

## **Section I - Executive Summary**

The mission and values of the Procurement Review Panel (the Panel) include conducting timely hearings to assure both vendors and the State that State contracts are solicited, awarded, and performed in the most effective and fair manner. The Panel's values are based on making unbiased decisions according to the letter of the law as set forth in the Consolidated Procurement Code. The Panel's mission can be divided into the following functions:

- provision of an administrative review of formal protests arising from the solicitation or award of contracts;
- provision of an administrative review arising from the debarment or suspension of a person from consideration for award of a contract;
- provision of an administrative review arising from a contract controversy;
- provision of an administrative review of any other decision, policy, or procedure arising from or concerning the State procurement system

The Panel seeks to provide the best possible services to vendors and agencies of the State in keeping with the integrity of the Consolidated Procurement Code. The Panel is unique in its formation, being composed of five members drawn from the private sector and two State employees, all of whom are appointed by the Governor. Each Panel member brings his or her own experience to bear in independently reviewing how the State procures its goods and services, ensuring that the State's procurement process is transparent, fair, and effective. Moreover, the Panel's composition and specialized purpose allows it to schedule and conduct hearings in a very timely fashion, which is one of its continuing strategic goals. Timely hearings and written decisions from the Panel allow the State to conduct its business efficiently while also guaranteeing fairness to vendors.

The Panel received nine requests for administrative review, or appeals, during fiscal year 2011-2012. Six of those appeals were from formal protests; two were contract

controversies; and one was from the debarment of a vendor. The relatively low number of appeals is attributable to the Panel's legal precedent, which has been established and followed by the Panel for over twenty-nine years. This body of precedent adds order and stability to the State's procurement system. To improve accessibility, the Panel's decisions are posted on the Internet through the MMO website at <http://www.mmo.sc.gov/PS/legal/PS-legal-panel-orders.phtm>. In addition, the Panel publishes its decisions on WestLaw, a legal research service.

The key strategic challenge the Panel faces is the lack of funding for the Panel to perform its primary functions. The Panel has only one full-time employee and one part-time employee, and the Panel's appointed members receive only the most basic State travel compensation for participating in hearings. The Panel has accepted all previous cuts and trimmed our budget to the bare minimum. In fact, the attorney is working more than the 24 hours scheduled. We would like to increase her pay and hours to 28 hours a week and if possible offer her insurance. The Panel will be challenged in the future to meet its goal of efficiently resolving protests and other appeals, thereby ensuring the operation of the public procurement process, without cutting services in light of our shrinking budget.

## **Section II – Organizational Profile**

The main objective of the Panel is established by Subarticle 3, section 11-35-4410 of the Consolidated Procurement Code. As mentioned above, the Panel's primary function is to provide an administrative review of decisions by the Chief Procurement Officers relating to (1) formal protests of the solicitation or award of State contracts; (2) suspension or debarment of individual vendors; (3) contract controversies; and (4) other written decisions, policies, or procedures affecting the state procurement system. These responsibilities are delineated in section 11-35-4410(1) of the Consolidated Procurement Code.

The Panel's key customers are the vendors who participate in the State procurement process and the State agencies which are procuring needed goods and services. Both groups of customers expect the Panel to conduct timely hearings and to ensure that the State's procurement process is open and fair to all participants. Both groups also expect the Panel to apply the provisions of the Consolidated Procurement Code in an independent and impartial manner. The Panel's primary services are providing hearings to aggrieved vendors and resolving the procurement questions presented by the appeal issues. The Panel's product is reflected by its written decisions resolving protests and other procurement issues. The written decisions are available in hard copies and by Internet access. The Panel does not have any key suppliers.

The office is located at 202 Blatt Building on Pendleton Street. The Panel's organizational structure consists of seven Panel members and two staff members. The staff members employed by the Panel are a full-time business manager and a part-time attorney. The attorney position was created to work 24 hours but the attorney works more and is not being compensated for it. We are asking in our budget plan to increase the hours for the attorney from 24 to 28 hours a week. Of the seven Panel members, two

are state employees and the other five are working for or retired from the private sector. The Panel members elect a Chairman and a Vice Chairman, as provided by section 11-35-4410(3) of the Consolidated Procurement code. The Panel's unique composition, with the majority of its members drawn from the private sector, engenders trust among the business community because vendors know their protests and claims will be fairly and independently heard by the Panel's members.

