

2. the Final Bond Resolution
3. a Petition of the Authority to the SFAA;
4. a form of the approving Resolution to be considered for adoption by the SFAA on August 30, 2022;
5. a form of a Notice of Action;
6. a form of bond counsel's opinion letter
7. 42M Letter; and
8. Private Participant Disclosure Forms.

Financing Structure

The Authority plans to issue the Bonds pursuant to a Trust Indenture ("Indenture") between the Authority and a trustee ("Trustee") under the Fannie Mae MTEB (MBS as Tax Exempt Bond Collateral) program. The proceeds of the Bonds will be used to make a loan to purchase a mortgage backed security ("MBS") issued by Fannie Mae, which is matched to a simultaneous mortgage loan ("Mortgage Loan") made to the Housing Sponsor by Regions Bank, a Fannie Mae lender ("Mortgage Lender"). Under the MTEB program, the Mortgage Lender underwrites the transaction based on Fannie Mae requirements and all of the Bond Documents are Fannie Mae based forms.

The MBS will be held by the Trustee and pledged under the terms of the Indenture as security for the payment of the Bonds. The proceeds of the Mortgage Loan will be used to acquire, rehabilitate and equip the Project. The Housing Sponsor will make payments on the Mortgage Loan from the revenues of the Project to the Mortgage Lender, which will then pass such payments from the Housing Sponsor through to the Trustee to make payments on the Bonds. The MBS ensures the payment in full of debt service on the Bonds.

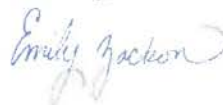
The Project will also be subject to an Agreement as to Restrictive Covenants, which will restrict occupancy at the Project to those who qualify as low-income tenants as defined by the HUD ("Beneficiary Class"). The Housing Sponsor will also enter into a Management Agreement which requires that the units at the Project be rented to those in the Beneficiary Class.

In the Petition, the Authority has requested the SFAA delegate to the State Treasurer the power to grant, on behalf of the SFAA, the final approval for the issuance of the Bonds following receipt by the State Treasurer of information with respect to the final details of the Bonds (including the final size, date, maturity schedule, and repayment provisions), the annual debt service requirements of the Authority on all of its outstanding bonds and notes, and the method to be employed in selling the Bonds. Pursuant to Section 31-13-220 of the Code, this information will be provided to the State Treasurer, as the designee of the SFAA, prior to the issuance of the Bonds.

Finally, a New Debt Information Form with respect to the Bonds will be submitted to the Office of the State Treasurer under separate cover, and I will provide you with a copy.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,



Emily W. Zackon

Enclosures: stated

BOND TRANSMITTAL FORM

TO: Delbert H. Singleton, Jr., Authority Secretary
State Fiscal Accountability Authority
600 Wade Hampton Building (29201)
P.O. Box 12444
Columbia, SC 29211

DATE: 8/23/2022

Submitted for SFAA Meeting on:
8/30/2022

FROM: Parker Poe Adams & Bernstein LLP

1221 Main Street, Suite 1100
Columbia, South Carolina 29201
803-253-6867

RE: South Carolina State Housing Finance and Development Authority Tax-Exempt Mortgage-backed Bonds (Shannon Park Apartments Project) (M-TEMS) Series 2022(FN)

Project Issue Date: 9/15/2022

Project Name: Shannon Park Apartments Project

Project Description: See Attachment A

Employment as a result of the project: Click or tap here to enter text.

	YES	NO	AMOUNT
Ceiling Allocation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	\$ 20,000,000 (carryforward)
Refunding Involved	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ Click or tap here to enter text.
Project Approved Previously	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ Click or tap here to enter text.

Documents enclosed (executed original and two copies of each):

(ALL documents required for state law approval; A and C only for ceiling allocation only.)

- A. ☒ Petition
- B. ☒ Resolution or Ordinance
- C. ☒ Inducement Resolution or comparable preliminary approval
- D. ☐ Department of Health and Environmental Control Certificate *if required*
- E. ☒ State Fiscal Accountability Authority Resolution and Public Notice *(original)*
Plus _____ copies for certification and return to bond counsel
- F. ☒ Draft bond counsel opinion letter
- G. ☐ Processing Fee

Amount: \$Click or tap here to enter text.

Check No: Click or tap here to enter text.

Payor: Click or tap here to enter text.

- H. ☐ No Private Participant will be known at the time the Authority considers this agenda item.
- J. ☒ This agenda item is accompanied by the applicable Private Party Disclosure form for each private participant.

Bond Counsel: Parker Poe Adams & Bernstein LLP
Typed Name of Bond Counsel

By: Emily Jackson

ATTACHMENT A TO TRANSMITTAL FORM

The South Carolina State Housing Finance and Development Authority ("Housing Authority"), has proposed to issue its Multifamily Tax-Exempt Mortgage-backed Bonds (Shannon Park Apartments Project) (M-TEMS) Series 2022 (FN), in the aggregate principal amount of not exceeding \$20,000,000 for the purpose of acquiring a guaranteed mortgage pass-through certificate in connection with the financing of the acquisition and rehabilitation by Standard Shannon Venture, LP, a South Carolina limited partnership (the "Sponsor") of an approximately 96-unit affordable housing development located in Goose Creek, Berkeley County, South Carolina to be known as the Shannon Park Apartments Project (collectively, the "Project"). The Project will provide housing for families earning 60% or less of the area median income.

RESOLUTION

A RESOLUTION AUTHORIZING THE SALE, ISSUANCE, EXECUTION AND DELIVERY OF NOT TO EXCEED \$20,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF MULTIFAMILY TAX-EXEMPT MORTGAGE-BACKED BONDS OF THE SOUTH CAROLINA STATE HOUSING FINANCE AND DEVELOPMENT AUTHORITY FOR THE SHANNON PARK APARTMENTS PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING THERETO; AUTHORIZING PROPER OFFICERS TO DO ALL THINGS NECESSARY OR ADVISABLE; AND OTHER MATTERS INCIDENTAL THERETO.

WHEREAS, the South Carolina State Housing Finance and Development Authority (the “*Authority*”) is authorized and empowered under and pursuant to the provisions of Title 31, Chapter 13, of the Code of Laws of South Carolina, 1976, as amended (the “*Act*”), upon making determinations that sufficient persons or families of either beneficiary class (as defined by the Act) (the “*Beneficiary Classes*”) are unable to pay the amounts at which private enterprise is providing decent, safe and sanitary housing, and that through the exercise of one or more of the programs authorized by the Act, decent, safe and sanitary housing would become available to members of the Beneficiary Classes in need therefor, to issue notes or bonds in order to alleviate the lack of decent, safe and sanitary housing available to the members of the Beneficiary Classes; and

WHEREAS, the Authority is further authorized by the Act to use the proceeds of such notes or bonds to purchase federally insured or guaranteed mortgages from mortgage lenders which will use the proceeds of the sale of the mortgages to originate new mortgage loans to housing sponsors for the construction or rehabilitation of residential housing for rental or purchase by the Beneficiary Classes; and

WHEREAS, Standard Shannon Venture, LP (the “*Housing Sponsor*”), has represented to the Authority that it desires to acquire, rehabilitate and equip a multifamily housing development located in the City of Goose Creek, Berkeley County, South Carolina known as the Shannon Park Apartments Project, consisting of a total of approximately 96 units (the “*Project*”) and has requested the assistance of the Authority in the financing thereof through the issuance of its bonds; and

WHEREAS, pursuant to and in accordance with the Act, the Authority desires to issue, in one or more series, its not exceeding \$20,000,000 aggregate principal amount Multifamily Tax-Exempt Mortgage-backed Bonds (M-TEMS) Series 2022 (the “*Bonds*”) for the Project, pursuant to this Resolution (this “*Resolution*”), and an Indenture of Trust (the “*Trust Indenture*”), between the Authority, and Zions Bancorporation, National Association, as trustee (the “*Trustee*”), in order to (i) provide funds to finance the costs of the Project, and (ii) pay the costs of issuance of the Bonds; and

WHEREAS, in furtherance of the purposes of the Act and in order to provide decent, safe and sanitary housing to members of the Beneficiary Classes, the Authority proposes to finance the costs of the Project by lending the proceeds derived from the sale of the Bonds pursuant to a

Financing Agreement (the "**Financing Agreement**"), by and among the Authority, the Trustee and the Housing Sponsor for the purpose of acquiring a guaranteed mortgage pass-through certificate; and

WHEREAS, the terms of the Financing Agreement will require the Housing Sponsor to make loan payments sufficient to pay when due the principal, premium (if any), and interest on the Bonds and related fees, costs and expenses and thereby provide a revenue source with which to pay the Bonds; and

WHEREAS, the Project will be subject to an Agreement as to Restrictive Covenants, which will require that the Project be operated in accordance with Section 142(d) of the Internal Revenue Code of 1986, as amended;

WHEREAS, it has been presently determined that the estimated amount necessary to finance the cost of the Project, including necessary expenses incidental to the issuance of the Bonds, will require the issuance, sale and delivery of the Bonds in the amount not to exceed \$20,000,000; and

WHEREAS, in accordance with the Act, Authority staff (a) has reviewed and recommended the Project based on its review, and (b) has approved the items which may be included in any required charges (rent plus any other mandatory payments) to occupants of the Project; and

WHEREAS, prior to issuing the Bonds, the Authority must obtain the approval of the State Fiscal Accountability Authority ("**SFAA**"); and

WHEREAS, there has been prepared for review and consideration by the Authority the forms of the Financing Agreement, the Trust Indenture, and the Regulatory Agreement; and

WHEREAS, it appears that the Financing Agreement and the Trust Indenture, which are now before this meeting for consideration, are in substantially final form and are appropriate instruments to be executed and delivered by the Authority for the purposes intended.

NOW, THEREFORE, BE IT RESOLVED, by the Authority as follows:

Section 1. In order to provide decent, safe and sanitary housing to members of the Beneficiary Classes, the issuance of the Bonds and the loan of the proceeds thereof for the Project is hereby authorized, ratified and approved.

Section 2. The Bonds shall be in substantially the form set forth in the Trust Indenture, now before this meeting, with necessary or appropriate variations, omissions and insertions as permitted or required by the Trust Indenture. The form, terms and provisions of the Bonds presented to this meeting and filed with the Executive Director of the Authority (the "**Executive Director**") are hereby approved, and all of the terms, provisions and conditions thereof are hereby incorporated by reference as if set out in this Resolution in their entirety. The Chairman ("**Chairman**") or Vice Chairman ("**Vice-Chairman**") of the Board of Commissioners of the Authority ("**Board**"), the Executive Director, or any of them, are hereby authorized, empowered and directed to execute, by manual, facsimile or electronic signature, and deliver the Bonds to the

Trustee, and the Secretary or Assistant Secretary of the Board (collectively, "**Secretary**") are each hereby authorized and directed to affix the corporate seal of the Authority to the Bonds. The Bonds are to be in substantially the form now before this meeting and hereby approved, or with such changes, insertions and omissions therein as may be deemed necessary or convenient by the Chairman, Vice Chairman or Executive Director executing the same, said execution to constitute conclusive evidence of such approval. In case the officers whose signatures shall appear on the Bonds shall cease to be such officers before the delivery of the Bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until delivery.

Section 3. The Bonds shall be a limited obligation of the Authority payable by the Authority solely from the Trust Estate (as defined in the Trust Indenture). The Bonds does not and shall never constitute a debt, grant or loan of the State of South Carolina ("**State**") or any political subdivision thereof within the meaning of any State constitutional provision or statutory limitation (other than Article X, Section 13(9) of the Constitution of the State of South Carolina, 1895, as amended, authorizing indebtedness for any public purpose payable solely from a revenue-producing project), nor give rise to a pecuniary liability as a result of the issuance thereof. The Bonds and the interest thereon are not payable out of any funds other than those of the Authority specified therefor, nor are they secured by or payable from the full faith, credit and taxing power of the State. The holders of the Mortgage Note must look solely to the Housing Sponsor to make payments under the Mortgage Note fully sufficient to pay principal of, premium, if any, and interest on the Bonds.

Section 4. The Chairman and the Executive Director of the Authority are hereby authorized to sell the Bonds to a purchaser to be designated by the Executive Director (the "**Purchaser**") pursuant to the terms and conditions of a term sheet, purchase contract or funding agreement which shall contain the terms and conditions acceptable to the Authority for the sale of its notes and bonds or as are approved by the Executive Director on receipt of advice from counsel to the Authority. The authority hereby conferred may be exercised as long as the interest rate of the Bonds does not exceed the limitations or contravene the conditions as described in the Act.

Section 5. Nothing in this Resolution or any other document executed in connection with the issuance of the Bonds shall be construed as an obligation or commitment by the Authority to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the revenues derived by the Authority from the Financing Agreement, (iii) any proceeds accruing to the Authority on account of insurance on the Project, (iv) any moneys accruing to the Authority on account of any taking or condemnation of title to all or part of any of the Project, and (v) any moneys arising out of the investment or reinvestment of said proceeds, revenues or moneys.

Section 6. The Trust Indenture as submitted herewith is hereby approved. The Trustee is hereby appointed as trustee. The Chairman, Vice Chairman, the Executive Director or any of them are hereby authorized and directed to execute and deliver the Trust Indenture with such changes, insertions and omissions as they deem necessary or convenient, said execution being conclusive evidence of such approval; and the Secretary is hereby authorized and directed to affix the corporate seal of the Authority to the Trust Indenture.

Section 7. The Financing Agreement as submitted herewith is hereby approved. The Chairman, Vice Chairman, the Executive Director or either of them are hereby authorized and directed to execute and deliver the Financing Agreement with such changes, insertions and omissions as they deem necessary or convenient, said execution being conclusive evidence of such approval.

Section 8. The Chairman, Vice Chairman, the Executive Director, or any other proper officer of the Authority, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and to cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution as may be recommended by legal counsel to the Authority; including, without limitation, the execution and delivery of any tax agreement, mortgage, assignment, bond purchase or placement agreement or agreement as to restrictive covenants customarily used in the transactions contemplated by the Financing Agreement and the Trust Indenture.

Section 9. The Trustee is hereby authorized to receive and receipt for the proceeds of the Bonds on behalf of the Authority and to hold, invest and disburse said proceeds in accordance with the provisions of the Financing Agreement and the Trust Indenture.

Section 10. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Authority contained in this Resolution, the Bonds or any other document executed in connection therewith against any officer of the Authority or employee, as such, in his or her individual capacity, past, present or future, of the Authority, either directly or through the Authority, whether by virtue of any constitutional provision, statute or rule or law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Resolution, the Bonds and all other documents referred to herein are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any officer of the Authority, employee as such, past, present or future, of the Authority, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Authority and the Trustee or the bondholder or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member, officer and employee is, by the adoption of this Resolution and the execution of the Bonds or any other documents referred to herein and as a condition of, and as a part of the consideration for, the adoption of this Resolution and the execution of the Bonds or any other documents referred to herein, expressly waived and released. The immunity of officers of the Authority and employees of the Authority under the provisions contained in this section shall survive the termination of this Resolution.

Section 11. This Resolution shall be construed and interpreted in accordance with the laws of the State.

Section 12. This Resolution shall become effective immediately upon its adoption by the Board and no prior or further action of the Board shall be required; however, the issuance of the Bonds shall be conditioned on the receipt of approval by the SFAA as required by the Act. The Chairman, the Executive Director, counsel to the Authority, or any of them, working with bond counsel are authorized and directed to prepare and present to the SFAA a petition for approval

prescribed by Section 31-13-220 of the Act, the form of which shall be approved by counsel to the Authority.

Section 13. Following underwriting and evaluation of the Project, there is hereby granted and definitively recommended an allocation of carryforward private activity bond ceiling in the amount of \$20,000,000 to support the issuance of the Bonds authorized by this Resolution.

Section 14. The provisions of this Resolution are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 15. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall take effect and be in full force from and after its passage and approval.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned Secretary of the South Carolina State Housing Finance and Development Authority (the "Authority") do hereby certify that I am the duly qualified and acting Secretary to the Authority and as such further certify that attached hereto is a true and correct copy of the Resolution adopted by the Board of Commissioners of the Authority at a meeting duly called and held on July 14, 2022, at which meeting a quorum was present and acting throughout, and that said Resolution has not been modified, amended or repealed and is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Authority effective July 14, 2022.

SOUTH CAROLINA STATE HOUSING
FINANCE AND DEVELOPMENT AUTHORITY

By: Bonita Shropshire
Bonita Shropshire, Secretary
Board of Commissioners

**A RESOLUTION APPROVING THE ISSUANCE BY THE SOUTH
CAROLINA STATE HOUSING FINANCE AND DEVELOPMENT
AUTHORITY OF ITS MULTIFAMILY HOUSING REVENUE
BONDS (SHANNON PARK APARTMENTS PROJECT) SERIES 2022
AND OTHER MATTERS RELATED THERETO**

WHEREAS, it is provided by the South Carolina State Housing Finance and Development Authority Act of 1977, as amended (the "Act"), that, upon approval of the State Fiscal Accountability Authority of South Carolina (the "SFAA"), the South Carolina State Housing Finance and Development Authority (the "Authority") may issue from time to time bonds or notes for the purpose of obtaining funds with which to make (1) construction or rehabilitation loans secured by mortgages of housing sponsors; and (2) permanent mortgage loans to housing sponsors who agree to and shall be required to provide construction or rehabilitation of residential housing for rental to persons or families of either Beneficiary Class, as defined in the Act; however, with respect to any particular issue of notes or bonds, one of the following conditions must be met: (a) if there is a public distribution of the notes or bonds, the issue must be rated by one or more of the national rating agencies, and one of more of the additional following conditions must be met: (i) there must be in effect a Federal program providing assistance in repayment of such loans; (ii) the proceeds must be used to acquire either Federally insured mortgage loans or mortgage loans insured by a private mortgage insurer authorized to do business in the State of South Carolina; (iii) the payment of the notes or bonds to the purchasers and holders of them must be assured by the maintenance of adequate reserves or insurance or a guaranty from a responsible entity which has been determined to be sufficient by the SFAA; or (b) if the notes or bonds are secured by a mortgage or other security agreement and are offered and sold as a unit with such mortgage or other security agreement in transactions with banks, institutional investors, or to other non-registered persons as provided in Section 35-1-202(11)(A) of the Code of Laws of South Carolina, 1976, as amended, the documents pursuant to which the notes or bonds are issued must permit the Authority to avoid any default by it by completing an assignment of, or foregoing its right with respect to any collateral or security pledged to secure the notes or bonds; and

WHEREAS, Standard Shannon Venture, LP, a South Carolina limited partnership (the "Sponsor"), has requested the Authority to assist it in an undertaking to acquire, rehabilitate and equip an approximately 96-unit multifamily affordable housing development in Berkeley County, South Carolina (the "Project"); and

WHEREAS, in order to provide money to finance the Project, the Authority proposes to issue its revenue bonds to be known as South Carolina State Housing Finance and Development Authority Multifamily Tax-Exempt Mortgage-backed Bonds (M-TEMS) Series 2022 (FN) in an aggregate principal amount of not exceeding \$18,000,000 (the "Bonds"); and

WHEREAS, the Authority has presented to the SFAA its Petition (the "Petition"), which sets forth certain information with respect to the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE STATE FISCAL ACCOUNTABILITY AUTHORITY IN MEETING DULY ASSEMBLED:

Section 1. Approval is granted to the undertaking of the Authority as outlined in the Petition.

Section 2. Subject to the conditions set forth in Section 3, approval is hereby granted by the SFAA to the execution and delivery by the Authority of its Bonds to be designated as South Carolina State Housing Finance and Development Authority Multifamily Tax-Exempt Mortgage-backed Bonds (M-TEMS) Series 2022 (FN) or such other designation as the Board of Commissioners of the Authority may determine, in the principal amount of not exceeding \$18,000,000.

Section 3. The approval of the SFAA is conditioned on the following:

(a) The Authority shall have provided to the State Treasurer, to the extent not previously provided herein or otherwise, the final information required to be submitted to the SFAA by the provisions of Section 31-3-220, to wit:

- (i) the principal amount of the Bonds to be issued;
- (ii) the maturity schedule of the Bonds to be issued;
- (iii) a schedule showing the annual debt service requirements of all outstanding notes and bonds of the Authority;
- (iv) a schedule showing the amount and source of revenues available for the payment of debt service on the notes and bonds referenced in item (iii); and
- (v) the method to be employed in selling the Bonds;

(b) The approval of the State Treasurer of the form and substance of the Bonds and of such documents as he deems necessary therefore;

(c) The State Treasurer shall find and determine that the funds estimated to be available for the repayment of the Authority's notes and bonds, including the Bonds, will be sufficient to provide for the payment of the principal and interest thereon;

(d) The documents pursuant to which the Bonds are being issued shall provide that all expenses, costs, and fees of the Authority in connection with the issuance of the Bonds, including legal fees, printing, and all disbursements shall be paid by the Sponsor; and

(e) To the extent required, the final approval by the Governor as the elected official of the State of South Carolina for purposes of Section 142(f) of the Internal Revenue Code of 1986, as amended.

Section 4. This Resolution shall take effect immediately upon its adoption.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PETITION

TO THE STATE FISCAL ACCOUNTABILITY
AUTHORITY OF SOUTH CAROLINA

SHANNON PARK
APARTMENTS PROJECT

The South Carolina State Housing Finance and Development Authority (the "**Authority**") submits this petition to the State Fiscal Accountability Authority of South Carolina (the "**SFAA**") pursuant to the South Carolina State Housing Finance and Development Authority Act of 1977, Act No. 76 of the Acts and Joint Resolutions of the General Assembly of 1977, as amended (the "**Act**") and respectfully shows:

1. The Act, among other things, provides that whenever the Authority has determined by resolution that sufficient persons and families of either beneficiary class (as defined in the Act) (the "**Beneficiary Classes**") are unable to pay the amounts at which private enterprise is providing decent, safe and sanitary housing and that through the exercise of one or more of the programs authorized by the Act, decent, safe and sanitary housing will become available to members of the Beneficiary Classes in need therefore, then, on receipt of approval from the SFAA, the Authority is authorized, subject to the conditions set forth in the Act, to issue from time to time its notes or bonds for the purpose of, among other things, obtaining funds with which to purchase federally insured or guaranteed mortgages from mortgage lenders which will use the proceeds of the sale of the mortgages to originate new mortgage loans to housing sponsors for the construction or rehabilitation of residential housing for rental or purchase by the Beneficiary Classes.

2. Standard Shannon Venture LP (the "**Sponsor**"), has applied to and requested the Authority to assist the Sponsor by issuing bonds, anticipated to be designated as South Carolina State Housing Finance and Development Authority Multifamily Tax-Exempt Mortgage-backed Bonds (Shannon Park Apartments Project) (M-TEMS) Series 2022 (FN) ("**Bonds**"), in the aggregate principal amount of not exceeding \$20,000,000 for the acquisition and rehabilitation of a 96-unit affordable housing development located in the City of Goose Creek, Berkeley County, South Carolina, to be known as Shannon Park Apartments (the "**Project**").

3. The Authority has approved the issuance and sale of the Bonds pursuant to a resolution adopted July 14, 2022 (the "**Resolution**") adopted by the Board of the Commissioners of the Authority ("**Board**"), to provide funds to acquire a guaranteed mortgage pass-through certificate in connection with the acquisition and rehabilitation of the Project.

4. The Board has made a definitive recommendation for an allocation of carryforward private activity bond ceiling in the amount of \$20,000,000 to support the issuance of the Bonds authorized by the Resolution.

5. The Authority will take steps necessary to comply with the requirements of Section 142 of the Internal Revenue Code of 1986, as amended.

6. The net interest rate to be borne by the Bonds has not been determined. The interest rate will not exceed the limitations or contravene the conditions described in the Act.

7. The trustee for the issue and the size, date, maturity schedule, payment dates and repayment provisions with respect to the Bonds shall be finally determined prior to the date the Bonds is issued. As soon as these matters are finally determined, a precise schedule thereof shall be presented to the SFAA or its designee as provided by the Act.

8. The Authority requests that the SFAA delegate to the State Treasurer as its designee and delegate to the State Treasurer the ability to approve the interest rate on the Bonds and to grant on behalf of the SFAA final approval for the issuance of the Bonds. Prior to the issuance of the Bonds, the Authority shall have provided to the State Treasurer, to the extent not previously provided herein or otherwise, the information required to be submitted to the SFAA by the provisions of Section 31-13-220, to wit:

- (a) the principal amount of the Bonds to be issued;
- (b) the maturity schedule of the Bonds to be issued;
- (c) a schedule showing the annual debt service requirements of all outstanding bonds of the Authority;
- (d) a schedule showing the amount and source of revenues available for the payment of debt service on said bonds;
- (e) the method to be employed in selling the Bonds.

9. The Bonds will be a special obligation of the Authority secured by and payable solely from monies, income and receipts of the Authority pledged under the Resolution and the trust indenture with respect thereto.

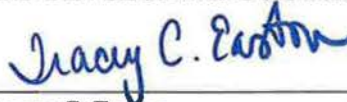
10. A schedule showing the annual debt service requirements of all outstanding bonds of the Authority and source of revenues available for the payment of such debt service requirements has previously been provided to the SFAA.

11. The Authority will produce any further information with respect to the Bonds required by the SFAA.

WHEREFORE, on the basis of the foregoing, the Authority prays that the SFAA preliminarily approve the issuance of the Bonds in the aggregate principal amount set forth above for the purpose of financing the acquisition, construction and equipping of the Project, establishing necessary reserve funds, and paying the costs and expenses incurred in connection with the issuance of the Bonds.

Respectfully submitted,

**SOUTH CAROLINA STATE HOUSING FINANCE
AND DEVELOPMENT AUTHORITY**



Tracey C. Easton
General Counsel

July 20, 2022

Atlanta, GA
Greenville, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

[Closing Date], 2022

Board of Commissioners
South Carolina State Housing
Finance and Development Authority
Lexington, South Carolina

Regions Bank
[City, State]

Re:

[\$[20,000,000]
South Carolina State Housing Finance and Development Authority
Multifamily Tax-Exempt Mortgage-backed Bonds
(M-TEMS) Series 2022(FN)

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the South Carolina State Housing Finance and Development Authority, as issuer and governmental lender ("***Issuer***"), of its \$[20,000,000] Multifamily Tax-Exempt Mortgage-backed Bonds (M-TEMS) (Shannon Park Apartments Project) Series 2022(FN) ("***Bonds***").

The Bonds issued under and pursuant to Title 31, Chapter 13 of the Code of Laws of South Carolina 1976, as amended ("***Act***"). The Bonds are being issued under an Indenture of Trust dated as of September 1, 2022 ("***Trust Indenture***"), among the Issuer, and Regions Bank, an Alabama banking corporation, as trustee ("***Trustee***"). Capitalized terms not defined herein shall have the same meaning as set forth in the Trust Indenture.

The Bonds are issued as a single certificate registered in the name of the initial purchaser thereof, in the aggregate principal amount of \$[20,000,000] and are dated [Closing Date], 2022. The Bonds bear interest from the date thereof payable in accordance with terms provided therein. The Bonds mature on []. The Bonds are subject to redemption upon the terms and conditions and at the price set forth therein. The Bonds are also subject to mandatory tender upon the terms and conditions set forth therein.

The Bonds are being issued for the primary purpose of providing funds for the making of a mortgage loan ("**Loan**") from the Issuer to Standard Shannon Venture, LP ("**Borrower**"), pursuant to that certain Financing Agreement, dated as of September 1, 2022 ("**Financing Agreement**"), between the Issuer and the Borrower, for the acquisition, construction, development and equipping of residential rental apartment units and the acquisition, rehabilitation and installation of related fixtures, equipment, furnishings and site improvements to be known as the Shannon Park Apartments Project located in the City of Goose Creek, Berkeley County, South Carolina.

In connection with the foregoing, we have examined (i) the Constitution, the Act and other relevant statutes of the State of South Carolina ("**State**"); (ii) certified copies of the proceedings of the Board of Commissioners of the Issuer authorizing the issuance of the Bond on July 14, 2022 ("**Resolution**"); (iii) certified copies of the proceedings of the State Fiscal Accountability Authority ("**Authority**") relating to the Bond, including a resolution adopted by the Authority on August 30, 2022; (iv) the Financing Agreement; (v) the Trust Indenture; (vi) a form of an Agreement as to Restrictive Covenants, dated [Closing Date], 2022 ("**Regulatory Agreement**"), among the Issuer, HOM SP Manager, LLC, as owner, and the Borrower; (vii) the Tax Certificate, dated [Closing Date], 2022 ("**Tax Agreement**"), between the Issuer, the Trustee and the Borrower (collectively, the Resolution, the Trust Indenture, the Financing Agreement, the Regulatory Agreement and the Tax Agreement are referred to herein as "**Bond Documents**"); and (viii) such other records and documents as we have considered necessary or appropriate in rendering the following opinions. We have also examined the fully executed Bonds.

As to questions of fact material to the opinions hereinafter expressed, we have relied upon representations of the Issuer and the Borrower contained in the Bond Documents, the certified proceedings and other certifications of public officials and others furnished to us, including certifications furnished to us by or on behalf of the Issuer and the Borrower, without undertaking to verify the same by independent investigation. We have assumed the accuracy and truthfulness of all public records and of all certifications, documents and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. We have also assumed the genuineness of the signatures appearing upon such public records, certifications, and documents and proceedings.

In giving the opinions hereinafter expressed, we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of the State, and such opinions are limited to the federal laws of the United States of America and the laws of the State.

Based upon the foregoing, it is our opinion under existing law that:

1. The Issuer is a duly created and validly existing public body corporate and politic and an agency of the State with full power and authority to issue the Bond, to make the Loan with the proceeds of the Bonds, and to perform all of its obligations under the Bond Documents.
2. The Issuer has the right, power and authority under the Act to adopt the Resolution and execute the Bond Documents and each has been duly and lawfully executed and delivered by the Issuer, is in full force and effect, and is valid and binding upon the Issuer and enforceable in accordance with its terms.
3. The Trust Indenture creates a valid pledge of the Trust Estate for payment of the Bonds pursuant to the terms of the Trust Indenture.

4. The Bonds have been duly authorized, executed and delivered and constitutes a legal valid and binding special obligation of the Issuer enforceable in accordance with its terms and the terms of the Trust Indenture. The Bonds are secured in the manner and the extent prescribed by the Trust Indenture.

5. The Bonds are not a debt or grant or loan of credit of the State or any political subdivision thereof and neither the State nor any political subdivision thereof is liable thereon, nor shall the Bonds be payable out of any funds other than those of the Issuer pledged therefor under the Trust Indenture.

6. Interest on the Bonds is excludable from gross income for federal income tax purposes, except for interest on the Bonds for any period during which such Bond is held by a "substantial user" of the facilities financed by the Bond or a "related person" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended ("**Code**"). Interest on the Bond is not a specific item of tax preference for purposes of the federal alternative minimum tax. The opinions set forth in this paragraph are subject to the condition that the Issuer and the Borrower comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Issuer and the Borrower have covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds.

7. The Bonds and the interest thereon are presently exempt from all South Carolina, county, municipal, school district, and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for inheritance, estate and transfer taxes, but the interest on the Bonds may be includable for certain franchise fees or taxes.

8. The Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Trust Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

It is understood that the enforceability of the Trust Indenture and the Bonds may be subject to judicial discretion, the exercise of the sovereign police powers of the State or the constitutional powers of the United States of America and valid bankruptcy, insolvency, reorganization, moratorium and other laws affecting the enforcement of creditors' rights generally.

This opinion letter is delivered solely for your benefit in connection with the issuance of the Bonds and consummation of the transaction contemplated thereby and may not be used or relied on by any other person or for any other purpose without our prior written consent in each instance. Our opinions expressed herein are as of the date hereof, and we undertake no obligation to advise you of any changes of applicable law or any other matters that may come to our attention after the date hereof that may affect our opinions expressed herein.

Very truly yours,

PARKER POE ADAMS & BERNSTEIN LLP

Shannon Park
Amortization Schedule

Assumptions

Loan Amount	5	16,000,000
Loan Repayment Date	192 months	10/31/28
Amortization (yrs)		40 yrs
Closing Date		09/30/22
Note Date		10/31/22

Pmt No.	Pmt Date (end of mo)	Year	Period Since Closing	Year	All-In Rate	Beginning Balance	Interest Expense	Amortization Expense	Principal Repayment	Ending Balance	Accumulated Interest	Accumulated Principal
1	Oct-22	2022	1	1	5.26%	16,000,000	70,067	9,806	-	15,990,194	70,067	9,806
2	Nov-22	2022	2	1	5.26%	15,990,194	70,024	9,849	-	15,980,344	140,090	19,656
3	Dec-22	2022	3	1	5.26%	15,980,344	69,981	9,892	-	15,970,452	210,071	29,548
4	Jan-23	2023	4	1	5.26%	15,970,452	69,937	9,936	-	15,960,516	280,008	39,484
5	Feb-23	2023	5	1	5.26%	15,960,516	69,894	9,979	-	15,950,537	349,902	49,463
6	Mar-23	2023	6	1	5.26%	15,950,537	69,850	10,023	-	15,940,514	419,752	59,486
7	Apr-23	2023	7	1	5.26%	15,940,514	69,806	10,067	-	15,930,447	489,558	69,553
8	May-23	2023	8	1	5.26%	15,930,447	69,762	10,111	-	15,920,336	559,320	79,664
9	Jun-23	2023	9	1	5.26%	15,920,336	69,718	10,155	-	15,910,181	629,038	89,819
10	Jul-23	2023	10	1	5.26%	15,910,181	69,673	10,200	-	15,899,982	698,711	100,018
11	Aug-23	2023	11	1	5.26%	15,899,982	69,629	10,244	-	15,889,737	768,340	110,263
12	Sep-23	2023	12	1	5.26%	15,889,737	69,584	10,289	-	15,879,448	837,924	120,552
13	Oct-23	2023	13	2	5.26%	15,879,448	69,539	10,334	-	15,869,114	907,463	130,886
14	Nov-23	2023	14	2	5.26%	15,869,114	69,493	10,379	-	15,858,731	976,956	141,266
15	Dec-23	2023	15	2	5.26%	15,858,731	69,448	10,425	-	15,848,309	1,046,404	151,691
16	Jan-24	2024	16	2	5.26%	15,848,309	69,402	10,471	-	15,837,839	1,115,807	162,161
17	Feb-24	2024	17	2	5.26%	15,837,839	69,357	10,516	-	15,827,322	1,185,163	172,678
18	Mar-24	2024	18	2	5.26%	15,827,322	69,310	10,563	-	15,816,760	1,254,474	183,210
19	Apr-24	2024	19	2	5.26%	15,816,760	69,264	10,609	-	15,806,151	1,323,738	193,849
20	May-24	2024	20	2	5.26%	15,806,151	69,218	10,655	-	15,795,496	1,392,956	204,504
21	Jun-24	2024	21	2	5.26%	15,795,496	69,171	10,702	-	15,784,794	1,462,127	215,206
22	Jul-24	2024	22	2	5.26%	15,784,794	69,124	10,749	-	15,774,045	1,531,251	225,953
23	Aug-24	2024	23	2	5.26%	15,774,045	69,077	10,796	-	15,763,250	1,600,328	236,750
24	Sep-24	2024	24	2	5.26%	15,763,250	69,030	10,843	-	15,752,406	1,669,358	247,594
25	Oct-24	2024	25	3	5.26%	15,752,406	68,982	10,891	-	15,741,516	1,738,340	258,484
26	Nov-24	2024	26	3	5.26%	15,741,516	68,935	10,938	-	15,730,578	1,807,275	269,422
27	Dec-24	2024	27	3	5.26%	15,730,578	68,887	10,986	-	15,719,591	1,876,162	280,409
28	Jan-25	2025	28	3	5.26%	15,719,591	68,839	11,034	-	15,708,557	1,945,001	291,443
29	Feb-25	2025	29	3	5.26%	15,708,557	68,790	11,083	-	15,697,475	2,013,791	302,525
30	Mar-25	2025	30	3	5.26%	15,697,475	68,742	11,131	-	15,686,343	2,082,533	313,657
31	Apr-25	2025	31	3	5.26%	15,686,343	68,693	11,180	-	15,675,164	2,151,226	324,806
32	May-25	2025	32	3	5.26%	15,675,164	68,644	11,229	-	15,663,933	2,219,870	336,006
33	Jun-25	2025	33	3	5.26%	15,663,933	68,595	11,278	-	15,652,637	2,288,465	347,243
34	Jul-25	2025	34	3	5.26%	15,652,637	68,546	11,327	-	15,641,299	2,357,011	358,671
35	Aug-25	2025	35	3	5.26%	15,641,299	68,496	11,377	-	15,629,822	2,425,307	370,088
36	Sep-25	2025	36	3	5.26%	15,629,822	68,446	11,427	-	15,618,326	2,493,953	381,474
37	Oct-25	2025	37	4	5.26%	15,618,326	68,396	11,477	-	15,606,749	2,562,349	392,951
38	Nov-25	2025	38	4	5.26%	15,606,749	68,346	11,527	-	15,595,522	2,630,695	404,478
39	Dec-25	2025	39	4	5.26%	15,595,522	68,295	11,578	-	15,583,944	2,698,990	416,056
40	Jan-26	2026	40	4	5.26%	15,583,944	68,245	11,628	-	15,572,316	2,767,233	427,644
41	Feb-26	2026	41	4	5.26%	15,572,316	68,194	11,679	-	15,560,636	2,835,429	439,344
42	Mar-26	2026	42	4	5.26%	15,560,636	68,143	11,730	-	15,548,906	2,903,571	451,091
43	Apr-26	2026	43	4	5.26%	15,548,906	68,091	11,782	-	15,537,124	2,971,663	462,876
44	May-26	2026	44	4	5.26%	15,537,124	68,040	11,833	-	15,525,291	3,039,702	474,709
45	Jun-26	2026	45	4	5.26%	15,525,291	67,988	11,885	-	15,513,406	3,107,690	486,594
46	Jul-26	2026	46	4	5.26%	15,513,406	67,936	11,937	-	15,501,469	3,175,626	498,331
47	Aug-26	2026	47	4	5.26%	15,501,469	67,884	11,989	-	15,489,479	3,243,509	510,521
48	Sep-26	2026	48	4	5.26%	15,489,479	67,831	12,042	-	15,477,437	3,311,340	522,563
49	Oct-26	2026	49	5	5.26%	15,477,437	67,778	12,095	-	15,465,343	3,379,119	534,657
50	Nov-26	2026	50	5	5.26%	15,465,343	67,725	12,148	-	15,453,195	3,446,844	546,805
51	Dec-26	2026	51	5	5.26%	15,453,195	67,672	12,201	-	15,440,994	3,514,516	559,006
52	Jan-27	2027	52	5	5.26%	15,440,994	67,619	12,253	-	15,428,740	3,582,135	571,260
53	Feb-27	2027	53	5	5.26%	15,428,740	67,565	12,308	-	15,416,432	3,649,700	583,569
54	Mar-27	2027	54	5	5.26%	15,416,432	67,511	12,363	-	15,404,070	3,717,211	595,930
55	Apr-27	2027	55	5	5.26%	15,404,070	67,457	12,416	-	15,391,654	3,784,668	608,346
56	May-27	2027	56	5	5.26%	15,391,654	67,403	12,470	-	15,379,184	3,852,071	620,816
57	Jun-27	2027	57	5	5.26%	15,379,184	67,348	12,523	-	15,366,659	3,919,419	633,341
58	Jul-27	2027	58	5	5.26%	15,366,659	67,293	12,580	-	15,354,079	3,986,712	645,921
59	Aug-27	2027	59	5	5.26%	15,354,079	67,238	12,635	-	15,341,444	4,053,950	658,556
60	Sep-27	2027	60	5	5.26%	15,341,444	67,183	12,690	-	15,328,754	4,121,133	671,246
61	Oct-27	2027	61	6	5.26%	15,328,754	67,127	12,746	-	15,316,008	4,188,260	683,992
62	Nov-27	2027	62	6	5.26%	15,316,008	67,071	12,802	-	15,303,206	4,255,331	696,794
63	Dec-27	2027	63	6	5.26%	15,303,206	67,015	12,858	-	15,290,348	4,322,346	709,652
64	Jan-28	2028	64	6	5.26%	15,290,348	66,959	12,914	-	15,277,434	4,389,305	722,566
65	Feb-28	2028	65	6	5.26%	15,277,434	66,902	12,971	-	15,264,464	4,456,208	735,536
66	Mar-28	2028	66	6	5.26%	15,264,464	66,846	13,027	-	15,251,437	4,523,033	748,563
67	Apr-28	2028	67	6	5.26%	15,251,437	66,789	13,084	-	15,238,352	4,589,842	761,648
68	May-28	2028	68	6	5.26%	15,238,352	66,731	13,142	-	15,225,210	4,656,573	774,790
69	Jun-28	2028	69	6	5.26%	15,225,210	66,674	13,199	-	15,212,011	4,723,247	787,989
70	Jul-28	2028	70	6	5.26%	15,212,011	66,616	13,257	-	15,198,754	4,789,863	801,246
71	Aug-28	2028	71	6	5.26%	15,198,754	66,558	13,315	-	15,185,439	4,856,421	814,561
72	Sep-28	2028	72	6	5.26%	15,185,439	66,500	13,373	-	15,172,066	4,922,920	827,934
73	Oct-28	2028	73	7	5.26%	15,172,066	66,441	13,432	-	15,158,634	4,989,361	841,366
74	Nov-28	2028	74	7	5.26%	15,158,634	66,382	13,491	-	15,145,143	5,055,744	854,857
75	Dec-28	2028	75	7	5.26%	15,145,143	66,323	13,550	-	15,131,593	5,122,067	868,407
76	Jan-29	2029	76	7	5.26%	15,131,593	66,264	13,609	-	15,117,984	5,188,331	882,016
77	Feb-29	2029	77	7	5.26%	15,117,984	66,204	13,669	-	15,104,315	5,254,535	895,683
78	Mar-29	2029	78	7	5.26%	15,104,315	66,144	13,729	-	15,090,586	5,320,679	909,414
79	Apr-29	2029	79	7	5.26%	15,090,586	66,084	13,789	-	15,076,797	5,386,763	923,203
80	May-29	2029	80	7	5.26%	15,076,797	66,024	13,849	-	15,062,948	5,452,787	937,052
81	Jun-29	2029	81	7	5.26%	15,062,948	65,963	13,910	-	15,049,038	5,518,750	950,962
82	Jul-29	2029	82	7	5.26%	15,049,038	65,902	13,971	-	15,035,068	5,584,652	964,932
83	Aug-29	2029	83	7	5.26%	15,035,068	65,841	14,032	-	15,021,036	5,650,493	978,964
84	Sep-29	2029	84	7	5.26%	15,021,036	65,780	14,093	-	15,006,942	5,716,273	993,058
85	Oct-29	2029	85	8	5.26%	15,006,942	65,718	14,155	-	14,992,787	5,781,991	1,007,213
86	Nov-29	2029	86	8	5.26%	14,992,787	65,656	14,217	-	14,978,570	5,847,647	1,021,430
87	Dec-29	2029	87	8	5.26%	14,978,570	65,594	14,279	-	14,964,291	5,913,241	1,035,709
88	Jan-30	2030	88	8	5.26%	14,964,291	65,531	14,342	-	14,949,949	5,978,772	1,050,051
89	Feb-30	2030	89	8	5.26%	14,949,949	65,468	14,405	-	14,935,544	6,044,240	1,0