### **Base Budget Expenditures and Appropriations**

<b>Major Budget Categories</b>	<b>10-11 Actual Expenditures</b>		<b>11-12 Actual Expenditures</b>		<b>12-13 Appropriations Act</b>	
	<b>Total Funds</b>	<b>General Funds</b>	<b>Total Funds</b>	<b>General Funds</b>	<b>Total Funds</b>	<b>General Funds</b>
Personal Service	\$75,579.76	\$75,579.76	\$75,754.76	\$75,754.76	\$78,413.00	\$78,413.00
Other Operating	\$15,608.22	\$15,608.22	13,841.78	\$13,841.78	\$17,735.00	\$14,735.00
Special Items	\$	\$	\$	\$	\$	\$
Permanent Improvements	\$	\$	\$	\$	\$	\$
Case Services	\$	\$	\$	\$	\$	\$
Distributions to Subdivisions	\$	\$	\$	\$	\$	\$
Fringe Benefits	\$19,589.54	\$19,589.54	\$20,155.56	\$20,155.56	\$23,154.00	\$23,154.00
Non-recurring	\$	\$	\$	\$	\$	\$
<b>Total</b>	<b>\$110,777.52</b>	<b>\$110,777.52</b>	<b>\$109,752.10</b>	<b>\$109,752.10</b>	<b>\$119,302.00</b>	<b>\$116,302.00</b>

## Other Expenditures

Sources of Funds	10-11 Actual Expenditures	11-12 Actual Expenditures
Supplemental Bills	\$0	\$0
Capital Reserve Funds	\$0	\$0
Bonds	\$00	\$0

## Major Program Area

Program Number and Title	Major Program Area Purpose (Brief)	FY 10-11 Budget Expenditures		FY 11-12 Budget Expenditures		Key Cross References for Financial Results*
Administration	To provide fast, efficient hearings which produce timely orders	State:	110,777.52	State:	103,221.68	7.1 - 7.5
		Federal:		Federal:		
		Other:		Other:	530.42	
		Total:	110,777.52	Total:	103,752.10	
		% of Total Budget:	100%	% of Total Budget:	100%	
		State:		State:		
		Federal:		Federal:		
		Other:		Other:		
		Total:		Total:		
		% of Total Budget:		% of Total Budget:		
		State:		State:		
		Federal:		Federal:		
		Other:		Other:		
		Total:		Total:		
		% of Total Budget:		% of Total Budget:		
		State:		State:		
		Federal:		Federal:		
		Other:		Other:		
		Total:		Total:		
		% of Total Budget:		% of Total Budget:		
Below: List any programs not included above and show the remainder of expenditures by source of funds.						
	Remainder of Expenditures:	State:		State:		
		Federal:		Federal:		
		Other:		Other:		
		Total:		Total:		
		% of Total Budget:		% of Total Budget:		

\* Key Cross-References are a link to the Category 7 - Business Results. These References provide a Chart number that is included in the 7th section of this document.

## **Filing Fee Revenue**

Proviso 83.1 was passed by the General Assembly(See Proviso below)

02-03 Actual receipts from filing fees	\$1,750.00
03-04 Actual Receipts from filing fees	\$3,433.00
04-05 Actual Receipts from filing fees	\$1,750.00
05-06 Actual Receipts from filing fees	\$2,750.00
06-07 Actual Receipts from filing fees	\$2,250.00
07-08 Actual Receipts from filing fees	\$1,750.00
08-09 Actual Receipts from filing fees	\$1,250.00
09-10 Actual Receipts from filing fees	\$2,000.00
10-11 Actual Receipts from filing fees	\$1,250.00
11-12 Actual Receipts from filing fees	\$2,000.00

Effective July 1, 2002, the following proviso in the 2002-2003 Budget Bill was passed by the South Carolina General Assembly.

### **Section 83-S60-Procurement Review Panel**

83.1 (PRP:Filing Fee) Requests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The Panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410. The funds generated by the filing fee shall be retained by the panel and carried forward to be used for the operation of the panel. Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waved.