Shannon Park
Amortization Schedule

Assumptions

Loan Amount		\$	16,000,000
Loan Repayment Date	192 months	10/31/38	
Amortization (yrs)		40 yrs	
Closing Date		09/30/22	
Note Date		10/31/22	

Pmt No.	Pmt Date (end of mo)	Year	Period Since Closing	Year	All-in Rate	Beginning Balance	Interest Expense	Amortization Expense	Principal Repayment	Ending Balance	Accumulated Interest	Accumulated Principal
97	Oct-30	2030	97	9	5.26%	14,832,930	64,956	14,917	-	14,818,013	6,565,692	1,181,887
98	Nov-30	2030	98	9	5.26%	14,818,013	64,891	14,982	-	14,803,030	6,630,583	1,196,970
99	Dec-30	2030	99	9	5.26%	14,803,030	64,823	15,048	-	14,787,982	6,695,408	1,212,018
100	Jan-31	2031	100	9	5.26%	14,787,982	64,759	15,114	-	14,772,868	6,760,167	1,227,132
101	Feb-31	2031	101	9	5.26%	14,772,868	64,693	15,180	-	14,757,686	6,824,860	1,242,312
102	Mar-31	2031	102	9	5.26%	14,757,686	64,626	15,247	-	14,742,442	6,889,486	1,257,558
103	Apr-31	2031	103	9	5.26%	14,742,442	64,560	15,313	-	14,727,128	6,954,046	1,272,872
104	May-31	2031	104	9	5.26%	14,727,128	64,493	15,380	-	14,711,748	7,018,538	1,288,252
105	Jun-31	2031	105	9	5.26%	14,711,748	64,425	15,448	-	14,696,300	7,082,963	1,303,700
106	Jul-31	2031	106	9	5.26%	14,696,300	64,358	15,515	-	14,680,785	7,147,321	1,319,215
107	Aug-31	2031	107	9	5.26%	14,680,785	64,290	15,583	-	14,665,201	7,211,611	1,334,799
108	Sep-31	2031	108	9	5.26%	14,665,201	64,221	15,652	-	14,649,530	7,275,832	1,350,430
109	Oct-31	2031	109	10	5.26%	14,649,530	64,153	15,720	-	14,633,830	7,339,985	1,366,170
110	Nov-31	2031	110	10	5.26%	14,633,830	64,084	15,789	-	14,618,040	7,404,069	1,381,960
111	Dec-31	2031	111	10	5.26%	14,618,040	64,015	15,858	-	14,602,182	7,468,084	1,397,818
112	Jan-32	2032	112	10	5.26%	14,602,182	63,945	15,928	-	14,586,235	7,532,029	1,413,745
113	Feb-32	2032	113	10	5.26%	14,586,235	63,876	15,997	-	14,570,237	7,595,905	1,429,743
114	Mar-32	2032	114	10	5.26%	14,570,237	63,806	16,067	-	14,554,190	7,659,710	1,445,810
115	Apr-32	2032	115	10	5.26%	14,554,190	63,735	16,138	-	14,538,032	7,723,443	1,461,948
116	May-32	2032	116	10	5.26%	14,538,032	63,665	16,208	-	14,521,844	7,787,110	1,478,136
117	Jun-32	2032	117	10	5.26%	14,521,844	63,594	16,279	-	14,505,564	7,850,704	1,494,456
118	Jul-32	2032	118	10	5.26%	14,505,564	63,522	16,351	-	14,489,214	7,914,226	1,510,786
119	Aug-32	2032	119	10	5.26%	14,489,214	63,451	16,422	-	14,472,791	7,977,676	1,527,209
120	Sep-32	2032	120	10	5.26%	14,472,791	63,379	16,494	-	14,456,297	8,041,035	1,543,703
121	Oct-32	2032	121	11	5.26%	14,456,297	63,307	16,566	-	14,439,731	8,104,362	1,560,269
122	Nov-32	2032	122	11	5.26%	14,439,731	63,234	16,639	-	14,423,092	8,167,596	1,576,908
123	Dec-32	2032	123	11	5.26%	14,423,092	63,161	16,712	-	14,406,380	8,230,757	1,593,620
124	Jan-33	2033	124	11	5.26%	14,406,380	63,088	16,785	-	14,389,595	8,293,845	1,610,405
125	Feb-33	2033	125	11	5.26%	14,389,595	63,014	16,859	-	14,372,736	8,356,859	1,627,264
126	Mar-33	2033	126	11	5.26%	14,372,736	62,941	16,932	-	14,355,804	8,419,800	1,644,196
127	Apr-33	2033	127	11	5.26%	14,355,804	62,866	17,007	-	14,338,797	8,482,666	1,661,203
128	May-33	2033	128	11	5.26%	14,338,797	62,792	17,081	-	14,321,716	8,545,438	1,678,284
129	Jun-33	2033	129	11	5.26%	14,321,716	62,717	17,156	-	14,304,561	8,608,176	1,695,439
130	Jul-33	2033	130	11	5.26%	14,304,561	62,642	17,231	-	14,287,330	8,670,818	1,712,670
131	Aug-33	2033	131	11	5.26%	14,287,330	62,567	17,306	-	14,270,023	8,733,384	1,729,977
132	Sep-33	2033	132	11	5.26%	14,270,023	62,491	17,382	-	14,252,641	8,795,875	1,747,359
133	Oct-33	2033	133	12	5.26%	14,252,641	62,415	17,458	-	14,235,183	8,858,290	1,764,817
134	Nov-33	2033	134	12	5.26%	14,235,183	62,338	17,533	-	14,217,648	8,920,628	1,782,352
135	Dec-33	2033	135	12	5.26%	14,217,648	62,261	17,612	-	14,200,037	8,982,889	1,799,963
136	Jan-34	2034	136	12	5.26%	14,200,037	62,184	17,689	-	14,182,348	9,045,074	1,817,652
137	Feb-34	2034	137	12	5.26%	14,182,348	62,107	17,766	-	14,164,582	9,107,181	1,835,418
138	Mar-34	2034	138	12	5.26%	14,164,582	62,029	17,844	-	14,146,738	9,169,210	1,853,262
139	Apr-34	2034	139	12	5.26%	14,146,738	61,951	17,922	-	14,128,816	9,231,161	1,871,184
140	May-34	2034	140	12	5.26%	14,128,816	61,872	18,001	-	14,110,815	9,293,033	1,889,185
141	Jun-34	2034	141	12	5.26%	14,110,815	61,794	18,079	-	14,092,736	9,354,827	1,907,264
142	Jul-34	2034	142	12	5.26%	14,092,736	61,714	18,159	-	14,074,577	9,416,541	1,925,423
143	Aug-34	2034	143	12	5.26%	14,074,577	61,635	18,238	-	14,056,339	9,478,176	1,943,661
144	Sep-34	2034	144	12	5.26%	14,056,339	61,555	18,318	-	14,038,021	9,539,731	1,961,979
145	Oct-34	2034	145	13	5.26%	14,038,021	61,475	18,398	-	14,019,623	9,601,206	1,980,377
146	Nov-34	2034	146	13	5.26%	14,019,623	61,394	18,479	-	14,001,144	9,662,600	1,998,856
147	Dec-34	2034	147	13	5.26%	14,001,144	61,313	18,560	-	13,982,585	9,723,931	2,017,413
148	Jan-35	2035	148	13	5.26%	13,982,585	61,232	18,641	-	13,963,944	9,785,146	2,036,056
149	Feb-35	2035	149	13	5.26%	13,963,944	61,150	18,723	-	13,945,221	9,846,296	2,054,779
150	Mar-35	2035	150	13	5.26%	13,945,221	61,068	18,805	-	13,926,417	9,907,364	2,073,582
151	Apr-35	2035	151	13	5.26%	13,926,417	60,986	18,887	-	13,907,530	9,968,350	2,092,470
152	May-35	2035	152	13	5.26%	13,907,530	60,903	18,970	-	13,888,560	10,029,254	2,111,440
153	Jun-35	2035	153	13	5.26%	13,888,560	60,820	19,053	-	13,869,508	10,090,074	2,130,492
154	Jul-35	2035	154	13	5.26%	13,869,508	60,737	19,136	-	13,850,372	10,150,811	2,149,628
155	Aug-35	2035	155	13	5.26%	13,850,372	60,653	19,220	-	13,831,152	10,211,464	2,168,848
156	Sep-35	2035	156	13	5.26%	13,831,152	60,569	19,304	-	13,811,848	10,272,033	2,188,152
157	Oct-35	2035	157	14	5.26%	13,811,848	60,484	19,389	-	13,792,459	10,332,517	2,207,541
158	Nov-35	2035	158	14	5.26%	13,792,459	60,399	19,474	-	13,772,986	10,392,917	2,227,014
159	Dec-35	2035	159	14	5.26%	13,772,986	60,314	19,559	-	13,753,427	10,453,231	2,246,573
160	Jan-36	2036	160	14	5.26%	13,753,427	60,229	19,644	-	13,733,782	10,513,460	2,266,218
161	Feb-36	2036	161	14	5.26%	13,733,782	60,143	19,730	-	13,714,052	10,573,602	2,285,948
162	Mar-36	2036	162	14	5.26%	13,714,052	60,056	19,817	-	13,694,235	10,633,658	2,305,765
163	Apr-36	2036	163	14	5.26%	13,694,235	59,969	19,904	-	13,674,331	10,693,628	2,325,669
164	May-36	2036	164	14	5.26%	13,674,331	59,882	19,991	-	13,654,341	10,753,510	2,345,659
165	Jun-36	2036	165	14	5.26%	13,654,341	59,793	20,078	-	13,634,262	10,813,304	2,365,738
166	Jul-36	2036	166	14	5.26%	13,634,262	59,707	20,166	-	13,614,096	10,873,011	2,385,904
167	Aug-36	2036	167	14	5.26%	13,614,096	59,618	20,253	-	13,593,841	10,932,630	2,406,159
168	Sep-36	2036	168	14	5.26%	13,593,841	59,530	20,343	-	13,573,498	10,992,159	2,426,502
169	Oct-36	2036	169	15	5.26%	13,573,498	59,441	20,432	-	13,553,066	11,051,600	2,446,934
170	Nov-36	2036	170	15	5.26%	13,553,066	59,351	20,522	-	13,532,541	11,110,951	2,467,496
171	Dec-36	2036	171	15	5.26%	13,532,541	59,261	20,612	-	13,511,932	11,170,212	2,488,068
172	Jan-37	2037	172	15	5.26%	13,511,932	59,171	20,702	-	13,491,230	11,229,383	2,508,770
173	Feb-37	2037	173	15	5.26%	13,491,230	59,080	20,793	-	13,470,437	11,288,464	2,529,563
174	Mar-37</											

Shannon Park
Amortization Schedule

Assumptions

Loan Amount		\$ 16,000,000
Loan Repayment Date	192 months	10/31/38
Amortization (yrs)		40 yrs
Closing Date		09/30/22
Note Date		10/31/22

Pmt No.	Pmt Date (end of mo)	Year	Period Since Closing	Year	All-In Rate	Beginning Balance	Interest Expense	Amortization Expense	Principal Repayment	Ending Balance	Accumulated Interest	Accumulated Principal
193	Oct-38	2038	193	17	3.26%	13,057,614	37,181	22,692	13,034,922	-	12,430,408	2,965,078



Atlanta, GA
Greenville, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

August 23, 2022

State Fiscal Accountability Authority
Columbia, South Carolina

South Carolina Attorney General
Columbia, South Carolina

Re:

Not to Exceed \$20,000,000
South Carolina State Housing Finance and Development Authority
Multifamily Tax-Exempt Mortgage-backed Bonds
(M-TEMS) Series 2022(FN)

Ladies and Gentlemen:

We are acting as bond counsel in connection with the issuance by the South Carolina State Housing Finance and Development Authority, as issuer and governmental lender ("**Issuer**"), of its Multifamily Tax-Exempt Mortgage-backed Bonds (M-TEMS) Series 2022(FN) in an amount not to exceed \$20,000,000 ("**Bonds**").

At the request of the State Fiscal Accountability Authority ("**SFAA**"), we are delivering this opinion in connection with the SFAA's consideration of the issuance of the Bonds pursuant to Section 31-13-200 of the Code of Laws of South Carolina 1976, as amended (the "**Act**").

The primary purpose of the issuance of the Bonds is to fund a portion of the acquisition, rehabilitation and equipping of residential rental apartment units and the acquisition and installation of related fixtures, equipment, furnishings and site improvements of an affordable housing development located in the City of Goose Creek, Berkeley County, South Carolina to be known as the Shannon Park Apartment Project. The Bonds are expected to be issued pursuant to the terms of an Indenture of Trust ("**Indenture**"), between the Issuer and a trustee (the "**Trustee**"), the proceeds of which will be used, in part, to fund the loan to Standard Shannon Venture, LP ("**Borrower**") pursuant to the terms of the related Financing Agreement ("**Financing Agreement**").

In our capacity as Bond Counsel, we have examined a form of the Resolution adopted by the Issuer on July 14, 2021, a Petition of the Issuer to the SFAA requesting that the SFAA approve the issuance of the Bonds, a form of the Resolution of the SFAA approving the issuance of the Bonds ("**Resolution**"), a form of the Indenture, a form of the Financing Agreement (collectively, the "**Transaction Documents**"), and

such other records and documents as we have considered necessary or appropriate in rendering the opinions set forth herein.

As to questions of fact material to the opinions hereinafter expressed, we have relied solely upon forms of the Transaction Documents, and upon representations of the Issuer and the Borrower made in connection with the application by the Borrower to the Issuer, without undertaking to verify the same by independent investigation.

In giving the opinions hereinafter expressed, we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of the State, and such opinions are limited to the federal laws of the United States of America and the laws of the State.

Based upon the foregoing, it is our opinion, under existing law, that:

1. The Transaction Documents are in compliance with applicable provisions of State and federal law;
2. The Transaction Documents are legally sufficient to allow the SFAA to approve the issuance of the Bonds through the adoption of the Resolution; and
3. The findings and conclusions appearing in the Resolution are supported by representations or statements of fact appearing in the Transaction Documents.

This opinion letter is delivered solely for your benefit in connection with the approval of the Bonds and may not be used or relied on by any other person or for any other purpose without our prior written consent in each instance. We express no opinion in connection with the issuance of the Bonds or the sale of the Bonds. Our opinions expressed herein are as of the date hereof, and we undertake no obligation to advise you of any changes of applicable law or any other matters that may come to our attention after the date hereof that may affect our opinions expressed herein.

Very truly yours,

Parker Poe Adams & Bernstein LLP

PARKER POE ADAMS & BERNSTEIN LLP

8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES: A Construction Financing / B. Permanent Financing

Sources	A. Est. Project Budget / Construction (Sources)	B. Est. Project Budget / Permanent (Sources)	Est. Project Budget (Uses)	Uses
(1) Bond Proceeds: (a) Par	\$ -	\$ 16,000,000	\$ 17,500,000	Project Fund
(b) Premium/Accr. Int.	-	-	837,924	Capitalized Interest Fund
(2) Issuer/Borrower Contr.	-	-	-	Debt Service Reserve Fund
(3) Debt Service Fund Trans.	-	-	-	Redemption Price/Escrow Deposit
(4) Debt Service Reserve Fund Contribution	-	-	481,250	Cost of Issuance (Incl. UW Disc.)
				Other (Contingency)
(5) Other MFHRB Sources			3,000,000	Developer Fee
(a) LIHTC	-	10,140,007	494,581	Reserves
(a) State Housing TC	-	5,810,486	1,006,064	Acquisition
(c) Owner's Equity/Other	-	381,498	8,448,000	Renovation
(d) Mortgage Loan (BTO)	-	-	564,172	Third party reports/soft costs
Total Project Sources	\$ -	\$ 32,331,991	\$ 32,331,991	Total Project Uses
Surplus/Deficit		\$ (0.00)		

CERTIFICATE OF THE ALLOCATING AGENCY

SHANNON PARK APARTMENTS

I, the undersigned, Bonita Shropshire, the duly qualified Executive Director of the South Carolina State Housing Finance and Development Authority (the "Authority") DO HEREBY CERTIFY that:

As provided in the 2021 South Carolina Qualified Allocation Plan (the "2021 QAP") pursuant to which the Authority administers its Low Income Housing Tax Credit Program, Low Income Housing Tax Credits (the "Tax Credits") are not allocated to developments financed through the issuance and sale of private activity bonds until each such development is placed in service;

As of the date hereof, the Authority is of the belief that should the construction of Shannon Park Apartments (the "Project") be carried out in the manner described in the Project's application, the Project will be a project described by the 2021 QAP as required by the provisions of Section 42(m)(1)(D) of the Internal Revenue Code of 1986, as amended (the "Code"). The above statement is predicated upon the assumption contained therein. A final determination as to whether or not the Project will be a project described in the 2021 QAP cannot be made until such time as the Project has been completed, placed in service, and has submitted an application to receive an allocation of Tax Credits; and

As of the date hereof, the Authority cannot make a final determination as to whether or not the Project will meet all of the requirements that will render it eligible to receive an allocation of Tax Credits, if any, for which the Project will qualify. The Authority's policy is not to make written determinations pursuant to Section 42(m)(2)(D) of the Code until the Project is placed in service. In the event that the Project is placed in service in accordance with the Code and the policies and procedures of the Authority and the Authority determines the Project to be eligible to receive an allocation of Tax Credits, the amount of such allocation will not be greater than that required for the basic financial feasibility of the Project and any determinations required by Section 42(m)(1)(D) and Section 42(m)(2)(D) will be done at that time.

IN WITNESS WHEREOF I have set my hand this 22nd day of December, 2021.

**SOUTH CAROLINA STATE HOUSING FINANCE
AND DEVELOPMENT AUTHORITY**

By: Bonita Shropshire
Bonita Shropshire, Executive Director

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification - Governor's School for Agriculture at John de la Howe

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C(1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. The Governor's School for Agriculture at John de la Howe (School) has not been delegated any additional authority.

In accordance with the S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of the School to determine whether the internal controls of the school's procurement system were adequate to ensure compliance, in all material respects, with the Code.

We found that the internal controls of the School's procurement system were not adequate to ensure compliance with the Code as described in the audit report and made recommendations for improvement. During the conduct of the audit, the School entered into a shared services agreement with the Department of Administration for assistance with its procurement system and the implementation of recommendations. With the implementation of the recommended corrective action, the internal controls of the School's procurement system will be adequate to ensure compliance with the Code and Regulations as described in the audit report.

AUTHORITY ACTION REQUESTED:

Allow the School to continue to make direct procurements of supplies and services, information technology, and construction services up to \$50,000 per commitment so long as it continues to do so through and under the oversight of the Department Administration.

ATTACHMENTS:

Agenda item worksheet and attachment

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: August 30, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C(1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. The Governor's School for Agriculture at John de la Howe (School) has not been delegated any additional authority.

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4. What is Authority asked to do?

Allow the School to continue to make direct procurements of supplies and services, information technology, and construction services up to \$50,000 per commitment so long as it continues to do so through and under the oversight of the Department Administration.

5. What is recommendation of the submitting agency involved?

Allow the School to continue to make direct procurements of supplies and services, information technology, and construction services up to \$50,000 per commitment so long as it continues to do so through and under the oversight of the Department Administration.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

- (a) Authorized Signature: _____
(b) Office Name: _____

8. List of Supporting Documents:

- (a) S.C. Code Ann. § 11-35-1210

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

- 9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

August 24, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: Governor's School for Agriculture at John de la Howe
Follow-up Procurement Audit Report

Delbert:

I have attached the Governor's School for Agriculture at John de la Howe's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its conclusion and recommendation.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

August 22, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Subject: Governor's School for Agriculture at John de la Howe
Follow-up Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of the Governor's School for Agriculture at John de la Howe (GSAg), for the period of July 1, 2021 to January 31, 2022, to determine whether the internal controls of GSAg's procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations (Code).

The audit disclosed conditions, as explained in the report, which we believe require corrective action or improvement. Corrective action by GSAg based on the recommendations described in the follow-up report will, in all material respects, place the agency in compliance with the Code.

Sincerely,

Crawford Milling
Director, Audit and Certification

Attachment



**The South Carolina
Governor's School for Agriculture
at John de la Howe**

FOLLOW-UP PROCUREMENT AUDIT REPORT

**for the Audit Period:
July 1, 2021 to January 31, 2022**

**Office of Audit & Certification
Division of Procurement Services
March 28, 2022**

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INTRODUCTION

The Division of Procurement Services (DPS) audited the SC Governor's School for Agriculture at John de la Howe's (GSAg) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020ⁱ. GSAg is a non-certified agency.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of GSAg's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of GSAg is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency's compliance with the Code, and
- Taking corrective action when instances of noncompliance are identified, including corrective action on the findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. 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 review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

Total Expenditures

During the audit period, the agency conducted procurements as follows:

	\$ Amount (000s)		
	Spend Amount		
	<u>PO's</u>	<u>Direct Pay</u>	<u>Total</u>
Audit Period	591	539	1,130

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about GSAG's compliance with the Code for the period July 1, 2021 through January 31, 2022, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) Written determinations for all sole source and emergency procurements. No sole source or emergency procurement activity was reported to DPS during the audit period
- (3) Procurement transactions for the audit period as follows:
 - a) Sixteen payments, for a total of \$198k
 - b) Twelve direct expenditure vouchers (Direct Payments) totaling \$138k
 - c) Two hundred sixty-six purchase orders (PO) and four hundred eight direct payments reviewed for order splitting or the use of favored vendors
 - d) Twenty-five P-Card transactions for two judgmentally selected months for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy). During the audit period there was one cardholder that made P-Card expenditures as follows:

	<u>Transactions</u>	<u>\$ Amount</u>
Audit Period	200	82,585

- (4) Three construction projects totaling approximately \$161k and one Architect/Engineer and Related Professional Service Project totaling approximately \$400k for compliance with the Manual for Planning and Execution of State Permanent Improvements
- (5) Small and Minority Business utilization plans and reports
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5k.
- (7) Disposition of unauthorized procurements. No unauthorized procurement activity was reported to DPS

SUMMARY OF FINDINGS

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GSAg did not report to DPS three unauthorized or illegal procurements totalling \$257k identified during the previous audit.	
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GSAg made two purchases totaling \$67k without competition.	
III. <u>Direct Payments (without POs)</u>	
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GSAg used the Direct Payment Method to pay for seven late invoices for one vendor totaling \$16k.	
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GSAg has not revised its business operation manual according to the corrective agreed to in the last audit.	
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GSAg's internal procurement procedure manual does not cover key provisions of the Code. This is a repeat finding.	
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GSAg had not established reconciliation and approval processes for P-Card monthly statements according to the corrective agreed to in the last audit.	
VI. <u>Unauthorized Procurement Not Reported to DPS</u>	9
GSAg had identified one unauthorized procurement during the audit period but had not reported it to DPS as required.	
VII. <u>Small and Minority Business Enterprise (MBE) Utilization</u>	10
GSAg did not provide annual utilization plans or quarterly reports during the audit period.	

Note: The Agency's responses to issues raised in this report have been inserted immediately following the recommendations in the body of the report. The Agency's response cover letter is at the end of the report as Attachment 1.

RESULTS OF AUDIT

I. Unauthorized Procurements Not Reported to DPS

We identified three unauthorized or illegal procurements during the previous audit and recommended they be reported to DPS as required. GSAg agreed with the recommendation in the prior audit report, however the agency still had not reported nor provided written determinations for these unauthorized or illegal procurements as of the date of this audit.

Regulation 19-445.2015 (A) requires that, "upon finding after award that a State employee has made an unauthorized award of a contract or that it is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section... If the value of the contract exceeds \$100,000 the CPO must concur in the written determination before any action is taken on the decision." (I) states "every quarter, each governmental body shall submit to the Materials Management Officer a record listing all contract awards or modifications discovered as described in item A(1) above, along with copies of the applicable written determinations..."

Recommendation: We recommend that GSAg report these illegal or unauthorized procurements, along with written determinations, to DPS as previously recommended.

Agency Response

One purchase was not in compliance with the South Carolina Consolidated Procurement Code and all applicable Office of State Engineer (OSE) procedures. The payment method should have been procured through a competitive source selection method and paid for with a PO. The agency did not follow the state purchase order policy as set forth by the state of South Carolina, and the invoice was paid utilizing the direct payment method. The procurement was reported as an unauthorized/illegal to DPS on 7/20/2022.

One purchase order was determined not to be a sole source by DPS. The vendor is not the sole company in the state of South Carolina that provides this type of service. The agency has prepared a determination, and it was sent to the CPO for concurrence or written determination on 7/19/2022. The agency will report the unauthorized/illegal procurement within seven business days of receipt of the determination from the CPO.

One purchase order was issued as an emergency purchase order. The agency has completed a determination regarding this illegal/unauthorized procurement, and it was reported to DPS on 7/01/2022.

RESULTS OF AUDIT

II. Two Purchases Made Without Competition

Two purchases during the audit period were made without competition; one for food for the school's cafeteria, and the other for propane gas.

Food Service - GSAg procured food services as an emergency procurement in the last audit. This was determined to be an illegal procurement and we recommended GSAg report the procurement, along with the required written determination, to DPS. We further recommended GSAg contact DPS to solicit a food contract for GSAg since the dollar amount exceeded the agency's certification level. As of the end of the follow-up audit period, GSAg had not reported the illegal procurement to DPS as recommended. After the last audit, the one-year contract expired; however, the agency continued to purchase food from the same vendor. The total spend during this audit period is approximately \$56k. GSAg had not contacted DPS to request the solicitation of a food contract as recommended in the previous audit.

Regulation 19-445.2015 (A) requires that, "upon finding after award that a State employee has made an unauthorized award of a contract or that it is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section... If the value of the contract exceeds \$100,000, the CPO must concur in the written determination before any action is taken on the decision." (I) states "every quarter, each governmental body shall submit to the Materials Management Officer a record listing all contract awards or modifications discovered as described in item A(1) above, along with copies of the applicable written determinations..."

Recommendation: We recommend GSAg Procurement submit a requisition for food to DPS as well as any required supplies and services, information technology, or construction that exceed the agency's procurement authority. We further recommend that GSAg report this illegal procurement, including the required written determination, to DPS as previously recommended.

Agency Response

The agency completed a determination that was sent to the CPO for review and a ratification was executed on 5/18/2022. The procurement was reported to DPS as an illegal/unauthorized procurement on 6/2/2022. DPS has processed a solicitation for food services, and no offers were received. The agency reposted the solicitation on 7/25/2022 to secure a competitive contract.

Propane Gas - The agency purchased propane gas from one vendor as an exempt commodity. Management stated they had always purchased this as an exempt commodity in the past and were recently made aware that propane is not an exempt commodity.

Utilities Exemption 1982.04.27 states: "The Board exempted the following from the purchasing procedures required under the Consolidated Procurement Code as authorized by

RESULTS OF AUDIT

Section 11-35-710:(1) invoices for gas and electricity and water and sewer services provided by public utilities subject to rate regulations by the Public Service Commission;"

SC Code Ann. §11-35-1550(2)(b) states, "Written request for written quotes from a minimum of three qualified sources of supply may be made and, unless adequate public notice is provided in the South Carolina Business Opportunities, documentation of at least three bona fide, responsive, and responsible quotes must be attached to the purchase requisition for a small purchase not in excess of twenty-five thousand dollars..."

Recommendation: We recommend GSAg Procurement solicit competition for small purchases as outlined in SC Code Ann. §11-35-1550(2)(b). We further recommend that GSAg report this illegal procurement, along with a written determination, to DPS as required.

Agency Response

The agency reported the illegal/unauthorized procurement to DPS on 4/20/2022. The agency has developed a draft solicitation and is awaiting end user input and approval to post for competition. The agency intends to have secured a contract by the end of December 2022.

III. Direct Payments (Without POs)

We tested 12 Direct Payments for compliance with the Code and the CG's PO Policy.

A. Improper Use of Direct Payments

One Direct Pay tested was for seven past due invoices for one vendor totaling \$16k. Payment for late invoices is only acceptable if they occur before a fiscal year cutoff.

Per the CG's State of South Carolina Purchase Order Policy regarding Direct Payments, "The expenditures for the purposes listed below may be paid by Direct Pay. (12) late invoices after FYE cut-off..."

Agency Response

GSAg entered into shared services agreement with the South Carolina Department of Administration in May 2022. With this agreement GSAg has created a draft SCGA-300 Procurement Procedure. SCGA Procurement Procedure will be finalized by September 30, 2022. Additionally, the agency will begin to attach all documents as images to the documents created during transaction in SCEIS to ensure proper file retention. The agency will respond to all audit inquiries from DPS in the future.

B. Agency Does Not Have a Policy Specifying When a PO is Required

In the previous audit, we recommended the agency add a provision to its business operations manual that clearly defines when supplies and services, information technology, and construction

RESULTS OF AUDIT

requisitions be routed through the procurement department. This provision should be consistent with the CG's PO Policy regarding when the direct payment method may be used. In response, management provided a corrective action plan to implement the recommendation. However, GSAg has not revised its business operations manual to develop such a policy, consistent with the State PO Policy.

During this Follow-Up audit, management stated: "The agency does not have a direct payment policy, however, as an operating practice has used 11-35-1550 as guidance on SC code exempt items, small purchases under \$10,000 to include PCard purchases, expenses not expected to exceed \$2,500 and late invoices."

Per the Comptroller General's State of South Carolina Statewide Purchase Order Policy, ... "A Direct Pay is a payment method only. It does not establish compliance with the SC Consolidated Procurement Code & Regulations or other State regulations." In addition, the CG PO Policy states, Direct Payments "should not be used as a matter of convenience as it leads to a reduction in controls and approvals."

Recommendation: We recommend GSAg implement its corrective action plan as provided in the previous audit. Having a policy in place that identifies when it is acceptable to use the direct payment method should reduce the control risk of improper direct payments being made.

Agency Response

GSAg entered into shared services agreement with the South Carolina Department of Administration in May 2022. With this agreement GSAg has created a draft SCGA-300 Procurement Procedure. SCGA Procurement Procedure will be finalized by September 30, 2022.

IV. GSAg's Internal Procurement Procedures Manual Lacked Key Provisions

The previous audit found that GSAg's procurement manual did not provide procedures, including assignment of roles and responsibilities, for application of key provisions of the Code, as required by Code and Regulation 19-445.2005. GSAg provided a corrective action plan stating the final written updated Procurement Manual would be submitted to Audit and Certification for pre-approval. No completion date was given.

Although improvements were made in the agency's most current Procurement Procedures Manual, the improvements were limited to small purchase procedures, which had been identified as a significant area of concern.

RESULTS OF AUDIT

SC Code Ann. § 11-35-540(3) states, “Governmental bodies shall develop internal operational procedures consistent with this code; except, that the operational procedures must be approved in writing by the appropriate chief procurement officer.”

Recommendation: We recommend GSAg develop and implement procedures including assignment of roles and responsibilities, for application of key provisions of the Code, as required by Code and Regulation 19-445.2005. We also recommend this procedure be made accessible to all agency staff by including it in a business operation manual.

Agency Response

GSAg entered into shared services agreement with the South Carolina Department of Administration in May 2022. With this agreement SCGA has established a SCGA-300 Procurement Procedure. The Procurement procedure will be finalized by September 30, 2022.

V. Purchasing Cards (P-Cards)

GSAg had one P-Card in use during the audit period and spent approximately \$83k in 200 transactions.

Program Administration

Roles and Responsibilities

Roles and responsibilities for the P-Card program have been updated in its P-Card Manual, however, current practice has not changed since the last audit.

Current practice is for the fiscal technician to perform the monthly statement reconciliations for the Director of Finance. There is no one with authority over the Director of Finance assigned the responsibility to approve his P-Card transactions. In addition, the Director of Finance is the Procurement Director, a cardholder, the Purchasing Card Administrator (PCA), and the approver of the monthly bank statements and P-Card Statement Certifications. The lack of separation of duties is a control weakness. This is a repeat finding from the previous audit.

The State P-Card Policy, section (V).(A) states, “...Internal controls shall include:

(1) Appropriate separation of duties between making transactions (Cardholders), review and approval of transactions for payment (approving officials), and payment of the cardholder monthly bank statements (Accounts Payable).

(3) Appropriate hierarchical review and approval of purchases by someone with supervisory authority over the Cardholder and/or with the authority to question purchases if needed.

(4). No Cardholder can provide approval for payment for his/her transactions or of the P-Card cardholder monthly bank statements. Review and approval responsibilities cannot be delegated to someone else...”

RESULTS OF AUDIT

Recommendation: We recommend GSAg implement its corrective plan provided in the previous audit to ensure the proper separation of duties and other internal controls as outlined in the State P-Card Policy.

Agency Response

GSAg entered into shared services agreement with the South Carolina Department of Administration in May 2022. With this agreement SCGA has established a SCGA-305 Purchasing Card Procedure. The Purchasing Card procedure will be finalized by September 30, 2022. The SCGA-305 Purchasing Card procedures will ensure the agency has proper separation of duties and internal controls in place.

VI. Unauthorized Procurement Not Reported to DPS

GSAg identified one unauthorized procurement during the audit period, but did not report it to DPS as required.

The procurement was initially a sole source and was advertised in SCBO; however, the requisition is dated after the service start date. The Sole Source determination was then approved by someone without the proper authority.

Although GSAg prepared a written determination to ratify the unauthorized procurement during this follow-up audit period, the ratification was flawed in that the value of the contract, \$57k, exceeded the agency's certification level.

Regulation 19-445-2015(A)(1) states, "Upon discovering after award either (a) that a person lacking actual authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations, the appropriate official, as defined in G below, must decide to either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void. If ratified, the contract may be continued or terminated. The contract may be ratified only if ratification is in the interest of the State."

And per section (G). "Appropriate Official. The appropriate official to make the decisions authorized by sections A....is the chief procurement officer, the head of a purchasing agency, or, for a contract with a total potential value no greater than \$100,000, a designee of either officer, above the level of the person responsible for the person committing or authorizing the act. If a contract award or modification is made in violation of the Consolidated Procurement Code or these regulation, and the value of the contract exceeds the certification of the purchasing agency or one hundred thousand dollars, the chief procurement officer must concur in the written determination before any further action is taken, unless the contract is declared null and void. In all circumstances, the chief procurement officer must concur in any determination finding bad faith."

Recommendation: We recommend that GSAg properly report this unauthorized procurement to DPS as required.

RESULTS OF AUDIT

Agency Response

This illegal/unauthorized procurement was initially reported on 7/1/2022 and the amount was requested to be updated by the agency to \$57,000 on 7/21/2022. The determination relating to this procurement has been sent to the CPO on 7/25/2022 for review and for a determination to be drafted. The agency will report the unauthorized/illegal procurement within seven business days of receipt of the determination from the CPO.

VII. MBE Utilization Plans and Quarterly Reports

GSAg did not submit annual MBE utilization plans or quarterly progress reports to the Small and Minority Business Enterprise during the follow-up audit period, as required. This is a repeat finding.

Recommendation: We recommend GSAg develop and implement procedures, including management review and approval, to require annual MBE utilization plans and quarterly progress reports be submitted to the SMBCC in a timely manner as required by SC Code Ann. § 11-35-5240 (2).

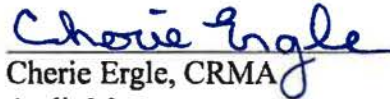
Agency Response

The agency has completed the annual plan for FY2023, and it was submitted to the Office of Minority Business and Contracting. The agency has submitted two quarterly reports for FY2022.

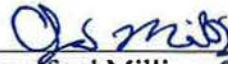
CONCLUSION

We believe corrective action based on the recommendations described in this report will make the Governor's School for Agriculture's internal procurement operations consistent with the South Carolina Consolidated Procurement Code and ensuing regulations.

We recommend the Governor's School for Agriculture be allowed to continue to make direct procurements of supplies and services, information technology, and construction services up to \$50,000 per commitment so long as it continues to do so through and under the oversight of the Department Administration.



Cherie Ergle, CRMA
Audit Manager,
Audit & Certification



Crawford Milling, CPA, CGMA
Director, Audit & Certification

End Notes

ⁱ Regulation 19-445.2020 Certification

(A) Review Procedures.

- (2) The Materials Management Officer shall review and report on the particular government body's entire internal procurement operation to include, but not be limited to the following:
- (a) Adherence to provisions of the Code and these Regulations.
 - (b) Procurement staff and training;
 - (c) Adequate audit trails and purchase order register;
 - (d) Evidence of competition;
 - (e) Small purchase provisions and purchase order confirmation;
 - (f) Emergency and sole source procurements;
 - (g) Source selection;
 - (h) File documentation of procurements;
 - (i) Decisions and determinations made pursuant to section 2015;
 - (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
 - (k) Adequacy of written determinations required by the Code and these Regulations;
 - (l) Contract administrations;
 - (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.
- (3) The report required by item §A(2) shall be submitted to the board.



**SC Governor's School
for Agriculture**

AT JOHN DE LA HOWE

July 19, 2022

Crawford Milling
Director
Audit and Certification
SC State Fiscal Accountability Division of Procurement Services
1201 Main St., Suite 600

Dear Mr. Milling,

Our Agency has investigated the findings and observations identified in your draft procurement mid-year audit report. We consider any finding, comment, or discussion during an audit other review to be constructive and beneficial to us in performing our jobs more efficiently.

We concur with your report and have already implemented most of your suggestions and we are in the process of implementing corrective action, as appropriate. We are also in the process of initiating or changing procedures to ensure that these deficiencies are not repeated.

Respectfully,

A handwritten signature in dark ink, appearing to read 'T. Keown', followed by a long horizontal line extending across the page.

Timothy R. Keown

SECTION 11-35-1210. Certification.

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify 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; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification - Midlands Technical College

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On August 31, 2017, the Authority delegated procurement authority to Midlands Technical College (MTC) as follows:

	<u>Certification Limits</u>
Supplies and Services	\$ 350,000 per commitment
Consultant Services	\$ 350,000 per commitment
Information Technology	\$ 150,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of Midlands Technical College to determine whether the internal controls of the College's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations (Code and Regulation).

We found the internal controls of MTC's procurement system and purchasing card procedures were not adequate to ensure compliance with the Code and State P-Card Policy as described in the audit report and made recommendations for improvement. Based on the findings and recommendations, DPS will conduct a follow up audit in one year. With the implementation of the recommended corrective action, the internal controls of Midlands Technical College's procurement system will be adequate to ensure compliance with the Code and Regulations as described in the audit report.

Per S.C. Code Ann. §11-35-1210, Midlands Technical College requests that the Authority reauthorize it to make direct procurements and increase the certification limits for Construction Services, Construction Contract Change Orders, and Architect/Engineer Contract Amendments.

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification - Midlands Technical College

AUTHORITY ACTION REQUESTED:

Authorize Midlands Technical College to make direct procurements at the following limits for three years from date of approval:

	<u>Certification Limits</u>
Supplies and Services ¹	*\$350,000 per commitment
Information Technology ²	*\$150,000 per commitment
Construction Contract Award	\$100,000 per commitment
Construction Contract Change Order	\$ 50,000 per change order
Architect/Engineer Contract Amendment	\$ 10,000 per amendment

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

Further require MTC to take the following corrective measures:

1. Advertise all sole source procurements, regardless of amount, for one year, ending August 31, 2023,
2. Provide a written corrective action plan for preparation and maintenance of sole source documentation to the Division of Procurement Services for submittal to the Authority no later than November 1, 2022,
3. Immediately suspend no less than 20% of its P-Cards until August 31, 2023 and notify the Division of Procurement Services of which cards have been suspended by September 30, 2022.

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

ATTACHMENTS:

Agenda item worksheet and attachment

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: August 30, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§ 11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On August 31, 2017, the Authority delegated procurement authority to Midlands Technical College (MTC) as follows:

	<u>Certification Limits</u>
Supplies and Services	\$ 350,000 per commitment
Consultant Services	\$ 350,000 per commitment
Information Technology	\$ 150,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of Midlands Technical College to determine whether the internal controls of the College's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations (Code and Regulation).

We found the internal controls of MTC's procurement system and purchasing card procedures were not adequate to ensure compliance with the Code and State P-Card Policy as described in the audit report and made recommendations for improvement. Based on the findings and recommendations, DPS will conduct a follow up audit in one year. With the implementation of the recommended corrective action, the internal controls of Midlands Technical College's procurement system will be adequate to ensure compliance with the Code and Regulations as described in the audit report.

Per S.C. Code Ann. § 11-35-1210, Midlands Technical College requests that the Authority reauthorize it to make direct procurements and increase the certification limits for Construction Services, Construction Contract Change Orders, and Architect/Engineer Contract Amendments.

4. What is Authority asked to do?

Authorize Midlands Technical College to make direct procurements at the following limits for three years from date of approval:

	<u>Certification Limits</u>
Supplies and Services ¹	*\$ 350,000 per commitment
Information Technology ²	*\$ 150,000 per commitment
Construction Contract Award	\$ 100,000 per commitment
Construction Contract Change Order	\$ 50,000 per change order
Architect/Engineer Contract Amendment	\$ 10,000 per amendment

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

Further require MTC to take the following corrective measures:

1. Advertise all sole source procurements, regardless of amount, for one year, ending August 31, 2023,

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

2. No later than November 1, 2022, provide a written corrective action plan for preparation and maintenance of sole source documentation to the Division of Procurement Services for submittal to the Authority.
3. Immediately suspend no less than 20% of its P-Cards until August 31, 2023 and notify the Division of Procurement Services of which cards have been suspended by September 30, 2022.

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

5. What is recommendation of the submitting agency involved?

Authorize Midlands Technical College to make direct procurements at the limits set forth above for three years and require MTC to implement the measures set forth above.

6. Private Participant Disclosure – Check one:

☒ No private participants will be known at the time the Authority considers this agenda item.

☐ A Private Participant Disclosure form has been attached for each private participant.

As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

(a) Authorized Signature: _____

(b) Office Name: _____

8. List of Supporting Documents:

(a) S.C. Code Ann. § 11-35-1230

(b) S.C. Code Ann. § 11-35-1210

(c) Certification Comparison

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

August 22, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: Midlands Technical College
Procurement Audit Report

Delbert:

I have attached Midlands Technical College's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority approve a three-year procurement certification for Midlands Technical College and impose requirements on the College tailored to the deficiencies noted in the report.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

August 22, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Subject: Midlands Technical College
Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of Midlands Technical College (MTC), for the period of July 1, 2018 to June 30, 2021, to determine whether the internal controls of MTC's procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations (Code).

The audit disclosed conditions, as explained in the report, which we believe require corrective action or improvement. Corrective action by MTC based on the recommendations described in the report will, in all material respects, place the agency in compliance with the Code.

Sincerely,

Crawford Milling
Director, Audit and Certification

Attachment



Midlands Technical College

INDEPENDENT PROCUREMENT AUDIT REPORT

For the Audit Period:
July 1, 2018 to June 30, 2021

Office of Audit & Certification
Division of Procurement Services
December 15, 2021

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INTRODUCTION

The Division of Procurement Services (DPS) audited Midlands Technical College's (MTC) internal procurement operating policies and procedures, as outlined in their Internal Procurement Operating Procedures Manual, under § 11-35-1230 (1) of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020¹ of the ensuing regulations.

The primary objective of the audit was to determine whether, in all material respects, the internal controls of MTC's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of MTC is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying MTC's procurement activities and understanding and complying with the Code.
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that MTC administers its procurement programs in compliance with the Code.
- Evaluating and monitoring MTC's compliance with the Code.
- Taking corrective action when instances of noncompliance are identified, including corrective action for the findings of this audit.

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. 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 review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

INTRODUCTION

Our audit was also performed to determine if recertification under SC Code Ann. § 11-35-1210 is warranted.

On August 31, 2017 the State Fiscal Accountability Authority (SFAA) granted MTC the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 350,000 per commitment
Consultant Services	*\$ 350,000 per commitment
Information Technology	*\$ 150,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

During the audit MTC requested the following increases in its certification limits.

<u>PROCUREMENT AREAS</u>	<u>REQUESTED CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 350,000 per commitment
Consultant Services	*\$ 350,000 per commitment
Information Technology	*\$ 150,000 per commitment
Construction Services	\$ 100,000 per commitment
Construction Contract Change Order	\$ 50,000 per change order
Architect/Engineer Contract Amendment	\$ 10,000 per amendment

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

Total Expenditures

During the audit period, MTC made expenditures as follows:

	<u>\$ Amount (000s)</u>			
	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
Total Spend	<u>13,566</u>	<u>18,596</u>	<u>19,111</u>	<u>51,272</u>

Note: All non-P-Card expenditures were made with purchase orders.

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about MTC's compliance with the Code for the period July 1, 2018 through June 30, 2021, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals.
- (2) Written determinations for all sole source and emergency procurements. MTC reported the following sole source and emergency procurement activity during the audit period:

<u>Fiscal Year</u>	<u>Sole Source</u>		<u>Emergency</u>	
	<u>Count</u>	<u>\$ Amount</u>	<u>Count</u>	<u>\$ Amount</u>
2019	16	888,522	1	2,063
2020	18	690,046	5	138,273
2021	7	448,253	6	211,201

- (3) Procurement transactions for the audit period as follows:
 - a) Seventy-one expenditures each exceeding \$10k totaling \$3.3M.
 - b) Direct payments of which there were none.
 - c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of favored vendors.
 - d) Twenty-five P-Card transactions for two judgementally selected months for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy). During the audit period MTC had 185 cardholders that made P-Card expenditures as follows:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2019	8,586	2,297,741
2020	7,979	2,137,610
2021	7,046	1,928,015

- (4) Two Design-Bid-Build projects totaling approximately \$292k, one small construction project totaling approximately \$38k, two Indefinite Quantity Contracts totaling approximately \$100k and one Construction Management at Risk project totaling approximately \$1.4M for compliance with the Manual for Planning and Execution of State Permanent Improvements.
- (5) Disposition of unauthorized procurements. MTC reported the following unauthorized procurement activity to DPS during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2019	1	107,219
2020	-	-0-
2021	-	-0-

- (6) Reporting of surplus property dispositions and approval of trade-ins in excess of \$5k.

SCOPE

- (7) Small and Minority Business utilization plans and reports. MTC reported the following activity to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
2019	1,358,715	117,866
2020	1,336,588	45,713
2021	1,336,588	14,698

SUMMARY OF FINDINGS

	<u>Page</u>
<u>I. Sole Source Procurements</u>	
A. <u>Sole Source Determinations Not Provided</u>	6
MTC did not provide written determinations for 12 sole source procurements.	
B. <u>Sole Source Determinations Not Authorized</u>	7
MTC did not date the signatures on 11 sole source written determinations and dated two written determinations after the purchase order was issued.	
<u>II. Purchasing Card Administration</u>	
A. <u>Internal P-Card Manual Inadequate.</u>	7
MTC's internal P-Card Manual is outdated and does not address key elements of the State P-Card Policy.	
B. <u>Use of Blocked Merchant Category Codes</u>	8
MTC made 1,608 transactions with blocked MCCs.	
<u>III. Blanket Purchase Agreements (BPAs)</u>	8
MTC did not include one or more required terms and conditions on five BPAs totaling approximately \$57k, and three of the five did not include the required dollar limit per call.	

Note: The agency's responses to issues raised in this report have been inserted immediately following the recommendations in the body of the report.

RESULTS OF AUDIT

I. Sole Source Procurements

Written determinations for all sole source and emergency procurements made pursuant to SC Code Ann. §§ 11-35-1560 and 1570 were evaluated to assess the appropriateness of the procurement actions and the accuracy of the quarterly reports submitted to the chief procurement officers, as required by § 11-35-2440.

A. Sole Source Determinations Not Provided

MTC did not provide written determinations for 12 sole source procurements totaling approximately \$342k. Without written determinations, we were unable to determine the justification for making these procurements without competition.

SC Code Ann. § 11-35-1560 (A) provides that: "A contract may be awarded for a supply, service, information technology, or construction item without competition if, 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 ...item."

The result is that these 12 procurements are illegal or unauthorized.

Regulation 19-445.2015 (A) (1) requires that, "Upon discovering after award either (a) that a person lacking actual authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations, as defined in section G below, must either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void."

Recommendation: We recommend that MTC report all 12 of these procurements as illegal or unauthorized as required by regulation. We recommend MTC develop and implement procedures to ensure that written determinations are prepared for all sole source procurements and properly authorized by the appropriate level of management as required by the Code.

Agency Response

Although the 12 were previously reported as sole source procurements and solicited publicity as Intent to Sole Source, the College did not complete MMO's form #102 for Justification for Sole Source Procurement. Therefore, as recommended, the College will complete the paperwork and report these as unauthorized procurements. Written changes were made to the standard procedures for sole source procurements.

RESULTS OF AUDIT

B. Sole Source Determinations Not Authorized

We identified 11 instances in which authorized approvers did not date their signatures on sole source written determinations totaling approximately \$475k. Without approval date, we could not determine if authorizations for these sole source procurements occurred before contract execution.

Regulation 19-445.2105 (C) (2) requires that: "The determination must be authorized prior to contract execution." Accepted practice to document that required approvals are obtained on time is for the appropriate official to date the written determination when signing it. The result is that without dates these 11 procurements are illegal or unauthorized.

See Regulation 19-445.2015 (A) (1) in IA above.

Recommendation: We recommend that MTC report all 11 of these procurements as unauthorized or illegal as required by regulation. We also recommend that MTC develop and implement procedures to ensure that written determinations are prepared and properly authorized for all sole source procurement as required by the Code.

Agency Response

These were the results of administrative oversights. The purchase orders were finalized after the signing of MMO's form #102 for Justification for Sole Source Procurement but since the dates were omitted, the College will comply by reporting these as unauthorized procurements. These were previously reported as sole source procurements. Staff training was conducted, and written changes were made to the standard procedures for sole source procurements.

II. P-Card Administration

MTC had 185 cardholders who spent approximately \$6.4M during the audit period. We reviewed MTC's P-Card policies and procedures and tested 25 P-Card transactions for compliance with the State P-Card Policy. We identified the following areas of non-compliance.

A. Internal P-Card Manual Inadequate

MTC's most recent P-Card manual was last updated in January of 2019 and it did not address key elements of the State P-Card Policy. We recommend that MTC develop an updated P-Card Manual that covers the key requirements of the State P-Card Manual including the following:

- Establishing written internal procedures for properly setting up each P-Card profile.
- A provision for documented Level 1 and II P-Card training.
- Procedures and criteria for establishing communicating single transaction limits.
- A provision for limiting the number of liaisons per cardholder. (Span of Control)
- A documented filing system and document retention policy.

RESULTS OF AUDIT

Recommendation: We recommend that MTC revise its P-Card procedure manual to include the key requirements of the State P-Card Policy. Procurement Services provides a P-Card manual checklist on its website that may be helpful in revising the College's manual.

Agency Response

The College concurs with the findings. As recommended, the College will revise its P-Card procedure manual to include key requirements of the State P-Card Policy.

B. Use of Blocked Merchant Category Codes

MTC's P-Card Policy requires that certain types of vendors be blocked from P-Card purchases. As a Group B Agency under State P-Card Policy, MCC restrictions only apply when imposed by the entity's own P-Card Policy. MTC provided a listing of their blocked MCCs. We identified 1,608 purchases totaling \$826k made under blocked MCCs without prior approval by the P-Card Administrator.

Recommendation: We recommend MTC re-evaluate its use of blocked MCCs to make the prohibition effective. Then revise P-Card training to increase Cardholder awareness of the blocked MCCs. Finally, MTC should develop and implement procedures for monthly P-Card liaison reviews that include checking for blocked MCC usage.

Agency Response

The College concurs with the findings and will re-evaluate its use of blocked MCCs and make changes in the P-Card training to increase Cardholders' awareness of the blocked MCCs. In addition, a more specific monthly review for P-Card liaison will be developed to verify the checking of blocked MCCs usage.

III. Blanket Purchase Agreements

Five BPAs totaling approximately \$57k did not describe the extent of obligation as required. Per Regulation 19-445.2100 (E) (3) (b): "Extent of obligation. A statement that the State is obligated only to the extent of authorized calls placed against the BPA."

Three of the five BPAs totaling approximately \$37k also did not contain the required provision listing the names of individuals authorized to place calls against the BPAs and their respective dollar limits. Per Regulation 19-445.2100 (E) (3) (c): "Notice of individuals authorized to place calls and dollar limitations. A provision that lists the names of individuals authorized to place calls under the agreement, identified by organizational component and the dollar limitations per call for each individual shall be furnished to the supplier by the Procurement Officer."

RESULTS OF AUDIT

Recommendation: We recommend that MTC modify the BPAs to include the extent of obligation statement as well as a provision listing authorized individuals and their respective dollar limitations per call, as required by SC Code of Regulation 19-445.2100 (E). We also recommend that MTC develop and implement procedures to ensure that future BPAs contain all terms and conditions required by regulation.

Agency Response

The College concurs with the findings but since these are older BPAs, we are unable to go back and modify them as the referenced documents were closed in the corresponding budget year. The College has conducted staff training as well as made changes to the written policy for BPAs.

In closing, as the College will continue to utilize this audit as a tool to improve upon our procurement performance, please let us know if you have any questions and/or concerns related to the College's responses.

CERTIFICATION RECOMMENDATIONS

We recommend Midlands Technical College (MTC) advertise all sole source procurements, regardless of amount, for one year, ending August 31, 2023. We further recommend that MTC shall provide a written corrective action plan for preparation and maintenance of sole source documentation by November 1, 2022 to the Division of Procurement Services for submittal to the five member Authority.

We recommend twenty percent of MTC's P-Cards be suspended immediately and remain suspended until August 31, 2023.

We believe corrective action based on the recommendations in this report will make MTC's internal procurement operations consistent, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations.

As provided in SC Code Ann. § 11-35-1210, we recommend that MTC's procurement authority to make direct agency procurements be increased to the following limits for three years:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services ¹	*\$ 350,000 per commitment
Information Technology ²	*\$ 150,000 per commitment
Construction Services	\$ 100,000 per commitment
Construction Contract Change Order	\$ 50,000 per change order
Architect/Engineer Contract Amendment	\$ 10,000 per amendment

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



Edward Welch, CPA
Audit Manager
Audit & Certification



Crawford Milling, CPA, CGMA
Director, Audit & Certification

¹ Supplies and Services includes non-IT consulting services

² Information Technology includes consulting services for any aspect of information technology, systems, and networks

END NOTES

ⁱ Regulation 19-445.2020 Certification

(A) Review Procedures.

(2) The Materials Management Officer shall review and report on the government body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the Code and these Regulations.
- (b) Procurement staff and training.
- (c) Adequate audit trails and purchase order register.
- (d) Evidence of competition.
- (e) Small purchase provisions and purchase order confirmation.
- (f) Emergency and sole source procurements.
- (g) Source selection.
- (h) File documentation of procurements.
- (i) Decisions and determinations made pursuant to section 2015.
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers.
- (k) Adequacy of written determinations required by the Code and these Regulations.
- (l) Contract administrations.
- (m) Adequacy of the governmental body's system of internal controls to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the board.

SECTION 11-35-1230. Auditing and fiscal reporting.

(1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.

SECTION 11-35-1210. Certification.

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify 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; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

Agency Certification
Comparison to Other Agencies

AGENCY	CERTIFICATION DATE	Active	Supplies and Services	Consultant Services	Information Technology	Construction Contract Award	Construction Contract	Architect/ Engineer Contract
							Change Order	Amendment
FLORENCE-DARLINGTON TECH	5/2/2017 Y		150,000	100,000	100,000		25,000	5,000
	12/17/2019 Y					100,000		
GREENVILLE TECHNICAL COLLEGE	12/10/2019 Y		250,000		150,000	100,000	50,000	25,000
HORRY-GEORGETOWN TECH	5/14/2019 Y		250,000		150,000	150,000	25,000	10,000
MIDLANDS TECHNICAL COLLEGE	8/31/2017 Y		350,000	350,000	150,000		25,000	5,000
	8/30/2022	Recommended	350,000		150,000	100,000	50,000	10,000
SPARTANBURG COMMUNITY COLLEGE	10/15/2019 Y		225,000		225,000	250,000	50,000	10,000
TRI-COUNTY TECHNICAL COLLEGE	12/17/2019 Y					100,000		
TRIDENT TECHNICAL COLLEGE	5/14/2019 Y		750,000		350,000	100,000	100,000	50,000

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification - Northeastern Technical College

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C(1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. Northeastern Technical College (NETC) has not been delegated any additional authority.

In accordance with the S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of NETC to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the Code and ensuing regulations.

We found the internal controls of NETC's procurement system were not adequate to ensure compliance with the Code as described in the audit report and made recommendations for improvement. Based on these findings and recommendations, DPS will conduct a follow up audit in one year. With the implementation of the recommended corrective action, the internal controls of Midlands Technical College's procurement system will be adequate to ensure compliance with the Code and Regulations as described in the audit report.

AUTHORITY ACTION REQUESTED:

As recommended by the Division of Procurement Services, require NETC to take the following corrective measures:

1. No later than November 1, 2022, provide a written corrective action plan for preparation, organization, filing and maintenance of procurement workpapers to DPS for submittal to the Authority.
2. Immediately suspend no less than 20% of its P-Cards until August 31, 2023, and notify DPS of which cards have been suspended by September 30, 2022.

ATTACHMENTS:

Agenda item worksheet and attachment

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: August 30, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C(1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. Northeastern Technical College (NETC) has not been delegated any additional authority.

In accordance with the S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of NETC to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the Code and ensuing regulations.

We found the internal controls of NETC's procurement system were not adequate to ensure compliance with the Code as described in the audit report and made recommendations for improvement. Based on these findings and recommendations, DPS will conduct a follow up audit in one year. With the implementation of the recommended corrective action, the internal controls of NETC's procurement system will be adequate to ensure compliance with the Code and Regulations as described in the audit report.

4. What is Authority asked to do?

Require NETC to take the following corrective measures:

1. No later than November 1, 2022, provide a written corrective action plan for preparation, organization, filing and maintenance of procurement workpapers to DPS for submittal to the Authority.
2. Immediately suspend no less than 20% of its P-Cards until August 31, 2023, and notify DPS of which cards have been suspended by September 30, 2022.

5. What is recommendation of the submitting agency involved?

Require NETC to implement the measures set forth above.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

- (a) Authorized Signature: _____
(b) Office Name: _____

8. List of Supporting Documents:

- (a) S.C. Code Ann. § 11-35-1210

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

- 9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.**

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

August 22, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: Northeastern Technical College
Procurement Audit Report

Delbert:

I have attached Northeastern Technical College's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority impose requirements on the College tailored to the deficiencies noted in the report.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

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EXECUTIVE DIRECTOR

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JOHN ST. C. WHITE
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(803) 737-0600
FAX: (803) 737-0639

August 22, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Subject: Northeastern Technical College
Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of Northeastern Technical College (NETC), for the period of October 1, 2017 to September 30, 2020, to determine whether the internal controls of NETC's procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations (Code).

The audit disclosed conditions, as explained in the report, which we believe require corrective action or improvement. Corrective action by NETC based on the recommendations described in the report will, in all material respects, place the agency in compliance with the Code.

Sincerely,

Crawford Milling
Director, Audit and Certification

Attachment



Northeastern Technical College

INDEPENDENT PROCUREMENT AUDIT REPORT

For the Audit Period:
October 1, 2017 to September 30, 2020

Office of Audit & Certification
Division of Procurement Services
August 31, 2021

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INTRODUCTION

Per § 11-35-1230 of the South Carolina Consolidated Procurement Code and Reg. 19-445.2020ⁱ, the Division of Procurement Services (DPS) audited Northeastern Technical College's (NETC) internal procurement operating policies and procedures. The primary objective of the audit was to determine whether, in all material respects, the internal controls of NETC's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of NETC is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code.
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code.
- Evaluating and monitoring the agency's compliance with the Code.
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit.

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. 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 review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

Total Expenditures

During the audit period, NETC made expenditures as follows:

	\$ Amount (000s)				
	Q2,3,4			Q1	
	FY2018	FY2019	FY2020	FY2021	Total
Total Spend	4,408	5,732	5,217	1,353	16,710

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included 1) testing, on a sample basis, evidence of NETC's compliance with the Code for the period October 1, 2017 through September 30, 2020, the audit period, and 2) performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals.
- (2) All written determinations for sole source and emergency procurement during the audit period. NETC reported the following sole source and emergency procurement activity to DPS during the audit period:

<u>Fiscal Year</u>	<u>Sole Source</u>		<u>Emergency</u>	
	<u>Count</u>	<u>\$ Amount</u>	<u>Count</u>	<u>\$ Amount</u>
Q2,3,4 2018	3	247,689	-	-0-
2019	5	320,114	-	-0-
2020	-	-0-	2	60,763
Q1 2021	2	35,745	-	-0-

- (3) Procurement transactions for the audit period as follows:
 - a) Twenty-five expenditures each exceeding \$10k totaling \$1.7 M.
 - b) Direct Expenditure Vouchers (DEVs) of which there were none.
 - c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of favored vendors.
 - d) Twenty-five P-Card transactions for two judgmentally selected months. There were 31 cardholders with a total spend of approximately \$340k during the audit period.

<u>Fiscal Year</u>	<u>Transactions</u>	<u>\$ Amount</u>
Q2,3,4 2018	787	89,729
2019	1,096	118,472
2020	988	97,265
Q1 2021	147	34,505

- (4) Thirteen construction, Architect/Engineer and Related Professional Service Contracts for compliance with the Manual for Planning and Execution of State Permanent Improvements.
- (5) Disposition of unauthorized procurements. The following unauthorized procurement activity was reported to DPS during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
Q1,2,3 2018	-	-0-
2019	-	-0-
2020	4	133,228
Q4 2021	-	-0-

SCOPE

- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5k.
- (7) Small and Minority Business Enterprise (MBE) utilization plans and reports. No plans or reports were submitted during the audit period.

SUMMARY OF FINDINGS

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NETC's Internal Procurement Procedures Manual lacked procedures to ensure compliance with key elements the Code.	

SUMMARY OF FINDINGS

PAGE

VIII. P-Card Administration

Weaknesses in management oversight of the P -Card program increased the risk that inappropriate use of P-Cards could go undetected.

A. Internal P-Card Manual Inadequate 13

NETC's internal P-Card Manual is outdated and does not address key elements of the State P-Card Policy.

B. Bank Statements Lacked Management and Cardholder Approval 14

Ten P-Card statements lacked supervisor/approver signatures and six lacked cardholder signatures.

C. Required Liaison Reviews Not Performed 14

There was no documented review of P-Card transactions by liaisons.

IX. Surplus Property 15

NETC did not identify and report surplus property to the Surplus Property Office (SPO).

X. MBE Utilization Plans and Progress Reports Not Filed 16

NETC did not file annual MBE utilization plans and quarterly reports.

XI. Delays in Access to Procurement Records..... 16

We experienced delays in response to requests for documentation or explanation during the audit.

Note: The agency's responses to issues raised in this report have been inserted immediately following the recommendations in the body of the report.

RESULTS OF AUDIT

I. Accounting System Limitations Resulted in Unreliable Expenditure Listing

At the beginning of the audit, NETC was unable to provide an accurate expenditure listing that included PO numbers. The expenditure listing NETC did provide totaled approximately \$16.7M. After we completed field work, NETC provided a second expenditure listing with PO numbers. However, this listing only totaled approximately \$9.4M. The inability to provide a reliable listing of expenditures with PO numbers is a material control weakness. System or procedural issues cannot be identified and remedied without reliable, accurate, and complete reports.

Recommendation: We recommend NETC evaluate its ERP system's reporting capabilities and its workflow procedures to ensure key information such as PO numbers are captured and reportable. Relevant reports should be designed and periodically reviewed to identify variances from policy and procedure. For example, expenditures made without POs should be investigated to determine if they are appropriate or if there are system or procedural issues that need to be addressed.

Agency Response

Concur. The cause was a lack of training and knowledge of the ERP to extract the report with purchase order numbers. The difference between the two reports provided was the initial report was all expenditures and the second report was only expenditures with purchase order numbers. NETC has implemented a yearlong training of the staff with the vendor on all aspects of the system and implementing improvements to the system.

II. Illegal or Unauthorized Construction

NETC provided a list of ten construction projects. The list had no project dollar amounts or dates; however, it indicated that nine of the projects were within NETC's \$50k authority. The Office of State Engineer is providing oversight on the remaining project. NETC was unable to provide requested documentation for any of the listed projects within its authority.

Regulation 19-445.2005 requires the Agency to "maintain procurement files sufficient to satisfy the requirements of external audit." Without adequate documentation, we are unable to determine whether NETC complied with the Code in the acquisition of construction for the nine projects within its authority and must assume that NETC failed to comply with the Code. The result is that any procurements associated with these nine projects must be treated as illegal or unauthorized.

Regulation 19-445.2015 (A) (1) requires that, "Upon discovering after award either (a) that a person lacking authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code

RESULTS OF AUDIT

or these regulations, the appropriate official,” as defined in 19-445.2015 (G), “must decide to either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void. If ratified, the contract may be continued or terminated. The contract may be ratified only if the ratification is in the best interest of the state.”

Recommendation: We recommend NETC develop and implement procedures for maintaining construction “procurement files sufficient to satisfy the requirements of external audit.” We further recommend that NETC report any procurements associated with these nine projects as illegal or unauthorized per Regulation 19-445.2015.

Agency Response

Concur. NETC has begun to implement an electronic filing system for all procurements to easily retrieve the documentation. NETC is in the process of developing a Master List of Projects to include the recommended elements from the audit.

III. Supplies & Services

We tested 25 procurements over \$10k that totaled approximately \$1.7M, out of a population of approximately \$7.2M for compliance with the Code. NETC is not certified and most of their purchasing is from state-term contracts, interagency agreements, or for exempt educational materials. However, the following findings are indicative of a material risk that NETC’s procurement procedures are being bypassed or not enforced.

A. Procurements Without Documentation

NETC did not provide documentation for three procurements greater than \$10k totaling approximately \$79k. Without adequate documentation, we were unable to determine whether NETC complied with the Code in the acquisition of supplies and services for these three procurements and must assume that NETC failed to comply with the Code. The result is that these three procurements must be treated as illegal or unauthorized.

See Regulations 19-445.2005 and 19-445.2015 in Section II.

Recommendation: We recommend that NETC develop and implement procedures that establish a consistent methodology for organization and location of required documentation of procurement activity as required by the Code and regulations. We further recommend that NETC report these three procurements as illegal or unauthorized per Regulation 19-445.2015.

Agency Response

Concur. NETC has begun to implement an electronic filing system for all procurements to easily retrieve the documentation.

RESULTS OF AUDIT

B. Procurements Without Evidence of Competition

NETC did not provide the required evidence of competition for nine procurements greater than \$10k and less than \$50k totaling approximately \$173k. Without adequate documentation, we were unable to determine whether NETC complied with the Code in the acquisition of supplies and services for these nine procurements and must assume that NETC failed to comply with the Code. The result is that these nine procurements must be treated as illegal or unauthorized.

SC Code Ann § 11-35-1550 (2) (b) states: "Written request for written quotes from a minimum of three qualified sources of supply may be made and, unless adequate public notice is provided in the South Carolina Business Opportunities, documentation of at least three bona fide, responsive, and responsible quotes must be attached to the purchase requisition for a small purchase not in excess of twenty-five thousand dollars, or for a small purchase of commercially available off-the-shelf products not in excess of one hundred thousand dollars, or for a small purchase of construction not in excess of one hundred thousand dollars. The award must be made to the lowest responsive and responsible sources. The request for quotes must include a purchase description. Requests must be distributed equitably among qualified supplies unless advertised as provided above."

Recommendation: We recommend NETC develop and implement procedures to ensure that procurements of supplies and services, information technology, and construction less than \$100k follow SC Code Ann. § 11-35-1550 (2) Small Purchase Procedures. . We further recommend that NETC report these nine procurements as illegal or unauthorized per Regulation 19-445.2015.

Agency Response

Concur. Training has been developed and implemented for all staff that would be involved to understand the code requirements for the different levels of small purchase procedures. The Director of Finance has sent several emails to all staff to be aware of the various dollar thresholds and requirements for small purchases.

C. Purchases Initiated Without Requisition

NETC did not provide purchase requisitions for 12 procurements totaling approximately \$1.2M.

NETC's Internal Procurement Manual, Section 5 A. Requisitioning requires:

"The requisition is the most important communication between the requesting party and the Business Office. This document notifies the Business Office that a department desires a specific item or service. It should be forwarded to the Business Office as soon as possible in advance of actual commodity need. Usually, it is the only document submitted; therefore, it must present specific and complete details on the commodity or service desired. It must be correct as to the quantity, item(s), specifications and delivery."

RESULTS OF AUDIT

We agree that NETC's policy that all procurements should be initiated by operations and properly documented is an important control to prevent unnecessary or authorized procurements. The absence of requisitions for these 12 procurements is a material control weakness.

Recommendation: We recommend NETC comply with its Internal Procurement Manual and treat any procurement that does not comply as an unauthorized procurement per Regulation 19-445.2015. We also recommend NETC provide clear guidance to personnel throughout the college regarding the requirement to issue a requisition before any procurement and that documentation of the requisition be maintained.

Agency Response

Concur. The Director of Finance has sent out a communication to all staff to explain the process and provided training to staff responsible for purchasing for various departments to ensure proper paperwork. The Business Office staff has been trained to ensure all proper documentation has been submitted before processing the purchase requisition including proper authorized signatures.

D. Inadequate Internal Controls over the Procurement Process

NETC's internal controls over the procurement process are inadequate or are being bypassed. We identified five POs totaling approximately \$32k that were dated after the invoice date.

Creating POs after a purchase has been made is not an effective way to ensure that supplies or services are ordered with management approval, adequate funding, and in compliance with the Code.