### **Section Three - Elements of Malcolm Baldrige Award Criteria**

#### **Category 1 Senior Leadership, Governance, and Social Responsibility**

Agency direction comes from the Chairman on a periodic basis if ideas to run hearings more efficiently are suggested. If changes to the Panel's existing procedures are suggested, the Chairman communicates those ideas to the agency attorney, who then sets

them down in writing. The entire Panel will then consider the written changes and decide whether or not to adopt them. In addition the Chairman audits the budget on a monthly basis. The Chairman also has on going communication with the attorney and business manager concerning all issues relating to the Panel. The key performance measures regularly reviewed by the Chairman are making sure our hearings are held with in the time guidelines.

Performance expectations for the attorney and business manager are set by the Chairman in accordance with state guidelines. Their duties are clearly communicated each time a hearing is to be scheduled, held, and orders are prepared and disseminated thereafter.

Organizational values are simply set forth as providing unbiased decisions on procurement appeals and contract controversy issues.

The small size of the agency does not allow for much empowerment or innovation. The Consolidated Procurement Code is strictly followed, without deviation, to accomplish the Panel's goals.

There is an annual learning conference for the entire organization, which is held locally. Employees of the Office of General Services speak to the Panel on new laws, any concerns, and what to expect in future years. This conference is very important. The attorney and the business manager attend seminars and workshops throughout the year specific to their respective duties and area of concentration. We try to stay informed of new procedures and apply them to our specific duties.

The attorney keeps an updated file on ethical questions as they arise.

Our senior leaders do not establish and promote a focus on customers because the Panel must ensure the unbiased opinions of the Panel members. Nevertheless, one of the Panel's guiding principles is to provide the prompt and fair resolution of procurement issues in a manner which serves both the State and its vendors.

Through its attorney, the Panel addresses the impact of its orders on the public by having a question and answer system in place to address new procurement issues when they arise as well as to review how specific issues were handled in the past if the same issues come up again.

## Category 2 - **Strategic Planning**

The Agency's primary strength is to hold administrative review hearings within a short time frame. The whole purpose of the Panel is to provide hearings at the second step of the grievance process for vendors. That is the key objective.

The Panel's action plan is to continue to provide timely, cost-efficient hearings that produce timely orders. The Panel's mandate is to provide these hearings within the budgetary and statutory time limits.

The vendors need a forum to present their cases openly and extensively, and the State needs to have its position heard on what is in the best interest of the State. Everyone expects that protests and appeals will be heard in a reasonable time frame.

Hearings are heard within one to two days. Fortunately, our agency's activities present no substantial societal or other risks. The Panel focuses on presenting orders which represent fair dealings with all parties involved so that society has faith in the procurement process.

Our human resource capabilities are limited to giving the public access to our orders anytime requested. In house human resources are handled by the business manager.

The Panel operates under the time frames set forth in the Procurement Code with some flexibility given to motions by parties involved. The Panel is expected to maintain operations by hearing new protests in a reasonable time frame.

The Panel operates on just the necessities of supplies due to our small budget. We have no contractor/partner needs. The budget cuts have created a risk to the agency's mission to provide hearings on a timely basis.

Our strategic objectives are tracked by keeping records of our hearings and orders, taking minutes of new developments, and researching new and innovative procurement laws. Resources are allocated as needed to hold hearings according to the size and depth of the issues involved as well as addressing the Panel member's needs to attend those hearings.

The Panel communicates and deploys our action plans and performance measures through oral and written communication.

Our objectives are communicated in orders which are available to the public and action plans are designed for Panel members in executive memorandums.

### Strategic Planning

<b>Program Number and Title</b>	<b>Supported Organization Strategic Planning Goal/Objective</b>	<b>Related FY 11-12 and beyond Key Agency Action Plan/Plan/Initiative(s) and Timeline for Accomplishing the plan (s)</b>	<b>Key Cross References for Performance Measures*</b>
I. Administration	To continue the panel's timely, cost efficient hearings that produce timely orders	To provide these hearings within the budgetary and statutory time limits.	7.1-7.5

### Category 3 - **Customer Focus**

Our key customers are vendors and state agencies.