NETC's Internal Procurement Manual section 5 B. Requisitioning, states:

The following steps are taken in the generation of [POs]:

1. Requisition is delivered to the Business Office (filled out properly with all pertinent information and bearing all required signatures).
2. After requisition is received, priority is established. The "FIFO" (first in, first out) method will be used except in case of extenuating circumstances.
3. Review requisition and assign proper account code.
4. Perform required purchasing steps (bids, source of supply, delivery by vendor or pick-up, etc.).
5. If Materials Management Office approval is required, the requisition is transposed onto a state requisition and forwarded to the Materials Management Office. Otherwise, requisition data is keyed into the finance system and a PO is created. Each [PO] will be distributed as follows:
 - i. Vendors copy to vendor unless confirmation order.
 - ii. Copy to Accounts Payable.
 - iii. Copy to Receiving Department.
6. All [PO's] must be signed by the Procurement Officer.

RESULTS OF AUDIT

Recommendation: We recommend NETC comply with its internal Procurement Manual and treat any procurement that does not comply as an unauthorized procurement per Regulation 19-445.2015. We also recommend NETC provide clear guidance to personnel throughout the college regarding the appropriate requisitioning process and use of POs.

Agency Response

Concur. The Director of Finance provided training to staff on the proper process of procurement between purchase requisition, direct pay, and procurement card as soon as it was identified between July and August of 2020. The Business Office staff was trained to identify and address the situations to ensure compliance with the regulations. The divisional staff was trained on the requirements that are responsible for purchasing.

IV. Sole Source Procurements

We assessed the written determinations for all ten Sole Source Procurements for compliance with the Code.

A. Sole Source Determinations Not Provided

NETC did not provide written determinations for three sole source procurements totaling approximately \$248k. Without written determinations, we were unable to determine the justification for making these procurements without competition.

SC Code Ann. § 11-35-1560 (A) provides that: “A contract may be awarded for a supply, service, information technology, or construction item without competition if, ... the CPO, 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 ... item.”

The result is that these three procurements are illegal or unauthorized.

Regulation 19-445.2015 address the disposition of unauthorized procurements. Section (H) (2) states: “The written determination must include the facts and circumstances surrounding the improper act, what corrective action is being taken to prevent recurrence, and the action taken against the individual committing the act.”

Recommendation: We recommend NETC develop and implement procedures to ensure that written determinations are prepared for all sole source procurements and properly authorized by the appropriate level of management as required by the Code. NETC’s procurement procedures manual should designate who is authorized to approve sole source procurements.

RESULTS OF AUDIT

Additionally, we recommend NETC draft the written determinations required by R 19-445.2015 (H) (2) for these three procurements and report them as illegal or unauthorized as required by R 19-445.2015 (I).

Agency Response

Concur. NETC was without a Procurement Manager and had several turnovers of the Director of Finance role during the time period. The Director of Finance has provided training to the staff on the Sole Source requirements purchase for the departments.

B. Sole Source Procurements Omitted from Reporting

NETC omitted two sole source procurements totaling approximately \$58k from its statutorily required quarterly reports.

SC Code Ann. § 11-35-2440 requires that governmental bodies submit quarterly, a record listing of all contracts made pursuant to § 11-35-1560 – Sole Source Procurements, to the Chief Procurement Officers.

Recommendation: We recommend that NETC report these two procurements as required, and develop and implement written procedures, to include management review and approval, to ensure that an accurate and complete list of all sole source procurements is reported quarterly in a timely manner.

Agency Response

Concur. NETC was without a Procurement Manager for an extended period and the staff was not aware of the Sole Source requirements. The Director of Finance has trained all staff that does purchase for divisions of the requirements. This will be added to the policy and procedure manual when revised.

V. Emergency Procurements

NETC made two emergency procurements totaling approximately \$61k during the audit period and did not provide the required written determinations for either. Without written determinations, we were unable to determine the justification for making these procurements without competition.

SC Code Ann. § 11-35-1570 (A) states: Notwithstanding any other provisions of the code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may award or authorize others to award emergency contracts only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board: and provided, that such emergency procurements shall be made with as much competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file.

RESULTS OF AUDIT

Recommendation: We recommend NETC develop and implement procedures to ensure that written determinations are prepared and properly authorized for all emergency procurements as required by the Code. We further recommend the procedures provide for sufficient review and approval of emergency expenditures by the appropriate level of management to ensure they are within the scope of the declared emergency.

Agency Response

Concur. NETC was without a Procurement Manager for an extended period and the interim Director of Finance wasn't aware of the emergency requirements. The current Director of Finance has provided training to all staff that does purchases for the college departments.

VI. Unauthorized Procurements

We reviewed unauthorized procurements to determine if they were properly ratified or terminated in accordance with Reg. 19-445.2015. We identified two instances totaling approximately \$24k, out of the four reported, where NETC properly reported unauthorized procurements, but did not provide the required written determination.

Regulation 19-445-2015(A)(1) states: Upon discovering after award either (a) that a person lacking actual authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations, the appropriate official, as defined in G below, must decide to either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void. If ratified, the contract may be continued or terminated. The contract may be ratified only if ratification is in the interest of the State.

Regulation 19-445-2015(H)(1) states: "All decisions authorized by sections A, B and E above shall be supported by a written determination of appropriateness conforming to the requirements of Section 11-35-210."

Recommendation: We recommend that the appropriate official either ratify the contracts or acknowledge and declare the contracts null and void and prepare the appropriate written determinations as required by Regulation 19-445.2015 (A)(1) and (H)(1) and report the unauthorized procurements to DPS.

Agency Response

Concur. NETC was without a Procurement Manager for an extended period and the staff thought Billboards were exempt under the advertising exemption. The Director of Finance that was hired on July 20, 2020, detected the issues, and ratified the contract with the assistance of the SC Technical College System Office. The staff was trained on the small purchase thresholds and communicated the only exemptions in detail what is specifically exempted.

RESULTS OF AUDIT

VII. Internal Procurement Procedures Manual Lacked Key Provisions

NETC's internal Procurement Procedures Manual is dated July 2002. The manual is based on the July 1, 1993 South Carolina Procurement Code and has not been approved by the Chief Procurement Officer. The General Assembly has materially amended the Code four times since 1993. Due to its age, the manual does not provide procedures for key provisions of the Code as required by Code and Regulation 19-445.2005. Provisions not addressed include, but are not limited to, assignment of roles and responsibilities, procedures for commonly used source selection methods, including the new small purchase procedures, as well as a filing system that provides for consistent organization, and retention of procurement files.

Recommendation: We recommend NETC revise its internal procurement manual to provide procedures for procurement personnel conducting commonly used source selection methods including the new small purchase procedures, the assignment of roles and responsibilities, and a consistent filing system. Procurement Services provides a Procurement Manual checklist on its website that may assist in revising the manual. Once the manual has been revised, we recommend NETC submit the manual to Audit and Certification for approval as required by SC Code Ann. § 11-35-540 and Reg. 19-445.2005. Upon approval, we recommend retraining staff on the revised procedures.

Agency Response

Concur. NETC is working on revising all policies and procedures to bring them into compliance with current procurement policies and procedures.

VIII. P-Card Administration

NETC had 31 cardholders who spent approximately \$340k during the audit period. We reviewed NETC's P-Card policies and procedures and tested 25 P-Card transactions for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy) and identified the following areas of non-compliance:

A. Internal P-Card Manual Inadequate

NETC's most recent P-Card manual was last updated in May of 2007 and did not address key elements of the State P-Card Policy, as revised March 6, 2020¹:

- Clear assignment of roles and responsibilities
- Required documentation of manager/supervisor approval
- Clear description of prohibited transactions
- Prohibition against order splitting

¹ The State P-Card Policy has since been updated on September 9, 2021.

RESULTS OF AUDIT

- A prohibition against the use of blocked MCC Codes
- Procedures for the use of BOA Works
- Requirement for a documented Level I and Level II training program

Recommendation: We recommend that NETC revise its P-Card procedure manual to include the key requirements of the State P-Card Policy as well as the assignment of roles and responsibilities. Procurement Services provides a P-Card manual checklist on its website that may be helpful in revising NETC's manual.

Agency Response

Concur. NETC trained staff based on the current South Carolina Purchasing Card Policy and Procedure, January 1, 2020, while NETC is developing a NETC Procurement Card Policy and Procedure Manual for the Area Commission and SFAA to approve. The Director of Finance arrived on July 20, 2020 and began training staff in September 2020 to begin to comply with the regulations. NETC is providing annual refresher training on the P-Card requirements.

B. Bank Statements Lacked Management & Cardholder Approval

In ten incidences, management failed to sign bank statements. In six incidences, cardholder's failed to sign bank statements. The lack of sufficient management oversight over the P-Card program increases the risk of misuse and abuse.

Per State P-Card Policy, Section III(B)(8), Supervisor/Approvers, "Sign the cardholder monthly bank statements signifying review and approval for payment. This responsibility cannot be delegated to another person." State P-Card Policy III(D)(4) states, cardholders "sign the cardholder monthly bank statements attesting to the accuracy and completeness of the statement. All signatures must be original. Signatures made with rubber stamps are prohibited."

Recommendation: We recommend that NETC's P-Card Manual require both management and the cardholder to sign the activity statements as required by the State P-Card Policy.

Agency Response

Concur. As of July 2020, the Director of Finance detected the lack of signatures by the cardholders and supervisor, which implemented training to ensure all bank statements were reviewed and signed by the appropriate staff. The Director of Finance assumed the role of P-Card Liaison and Administrator. The Certification Document was created and implemented for all cardholders to sign and attach the monthly bank statement in addition to signing the bank card statement.

C. Required Liaison Reviews Not Performed

There is no documentation of liaison review of any of the transactions tested. During the audit the P-Card Administrator implemented new procedures that require him to perform a documented

RESULTS OF AUDIT

review of all the bank statements and all the transactions. We commend NETC for implementing these new policies; however, we believe that these new policies may not be effective due the number of cards being reviewed by one individual (span of control).

State P-Card Policy III (C) Liaison Responsibilities states: "The liaison reviews the transactions for all cardholders assigned to him/her to determine that the cardholder and supervisor/approver are complying with this State P-Card Policy, i.e., no prohibited transactions, no split transactions, purchases are made from contract vendors when available, no deliveries to other than the business address(s), no blocked MCC codes, etc."

Recommendation: We recommend that NETC document procedures that were put into place during the audit and assign responsibility for this review to departmental liaisons to reduce the span of control to an effective level.

Agency Response

Concur. The number of Procurement Card has been reduced and have implemented a review process to ensure compliance with the regulations. There is enough oversight with the employee, trained supervisors, and the Director of Finance to review and sign off each statement. NETC is a small college and with the turnover rate, the annual total might have been 31 for a given year but typically have less than 20 active cards at any given time.

IX. Surplus Property

NETC did not identify and report surplus items to the Surplus Property Management Office. No documentation for Surplus Property disposal was provided.

SC Regulation 19-445-2150 (B) (1) Surplus Property Management states: "Reporting: Within one hundred eighty days from the date property becomes surplus, it must be reported to the SPMO on a turn-in-document (TID) designed by SPMO. The description, model or serial number, acquisition cost, date of purchase and agency ID number shall be listed for each item."

Recommendation: We recommend NETC develop and implement procedures for the disposal of Surplus Property, including the assignment of roles and responsibilities, as required by SC Code Ann. § 11-35-3820.

Agency Response

Concur. NETC has implemented an electronic file system to track all Turn-In Documents. All documents sent to and received from State Surplus are filed by month and year. NETC tried to verify with State Surplus if they had any records during the audit period but was unsuccessful in making the determination based on how State Surplus files the documents.

RESULTS OF AUDIT

X. MBE Utilization Plans and Progress Reports Not Filed

NETC had not submitted any Annual MBE Utilization Plans or Quarterly Progress Reports.

Recommendation: We recommend NETC develop and implement procedures, including management review and approval, to require annual MBE utilization plans and quarterly progress reports be submitted to the Office of Small and Minority Business Assistance in a timely manner as required by SC Code Ann. § 11-35-5240 (2).

Agency Response

Concur. NETC has flagged all certified MBE vendors in the accounting system to be able to run the reports to submit online. The Director of Finance has referred vendors to get certified by the Governor's Office. It is part of the procurement card training to actively look for MBE vendors whenever possible. Purchase Cardholders are to notify the Business Office for tracking if any MBE vendors are used by the purchase card.

XI. Delays in Access to Procurement Records

We experienced delays in response to requests for documentation or explanation during the audit. Required procurement records did not appear to be organized in a consistent manner or location for access by current procurement personnel. NETC had experienced significant turnover in key procurement staff in recent years. The current Director of Finance assumed that position in July of 2020. The Director of Finance position had been vacant for 18 months and there was no procurement staff in place during this period. By July 2021 a new procurement staff had been established.

During the audit, management stated that NETC implemented an electronic system for filing all procurement documentation in a dedicated and clearly marked location including procedures requiring all staff to review and scan documents related to procurement. NETC is cross training staff on where records are located to ensure that records will be accessible. The State Board for Technical and Comprehensive Education provided training for the staff in August of 2021.

Regulation 19-445.2005 (B) Procurement Records, requires "Each governmental body must maintain procurement files sufficient to satisfy the requirements of external audit." SC Code Ann. § 11-35-2430 states, "All procurement records of governmental bodies shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History after consultation with the Attorney General."

RESULTS OF AUDIT

Recommendation: We commend NETC for implementing new procedures that establish a consistent methodology for organizing and locating required documentation of procurement activity as required by the Code and regulations. We recommend that NETC include in these procedures' requirements for the maintenance of documentation sufficient to demonstrate compliance with the Code and regulations and to satisfy the requirements of an external audit. NETC should also include procedures for management review and oversight.

Agency Response

Concur. NETC has implemented an electronic filing system on the server to easily retrieve procurement documents with a naming convention.

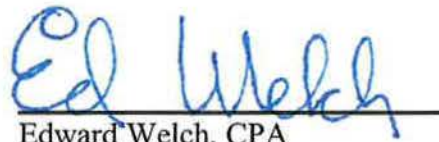
CONCLUSION AND RECOMMENDATIONS

Based on the results of our audit, it appears that NETC staff were bypassing NETC's procurement procedures. We recommend NETC submit a corrective action plan regarding organization and filing of procurement workpaper files by November 1, 2022 to the Division of Procurement Services for submittal to the five member Authority.

We recommend twenty percent of NETC's P-Cards be suspended immediately and remain suspended until August 31, 2023.

We believe corrective action based on the recommendations described in this report will bring NETC into compliance with the South Carolina Consolidated Procurement Code.

NETC has not requested procurement certification above the statutory limit of \$50,000. Subject to the corrective actions listed in this report, we recommend NETC be allowed to continue procuring supplies and services, information technology, and construction up to \$50,000 as provided by the Code.



Edward Welch, CPA
Audit Manager
Audit & Certification



Crawford Milling, CPA, CGMA
Director, Audit & Certification

End Notes

ⁱ Regulation 19-445.2020 Certification

- (A) Review Procedures.
- (2) The Materials Management Officer shall review and report on the particular government body's entire internal procurement operation to include, but not be limited to the following:
 - (a) Adherence to provisions of the Code and these Regulations.
 - (b) Procurement staff and training.
 - (c) Adequate audit trails and purchase order register.
 - (d) Evidence of competition.
 - (e) Small purchase provisions and purchase order confirmation.
 - (f) Emergency and sole source procurements.
 - (g) Source selection.
 - (h) File documentation of procurements.
 - (i) Decisions and determinations made pursuant to section 2015.
 - (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers.
 - (k) Adequacy of written determinations required by the Code and these Regulations.
 - (l) Contract administrations.
 - (m) Adequacy of the governmental body's system of internal controls to ensure compliance with applicable requirements.
- (3) The report required by item A(2) shall be submitted to the board.

SECTION 11-35-1210. Certification.

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify 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; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF August 30, 2022

REGULAR SESSION
ITEM NUMBER 13

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification – State Accident Fund

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C(1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. The State Accident Fund has not been delegated any additional authority.

In accordance with the S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of the State Accident Fund to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the Code. Because the State Accident Fund is not certified and has not requested procurement certification, this report is submitted as information only.

AUTHORITY ACTION REQUESTED:

Receive the State Accident Fund's procurement audit report for information only.

ATTACHMENTS:

Agenda item worksheet and attachment

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: August 30, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C(1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. The State Accident Fund has not been delegated any additional authority.

In accordance with the S.C. Code Ann. § 11-35-1210, the Division of Procurement Services (DPS) audited the procurement operating policies and procedures of the State Accident Fund to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the Code. Because the State Accident Fund is not certified and has not requested procurement certification, this report is submitted as information only.

4. What is Authority asked to do?

Receive State Accident Fund's procurement audit report for information only.

5. What is recommendation of the submitting agency involved?

DPS recommends that the Authority receive the report for information only.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

(a) Authorized Signature: _____

(b) Office Name: _____

8. List of Supporting Documents:

- (a) S.C. Code Ann. § 11-35-1210

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

July 28, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: State Accident Fund
Procurement Audit Report

Delbert:

I have attached the State Accident Fund's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its conclusion.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



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J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

July 27, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Subject: State Accident Fund
Follow-up Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of the State Accident Fund (SAF), for the period of April 1, 2021 to January 31, 2022, to determine whether the internal controls of SAF's procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations (Code).

Our examination found that the internal controls of SAF's procurement system were adequate to ensure compliance with the Code and ensuing regulations and identified no material violations of Code.

Sincerely,



Crawford Milling
Director, Audit and Certification

Attachment



**South Carolina
State Accident Fund**

FOLLOW-UP PROCUREMENT AUDIT REPORT

**for the Audit Period:
April 1, 2021 to January 31, 2022**

**Office of Audit & Certification
Division of Procurement Services
March 17, 2022**

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INTRODUCTION

The Division of Procurement Services (DPS) audited State Accident Fund's (SAF) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020¹. This audit was a follow-up to the period ending March 31, 2021, audit. DPS conducted the follow-up audit at the request of the State Fiscal Accountability Authority based on the findings in the original report.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of State Accident Fund's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of State Accident Fund is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency's compliance with the Code
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. 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 review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

INTRODUCTION

Total Expenditures

During the audit period, the agency made expenditures as follows:

\$ Amount (000s)			
	Q4	Q1,2	
	FY2021	FY2022	Total
POs	636	504	1,140
Direct Pays	424	1,356	1,780
Total Spend	1,060	1,860	2,920

*Claims expenses totaling \$51M removed from Direct Pays

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about SAF's compliance with the Code for the period April 1, 2021 through January 31, 2022, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) Procurement transactions for the audit period as follows:
 - a) Seventeen supplies & services expenditures each exceeding \$10k totaling \$693k.
 - b) Four direct payments totaling \$4.2M.
 - c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of or favored vendors
 - d) Twenty-five P-Card transactions totaling \$5k for compliance with the South Carolina Card Policy and Procedures (State P-Card Policy). During the audit SAF had two P-Card cardholders that made P-Card expenditures as follows:

<u>Fiscal Year</u>	<u>Transactions</u>	<u>\$ Amount</u>
Q4 2021	21	2,839
Q1,2 2022	34	5,608

- e) Information Technology acquisitions under approved IT Plans
- (3) Construction contracts and Architect/Engineer and Related Professional Service Contracts for compliance with the Manual for Planning and Execution of State Permanent Improvements of which there were none.
- (4) Written determinations for all sole source and emergency procurements. The following sole source and emergency procurement activity was reported to DPS during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>Sole Source</u>	<u>Count</u>	<u>Emergency</u>
		<u>\$ Amount</u>		<u>\$ Amount</u>
Q4, 2021	0	0	0	0
Q1,2 2022	1	17,000	0	0

- (5) Disposition of unauthorized procurements. SAF reported no unauthorized procurement activity to DPS during the audit period.
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5k.

SCOPE

- (7) Small and Minority Business utilization plans and reports. The following activity was reported to the Division of Small and Minority Business Contracting and Certification (SMBCC):

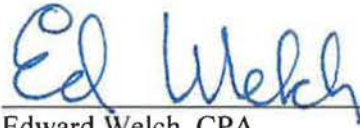
<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
Q4 2021	1,672	20,400
Q1,2 2022	10,144	467

CONCLUSION

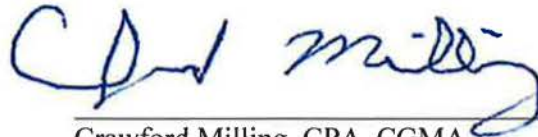
Our examination found that the internal controls of SAF's procurement system were adequate to ensure compliance with the Code and ensuing regulations and identified no material violations of Code.

In our opinion the South Carolina State Accident Fund's internal procurement operations are consistent with the South Carolina Consolidated Procurement Code and ensuing regulations.

The Agency has not requested increased procurement certification above the \$50,000 statutory authority provided by § 11-35-1210 of the Code. As provided by SC Code Ann. § 11-35-1210, we recommend the State Accident Fund be allowed to continue to make direct agency procurements of supplies and services, information technology, and construction services up to \$50,000 per commitment.

A handwritten signature in blue ink, reading "Ed Welch", written over a horizontal line.

Edward Welch, CPA
Audit Manager,
Audit & Certification

A handwritten signature in blue ink, reading "Crawford Milling", written over a horizontal line.

Crawford Milling, CPA, CGMA
Director, Audit & Certification

End Notes

ⁱ Regulation 19-445.2020 Certification

(A) Review Procedures.

(2) The Materials Management Officer shall review and report on the government body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the Code and these Regulations;
- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidence of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selection;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
- (k) Adequacy of written determinations required by the Code and these Regulations;
- (l) Contract administrations;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the board.



South Carolina State Accident Fund

Henry D. McMaster
Governor

Erin Farthing
Acting Director

June 13, 2022

Via e-mail: dcmillling@mmo.sc.gov

Crawford Milling, CPA, CGMA
Director of Audit & Certification
Division of Procurement Services/Audit & Certification
State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: South Carolina State Accident Fund Follow-Up Procurement Audit Report

Dear Mr. Milling:

We are in receipt of the Follow-Up Procurement Audit Report following your follow-up audit of the State Accident Fund (SAF)'s internal procurement operating policies and procedures. Once again, we appreciate your time, effort, and professionalism in conducting this audit. Per the conclusion of your report, you did not identify any material violations of the South Carolina Consolidated Procurement Code by SAF, and "found that the internal controls of SAF's procurement system were adequate to ensure compliance with the Code and ensuing regulations." Since your audit in 2021, we at SAF have worked to ensure our procurement policies, procedures, and practices are in full compliance with the South Carolina Consolidated Procurement Code and its correlating regulations. We will continue to conduct internal reviews and make any necessary changes to ensure that all future procurement actions remain in full compliance with the Code and ensuing regulations.

Thank you again for your input and assistance in helping the State Accident Fund improve our procurement procedures. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Erin Farthing". The signature is written in a cursive, flowing style.

Erin Farthing
Acting Director

SECTION 11-35-1210. Certification.

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify 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; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification – SC Department of Public Safety

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated additional procurement authority to the SC Department of Public Safety as follows:

	<u>Certification Limits</u>
Supplies and Services	\$ 500,000 per commitment
Consultant Services	\$ 100,000 per commitment
Information Technology	\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services audited the procurement operating policies and procedures of the Department of Public Safety to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations (Code and Regulation). With the implementation of the recommended corrective action, the internal controls of the Department of Public Safety's procurement system are adequate to ensure compliance with the Code and Regulations as described in the audit report.

Per S.C. Code Ann. §11-35-1210, the Department of Public Safety requests that the Authority reauthorize it to make direct procurements at the current certification limits for supplies and services and information technology:

	<u>Certification Limits</u>
Supplies and Services ¹	*\$ 500,000 per commitment
Information Technology ²	*\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

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

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification – SC Department of Public Safety

AUTHORITY ACTION REQUESTED:

Authorize the Department of Public Safety to make direct procurements at the following limits for three years from date of approval:

	<u>Certification Limits</u>
Supplies and Services ¹	*\$ 500,000 per commitment
Information Technology ²	*\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment
* Total potential purchase commitment whether single year or multi-term contracts are used.	

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

ATTACHMENTS:

Agenda item worksheets and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: August 30, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated additional procurement authority to the SC Department of Public Safety as follows:

<u>Certification Limits</u>	
Supplies and Services	\$ 500,000 per commitment
Consultant Services	\$ 100,000 per commitment
Information Technology	\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services audited the procurement operating policies and procedures of the Department of Public Safety to determine whether the internal controls of the Agency's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations (Code and Regulation). With the implementation of the recommended corrective action, the internal controls of the Department of Public Safety's procurement system are adequate to ensure compliance with the Code and Regulations as described in the audit report.

Per S.C. Code Ann. §11-35-1210, the Department of Public Safety requests that the Authority reauthorize it to make direct procurements at the current certification limits for supplies and services and information technology.

4. What is Authority asked to do?

Authorize the Department of Public Safety to make direct procurements at the following limits for three years from date of approval:

<u>Certification Limits</u>	
Supplies and Services ¹	*\$ 500,000 per commitment
Information Technology ²	*\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

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

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

5. What is recommendation of the submitting agency involved?

Authorize the SC Department of Public Safety to make direct procurements at the limits set forth above for three years.

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.
-

7. Recommendation of other office (as required)?

(a) Authorized Signature: _____

(b) Office Name: _____

8. List of Supporting Documents:

- (a) S.C. Code Ann. § 11-35-1230
(b) S.C. Code Ann. § 11-35-1210
(c) Certification Comparison
-

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
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(803) 737-0600
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CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

July 28, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: Department of Public Safety
Procurement Audit Report

Delbert:

I have attached the SC Department of Public Safety's procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority approve a three-year procurement certification for the Department of Public Safety.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

July 27, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Subject: Department of Public Safety
Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of the South Carolina Department of Public Safety (DPS), for the period of July 1, 2018 to June 30, 2021, to determine whether the internal controls of DPS' procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations (Code).

The audit disclosed conditions, as explained in the report, which we believe require corrective action or improvement. Corrective action by DPS based on the recommendations described in the report will, in all material respects, place the agency in compliance with the Code.

Sincerely,

Crawford Milling
Director, Audit and Certification

Attachment



**South Carolina
Department of Public Safety
INDEPENDENT PROCUREMENT AUDIT REPORT
For the Audit Period:
July 1, 2018 to June 30, 2021**

**Office of Audit & Certification
Division of Procurement Services
June 3, 2022**

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INTRODUCTION

Procurement Services audited the Department of Public Safety's (DPS) internal procurement operating policies and procedures, as outlined in their Internal Procurement Operating Procedures Manual, under § 11-35-1230 (1) of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020 of the ensuing regulations.

The primary objective of the audit was to determine whether, in all material respects, the internal controls of DPS's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of DPS is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code.
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code.
- Evaluating and monitoring the agency's compliance with the Code.
- Taking corrective action when instances of noncompliance are identified, including corrective action on the findings of this audit.

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. 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 review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

INTRODUCTION

We also performed our audit to determine if recertification under SC Code Ann. § 11-35-1210 is warranted.

On May 2, 2017 the State Fiscal Accountability Authority (SFAA) granted DPS the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 500,000 per commitment
Consultant Services	*\$ 100,000 per commitment
Information Technology	*\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

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

During the audit, the agency did not request additional certification.

Total Expenditures

During the audit period, DPS made expenditures as follows:

	<u>\$ Amount (000s)</u>			
	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
POs	23,966	25,159	31,200	80,326
DEVs	23,937	32,217	24,504	80,658
Total Spend	47,903	57,376	55,704	160,984

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about DPS's compliance with the Code for the period July 1, 2018 through June 30, 2021, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals.
- (2) Written determinations for all sole source and emergency procurements. DPS reported the following sole source and emergency procurement activity during the audit period:

<u>Fiscal Year</u>	<u>Sole Source</u>		<u>Emergency</u>	
	<u>Count</u>	<u>\$ Amount</u>	<u>Count</u>	<u>\$ Amount</u>
2019	13	773,873	2	128,796
2020	5	647,036	2	310,730
2021	9	811,303	1	15,931

- (3) Procurement transactions for the audit period as follows:

- a) Seventy-one expenditures each greater than \$10,000 totaling approximately \$8.9M.
- b) Twenty-five direct payments totaling approximately \$9M.
- c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of favored vendors.
- d) Twenty-five P-Card transactions for two judgmentally selected months for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy). During the audit period DPS had 42 cardholders that made P-Card expenditures as follows:

<u>Fiscal Year</u>	<u>Transactions</u>	<u>\$ Amount</u>
2019	2,300	539,804
2020	2,304	562,214
2021	2,517	596,606

- (4) Four Design-Bid-Build projects totaling approximately \$1.1M and one small construction project totaling approximately \$70k for compliance with the Manual for Planning and Execution of State Permanent Improvements.
- (5) Reporting of surplus property dispositions and approval of trade-ins in excess of \$5k.
- (6) Disposition of unauthorized procurements. DPS reported no unauthorized procurement activity to Procurement Services during the audit period:

SCOPE

- (7) Small and Minority Business utilization plans and reports. DPS reported the following activity to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
2019	108,709	238,132
2020	112,645	262,875
2021	136,800	136,800

SUMMARY OF FINDINGS

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DPS did not provide evidence of required competition for three procurements totaling approximately \$196k.	
II. <u>Sole Source Procurements</u>	
A. <u>Sole Source Written Determinations Not Dated</u>	7
DPS authorized approvers did not date their signatures on seven sole source written determinations totaling approximately \$354k.	
B. <u>Sole Source Written Determinations Not Reported or Reported Late</u>	8
DPS omitted 14 sole source procurements totaling approximately \$1.2M from its statutorily required quarterly reports and did not report four sole source procurements totaling approximately \$90k in a timely manner.	
III. <u>Blanket Purchase Agreements (BPAs)</u>	9
DPS did not specify the dollar limit per call, as required, on three BPAs totaling approximately \$19k.	

Note: The agency's responses to issues raised in this report have been inserted immediately following the recommendations in the body of the report.

RESULTS OF AUDIT

I. Supplies and Services Contracts

Our review of supplies and services for the audit period identified the following issues:

DPS did not provide evidence of competition for three procurements greater than \$10k totaling approximately \$196k.

Per SC Code Ann § 11-35-1550 (2) (b) requires that: "Written request for written quotes from a minimum of three qualified sources of supply may be made and, unless adequate public notice is provided in the South Carolina Business Opportunities, documentation of at least three bona fide, responsive, and responsible quotes must be attached to the purchase requisition for a small purchase not in excess of twenty-five thousand dollars, or for a small purchase of commercially available off-the-shelf products not in excess of one hundred thousand dollars, or for a small purchase of construction not in excess of one hundred thousand dollars. The award must be made to the lowest responsive and responsible sources. The request for quotes must include a purchase description. Requests must be distributed equitably among qualified supplies unless advertised as provided above."

Recommendation: We recommend that DPS develop and implement procedures to ensure that all procurements are appropriately procured through a competitive process as required per SC Code Ann. § 11-35-1550.

Agency Response

SCDPS concurs with this finding. While gathering the initial documentation as requested for this audit by the auditors, these three procurements were identified as lacking competition and reported as such to the auditors by the Director of Procurement as improper procurements. As the products and services were already completely received, the decision to declare the contracts null and void was unnecessary; therefore, a written determination was created for each of the three procurements and sent to the agency Director for affirmation and reported accordingly in Audit & Certification's Online Reporting Database on 1/14/2022. In addition, SCDPS has created an agency term contract for thermal paper and miscellaneous vehicle equipment.

SCDPS procedures require procurements be appropriately procured through a competitive process as required by the SC Procurement Code. The staff who conducted these three procurements are no longer employed at SCDPS.

II. Sole Source Procurements

Sole source and emergency procurements made pursuant to SC Code Ann § 11-35-1560 and 1570, were evaluated to assess the appropriateness of the procurement actions and the accuracy of the quarterly reports submitted to the chief procurement officers as required by § 11-35-2440.

RESULTS OF AUDIT

A. Sole Source Written Determinations Not Dated

DPS authorized approvers did not date their signatures on seven sole source written determinations totaling approximately \$354k. Therefore, we could not determine if authorizations for these sole source procurements were obtained before contract execution. the audit file did not contain sufficient documentation as required, therefore, we have to assume that these eight procurements were illegal or unauthorized.

Regulation 19-445.2105(C) (2) requires that, "The determination must be authorized prior to contract execution". A signature provides documentation that the authorization was made by the appropriate official. Dating the approval provides documentation that the required approval was obtained prior to execution of a contract for supplies and services without competition.

Regulation 19-445.2015 (A) (1) requires that, "Upon discovering after award either (a) that a person lacking actual authority has made an unauthorized award or modification of a contract or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations, the appropriate official, as defined in section G below, must decide to either ratify the contract in accordance with this regulation or acknowledge and declare the contract null and void."

Recommendation: We recommend that these eight procurements be reported as illegal or unauthorized as required by regulation. We further recommend DPS develop and implement procedures to ensure that written determinations are prepared for all sole source procurements and properly authorized by the appropriate level of management as required by regulation. We also recommend that the format of the written determinations provide for documentation of timely approvals. A sample form is posted on the Department of Procurement Services web site.

Agency Response

SCDPS concurs with this finding. Dates were not included on seven sole source written determinations; however, appropriate management approval was included on all of these documents, which, to the Procurement Officer, indicated approval of the sole source. The Procurement Officer proceeded with the purchase order or contract based on this approval. As evidence that these sole sources were in place prior to contract execution, four of the sole source documents had the signed written determination attached to the PO on the date the contract or purchase order was executed.

RESULTS OF AUDIT

The goods receipts and payments happened after the purchase order was issued as outlined in the table below:

Vendor Name	PO Amount	Sole Source Attached to PO	PO Date	Goods Receipt	Date Paid
Vendor 1	\$176,390	3/20/2019	3/20/2019	6/30/2019	6/30/2019
Vendor 2	\$ 29,000	3/25/2019	3/25/2019	3/26/2019	6/24/2019
Vendor 3	\$ 44,780	2/12/2019	2/12/2019	5/21/2019	5/21/2019
Vendor 4.	\$ 5,764	3/29/2019	4/3/2019	6/7/2019	6/10/2019

It is standard practice for written determinations to be prepared for all sole source procurements and properly authorized by the appropriate level of management as required by regulation prior to the Procurement Officer proceeding with a purchase order or contract. The absence of a date on these documents was an oversight by management. Approved/authorized sole source written determinations will be dated and attached in SCEIS upon issuance of the purchase order. In addition, SCDPS utilizes the form posted on the Department of Procurement Services web site as further assurance the agency is following appropriate procedures.

In accordance with Regulation 19-445.2015, as the products and services have been completely received, the decision to declare the contracts null and void is unnecessary; therefore, a written determination will be created for these procurements and sent to the agency Director for affirmation and reported accordingly in Audit & Certification's Online Reporting Database.

B. Sole Source Written Determinations Not Reported or Reported Late

DPS omitted 14 sole source procurements totaling approximately \$1.2M from its statutorily required quarterly reports, and four sole source procurements totaling approximately \$90k were reported late.

SC Code Ann. § 11-35-2440 (1) (a) requires that governmental bodies submit quarterly, a record listing of all contracts made pursuant to § 11-35-1560 – Sole Source Procurements, to the Chief Procurement Officers.

Recommendation: We recommend that DPS develop and implement procedures, including management review and approval, to ensure that all sole source procurements are accurately and timely reported as required by SC Code Ann. § 11-35-2440.

Agency Response

SCDPS concurs with this finding. SCDPS is like many other agencies and has experienced staff turnover within the Procurement Office during this audit period. Because tracking items for quarterly reports is still a manual process, it is often an overlooked requirement when a new

RESULTS OF AUDIT

employee is transitioning into their new position. SCDPS will ensure that sole source procurements are accurately and timely reported by SC Code Ann. §11-35-2440. Going forward, once a purchase order is issued as a sole source procurement, the purchase order will be reported within the online reporting database with all documents attached to the purchase order within SCEIS. In addition, original copies are stored in a file cabinet in the Director of Procurement's office by date/quarter.

III. Blanket Purchase Agreements

Three BPAs totaling approximately \$19k were identified that did not contain required terms and conditions. Regulation 19-445.2100 E. (3) (c) requires: "Notice of individuals authorized to place calls and dollar limitations. A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer."

Recommendation: We recommend that DPS modify the BPAs to include the dollar limitations per call as required by SC Code of Regulation 19-445.2100. We also recommend that DPS develop and implement procedures to ensure that future BPAs contain the terms and conditions required by regulation.

Agency Response

SCDPS concurs with this finding. DPS will ensure that future BPAs contain the terms and conditions required by regulation including the dollar limitations per call.

SCDPS accepts your findings and recommendations. The exceptions noted within this audit have been discussed with Procurement Staff to ensure appropriate procedures are adhered to going forward.

We appreciate the time, effort, and guidance you have given our agency throughout the audit process.

CERTIFICATION RECOMMENDATION

We believe corrective action based on the recommendations in this report will make the Department of Public Safety's internal procurement operations consistent with the South Carolina Consolidated Procurement Code and ensuing regulations.

As provided in SC Code Ann. § 11-35-1210, we recommend that the Department of Public Safety's procurement authority to make direct agency procurements be re-certified up to the following limits for three years:

PROCUREMENT AREAS

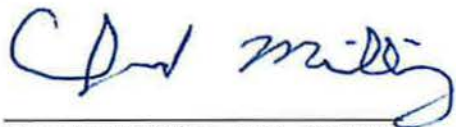
RECOMMENDED CERTIFICATION LIMITS

Supplies and Services ¹	*\$ 500,000 per commitment
Information Technology ²	*\$ 100,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

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



Edward Welch, CPA
Audit Manager
Audit & Certification



Crawford Milling, CPA, CGMA
Director, Audit & Certification

¹ Supplies and Services includes non-IT consulting services

² Information Technology includes consulting services for any aspect of information technology, systems, and networks.

End Notes

¹ Regulation 19-445.2020 Certification.

- (1) Review Procedures.
- (2) The Materials Management Officer shall review and report on the government body's entire internal procurement operation to include, but not be limited to the following:
 - (a) Adherence to provisions of the Code and these Regulations.
 - (b) Procurement staff and training.
 - (c) Adequate audit trails and purchase order register.
 - (d) Evidence of competition.
 - (e) Small purchase provisions and purchase order confirmation.
 - (f) Emergency and sole source procurements.
 - (g) Source selection.
 - (h) File documentation of procurements.
 - (i) Decisions and determinations made pursuant to section 2015.
 - (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers.
 - (k) Adequacy of written determinations required by the Code and these Regulations.
 - (l) Contract administrations.
 - (m) Adequacy of the governmental body's system of internal controls to ensure compliance with applicable requirements.
- (3) The report required by item A(2) shall be submitted to the board.

SECTION 11-35-1230. Auditing and fiscal reporting.

(1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.

SECTION 11-35-1210. Certification.

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify 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; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

AGENCY	CERTIFICATION DATE	Active	Supplies and Services	Supplies	All other Supplies and Services	Services	Consultant Services	Information Technology	Construction Contract Award	Construction Contract Change Order	Architect/ Engineer Contract Amendment
ADJUTANT GENERAL, OFFICE OF THE	8/21/2018	Y	100,000						100,000		
ARTS COMMISSION	9/8/2021	Y	100,000					100,000			
COMMERCE, DEPT. OF	5/14/2019	Y	100,000					100,000			
CORRECTIONS, SC DEPT. OF	8/21/2018	Y	1,000,000				100,000	100,000	100,000	100,000	50,000
EDUCATION, SC DEPT. OF	10/15/2019	Y	150,000					100,000			
FORESTRY COMMISSION	10/17/2017	Y	200,000				75,000	100,000			
	1/9/2020	Y							100,000		
HEALTH & ENVIRONMENTAL CONTROL,	6/27/2018	Y			2,000,000		250,000	225,000			
	2/11/2020	Y							100,000		
JUVENILE JUSTICE, DEPT. OF	12/17/2020	Y	500,000						100,000	25,000	5,000
LABOR, LICENSING & REGULATION, DEP	8/21/2018	Y	100,000				100,000				
MOTOR VEHICLES, DEPT. OF	5/12/2020	Y	350,000					150,000			
NATURAL RESOURCES, DEPT. OF	5/1/2018	Y	300,000								
	9/9/2019	Y							100,000		
PARKS, RECREATION & TOURISM, DEPT	5/31/2022	Y	250,000						250,000	250,000	50,000
PUBLIC SAFETY, DEPT. OF	5/2/2017	Y	500,000				100,000	100,000		25,000	5,000
	8/30/2022	Recommend	500,000					100,000		25,000	5,000
STATE LAW ENFORCEMENT DIVISION (S	5/2/2017	Y	250,000				100,000	100,000			
	8/30/2022	Recommend	250,000					100,000			
TRANSPORTATION, DEPT. OF	12/10/2019	Y		1,000,000		500,000		100,000	500,000	100,000	25,000
VOCATIONAL REHABILITATION	10/15/2019	Y	250,000					100,000	250,000	100,000	25,000

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification – State Law Enforcement Division

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated procurement authority to the State Law Enforcement Division as follows:

	<u>Certification Limits</u>
Supplies and Services	\$ 250,000 per commitment
Consultant Services	\$ 100,000 per commitment
Information Technology	\$ 100,000 per commitment

In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services audited the procurement operating policies and procedures of the State Law Enforcement Division to determine whether the internal controls of the State Law Enforcement Division's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations (Code and Regulation). With the implementation of the recommended corrective action, the internal controls of the State Law Enforcement Division's procurement system are adequate to ensure compliance with the Code and Regulations as described in the audit report.

Per S.C. Code Ann. §11-35-1210, the State Law Enforcement Division requests that the Authority reauthorize it to make direct procurements at the current limits:

	<u>Certification Limits</u>
Supplies and Services ¹	*\$250,000 per commitment
Information Technology ²	*\$100,000 per commitment

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

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF August 30, 2022

REGULAR SESSION
ITEM NUMBER 15, Page 2

AGENCY: Division of Procurement Services

SUBJECT: Procurement Audit and Certification – State Law Enforcement Division

AUTHORITY ACTION REQUESTED:

Authorize the State Law Enforcement Division to make direct procurements at the following limits for three years from date of approval:

	<u>Certification Limits</u>
Supplies and Services ¹	*\$250,000 per commitment
Information Technology ²	*\$100,000 per commitment
* Total potential purchase commitment whether single year or multi-term contracts are used.	

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

ATTACHMENTS:

Agenda item worksheets and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: August 30, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

The S.C. Consolidated Procurement Code and Regulations (Code) authorize agencies to make direct procurements up to \$50,000 and to enter sole source and emergency procurement contracts with no dollar limitation. S.C. Codes §§11-35-1210(1), 1560, and 1570, and Regulation 19-445.2000C (1). The Code authorizes the Authority to delegate additional procurement authority by assigning dollar limits below which an agency may make direct procurements. On May 2, 2017, the Authority delegated procurement authority to the State Law Enforcement Division as follows:

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In accordance with S.C. Code Ann. § 11-35-1230, the Division of Procurement Services audited the procurement operating policies and procedures of the State Law Enforcement Division to determine whether the internal controls of the State Law Enforcement Division's procurement system were adequate to ensure compliance, in all material respects, with the S.C. Consolidated Procurement Code and ensuing regulations (Code and Regulation). With the implementation of the recommended corrective action, the internal controls of the State Law Enforcement Division's procurement system are adequate to ensure compliance with the Code and Regulations as described in the audit report.

Per S.C. Code Ann. §11-35-1210, the State Law Enforcement Division requests that the Authority reauthorize it to make direct procurements at the current limits.

4. What is Authority asked to do?

Authorize the State Law Enforcement Division to make direct procurements at the following limits for three years from date of approval:

<u>Certification Limits</u>	
Supplies and Services ¹	*\$ 250,000 per commitment
Information Technology ²	*\$ 100,000 per commitment

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

¹ Supplies and Services includes non-IT consulting services.

² Information Technology includes consultant assistance for any aspect of information technology, systems and networks.

5. What is recommendation of the submitting agency involved?

Authorize the State Law Enforcement Division to make direct procurements at the limits set forth above for three years.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

7. Recommendation of other office (as required)?

(a) Authorized Signature: _____

(b) Office Name: _____

8. List of Supporting Documents:

(a) S.C. Code Ann. § 11-35-1230

(b) S.C. Code Ann. § 11-35-1210

(c) Certification Comparison

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
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HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

July 28, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: South Carolina Law Enforcement Division
Procurement Audit Report

Delbert:

I have attached the South Carolina Law Enforcement Division's (SLED's) procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority approve a three-year procurement certification for SLED.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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J. GARY SIMRILL
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

July 27, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Subject: South Carolina Law Enforcement Division
Procurement Audit Report

John:

We have audited the internal procurement operating policies and procedures of the South Carolina Law Enforcement Division (SLED), for the period of July 1, 2018 to June 30, 2021, to determine whether the internal controls of SLED's procurement system were adequate to ensure compliance, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations (Code).

The audit disclosed conditions, as explained in the report, which we believe require corrective action or improvement. Corrective action by SLED based on the recommendations described in the report will, in all material respects, place the agency in compliance with the Code.

Sincerely,



Crawford Milling
Director, Audit and Certification

Attachment



State Law Enforcement Division

INDEPENDENT PROCUREMENT AUDIT REPORT

for the Audit Period:
July 1, 2018 to June 30, 2021

Office of Audit & Certification
Division of Procurement Services
December 14, 2021

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Certification Recommendation	10
Agency Response Cover Letter	Attachment 1

INTRODUCTION

The Division of Procurement Services (DPS) audited the State Law Enforcement Division's (SLED) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020¹ of the ensuing regulations.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of SLED's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of SLED is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency's compliance with the Code
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. 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 review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

INTRODUCTION

Our audit was also performed to determine if recertification under SC Code Ann. § 11-35-1210 is warranted.

On May 2, 2017, the State Fiscal Accountability Authority (SFAA) granted SLED the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 250,000 per commitment
Information Technology	*\$ 100,000 per commitment
Consultant Services	*\$ 100,000 per commitment

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

Total Expenditures

During the audit period, the agency conducted procurements as follows:

	<u>\$ Amount (000s)</u>			
	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
PO's	26,055	28,951	24,851	79,857
Direct Payments	12,086	11,729	12,790	36,605
Total Spend	38,142	40,679	37,642	116,463

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about SLED's compliance with the Code for the period July 1, 2018 through June 30, 2021, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) Written Determinations for all sole source and emergency procurements. SLED reported the following sole source and emergency procurement activity during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>Sole Source</u>		<u>Emergency</u>	
		<u>\$ Amount</u>	<u>Count</u>	<u>\$ Amount</u>	
2019	95	5,182,709	8	39,422	
2020	67	6,649,732	12	2,287,407	
2021	53	7,866,709	1	11,480	

- (3) Procurement transactions for the audit period as follows:
 - a) Seventy-one expenditures each greater than \$10k totaling approximately \$6.3M.
 - b) Twenty-five direct payments totaling approximately \$48k.
 - c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of or favored vendors
 - d) Twenty-five P-Card transactions for two judgmentally selected months for compliance with the South Carolina Purchasing Card Policy (State P-Card Policy). During the audit period SLED had 46 cardholders that made expenditures as follows:

<u>Fiscal Year</u>	<u>Transactions</u>	<u>\$ Amount</u>
2019	1,399	365,215
2020	1,243	749,025
2021	1,167	291,621

- (4) Four Design-Bid-Build projects totaling approximately \$1.1M for compliance with the Manual for Planning and Execution of State Permanent Improvements
- (5) Disposition of unauthorized procurements. SLED reported the following unauthorized procurement activity to Procurement Services during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2019	4	8,317
2020	3	2,730
2021	1	154

- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5k

SCOPE

- (7) Small and Minority Business utilization plans and reports. SLED reported the following activity to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
2019	343,779	405,327
2020	341,434	441,905
2021	537,904	225,126

SUMMARY OF FINDINGS

	<u>PAGE</u>
I. <u>Internal Procurement Procedure Manual Lacked Key Provisions</u>	6
SLED's internal Procurement Procedure Manual lacked key provisions to ensure compliance with key elements of the Code.	
II. <u>Sole Source Procurements</u>	
<u>Right to Protest Clause Not Included in SCBO Ads</u>	6
SLED did not include the prospective bidder's right to protest clause in the SCBO ads for nine procurements totaling approximately \$1.4M.	
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A. <u>Internal P-Card Manual</u>	7
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B. <u>Independent Audit of Purchasing Cards Not Performed</u>	8
SLED did not perform required periodic independent audits of the P-Card program.	
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<u>Annual Utilization Plans and Progress Reports Not Submitted Timely</u>	8
SLED did not submit three MBE Utilization Plans and five quarterly reports to the SMBCC in a timely manner.	

Note: The agency's responses to issues raised in this report have been inserted immediately following the recommendations in the body of the report. The cover letter is at the end of the report as Attachment 1.

RESULTS OF AUDIT

I. Internal Procurement Procedure Manual Lacked Key Provisions

SLED's internal procurement procedure manual lacked key provisions to ensure compliance with the procurement code. The following key elements were not included in SLED's procurement manual:

- Commonly used source selection methods - SC Code Ann § 11-35-1510.
- Competitive sealed bidding (pre-bid conferences, safeguarding of bids, acceptance and evaluation, rejections of bids) - SC Code Ann § 11-35-1520.
- Construction procurement procedures - SC Reg. 19-445.2145.
- IT Procurements greater than \$50,000 - SC Proviso 117.117
- Maintenance of procurement files - SC Reg. 19-445.2005.
- Surplus Property Management - SC Code Ann § 11-35-3820.
- Trade-in sales - SC Code Ann § 11-35-1510.
- Minority Business Enterprise Utilization - SC Code Ann § 11-35-5210.

Recommendation: We recommend SLED revise its internal procurement procedures manual as required by SC Code Ann. § 11-35-540(3) and Reg. 19-445.2005 and submit the revised manual to DPS for approval. Procurement Services' website has a procurement manual checklist that may be helpful in revising the agency's manual.

Agency Response

Agency concurs with finding. SLED will revise the internal procurement procedures manual as noted in the audit report and will submit to DPS for approval.

II. Sole Source Procurements

Right to Protest Clause Not Included in SCBO Ads

SLED did not include the prospective bidders' right to protest clause in the SCBO ads for nine procurements totaling approximately \$1.4M. SC Code Ann. § 11-35-1560(A) requires public notice of intent to award without competition contain a statement of a bidder's right to protest.

Recommendation: We recommend that SLED develop and implement procedures to ensure that the bidder's right to protest is included on all public notice of intent to award without competition.

Agency Response

Agency concurs with finding. While the notice was provided on the link that the SCBO advertisement directed vendors to view, we understand that it must be posted directly with the advertisement posted in SCBO and will ensure that this policy is adhered to.

RESULTS OF AUDIT

III. Supplies and Services

IT Procurement Plan Approval Not Documented

SLED did not request verification of required IT Plan approval prior to executing eight IT purchases that exceeded \$50k. Proviso 117.117 states that "With the consultation and approval of the Division of Technology Operations, agencies must create an information technology plan for purchases that exceed \$50,000 to ensure compliance with the Statewide Strategic Information Technology Plan and the standards defined by the division."

Recommendation: We recommend SLED develop and implement procedures to require IT requisitions greater than \$50k include certification that the agency has IT Plan approval prior to contract execution.

Agency Response

While the agency felt that controls were in place to adhere to this Proviso, we have added this requirement to the agency's Policy Manual. The agency participates in the reporting of the annual IT Plan. All agency shopping carts that are created with IT General Ledger Codes, regardless of the dollar value, currently route through the IT Director for approval before the workflow goes to Procurement. A new process will be put in place to have a Proviso specific approval from the IT Director for each Procurement that is \$50,000 or greater.

IV. P-Cards

Program Administration

A. Internal P-Card Manual

SLED's internal p-card manual did not address the following provisions:

- Annual review of internal policy.
- Monitoring cardholder accounts for inactivity
- Default accounting codes.
- Hierarchical review and approval of purchases
- Procedures for increasing the Single Transaction Limits greater than \$2.5K
- Prohibition against the use of blocked MCC codes.
- Responsibility for ensuring that the Certification Statements are submitted for approval by the Comptroller General (CG).

State P-Card Policy Section III. A. 1. (a) requires agencies to "Develop the internal policy governing the use of P-Cards, to include the [listed] minimum requirements."

RESULTS OF AUDIT

Recommendation: We recommend SLED revise its internal P-Card Manual to cover the key requirements of the State P-Card Policy. Procurement Services' website provides a P-Card Manual checklist which may be of assistance in revising the manual.

Agency Response

The agency concurs with this finding. SLED staff has begun working on the revision of the P-Card Manual to adhere to the provisions listed in the audit report.

B. Independent Audit of P-Cards Not Performed

SLED had not performed independent audits of P-Card activity as required. State P-Card Policy, Section III. A. 1. a. (ix) requires agencies to "create a provision for audit or other independent review of all areas of program administration and transactions at least annually."

Recommendation: We recommend SLED develop and implement procedures to ensure independent audits of the P-Card program are conducted, at least annually, to include program administration and transaction testing. We further recommend that these audits be performed by individuals not associated with the P-Card program, and that the procedures for these audits be documented in SLED's internal p-card manual.

Agency Response

The agency concurs with this finding. The SLED Internal Auditor will perform an annual audit of the P-Card Program beginning the current fiscal year of 2023.

V. Minority Business Enterprise Utilization

Annual Utilization Plans and Quarterly Progress Reports Not Submitted Timely

SLED did not submit three annual MBE Utilization Plans and five quarterly reports to the SMBCC in a timely manner. SC Code Ann. § 11-35-5240 (2) requires that MBE utilization plans be submitted to the SMBCC for approval no later than July 30th annually and that progress reports be submitted to the SMBCC no later than 30 days after the end of each fiscal quarter.

Recommendation: We recommend the SLED develop and implement procedures, including management review and approval, to ensure that annual MBE utilization plans, and quarterly progress reports are submitted to the SMBCC in a timely manner as required by SC Code Ann. § 11-35-5240 (2).

RESULTS OF AUDIT

Agency Response

The Agency concurs with this finding. The SLED Procurement Staff will compile and submit all reports in a timely manner. SLED is currently working on the 2023 MBE Utilization Plan and will submit by July 30, 2022.

CERTIFICATION RECOMMENDATION

We believe corrective action based on the recommendations in this report will make the State Law Enforcement Division's internal procurement operations consistent with the South Carolina Consolidated Procurement Code and ensuing regulations.

As provided in SC Code Ann. § 11-35-1210, we recommend that the State Law Enforcement Division's procurement authority to make direct agency procurements be re-certified up to the following limits for three years:

PROCUREMENT AREAS

Supplies and Services¹

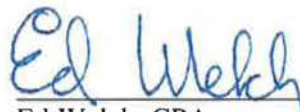
Information Technology²

RECOMMENDED CERTIFICATION LIMITS

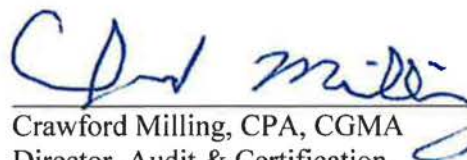
*\$ 250,000 per commitment

\$ 100,000 per commitment

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



Ed Welch, CPA
Audit Manager
Audit & Certification



Crawford Milling, CPA, CGMA
Director, Audit & Certification

¹ Supplies and Services includes non-IT consulting services

² Information Technology includes consulting services for any aspect of information technology, systems and networks

End Notes

ⁱ Regulation 19-445.2020 Certification

(A) Review Procedures.

- (2) The Materials Management Officer shall review and report on the particular government body's entire internal procurement operation to include, but not be limited to the following:
- (a) Adherence to provisions of the Code and these Regulations.
 - (b) Procurement staff and training.
 - (c) Adequate audit trails and purchase order register.
 - (d) Evidence of competition.
 - (e) Small purchase provisions and purchase order confirmation.
 - (f) Emergency and sole source procurements.
 - (g) Source selection.
 - (h) File documentation of procurements.
 - (i) Decisions and determinations made pursuant to section 2015.
 - (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers.
 - (k) Adequacy of written determinations required by the Code and these Regulations.
 - (l) Contract administrations.
 - (m) Adequacy of the governmental body's system of internal controls to ensure compliance with applicable requirements.
- (3) The report required by item A(2) shall be submitted to the board.

SECTION 11-35-1230. Auditing and fiscal reporting.

(1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.

SECTION 11-35-1210. Certification.

(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify 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; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.

AGENCY	CERTIFICATION DATE	Active	Supplies and Services	Supplies	All other Supplies and Services	Services	Consultant Services	Information Technology	Construction Contract Award	Construction Contract Change Order	Architect/ Engineer Contract Amendment
ADJUTANT GENERAL, OFFICE OF THE	8/21/2018	Y	100,000						100,000		
ARTS COMMISSION	9/8/2021	Y	100,000					100,000			
COMMERCE, DEPT. OF	5/14/2019	Y	100,000					100,000			
CORRECTIONS, SC DEPT. OF	8/21/2018	Y	1,000,000				100,000	100,000	100,000	100,000	50,000
EDUCATION, SC DEPT. OF	10/15/2019	Y	150,000					100,000			
FORESTRY COMMISSION	10/17/2017	Y	200,000				75,000	100,000			
	1/9/2020	Y							100,000		
HEALTH & ENVIRONMENTAL CONTROL,	6/27/2018	Y			2,000,000		250,000	225,000			
	2/11/2020	Y							100,000		
JUVENILE JUSTICE, DEPT. OF	12/17/2020	Y	500,000						100,000	25,000	5,000
LABOR, LICENSING & REGULATION, DEP	8/21/2018	Y	100,000				100,000				
MOTOR VEHICLES, DEPT. OF	5/12/2020	Y	350,000					150,000			
NATURAL RESOURCES, DEPT. OF	5/1/2018	Y	300,000								
	9/9/2019	Y							100,000		
PARKS, RECREATION & TOURISM, DEPT	5/31/2022	Y	250,000						250,000	250,000	50,000
PUBLIC SAFETY, DEPT. OF	5/2/2017	Y	500,000				100,000	100,000		25,000	5,000
	8/30/2022	Recommend	500,000					100,000		25,000	5,000
STATE LAW ENFORCEMENT DIVISION (S	5/2/2017	Y	250,000				100,000	100,000			
	8/30/2022	Recommend	250,000					100,000			
TRANSPORTATION, DEPT. OF	12/10/2019	Y		1,000,000		500,000		100,000	500,000	100,000	25,000
VOCATIONAL REHABILITATION	10/15/2019	Y	250,000					100,000	250,000	100,000	25,000

AGENCY: Executive Director

SUBJECT: South Carolina State Ceiling Allocation Plan - 2022

Act 202 of 2022 is effective for allocations of state ceiling beginning January 1, 2022, and thereafter. As a condition of allocating state ceiling, the Act directs the Authority to adopt an annual State Ceiling Allocation Plan, subject to review and comment by the Joint Bond Review Committee.

In compliance with Act 202, a proposed 2022 State Ceiling Allocation Plan has been developed which assigns percentages of state ceiling to categories of private activity bonds and establishes a process for its periodic allocation. The 2022 State Ceiling Allocation Plan was approved on June 28, 2022, contingent on future approval of competitive criteria to be included in the plan. Since the June meeting, competitive criteria for allocation of state ceiling to authorized requests have been developed and incorporated into the proposed Allocation Plan.

The proposed Allocation Plan was reviewed by the Joint Bond Review Committee at its meeting of June 21, 2022. The Committee provided comments to the Authority by letter dated June 21, 2022. Those comments are attached.

The revised Allocation Plan, including the finalized competitive criteria, was submitted to the Committee for review at its meeting of August 23, 2022. The Committee recommended approval of the Plan, but also recommended "that the State Fiscal Accountability Authority carefully consider inclusion of tie breaking criteria for multifamily housing projects in the event that an insufficient amount of limited state ceiling is available to support an allocation for bottom-ranked projects with identical overall rankings" The Committee's recommended tie breaking criteria appear in the attached letter.

AUTHORITY ACTION REQUESTED:

Approve the 2022 State Ceiling Allocation Plan.

ATTACHMENTS:

1. JBRC Comments dated June 21, 2022
2. Proposed 2022 South Carolina State Ceiling Allocation Plan
3. 2022 Act 202 (H. 5075)
4. JBRC Comments dated August 23, 2022

NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R228, H5075)

AN ACT TO AMEND SECTION 12-6-3795, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA HOUSING TAX CREDIT, SO AS TO DEFINE TERMS AND LIMIT THE CREDIT; TO PROVIDE A ONE-TIME AUTHORIZATION OF SOUTH CAROLINA HOUSING TAX CREDITS FOR CERTAIN PROJECTS APPROVED BEFORE 2022; TO AMEND ARTICLE 3 OF CHAPTER 11, TITLE 1, RELATING TO THE ALLOCATION OF STATE CEILING ON ISSUANCE OF PRIVATE ACTIVITY BONDS, SO AS TO REQUIRE THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO DEVELOP A STATE CEILING ALLOCATION PLAN ANNUALLY, TO SPECIFY REQUIREMENTS OF THE PLAN, AND TO PROVIDE A PROCESS FOR PERIODIC ALLOCATIONS OF THE STATE CEILING; AND TO REPEAL SECTION 1-11-370 RELATING TO INDEBTEDNESS INCLUDED WITHIN ANY LIMITS ON PRIVATE ACTIVITY BONDS.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Housing Tax Credit

SECTION 1. A. Section 12-6-3795 of the 1976 Code, as added by Act 137 of 2020, is amended to read:

“Section 12-6-3795. (A) As used in this section:

(1) ‘Eligibility statement’ means a statement authorized and issued by the South Carolina State Housing and Finance Development Authority certifying that a given project qualifies for the South Carolina housing tax credit, including any preliminary determination thereof.

(2) ‘Federal housing tax credit’ means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended.

(3) ‘Median income’ means those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted for family size.

(4) 'Project' means a housing project that has restricted rents that do not exceed thirty percent of income for at least forty percent of its units occupied by persons or families having incomes of sixty percent or less of the median income, or at least twenty percent of the units occupied by persons or families having incomes of fifty percent or less of the median income.

(5) 'Qualified project' means a qualified low-income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located in South Carolina and receives approval for tax credits from the South Carolina Housing and Finance Development Authority provided pursuant to this section.

(6) 'Taxpayer' means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes pursuant to Section 12-6-510, Section 12-6-530, Chapter 11, Title 12, or Chapter 7, Title 38.

(7) 'Federal 9 percent tax credit' means the federal housing tax credit described in Section 42(b)(1)(B)(i) of the Internal Revenue Code.

(8) 'Federal 4 percent tax credit' means the federal housing tax credit described in Section 42(b)(1)(B)(ii) of the Internal Revenue Code.

(9) 'Credit period' has the meaning defined in Section 42(f)(1) of the Internal Revenue Code.

(10) 'State housing authority' means the South Carolina State Housing Finance and Development Authority.

(11) 'Department of Revenue' means the South Carolina Department of Revenue.

(B)(1) A state tax credit pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11, Title 12, corporate license fees imposed pursuant to Chapter 20, Title 12, and insurance premium and retaliatory taxes imposed pursuant to Chapter 7, Title 38, to be termed the South Carolina housing tax credit, and is allowed with respect to each qualified project placed in service after January 1, 2020, and before December 31, 2030, in an amount not to exceed the federal housing tax credit allowed with respect to such qualified project, subject to the limitations of item (5). In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowed pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

(2)(a) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal housing tax credit taken on a project is required to be recaptured, the taxpayer claiming any South Carolina housing tax credit with respect to such project also is required to recapture a portion of any South Carolina housing tax credit authorized by this section. The state recapture amount is equal to the proportion of

the South Carolina housing tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal housing tax credit amount subject to recapture.

(b) In the event that recapture of any South Carolina housing tax credit is required, any return submitted to the Department of Revenue, as provided in this section, shall include the proportion of the South Carolina housing tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of South Carolina housing tax credit previously allocated to such taxpayer. Any recapture of the South Carolina housing tax credit is reported in the same manner as any recapture of the federal housing tax credit.

(3) The total amount of the South Carolina housing tax credit allowed by this section for a taxable year may not exceed the taxpayer's income tax liability. Any unused South Carolina housing tax credit may be carried forward to apply to the taxpayer's next five succeeding years' tax liability. The taxpayer may not apply the credit against any prior tax years' tax liability.

(4) The South Carolina housing tax credit and any recaptured tax credit, must be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, regardless of whether such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.

(5)(a) The South Carolina housing tax credit allowed for any project must supplement but not supplant the federal housing tax credit and must be limited to an amount necessary only to achieve financial feasibility of the project.

(b) The total amount of all South Carolina housing tax credits that may be allocated in any calendar year must not exceed twenty million dollars, plus the total of all unallocated tax credits, if any, for any preceding years, and the total amount of any previously allocated tax credits that have been recaptured, revoked, canceled, or otherwise recovered but not otherwise reallocated.

(c) Of the dollar limitation prescribed in subitem (b), the total amount of South Carolina housing tax credits allocated to qualified projects utilizing the federal 9 percent tax credit must not exceed forty percent of the dollar limitation prescribed in subitem (b). Of the South Carolina housing tax credits allocated to qualified projects utilizing the federal 9 percent tax credit, no less than fifty percent of the South Carolina housing tax credits must be allocated to qualified projects located in an eligible rural area as designated by the United States Department of Agriculture, with the remainder allocated to (i) qualified projects serving older persons or persons with special needs, irrespective

of rural eligibility criteria; (ii) qualified projects supporting workforce development as certified by the South Carolina Department of Commerce, irrespective of rural eligibility criteria; and (iii) other qualified projects, irrespective of rural eligibility criteria.

(d) Compliance with the dollar limitations of subitems (b) and (c) must be determined by the total amount of South Carolina housing tax credits allocated for one full year of the credit period applicable to each qualified project, and not the total amount of South Carolina housing tax credits allocated for the entire credit period applicable to each qualified project. Compliance with the dollar limitations of subitems (b) and (c) must be determined within each calendar year at the time the state housing authority makes a preliminary determination of any qualified project's eligibility for the South Carolina housing tax credit.

(e) In addition to the dollar limitation of subitem (b), allocation of any South Carolina housing tax credit to any qualified project utilizing the federal 4 percent tax credit is conditioned on among other things availability and allocation to the extent necessary for the qualified project of any state ceiling made pursuant to Article 3, Chapter 11, Title 1.

(C)(1) The state housing authority shall promulgate rules establishing criteria upon which the eligibility statements are issued which must include consideration of evidence of local support for the project. The eligibility statement must specify the amount of the South Carolina housing tax credit allowed, and must include: (i) the annual amount of South Carolina housing tax credit allocated to the qualified project for each year of credit the period; and (ii) the total amount of South Carolina housing tax credit allocated to the qualified project for the entire credit period.

(2) The state housing authority may not issue an eligibility statement until the taxpayer provides a report to the state housing authority detailing how the South Carolina housing tax credit will benefit the tenants of the project, once placed in service, including without limitation, reduced rent, and why the South Carolina housing tax credit is essential to the financial feasibility of the project.

(3) The state housing authority must establish uniform criteria for allocating the South Carolina housing tax credit to eligible projects pursuant to a competitive process that promotes highest value and greatest public benefit. The state housing authority must establish the criteria required by this section as part of any qualified allocation plan adopted to administer the federal housing tax credit, which must include without limitation: (i) written notice by the state housing authority to the county and city within which any project is proposed to be located; (ii)

following such notice, an opportunity for public comment on the proposed project at a public hearing conducted by the state housing authority no less than ten business days following notice of such public hearing, notification of which must be made by publication in a newspaper of general circulation in the county and city within which the proposed project is to be located; and (iii) an opportunity for the county and the city within which the project is proposed to be located to provide comment within no less than ten business days following such public hearing. The criteria established pursuant to this section, and any qualified allocation plan, are subject to the prior review and comment of the Joint Bond Review Committee.

(4) The state housing authority must furnish no later than January thirty-first of each year an annual report of South Carolina housing tax credits allocated pursuant to this section, which must include for the preceding calendar year the total amount of South Carolina housing tax credits allocated, and for each project, the project name and location, the amount of the South Carolina housing tax credits allocated to the project, project ownership, total number of units assisted, and the public benefit achieved by the project. The annual report must be furnished to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Ways and Means Committee, the Joint Bond Review Committee, and the State Fiscal Accountability Authority.

(D) The Department of Revenue, in consultation with the state housing authority, may adopt rules and policies necessary to implement and administer the provisions of this section; provided, however, that the state housing authority has the responsibility for: (i) allocation and administration of the South Carolina housing tax credit; and (ii) ensuring that the limits prescribed by subsection (B)(5)(b) and (c) are not exceeded.

(E) Notwithstanding any other provision of law, the provisions of this section and administration thereof are subject to the oversight, and review and comment as appropriate, of the Joint Bond Review Committee.”

B.1. Notwithstanding the limitations prescribed by Section 12-6-3795(B)(5)(b), (c), and (d) in SECTION 1.A., the General Assembly hereby provides a one-time authorization of South Carolina housing tax credits in an amount necessary but not exceeding one hundred million dollars for qualified projects approved before December 31, 2021, by the State Fiscal Accountability Authority or the South Carolina State Housing and Finance Development Authority, as applicable. Any allocations of South Carolina housing tax credits made

pursuant to this provision are subject to the review and comment of the Joint Bond Review Committee. No later than thirty days following enactment hereof, the South Carolina State Housing and Finance Development Authority must identify and report to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Ways and Means Committee, the Joint Bond Review Committee, and the State Fiscal Accountability Authority all qualified projects to which this one-time authorization of South Carolina housing tax credits is proposed to apply. The report must be made in such form and substance as may be directed by the Joint Bond Review Committee. Nothing in this provision grants any rights to, or in the processes used in the determination of, allocation of this one-time authorization of South Carolina housing tax credits. Decisions made pursuant to this provision are final and are not subject to judicial or administrative review.

2. This subsection B takes effect upon approval by the Governor.

C. This SECTION takes effect upon approval by the Governor and first applies to tax years beginning after 2021.

State ceiling allocation

SECTION 2. Article 3, Chapter 11, Title 1 of the 1976 Code is amended to read:

“Article 3

Allocation of State Ceiling on Issuance of Private Activity Bonds

Section 1-11-500. The state ceiling on the issuance of private activity bonds as defined in Section 146 of the Internal Revenue Code of 1986 established in the act must be certified annually by the Secretary of the State Fiscal Accountability Authority (the state authority) based upon the provisions of the act. The secretary of the state authority shall make this certification as soon as practicable after the estimates of the population of the State of South Carolina to be used in the calculation are published by the United States Bureau of the Census but in no event later than February first of each calendar year.

Section 1-11-510. (A) The private activity bond limit for all issuing authorities must be allocated by the state authority in response to

authorized requests as described in Section 1-11-530 by the issuing authorities, or as otherwise provided in Section 1-11-520(G).

(B) The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.

(C) Nothing in this article or the State Ceiling Allocation Plan adopted pursuant to this article grants any rights to, or in the processes used in the allocation or disposition of, state ceiling. Decisions made pursuant to this article are final and are not subject to judicial or administrative review.

Section 1-11-520. (A) No later than September thirtieth of the year preceding the calendar year to which the state ceiling applies, and subject to review and comment by the Joint Bond Review Committee, the state authority must publish a State Ceiling Allocation Plan that assigns percentages of the state ceiling to categories of any of the permitted purposes prescribed by the Internal Revenue Code. Without limitation, categories of permitted purposes may include industrial and economic development bonds; single family housing bonds; multifamily housing bonds; student loan bonds; and any other bonds eligible for tax exemption as a private activity bond pursuant to the Internal Revenue Code. No initial assignment to any single category may exceed forty percent of the state ceiling, and no minimum assignment is required for any category.

(B) Further, the allocation plan must provide for a process of periodic allocations of the state ceiling within each category, which for any period generally may not exceed an amount of the state ceiling allocated to that category equally divided among the number of periods in the year during which allocations are to be made; provided, however, that the state authority may, upon findings of exceptional and compelling circumstances, amend the annual allocation plan following review and comment by the committee.

(C) Notwithstanding the assigned percentages set forth in the allocation plan, the state authority may but need not reassign any state ceiling unused in prior periods as a supplement to and means to address demand for ceiling allocation in a subsequent period. Such reassignment may be made for any allocation category, notwithstanding its original assignment.

(D) Unless otherwise approved in writing by the state authority following justification and substantial findings of significance, no authorized request may receive an allocation of state ceiling applicable to that calendar year exceeding ten percent of the total state ceiling in the

case of an industrial or economic development project, or five percent of the total state ceiling for any other allocation category.

(E) The allocation plan must establish competitive criteria for allocation of state ceiling to authorized requests. Competitive criteria may be unique to each category but must be uniform within each category and established to achieve highest value and greatest public benefit. Discussions of matters related to the periodic evaluation of authorized requests may be conducted in executive session. The state authority may utilize the services of the South Carolina Department of Commerce, the South Carolina State Housing Finance and Development Authority, any other state agency, and any other public or private resources to inform and provide services for the development of the allocation plan, including the evaluation and competitive criteria; and the periodic evaluation of authorized requests. The Department of Commerce and the State Housing Finance and Development Authority are directed to provide to the state authority such assistance as may be requested or required to accomplish the purposes of this article.

(F) Allocations of state ceiling to authorized requests must be made in accordance with the provisions of the allocation plan and policies and procedures adopted by the state authority.

(G) The state authority must determine the disposition of any remaining, unused state ceiling during the final period of the calendar year pursuant to a petition submitted in accordance with Section 1-11-530(D).

Section 1-11-530. (A) For private activity bonds proposed for issue by other than state government issuing authorities, an authorized request is a request included in a petition to the state authority that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by: (i) a copy of the Inducement Contract, Inducement Resolution, or other comparable preliminary approval entered into or adopted by the issuing authority, if any, relating to the bonds, and (ii) such other supporting documentation as the state authority may by policy prescribe.

(B) For private activity bonds proposed for issue by any state government issuing authority, an authorized request is a request included in a petition to the state authority that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by: (i) a bond resolution or comparable action by the issuing authority authorizing the issuance of the bonds, and (ii) such other supporting documentation as the state authority may by policy prescribe.

(C) Each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.

(D) An issuing authority seeking an allocation of any remaining unused state ceiling for carry-forward designation must submit to the state authority a petition identifying the types of tax-exempt bonds to which the carry-forward designation will apply. The petition must be accompanied by such other supporting documentation as the state authority may by policy prescribe. Such allocations are not subjected to the provisions of Section 1-11-520(D), (E), and (F).

(E) Notwithstanding any other provision of this article, the state authority may disapprove, reduce, or defer any authorized request or petition for carryforward.

(F) The state authority must periodically furnish to the Joint Bond Review Committee a report of petitions received, along with their dispositions.

Section 1-11-540. Reserved.

Section 1-11-550. (A) An allocation of the state ceiling approved by the state authority is made formal initially by a certificate which allocates tentatively a specific amount of the state ceiling to the bonds for which the allocation is requested. This tentative allocation certificate must specify the state ceiling amount allocated, the issuing authority and the project involved, and the time period during which the tentative allocation is valid. This certificate must remind the issuing authority that the tentative allocation is made final after the issuing authority chairman or other duly authorized official or agent of the issuing authority, before the issue is made, certifies the issue amount and the projected date of issue, as is required by subsection (B) of this section. It also may include other information considered relevant by the secretary of the state authority.

(B) The chairman or other authorized official or agent of an issuing authority issuing any private activity bond for which a portion of the state ceiling has been allocated tentatively shall execute and deliver to the secretary of the state authority an issue amount certificate setting forth the exact amount of bonds to be issued and the projected bond issue date which date must not be more than ten business days after the date of the issue amount certificate and it must be before the state ceiling allocation involved expires. The issue amount certificate may be an executed copy of the appropriate completed form to be submitted to the Internal Revenue Service on the issue or it may be in the form of a letter which

certifies the exact amount of bonds to be issued and the projected date of the issue.