Our customers are identified when we receive written requests for administrative reviews from parties or their attorneys. These written requests spell out what the key requirements are.

We use vendor and agency information to provide the best form of review. Sometimes hearings are not necessary, and the Panel acts on these matters de novo after reviewing motions and/or briefs from the parties.

We usually do not measure satisfaction, but the low number of appeals to higher courts gives us an indication of satisfaction with our orders.

We build positive relationships with vendors and agencies by keeping our phone lines available for pre-hearing questions, by providing hearing records, and supplying updated Panel orders as requested. As previously mentioned, orders are now available through two sources on the Internet.

### Category 4 – **Measurement , Analysis, and Knowledge Management**

We only have hearings and decisions to measure for tracking financial and operational performance.

Our key measures are producing timely hearing and issuing timely orders. This benefits the State by not holding up government contracts.

We ensure data integrity, timeliness, accuracy and security and availability for decision-making by holding de novo hearings, legal research and legal updates.

The data gathered in research is presented to the Panel by the attorney, which provides effective support for decision making. The facts of a case and the applicable Consolidated Procurement Code provisions are the bases for the Panel's decision making. The Panel members review all the information and make an unbiased decision on the case based on the information presented to them by a hearing.

Comparative data comes from prior orders which are similar to new hearings. Those similar decisions are used as precedent to keep rulings consistent over time.



#### Category 5 – **Workplace Focus**

As a two person agency the employees consult each other on all operations and encourage each other by complimenting work well done.

As a two person agency our only means of training is occasional free seminars. It is very difficult to motivate employees and keep morale high when the budget situation is very dire.

Our Chairman and Panel members give us feedback on our work performed. Our Chairman evaluates our job performance each year and offers suggestions if he believes they are necessary. He demands our best performances at all times.

Assessments are informal and verbal. We perform our duties to the best of our abilities.

We maintain a safe and healthy work environment by following State guidelines and building codes.

We maintain a safe, secure and healthy work environment by abiding by the rules and regulations of the Blatt Building.

We have no community involvement as far as the Panel is concerned, unless called upon. We are an appeals board. Each individual member and staff has their own involvement in the community but not as a whole.

#### Category 6 – **Process Management**

Our key processes are holding timely hearings which keep the Panel very successful. We have written procedures which are updated as needed.

Our day to day operations depend upon how many pending appeals we have. We meet key performance requirements by scheduling all hearings in a timely manner and delivering decisions thereafter.

The Panel is always looking for ways to perform more effectively and efficiently.

As a two person agency, our support processes consists mostly of computer operations, which are updated as needed by system warnings.

We have no key supplier/contractor/partner interactions due to the nature of the Panel. We buy supplies as needed by the office, which consists of paper, pens, stamps, all standard supplies that an office needs.

Category 7-**Results**

**Performance Measures**

Fiscal year	2009-10	2010-11	2011-12
◆ Number of Protests filed	7	9	9
◆ Number of hearings held	3	4	4
◆ Number of Protest withdrawn	2	3	0
◆ Settled by Conference Call	0	0	1
◆ Dismissed for failure to follow Procedures	0	0	0
◆ Dismissed on legal grounds	1	2	2
◆ Number of Protests appealed to Circuit Court	0	0	0
◆ Settlement agreement	1	0	1
◆ Cases pending	0	0	1*

\* Case number 2012 -2 in Re: Appeal by TACIO, Inc and Mr. Mark DeGroote was not heard until September 6 and 7<sup>th</sup> due to scheduling issues with attorney's.

Our agency continues to conduct its business as efficiently and as effectively as possible.

- 7.1 The Panel's performance levels and trends for the key measure of mission accomplishment is holding timely hearings and issuing timely orders.
- 7.2 The Panel's performance measures and trends for key measures of customer satisfaction is the lack of hearings appealed to a higher court.
- 7.3 The key measure on financial performance is staying within the agency's budget guidelines.
- 7.4 The key measures of workforce satisfaction including workforce retention are retaining two employees on staff.
- 7.5 The Panel's performance level of organizational effectiveness/operational efficiency is holding timely hearings and issuing timely orders.
- 7.6 The Panel abides by all regulatory/legal requirements.