(C) In response to the issuing authority's issue amount certificate required by subsection (B) of this section, the secretary of the state authority is authorized to issue and, as may be necessary, to revise a certificate making final the ceiling allocation previously approved by the state authority on a tentative basis, if the secretary of the state authority determines that:

(1) the issuing authority's issue amount certificate specifies an amount not in excess of the approved tentative ceiling allocation amount;

(2) the issue amount certificate was received prior to the issue date projected and that the certificate is dated not more than ten days prior to the issue date projected; provided, however, that if an issue amount certificate is dated more than ten days prior to the date of issue of the bonds, such certificate shall be void, and a new request must be provided to the secretary of the state authority prior to issuance of the bonds;

(3) the issue date projected is within the time period approved previously for the tentative ceiling allocation; and

(4) the bonds when issued and combined with the total amount of bonds requiring a ceiling allocation included in issue amount certificates previously submitted to the state authority by issuing authorities do not exceed the state ceiling for the calendar year. Except under extraordinary circumstances, the secretary of the state authority shall issue this certificate within two business days following the date the issue amount certificate is received.

(D) In accordance with Section 149(e)(2)(F) of the Internal Revenue Code, the secretary of the state authority is designated as the state official responsible for certifying, if applicable, that certain bonds meet the requirements of Section 146 of the Internal Revenue Code relating to the volume cap on private activity bonds.

(E) Any tentative or final state ceiling allocation granted by the state authority before the effective date of this act remains valid as an allocation of a portion of the volume cap for South Carolina provided under Section 146 of the Internal Revenue Code. The allocations expire in accordance with the law under which they were granted or extended and their validity may be extended or reinstated in accordance with the provisions of Sections 1-11-500 through 1-11-570.

Section 1-11-560. (A) Any state ceiling allocation approved by the state authority is valid only for the calendar year in which it is approved, unless eligible and approved for carry-forward election or unless specified differently in the certificates required by Section 1-11-550.

(B) Unless eligible and approved for carry-forward election or unless specified differently in certificates required by Section 1-11-550, each state ceiling allocation expires automatically if the bonds for which the allocation is made are not issued within ninety consecutive calendar days from the date the allocation is approved by the state authority.

(C) In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the state authority, acting during the period an approved allocation is valid, may but need not extend the period in which an allocation is valid in a single calendar year by thirty-one consecutive calendar days to a total of not more than one hundred twenty-one consecutive calendar days.

(D) In response to a written request by the chairman or other authorized official or agent of an issuing authority, the state authority may but need not reinstate for a period of not more than thirty-one consecutive calendar days in any one calendar year part or all of an allocation approved but not extended previously in accordance with subsection (C) of this section in that same calendar year which has expired. The reinstatement request must certify that the authorized request previously submitted is still true and correct or a new authorized request must be submitted.

(E) A tentative ceiling allocation is canceled automatically if the chairman or other authorized official or agent of the issuing authority fails to deliver the issue amount certificate required by Section 1-11-550 to the secretary of the state authority before the bonds for which the allocation is made are issued.

(F) The chairman or other authorized official or agent of an issuing authority shall advise the secretary of the state authority in writing as soon as is practicable after a decision is made not to issue bonds for which a portion of the state ceiling has been allocated. All notices of relinquishment of ceiling allocations must be entered promptly in the state authority's records by the secretary of the state authority.

(G) Ceiling allocations which are eligible and approved for carry-forward election are not subject to the validity limits of this section. The state authority shall join with the issuing authorities involved in carry-forward election statements to meet the requirements of the Internal Revenue Service.

Section 1-11-570. The state authority may adopt policies and procedures necessary to implement and administer the provisions of this article. All such policies and procedures, and any changes thereto, are subject to review and comment by the Joint Bond Review Committee.

Section 1-11-580. The State Fiscal Accountability Authority shall make quarterly payments on insurance contracts where the annual premium exceeds fifty thousand dollars. The board shall undertake necessary negotiations to implement this requirement. Where fees may be incurred for quarterly rather than annual payments, the State Fiscal Accountability Authority shall determine whether the investment income opportunity is greater or less than proposed fees and shall make the decision which best benefits South Carolina.”

Repeal

SECTION 3. Section 1-11-370 of the 1976 Code is repealed.

Conflicting provisions

SECTION 4. The provisions of Article 3, Chapter 11, Title 1 of the 1976 Code relating to the allocation of state ceiling on issuance of private activity bonds, as amended in this act, shall control if there is any conflict with any other provision of law or regulation, specifically including Regulation 19-103.

Severability

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 6. The provisions of this act are effective for allocations of state ceiling beginning January 1, 2022, and thereafter. For the first year of implementation, the state authority may adopt such special procedures as may be necessary to effect the requirements of this act.

Ratified the 12th day of May, 2022.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2022.

Governor

---XX---

**Capital Improvements
Joint Bond Review Committee**

HARVEY S. PEELER, JR.
SENATE
CHAIRMAN

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J. GARY SIMRILL
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VICE CHAIRMAN

F. RICHARD HARMON, JR.
DIRECTOR OF RESEARCH
SFAA LIAISON
803-212-6682

JESSA WIGINGTON
ADMINISTRATIVE ASSISTANT
803-212-6677
FAX: 803-212-6690

August 23, 2022

Mr. Grant Gillespie
Executive Director
State Fiscal Accountability Authority
Post Office Box 12444
Columbia, South Carolina 29211

Re: Proposed Ceiling Allocation Plan Pursuant to Act 202 of 2022

Dear Mr. Gillespie:

At its meeting today, the Joint Bond Review Committee reviewed the proposed State Ceiling Allocation Plan for Calendar Year 2022 submitted on behalf of the State Fiscal Accountability Authority for consideration by the Committee pursuant to the provisions of Act 202 of 2022, which provides for among other things publication by the Authority of a State Ceiling Allocation Plan, subject to the review and comment by the Committee. The Committee determined that the Plan for 2022 as presented complies with the provisions of the Act, and recommends its approval.

The proposed Plan for 2022 assigns percentages to private activity bond purposes permitted by the Internal Revenue Code, subject to certain limitations; provides for periodic allocations equally divided among the periods during the year in which allocations are to be made; provides for competitive criteria to achieve highest value and greatest public benefit; provides for allocation of the private activity bond limit for all issuing authorities in response to authorized requests; and provides for limitations on amounts assigned to authorized requests; all in accordance with the Act.

In addition to the foregoing, the Plan for 2022 establishes policies and procedures for submission of authorized requests, and provides for special procedures during the first year of implementation.

The provisions of the Plan for 2022 apply to allocations of state ceiling beginning January 1, 2022, as required by the Act. The plan also focuses on the statutory requirement that awards of limited state resources are made to projects demonstrating highest value and greatest public benefit, as measured by the relationship of the state resources to the measurable benefit of the project. The Plan further provides for recommendations by the South Carolina Department of Commerce and the South Carolina State Housing Finance and Development Authority, as applicable, to the State Fiscal Accountability Authority, which has ultimate discretion and accountability for approval of the allocation of state ceiling to permitted categories and authorized requests.

**Capital Improvements
Joint Bond Review Committee**

Mr. Grant Gillespie
State Fiscal Accountability Authority
August 23, 2022
Page 2

Act 202 further permits the State Fiscal Accountability Authority to adopt policies and procedures to effect the purposes of the Act, and the Plan for 2022 includes numerous such provisions, including those recommended by the Committee following its review of the draft Plan for 2022 on June 21, 2022.

As a further recommendation, the Committee recommends that the State Fiscal Accountability Authority carefully consider inclusion of tie breaking criteria for multifamily housing projects in the event that an insufficient amount of limited state ceiling is available to support an allocation for bottom-ranked projects with identical overall rankings, in substance and in order of priority:

Allocation of state ceiling to the project that could be accommodated within the limitation in the event the other project could not; thereafter,

Allocation to a project located within a designated rural area if the other project is not; and thereafter,

Allocation determined solely by the relationship of total state resources to the number of tenants the project is expected to serve, as a determinant of greatest public benefit.

Please advise if you have any questions or need clarification.

Very truly yours,



F. Richard Harmon, Jr.
Director of Research

**Capital Improvements
Joint Bond Review Committee**

HARVEY S. PEELER, JR.
SENATE
CHAIRMAN

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June 21, 2022

Mr. Grant Gillespie
Executive Director
State Fiscal Accountability Authority
Post Office Box 12444
Columbia, South Carolina 29211

Re: Proposed Ceiling Allocation Plan Pursuant to Act 202 of 2022

Dear Mr. Gillespie:

At its meeting today, the Joint Bond Review Committee reviewed the proposed State Ceiling Allocation Plan for Calendar Year 2022 submitted on behalf of the State Fiscal Accountability Authority for consideration by the Committee pursuant to the provisions of Act 202 of 2022, which provides for among other things publication by the Authority of a State Ceiling Allocation Plan, subject to the review and comment by the Committee.

The proposed Plan assigns percentages to private activity bond purposes permitted by the Internal Revenue Code, subject to certain limitations; provides for periodic allocations equally divided among the periods during the year in which allocations are to be made; provides for competitive criteria to achieve highest value and greatest public benefit; provides for allocation of the private activity bond limit for all issuing authorities in response to authorized requests; and provides for limitations on amounts assigned to authorized requests; all in accordance with the Act. In addition to the foregoing, the Plan establishes policies and procedures for submission of authorized requests, and provides for special procedures during the first year of implementation.

The provisions of the Plan apply to allocations of state ceiling beginning January 1, 2022, as required by the Act. The plan also focuses on the statutory requirement that awards of limited state resources are made to projects demonstrating highest value and greatest public benefit, as measured by the relationship of the state resources to the measurable benefit of the project. The Plan further provides for recommendations by the South Carolina Department of Commerce and the South Carolina State Housing Finance and Development Authority, as applicable, to the State Fiscal Accountability Authority, which has ultimate discretion and accountability for approval of the allocation of state ceiling to permitted categories and authorized requests.

**Capital Improvements
Joint Bond Review Committee**

Mr. Grant Gillespie
State Fiscal Accountability Authority
June 21, 2022
Page 2

Act 202 further permits the State Fiscal Accountability Authority to adopt policies and procedures to effect the purposes of the Act, and the Plan includes numerous such provisions, among them:

The Plan requires applications to be complete at the time of submission so that the State Fiscal Accountability Authority is positioned to make an informed decision that considers all aspects of the request, including as applicable, any commitment to and amount of state incentives; the ceiling allocation request; and the bonds to be issued pursuant to the allocation. The plan appropriately relies extensively on the professional expertise of the Department of Commerce and the State Housing Authority, and recognizes the unique characteristics of each category for which requests for state ceiling may be made.

The Plan recognizes that complete submissions for allocations of state ceiling to multi-family housing projects will include a statutory determination by the State Housing Authority for federal and state housing tax credits in conjunction with its recommendations for allocation of state ceiling to authorized requests. The Plan also recognizes that the State Housing Authority, as the historical recipient of unused state ceiling, holds an important resource in managing and preserving the state's federally limited state ceiling allocation, and provides for preferential utilization of this resource before making allocations from current year state ceiling.

The Committee determined that the Plan as presented complies with the provisions of the Act, subject to finalizing certain matters requiring further review by the Committee, and careful consideration by the State Fiscal Accountability Authority of the recommendations included herein.

The Committee was advised that two distinct submission channels for multi-family housing ceiling allocation requests evolved during the 2021 calendar year, with proposals submitted in some cases through the State Housing Authority, and others submitted by local housing authorities, with the latter potentially having by-passed the more rigorous and robust financial and underwriting standards utilized by the State Housing Authority.

The provisions of Act 202 requiring establishment of uniform competitive criteria dictate careful consideration of the submission process, which must be standardized through a common administrative channel that produces a single list of submissions that have been uniformly and competitively scored and ranked in accordance with the value and benefit provisions of the Act. For these reasons, the Committee recommends that the State Fiscal Accountability Authority carefully consider a requirement that submissions for multi-family projects requesting state ceiling must be made only through the State Housing Authority.

**Capital Improvements
Joint Bond Review Committee**

Mr. Grant Gillespie
State Fiscal Accountability Authority
June 21, 2022
Page 3

The Committee acknowledges that the Plan contemplates further refinement, particularly development and inclusion of detailed competitive criteria, for further consideration by the Committee and the State Fiscal Accountability Authority at their meetings scheduled in August 2022. Accordingly, the Committee reserves final comment until the Plan is finalized, and recommends that no allocations of Calendar Year 2022 state ceiling be made pursuant to the Plan until the Committee has made further review and provided comment on the final version thereof.

Please advise if you have any questions or need clarification.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'F. Harmon, Jr.', is positioned above the printed name.

F. Richard Harmon, Jr.
Director of Research

2022 South Carolina State Ceiling Allocation Plan

SECTION A. BACKGROUND AND PURPOSE

Among other things, Act 202 of 2022 amended the provisions of Article 3 of Chapter 11, Title 1 of the 1976 Code, which provides for the allocation of state ceiling necessary for the issuance of private activity bonds. The Act requires allocation of the private activity bond limit by the State Fiscal Accountability Authority (the State Authority) for all issuing authorities in response to authorized requests. The Act further requires that the State Authority publish a State Ceiling Allocation Plan that assigns percentages to the purposes permitted by the Internal Revenue Code, subject to certain limitations. The Allocation Plan must provide for a process of periodic allocations of state ceiling equally divided among the periods during the year in which allocations are to be made, with certain exceptions. The Allocation Plan must establish competitive criteria for the allocation of state ceiling, which may be unique to each category but must be uniform within each category and established to achieve highest value and greatest public benefit. The Act provides limitations on amounts assigned to authorized requests, with certain exceptions. The State Authority is permitted to utilize the services of the South Carolina Department of Commerce, the South Carolina State Housing Finance and Development Authority, other state agencies, and public or private resources, to establish and inform development of the allocation plan, competitive criteria, and periodic evaluation of authorized requests.

The provisions of the Act are effective for allocations of state ceiling beginning January 1, 2022, and thereafter. For the first year of implementation, the State Authority is authorized to adopt such special procedures as may be necessary to effect the requirements of the Act.

The purpose of this plan is to establish the State Ceiling Allocation Plan for calendar year 2022, as well as any special procedures applicable thereto; to otherwise establish policies and procedures in accordance with the provisions of the Act; and to provide for a coordinated effort to prepare and publish an allocation plan for 2023.

SECTION B. DETERMINATION OF STATE CEILING

Pursuant to Section 1-11-500 of the 1976 Code, the Secretary of the State Authority certified that the state ceiling on the issuance of private activity bonds for calendar year 2022 is \$570,977,550.

SECTION C. DETERMINATION OF LIMITS ON STATE CEILING FOR AUTHORIZED REQUESTS

Pursuant to Section 1-11-520(D), the amount of state ceiling that may be allocated to an authorized request may not exceed 10% (\$57,097,755.00) in the case of an industrial or economic development project, or 5% (\$28,548,877.50) for any other authorized request. The same limitations shall apply to any requests for issuance approval for use of prior year carryforward.

The State Authority may approve an amount exceeding these limitations only upon justification and substantial findings of significance. Requests for such approval must be made to the Authority in writing and adequately supported. The State Authority reserves the right to seek

2022 South Carolina State Ceiling Allocation Plan

any additional information from an applicant necessary to support a substantial finding of significance.

SECTION D. DETERMINATION OF AMOUNTS SUBJECT TO THIS ALLOCATION PLAN

In addition to the amount determined pursuant to Section 1-11-500, certain amounts available from carryforward and other adjustments are subject to the provisions of this Allocation Plan, as follows:

Amount determined pursuant to Section 1-11-500	\$570,977,550
Less amounts previously allocated	(0)
Plus amounts expired, relinquished, revoked, or otherwise not utilized for issuance	0
Plus amounts carried forward from prior calendar years that remain unused:	
Allocated to Single-Family Housing (2019; expires 2022)	374,998,335
Allocated to Multi-Family Housing (2020; expires 2023)	316,453,232
Allocated to Multi-Family Housing (2021; expires 2024)	<u>2,839,401</u>
Total	\$1,265,268,518

SECTION E. AVAILABILITY OF AMOUNTS; PERIODIC ALLOCATION

Pursuant to Section 1-11-520(A), and subject to the special provisions below, the State Authority hereby makes an initial assignment of the state ceiling applicable to calendar year 2022 pursuant to Section 1-11-500 to the following categories of permitted purposes¹ prescribed by the Internal Revenue Code:

Industrial and Economic Development (40%) ²	\$ 228,391,020
Single-family Housing (40%) ³	228,391,020
Multi-family Housing (0%) ⁴	0
Other Qualified Purposes (20%) ⁵	114,195,510

SECTION F. PERIODIC ALLOCATION

Pursuant to Section 1-11-520(B), the State Authority hereby provides for two (2) allocation periods for 2022, and hereby designates February 1 and August 1 as allocation dates, on which 50% of the state ceiling assigned to each category is made available for subsequent allocation to authorized requests and on which dates issuance approval for use of carryforward will be made. Allocations to authorized requests and issuance approval for carryforward use will be made only at the meeting of the State Authority immediately following each allocation date;

¹ Generally, see IRS Publication 4078 (Rev. 9-2019) for a complete list of permitted purposes prescribed by the IRC.

² Facilities for the furnishing of water; sewage facilities; privately owned solid waste disposal facilities; facilities for the local furnishing of electric energy or gas; local district heating or cooling; qualified hazardous waste facilities; qualified enterprise zone facilities; qualified small issue bonds.

³ Qualified mortgage bonds.

⁴ Qualified residential rental projects.

⁵ Mass commuting facilities; privately owned high-speed intercity rail facilities; qualified redevelopment bond; and qualified student loan bonds.

2022 South Carolina State Ceiling Allocation Plan

provided, for 2022, the August allocation will be effected at the Authority's regularly scheduled October meeting.

The following table summarizes these provisions.

Category	Category Percentage	Category Amount	Amount Available for Allocation to Authorized Requests on or after February 1, 2022	Amount Available for Allocation to Authorized Requests on or after August 1, 2022
Industrial and Economic Development	40%	\$228,391,020	\$114,195,510	\$114,195,510
Multi-Family Housing	0%	\$0.00	\$0.00	\$0.00
Single-Family Housing	40%	\$228,391,020	\$114,195,510	\$114,195,510
Other Qualified Purposes	20%	\$114,195,510	\$ 57,097,755	\$ 57,097,755
Totals	100%	\$570,977,550	\$ 285,488,775	\$ 285,488,775

The amount available for allocation to authorized requests on February 1, 2022 has not been allocated to any authorized requests as of the date of adoption of this plan. Section 1-11-520(C) expressly provides that "the state authority may but need not reassign any state ceiling unused in prior periods as a supplement to and means to address demand for ceiling allocation in a subsequent period. Such reassignment may be made for any allocation category, notwithstanding its original assignment." Such reassignment, if made, will be determined on or after the August 1, 2022, allocation date.

If an authorized request cannot be approved pursuant to the then-current plan even with a reassignment pursuant to Section 1-11-520(C), the Authority's Secretary is authorized to not place the request on the Authority's agenda. In such an event, Authority's Secretary will notify the Authority's members well in advance of the scheduled meeting date.

SECTION G. PERIODIC ALLOCATION FOR INDUSTRIAL AND ECONOMIC DEVELOPMENT

The amount of state ceiling available for this category for each allocation date is \$114,195,510. The amount available for the February 1 allocation date has not been allocated to any authorized requests as of the date of adoption of this plan.

SECTION H. PERIODIC ALLOCATION FOR SINGLE-FAMILY HOUSING

The amount of state ceiling available for this category for each allocation date is \$114,195,510. The amount available for the February 1 allocation date has not been allocated to any authorized requests as of the date of adoption of this plan.

As noted above, there is available \$374,998,335 carried forward from calendar year 2019 that will expire in calendar year 2022 unless otherwise utilized. On May 31, 2022, the Authority approved the issuance and sale by the State Housing Finance and Development Authority of not

2022 South Carolina State Ceiling Allocation Plan

exceeding \$375,000,000 in mortgage revenue bonds and short-term notes to preserve this allocation.

SECTION I. PERIODIC ALLOCATION FOR MULTI-FAMILY HOUSING

No amount of state ceiling for the 2022 calendar year is designated for allocation to Multi-family Housing, and no assignment of state ceiling is contemplated for this category until the available carryforward is exhausted. As noted above, there is carryforward available that will expire in calendar year 2023 unless otherwise utilized. The State Housing Finance and Development Authority shall endeavor to utilize this carryforward.

In addition to the determination made above, the State Authority recognizes that authorized requests and issuance approval requests made through local housing authorities will be further impacted by other aspects of this policy. Act 202 contemplates that State Housing will perform the periodic evaluation and ranking of authorized requests for state ceiling, and requires State Housing to administer the allocation of the state housing tax credit. Both requirements involve the use of a competitive process that must be applied uniformly as to any multi-family housing project seeking an allocation of current year ceiling or issuance approval for projects using carryforward. In addition, the statutory standard for the competitive criteria required for both state ceiling and the state tax credit is "highest value and greatest public benefit." Accordingly, prior to submission to the State Authority, authorized requests for state ceiling and requests for issuance approval of bonds using carryforward previously allocated to State Housing for multi-family housing projects must, as a practical matter, be submitted to State Housing for underwriting and evaluation for allocation of state ceiling or issuance approval involving the use or carryforward, for compliance with the corresponding federal low-income housing tax credit, and, as applicable, for the ranking associated with allocation of the state housing tax credit. For additional guidance regarding the submission of authorized requests for ceiling allocation or for issuance approval for use of carryforward for multifamily housing, see the Submission Criteria for Authorized Requests section below.

SECTION J. PERIODIC ALLOCATION FOR OTHER QUALIFIED PURPOSES

The amount of state ceiling available for this category for each allocation date is \$57,097,755. The amount available for the February 1 allocation date has not been allocated to any authorized requests as of the date of adoption of this plan.

SECTION K. REASSIGNMENT OF UNUSED STATE CEILING AND PLAN AMENDMENTS

The amounts not allocated to authorized requests for the 2022 calendar year may be reassigned by the State Authority on or after August 1, 2022, in accordance with the provisions of Section 1-11-520(C), following the process described below. Any change to the amount of state ceiling allocated to a category that cannot be accomplished by a reassignment pursuant to Section 1-11-520(C) requires an amendment to the annual allocation plan in accordance with Section 1-11-520(B) following review and comment by the Joint Bond Review Committee.

2022 South Carolina State Ceiling Allocation Plan

SECTION L. SUBMISSION FOR 2022 RANKING AND REQUIRED REPORTS FOR NECESSARY INFORMATION

Industrial and Economic Development Bonds

Not later than September 19, 2022, Commerce must provide the State Authority with its final evaluation and ranking for allocation of state ceiling to these authorized requests in accordance with the competitive criteria described herein, as well as its allocation recommendations.

Commerce and the South Carolina Jobs Economic Development Authority (JEDA), in consultation with the South Carolina Coordinating Council for Economic Development (Coordinating Council), must provide a coordinated report for proposed industrial and economic development projects to the State Authority identifying all known requests for state ceiling for each of the calendar years 2022 and 2023 no later than August 1, 2022. The response must include the project name,⁶ amount of the state ceiling request, year of allocation, and tentative recommendation of Commerce in accordance with the competitive criteria described below.

For the 2023 calendar year, Commerce may also submit a request for the State Authority to assign up to 40 percent of state ceiling for Industrial and Economic Development, less any allocation requested for known projects, to accommodate future but presently unidentifiable requests; provided, however, that once known, each such request shall identify the project, amount of the allocation request, year of allocation, and include a recommendation of Commerce in accordance with the competitive criteria.

Multi-Family Housing Bonds

Not later than September 19, 2022, State Housing must provide the State Authority with a report of its evaluation and ranking for allocation of state ceiling to all authorized requests for state ceiling and all issuance requests for issuance approval for use of carryforward in accordance with the competitive criteria described below. State Housing's report must also include its evaluation and ranking of all pending state tax credit applications. As noted in Section N below, State Housing must provide the State Authority with written confirmation of its Board's allocation recommendations for State Housing projects no later than September 30, 2022.

The State Housing Finance and Development Authority must provide a report for proposed single-family and multi-family housing projects to the State Authority identifying all pending and expected authorized requests for each of the calendar years 2022 and 2023 not later than August 1, 2022. The report must also identify all pending and expected requests for issuance approval for use of carryforward for the years 2022 and 2023. The response must include the project name, amount of the state ceiling request, amount of state tax credit (if any), and year of allocation. The report must also include recommendations for the amount of year-end carryforward needed for State Housing to continue its programs in future years.

⁶ Or other identifying information in the event the name of the project is not yet public.

2022 South Carolina State Ceiling Allocation Plan

These reports will be utilized in decisions to reassign state ceiling pursuant to section 1-11-520(C), to reallocate by amending the plan pursuant to section 1-11-520(B), or to reserve current year state ceiling for allocation as year-end carryforward.

These reports will also be utilized in development of the 2023 State Ceiling Allocation Plan. The State Authority recognizes and acknowledges that specific project details may not be known in all cases for the 2023 calendar year; accordingly, specificity is expected to the extent known, accompanied by reasonable estimates of anticipated requests otherwise, properly described as such.

Pursuant to Section 1-11-520(E), State Housing, Commerce, and JEDA are directed to undertake outreach efforts each year designed to provide the State Authority with the best available information by the deadlines provided in the next year's state ceiling allocation plan.

All issuing authorities must provide the State Authority's Secretary with a year-end account of any unused remaining carryforward from prior years no later than January 2nd each year.

SECTION M. COMPETITIVE CRITERIA

Act 202 provides among other things that the allocation plan must establish competitive criteria for allocation of state ceiling to authorized requests, and further provides that competitive criteria may be unique to each category but must be uniform within each category and established to achieve highest value and greatest public benefit.

For purposes of this Allocation Plan, determinations of highest value and greatest public benefit will be made on the basis of the relationship of the state resources requested to the measurable benefit of the proposed project.

SECTION N. COMPETITIVE CRITERIA FOR INDUSTRIAL AND ECONOMIC DEVELOPMENT ALLOCATION AND ALLOCATION TO OTHER PERMITTED PURPOSES

Commerce must provide each year to the State Authority for inclusion in the annual State Ceiling Allocation Plan its recommendations for determining highest value and greatest public benefit for allocation of state ceiling to industrial and economic development projects, and projects proposed for other qualified purposes.

Determinations of highest value and greatest public benefit must include at a minimum and without limitation such measures as the number of new permanent jobs⁷ that will be created by the project; the capital investment of the project sponsor independent of state incentives and resources; and a cost benefit analysis generally reflecting a positive financial benefit to the state. The Council must submit its proposed recommendations for the coming year to the State Authority no later than June 30 each year. Commerce will use these measures to evaluate any ceiling allocation requests for Industrial and Economic Development projects and projects proposed for other qualified purposes, and such evaluations shall be presented to the Coordinating Council for approval at a public meeting.

⁷ Generally, maintenance of existing jobs will not meet this criterion.

2022 South Carolina State Ceiling Allocation Plan

For projects seeking either local or state discretionary incentives such as fee in lieu of tax arrangements, county industrial development bonds, job development credits and/or state grant funding, a definitive agreement with the Coordinating Council and/or the local government, as applicable, must have been finalized prior to consideration by the State Authority. Such agreements with the Coordinating Council may include a preliminary revitalization, grant performance or other incentive agreement provided that it contains minimum new permanent job and investment commitments by the entity seeking an allocation.

For projects that are not seeking local or state discretionary incentives, such information as is requested and determined by Commerce to be sufficient for Commerce to evaluate the feasibility and competitiveness of the proposal must be submitted to Commerce prior to consideration by the State Authority.

With its recommendations, Commerce must submit proposed deadlines for the coming year by which those seeking state ceiling for Industrial and Economic Development projects or projects proposed for other qualified purposes must submit their proposals to Commerce in order for Commerce to provide the State Authority with its final evaluation, ranking and recommendation no later than the bond submission deadline for the meetings at which state ceiling allocation requests will be considered for the applicable allocation period.

If multiple projects will be submitted for consideration by the State Authority within a single allocation period, Commerce must rank those projects from highest to lowest value and public benefit as determined by provisions of this section.

In addition to the foregoing, Commerce must provide a definitive recommendation for the amount of state ceiling proposed to be allocated to the project, following an affirmative vote of the Coordinating Council in a public meeting.

For the current year, the competitive criteria for Industrial and Economic Development projects recommended by Commerce are adopted by the State Authority, attached as **Exhibit A**, and incorporated into this Plan by reference.

SECTION O. COMPETITIVE CRITERIA FOR MULTI-FAMILY HOUSING ALLOCATION

State Housing Finance and Development Authority (Housing) must provide each year to the State Authority for inclusion in the State Ceiling Allocation Plan its recommendations for determining highest value and greatest public benefit for allocation of state ceiling to multi-family housing projects.

Determinations of highest value and greatest public benefit must reflect the relationship of the state resources proposed for the project to the affordable housing benefits the project will achieve. Total state resources must include without limitation the amount of state ceiling, any applicable state tax credits, and any other state resources and incentives as are germane and applicable to the project. Affordable housing benefits must include without limitation such facility characteristics as the heated residential square footage, number of bedrooms, and number of tenants the project is designed to serve. A determination of highest value must include a comparison of the state resources to the project's total cost.

2022 South Carolina State Ceiling Allocation Plan

State Housing may coordinate these determinations with the applicable Qualified Allocation Plan and any other threshold requirements, policies, or procedures as are consistent with this section.

If multiple multi-family project submissions (for ceiling allocation and/or issuance approval for use of carryforward) will be considered by the State Authority within a single allocation period, State Housing must rank those projects from highest to lowest value and public benefit, as determined by the provisions of this section.

These criteria will be applied uniformly to all multi-family housing projects whether seeking current year ceiling allocation or issuance approval using carryforward. Housing must submit its proposed recommendations for the coming year to the State Authority no later than June 30th each year.

With its recommendations for 2023, Housing must submit proposed deadlines for 2023 by which those seeking state ceiling for Multi-family housing projects must submit their proposals to Housing in order for Housing to provide the State Authority with its final evaluation, ranking and recommendation no later than the bond submission deadline for the meetings at which state ceiling allocation requests will be considered for the applicable allocation period.

In addition to the foregoing, Housing must provide a definitive recommendation for the amount of state ceiling proposed to be allocated to any State Housing project, following an affirmative vote of its governing board in a public meeting. For 2022, State Housing must submit written confirmation of its Board's recommendations no later than September 30, 2022.

For the current year, the competitive criteria for Multi-family Housing projects recommended by Housing are adopted by the State Authority, attached as **Exhibit B**, and incorporated into this Plan by reference.

SECTION P. COMPETITIVE CRITERIA FOR SINGLE-FAMILY HOUSING ALLOCATION

Multiple competing requests during a single allocation period are not expected for submissions in this category. Accordingly, the State Authority has determined that the highest value and greatest public benefit are most appropriately determined at the programmatic level, rather than by allocations to specific requests.

SECTION Q. SUBMISSION REQUIREMENTS FOR AUTHORIZED REQUESTS

All submissions for allocation of state ceiling must be complete at the time of submission. The Secretary of the Authority is authorized not to place any submission on the agenda if the submission is found by Authority staff to be incomplete. The request must be in accordance with the statutory provisions of Section 1-11-530. In addition to the foregoing, all requests for allocation of state ceiling must meet all of the following requirements, as applicable:

1. If the applicable private activity bonds require approval of the State Authority, the request for allocation of state ceiling must include a contemporaneous request for approval to issue the associated bonds. A request for an allocation of state ceiling associated with a contemporaneous request for issuance approval is not complete unless it includes all items required by the Authority for the issuance approval request.

2022 South Carolina State Ceiling Allocation Plan

2. If the applicable private activity bonds require the approval of an entity other than the State Authority, the issuer, or a state constitutional officer, a certified statement from the other approving entity must be submitted with the allocation request. For example, an issuance of bonds by the Jobs-Economic Development Authority must be approved by the Coordinating Council (§ 41-43-110(A)).
3. If a request for allocation of state ceiling regards private activity bonds for a multi-family housing project, either (i) the petition making the request must be accompanied by both a preliminary determination of the project's eligibility for the South Carolina housing tax credit (§12-6-3795(B)(5)(d)) and all comments provided by a county and city pursuant to Section 12-6-3795(C)(3)); or (ii) the petition making the request must include an irrevocable waiver of any claim for a state tax credit pursuant to Section 12-6-3795, accompanied by proof that the petition has been filed with State Housing. Even if a project includes an irrevocable waiver of any claim for a state tax credit, the request must undergo a feasibility and underwriting review by State Housing; accordingly, the request must be accompanied by a Certificate of Allocating Agency (42(m) Letter).
4. If a request for issuance approval regards private activity bonds for a multi-family housing project, and is using prior-year carryforward previously allocated to State Housing either the (i) the petition making the request must be accompanied by both a preliminary determination of the project's eligibility for the South Carolina housing tax credit (§12-6-3795(B)(5)(d)) and all comments provided by a county and city pursuant to Section 12-6-3795(C)(3)); or (ii) the petition making the request must include an irrevocable waiver of any claim for a state tax credit pursuant to Section 12-6-3795, accompanied by proof that the petition has been filed with State Housing. Even if a project includes an irrevocable waiver of any claim for a state tax credit, the request must undergo a feasibility and underwriting review by State Housing; accordingly, the request must be accompanied by a Certificate of Allocating Agency (42(m) Letter).
5. The petition submitted for each authorized request must include a representation that "the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project." Reference Section 1-11-530(C).
6. In the case of a proposed industrial or economic development project using state ceiling from either the Industrial and Economic Development or Other Qualified Purposes categories, the project must appear on the list of projects ranked by the Coordinating Council for Economic Development and must have received a definitive recommendation from the Council for the amount of state ceiling proposed to be allocated to the project.
7. In the case of a proposed project using state ceiling from the Multi-family Housing category or prior year carryforward previously allocated to State Housing for multi-family housing projects, the project must appear on the list of projects ranked by the State Housing and Finance Development Authority and must have received a definitive recommendation from State Housing for the amount of state ceiling proposed to be allocated to the project.

2022 South Carolina State Ceiling Allocation Plan

8. A request to take any of the following actions must be accompanied by a letter signed by the chief executive officer of the applicant providing a thorough explanation of the compelling circumstances leading to the request and a justification for why those circumstances were not successfully avoided: A request (a) to reinstate or extend the validity of previously allocated state ceiling, (b) to allocate state ceiling to a project if previously allocated state ceiling was allowed to expire, or (c) to allocate additional state ceiling to a project. In addition, a request to allocate additional state ceiling to a project must be accompanied by supporting financial analysis demonstrating the further amount necessary to accomplish financial feasibility of the project. A responsible officer of the applicant is expected to attend the applicable Authority meeting.

9. A request (a) to approve single-project allocations for carry-forward election, or (b) to approve carryforward elections prior to the fourth quarter of the calendar year to which the state ceiling applies must be accompanied by a letter signed by the chief executive officer of the applicant that provides a compelling justification for such action and a thorough explanation of why it is in the best interest of the state to approve the request. As noted below, such requests are considered extraordinary and will receive a heightened level of review. A responsible officer of the applicant is expected to attend the applicable Authority meeting.

10. In the case of an industrial or economic development project, a petition requesting more than ten percent of the total state ceiling must be accompanied by a thorough and compelling statement of facts justifying such an extraordinary allocation of state ceiling to a single project. The petition must be accompanied by a statement of position by the Coordinating Council regarding the relative size of the request.

11. In the case of a request for any purpose other than for industrial or economic development, a petition requesting more than five percent of the total state ceiling must be accompanied by a thorough and compelling statement of facts justifying such an extraordinary allocation of state ceiling to a single project.

12. If any part of the submission is subject to review, comment or other action of the Joint Bond Review Committee, the item must be submitted to the committee prior to consideration of the submission by the State Authority.

If a request does not meet each and every published requirement by the submission deadline for the applicable Authority meeting, the Authority's Secretary is authorized not to place the item on the Authority's agenda.

The State Authority reserves its discretion to amend and supplement these procedures as circumstances dictate.

The State Authority and its members reserve the right to require additional information for any particular item.

SECTION R. EXTENSIONS AND CARRYFORWARDS

Section 1-11-530(C) provides that each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated

2022 South Carolina State Ceiling Allocation Plan

at the time for the project and any other facilities located at or used as a part of an integrated operation with the project. In addition to the foregoing, the Authority must be reasonably assured that any allocation of state resources will be utilized prior to expiration. Accordingly, the State Authority will undertake a heightened level of review and exercise conservative discretion in addressing any request to (1) reinstate or extend the validity of previously allocated state ceiling, (2) allocate state ceiling to a project if previously allocated state ceiling was allowed to expire, (3) allocate additional state ceiling to a project, (4) approve single-project allocations for carry-forward election, (5) or approve carryforward elections prior to the fourth quarter of the calendar year to which the state ceiling applies.



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Harry M. Lightsey III
Secretary

August 3, 2022

Mr. Grant Gillespie
Executive Director
State Fiscal Accountability Authority
1200 Senate Street
Columbia, SC 29201

Dear Mr. Gillespie:

Please find attached the final version of the competitive scoring criteria required by Act 202 and included as an attachment to the 2022 State Ceiling Allocation Plan.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Manning", with a long, sweeping horizontal line extending to the right.

Karen Blair Manning
Chief Legal Counsel

KBM

Attachment

Cc: Harry M. Lightsey III
A. Daniel Young

SUMMARY OF PROCEDURES FOR EVALUATING REQUESTS FOR STATE CEILING ALLOCATIONS

The following briefly summarizes the procedures applicable to the methodology employed by the South Carolina Department of Commerce (the "Department") in evaluating industrial and economic development projects that are requesting an allocation of the state private activity bond limit by the State Fiscal Accountability Authority (SFAA).

Background

The Department was designated by the South Carolina General Assembly to assist SFAA in determining the allocation of the state private activity bond limit for industrial and economic development projects. As required by Act 202 of 2022 and the South Carolina State Ceiling Allocation Plan, Commerce has established competitive criteria to evaluate industrial and economic development project. These criteria are designed to achieve highest value and greatest public benefit.

Review Procedures and Scoring

During the review process, Department staff will evaluate the following factors for each industrial and economic development project requesting allocation of the state ceiling and will give scores weighted in the ranges set forth on the attached Scoring Criteria for Bond Applicants and as discussed below.

1. **Tier ranking of the county in which the project will be located as determined by the South Carolina Department of Revenue for the year in which allocation is sought.**
Projects in the most rural counties will be given the higher scores to encourage development in those counties. The rural counties are most in need of industrial development to sustain and improve those counties.
2. **Type of Project.**
Projects that improve public infrastructure will score higher than projects that only benefit the public through job creation and investment. Manufacturing projects will score higher than non-manufacturing projects because they attract suppliers that generate further new job creation and investment to South Carolina.
3. **Number of existing jobs to be maintained at the project.**
The larger the current employment, the higher the score because larger companies have the greatest impact on the economy of the local region and the state as a whole.
4. **Number of net new jobs to be created at the project.**
The more jobs being created, the greater the impact on the economy of the local region and the state as a whole by providing more employment for residents and resulting in increased income to the state.
5. **Average salary of the new jobs to be created at the project.**
Jobs with higher wages will increase income to the state, and jobs with wages above the per capita income of the county have a greater impact on the economic well-being of that county.
6. **Existing investment of the entity.**
The greater the existing investment the more property taxes that will be received to benefit the economy of the local region and the state as a whole.
7. **New investment to be made at the project.**
Similarly, the greater the new investment, the more property taxes that will be received and will benefit the county and local school districts.

8. **Financing available to support the project.**

This category is the most subjective, but a vital consideration. A project's ability to support the project financially is essential to the success.

9. **Cost Benefit**

The South Carolina Coordinating Council for Economic Development (the "Coordinating Council") will perform a cost benefit analysis on each project. Absent extenuating circumstances, a project that does not have a positive financial benefit to the state will not be recommended for state ceiling allocation; provided, however, projects locating in Tier 3 and 4 counties will not be excluded from consideration because of a negative return on investment resulting from the estimated value of job tax credits. While the cost benefit analysis assumes all job tax credits earned and accrued are used, as a practical matter, companies rarely have sufficient income tax liability to use the maximum value of the credits. This is particularly true in the most rural counties because of the extremely high value of the job tax credits under state law.

After consideration of each factor and allocation of appropriate scores, the Department will then calculate the final score using the following formula:

$$((\text{County Designation} \times (\text{New Jobs} + \text{New Investment})) + \text{Type of Project} + \text{Existing jobs} + \text{Existing Investment} + \text{Average Salary} + \text{Financing} + \text{Cost Benefit})$$

Scoring Criteria for Bond Applicants

County Designation

Tier 4	3
Tier 3	2
Tier 2	1
Tier 1	1

Type of Project

Public Infrastructure	4
Manufacturing	2
Other Business	0

Existing Jobs

> 500	2
100-500	1
0-100	0

New Jobs

>300	5
150-300	4
50-149	3
25-49	2
>25	1

Existing Investment

>\$300,000,000	3
\$100,000,000- \$300,000,000	2
\$70,000,000-\$100,000,000	1
<\$70,000,000	0

New Investment

>\$20,000,000	4
\$10,000,000-\$20,000,000	3
\$5,000,000-\$10,000,000	2
<\$5,000,000	1

Avg. Salary

>150% of per capita income	2
100% of per capita income	1
>100%	0

Financing

Financing in place	5
Financing not sufficient to sustain project	0

Cost Benefit

Positive State Benefit > \$10 million	4
Estimate positive state benefit < \$9.9 Million	2
Negative	-30



South Carolina State Housing Finance and Development Authority

300-C Outlet Pointe Blvd., Columbia, South Carolina 29210

Telephone: 803.896.9001 TTY: 803.896.8831

SCHousing.com

C. Todd Latiff
Chairman

Bonita H. Shropshire
Executive Director

Writer's Direct Numbers

(803) 896-8771

E-mail: Tracey.Easton@schousing.com

August 2, 2022

Delbert H. Singleton, Jr., Esquire
Secretary
State Fiscal Accountability Authority
1200 Senate Street
Wade Hampton Building, Suite 600
Columbia, South Carolina 29201

Re: 2022 Proposed State Ceiling Criteria

Dear Delbert:

I enclose SC Housing's 2022 Proposed State Ceiling Criteria and a sample ranking spreadsheet.

I would greatly appreciate if this matter could be placed before the State Fiscal Accountability Authority for consideration in conjunction with the State Ceiling Allocation Plan.

Thank you for your assistance.

Very truly yours,

A handwritten signature in blue ink that reads "Tracey C. Easton".

Tracey C. Easton
General Counsel



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SCHousing.com

C. Todd Latiff
Chairman

Bonita H. Shropshire
Executive Director

This proposed criteria for State Ceiling allocations is presented solely for consideration by the Joint Bond Review Committee and State Fiscal Accountability Authority and is not intended to provide official or final guidance to participants in the program. Once approved by the JBRC and SFAA, final guidance will be published on the website of the South Carolina State Housing Finance and Development Authority (SC Housing).

Proposed State Ceiling Criteria

For those projects seeking an allocation of state ceiling or carryforward for a multifamily project intending to utilize 4% federal low-income housing tax credits, SC Housing will require certain threshold criteria as detailed in the applicable Qualified Allocation Plan (QAP) which is the controlling document related to the allocation of the credit. This threshold criteria includes items such as financial feasibility, minimum applicant experience, site control, financial capacity of the applicant, and readiness to proceed (i.e., without limitation, establishment of the bond working group, existence of letters of interest or letters of intent from lenders, syndicators, and other parties). Additionally, SC Housing will require projects to meet the requirements outlined in SC Housing's Multifamily Tax-Exempt Bond Finance Program manual.

Projects meeting the threshold criteria described above will be ranked for state ceiling utilizing the following criteria that evidence the highest value and greatest public benefit as required by Act 202 of 2022 and the State Ceiling Allocation Plan. Section O of the State Ceiling Allocation Plan requires, at a minimum, certain measures to be included. The following criteria meet the requirements of the State Ceiling Allocation Plan:

- State resources per heated residential square foot
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources (bond ceiling and state tax credit) per heated residential square foot (i.e., excluding common areas), to demonstrate the most efficient use of state resources for the portion of total project costs applicable to actual tenant housing.
- State resources per bedroom
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources per bedroom, to demonstrate the most efficient use of state resources for the number of families the project will house.
- State resources per dollar of total project costs
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources to total project costs to demonstrate the most efficient investment of state resources in the project overall.
- State resources per potential tenant
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources per potential tenant to demonstrate the most efficient use of state resources for the number of potential residents the project will house.

Exhibit B - 2022 & 2023 Competitive Criteria for Multi-family Housing Projects

A 30% adjustment to state resources will be made as a ranking consideration for projects located in USDA-designated rural areas. A 10% adjustment to state resources will be made for new construction units, as a ranking consideration for projects providing an overall increase in affordable housing. These adjustments apply for the sole purpose of establishing project rankings.

Exhibit B - 2022 & 2023 Competitive Criteria for Multi-family Housing Projects

Development [EXCLUDED PROJECTS]		Location	USDA Rural Eligibility	Issuance Approval Date	Annual STC	10 Year STC	State Historic Tax Credit	Project Unit Rate										Ranking Criteria				Development Ranking												
								Abandoned Building Credit	T10 Ceiling Allocation	Total Project Costs	Net New Units	Residential Square Footage	Efficiency/ Status	1BR	2BR	3BR	4BR	Total BRs	Total Units	Total Tenants	Total State Resources	Rural Bonus	New Construction Bonus	ADJUSTED Total State Resources	State Resources per Res SF	State Resources per BR	Total Project Costs (Value)	State Resources per Potential Tenant (Public Benefit)	RURA Resources per Res SF	State Resources per BR	Project Costs (Value)	State Resources per Potential Tenant (Public Benefit)	Total	Overall
Maple Avenue Apartments	Beverlyport	N	1980	\$ 1,987,326.00	\$ 19,873,260	\$ -	\$ -	\$ 23,000,000	\$ 48,687,000	185	301,538				15	20	150	690	185	1,390	\$ 44,879,360	0.0	0.1	\$ 40,381,934	\$ 239.94	\$ 54,530.34	0.0263	\$ 29,265	1	1	3	1	6	1
Main Street Village	Greenfield	N	1980	\$ 447,194.00	\$ 4,471,940	\$ -	\$ 263,000	\$ 8,200,000	\$ 18,750,000	72	68,916				6	11	83	72	186	\$ 13,934,960	0.0	0.1	\$ 14,641,448	\$ 188.93	\$ 140,254.39	0.0550	\$ 70,123	2	4	3	4	12	2	
Panama Mill	Panama	N	1980	\$ 776,523.00	\$ 7,765,230	\$ 1,587,203	\$ -	\$ 16,560,000	\$ 20,425,000	70	72,000				40	20	8	190	340	\$ 26,703,433	0.3	0.1	\$ 15,211,400	\$ 211.27	\$ 89,479.18	0.0987	\$ 44,740	4	2	4	2	13	4	
Cherryvale Apartments	Cherryvale	N	1980	\$ 3,020,000.00	\$ 30,200,000	\$ -	\$ -	\$ 28,800,000	\$ 45,167,606	200	211,000				50	120	30	420	200	890	\$ 43,000,000	0.0	0.1	\$ 33,800,000	\$ 179.15	\$ 54,500.00	0.0319	\$ 47,250	6	3	4	3	13	3
Rolling Hills Farme	York	N	1980	\$ 875,000.00	\$ 8,750,000	\$ -	\$ -	\$ 14,000,000	\$ 28,150,000	70	64,323				54	20	188	35	188	\$ 22,350,000	0.3	0.1	\$ 18,000,000	\$ 211.55	\$ 145,713.77	0.0220	\$ 72,000	5	5	1	5	16	5	
				TOTAL	\$ 8,068,043.00				\$ 83,208,000																									

Column A: Development name

Column B: Development location

Column C: USDA Rural Designation of the development property. Properties located in rural areas receive a preference bonus reflected in a 30% adjustemnt to the total state resources figure.

Columns F through H: Annual state tax credits (housing, historic, abandoned building) in the project

Column I: Tax exempt bond ceiling allocation being requested by the developer/sponsor

Column J: Total development project cost

Column K: In mixed-use proposals, the amount of the overall development cost apportioned to multifamily residential. NB: Market rate units are not included in the total.

Column L: The net newly produced units in the proposed project. Projects where a majority of the units are newly produced receive a preference bonus reflected in a 10% adjustment to the total state resources figure.

Column M: Residential square footage is that portion of heated square footage comprising living units, and is of direct use and benefit to the tenants.

Columns N-R: The unit mix of the development project by bedroom size of units.

Column U: The number of potential tenants served in the development; 2 persons per bedroom is the standard.

Column V: Total tax exempt bond request plus all state tax credits

Columns W & X: projects located in rural areas as designated by the USDA receive a 30% preference bonus; projects where the majority of units are new (rather than rehab of existing) receive a 10% preference bonus.

Column Y: Adjusted total state resources (see Column T) after the rural and new unit preferences have been factored in.

Column Z: State resources per residential square footage; this reflects the value of the building as an asset and is a component of determining "highest and best value" for the state's investment.

Column AA: State resources per bedroom; this reflects the potential utility of the building to tenants and is a component of determining the "public benefit" of the state's investment.

Column AB: Total project costs ratio; this reflects the value of the state's adjusted total investment relative to the total residential development cost and is a measure of the "highest and best value" for the state's investment.

Column AC: State resources per potential tenant housed in the development; this is reflective of the potential number of citizens served and therefore of the "public benefit" for the state's investment.

Columns AD through AI: Development projects are ranked by relative score in Columns X through AA; a development's rank is totaled across all four ranking categories to produce an Overall Rank within the competitive pool.

South Carolina General Assembly
124th Session, 2021-2022

R228, H5075

STATUS INFORMATION

General Bill

Sponsors: Reps. G.M. Smith and West

Document Path: I:\council\bill\11339dg22.docx

Companion/Similar bill(s): 1120

Introduced in the House on March 3, 2022

Introduced in the Senate on April 7, 2022

Last Amended on May 4, 2022

Passed by the General Assembly on May 10, 2022

Governor's Action: May 16, 2022, Signed

Summary: Housing tax credit

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/3/2022	House	Introduced and read first time (House Journal-page 23)
3/3/2022	House	Referred to Committee on Ways and Means (House Journal-page 23)
3/31/2022	House	Committee report: Favorable with amendment Ways and Means (House Journal-page 31)
4/5/2022	House	Member(s) request name added as sponsor: West
4/5/2022		Scrivener's error corrected
4/6/2022	House	Amended (House Journal-page 77)
4/6/2022	House	Read second time (House Journal-page 77)
4/6/2022	House	Roll call Yeas-99 Nays-5 (House Journal-page 85)
4/7/2022	House	Read third time and sent to Senate
4/7/2022	Senate	Introduced and read first time (Senate Journal-page 11)
4/7/2022	Senate	Referred to Committee on Finance (Senate Journal-page 11)
4/7/2022		Scrivener's error corrected
4/12/2022	Senate	Recalled from Committee on Finance (Senate Journal-page 6)
4/13/2022		Scrivener's error corrected
4/20/2022	Senate	Amended (Senate Journal-page 32)
4/20/2022	Senate	Read second time (Senate Journal-page 32)
4/20/2022	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 32)
4/21/2022	Senate	Read third time and returned to House with amendments (Senate Journal-page 8)
4/21/2022		Scrivener's error corrected
4/25/2022		Scrivener's error corrected
4/27/2022	House	Debate adjourned (House Journal-page 33)
5/4/2022	House	Senate amendment amended (House Journal-page 52)
5/4/2022	House	Roll call Yeas-106 Nays-3 (House Journal-page 53)
5/4/2022	House	Returned to Senate with amendments (House Journal-page 54)
5/5/2022		Scrivener's error corrected
5/10/2022	Senate	Concurred in House amendment and enrolled (Senate Journal-page 83)
5/10/2022	Senate	Roll call Ayes-41 Nays-2 (Senate Journal-page 83)
5/12/2022		Ratified R. 228 (Senate Journal-page 229)
5/16/2022		Signed By Governor

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VERSIONS OF THIS BILL

[3/3/2022](#)

[3/31/2022](#)

[4/5/2022](#)

[4/6/2022](#)

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[4/12/2022](#)

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[4/20/2022](#)

[4/21/2022](#)

[4/25/2022](#)

[5/4/2022](#)

[5/5/2022](#)

STATE FISCAL ACCOUNTABILITY AUTHORITY
MEETING OF August 30, 2022

REGULAR SESSION
ITEM NUMBER 17

AGENCY: Executive Director

SUBJECT: South Carolina State Ceiling Allocation Plan - 2023

As a condition of allocating state ceiling, Act 202 of 2022 directs the Authority to adopt an annual State Ceiling Allocation Plan. Section 1-11-520(A) requires the Authority to publish its plan no later than September 30th of the year preceding the calendar year to which the plan applies.

In compliance with Act 202, a proposed 2023 State Ceiling Allocation Plan has been developed. As required by Act 202, the proposed Plan was submitted to the Joint Bond Review Committee for review at its meeting of August 23, 2022. The Committee recommended approval of the Plan, also recommended "that the State Fiscal Accountability Authority carefully consider inclusion of tie breaking criteria for multifamily housing projects in the event that an insufficient amount of limited state ceiling is available to support an allocation for bottom-ranked projects with identical overall rankings" The Committee's recommended tie breaking criteria appear in the attached letter.

AUTHORITY ACTION REQUESTED:

Approve the 2023 State Ceiling Allocation Plan.

ATTACHMENTS:

1. Proposed 2023 South Carolina State Ceiling Allocation Plan
2. 2022 Act 202 (H. 5075)
3. JBRC Comments dated August 23, 2022

2023 South Carolina State Ceiling Allocation Plan

SECTION A. CONVENTIONS, DEFINITIONS AND EXHIBITS

Authorized Request includes any request submitted pursuant to §1-11-530(A) or (b) and any request for Issuance Approval as defined below using prior year carryforward.

Issuance approval means approval by the State Authority for the issuance by State Housing of private activity bonds for a multi-family housing project, as required by Section 31-13-90.

Plan Year refers to the year to which this plan applies, which is noted in the header on each page.

Commerce means the South Carolina Department of Commerce.

Committee means the Joint Bond Review Committee.

Secretary means the Secretary of the State Fiscal Accountability Authority.

State Authority means the State Fiscal Accountability Authority.

State Housing means the State Housing Finance Development Authority.

Exhibit	Subject
A	Competitive Criteria for Industrial and Economic Development Projects, and Projects Proposed for Other Qualified Purposes
B	Competitive Criteria for Multi-family Housing Projects
C	Evaluation and Ranking Report Format for Multi-family Housing Projects

SECTION B. AUTHORITY AND ADOPTION

The State Authority approved this plan at its meeting of [meeting date]. Unless the State Authority provides otherwise herein, the Plan is effective upon adoption.

The Committee favorably reviewed this plan at its meeting of [meeting date].

Section 1-11-520(A) requires the annual publication of a State Ceiling Allocation Plan no later than September thirtieth of the year preceding the Plan Year. The State Authority intends to adopt each year's plan at its last regularly scheduled meeting prior to September thirtieth.

SECTION C. PLAN UPDATES AND AMENDMENTS; PLAN PUBLICATION

Administrative Updates

The Plan may be updated administratively as provided herein. An administrative update authorized by this plan is deemed not to constitute an amendment to the Plan.

By the second Monday in January, the Secretary shall publish an administrative update of the plan that (a) updates Section D to state the actual certified amount of state ceiling for the Plan

2023 South Carolina State Ceiling Allocation Plan

Year, (b) updates Section D to recalculate the limits on authorized requests using the total state ceiling for the Plan Year, (c) updates Section E to state the then-current amounts identified in that Section (d) adds to Section E the amount of any carryforward designated in the prior calendar year pursuant to Section 1-11-520(G), and (e) using the Category Percentages previously approved, recalculates the dollar amounts in Section G based on the actual certified amount of state ceiling for the Plan year.

At the State Authority's first regularly scheduled meeting for the Plan Year, the Secretary will submit a summary of the updates to the State Authority as an informational agenda item.

Plan Amendments

The Plan may be amended as allowed by Title 1, Chapter 11. Section 1-11-520 expressly contemplates amendments to the annual allocation plan upon a finding of exceptional and compelling circumstances by the State Authority. Amendments are subject to review and comment by the Committee. See Section H.

Publication of the Plan

Section 1-11-520(A) requires the State Authority to publish the plan. Once approved, the Secretary is directed to publish the approved plan, as well as any amendment or update, by posting it to the State Authority's website. The initial plan and every update or amendment shall remain on the State Authority's website until the end of the Plan Year.

All updates or amendments shall be sequentially numbered. With each update or amendment, the header shall be revised to include the number and date of the update or amendment, as applicable.

SECTION D. DETERMINATION OF STATE CEILING AND LIMITS ON STATE CEILING FOR AUTHORIZED REQUESTS

The total state ceiling on the issuance of private activity bonds for the year preceding this Plan Year is \$570,977,550, as certified by the Secretary pursuant to Section 1-11-500.

The amount of state ceiling that may be allocated to an authorized request may not exceed 10% of the total state ceiling (\$57,097,755.00) in the case of an industrial or economic development project, or 5% (\$28,548,877.50) for any other authorized request.

The total state ceiling for the Plan Year will not be known until the January following the plan's adoption; accordingly, for purposes of the plan's publication, the State Authority will use the state ceiling for the year in which the plan is published. As reflected above, the limits on authorized requests are calculated against the total state ceiling for the year preceding this Plan Year. As reflected in Section E below, the plan will also use an estimate of the carryforward the Secretary anticipates will be unused and available for the Plan Year. These and other tentative amounts will be updated pursuant to Section C.

SECTION E. DETERMINATION OF AMOUNTS SUBJECT TO THIS ALLOCATION PLAN

As provided in Item 7 of Section P, a multi-family housing project using carryforward allocated to State Housing in prior years must appear on the list of projects evaluated and ranked by

2023 South Carolina State Ceiling Allocation Plan

State Housing at the time State Housing requests issuance approval. Accordingly, and in addition to the amount determined pursuant to Section 1-11-500, certain amounts available from carryforward from prior years and other adjustments are subject to the provisions of this Allocation Plan, as follows:

Amount determined pursuant to Section 1-11-500	\$570,977,550
Less amounts previously allocated	(0)
Plus amounts expired, relinquished, revoked, or otherwise not utilized for issuance	0
Plus amounts carried forward from prior calendar years that remain unused:	
Allocated to Multi-Family Housing (2020; expires 2023)	316,453,232
Allocated to Multi-Family Housing (2021; expires 2024)	<u>2,839,401</u>
Total	\$890,270,183

SECTION F. ALLOCATION PERIODS

Pursuant to Section 1-11-520(B), the State Authority hereby provides for two (2) allocation periods and hereby designates February 1 and August 1 as allocation dates, on which 50% of the state ceiling assigned to each category is made available for subsequent allocation to authorized requests.

Authorized requests for an allocation of state ceiling, as well as requests for issuance approval for projects using carryforward from prior years will be made only at the meeting of the State Authority immediately following each allocation date.

SECTION G. CATEGORIES OF PERMITTED PURPOSES; PERCENTAGE ASSIGNMENTS TO CATEGORIES

In accordance with Section 1-11-520(A), the State Authority adopts the following categories of permitted purposes and assigns percentages of the current-year state ceiling to those categories.

Categories of Permitted Purposes ¹	Category Percentage	Category Amount	Amount Available for Allocation on or after February 1 of the Plan Year	Amount Available for Allocation on or after August 1 of the Plan Year
Industrial and Economic Development ²	40%	\$228,391,020	\$114,195,510	\$114,195,510
Multi-Family Housing ³	0%	\$0.00	\$0.00	\$0.00

¹ Generally, see IRS Publication 4078 (Rev. 9-2019) for a complete list of permitted purposes prescribed by the IRC.

² Facilities for the furnishing of water; sewage facilities; privately owned solid waste disposal facilities; facilities for the local furnishing of electric energy or gas; local district heating or cooling; qualified hazardous waste facilities; qualified enterprise zone facilities; qualified small issue bonds.

³ Qualified residential rental projects.

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Single-Family Housing ⁴	20%	\$114,195,510	\$57,097,755	\$57,097,755
Other Qualified Purposes ⁵	40%	\$228,391,020	\$114,195,510	\$114,195,510
Totals	100%	\$570,977,550	\$ 285,488,775	\$ 285,488,775

The above amounts are subject to revisions pursuant to the update required by Section C.

As noted in Section E, there is carryforward available for Multi-Family Housing that will expire during the plan year unless otherwise utilized. Accordingly, no assignment of state ceiling is contemplated for Multi-Family Housing until the available carryforward is exhausted.

If an authorized request submitted to the Secretary cannot be approved pursuant to the then-current plan even with a reassignment pursuant to Section 1-11-520(C), the Secretary is authorized not to place the request on the State Authority's agenda. In such an event, Secretary will notify the State Authority's members as soon as practicable prior to the scheduled meeting date.

SECTION H. PLAN AMENDMENTS

Any change to the amount of state ceiling allocated to a category that cannot be accomplished by a reassignment pursuant to Section 1-11-520(C) can only be effected by an amendment to the annual allocation plan in accordance with Section 1-11-520(B) following review and comment by the Joint Bond Review Committee.

SECTION I. EVALUATION AND RANKING BY STATE HOUSING AND COMMERCE

Pursuant to Section 1-11-520(E), the State Authority hereby directs that State Housing perform the periodic evaluation and ranking of all multi-family housing projects involving either an authorized request for state ceiling or a request for issuance approval of bonds using carryforward. In performing this evaluation and ranking, State Housing will use the competitive criteria adopted in this plan and provide a report as described in Exhibit C.

Pursuant to Section 1-11-520(E), the State Authority hereby directs that the South Carolina Department of Commerce perform the periodic evaluation and ranking of any non-housing project involving an authorized request for state ceiling. In performing this evaluation and ranking, Commerce will use the competitive criteria adopted in this plan and provide a report as described herein.

SECTION J. SUBMISSION FOR 2023 RANKING

No request for an allocation of state ceiling will be considered by the State Authority until the project associated with the request has been evaluated and ranked by either State Housing or Commerce, as applicable.

⁴ Qualified mortgage bonds.

⁵ Mass commuting facilities; privately owned high-speed intercity rail facilities; qualified redevelopment bond; and qualified student loan bonds.

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No request for issuance approval for a multi-family housing project using carryforward allocated to State Housing in prior years will be considered by the State Authority until the project has been evaluated and ranked by State Housing. Reference Section E.

Timely submissions are essential for applicants seeking an allocation of state ceiling or approval to issue multi-family housing bonds. Any delay can undermine the ability of the State Authority to timely adopt any plan amendment necessary to modify the category assignments. Reference Section H.

Industrial and Economic Development

Any Industrial or Economic Development project making an authorized request during an allocation period must submit all necessary information to Commerce by any due date established by Commerce for the applicable allocation period. Once the State Authority adopts a schedule for its regular meetings in the Plan Year, Commerce should announce all applicable due dates for each allocation period.

Not later than the published bond due date for the applicable State Authority meeting, Commerce must provide the State Authority with its allocation recommendations and its evaluation and ranking for any non-housing project seeking an allocation of state ceiling, provided the request was timely received by Commerce.

As noted in Item 6 of Section P below, Commerce must provide the State Authority with written confirmation of the Coordinating Council's allocation recommendations no later than the published bond due date for the applicable State Authority meeting.

Multi-Family Housing

All multi-family housing projects making an authorized request during an allocation period must submit all necessary information to State Housing by the due date established by State Housing for the applicable allocation period. Once the State Authority adopts a schedule for its regular meetings in the Plan Year, State Housing should announce all applicable due dates for each allocation period.

Not later than the published bond due date for the applicable State Authority meeting, State Housing must provide the State Authority with a report of its evaluation and ranking of all projects requesting an allocation of state ceiling and all projects requesting issuance approval for a multi-family housing project using carryforward allocated to State Housing in prior years. State Housing's report must also include its evaluation and ranking of all pending state tax credit applications. The report must include all the information identified in **Exhibit C**.

As noted in Item 7 of Section P below, State Housing must provide the State Authority with written confirmation of its Board's allocation recommendations for State Housing projects no later than the published bond due date for the applicable State Authority meeting.

SECTION K. REQUIRED REPORTS

No later than September 30th each year, the State Authority must adopt a plan for the next calendar year. In order to develop that plan, the State Authority needs reliable information

2023 South Carolina State Ceiling Allocation Plan

before it begins drafting. To gather that information, the State Authority requests the following reports be submitted by August 1st of each year.

The State Authority acknowledges that specific project details may not be known in all cases for the coming plan year; accordingly, specificity is expected to the extent known, accompanied by reasonable estimates of anticipated requests.

These reports will also inform any decisions to reassign state ceiling pursuant to section 1-11-520(C), to reallocate by amending the plan pursuant to section 1-11-520(B), or to reserve current-year state ceiling for year-end designation as carryforward.

Industrial and Economic Development Bonds

Commerce and the South Carolina Jobs Economic Development Authority (JEDA), in consultation with the South Carolina Coordinating Council for Economic Development (Coordinating Council), must provide a coordinated report for proposed industrial and economic development projects to the State Authority identifying all known requests for state ceiling for the year following the plan year. The response must include the project name,⁶ amount of the state ceiling request, year of allocation, and tentative recommendation of Commerce in accordance with the competitive criteria described below.

With its report, Commerce must submit proposed deadlines for the year following the plan year by which those seeking state ceiling for Industrial and Economic Development projects or projects proposed for other qualified purposes must submit their proposals to Commerce in order for Commerce to provide the State Authority with its final ranking and recommendations no later than the bond submission deadline for the meetings at which state ceiling allocation requests will be considered for the applicable allocation period.

Commerce may also submit a request for the State Authority to assign up to 40 percent of state ceiling for Industrial and Economic Development, less any allocation requested for known projects, to accommodate future but presently unidentifiable requests; provided, however, that once known, each such request shall identify the project, amount of the allocation request, year of allocation, and include a recommendation of Commerce in accordance with the competitive criteria.

JEDA and any other issuer must provide the Secretary with a year-end account of any unused state ceiling from the prior year no later than January 2nd each year.

Multi-Family and Single-Family Housing Bonds

State Housing must provide a report for proposed single-family and multi-family housing projects to the State Authority identifying all pending and expected authorized requests for the year following the plan year. The response must include the project name, amount of the state ceiling request, amount of state tax credit (if any), and year of allocation.

⁶ Or other identifying information in the event the name of the project is not yet public.

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The report must also include recommendations for the amount of carryforward from prior years needed for State Housing to continue each of its programs in the year following the plan year.

With its report, Housing must submit proposed deadlines for the year following the plan year by which those seeking state ceiling for multi-family housing projects must submit their proposals to Housing in order for Housing to provide the State Authority with its final ranking and recommendation no later than the bond submission deadline for the meetings at which state ceiling allocation requests will be considered for the applicable allocation period.

State Housing must provide the Secretary with a year-end account of any unused remaining carryforward from prior years no later than January 2nd each year.

SECTION L. COMPETITIVE CRITERIA - GENERALLY

Section 1-11-520(E) requires that the allocation plan establish competitive criteria for allocation of state ceiling to authorized requests, and further provides that competitive criteria may be unique to each category but must be uniform within each category and established to achieve highest value and greatest public benefit.

For purposes of this Allocation Plan, determinations of highest value and greatest public benefit will be made on the basis of the relationship of the state resources requested to the measurable benefit of the proposed project.

SECTION M. COMPETITIVE CRITERIA FOR INDUSTRIAL AND ECONOMIC DEVELOPMENT ALLOCATION AND ALLOCATION TO OTHER PERMITTED PURPOSES

Commerce must provide each year to the State Authority for inclusion in the annual State Ceiling Allocation Plan its recommendations for determining highest value and greatest public benefit for allocation of state ceiling to industrial and economic development projects, and projects proposed for other qualified purposes.

Determinations of highest value and greatest public benefit must include at a minimum and without limitation such measures as the number of new permanent jobs⁷ that will be created by the project; the capital investment of the project sponsor independent of state incentives and resources; and a cost benefit analysis generally reflecting a positive financial benefit to the state. The Coordinating Council must submit its proposed recommendations for the year following the plan year to the State Authority no later than August 1 of the plan year.

Commerce will use these measures to evaluate any ceiling allocation requests for Industrial and Economic Development projects and projects proposed for other qualified purposes, and such evaluations shall be presented to the Coordinating Council for approval at a public meeting.

For projects seeking either local or state discretionary incentives such as fee in lieu of tax arrangements, county industrial development bonds, job development credits and/or state grant funding, a definitive agreement with the Coordinating Council and/or the local government, as applicable, must have been finalized prior to consideration by the State Authority. Such agreements with the Coordinating Council may include a preliminary

⁷ Generally, maintenance of existing jobs will not meet this criterion.

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revitalization, grant performance or other incentive agreement provided that it contains minimum new permanent job and investment commitments by the entity seeking an allocation.

For projects that are not seeking local or state discretionary incentives, such information as is requested and determined by Commerce to be sufficient for Commerce to evaluate the feasibility and competitiveness of the proposal must be submitted to Commerce prior to consideration by the State Authority.

If multiple projects will be submitted for consideration by the State Authority within a single allocation period, Commerce must rank those projects from highest to lowest value and public benefit as determined by provisions of this section.

In addition to the foregoing, Commerce must provide a definitive recommendation for the amount of state ceiling proposed to be allocated to the project, following an affirmative vote of the Coordinating Council in a public meeting.

For the current year, the competitive criteria for Industrial and Economic Development projects recommended by Commerce are adopted by the State Authority, attached as **Exhibit A**, and incorporated into this Plan by reference.

SECTION N. COMPETITIVE CRITERIA FOR MULTI-FAMILY HOUSING ALLOCATION

State Housing must provide each year to the State Authority for inclusion in the State Ceiling Allocation Plan its recommendations for determining highest value and greatest public benefit for allocation of state ceiling to multi-family housing projects.

Determinations of highest value and greatest public benefit must reflect the relationship of the state resources proposed for the project to the affordable housing benefits the project will achieve. Total state resources must include without limitation the amount of state ceiling, any applicable state tax credits, and any other state resources and incentives as are germane and applicable to the project. Affordable housing benefits must include without limitation such facility characteristics as the heated residential square footage, number of bedrooms, and number of tenants the project is designed to serve. A determination of highest value must include a comparison of the state resources to the project's total cost.

State Housing may coordinate these determinations with the applicable Qualified Allocation Plan and any other threshold requirements, policies, or procedures as are consistent with this section.

If multiple multi-family project submissions (for ceiling allocation and/or issuance approval for use of carryforward) will be considered by the State Authority within a single allocation period, State Housing must rank those projects from highest to lowest value and public benefit, as determined by the provisions of this section.

These criteria will be applied uniformly to all multi-family housing projects whether seeking current year ceiling allocation or issuance approval using carryforward. State Housing must submit its proposed recommendations for the coming year to the State Authority no later than August 1 of the plan year.

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In addition to the foregoing, State Housing must provide a definitive recommendation for the amount of state ceiling proposed to be allocated to any State Housing project, following an affirmative vote of its governing board in a public meeting.

For the current year, the competitive criteria for Multi-family Housing projects recommended by State Housing are adopted by the State Authority, attached as **Exhibit B**, and incorporated into this Plan by reference.

SECTION O. COMPETITIVE CRITERIA FOR SINGLE-FAMILY HOUSING ALLOCATION

Multiple competing requests during a single allocation period are not expected for submissions in this category. Accordingly, the State Authority has determined that the highest value and greatest public benefit are most appropriately determined at the programmatic level, rather than by allocations to specific requests.

SECTION P. SUBMISSION REQUIREMENTS FOR AUTHORIZED REQUESTS

All submissions for allocation of state ceiling must be complete at the time of submission. The Secretary is authorized not to place any incomplete submission on the agenda. The request must be in accordance with the statutory provisions of Section 1-11-530. In addition to the foregoing, all requests for allocation of state ceiling must meet all of the following requirements, as applicable:

1. If the applicable private activity bonds require approval of the State Authority, the request for allocation of state ceiling must include a contemporaneous request for approval to issue the associated bonds. A request for an allocation of state ceiling associated with a contemporaneous request for issuance approval is not complete unless it includes all items required by the State Authority for the issuance approval request.
2. If the applicable private activity bonds require the approval of an entity other than the State Authority, the issuer, or a state constitutional officer, a certified statement from the other approving entity must be submitted with the allocation request. For example, an issuance of bonds by the Jobs-Economic Development Authority must be approved by the Coordinating Council (§ 41-43-110(A)).
3. If a request for allocation of state ceiling regards private activity bonds for a multi-family housing project, either (i) the petition making the request must be accompanied by both a preliminary determination of the project's eligibility for the South Carolina housing tax credit (§12-6-3795(B)(5)(d)) and all comments provided by a county and city pursuant to Section 12-6-3795(C)(3)); or (ii) the petition making the request must include an irrevocable waiver of any claim for a state tax credit pursuant to Section 12-6-3795, accompanied by proof that the petition has been filed with State Housing. Even if a project includes an irrevocable waiver of any claim for a state tax credit, the request must undergo a feasibility and underwriting review by State Housing; accordingly, the request must be accompanied by a Certificate of Allocating Agency (42(m) Letter).
4. If a request for issuance approval regards private activity bonds for a multi-family housing project, and is using carryforward allocated to State Housing in prior years, either the (i) the petition making the request must be accompanied by both a preliminary determination

2023 South Carolina State Ceiling Allocation Plan

of the project's eligibility for the South Carolina housing tax credit (§12-6-3795(B)(5)(d)) and all comments provided by a county and city pursuant to Section 12-6-3795(C)(3)); or (ii) the petition making the request must include an irrevocable waiver of any claim for a state tax credit pursuant to Section 12-6-3795, accompanied by proof that the petition has been filed with State Housing. Even if a project includes an irrevocable waiver of any claim for a state tax credit, the request must undergo a feasibility and underwriting review by State Housing; accordingly, the request must be accompanied by a Certificate of Allocating Agency (42(m) Letter).

5. The petition submitted for each authorized request must include an acknowledgement that any amount of allocation subsequently requested will constitute a new authorized request and a representation that "the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project." Reference Section 1-11-530(C).

6. In the case of a proposed industrial or economic development project using state ceiling from either the Industrial and Economic Development or Other Qualified Purposes categories, the project must appear on the list of projects ranked by the Coordinating Council for Economic Development and must have received a definitive recommendation from the Coordinating Council for the amount of state ceiling proposed to be allocated to the project.

7. In the case of a proposed project using state ceiling from the Multi-family Housing category or prior year carryforward previously allocated to State Housing for multi-family housing projects, the project must appear on the list of projects ranked by State Housing and must have received a definitive recommendation from State Housing for the amount of state ceiling proposed to be allocated to the project.

8. A request to take any of the following actions must be accompanied by a letter signed by the chief executive officer of the applicant providing a thorough explanation of the compelling circumstances leading to the request and a justification for why those circumstances were not successfully avoided: A request (a) to reinstate or extend the validity of previously allocated state ceiling, (b) to allocate state ceiling to a project if previously allocated state ceiling was allowed to expire, or (c) to allocate additional state ceiling to a project. In addition, a request to allocate additional state ceiling to a project must be accompanied by supporting financial analysis demonstrating the further amount necessary to accomplish financial feasibility of the project. A responsible officer of the applicant is expected to attend the applicable State Authority meeting.

9. A request (a) to approve single-project allocations for carry-forward election, or (b) to approve carryforward elections prior to the fourth quarter of the calendar year to which the state ceiling applies must be accompanied by a letter signed by the chief executive officer of the applicant that provides a compelling justification for such action and a thorough explanation of why it is in the best interest of the state to approve the request. As noted below, such requests are considered extraordinary and will receive a heightened level of review. A responsible officer of the applicant is expected to attend the applicable State Authority meeting.

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10. In the case of an industrial or economic development project, an authorized request seeking more than ten percent of the total state ceiling for the Plan Year must be accompanied by a thorough and compelling statement of facts justifying such an extraordinary allocation of state ceiling to a single project. The petition must be accompanied by a statement of position by the Coordinating Council regarding the relative size of the request.

11. In the case of a project for any purpose other than for industrial or economic development, an authorized request seeking more than five percent of the total state ceiling for the Plan Year must be accompanied by a thorough and compelling statement of facts justifying such an extraordinary allocation of state ceiling to a single project.

12. If any part of the submission is subject to review, comment or other action of the Joint Bond Review Committee, the item must be submitted to the committee prior to consideration of the submission by the State Authority.

If a request does not meet each and every published requirement by the submission deadline for the applicable State Authority meeting, the State Authority's Secretary is authorized not to place the item on the State Authority's agenda.

The State Authority reserves its discretion to amend and supplement these procedures as circumstances dictate.

The State Authority and its members reserve the right to require additional information for any particular item.

SECTION Q. EXTENSIONS AND CARRYFORWARDS

Section 1-11-530(C) provides that each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project. In addition to the foregoing, the State Authority must be reasonably assured that any allocation of state resources will be utilized prior to expiration. Accordingly, the State Authority will undertake a heightened level of review and exercise conservative discretion in addressing any request to (1) reinstate or extend the validity of previously allocated state ceiling, (2) allocate state ceiling to a project if previously allocated state ceiling was allowed to expire, (3) allocate additional state ceiling to a project, (4) approve single-project allocations for carry-forward election, (5) or approve carryforward elections prior to the fourth quarter of the calendar year to which the state ceiling applies.

SECTION R. BACKGROUND

On August 30, 2022, the State Fiscal Accountability Authority adopted the inaugural South Carolina State Ceiling Allocation Plan pursuant to Act 202 of 2022. Section A of the 2022 State Ceiling Allocation Plan provided the background and purpose of the plan. The background and purpose of the inaugural plan and Act 202 of 2022 has not changed and need not be repeated on an annual basis. However, the Background and Purpose as written in the 2022 State Ceiling Allocation Plan remains relevant and is incorporated by reference for the 2023 South Carolina State Ceiling Allocation Plan.



Henry McMaster
Governor

SOUTH CAROLINA
DEPARTMENT OF COMMERCE

Harry M. Lightsey III
Secretary

August 3, 2022

Mr. Grant Gillespie
Executive Director
State Fiscal Accountability Authority
1200 Senate Street
Columbia, SC 29201

Dear Mr. Gillespie:

Please find attached the final version of the competitive scoring criteria required by Act 202 and included as an attachment to the 2022 State Ceiling Allocation Plan.

Sincerely,

A handwritten signature in blue ink, which appears to read "Karen Blair Manning", is written over the typed name and title. The signature is stylized and extends across the line.

Karen Blair Manning
Chief Legal Counsel

KBM

Attachment

Cc: Harry M. Lightsey III
A. Daniel Young

SUMMARY OF PROCEDURES FOR EVALUATING REQUESTS FOR STATE CEILING ALLOCATIONS

The following briefly summarizes the procedures applicable to the methodology employed by the South Carolina Department of Commerce (the "Department") in evaluating industrial and economic development projects that are requesting an allocation of the state private activity bond limit by the State Fiscal Accountability Authority (SFAA).

Background

The Department was designated by the South Carolina General Assembly to assist SFAA in determining the allocation of the state private activity bond limit for industrial and economic development projects. As required by Act 202 of 2022 and the South Carolina State Ceiling Allocation Plan, Commerce has established competitive criteria to evaluate industrial and economic development project. These criteria are designed to achieve highest value and greatest public benefit.

Review Procedures and Scoring

During the review process, Department staff will evaluate the following factors for each industrial and economic development project requesting allocation of the state ceiling and will give scores weighted in the ranges set forth on the attached Scoring Criteria for Bond Applicants and as discussed below.

1. **Tier ranking of the county in which the project will be located as determined by the South Carolina Department of Revenue for the year in which allocation is sought.**
Projects in the most rural counties will be given the higher scores to encourage development in those counties. The rural counties are most in need of industrial development to sustain and improve those counties.
2. **Type of Project.**
Projects that improve public infrastructure will score higher than projects that only benefit the public through job creation and investment. Manufacturing projects will score higher than non-manufacturing projects because they attract suppliers that generate further new job creation and investment to South Carolina.
3. **Number of existing jobs to be maintained at the project.**
The larger the current employment, the higher the score because larger companies have the greatest impact on the economy of the local region and the state as a whole.
4. **Number of net new jobs to be created at the project.**
The more jobs being created, the greater the impact on the economy of the local region and the state as a whole by providing more employment for residents and resulting in increased income to the state.
5. **Average salary of the new jobs to be created at the project.**
Jobs with higher wages will increase income to the state, and jobs with wages above the per capita income of the county have a greater impact on the economic well-being of that county.
6. **Existing investment of the entity.**
The greater the existing investment the more property taxes that will be received to benefit the economy of the local region and the state as a whole.
7. **New investment to be made at the project.**
Similarly, the greater the new investment, the more property taxes that will be received and will benefit the county and local school districts.

8. **Financing available to support the project.**

This category is the most subjective, but a vital consideration. A project's ability to support the project financially is essential to the success.

9. **Cost Benefit**

The South Carolina Coordinating Council for Economic Development (the "Coordinating Council") will perform a cost benefit analysis on each project. Absent extenuating circumstances, a project that does not have a positive financial benefit to the state will not be recommended for state ceiling allocation; provided, however, projects locating in Tier 3 and 4 counties will not be excluded from consideration because of a negative return on investment resulting from the estimated value of job tax credits. While the cost benefit analysis assumes all job tax credits earned and accrued are used, as a practical matter, companies rarely have sufficient income tax liability to use the maximum value of the credits. This is particularly true in the most rural counties because of the extremely high value of the job tax credits under state law.

After consideration of each factor and allocation of appropriate scores, the Department will then calculate the final score using the following formula:

$$((\text{County Designation} \times (\text{New Jobs} + \text{New Investment})) + \text{Type of Project} + \text{Existing jobs} + \text{Existing Investment} + \text{Average Salary} + \text{Financing} + \text{Cost Benefit})$$

Scoring Criteria for Bond Applicants

County Designation

Tier 4	3
Tier 3	2
Tier 2	1
Tier 1	1

Type of Project

Public Infrastructure	4
Manufacturing	2
Other Business	0

Existing Jobs

> 500	2
100-500	1
0-100	0

New Jobs

>300	5
150-300	4
50-149	3
25-49	2
>25	1

Existing Investment

>\$300,000,000	3
\$100,000,000- \$300,000,000	2
\$70,000,000-\$100,000,000	1
<\$70,000,000	0

New Investment

>\$20,000,000	4
\$10,000,000-\$20,000,000	3
\$5,000,000-\$10,000,000	2
<\$5,000,000	1

Avg. Salary

>150% of per capita income	2
100% of per capita income	1
>100%	0

Financing

Financing in place	5
Financing not sufficient to sustain project	0

Cost Benefit

Positive State Benefit > \$10 million	4
Estimate positive state benefit < \$9.9 Million	2
Negative	-30



South Carolina State Housing Finance and Development Authority

300-C Outlet Pointe Blvd., Columbia, South Carolina 29210

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August 2, 2022

Delbert H. Singleton, Jr., Esquire
Secretary
State Fiscal Accountability Authority
1200 Senate Street
Wade Hampton Building, Suite 600
Columbia, South Carolina 29201

Re: 2022 Proposed State Ceiling Criteria

Dear Delbert:

I enclose SC Housing's 2022 Proposed State Ceiling Criteria and a sample ranking spreadsheet.

I would greatly appreciate if this matter could be placed before the State Fiscal Accountability Authority for consideration in conjunction with the State Ceiling Allocation Plan.

Thank you for your assistance.

Very truly yours,

A handwritten signature in blue ink that reads "Tracey C. Easton".

Tracey C. Easton
General Counsel



South Carolina State Housing Finance and Development Authority

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C. Todd Latiff
Chairman

Bonita H. Shropshire
Executive Director

This proposed criteria for State Ceiling allocations is presented solely for consideration by the Joint Bond Review Committee and State Fiscal Accountability Authority and is not intended to provide official or final guidance to participants in the program. Once approved by the JBRC and SFAA, final guidance will be published on the website of the South Carolina State Housing Finance and Development Authority (SC Housing).

Proposed State Ceiling Criteria

For those projects seeking an allocation of state ceiling or carryforward for a multifamily project intending to utilize 4% federal low-income housing tax credits, SC Housing will require certain threshold criteria as detailed in the applicable Qualified Allocation Plan (QAP) which is the controlling document related to the allocation of the credit. This threshold criteria includes items such as financial feasibility, minimum applicant experience, site control, financial capacity of the applicant, and readiness to proceed (i.e., without limitation, establishment of the bond working group, existence of letters of interest or letters of intent from lenders, syndicators, and other parties). Additionally, SC Housing will require projects to meet the requirements outlined in SC Housing's Multifamily Tax-Exempt Bond Finance Program manual.

Projects meeting the threshold criteria described above will be ranked for state ceiling utilizing the following criteria that evidence the highest value and greatest public benefit as required by Act 202 of 2022 and the State Ceiling Allocation Plan. Section O of the State Ceiling Allocation Plan requires, at a minimum, certain measures to be included. The following criteria meet the requirements of the State Ceiling Allocation Plan:

- State resources per heated residential square foot
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources (bond ceiling and state tax credit) per heated residential square foot (i.e., excluding common areas), to demonstrate the most efficient use of state resources for the portion of total project costs applicable to actual tenant housing.
- State resources per bedroom
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources per bedroom, to demonstrate the most efficient use of state resources for the number of families the project will house.
- State resources per dollar of total project costs
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources to total project costs to demonstrate the most efficient investment of state resources in the project overall.
- State resources per potential tenant
 - This criterion will rank projects from lowest to highest, based on a calculation of state resources per potential tenant to demonstrate the most efficient use of state resources for the number of potential residents the project will house.

A 30% adjustment to state resources will be made as a ranking consideration for projects located in USDA-designated rural areas. A 10% adjustment to state resources will be made for new construction units, as a ranking consideration for projects providing an overall increase in affordable housing. These adjustments apply for the sole purpose of establishing project rankings.

Exhibit B - 2022 & 2023 Competitive Criteria for Multi-family Housing Projects

[illegible]

Exhibit C - Evaluation and Ranking Report Format for Multi-family Housing Projects

1	Project Name
2	Location (Municipality)
3	Issuer
4	Attorney
5	State Tax Credits (1 year)
6	State Tax Credits (10 years)
7	State Tax Credit Letter Date
8	Current Year-Ceiling Allocation Request Amount
9	Ceiling Allocation Date
10	Carryforward granted by SFAA or SC Housing
11	Amount of Carryforward requested from SHFDA
12	Balance of Carryforward held by SHFDA
13	Annual State Tax Credit needed
14	Balance of Annual State Tax Credits Allocated to 4% projects

South Carolina General Assembly
124th Session, 2021-2022

R228, H5075

STATUS INFORMATION

General Bill

Sponsors: Reps. G.M. Smith and West

Document Path: I:\council\bill\ncd\11339dg22.docx

Companion/Similar bill(s): 1120

Introduced in the House on March 3, 2022

Introduced in the Senate on April 7, 2022

Last Amended on May 4, 2022

Passed by the General Assembly on May 10, 2022

Governor's Action: May 16, 2022, Signed

Summary: Housing tax credit

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/3/2022	House	Introduced and read first time (House Journal-page 23)
3/3/2022	House	Referred to Committee on Ways and Means (House Journal-page 23)
3/31/2022	House	Committee report: Favorable with amendment Ways and Means (House Journal-page 31)
4/5/2022	House	Member(s) request name added as sponsor: West
4/5/2022		Scrivener's error corrected
4/6/2022	House	Amended (House Journal-page 77)
4/6/2022	House	Read second time (House Journal-page 77)
4/6/2022	House	Roll call Yeas-99 Nays-5 (House Journal-page 85)
4/7/2022	House	Read third time and sent to Senate
4/7/2022	Senate	Introduced and read first time (Senate Journal-page 11)
4/7/2022	Senate	Referred to Committee on Finance (Senate Journal-page 11)
4/7/2022		Scrivener's error corrected
4/12/2022	Senate	Recalled from Committee on Finance (Senate Journal-page 6)
4/13/2022		Scrivener's error corrected
4/20/2022	Senate	Amended (Senate Journal-page 32)
4/20/2022	Senate	Read second time (Senate Journal-page 32)
4/20/2022	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 32)
4/21/2022	Senate	Read third time and returned to House with amendments (Senate Journal-page 8)
4/21/2022		Scrivener's error corrected
4/25/2022		Scrivener's error corrected
4/27/2022	House	Debate adjourned (House Journal-page 33)
5/4/2022	House	Senate amendment amended (House Journal-page 52)
5/4/2022	House	Roll call Yeas-106 Nays-3 (House Journal-page 53)
5/4/2022	House	Returned to Senate with amendments (House Journal-page 54)
5/5/2022		Scrivener's error corrected
5/10/2022	Senate	Concurred in House amendment and enrolled (Senate Journal-page 83)
5/10/2022	Senate	Roll call Ayes-41 Nays-2 (Senate Journal-page 83)
5/12/2022		Ratified R 228 (Senate Journal-page 229)
5/16/2022		Signed By Governor

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VERSIONS OF THIS BILL

[3/3/2022](#)

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[4/12/2022](#)

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NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R228, H5075)

AN ACT TO AMEND SECTION 12-6-3795, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA HOUSING TAX CREDIT, SO AS TO DEFINE TERMS AND LIMIT THE CREDIT; TO PROVIDE A ONE-TIME AUTHORIZATION OF SOUTH CAROLINA HOUSING TAX CREDITS FOR CERTAIN PROJECTS APPROVED BEFORE 2022; TO AMEND ARTICLE 3 OF CHAPTER 11, TITLE 1, RELATING TO THE ALLOCATION OF STATE CEILING ON ISSUANCE OF PRIVATE ACTIVITY BONDS, SO AS TO REQUIRE THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO DEVELOP A STATE CEILING ALLOCATION PLAN ANNUALLY, TO SPECIFY REQUIREMENTS OF THE PLAN, AND TO PROVIDE A PROCESS FOR PERIODIC ALLOCATIONS OF THE STATE CEILING; AND TO REPEAL SECTION 1-11-370 RELATING TO INDEBTEDNESS INCLUDED WITHIN ANY LIMITS ON PRIVATE ACTIVITY BONDS.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Housing Tax Credit

SECTION 1. A. Section 12-6-3795 of the 1976 Code, as added by Act 137 of 2020, is amended to read:

“Section 12-6-3795. (A) As used in this section:

(1) ‘Eligibility statement’ means a statement authorized and issued by the South Carolina State Housing and Finance Development Authority certifying that a given project qualifies for the South Carolina housing tax credit, including any preliminary determination thereof.

(2) ‘Federal housing tax credit’ means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended.

(3) ‘Median income’ means those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted for family size.

(4) 'Project' means a housing project that has restricted rents that do not exceed thirty percent of income for at least forty percent of its units occupied by persons or families having incomes of sixty percent or less of the median income, or at least twenty percent of the units occupied by persons or families having incomes of fifty percent or less of the median income.

(5) 'Qualified project' means a qualified low-income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located in South Carolina and receives approval for tax credits from the South Carolina Housing and Finance Development Authority provided pursuant to this section.

(6) 'Taxpayer' means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes pursuant to Section 12-6-510, Section 12-6-530, Chapter 11, Title 12, or Chapter 7, Title 38.

(7) 'Federal 9 percent tax credit' means the federal housing tax credit described in Section 42(b)(1)(B)(i) of the Internal Revenue Code.

(8) 'Federal 4 percent tax credit' means the federal housing tax credit described in Section 42(b)(1)(B)(ii) of the Internal Revenue Code.

(9) 'Credit period' has the meaning defined in Section 42(f)(1) of the Internal Revenue Code.

(10) 'State housing authority' means the South Carolina State Housing Finance and Development Authority.

(11) 'Department of Revenue' means the South Carolina Department of Revenue.

(B)(1) A state tax credit pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11, Title 12, corporate license fees imposed pursuant to Chapter 20, Title 12, and insurance premium and retaliatory taxes imposed pursuant to Chapter 7, Title 38, to be termed the South Carolina housing tax credit, and is allowed with respect to each qualified project placed in service after January 1, 2020, and before December 31, 2030, in an amount not to exceed the federal housing tax credit allowed with respect to such qualified project, subject to the limitations of item (5). In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowed pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

(2)(a) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal housing tax credit taken on a project is required to be recaptured, the taxpayer claiming any South Carolina housing tax credit with respect to such project also is required to recapture a portion of any South Carolina housing tax credit authorized by this section. The state recapture amount is equal to the proportion of

the South Carolina housing tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal housing tax credit amount subject to recapture.

(b) In the event that recapture of any South Carolina housing tax credit is required, any return submitted to the Department of Revenue, as provided in this section, shall include the proportion of the South Carolina housing tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of South Carolina housing tax credit previously allocated to such taxpayer. Any recapture of the South Carolina housing tax credit is reported in the same manner as any recapture of the federal housing tax credit.

(3) The total amount of the South Carolina housing tax credit allowed by this section for a taxable year may not exceed the taxpayer's income tax liability. Any unused South Carolina housing tax credit may be carried forward to apply to the taxpayer's next five succeeding years' tax liability. The taxpayer may not apply the credit against any prior tax years' tax liability.

(4) The South Carolina housing tax credit and any recaptured tax credit, must be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, regardless of whether such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.

(5)(a) The South Carolina housing tax credit allowed for any project must supplement but not supplant the federal housing tax credit and must be limited to an amount necessary only to achieve financial feasibility of the project.

(b) The total amount of all South Carolina housing tax credits that may be allocated in any calendar year must not exceed twenty million dollars, plus the total of all unallocated tax credits, if any, for any preceding years, and the total amount of any previously allocated tax credits that have been recaptured, revoked, canceled, or otherwise recovered but not otherwise reallocated.

(c) Of the dollar limitation prescribed in subitem (b), the total amount of South Carolina housing tax credits allocated to qualified projects utilizing the federal 9 percent tax credit must not exceed forty percent of the dollar limitation prescribed in subitem (b). Of the South Carolina housing tax credits allocated to qualified projects utilizing the federal 9 percent tax credit, no less than fifty percent of the South Carolina housing tax credits must be allocated to qualified projects located in an eligible rural area as designated by the United States Department of Agriculture, with the remainder allocated to (i) qualified projects serving older persons or persons with special needs, irrespective

of rural eligibility criteria; (ii) qualified projects supporting workforce development as certified by the South Carolina Department of Commerce, irrespective of rural eligibility criteria; and (iii) other qualified projects, irrespective of rural eligibility criteria.

(d) Compliance with the dollar limitations of subitems (b) and (c) must be determined by the total amount of South Carolina housing tax credits allocated for one full year of the credit period applicable to each qualified project, and not the total amount of South Carolina housing tax credits allocated for the entire credit period applicable to each qualified project. Compliance with the dollar limitations of subitems (b) and (c) must be determined within each calendar year at the time the state housing authority makes a preliminary determination of any qualified project's eligibility for the South Carolina housing tax credit.

(e) In addition to the dollar limitation of subitem (b), allocation of any South Carolina housing tax credit to any qualified project utilizing the federal 4 percent tax credit is conditioned on among other things availability and allocation to the extent necessary for the qualified project of any state ceiling made pursuant to Article 3, Chapter 11, Title 1.

(C)(1) The state housing authority shall promulgate rules establishing criteria upon which the eligibility statements are issued which must include consideration of evidence of local support for the project. The eligibility statement must specify the amount of the South Carolina housing tax credit allowed, and must include: (i) the annual amount of South Carolina housing tax credit allocated to the qualified project for each year of credit the period; and (ii) the total amount of South Carolina housing tax credit allocated to the qualified project for the entire credit period.

(2) The state housing authority may not issue an eligibility statement until the taxpayer provides a report to the state housing authority detailing how the South Carolina housing tax credit will benefit the tenants of the project, once placed in service, including without limitation, reduced rent, and why the South Carolina housing tax credit is essential to the financial feasibility of the project.

(3) The state housing authority must establish uniform criteria for allocating the South Carolina housing tax credit to eligible projects pursuant to a competitive process that promotes highest value and greatest public benefit. The state housing authority must establish the criteria required by this section as part of any qualified allocation plan adopted to administer the federal housing tax credit, which must include without limitation: (i) written notice by the state housing authority to the county and city within which any project is proposed to be located; (ii)

following such notice, an opportunity for public comment on the proposed project at a public hearing conducted by the state housing authority no less than ten business days following notice of such public hearing, notification of which must be made by publication in a newspaper of general circulation in the county and city within which the proposed project is to be located; and (iii) an opportunity for the county and the city within which the project is proposed to be located to provide comment within no less than ten business days following such public hearing. The criteria established pursuant to this section, and any qualified allocation plan, are subject to the prior review and comment of the Joint Bond Review Committee.

(4) The state housing authority must furnish no later than January thirty-first of each year an annual report of South Carolina housing tax credits allocated pursuant to this section, which must include for the preceding calendar year the total amount of South Carolina housing tax credits allocated, and for each project, the project name and location, the amount of the South Carolina housing tax credits allocated to the project, project ownership, total number of units assisted, and the public benefit achieved by the project. The annual report must be furnished to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Ways and Means Committee, the Joint Bond Review Committee, and the State Fiscal Accountability Authority.

(D) The Department of Revenue, in consultation with the state housing authority, may adopt rules and policies necessary to implement and administer the provisions of this section; provided, however, that the state housing authority has the responsibility for: (i) allocation and administration of the South Carolina housing tax credit; and (ii) ensuring that the limits prescribed by subsection (B)(5)(b) and (c) are not exceeded.

(E) Notwithstanding any other provision of law, the provisions of this section and administration thereof are subject to the oversight, and review and comment as appropriate, of the Joint Bond Review Committee."

B.1. Notwithstanding the limitations prescribed by Section 12-6-3795(B)(5)(b), (c), and (d) in SECTION 1.A., the General Assembly hereby provides a one-time authorization of South Carolina housing tax credits in an amount necessary but not exceeding one hundred million dollars for qualified projects approved before December 31, 2021, by the State Fiscal Accountability Authority or the South Carolina State Housing and Finance Development Authority, as applicable. Any allocations of South Carolina housing tax credits made

pursuant to this provision are subject to the review and comment of the Joint Bond Review Committee. No later than thirty days following enactment hereof, the South Carolina State Housing and Finance Development Authority must identify and report to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Ways and Means Committee, the Joint Bond Review Committee, and the State Fiscal Accountability Authority all qualified projects to which this one-time authorization of South Carolina housing tax credits is proposed to apply. The report must be made in such form and substance as may be directed by the Joint Bond Review Committee. Nothing in this provision grants any rights to, or in the processes used in the determination of, allocation of this one-time authorization of South Carolina housing tax credits. Decisions made pursuant to this provision are final and are not subject to judicial or administrative review.

2. This subsection B takes effect upon approval by the Governor.

C. This SECTION takes effect upon approval by the Governor and first applies to tax years beginning after 2021.

State ceiling allocation

SECTION 2. Article 3, Chapter 11, Title 1 of the 1976 Code is amended to read:

“Article 3

Allocation of State Ceiling on Issuance of Private Activity Bonds

Section 1-11-500. The state ceiling on the issuance of private activity bonds as defined in Section 146 of the Internal Revenue Code of 1986 established in the act must be certified annually by the Secretary of the State Fiscal Accountability Authority (the state authority) based upon the provisions of the act. The secretary of the state authority shall make this certification as soon as practicable after the estimates of the population of the State of South Carolina to be used in the calculation are published by the United States Bureau of the Census but in no event later than February first of each calendar year.

Section 1-11-510. (A) The private activity bond limit for all issuing authorities must be allocated by the state authority in response to

authorized requests as described in Section 1-11-530 by the issuing authorities, or as otherwise provided in Section 1-11-520(G).

(B) The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.

(C) Nothing in this article or the State Ceiling Allocation Plan adopted pursuant to this article grants any rights to, or in the processes used in the allocation or disposition of, state ceiling. Decisions made pursuant to this article are final and are not subject to judicial or administrative review.

Section 1-11-520. (A) No later than September thirtieth of the year preceding the calendar year to which the state ceiling applies, and subject to review and comment by the Joint Bond Review Committee, the state authority must publish a State Ceiling Allocation Plan that assigns percentages of the state ceiling to categories of any of the permitted purposes prescribed by the Internal Revenue Code. Without limitation, categories of permitted purposes may include industrial and economic development bonds; single family housing bonds; multifamily housing bonds; student loan bonds; and any other bonds eligible for tax exemption as a private activity bond pursuant to the Internal Revenue Code. No initial assignment to any single category may exceed forty percent of the state ceiling, and no minimum assignment is required for any category.

(B) Further, the allocation plan must provide for a process of periodic allocations of the state ceiling within each category, which for any period generally may not exceed an amount of the state ceiling allocated to that category equally divided among the number of periods in the year during which allocations are to be made; provided, however, that the state authority may, upon findings of exceptional and compelling circumstances, amend the annual allocation plan following review and comment by the committee.

(C) Notwithstanding the assigned percentages set forth in the allocation plan, the state authority may but need not reassign any state ceiling unused in prior periods as a supplement to and means to address demand for ceiling allocation in a subsequent period. Such reassignment may be made for any allocation category, notwithstanding its original assignment.

(D) Unless otherwise approved in writing by the state authority following justification and substantial findings of significance, no authorized request may receive an allocation of state ceiling applicable to that calendar year exceeding ten percent of the total state ceiling in the

case of an industrial or economic development project, or five percent of the total state ceiling for any other allocation category.

(E) The allocation plan must establish competitive criteria for allocation of state ceiling to authorized requests. Competitive criteria may be unique to each category but must be uniform within each category and established to achieve highest value and greatest public benefit. Discussions of matters related to the periodic evaluation of authorized requests may be conducted in executive session. The state authority may utilize the services of the South Carolina Department of Commerce, the South Carolina State Housing Finance and Development Authority, any other state agency, and any other public or private resources to inform and provide services for the development of the allocation plan, including the evaluation and competitive criteria; and the periodic evaluation of authorized requests. The Department of Commerce and the State Housing Finance and Development Authority are directed to provide to the state authority such assistance as may be requested or required to accomplish the purposes of this article.

(F) Allocations of state ceiling to authorized requests must be made in accordance with the provisions of the allocation plan and policies and procedures adopted by the state authority.

(G) The state authority must determine the disposition of any remaining, unused state ceiling during the final period of the calendar year pursuant to a petition submitted in accordance with Section 1-11-530(D).

Section 1-11-530. (A) For private activity bonds proposed for issue by other than state government issuing authorities, an authorized request is a request included in a petition to the state authority that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by: (i) a copy of the Inducement Contract, Inducement Resolution, or other comparable preliminary approval entered into or adopted by the issuing authority, if any, relating to the bonds, and (ii) such other supporting documentation as the state authority may by policy prescribe.

(B) For private activity bonds proposed for issue by any state government issuing authority, an authorized request is a request included in a petition to the state authority that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by: (i) a bond resolution or comparable action by the issuing authority authorizing the issuance of the bonds, and (ii) such other supporting documentation as the state authority may by policy prescribe.

(C) Each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.

(D) An issuing authority seeking an allocation of any remaining unused state ceiling for carry-forward designation must submit to the state authority a petition identifying the types of tax-exempt bonds to which the carry-forward designation will apply. The petition must be accompanied by such other supporting documentation as the state authority may by policy prescribe. Such allocations are not subjected to the provisions of Section 1-11-520(D), (E), and (F).

(E) Notwithstanding any other provision of this article, the state authority may disapprove, reduce, or defer any authorized request or petition for carryforward.

(F) The state authority must periodically furnish to the Joint Bond Review Committee a report of petitions received, along with their dispositions.

Section 1-11-540. Reserved.

Section 1-11-550. (A) An allocation of the state ceiling approved by the state authority is made formal initially by a certificate which allocates tentatively a specific amount of the state ceiling to the bonds for which the allocation is requested. This tentative allocation certificate must specify the state ceiling amount allocated, the issuing authority and the project involved, and the time period during which the tentative allocation is valid. This certificate must remind the issuing authority that the tentative allocation is made final after the issuing authority chairman or other duly authorized official or agent of the issuing authority, before the issue is made, certifies the issue amount and the projected date of issue, as is required by subsection (B) of this section. It also may include other information considered relevant by the secretary of the state authority.

(B) The chairman or other authorized official or agent of an issuing authority issuing any private activity bond for which a portion of the state ceiling has been allocated tentatively shall execute and deliver to the secretary of the state authority an issue amount certificate setting forth the exact amount of bonds to be issued and the projected bond issue date which date must not be more than ten business days after the date of the issue amount certificate and it must be before the state ceiling allocation involved expires. The issue amount certificate may be an executed copy of the appropriate completed form to be submitted to the Internal Revenue Service on the issue or it may be in the form of a letter which

certifies the exact amount of bonds to be issued and the projected date of the issue.

(C) In response to the issuing authority's issue amount certificate required by subsection (B) of this section, the secretary of the state authority is authorized to issue and, as may be necessary, to revise a certificate making final the ceiling allocation previously approved by the state authority on a tentative basis, if the secretary of the state authority determines that:

(1) the issuing authority's issue amount certificate specifies an amount not in excess of the approved tentative ceiling allocation amount;

(2) the issue amount certificate was received prior to the issue date projected and that the certificate is dated not more than ten days prior to the issue date projected; provided, however, that if an issue amount certificate is dated more than ten days prior to the date of issue of the bonds, such certificate shall be void, and a new request must be provided to the secretary of the state authority prior to issuance of the bonds;

(3) the issue date projected is within the time period approved previously for the tentative ceiling allocation; and

(4) the bonds when issued and combined with the total amount of bonds requiring a ceiling allocation included in issue amount certificates previously submitted to the state authority by issuing authorities do not exceed the state ceiling for the calendar year. Except under extraordinary circumstances, the secretary of the state authority shall issue this certificate within two business days following the date the issue amount certificate is received.

(D) In accordance with Section 149(e)(2)(F) of the Internal Revenue Code, the secretary of the state authority is designated as the state official responsible for certifying, if applicable, that certain bonds meet the requirements of Section 146 of the Internal Revenue Code relating to the volume cap on private activity bonds.

(E) Any tentative or final state ceiling allocation granted by the state authority before the effective date of this act remains valid as an allocation of a portion of the volume cap for South Carolina provided under Section 146 of the Internal Revenue Code. The allocations expire in accordance with the law under which they were granted or extended and their validity may be extended or reinstated in accordance with the provisions of Sections 1-11-500 through 1-11-570.

Section 1-11-560. (A) Any state ceiling allocation approved by the state authority is valid only for the calendar year in which it is approved, unless eligible and approved for carry-forward election or unless specified differently in the certificates required by Section 1-11-550.

(B) Unless eligible and approved for carry-forward election or unless specified differently in certificates required by Section 1-11-550, each state ceiling allocation expires automatically if the bonds for which the allocation is made are not issued within ninety consecutive calendar days from the date the allocation is approved by the state authority.

(C) In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the state authority, acting during the period an approved allocation is valid, may but need not extend the period in which an allocation is valid in a single calendar year by thirty-one consecutive calendar days to a total of not more than one hundred twenty-one consecutive calendar days.

(D) In response to a written request by the chairman or other authorized official or agent of an issuing authority, the state authority may but need not reinstate for a period of not more than thirty-one consecutive calendar days in any one calendar year part or all of an allocation approved but not extended previously in accordance with subsection (C) of this section in that same calendar year which has expired. The reinstatement request must certify that the authorized request previously submitted is still true and correct or a new authorized request must be submitted.

(E) A tentative ceiling allocation is canceled automatically if the chairman or other authorized official or agent of the issuing authority fails to deliver the issue amount certificate required by Section 1-11-550 to the secretary of the state authority before the bonds for which the allocation is made are issued.

(F) The chairman or other authorized official or agent of an issuing authority shall advise the secretary of the state authority in writing as soon as is practicable after a decision is made not to issue bonds for which a portion of the state ceiling has been allocated. All notices of relinquishment of ceiling allocations must be entered promptly in the state authority's records by the secretary of the state authority.

(G) Ceiling allocations which are eligible and approved for carry-forward election are not subject to the validity limits of this section. The state authority shall join with the issuing authorities involved in carry-forward election statements to meet the requirements of the Internal Revenue Service.

Section 1-11-570. The state authority may adopt policies and procedures necessary to implement and administer the provisions of this article. All such policies and procedures, and any changes thereto, are subject to review and comment by the Joint Bond Review Committee.

Section 1-11-580. The State Fiscal Accountability Authority shall make quarterly payments on insurance contracts where the annual premium exceeds fifty thousand dollars. The board shall undertake necessary negotiations to implement this requirement. Where fees may be incurred for quarterly rather than annual payments, the State Fiscal Accountability Authority shall determine whether the investment income opportunity is greater or less than proposed fees and shall make the decision which best benefits South Carolina.”

Repeal

SECTION 3. Section 1-11-370 of the 1976 Code is repealed.

Conflicting provisions

SECTION 4. The provisions of Article 3, Chapter 11, Title 1 of the 1976 Code relating to the allocation of state ceiling on issuance of private activity bonds, as amended in this act, shall control if there is any conflict with any other provision of law or regulation, specifically including Regulation 19-103.

Severability

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 6. The provisions of this act are effective for allocations of state ceiling beginning January 1, 2022, and thereafter. For the first year of implementation, the state authority may adopt such special procedures as may be necessary to effect the requirements of this act.

Ratified the 12th day of May, 2022.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2022.

Governor

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**Capital Improvements
Joint Bond Review Committee**

HARVEY S. PEELER, JR.
SENATE
CHAIRMAN

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August 23, 2022

Mr. Grant Gillespie
Executive Director
State Fiscal Accountability Authority
Post Office Box 12444
Columbia, South Carolina 29211

Re: Proposed Ceiling Allocation Plan Pursuant to Act 202 of 2022

Dear Mr. Gillespie:

At its meeting today, the Joint Bond Review Committee reviewed the proposed State Ceiling Allocation Plan for Calendar Year 2023 submitted on behalf of the State Fiscal Accountability Authority for consideration by the Committee pursuant to the provisions of Act 202 of 2022, which provides for among other things publication by the Authority of a State Ceiling Allocation Plan, subject to the review and comment by the Committee. The Committee determined that the Plan for 2023 as presented complies with the provisions of the Act, and recommends its approval.

The proposed Plan for 2023 assigns percentages to private activity bond purposes permitted by the Internal Revenue Code, subject to certain limitations; provides for periodic allocations equally divided among the periods during the year in which allocations are to be made; provides for competitive criteria to achieve highest value and greatest public benefit; provides for allocation of the private activity bond limit for all issuing authorities in response to authorized requests; and provides for limitations on amounts assigned to authorized requests; all in accordance with the Act.

The provisions of the Plan for 2023 apply to allocations of state ceiling beginning January 1, 2023, as required by the Act. The plan also focuses on the statutory requirement that awards of limited state resources are made to projects demonstrating highest value and greatest public benefit, as measured by the relationship of the state resources to the measurable benefit of the project. The Plan further provides for recommendations by the South Carolina Department of Commerce and the South Carolina State Housing Finance and Development Authority, as applicable, to the State Fiscal Accountability Authority, which has ultimate discretion and accountability for approval of the allocation of state ceiling to permitted categories and authorized requests.

**Capital Improvements
Joint Bond Review Committee**

Mr. Grant Gillespie
State Fiscal Accountability Authority
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The Plan for 2023 provides for policies and procedures to effect the purposes of the Act, and closely follows the provisions of the Plan for 2022, except for those aspects of the Plan for 2022 that address the initial year of implementation, and other changes that promote simplification and adaptability for future years.

Consistent with its recommendation for the Plan for 2022, the Committee recommends that the State Fiscal Accountability Authority carefully consider for inclusion in the Plan for 2023 tie breaking criteria for multifamily housing projects in the event that an insufficient amount of limited state ceiling is available to support an allocation for bottom-ranked projects with identical overall rankings, in substance and in order of priority:

Allocation of state ceiling to the project that could be accommodated within the limitation in the event the other project could not; thereafter,

Allocation to a project located within a designated rural area if the other project is not; and thereafter,

Allocation determined solely by the relationship of total state resources to the number of tenants the project is expected to serve, as a determinant of greatest public benefit.

Please advise if you have any questions or need clarification.

Very truly yours,



F. Richard Harmon, Jr.
Director of Research

STATE FISCAL ACCOUNTABILITY AUTHORITY

REGULAR SESSION

MEETING OF August 30, 2022

ITEM NUMBER **18**

AGENCY: State Fiscal Accountability Authority

SUBJECT: Future Meeting

The next regular meeting of the State Fiscal Accountability Authority will be held at 10:00 a.m. on Tuesday, November 1, 2022, in Room 252, Edgar A. Brown Building.

The Authority is also asked to approve the following schedule of proposed meetings for the State Fiscal Accountability Authority for 2023:

Tuesday, January 31

Tuesday, March 28

Tuesday, May 23

Tuesday June 27

Tuesday, August 29

Tuesday, October 17

Tuesday, December 12

AUTHORITY ACTION REQUESTED:

Agree to meet at 10:00 a.m. on Tuesday, November 1, 2022, in Room 252, Edgar A. Brown Building. Additionally, approve the proposed schedule of meetings for calendar year 2023.

ATTACHMENTS: