



PROCUREMENT CODE

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HORRY COUNTY SCHOOLS

APPROVED ON JANUARY 20, 2005

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ARTICLE I
GENERAL PROVISIONS

A. Purpose and Policies. (SC Code §§ 11-35-20, -70; SC Reg. § 19-445-2000)

The underlying purposes and policies of this code are:

1. To provide increased economy in District procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the District and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act, as may be amended.
2. To foster effective broad-based competition for public procurement within the free enterprise system.
3. To develop procurement capability responsive to appropriate user needs.
4. To require the adoption of competitive procurement practices by the District.
5. To ensure the fair and equitable treatment of all persons who deal with the procurement system of the District which will promote increased public confidence in the procedure followed in public procurement.
6. To provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process.
7. To develop an efficient and effective means of delegating roles and responsibilities.
8. To train procurement officials in the techniques and methods of public procurement.
9. To mandate the existence of a structured system of auditing and monitoring in order to assure adherence to the provision of this code.
10. To provide for the coordination and control of information technology activities by the District so as to promote the efficient and effective management and procurement of information technology.
11. To establish policies and procedures relating to the procurement, management, control, and disposal of supplies, services, equipment, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, Title 59 of the South Carolina Code of Laws, and regulations of the State Board of Education. To promote certainty and efficiency, it is the intent of the District to have this Code interpreted as consistently as possible with official interpretations of parallel provisions of the State Consolidated Procurement Code, except in cases of demonstrably unique circumstances or conflicting or ambiguous legal authority affecting the District inapplicable to the State.

Nothing contained in this Code shall be construed to waive any rights, remedies or defenses the District might have under any of the laws of the State of South Carolina or any other State, or under any of the laws or treaties of the United States.

B. Obligation of Good Faith. (SC Code § 11-35-30)

Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

C. Application of This Code. (SC Code §§ 11-35-40, -50, -70)

1. General Application. This code applies only to contracts solicited or entered into after the effective date of this code unless the parties agree to its application to a contract entered into prior to its effective date.
2. Application to District Procurement. This code shall apply to every expenditure of funds by the District under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in "Compliance with Federal Requirements." It shall also apply to the disposal of District supplies as provided in Supply Management except real property as defined in Board policy. The provisions of this code shall apply to all procurements of information technology elements irrespective of the source funds whether appropriated or not.

3. Compliance with Federal Requirements. Where procurement involves the expenditure of federal assistance or contract funds, the District shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in the code. Notwithstanding, where federal assistance or contract funds are used in procurement by the District, requirements that are more restrictive than federal requirements shall be followed.
 4. Use of Public Funds. The acquisition of any facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of the District which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this Code in the same manner as any governmental body. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by standards and principles established by the State Auditor.
- D. Purchase from Entity Employing Prison Inmates of Another State. (SC Code § 11-35-55)
The District may not accept any proposals from or procure any goods or services from an entity, which employs or uses inmates of a correctional system of another state who are not paid at least the required federal minimum wage for work performed in the manufacturing, processing, or supplying of those goods or services.
- E. Written Determinations. (SC Code § 11-35-210)
Written determinations and findings required by the code shall be retained in an official contract file by the District. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit.
- F. Public Access to Procurement Information. (SC Code § 11-35-410)
1. Procurement Information. Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a "Request for Proposals" or any type of bid solicitation, which is privileged and confidential, need not be disclosed. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information would include:
 - Customer lists.
 - Design recommendations and identification of prospective problem areas under an RFP.
 - Design concepts, including methods and procedures.
 - Biographical data on key employees of the Bidder.
 2. Evaluative Documents. Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.
 3. Confidential Information. At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying.
- G. Gifts-in-Kind. (SC Code § 11-35-475)
The District may accept gifts-in-kind of architectural or engineering services, or both, and items of construction of value less than two hundred fifty thousand dollars (\$250,000), provided that these gifts may not be made or accepted if these gifts are offered with intent of influencing the judgment of any governmental body. No other approvals or procedural requirements, including the provisions this Code, may be imposed on the acceptance of these gifts.

ARTICLE II
DEFINITIONS OF TERMS

A. Definitions. (SC Code § 11-35-310; 11-35-1410; 11-35-2610; 11-35-2910; 11-35-4610; 11-35-5010; SC Reg. § 19-445.2150; 19-445.2160)

Terms used in this code, unless the context clearly indicates otherwise, shall mean:

1. Architect, Engineer and Land Surveying Services means those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of the State of South Carolina, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultants, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.
2. Board means the Board of Education of the Horry County Schools.
3. Brand Name Specification means a specification limited to one (1) or more items by the manufacturer's name or catalog number.
4. Brand Name or Equal Specification means a specification which uses one (1) or more manufacturer's name or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet District requirements, and which provide for the submission of equivalent products.
5. Business means any corporation, partnership, individual, sole proprietorship, joint- stock company, joint venture or any other legal entity.
6. Change order means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract
7. Construction means the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
8. Construction Management Services means those professional services associated with a system in which the using agency directly contracts with a professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of a District project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.
9. Contract means all types of District agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, equipment or construction.
10. Contract modification means a written order signed by the Procurement Director, directing the Contractor to make changes, which the changes clause of the contract authorizes the Procurement Director to order without the consent of the Contractor.
11. Contractor means any person having a contract with the Horry County Schools.
12. Cooperative Purchasing means procurement conducted by, or on behalf of, more than one (1) public procurement unit.
13. Cost Reimbursement Contract means a contract under which a Contractor is reimbursed for costs, which are allowable and allocable in accordance with the cost principals and a fee, if any.
14. Cost effectiveness means the ability of a particular product or service to efficiently provide goods or services to the District. In determining the cost effectiveness of a particular product or service, the Procurement Director shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.
15. Catalog Price means the price included in a catalog, price list, schedule or other form that:
 - Is regularly maintained by a manufacturer or vendor of an item.
 - Is either published or otherwise available for inspection by customers.
 - States prices at which sales are currently or were last made to a significant number of

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- buyers constituting the general buying public for the supplies or services involved.
16. Data means recorded information, regardless of form or characteristics.
 17. Day means calendar days. In computing any period of time prescribed by this code or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday or a legal holiday for the District, then the period shall run to the end of the next business day.
 18. Debarment means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the District, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.
 19. Designee means a duly authorized representative of a person with formal responsibilities under the code.
 20. District means a governmental entity governed by an elected Board of Education, which appoints a Superintendent to carry out policies established by the Board. This refers to the Horry County Schools hereinafter referred to as the "District".
 21. Economically Disadvantaged Individuals means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area that are not socially disadvantaged.
 22. Eligible Non-Profit Health or Educational Institution means tax-exempt entities duly incorporated as such by the State.
 23. Employee means an individual receiving a salary from the District and any non-salaried individual performing personal services for the District.
 24. External Procurement Activity means any buying organization not located in this State, which would qualify as a public procurement unit, or buying by the United States government.
 25. Grant means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award the primary purpose of which is to procure specified end products, whether in the form of supplies, services, equipment or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract
 26. Information Technology (IT) means data processing, telecommunications and office systems technologies and services:
 - a. Data processing means the automated collection, storage, manipulation and retrieval of data including: central processing units for micro, mini and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, offline memory storage and printing systems, data transmission equipment; and related software such as operating systems, library and maintenance routines and applications programs.
 - b. Telecommunications means voice, data, message and video transmissions, and include the transmission and switching facilities of public telecommunications systems, as well as operating and network software.
 - c. Office systems technology means office equipment such as typewriters, duplicating and photocopy machines, paper forms and records, microfilm and microfiche equipment and printing equipment and services.
 - d. Service means the providing of consultant assistance for any aspect of information technology, systems, and networks.
 27. Invitation for Bids means a written or published solicitation, including all documents whether attached or incorporated by reference, utilized for soliciting bids and issued by the Procurement Director or Buyer to contract for the procurement or disposal of stated supplies, services, equipment or construction, which will ordinarily result in the award of the contract to the responsible Bidder making the lowest responsive bid.
 28. Junk means District-owned supplies and equipment having no remaining useful life in public service or the cost to repair or to refurbish the property in order to return it to public use would exceed the value of like used equipment with remaining useful life.

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29. Local Public Procurement Unit means any political subdivision or unit thereof, which expends public funds for the procurement of supplies, services, equipment or construction.
30. Mandatory Opting means the requirement for a local procurement unit to choose whether to utilize a state contract before it is established as prescribed in regulation by the State.
31. Minority Business Enterprise is a business, which has been certified as a socially and economically disadvantaged small business.
32. Minority Person means a United States citizen who is economically and socially disadvantaged.
33. OSMBA means the Office of Small and Minority Business Assistance.
34. Political Subdivision includes counties, municipalities, school districts, public service or special purpose districts.
35. Procurement means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services, equipment or construction. It also includes all functions that pertain to the obtaining of any supply, service, equipment or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
36. Procurement Department means the procurement unit of the District.
37. Procurement Director means the person holding the primary management position for the District's procurement services.
38. Procurement Official or "Buyer" mean any person acting within the scope of his authority and duly authorized by the District to enter into and administer contracts and make written determinations and findings with respect thereto.
39. Public Procurement Unit means either a local public procurement unit or a state public procurement unit.
40. Purchase Description means specifications or any other document describing the supplies, services, equipment or construction to be procured.
41. Qualified Products List means an approved list of supplies, services, equipment or construction items described by model or catalog number, which prior to the competitive solicitation, the district has determined will meet the applicable specification requirements.
42. Real Property means any land, all things growing on or attached thereto, and all improvements made thereto-including buildings and structures located thereon.
43. Request for Proposals (RFP) means a written or published solicitation, including all documents whether attached or incorporated by reference, utilized for soliciting proposals and issued by the Procurement Director or Buyer for proposals to provide supplies, services, equipment or construction, which will ordinarily result in the award of the contract to the responsible Bidder making the proposal determined to be most advantageous to the District. The award of the contract shall be made on the basis of evaluation factors, which must be stated in the RFP.
44. Responsible Bidder or Offeror means a vendor who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability to assure good faith performance, which may be substantiated by past performance.
45. Responsive Bidder means a vendor who has submitted a bid, which conforms in all material aspects to the invitation for bids.
46. Services means the furnishing of labor, time, or effort by a Contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management and related services. This term shall not include employment agreements or services for information technology within paragraph 1(d) of these definitions.
47. Small Business means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 C.F.R Section 121 (1989). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of

materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

48. Socially and Economically Disadvantaged Small Business means any small business concern which:
 - a. Is at least fifty-one percent (51%) owned by one (1) or more citizens of the United States who are determined to be socially and economically disadvantaged.
 - b. In the case of a concern, which is a corporation, fifty-one percent (51%) of all classes of voting stock or such corporation must be owned by an individual determined to be socially and economically disadvantaged.
 - c. In the case of a concern, which is a partnership, an individual must own fifty-one percent (51%) of the partnership interest or individuals determined to be socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.
49. Socially Disadvantaged Individuals mean those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include but are not limited to Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, Asians and women regardless of race or origin.
50. Specification means any description of the physical, functional, or performance characteristics or of the nature of a supply, service, equipment or construction item. A specification includes, as appropriate, requirements for inspecting, testing or preparing a supply, service, equipment or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeable throughout this Code.
51. Specification for a common or General Use Item means a specification, which has been developed and approved for repeated use in procurements.
52. State Public Procurement Unit means the offices of the chief procurement officers and any other purchasing agency of this state.
53. Subcontractor means any person having a contract to perform work or render a particular service for a prime Contractor as a part of the prime Contractor's agreement with the District.
54. Supplies means all personal property, including but not limited to equipment, materials, printing, and insurance.
55. Surplus Property means all supplies and equipment, not in actual public use, with remaining useful life and available for disposal. This definition excludes the disposal of solid and hazardous wastes as defined by any federal, state or local statutes and regulations. Property so defined as solid or hazardous waste shall not be relocated, nor title assumed under the authority of these regulations.
56. Suspension means the disqualification of a vendor to receive invitations for bids, requests for proposals, or the award of a contract by the District, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a vendor is suspected upon probable cause of engaging in criminal, fraudulent or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.
57. Term contract means a contract established by the Procurement Director or Buyers for a specific product or service for a specified time and for which it is mandatory that the District procure their requirements for such goods and services during its term. If the District is offered goods and services at a price that is at least ten percent (10%) less than the term contract price for the same goods and services, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. If the vendor holding the term contract meets the lower price, then the District must purchase from the contract vendor. A term contract may be a multi-term contract as provided by this Code.

ARTICLE III
PROCUREMENT ORGANIZATION

- A. Centralization of Materials Management Authority. (SC Codes § 11-35-510; 54-19-130)
All rights, powers, duties and authority relating to the procurement of supplies, equipment, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services are vested in the Board of Education. Exercise of this authority shall be consistent with this Code, the scope of delegations provided for herein, as well as all other provisions of this Code.
- B. Authority and Duties of the Board of Education. (SC Code §§ 11-35-540; 59-19-130 et. seq.)
1. Authority to Promulgate Policies. The Board of Education has the ultimate authority and responsibility to promulgate policies governing the procurement, management, control and disposal of any and all supplies, services, equipment and construction to be procured by the District. Such policies shall be binding in all procurements made by the District.
 2. Non-delegation. The Board of Education shall not delegate its power to promulgate policies.
 3. Board Oversight. The Board of Education as a whole shall consider and decide matters of policy within provisions of this code, including those referred to it by the Superintendent. The Board of Education shall have the power to audit and monitor the implementation of its policies and the requirements of this code.
- C. Procurement Policies Advisory Committees. (SC Code § 11-35-530).
The following advisory committees may be established by the Board or the Superintendent:
- Purchasing policies and procedures advisory committee to discuss the performance of public purchasing and to consider specific methods for improvement.
 - Information technology and procedures advisory committee to discuss the purchasing performance of information technology and to consider specific methods for improvement.
 - Construction, Architect, Engineer, construction management and land surveying services advisory committee to discuss the purchasing performance of these services and to consider specific methods of improvement.
- D. Authority and Duties of the Superintendent. (SC Code §§ 11-35-510, -840; SC Reg. § 19-445.2000(B))
The Board delegates to the Superintendent all authority and responsibilities for conducting procurement on behalf of the District in a manner consistent with this Code and Board policy. The Superintendent shall be responsible for developing such organizational structure and procedures (including a Procurement Manual) as necessary to implement the provisions of this Code. The Superintendent may delegate such authority to the Procurement Director or other designees.
- E. Exemptions. (SC Code §§ 11-35-710, 59-19-270)
The Board of Education may exempt specific supplies or services from the purchasing procedures herein required or withdraw any exemptions provided for in this section. The District adopts the exemptions granted by the State Budget and Control Board both present and future. The following exemption categories are granted by the Board of Education:
1. Copyrighted Educational Materials to include, but not be limited to:
 - a. Books, dictionaries, textbooks, newspapers, diplomas
 - b. Professional journals, technical pamphlets, periodicals, subscriptions
 - c. Educational films, filmstrips, slides and transparencies
 - d. Video tapes, cassettes, DVDs
 - e. Standardized testing materials
 2. Copyrighted Technology Materials to include, but not be limited to:
 - a. Computer assisted instructional materials, interactive video programs
 - b. CD-ROM documents, data bases

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- c. District adopted instructional software, including site licenses, or other support services or related information/materials only available or provided by the software Provider
3. Medical and/or Psychological Services to include, but not be limited to:
 - a. Licensed/certified medical doctors, physicians, nurses, psychiatrists, psychologists, school psychologists, behaviorists, counselors, optometrists, dentists, etc.
 - b. Hospital and clinical services, occupational and physical therapy, orientation and mobility
 - c. Speech, language and audiological services
 - d. Hepatitis B and other vaccines
4. Governmental Services to include, but not be limited to:
 - a. Services and supplies provided by the Federal government, State agencies, county, city or town governments, and special purpose Districts
 - b. Payments of taxes, social security, annuities, credit unions
 - c. School Resource Officer services
 - d. Professional artists utilized by S.C. Arts Commission
5. Educational Services to include, but not be limited to:
 - a. Contractual, cooperative agreements, services and supplies for provision of services to students
 - b. Tuitions paid to institutions of higher education
 - c. Evaluation services such as visiting committees of the Southern Association of Colleges and Schools
6. Policy and Legal Services to include, but not be limited to:
 - a. Attorney services (subject to Board approval), court recorders, expert witness services\Bond rating services
 - b. Legislative consultant
 - c. Advertising
 - d. Primary and reinsurance coverage
 - e. Goods and services of a confidential/sensitive nature that would cause injury to students, staff and/or District if procured through public solicitation, as recommended by administration and approved by Superintendent on an "as needed" basis
7. Staff Development to include, but not be limited to:
 - a. Training provided by consultants, certified teachers/trainers or District personnel
 - b. Training materials secured or prepared for instructional purposes
 - c. Workshop, conference, seminar registrations
 - d. Travel
8. Student Services to include, but not be limited to:
 - a. Pupil activity funds
 - b. Test scoring services
 - c. Canine Drug and/or weapon detection services and related support services
 - d. Homebound services
 - e. Home visits
 - f. Instruction provided by certified teachers
 - g. Professional dues and membership fees
 - h. Clergy
 - i. Travel
9. Utilities and Energy Expenses to include, but not be limited to, fuel, propane, electric, telephone, cell phones, water/sewer
10. Refunds to include, but not be limited to, refunds of health insurance, earnest monies, bid securities, or other funds temporarily entrusted to the District
11. Art Reproductions
12. Emergency Repairs
13. Items Purchased for Resale
14. Livestock, Feed and Veterinary Supplies and Services
15. Mail and Delivery Services
16. Perishable Foods

17. Option to Transfer Surplus Property to Governmental Bodies, Political Subdivisions, and Eligible Nonprofit Health or Education Institutions. When the Director of Procurement or the Director's designee identifies surplus personal property of the type that may be of special interest to political subdivisions, or to eligible nonprofit health or educational institutions, the following method of offering priority direct purchases may be employed:

- a. Determination of Sale Price. The sale price for all items will normally be fair market value as determined by the Director of Procurement or a designee using commercially reasonable pricing methods. However, the Director of Procurement or a designee may negotiate for a fair and reasonable return for disposition of the property to a political subdivision or eligible nonprofit health or educational institution that includes consideration of indirect benefits resulting to the public from the disposition and proposed future use of the property by the political subdivision or eligible nonprofit health or educational institution.
- b. Terms and Conditions on Property Transferred. For any purchases made under this subsection, the purchasing entity will certify that all items acquired will be for the sole benefit of the buying institution and that no personal use will be involved. The following terms and conditions are automatically incorporated into every sale pursuant to this method of disposition:
 - i. Property must be placed into public use within one (1) year of acquisition and remain in use one (1) year from the date placed into actual use.
 - ii. Property which becomes unusable may be disposed of prior to the one-year limitation with the approval of the Director of Procurement.
 - iii. A utilization visit may be made by authorized personnel of the District.
 - iv. Any misuse of property will be reported in writing to the Director of Procurement. Upon determination that misuse of property has occurred, purchasing privileges will be terminated and not restored until the buying political subdivision, or nonprofit health or educational institution pays to the District the fair market value of the item(s) misused or returns the misused property to the District.
 - v. If indirect benefits resulting to the public are a substantial part of the consideration for the disposition, the District may impose additional limitations and monitoring requirements upon the future use of the property.
- c. Disposition Method. At the discretion of the Director of Procurement in light of the quantities, types, and likely market for the personal property, the surplus property may be made available to political subdivisions and nonprofit health or educational institutions for purchase pursuant to this method either prior to, or concurrent with, any other process of disposition.
- d. Notices and Advertisement. The Director of Procurement shall use commercially reasonable means of informing potential interested purchasers of the availability of items offered for sale pursuant to this disposal method. Public electronic posting of the availability of types or categories of available items is sufficient.

F. Advisory Committees and Training. (SC Code § 11-35-530)

- 1. Relationship with End Users. (SC Code §§ 11-35-1010, -1020) The Procurement Director and Buyers shall maintain a close and cooperative relationship with the end user. The Procurement Director or Buyers shall afford each end-user reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the District.
- 2. Advisory Groups. (SC Code § 11-35-1020) The Procurement Director or Buyers may appoint advisory groups such as user committees to assist with respect to specifications and procurement in specific areas and with respect to any other matters within the authority of the Procurement Director or Buyers. They shall develop methods for obtaining necessary and relevant information, whether through user committees or by surveys and other methods. They shall make every reasonable effort to ensure that such contracts are developed as will best suit the interest of the District, giving due emphasis to user needs, total costs and open competitive methods of public purchasing.
- 3. Professional Development. (SC Code § 11-35-1030) The Procurement Director shall develop

and implement an organized professional development program for purchasing personnel. These activities should be correlated with the District program of staff development.

G. Procurement Auditing and Authorizations.

1. Certification. (SC Code § 11-35-1210 ; SC Reg § 19-445.2015)
 - a. Authority. The Superintendent may assign differential dollar limits below which the Procurement Director and Buyers may make direct procurements not under term contracts.
 - b. Unauthorized Procurements. The ratification of an act obligating the District in a contract by any person without the requisite approval to do so by an appointment or delegation under the Procurement Code rests with the Superintendent or Chief Financial Officer. The ratification of unauthorized procurements by the superintendent shall be limited to an amount of one hundred and fifty thousand dollars (\$150,000.00) and the Chief Financial Officer shall be limited to one hundred and twenty-five thousand dollars (\$125,000.00). The Board of Education shall ratify unauthorized purchases over one hundred and fifty thousand dollars (\$150,000.00).
 - c. Corrective Action and Liability. The Superintendent or the Chief Financial Officer shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent reoccurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable.
 - d. Policy. Authorizations granted by the Board of Education to the Superintendent are subject to the following:
 - i. Adherence to the provisions of this Code particularly concerning competitive procurement methods.
 - ii. Responsiveness to user needs.
 - iii. Obtaining of the best prices for value received.
 - e. Adherence to Provisions of the Code. Procurements shall be subject to the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.
2. Collection of Data Concerning Public Procurement. (SC Code § 11-35-1220) The Procurement Director shall prepare statistical data concerning the procurement use and disposition of supplies, services and equipment. The Procurement Director shall prescribe forms to be used by the end users in requisitioning of supplies, equipment and services. The Procurement Director shall limit requests for information to those items necessary for the effective operation of the purchasing system, but end users shall be required to provide information if requested.
3. Procurement Auditing. (SC Code § 11-35-1230) The Superintendent through consultation with the Procurement Director shall develop written plans for the auditing of procurements. A procurement audit must be performed a minimum of every three (3) years by an audit firm approved by the Office of General Services or performed by General Services. Costs associated with the internal review and audits are the responsibility of the District and will be paid to the entity performing the audit.
4. Administrative Penalties. (SC Code § 11-35-1240) Violation of these provisions shall be grounds for loss of or reduction in authority delegated by the Superintendent.

H. Contracts for Certain Services.

1. Authority to Contract for Auditing or Accounting Services. (SC Code § 11-35-1250; SC Reg. § 19-445-2025(E), Board Governance EL8, 7) No contract for auditing or accounting services shall be awarded without the approval of the Board or Superintendent.
2. Authority to Contract for Legal Services. (SC Code § 11-35-1260; SC Reg. § 19-445-2025(D)) No contract for the services of attorneys shall be awarded without the approval of the Superintendent and the Board.
3. Authority to Secure Certain Services on a Fee Basis. (SC Code § 11-35-1270; SC Reg. § 19-445-2025) For the purpose of procuring any professional services not included in the purchasing authority of this Code, where the person employed is customarily employed on a

fee basis rather than by competitive bidding, the District may contract for such services on a fee basis rather than by term contract, including but not limited to the following services:

- a. Consultant Services. An individual, partnership, corporation or any other legally established organization performing consulting services for or providing consulting advice to the District, or any group or organization over whom the District has the right of control as to the result to be accomplished but not as to the details and means by which that result is to be accomplished.
- b. Employee Services. An individual performing services directly for the District, or any group or organization over whom the District has the right of control not only as to the result to be accomplished by the work but also as to the details and means by which that work is to be accomplished. Services, which fall within this definition, shall be procured in accordance with District personnel policies and procedures.
- c. Employment Services. An individual performing services indirectly for the District, or any governmental body thereof, whose services are obtained through a private employment agency. The employee-employer relationship exists between the private employment agency and its employee. The District, or any governmental body, will contract with the private employment agency for the services of it employees.

ARTICLE IV
SOURCE SELECTION AND CONTRACT FORMATION

- A. Methods of Source Selection. (SC Code § 11-35-1510)
1. Competitive Sealed Bidding Exceptions. Unless an exception is provided by this Code, District contracts shall be awarded by competitive sealed bidding. Exceptions, as more fully described in this Code, include:
 - Authority to Contract for Auditing or Accounting Services (III.H.1)
 - Authority to Contract for Legal Services (III.H.2)
 - Authority to Secure Certain Services on a Fee Basis (III.H.3)
 - Request for Qualifications (IV.A.3)
 - Competitive Fixed Price Bidding (IV.A.4)
 - Fixed Price Bidding (IV.A.5)
 - Competitive Best Value Bidding (IV.A.6)
 - Best Value Bidding (IV.A.7)
 - Competitive On-Line Bidding (IV. A. 8)
 - Competitive Sealed Proposals (IV.A.9) (X.D.2.c)
 - Small Purchases (IV.A.10)
 - Blanket Purchase Agreements (IV.A.11)
 - Sole Source Procurement (IV.A.12)
 - Emergency Procurements (IV.A.13)
 - Procurements at Auction (IV.A.14)
 - Information Technology Procurements (IV.A.15) (XIII.F)
 - Prequalification of Supplies and Suppliers (IV.A.16)
 - Professional Services for Construction (X.B)
 - Real Property Acquisition (X.C)
 - Construction Contracting Administration (X.E)
 - Negotiations After Unsuccessful Competitive Sealed Bidding (X.D.2.b.viii)
 - Indefinite Delivery for Construction Services (X.J.1.a)
 - Indefinite Delivery for Architectural, Engineering and Land Surveying Services (X.J.1.b)
 - Cooperative Purchasing (XIII.A)
 - Selective Mandatory Opting (XIII.B)
 - Joint Use of Facilities (XIII.E)
 2. Competitive Sealed Bidding. (SC Code § 11-35-1520)
 - a. Condition for Use. (SC Code § 11-35-1520(1)) The preferred procurement technique, competitive sealed bidding, should not be used in all instances. This is a price determinate method of procurement and is best applied where the needs of the District are precise and certain and may be secured from any number of potential suppliers based upon formal bid requirements for which bid specifications can be developed to assure adequate competition requiring a minimum number of Bidders. Unless otherwise provided for by this Code, all contracts and the purchase of supplies, materials, equipment and contractual services exceeding \$25,000.00 will be by formal, sealed bid. These bids will be conducted only by the authorized Procurement Officer and as otherwise provided in this Code.
 - b. Invitation for Bids. (SC Code § 11-35-1520(2); SC Reg. § 19-445-2030) An invitation for bids shall be issued in an efficient and economical manner to include specifications and all contractual terms and conditions applicable to the procurement. Bidding time will be set to provide Bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined by the Procurement Director or designee. The invitation for bids shall be the document used to initiate a competitive sealed bid procurement and shall include the following:

- i. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, and any other special information.
 - ii. Purchase description, specifications, delivery and performance schedule, and such inspection and acceptance requirement as are not included in the purchase descriptions.
 - iii. All contract terms and conditions, including warranty and bonding or other security requirements as applicable, and
 - iv. Instructions to bidders to visibly mark as confidential each part of their bid, which they consider to be proprietary information.
 - v. Statement of a bidder's right to protest under this Code.
- c. Notice. Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the County such as the Sun News or in the State such as "South Carolina Business Opportunities" or through a means of central electronic advertising as approved by the Superintendent.
- d. Receipt and Safeguarding of Bids. (SC Code § 11-35-1520(4); SC Reg. § 19-445.2045) All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided for elsewhere, unopened in a bid file. If an invitation for bids is canceled, bids shall be returned to the Bidders. Necessary precautions shall be taken to insure the security of the bid file. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to District employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.
- e. Unidentified Bids. Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Procurement Director or designee. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the Procurement Director. The Procurement Director or buyers shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his/her signature, and then shall immediately reseal the envelope.
- f. Bid Opening. (SC Reg. § 19-445.2050)
- i. Postponement. If it becomes necessary to postpone a bid opening, the procurement officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid opening.
 - ii. Public Opening. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids and in the following manner. The Procurement Director shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded.
 - iii. Bid Tabulation. The amount of each bid and such other relevant information, together with the name of each Bidder, shall be tabulated. The tabulation shall be open to public inspection.
 - iv. Disclosure of Information. Only the information disclosed by the Procurement Director or designee at the bid opening is considered to be public information under the Freedom of Information Act, Chapter 3 of Title 30, until the award is made or until the intent to award is issued.
 - v. Notice of Posting. The anticipated date and location for the posting of the notice of an intended award shall be announced at bid opening.
- g. Bid Acceptance and Bid Evaluation. (SC Reg. § 19-445.2055) Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be

used in bid evaluations that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and this Code. When necessary for the best interest of the District, bid criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life-cycle costs.

- h. Telegraphic Bids. As a general rule, telegraphic bids will not be authorized. When, in the judgment of the Procurement Director, the date for the opening of bids will not allow Bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, sealed telegraphic bids may be authorized. (SC Reg. § 19-445.2060)
- i. Rejection of Bids. (SC Reg. § 19-445.2065) Unless there is a compelling reason to reject one (1) or more bids, award will be made to the lowest responsible and responsive Bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective Bidders of any resulting modification or cancellation, thereby permitting Bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and re-advertised due solely to increased requirements for the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.
- j. Cancellation of Bids Prior to Award. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening, but prior to award, when such action is consistent with Subsection 1 above and the Procurement Director determines, in writing, that any of the following has occurred:
 - i. Inadequate or ambiguous specifications were cited in the invitation.
 - ii. Specifications have been revised.
 - iii. Supplies or services being procured are no longer required.
 - iv. Invitation for Bids did not provide for consideration of all factors of cost to the District, such as cost of transporting District furnished property to Bidders' plants.
 - v. Bids received indicate the needs of the District can be satisfied by a less expensive article differing from that on which the bids were invited.
 - vi. All otherwise acceptable bids received are at unreasonable prices.
 - vii. Bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - viii. For other reasons, cancellation is in the best interest of the District.Determinations to cancel invitations for bids shall state the reasons therefore.
- k. Extension of Bid Acceptance Period. Should administrative difficulties be encountered after the bid opening, which may delay award beyond Bidders' acceptance periods, the several lowest Bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.
- l. Rejection of Individual Bids. (SC Reg. § 19-445.2070)
 - i. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.
 - ii. Alternate Bids. Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.
 - iii. Nonresponsive Bids. Any bid which fails to conform to the delivery schedule, or permissible alternate thereto stated in the invitation for bids may be rejected as non-responsive.

- iv. Modification of Requirements by Bidder. Ordinarily a bid should be rejected when the Bidder attempts to impose conditions, which would modify requirements of the invitation for bids or limit his liability to the District, since to allow the Bidder to impose such conditions would be prejudicial to other Bidders. For example, bids should be rejected in which the Bidder a) attempts to protect him against future changes in conditions, such as increased costs, if total possible cost to the District cannot be determined; b) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;" c) states a price but qualified such price as being subject to "price in effect at time of delivery;" d) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his/her bid is to be considered only if, prior to date of award, the Bidder receives (or does not receive) award under a separate procurement; e) requires the District to determine that the Bidder's product meets specifications; or f) limits the rights of the District under any contract clause. The lowest responsive and responsible Bidder may be requested to delete objectionable conditions from his bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other Bidders.
- v. Price Unreasonableness. Any bid may be rejected if the Procurement Director determines in writing that it is unreasonable as to price.
- vi. Bid Guarantee Requirement. When a bid guarantee is required and a Bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.
- vii. Unsigned Bids. Unsigned bids shall be rejected unless a representative of the company who has the authority to sign is present at the bid opening and if discovery is made prior to the reading of any bids for that procurement, the representative may be allowed to sign the bid.
- viii. Exceptions to Rejection Procedures. Any bid, proposal, response to invitation, or qualification statement received after the Procurement Director or designee has declared that the time set for bid opening has arrived, shall be rejected unless a bid, proposal, response to invitation, or qualification statement was in the possession of the purchasing office and had been misplaced by District employees in that office. In this event, the Superintendent, the Procurement Director, or Buyers shall annotate the bid tabulation and consider the misplaced bid, proposal, response to invitation, or qualification statement along with the other previously received bids, proposals, responses to invitation, or qualification statements.
- ix. All or None Qualifications. (SC Reg. § 19-445.2075). Unless the invitation for bids so provides, a bid is not rendered non-responsive by the fact that the Bidder specifies that the award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, Bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affects the rights of other Bidders.
- m. Correction or Withdrawal of Bids; Cancellation of Awards. (SC Code § 11-35-1570(7); SC Reg. § 19-445-2085) Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts, after award but prior to performance may be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition shall be permitted. Except as otherwise provided, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts after award but prior to performance, shall be supported by a written determination of appropriateness made by the Procurement Director.
 - i. General Procedures. After bid opening, a Bidder or Offeror must submit in writing a request to withdraw a bid to the Procurement Director or Buyer. Each written request must document the fact that the Bidder or Offeror's mistake is clearly an error that will cause him substantial loss.

- ii. Correction Creates Low Bid. To maintain the integrity of the competitive sealed bidding system, a Bidder shall not be permitted to correct a bid mistake after bid opening that would cause such Bidder to have the low bid unless the mistake, in the judgment of the Procurement Director, is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.
- iii. Cancellation of Award Prior to Performance. When it is determined after an award has been issued but before performance has begun that the District's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either re-awarded or a new solicitation issued, if the Procurement Director determines in writing that a) inadequate or ambiguous specifications were cited in the invitation; b) specifications have been revised; c) supplies or services being procured are no longer required; d) invitation did not provide for consideration of all factors of cost to the District, such as cost of transporting state furnished property to Bidders' plants; e) bids received indicate that a less expensive article differing from that on which the bids were invited can satisfy the needs of the District; f) bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; g) administrative error of the Procurement Department discovered prior to performance; or h) for other reasons cancellation is clearly in the best interest of the District.
- n. Discussion with Bidders. (SC Code § 11-35-1520(8)) As provided in the invitation for bids, discussions may be conducted with apparent responsive Bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the Procurement Department's sole judgment, needing clarification shall be accorded such an opportunity.
- o. Tie Bids. (SC Code § 11-35-1520(9)) In the event two (2) or more Bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
 - i. Tie bids involving a South Carolina firm and an out-of-state firm, the award shall be made automatically to the South Carolina firm.
 - ii. Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the state shall be resolved in favor of the South Carolina commodity.
 - iii. Tie bids involving South Carolina firms shall be resolved by the flip of a coin in the Procurement Department witnessed by at least two (2) people.In all other situations where bids are tied, the award will be made by the Procurement Director to the tied Bidder offering the quickest delivery time, or if the Bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the Procurement Department witnessed by at least two (2) people.
- p. Intent to Award. (SC Code § 11-35-1520(10); SC Reg. § 19-445.2090) Unless there is a compelling reason to reject bids, notice of an intended award of a contract to the lowest responsive and responsible Bidder(s) whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of a Bidder's right to protest and the anticipated date and location of posting must be announced at bid opening. The procurement officer shall issue the notice of intent to award or award on the date announced at the bid opening, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of a time extension to each Bidder by posting it at the location announced at the bid opening. Prior to the posting of the award, the District may negotiate with the lowest responsive and responsible Bidder to lower his bid within the scope of the invitation for bids. When a contract has total or potential value in excess of fifty thousand dollars (\$50,000), in addition to the posted notice, notice of an intended award must be given to all Bidders responding to the solicitation, except when only one (1) response is received. Such notice must contain a statement of the Bidder's right to protest. When a contract has a total or potential value in excess of fifty thousand dollars (\$50,000), sixteen (16) days after notice is given the District may enter a contract with the Bidder named in the

- notice in accordance with the provisions of this code and of the bid solicited. When only one (1) response is received, the notice of intended award and the sixteen (16) day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section IV.C (Responsibility of Bidders and Offerors) of this Code.
- q. Notice of Award. Written notice of award shall be sent to the successful Bidder in procurements over \$25,000.00. Notice of award shall be made available to the public on request and shall be posted at the location announced at the bid opening.
 - r. Contract Award. The contract award shall be made within thirty (30) days from the bid opening unless the Chief Financial Officer or the Procurement Director shall determine that a longer review time is necessary. The Chief Financial Officer or the Procurement Director shall give notice of a time extension to each Bidder.
 - s. Minor Informalities and Irregularities in Bids. (SC Code § 11-35-1520(13)) A minor informality or irregularity is one (1) which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to Bidders. The Procurement Director shall either give the Bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the District. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:
 - i. Failure of a Bidder to return the number of copies of signed bids required by the solicitation.
 - ii. Failure of a Bidder to furnish the required information concerning the number of the Bidder's employees or failure to make a representation concerning its size.
 - iii. Failure of a Bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the Bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the Bidder with the bid referring to and identifying the bid itself.
 - iv. Failure of a Bidder to acknowledge receipt of an amendment to a solicitation, but only if (i) the bid received indicates in some way that the Bidder received the amendment, such as where the amendment added another item to the solicitation and the Bidder submitted a bid thereon, provided that the Bidder states under oath that it received the amendment prior to bidding and that the Bidder will stand by its bid price or, (ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality, or delivery, and is not prejudicial to Bidders, such as an amendment correcting a typographical mistake in the name of the governmental body.
 - v. Failure of a Bidder to furnish an affidavit concerning affiliates.
 - vi. Failure of a Bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs.
 - vii. Failure of a Bidder to furnish cut sheets or product literature.
 - viii. Failure of a Bidder to furnish certificates of insurance.
 - ix. Failure of a Bidder to furnish financial statements.
 - x. Failure of a Bidder to furnish references; failure of a Bidder to furnish its Bidder number.
 - xi. Failure of a Bidder to indicate his Contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the Bidder unless and until the Bidder is properly licensed under the laws of South Carolina.
3. Request for Qualifications. (SC Code § 11-35-1520(11)) Prior to soliciting bids, Horry County Schools, acting through the authorized Procurement Official, may issue a request for qualifications from prospective Bidders. Such request shall contain at a minimum a description of the goods or services to be solicited by the invitation for bids, the general scope of the work,

the deadline for submission of information, and how prospective Bidders may apply for consideration. The request shall require information concerning the prospective Bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given. After receipt of the responses to the request for qualifications from prospective Bidders, the prospective Bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two (2) prospective Bidders by means of an invitation for bids. The failure of a prospective Bidder to be selected to receive the invitation for bids shall not be grounds for protest.

4. Competitive Fixed Price Bidding. (SC Code § 11-35-1525) When the Procurement Director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive fixed price bidding using the procedure for competitive sealed bidding except as provided for herein.
5. Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a pre-set maximum price, which the District will pay for such goods or services.
 - a. Public Notice. Adequate public notice of the solicitation shall be given as for competitive sealed bidding.
 - b. Pricing. The District shall establish, prior to issuance of the fixed price bid, a maximum amount the District will pay for the goods or services desired.
 - c. Evaluation. Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
 - d. Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive Bidders to assure understanding of the requirements of the fixed priced bid. All Bidders whose bids, in the Procurement Director's sole judgment, need clarification shall be accorded such an opportunity.
 - e. Award. Award must be made to all responsive and responsible Bidders to the District's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
 - f. Bids Received after Award. Bidders not responding to the initial fixed price bid may be added to the awarded vendors list provided the Bidder furnishes evidence of responsibility and responsiveness to the District's original fixed price bid as authorized by the solicitation.
 - g. Remedies. The failure of a specific Offeror to receive business, once it has been added to the awarded vendors list, shall not be grounds for a contract controversy.
6. Competitive Best Value Bidding. (SC Code § 11-35-1528) When the Procurement Director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive best value bidding using the procedure for competitive sealed bidding except as provided for herein.
7. Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by the District.
 - a. Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as for competitive sealed bidding.
 - b. Bid Opening. At bid opening, the only information that will be released is the names of the participating Bidders. Cost information will be provided after the ranking of Bidders and the issuance of award.
 - c. Evaluation Factors. The best value bid solicitation shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent (60%). Best value bid evaluation factors, as determined by the District at its sole discretion and not subject to protest, may be defined to include, but are not limited to:
 - Operational costs that the District would incur if the bid is accepted.
 - Quality of the product or service, or its technical competency.
 - Reliability of delivery and implementation schedules.

- Maximum facilitation of data exchange and systems integration.
 - Warranties, guarantees, and return policy.
 - Vendor financial stability.
 - Consistency of the proposed solution with the District's planning documents and announced strategic program direction.
 - Quality and effectiveness of business solution and approach.
 - Industry and program experience.
 - Prior record of vendor performance.
 - Vendor expertise with engagement of similar scope and complexity.
 - Extent and quality of the proposed participation and acceptance by all user groups.
 - Proven development methodologies and tools.
 - Innovative use of current technologies and quality results.
- d. Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive Bidders to assure understanding of the best value bid. All Bidders, whose bids, in the District's sole judgment, need clarification shall be accorded such an opportunity.
- e. Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating Bidder. Once the evaluation is complete, all responsive Bidders shall be ranked from most advantageous to least advantageous to the District, considering only the evaluation factors stated in the best value bid.
- f. Award. Award must be made to the responsive and responsible Bidder whose bid is determined, in writing, to be most advantageous to the District, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
8. Competitive On-line Bidding. (SC Code § 11-35-1530) When the Procurement Director determines that on-line bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive on-line bidding, using the procedure for competitive sealed bidding except as provided for herein.
- a. Bidding Process. The solicitation must designate both an Opening Date and time, but may remain dependent on a variable specified in the solicitation. At the Opening Date and Time, the District must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. The District may require Bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a Bidder may lower the price of its bid, except that after Opening Date and Time, a Bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with this Code. If a bid is withdrawn, a later bid submitted by the same Bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the District may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing Bidders by giving notice to all pre-existing Bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.
- b. Receipt and Safeguarding of Bids. Other than price, any information provided to the District by a Bidder must be safeguarded as required in this Code.
- c. Provisions Not to Apply. Sections of this Code regarding Bid Opening do not apply to solicitations issued pursuant to this section.
9. Competitive Sealed Proposals. (SC Code § 11-35-1530; SC Reg. §§ 19-445-2055, -2095) When the Procurement Director determines in writing that the use of competitive sealed bidding

is either not practicable or not advantageous to the District, a contract may be entered into by competitive sealed proposals. Procurements may be made by competitive sealed proposals above \$25,000 that are highly technical, complex in nature and do not lend themselves to formal competitive sealed bidding. Competitive Sealed Proposals should include, but not be limited to, the general scope of the proposal, criteria for selection, information required to be submitted, activities to be performed, and relevant costs. An award shall be made to the Offeror whose proposal is considered to be most advantageous to the District.

- a. Request for Proposal. Proposals shall be solicited from qualified sources, when such sources are available, through a request for proposals.
- b. Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Competitive Sealed Bidding procedures.
- c. Receipt of Proposals. The Procurement Official or designee in the presence of one (1) or more witnesses shall open proposals publicly at the time and place designated in the request for proposals. A record of those offering a proposal shall be made public record. Contents of competing offers shall not be disclosed during the process of negotiation. All Offerors must visibly mark as "confidential" each part of their proposal, which they consider to be proprietary information. The provisions for Telegraphic Bids, Rejection of Bids, Rejection of Individual Bids, All or None Qualifications, Cancellation of Awards, Cancellation of Awards Prior to Performance, and Minor Informalities and Irregularities in the Competitive Sealed Bidding section of this Code shall apply in the context of Competitive Sealed Proposals as well.
- d. Request for Qualifications. Prior to soliciting proposals, the procurement official, acting through the authorized Procurement Director, may issue a request for qualifications from prospective Offerors. Such request shall contain at a minimum a description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective Offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the request for qualifications from prospective Offerors, the perspective Offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two (2) prospective Offerors by means of a request for proposals. The failure of a prospective Offeror to be selected to receive the request for proposals shall not be grounds for protest.
- e. Evaluation Factors. The request for proposals shall state the relative importance of factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor. Criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.
- f. Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with apparent responsive Offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All Offerors whose proposals, in the Procurement Director's sole judgment, need clarification shall be accorded such an opportunity.
- g. Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weighting that have been previously assigned. Once evaluation is complete, all responsive Offerors shall be ranked from most advantageous to least advantageous to the District, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with this Code's provisions for Award in competitive sealed proposals.
- h. Negotiations. Whether price was an evaluation factor or not, the District, subject to challenge through a protest, may proceed in any of the manners indicated below:

- i. Negotiate price with the highest ranked Offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the District, with the second, and then the third, and so on, ranked Offerors to such level of ranking as determined by the District in its sole discretion,
 - ii. Negotiate with the highest-ranking Offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking Offeror, negotiations may be conducted, in the sole discretion of the District, with the second, and then the third, and so on, ranked Offerors to such level of ranking as determined by the District in its sole discretion.
 - iii. During the negotiation process as outlined in subsections, if the District is unsuccessful in its first round of negotiations, it may reopen negotiations with any Offeror with whom it previously negotiated.
 - iv. If, after following the procedures set forth above, a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive Offerors must be allowed to submit their best and final offers.
 - v. In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing Offerors.
 - i. Award. Award must be made to the responsive Offeror whose proposal is determined in writing to be the most advantageous to the District, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the District determines to utilize one (1) of the options provided in Section h(i) above. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract shall be the same as those used for competitive sealed bidding.
 - j. Specified Types of Supplies, Services or Construction. Pursuant to the provisions of this Code relating to Construction Procurement, the following types of supplies, services, or construction may be procured by competitive sealed proposals:
 - i. Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. Hazard waste remedial action).
 - ii. Design/Build or Lease/Purchase contracts where there must be selection criteria in addition to price.
 - iii. Energy conservation or other projects to be financed by vendors who will be paid from the District's savings.
 - iv. Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the District.
 - k. Negotiations After Unsuccessful Competitive Sealed Bidding. (SC Code § 11-35-1540) When bids received pursuant to an invitation for bids are considered unreasonable, are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the Procurement Director, or the Superintendent or a designee above the level of Procurement Director, that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:
 - i. each responsible Bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
 - ii. the negotiated price is lower than the lowest rejected bid by a responsible and responsive Bidder under the original solicitation; and
 - iii. the negotiated price is the lowest negotiated price offered by any responsible and responsive Offeror.
10. Small Purchases. (SC Code § 11-35-1550; SC Reg. § 19-445.2100) The following small purchase procedures may be utilized in conducting procurements for the District that are less than \$25,000.00 in actual or potential value, provided, however, that procurement requirements

shall not be artificially divided by the District so as to constitute a small purchase under this section.

a. Competition and Price Reasonableness.

- i. Small purchases not exceeding \$1,500.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The school/department shall annotate the purchase requisition: 'Price is fair and reasonable' and sign. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase 'not in excess of' may more than offset potential savings in detecting instances of overpricing. Therefore, action to verify the reasonableness of the price need be taken only when the procurement officer of the District suspects that the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved.
- ii. Purchases from \$1,500.01 to \$5,000.00. Solicitations of verbal or written quotes from a minimum of three (3) qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.
- iii. Purchases from \$5,000.01 to \$10,000.00. Solicitation of written quotes from a minimum of three (3) qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible sources.
- iv. Purchases from \$10,000.01 to \$25,000.00 Written solicitation of written quotes, bids, or proposals shall be made. The procurement shall be advertised at least once in the South Carolina Business Opportunities (SCBO) newspaper, a newspaper of local circulation, or through a means of central electronic advertising as approved by the Procurement Director. A copy of the written solicitation and written quotes shall be attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest-ranking Offeror.

b. Protest Rights. The provisions of this Code pertaining to protests shall not apply to contracts awarded under the procedures set forth in this section.

c. Requirement to Advertise. All competitive procurements above \$25,000.00 must be advertised at least once in the South Carolina Business Opportunities (SCBO) newspaper, a newspaper of local circulation, or through a means of central electronic advertising as approved by the Procurement Director. The District may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement so advertised

11. Blanket Purchase Agreements. A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

a. Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one (1) supplier. All competitive sources shall be given an equal opportunity to furnish supplies or services under such agreements.

b. Terms and Conditions. Blanket purchase agreements shall contain the following provisions:

i. Description of Agreement. A statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the Procurement Director or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.

- ii. Extent of Obligation. A statement that the District is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.
- iii. 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 purchasing official.
- iv. Delivery Tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following information:
 - Name of supplier
 - Blanket purchase agreement number
 - Date of call
 - Call number
 - Itemized list of supplies or services furnished
 - Quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information)
 - Date of delivery of shipment.
- v. Invoices. One (1) of the following procedures should be used when invoicing:
 - A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.
 - An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Copies of delivery tickets need not support such invoices.
 - When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.
 - An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that orders have been placed in effect or will be placed in effect upon receipt of payment.
- c. Competition Under Blanket Purchase Agreement. Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.
- d. Calls Against Blanket Purchase Agreement. Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed on a District purchase order form. Documentation of calls shall be limited to essential information.
- e. Receipt and Acceptance of Supplies or Services. Acceptance of supplies or services shall be indicated by signature and date on the appropriate form by the authorized District representative after verification and notation of any exceptions. A sales slip or delivery

ticket may be used for receipt and acceptance when purchases are retained for administration.

- f. Review Procedures. The Procurement Director or designee shall review blanket purchase agreement files at least semi-annually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of not longer than twelve (12) months.

12. Sole Source Procurement. (SC Code § 11-35-1560; SC Reg. § 19-445-2105) A contract may be awarded for a supply, service, equipment or construction item without competition when, the Chief Financial Officer, or a designee above the level of the Procurement Director, determines in writing that there is only one (1) source for the required supply, service, equipment or construction item. Written documentation must include the determination and basis for the proposed sole source procurement. Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances, which could necessitate sole source procurement:

- Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration.
- Where a sole supplier's item is needed for trial use or testing.
- Where a sole supplier's item is to be procured for resale.
- Where the item is one (1) of a kind.
- Printed forms, pamphlets, and brochures, exclusive of printing equipment.

In cases of reasonable doubt, competition must be solicited. Any decision by a District that procurement be restricted to one (1) potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. Any delegation of authority by an officer above the level of purchasing official with respect to sole source determinations must be submitted in writing to the purchasing official. Any violation of these regulations by the purchasing department may, upon order of the Superintendent result in the temporary suspension not to exceed one (1) year of the Purchasing Department's authority to procure supplies, services or construction items under this section.

13. Emergency Procurements. (SC Code § 11-35-1570; SC Reg. § 19-445-2110) Notwithstanding any other provision of this code, the Superintendent, Chief Financial Officer, or Procurement Director may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions such as floods, epidemics, riots, equipment failure, fire loss, or such other conditions as may be proclaimed an emergency by the Superintendent; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular Contractor shall be included in the contract file. The existence of emergency conditions must create an immediate and serious need for supplies, services, equipment or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten a) the functioning of the District; b) the preservation or protection of property; or c) the health or safety of any person.

- a. Limitations. Emergency procurement shall be limited to those supplies, services, equipment, or construction items necessary to meet the emergency.
- b. Conditions. An emergency procurement may be made when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the Superintendent or his designee shall be obtained prior to the procurement.
- c. Selection of Methods of Procurement. The procedures used shall be selected to assure that the required supplies, services, equipment or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- d. General Procedures. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer or director, and time or other

- circumstances will not permit the delay required to re-solicit competitive sealed bids. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.
- e. Written Determination. The Superintendent, Chief Financial Officer, Procurement Director, or their designees shall make a written determination stating the basis for an emergency procurement and for the selection of a particular Contractor.
14. Procurements at Auction. (SC Code § 11-35-1575) The District having knowledge of an auction may elect to participate. The District shall (a) survey the needed items being offered at auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the District shall determine the maximum price that it can pay for each item desired. At the auction, the District shall not exceed the maximum price so determined.
15. Information Technology Procurements. (SC Code § 11-35-1580; SC Reg. § 19-445-2115) The District Technology Department shall be responsible for :
- a. assessing the need for and use of information technology;
 - b. consulting on procurement and contracting activities involving information technology in accordance with this Code;
 - c. consulting on the disposal of all information technology property surpluses to the needs of the District; and
 - d. operating a comprehensive inventory and accounting reporting system for information technology.
16. Prequalification of Supplies and Suppliers. (SC Code § 11-35-1820; SC Reg. § 19-445.2130)
- a. Qualified Products Lists. The Procurement Director or designee of the District may develop a Qualified Products Lists (QPL). The Procurement Director or designee is authorized to develop qualified products lists when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy District requirements. The procedures for the inclusion of a product on the qualified products list must be available to prospective vendors for consideration of adding their product to the list.
 - b. Prequalification. Prospective suppliers may be pre-qualified for Bidder lists, and distribution of the solicitation may be limited to pre-qualified suppliers. Suppliers who meet the prequalification standards at any time shall be added to the pre-qualified list for subsequent solicitations. The fact that a prospective supplier has been pre-qualified does not necessarily represent a finding of responsibility.
 - c. Prequalification of Construction Bidders. (SC Code § 11-35-1825) The District may develop a procedure and a list of criteria for pre-qualifying construction Bidders. The criteria may include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. The District may use the pre-qualification process only for projects where the construction involved is unique in nature or over ten million dollars (\$10,000,000) in value. When the pre-qualification process is employed, only those Bidders who are pre-qualified through this procedure are entitled to submit a bid for the project. The determination of which Bidders are pre-qualified, and thereby entitled to bid, is not protestable under this Code.
 - d. Cost or Pricing Data. (SC Code § 11-35-1830) A Contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of: a) The pricing of any contract awarded by competitive sealed proposals or pursuant to sole source procurement where the total contract price exceeds an amount established by this Code; or b) The pricing of any change order or contract modification which exceeds an amount established by the board in regulations.
 - e. Price Adjustment. Any contract, change order or contract modification under which a

certificate is required shall contain a provision that the price to the District, including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the Contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between parties.

- f. Cost or Pricing Data Not Required. The requirements of this section shall not apply to contracts when:
 - i. Contract price is based on adequate price competition.
 - ii. Contract price is based on established catalog prices or market prices.
 - iii. Contract prices are set by law or regulations.
 - iv. Determined, in writing, by the Procurement Director that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

- B. Cancellation of Invitations for Bids or Request for Proposals. (SC Code § 11-35-1710)
Any solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the District. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

- C. Responsibility of Bidders and Offerors. (SC Code § 11-35-1810; SC Reg. § 19-445-2125)
Determination of Responsibility. Responsibility of the Bidder or Offeror shall be ascertained for each contract awarded by the District based upon full disclosure to the Procurement Director concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.
 - 1. District Standards of Responsibility. Factors to be considered in determining whether the District standards of responsibility have been met include whether a prospective Contractor has met all of the following:
 - a. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements.
 - b. Satisfactory record of performance.
 - c. Satisfactory record of integrity.
 - d. Qualified legally to contract with the District and State.
 - e. Supplied all necessary information in connection with the inquiry concerning responsibility.
 - 2. Duty of Contractor to Supply Information. The prospective Contractor shall supply information requested by the Procurement Director concerning the responsibility of such Contractor. If such Contractor fails to supply the requested information, the Procurement Director shall base the determination of responsibility upon any available information or may find the prospective Contractor nonresponsible if such failure is unreasonable.
 - 3. Demonstration of Responsibility. The prospective Contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
 - a. Evidence that such Contractor possesses such necessary items.
 - b. Acceptable plans to subcontract for such necessary items.
 - c. A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
 - d. Opportunity for an on site visitation.
 - 4. Justification for Contract Award. Before awarding a contract, the Procurement Director must be satisfied that the prospective Contractor is responsible.
 - 5. Written Determination of Nonresponsibility. If a Bidder or Offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Chief Financial Officer or the Procurement Director. A copy of the determination shall be sent promptly to the nonresponsible Bidder or Offeror. The final determination shall be made part of the procurement file.

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6. Right to Disclosure. Except as otherwise provided by regulations, information furnished by a Bidder or Offeror pursuant to this section shall not be disclosed outside of the offices of the District without prior written consent by the Bidder or Offeror.

ARTICLE V
CONTRACTS

A. Types and Forms of Contracts. (SC Code § 11-35-2010)

Subject to the limitations of this section, any type of contract, which will promote the best interests of the District, may be used.

1. Cost Reimbursement Contract. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall be used only when a determination sufficient for external audit is prepared showing that such contract is likely to be less costly to the District than any other type or that is impracticable to obtain the supplies, services, equipment or construction required except under such a contract approved by the Board.
2. Term Contract. A contract established by the Procurement Director or buyer for a specific product or service for a specified time and for which it is mandatory that the District procure its requirements for the goods and services during its term, is a "term contract." If the District is offered goods or services at a price that is at least ten percent (10%) less than the term contract price for the same goods or services it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. If the vendor holding the term contract meets the lower price, then the District must purchase from the contract vendor.
3. Construction Services Contract. The following contract forms shall be used as applicable. All persons seeking to do business with the District under this Code are responsible for carefully examining the content of all District documents applicable to each Project.
 - a. Land Surveyor. The District may use a letter contract written for each individual project.
 - b. Architect or Engineer. Architect contracts modeled on the South Carolina Office of State Engineer's model contracts, modified to meet the special requirements for school projects and further modified in the best interests of the District. For small Architect or Engineer projects, a letter contract written for each individual project.
 - c. Architect, Engineer or Construction Management. Contracts modeled on the South Carolina State Engineer's model contracts, modified to meet the special requirements for school projects and further modified in the best interests of the District.
 - d. Construction. Contracts modeled on the South Carolina Office of State Engineer's model contracts, modified to meet the special requirements for school projects and further modified in the best interests of the District. For emergency construction, when authorized, a letter contract written for each individual project.
 - e. Bidding Documents. Bidding documents may be as follows:
 - i. Instruction to Bidders. As approved for each project by the Facilities Management Team.
 - ii. General Conditions of the Contract for Construction. To be modeled on the South Carolina State Engineer's model General Conditions, modified in the best interests of the District.
 - iii. Bid Form and Change Order. Forms modeled on the South Carolina Office of State Engineer's model forms, modified to meet the special requirements for school projects and further modified in the best interests of the District.
 - f. Other Construction Forms. For services procured by Competitive Sealed Proposals or as Small Purchases may be in a format and description of services modeled on the South Carolina Office of State Engineer's model forms, modified to meet the special requirements for school projects and further modified in the best interests of the District.

B. Approval of Accounting System. (SC Code § 11-35-2020)

The Procurement Director or a designee may require that:

1. The proposed Contractor's accounting system permit timely development of all necessary cost data in the form required by the specific contract type contemplated.
2. The proposed Contractor's accounting system be adequate to allocate costs in accordance with generally accepted accounting principles.

- C. Multi-Term Contracts. (SC Code §11-35-2030; SC Reg. § 19-445.2135)
1. Period. Unless otherwise provided by law, a contract for supplies, equipment or services shall not be entered into for any period of more than one (1) year unless approved in the manner prescribed herein; provided, however, that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. A multi-term contract is appropriate:
 - a. When it is in the best interest of the District to obtain uninterrupted services extending over more than one (1) fiscal year.
 - b. Where the performance of such services involves high start-up costs.
 - c. When a changeover of service contracts involves high phase-in/phase-out costs during a transition period.
 - d. When special production of definite quantities of supplies for more than one (1) fiscal year is necessary to best meet the District needs but funds are available only for the initial fiscal year. Special production refers to production for contract performance when it requires alteration in the Contractor's facilities or operations involving high start-up costs.The contractual obligation of both parties in each fiscal year succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event funds are not available for any succeeding fiscal year, the remainder of such contract shall be cancelled.
 2. Objective. The objective of the multi-term contract is to promote economy and efficiency in the procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs or high phase-in/phase-out costs during changeover of service contracts.
 3. Conditions of Use. A multi-term contract may be used when it is determined in writing by the Procurement Director that: (1) special production of definite quantities or the furnishing of long-term services are required to meet District needs; or (2) a multi-term contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economics in District procurement. The following factors are among those relevant for such a determination:
 - a. Firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance.
 - b. Lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices.
 - c. Stabilization of the Contractor's work force over a longer period of time may promote economy and consistent quality.
 - d. The cost and burden of contract solicitation, award, and administration of the procurement may be reduced.
 4. Solicitation. The solicitation shall state:
 - a. The estimated amount of supplies or services required for the proposed contract period.
 - b. That a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract).
 - c. That the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation or performance in any fiscal period succeeding the first; however, this does not affect either the District's rights or the Contractor's rights under any termination clause in the contract.
 - d. That the Procurement Director must notify the Contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal year.
 - e. Whether Bidders or Offerors may submit prices for:

- i. The first fiscal year only.
 - ii. The entire time of performance only.
 - iii. Both the first fiscal year and the entire time of performance.
- f. That a multi-term contract may be awarded and how the award will be determined including, if prices for the first fiscal year and entire time of performance are submitted, how such prices will be compared.
- g. That in the event of cancellation as provided in "c." above, the Contractor would be reimbursed the unamortized, reasonably incurred, nonrecurring costs.
- 5. Award. Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal year and the award on the basis of prices for the first year does not permit the successful Bidder or Offeror to "buy in" i.e. give such Bidder or Offeror an undue competitive advantage in subsequent procurements.
- 6. Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing, and that such a contract will serve the best interests of the District by encouraging effective competition.
- 7. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.
- 8. Maximum Time for Use. The maximum time for any multi-term contract is five (5) years. The Board may approve contract terms of up to seven (7) years.

ARTICLE VI
INSPECTION OF PLANT AND AUDIT OF RECORDS

- A. Right to Inspect Plant. (SC Code § 11-35-2210)
The Procurement Director, Buyers, the Chief Financial Officer, or Chief Construction Officer shall be authorized, at reasonable times, to inspect the part of the plant or place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

- B. Right To Audit Records. (SC Code § 11-35-2220)
 - 1. Audit of Cost or Pricing Data. All District contracts shall contain a clause setting forth the District's right at reasonable times and places to audit the books and records of any Contractor or subcontractor who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the Contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the Procurement Director; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Procurement Director.
 - 2. Contract Audit. The District shall be entitled to audit the books and records of a Contractor or any subcontractor under any negotiated contract or subcontract other than a firm-fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Procurement Director or Buyer.

ARTICLE VII
DETERMINATIONS AND REPORTS

- A. Finality of Determinations. (SC Code § 11-35-2410)
The determinations required by the following sections of this Code shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law:
1. Competitive Sealed Bidding. Correction or Withdrawal of Bids, Cancellation of Awards, and Request for Qualifications.
 2. Competitive Fixed Price Bidding. Conditions for Use.
 3. Competitive Best Value Bidding. Conditions for Use.
 4. Competitive Best Value Bidding. Award.
 5. Competitive Sealed Proposals. Conditions for Use, Request for Qualifications, Negotiations, Selection and Ranking of Prospective Offerors, Award.
 6. Negotiations After Unsuccessful Competitive Sealed Bidding.
 7. Sole Source Procurement.
 8. Emergency Procurement.
 9. Responsibility of Bidders and Offerors. Determination of Nonresponsibility.
 10. Prequalification of Construction Bidders.
 11. Cost or Pricing Data, Cost or Pricing Data Not Required.
 12. Types and Forms of Contracts.
 13. Approval of Accounting System.
 14. Multi-Term Contract: Determination Prior to Use.
 15. Procurement Procedure. Selection and Ranking of the Five Most Qualified.
 16. Stay of Procurement During Protests. Decision to Proceed.
- The Chief Financial Officer shall review samples of such determinations periodically, and issue reports and recommendations on the appropriateness of the determinations made.
- B. Reporting of Anti-competitive Practices. (SC Code § 11-35-2420)
When any information or allegations concerning anti-competitive practices among any Bidders or Offerors, come to the attention of any employee of the District, immediate notice of the relevant facts shall be transmitted to the Procurement Director.
- C. Retention of Procurement Records. (SC Code § 11-35-2430)
All procurement records of the District shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History. All retained documents shall be made available to the Board of Education or a designee upon request and proper receipt therefore.
- D. Records of Procurement Actions. (SC Code § 11-35-2440)
1. Contents of Record. The District shall submit annually a record listing all contracts made under Sole Source Procurement or Emergency Procurements to the Chief Financial Officer. The record shall contain:
 - Each Contractor's name.
 - Amount and type of each contract.
 - Listing of the supplies, services, equipment, or construction procured under each contract.
 The Procurement Department shall maintain these records for five (5) years.
 2. Publication of Record. A copy of the record shall be submitted to the Board through the Superintendent on an annual basis and shall be available for public inspection.

ARTICLE VIII
SPECIFICATIONS

- A. Issuance of Specifications. (SC Code § 11-35-2710; SC Reg. § 19-445-2140)
The purpose of a specification is to serve as a basis for obtaining a supply, service, equipment or construction item adequate and suitable for the District's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the District that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the District's requirements. All specifications shall be written in a nonrestrictive manner so as to describe the requirements to be met.

- B. Use of Functional or Performance Descriptions. (SC Reg. § 19-445-2140)
Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the District. To facilitate the use of such criteria, the District shall endeavor to include as part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

- C. Preference for Commercially Available Products. (SC Reg. § 19-445-2140)
It is the general policy of this District to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

- D. Duties of the Procurement Director and the End User. (SC Code § 11-35-2720)
The Procurement Director or Buyers shall prepare or review, issue, revise, and maintain the specifications for supplies, services, equipment, and construction procured by the District.

- E. Assuring Competition. (SC Code § 11-35-2730)
All specifications shall be drafted so as to assure cost effective procurement of the District's actual needs and shall not be unduly restrictive.

- F. Relationship with End Users. (SC Code § 11-35-2740)
The Procurement Director or Buyers may obtain advice and assistance from end users in the development of specifications. Specifications shall be drawn in such a manner as to ensure maximally cost-effective procurement, consistent with regulations.

- G. Specifications Prepared by Architects and Engineers. (SC Code § 11-35-2750)
The requirements of this article regarding the non-restrictiveness of specifications shall apply to each solicitation and include, among others, all specifications prepared by architects, engineers, designers, draftsmen and land surveyors for District contracts.

**ARTICLE IX
MODIFICATIONS AND TERMINATION OF CONTRACTS
FOR SUPPLIES, EQUIPMENT, AND SERVICES
(SC Code § 11-35-3410)**

A. Contract Clauses.

The District may require the inclusion in District supplies, equipment and services contracts of clauses providing for adjustments in prices, time of performance or other contract provisions, as appropriate, and covering the following subjects:

- The unilateral right of the District to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance.
- Variations occurring between estimated quantities of work in a contract and actual quantities.

B. Price Adjustments.

Adjustments in price pursuant to paragraph "A." (Contract Clauses) above shall be computed and documented by written change order. The price adjustment agreed upon shall approximate the actual cost to the Contractor, and all costs incurred by the Contractor shall be justifiable compared with prevailing standards, including a reasonable profit. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one (1) of the following ways is the most valid approximation of the actual cost to the Contractor:

1. By unit prices specified in the contract or subsequently agreed upon.
2. By the costs attributable to the events or situations under such clauses with adjustment for profit or fee, all specified in the contract or subsequently agreed upon.
3. By agreement on a fixed price adjustment.
4. By rates determined by the Public Service Commission and set forth in the applicable tariffs.
5. In such other manner as the contracting parties may mutually agree.
6. In the absence of agreement by the parties, through unilateral determination by the District of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the District in accordance with sections of this Code concerning "Cost Principles" and "Legal and Contractual Remedies."

A Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

C. Additional Contract Clauses.

The District may, in supplies, equipment and services contracts, require the inclusion of contract clauses providing for appropriate remedies and covering the following subjects:

- Specified excuses for delay or nonperformance.
- Termination of the contract for default.
- Termination of the contract in whole or in part for the convenience of the District.

D. Modification of Clauses.

The Procurement Director may vary the usual clauses customarily included by the District under subsection A and subsection C of this section in any particular District contract; provided, that any substantial variations are supported by a written determination that states the circumstances justifying such variations; and provided, further, that notice of any such material variations shall be stated in the invitation for bids or request for proposals.

ARTICLE X
MAJOR CONSTRUCTION

A. Governing Provisions For Construction Procurement.

1. Introduction. The Board has the responsibility for assessing building needs, both current and future, and for developing and conducting a building program to meet those needs within the limits of the resources of the District. Included are all the ancillary tasks required for successful accomplishment of each project to include site selection and purchase, furniture and equipment selection, and so forth. Horry County Schools will conduct its building program in accordance with the regulations of the State Department of Education and the procedures set forth herein.
2. Authority and Approval.
 - a. Local. The local authority is established in accordance with the South Carolina School Facilities Planning & Construction Guide prepared by the Office of School Planning & Building. The approval process for construction projects and their funding will include the Chief Officer for Construction Services, the Superintendent, and ultimately the Board of Education as directed by the Superintendent and/or Board policy. The Director of Procurement Services and the Chief Officer for Finance will recommend contract award(s) for each project within the approved budget.
 - b. State. (SC Code §§ 59-23-210 *et seq.*)

B. Professional Services for Construction. (SC Code §§ 11-35-3210 *et seq.*; SC Reg. § 19-445-2145(D))

The procedure for acquiring these services is set forth below.

1. Invitation. The District will announce its requirements for these services through Dodge-McGraw Hill and newspaper advertisements and will mail invitations for proposals to firms on District's bid list and/or firms listed in the records of the Office of School Facilities Planning.
2. Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen (15) days after publication of the invitation. Interested Architect, Engineer, construction management and land surveying persons or firms shall be required to respond to the invitation with the submission of a current and accurate Federal Standard Form 254, Architect, Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect, Engineer and Related Services Questionnaire for Specific Project, or such similar information as the Board may prescribe by policy, and any other information which the particular invitation may require.
3. Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the Superintendent's appointed architectural selection committee shall hold interviews with at least five (5) persons or firms who have responded to the advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than five (5) persons or firms have responded to the advertisement, the committee shall hold interviews with those who did respond. The selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the selection committee to fully acquaint it with the relative qualifications of the several interested firms.
4. Selection and Ranking of the Five Most Qualified. The selection committee shall evaluate each of the persons or firms interviewed in view of their:
 - a. Past performance.
 - b. Ability of professional personnel.
 - c. Willingness to meet time and budget requirements.
 - d. Location.

- e. Recent, current and projected work loads of the firms.
- f. Creativity and insight related to the project.
- g. Related experience on similar projects.

Based upon these evaluations, the selection committee shall select the five (5) , which, in its judgment, are the most qualified, ranking the five (5) in priority order. The selection committee's report ranking the five (5) chosen persons or firms shall be in writing and shall include data substantiating its determinations. When the ranking report is final, written notification of the election and order of preference shall be immediately sent to all that responded to the selection committee's invitation to submit information.

- 5. Negotiation of Contract. The Superintendent, Chief Officer for Construction Services or their designees shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the District. Should the Superintendent, Chief Officer for Construction Services or other designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, fourth and fifth most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one (1) of the five (5), additional persons or firms in order of their competence and qualifications shall be selected after consultation with the selection committee, and negotiations shall be continued in the same manner until agreement is reached. Once agreement has been reached, either the Superintendent, Chief Officer for Construction Services, designee or the selection committee will submit its recommendation to the Board for approval. Upon Board approval, the Superintendent or his designee will be authorized to execute a contract with the selected person or firm. If Board approval is not received, additional persons or firms shall be selected in order of their competence and qualifications by the selection committee and negotiations shall be continued in the same manner until further agreement and Board approval is received.
- 6. Non-Architect Approvals and Projects. Where agreed to in advance by the Office of School Facilities, the services of the architect may be deleted and comparable basic services of a professional engineer, landscape architect or other specialist may be substituted, as provided for in the Guide §106.
- 7. Exception for Small Architect, Engineer, and Land Surveying Services. The District may secure Architect, Engineer or land surveying services, which are estimated not to exceed \$25,000 by direct negotiation and selection. In this event, the following sequence will be followed:
 - a. Maximum Fees Payable for Single Procurement. Services, which are estimated not to cost in excess of \$25,000, may be acquired by direct negotiation and selection, taking into account the:
 - i. Nature of the project.
 - ii. Proximity of the Architect, Engineer or land surveying services to the project.
 - iii. Capability of the architect, engineer, or land surveyor to produce the required services within a reasonable time.
 - iv. Past performance.
 - v. Ability to meet project budget requirements.
 - b. Maximum Fees Payable to One (1) Person or Firm. Fees paid during the twenty-four (24) month period immediately preceding negotiation of small contracts by the District for professional services performed by any one (1) architectural, engineering or land-surveying firm pursuant to this section shall not exceed \$75,000. The Director of Procurement will verify through Accounts Payable the fees paid by the District during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.
 - c. Splitting of Large Projects Prohibited. No project may be subdivided for the purpose of circumventing these provisions.
 - d. Authorizing Services. A purchase order shall be used to authorize these services.
- 8. Construction Work Prohibited by Architect or Engineer. No architect or engineer performing design work, or construction manager performing construction management services pursuant

to a contract awarded under any provision of this Article may perform other work on that project as a Contractor or subcontractor either directly or through a business in which he architect, or his architectural or engineering construction management firm has greater than a five percent (5%) interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a Contractor or subcontractor. Should the construction manager perform or be responsible for safety compliance and other incidental construction activities, and these support activities are in noncompliance with the provisions of S.C. Code Ann. § 41-15-210, then the construction management firm is subject to all applicable fines and penalties.

C. Real Property Acquisition. (SC Code §§ 59-19-180 *et seq.*; Guide, Division 2)

1. Site Acquisition. Site purchase will be scheduled on the long range capital improvements priority list the same as building projects. Once a site purchase is scheduled the following sequence of events is used:
 - a. Identify the general area in which the site is needed. This is done by identifying the attendance areas to be served by the proposed school. Since the proposed building will have a life expectancy of fifty (50) years or greater, it is essential that an evaluation of the area be made on a long-term basis.
 - b. Identify several vacant tracts in the area of interest. Compare and contrast these sites in terms of access, utilities, topography, zoning, services, costs, etc.
 - c. Obtain an appraisal of the several most advantageous sites.
 - d. Obtain State Department of Education approval pursuant to S.C. Code Ann. § 59-23-310.
 - e. If negotiations are successful, complete the transaction according to the Board and the State Department of Education procedures. If negotiations are unsuccessful, switch attention to the second most advantageous site.
 - f. If unable to successfully negotiate the purchase of a satisfactory site, condemnation can be used. See the following section.
2. Condemnation. Condemnation can be used to acquire property under certain conditions. Essentially, condemnation is for circumstances where no usable property can be acquired at or around market value. To exercise condemnations follow this sequence.
 - a. Obtain from the Board a Resolution of Need, stating that the subject property is necessary for school purposes. The Board should also authorize the administration to proceed through legal channels to acquire the property through condemnation.
 - b. With condemnation authorized, make a final effort to negotiate an agreement with the property owner.
 - c. If negotiations are still unsuccessful, instruct the school attorney to proceed with condemnation.

D. Construction Contracting Administration. (SC Code § 11-35-3010; SC REG. § 19-445-2145; Guide, Division 8)

To the extent clearly applicable, particularly with regard to required specifications, the District will adhere to the South Carolina School Facilities Planning and Construction Guide ("Guide") administered by the Office of School Facilities Planning. However, given the size and scope of the District's building program needs, the Horry County Schools Board of Education finds that the Guide is inadequate to assure that the purposes of this Procurement Code are met during the initial phases of District construction projects. Therefore, to serve the purposes of this Code and to ensure operations are substantially similar to the State Procurement Code, the following specific bidding and contracting procedures are hereby adopted, and are to be interpreted and applied consistent with the interpretations and applications of the parallel and analogous provisions of the South Carolina State Consolidated Procurement Code, including implementing Regulations of the Budget and Control Board, and administrative decisions of the State Procurement Review Panel. The District may seek opinions and assistance from appropriate State officers for the purpose of administering this Code and resolving any controversies arising hereunder with regard to construction projects.

1. Selection of Method. The method of construction contracting administration used for a District construction project shall be determined to be that method which is most advantageous to the District and will result in the most timely, economical, and successful completion of the construction project. The District shall select the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations that led to the selection of that particular method. The District shall make a written determination that must be reviewed by the Director of Procurement Services. The determination shall describe the construction contracting method chosen and set forth the facts and considerations, which led to the selection of that method. This determination shall demonstrate that the requirements and financing of the project were all considered in making the selection. In selecting the construction contracting method, the District should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill District requirements. The District shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the District's needs. In each instance, consideration should be given to all the appropriate and effective means of obtaining both the design and construction of the project. Before choosing the construction contracting method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the District. The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including what sources of funding are available. The District should consider whether a price could be obtained that is fair and reasonable when considered together with the benefit to the District potentially obtainable from such a contract.
2. Construction Services Procurement Procedures. (SC Code § 11-35-3020)
 - a. Source Selection. All District construction contracts should normally be awarded by competitive sealed bidding except as provided in cases of procurements not exceeding twenty-five thousand dollars (\$25,000), sole-source procurements, or emergency procurements. Competitive sealed proposals (see paragraph c. below) and multi-step sealed bidding shall not be used, except in such cases as may be authorized by the Superintendent.
 - b. Competitive Sealed Bidding Procedure. Competitive sealed bidding shall be performed in a manner not inconsistent with § 8.04(6) of the Guide and subject to the provisions of this Code governing competitive sealed bidding except as addressed by a specific provision set forth in this Article:
 - i. Invitation for Bids. (SC Code § 11-35-3020(2)(a)) In lieu of Article IV of this Code, the following provisions apply. The Procurement Department shall be responsible for developing a formal invitation for bid for each District construction project subject to competitive sealed bidding. The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement, except that all applicable provisions of this Code may be incorporated by reference. A copy of each invitation for bids shall be adequately formally advertised; the manner in which this official publication shall be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication will be distributed shall be decided by the Director of Procurement Services and shall not be inconsistent with the § 8.04 of the Guide.
 - ii. Construction Subcontractors. (SC Code § 11-35-3020(2)(b))
 - a) The Procurement Department, in consultation with the Architect, Engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work to the prime Contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent (3%) of the prime Contractor's total base bid. In addition, the Procurement Department, in consultation with the Architect, Engineer assigned to the project, may identify by

- specialty in the invitation for bids any additional subcontractors who are expected to perform work that is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable under this Code.
- b) Any Bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractor(s) that will perform the work as identified in the invitation for bids. If the Bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the Bidder is qualified to perform such work under the terms of the invitation for bids, the Bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of the District for good cause shown. Failure to complete the list provided for in the invitation for bids renders the Bidder's bid unresponsive.
 - c) No prime Contractor to whom the contract is awarded shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one (1) or more of the following reasons:
 - (1) Upon a showing satisfactory to the District by the Contractor that a subcontractor who was listed is not financially responsible.
 - (2) Upon a showing satisfactory to the District by the Contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid.
 - (3) Upon a showing satisfactory to the District made by the Contractor that the subcontractor was listed as a result of an inadvertent clerical error.
 - (4) Upon a showing satisfactory to the District by the Contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime Contractor after the subcontractor had represented to the prime Contractor that he could obtain a performance and payment bond.
 - (5) Upon a showing satisfactory to the District by the Contractor that the listed subcontractor is required to be licensed and does not have the license at the time it is required to perform; however, where a bid is non-responsive because at the Bid Opening it lists a subcontractor who, at the moment the bid was submitted, was not sufficiently licensed under State law to perform the work for which it was listed, such non-responsiveness is not subject to cure by substitution.
 - (6) When the listed subcontractor fails or refuses to perform his subcontract.
 - (7) When the work of the listed subcontractor is found by the District to be substantially unsatisfactory.
 - (8) Upon mutual agreement of the Contractor and subcontractor.
 - (9) With the consent of the District for good cause shown.
 - d) The request for substitution must be made to the District in writing. This written request does not give rise to any private right of action against the prime Contractor in the absence of actual malice.
 - e) Where substitution is allowed, the prime Contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one (1) subcontractor whose bid was received prior to the submission of the prime Contractor's bid. Nothing in this section affects a Contractor's ability to request withdrawal of a bid in accordance with the provisions of this Code.
- iii. Receipt and Safeguarding of Bids. See Article IV of this Code.
 - iv. Bid Opening. The provisions of Article IV of this Code apply, except that the Procurement Department shall send all responsive Bidders a copy of the bid tabulation within ten (10) working days following the bid opening.

- v. Bid Evaluation and Acceptance.
 - a) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids or instructions to Bidders. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code. Specific criteria for evaluation of the responsiveness of bids and responsibility determinations shall be as published in the Bid Instructions and related project documents for each project, including the mandatory clauses established in this Code; provided however, that any provision of law which preempts the project documents — including but not limited to provisions of federal law or regulations applicable to specific projects, or the State Contractor licensure laws — necessarily must also be considered in making responsiveness and responsibility determinations for each bid.
 - b) Identification of the apparent low Bidder will be based on the “base bid” work and the alternates, if any, which the District actually chooses to implement.
- vi. Correction or Withdrawal of Erroneous Bids. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts after award but prior to performance may be permitted.
 - a) Prior to the bid opening date and time, a bid submitted may be modified or withdrawn by notice to the District’s Director of Procurement Services. Any modifications to a response prior to bid opening must be handled in the same manner as the response to the competitive sealed bidding. Such notice shall be in writing with the signature of the individual signing the original bid documents and shall be mailed or hand delivered to the Office of Procurement Services to be received no later than the bid opening date and time. No explanation for withdrawal is required. If sufficient time does not allow for delivery of the bid withdrawal by the bid opening date and time, a facsimile may be transmitted prior to the bid opening date and time. A change in any base bid, alternate bid or unit pricing amounts shall be worded so as not to reveal the original amount submitted in the sealed bid. Should the change in base bid or any alternate bid result in an overall increase in the total bid price, the Bidder shall be required to submit a revised bid security for the corrected bid price or a confirmation from the bond surety that the difference is incorporated in the original Bid Bond. A withdrawn bid may be resubmitted up to the published bid opening date and time provided it is in full conformance with the Bid Instructions at the time of resubmission.
 - b) After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition shall be permitted. Except as otherwise provided, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts after award but prior to performance, shall be supported by a written determination of appropriateness made by the Director of Procurement Services. A Bidder must submit in writing a request to withdraw a bid to the Director of Procurement Services. Each written request must document the fact that the Bidder's mistake is clearly an error that will cause the Bidder substantial loss, as set forth in paragraph c) below. To maintain the integrity of the competitive sealed bidding system, a Bidder shall not be permitted to correct a bid mistake after bid opening that would cause such Bidder to have the low bid unless the mistake, in the judgment of the Director of Procurement Services, is clearly evident from examining the bid document.
 - c) For the District to give consideration to the withdrawal after the bid opening date and time, when a clerical error has been made, the following conditions shall be met:
 - (1) A request for withdrawal is received by the District’s Director of Procurement Services, in writing, on company stationery, via United States mail or facsimile,

- with the signature of the original signatory on the Official Bid Form within three (3) consecutive days following the bid opening date and time; and
- (2) The bid was submitted in good faith; and
 - (3) The mistake was a clerical error, such as misplacement of a decimal point rather than an error in judgment; and
 - (4) Objective evidence drawn from the original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or other such mistake; and
 - (5) The bid price is substantially lower than the next lowest bid indicating a mistake may have been made, and requiring the Bidder to honor the bid price would be unconscionable.
- d) Negligence or error on the part of any Bidder in preparing a bid confers no right of withdrawal or modification after the bid opening date and time. The decision of the District to accept or not accept the withdrawal or modification of a bid after the bid opening date and time shall be solely at the discretion of the District's Director of Procurement Services and in accordance with this Code.
 - e) No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other services for the Bidder to whom the contract is awarded or shall otherwise benefit from the contract.
- vii. Notice of Intent to Award. (SC Code § 11-35-3020(2)(c))
- a) Unless there is a compelling reason to reject bids, Notice of Intent to Award a contract to the lowest responsive and responsible Bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location which has been specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the Bidder's right to protest under this Code and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the Procurement Department shall promptly send all responsive Bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the Bidder's right to protest under this Code.
 - b) For purposes of this Article, the Notice of Intent to Award does not constitute "award." Award occurs when the contract is executed between the Contractor and the District, and not sooner. A determination of responsibility must be made before award.
 - c) Sixteen (16) days after notice is given the District may enter into a contract with the Bidder named in the Notice of Intent to Award. If, after bid opening, only one (1) bid is received and determined to be responsive and responsible and within the District's construction budget, award may be made without the sixteen (16) day waiting period.
- viii. Negotiations After Unsuccessful Competitive Sealed Bidding. (SC Code § 11-35-3020(2)(d)) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the District that circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive Bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five percent (5%) of the construction budget established for that portion of the work. The District may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent (10%) without approval of the Superintendent. When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the District is able to identify additional funds for the project in the amount of the difference between the lowest base bid and the

approved available funds for the project, the administration shall submit its request to use such additional funds to the Superintendent for approval.

- c. Competitive Sealed Proposals. (SC Reg. § 19-445.2095(F)). Article IV(B)(9)(j) of this Code provides that the following types of services or construction may be procured by competitive sealed proposals:
 - i. Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. Hazardous waste remedial action).
 - ii. Design/Build or Lease/Purchase contracts where there must be selection criteria in addition to price.
 - iii. Energy conservation or other projects to be financed by vendors who will be paid from the District's savings.
 - iv. Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the District.

E. Bonds And Security. (SC Code § 11-35-3030; SC Reg. § 19-445-2145(C))

1. Bid Security.

- a. Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in excess of one hundred thousand dollars (\$100,000), such other contracts as may be prescribed by the Office of School Facilities, and where otherwise required by State law. Bid Security shall be a certified cashier's check or a bond provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. In the case of a construction contract under one hundred thousand dollars (\$100,000), the agency may, with the approval of the Superintendent or designee, allow the use of a "B" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety.
- b. Amount of Bid Security. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid at a minimum.
- c. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a Bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one (1) working day from bid opening to cure such deficiencies. If the Bidder cannot cure these deficiencies within one (1) working day of bid opening, his bid shall be rejected.
- d. Withdrawal of Bid. If a Bidder is permitted to withdraw its bid before bid opening pursuant to the provisions on Withdrawal of Bids in this Code no action shall be had against the Bidder or the bid security.

2. Contract Performance and Payment Bonds.

- a. Required Bonds. When a Notice of Intent to Award is acknowledged by a Contractor, the following bonds or security shall be delivered with the Contractor's acknowledgement of the Notice of Intent to Award to the Procurement Department, and shall become binding on the parties upon the execution of the contract:
 - i. A performance bond satisfactory to the District, executed by a surety company meeting the criteria established set forth below, or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent (100%) of the price specified in the contract.
 - ii. A payment bond satisfactory to the District, executed by a surety company meeting the criteria established below, or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price.

- iii. In the case of a construction contract valued at one hundred thousand dollars (\$100,000) or less, the District may waive the requirements of (1) and (2) above, provided that the District is protected.
 - iv. Criteria. The Contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in the form of AIA Document A311 "Performance Bond and Labor and Material Bond," as may be amended by the District. The District will supply the required version of Document A311 or District form. Each bond shall be in the full amount of the Contract Sum, issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. In the case of construction under \$100,000, the District may, with the approval of the Superintendent or designee, allow the use of a "B" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety.
 - b. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the Superintendent to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in item (a) of such subsection, when the District deems such bonds to be in the best interests of the District.
 - c. Suits on Payment Bonds. S.C. Code Ann. § 11-35-3020(2)(c)-(d) provides for legal actions on payment bonds.
 - d. Bond Copies. Any person may request and obtain from the Procurement Department a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.
 - e. Additional Bond Requirements. See S.C. Code §29-6-250 for additional bond requirements for projects over \$50,000.
- 3. Retention. (SC Code § 11-35-3030(4))
 - a. Maximum amount to be withheld. In any contract or subcontract for construction which contract or subcontract provides for progress payments in installments based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the District or general Contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment shall be no more than ten percent (10%).
 - b. Release of Retained Funds. When the work to be performed on a District construction project or pursuant to a District construction contract is to be performed by multiple prime Contractors or by a prime Contractor and multiple subcontractors, the work contracted to be done by each individual Contractor or subcontractor will be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed that portion of the retained funds which is allocable to the completed division of the contract shall be released forthwith to the prime Contractor, who shall, within ten (10) days of its receipt, release to the subcontractor responsible for the completed work the full amount of any retention previously withheld from him by the prime Contractor.

F. Contract Clauses And Their Administration (SC Code § 11-35-3040)

- 1. Contract Clauses. Horry County Schools construction contracts and subcontracts may include clauses providing for adjustments in prices, time of performance and other appropriate contract provisions including but not limited to:
 - a. The unilateral right to order in writing:
 - i. All changes in the work within the scope of the contract.
 - ii. All changes in the time of performance of the contract that do not alter the scope of the contract work.

- iii. Variations occurring between estimated quantities of work in the contract and actual quantities.
 - iv. Suspension of work.
 - v. Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site condition clauses promulgated by the Board need not be included in a contract.
 - vi. When the contract is negotiated.
 - vii. When the parties have otherwise agreed with respect to the risk of differing site conditions.
2. Price Adjustments.
- a. Adjustments in price pursuant to clauses promulgated under subsection F(1) of this section shall be computed and documented with a written determination. The price adjustment agreed upon shall approximate the actual cost to the Contractor and all costs incurred by the Contractor shall be justifiably compared with prevailing industry standards, including reasonable profit. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one (1) of the following ways is the most valid approximation of the actual cost to the Contractor:
 - i. By unit prices specified in the contract or subsequently agreed upon.
 - ii. By the costs attributable to the events or situations under such clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon.
 - iii. By agreement on a fixed price adjustment.
 - iv. In such other manner as the contracting parties may mutually agree.
 - v. In the absence of agreement by the parties, through unilateral determination by the District of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the District and subject to the process for contract dispute resolution provided by this Code.
 - b. A Contractor shall be required to submit cost or pricing data if any adjustment in contract price is sought.
3. Additional Contract Clauses. The construction contracts and subcontracts may include clauses providing for appropriate remedies, which cover as a minimum:
- a. Specified excuses for delay or nonperformance;
 - b. Termination of the contract for default;
 - c. Termination of the contract in whole or in part for the convenience of the District.
 - d. Liquidated damages in case of late completion and/or certification for occupancy.
4. Modification of Required Clauses. The Director of Procurement Services may vary the clauses referenced subsection F(1) and subsection F(3) of this section in any particular construction contract; provided, that any variations from the usual and customary clauses on these matters appearing in the District's standard construction contract models are supported by a written determination that states the circumstances justifying such variations; and provided, further, that notice of any such material variation be stated in the invitation for bids.
5. Changes to Architect, Engineer and Construction Contracts.
- a. Change Orders which significantly change the scope of the project or cause the budget authorized for the project by the Superintendent to be exceeded shall be submitted for review by the Office of School Facilities and Planning when so required by the provisions of Guide § 9.05(c).
 - b. Change Orders which do not significantly change the scope of the project or exceed the budget authorized by the Board may be executed by the Superintendent or designee without prior approval.

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- G. Cost Principles Regulations For Construction Contractors. The District may establish, in the construction project documents for each project, any cost principles, which shall be used to determine the allowability of, incurred costs for the purpose of reimbursing costs under provisions in construction contracts which provide for the reimbursement of costs.
- H. Sole Source Construction Procurement. See Article IV of this Code.
- I. Emergency Construction Procurement. See Article IV of this Code.
- J. Indefinite Delivery.
 - 1. General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services and for architectural-engineering and land surveying services pursuant to the procedure in this Article X.
 - a. Construction services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of \$750,000.00 for a two-year period with individual project expenditures not to exceed \$150,000.00.
 - b. Architectural-engineering and Land Surveying Services. When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of \$300,000.00 for a two-year period with individual project expenditures not to exceed \$100,000.00.
 - 2. Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural, engineering and land surveying services may be procured as provided in subsection (B)(7) of Article X. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided subsection (B)(7)(a) and (b) of Article X.

ARTICLE XI
DISPOSAL OF PROPERTY

- A. Disposal of Personal Property. (SC Code §§ 11-35-3810 *et seq.*, -4020; SC Reg. § 19-445.2150)
1. Authority. The sale of all District-owned surplus supplies, equipment, and property not in actual public use shall be conducted by the District at such places and in such manner most advantageous to the District. The District shall deposit the proceeds from such sales, less expense of the sales, in an expense account of the general fund or capital fund.
 2. Disposition of Surplus Supplies. Surplus supplies and property shall be offered through competitive sealed bids or public auction. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the Procurement Director or designee may employ such other means, including, but not limited to, appraisal, provided such officer makes a written determination that such procedure is advantageous to the District. Only cashiers' checks, United States' currency or personal checks shall be accepted for sales of surplus supplies or property.
 3. Competitive Sealed Bidding.
 - a. Solicitation and Opening. Except as specially provided for herein, when competitive sealed bidding is used, the procedures of Article IV of this Code apply. When making sales by competitive sealed bidding, notice of the sale should be given at least once fifteen (15) days before the date set for opening bids. Notice shall be given by mailing a Notice of Sale to prospective Bidders, including those Bidders on lists maintained for this purpose, and by making the Notice of Sale publicly available. Newspaper advertisement may also be used. The Notice of Sale shall list the supplies or property offered for sale; designate their location and how they may be inspected; and state the terms and conditions of sale and instructions to Bidders including the place, date and time set for bid opening. Bids shall be opened publicly.
 - b. Award. Award shall be made in accordance with the provisions of the Notice of Sale to the highest responsive and responsible Bidder, provided that the price offered by such Bidder is acceptable to the Procurement Director. Where such price is not acceptable, the Procurement Director may reject the bids in whole or in part and negotiate the sale provided the negotiated sale price is higher than the highest responsive and responsible bid.
 4. Auctions. An experienced auctioneer to cry the sale and assist in preparation of the sale may sell supplies at auction. The solicitation to Bidders should stipulate, at a minimum, all the terms and conditions of any sale and the fact that the District retains the right to reject and all bids. Auctioneer services shall be obtained by competition in accordance with the Procurement Code and these Regulations.
 5. Allocation of Proceeds from Sale or Disposal of Surplus. (SC Code § 11-35-3820) The sale of all District owned supplies, equipment or property not in actual public use shall be conducted and directed by the Director of Procurement Services. Such sales shall be held at such places and in such manner as in the judgment of the Procurement Director will be most advantageous to the District. Unless otherwise determined sales shall be by either public auction or competitive sealed bid to the highest Bidder. Proceeds from the sale, lease or disposal of surplus supplies and property shall be deposited in the District general fund.
 6. Trade-in Sales. (SC Code § 11-35-3830) The District may trade in its tangible personal property if the original unit purchase price did not exceed \$5,000, as long as the trade in value is applied to the purchase of new items. When the original unit purchase price exceeds \$5,000, the District shall refer the matter to the Chief Financial Officer for disposition. The Chief Financial Officer shall have the authority to determine whether the property shall be traded in and the value applied to the purchase of new like items or classified as surplus and sold in accordance with the provisions of the Procurement Code. When the original purchase price exceeds \$100,000, the Chief Financial Officer shall make a written determination as to its reasonableness and report such trade-in transaction to the Board as information.

7. Sale of Unserviceable Materials and Equipment (“Junk”). (SC Reg. § 19-445.2150(H)) The District may sell any supplies owned by it after such supplies have become entirely unserviceable and can properly be classified as “junk. It shall be the responsibility of the Fixed Assets Office to inspect and/or declare items as junk. Upon declaration as junk, if the owning agency determines to sell the property, it shall advertise the property in a newspaper of general circulation at least once fifteen (15) days prior to the sale. All sales of unserviceable supplies by the District shall be made in public to the highest Bidder, after advertising.
- B. Disposition of Real Property. (SC Code §§ 59-19-90, -120, -125, -190, -250; § 59-23-310)
1. Demolition. The Superintendent or designee must authorize demolition of structures.
 2. Moving. The Superintendent or designee must approve moving existing buildings.
 3. Sale. If the Superintendent determines that it is in the best interests of the District to dispose of real property owned or leased by the District, the disposal will be conducted under the general principles and procedures for either “competitive sealed bidding” or “competitive sealed proposals” set forth in this Code, *mutatis mutandis*.
 - a. Recovery of Useful Fixtures, Equipment, and Inventory. Prior to the disposal of any real property the District shall remove and recover useful fixtures, equipment, and inventory. Removal should occur prior to making the real property available for view by prospective purchasers, or items to be removed prior to conveyance should be clearly marked or described.
 - b. Appraisal. Prior to offering the real property for sale, an appraisal shall be obtained providing a basis for the value of the property.
 - c. Approvals. Where disposal of a parcel of land acquired with state funds after the year 1952 requires prior written approval of the State Board of Education, the offer of sale is contingent upon such approval.
 - d. Bid Deposit. All Bidders or proposers must submit a cashier's check or certified check with the bid or proposal, as the case may be, payable to the District in the amount of ten percent (10%) of the bid or value of the proposal. If a bid or proposal is accepted, the deposit is applied to the purchase price. If a Bidder or proposer defaults, the District may retain the deposit. Deposits on all bids and proposals not accepted are returned without interest or penalty.
 - e. Right of Rejection. Unless otherwise specifically set forth in the specific invitation for bids or request for proposals, Horry County Schools reserves the right to accept or reject any and all bids or proposals in whole or in part and to waive any informalities in the competitive bid or sealed proposals process; further, the District reserves the right to enter into any contract deemed to be in its best interests; finally, the District reserves the right to withdraw any property from the sale process at any time prior to closing, without liability of any kind whatsoever.
- C. Unauthorized Disposal. (SC Reg. § 19-445.2150(I))
The ratification of an act of unauthorized and/or improper disposal of property by any persons without the requisite authority to do so by an appointment or delegation under the Procurement Code rests with the Procurement Director. In all cases, the Procurement Director shall prepare a written determination describing the facts and circumstances surrounding the act, corrective action being taken to prevent recurrence, and action taken against the individual committing the act and shall report the matter in writing to Chief Financial Officer within ten (10) days after the determination.

ARTICLE XII
LEGAL AND CONTRACTUAL REMEDIES

A. Resolving Protests.

1. Right to Protest and Exclusive Remedy. (SC Code § 11-35-4210(1))
 - a. Any prospective Bidder, Offeror, Contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Procurement Director in the manner stated below within fifteen (15) days of the date of issuance of the Invitation for Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto if the amendment is at issue.
 - b. Any actual Bidder, Offeror, Contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Procurement Director in the manner stated below within fifteen (15) days of the date notification of intent to award is posted in accordance with this code.
 - c. The rights and remedies granted in this article to a disappointed Bidder, Offeror, Contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed Bidder, Offeror, Contractor, or subcontractor against the District at common law or otherwise for the loss or potential loss of an award of a contract under the District's Procurement Code, Policies, and Regulations.
2. Protest Procedure. (SC Code § 11-35-4210(2)) A protest shall be in writing, submitted to the Procurement Director and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.
3. Authority. (SC Code § 11-35-4210(3)) The Procurement Director or designee thereof shall have authority, prior to the commencement of an administrative review, to settle and resolve a protest of an aggrieved Bidder, Offeror, Contractor or subcontractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be utilized in a manner consistent with this Code and any other applicable statutes, regulations, court decisions, Board policies, or administrative adjudicatory decisions governing the procurement of supplies, services, equipment and construction for the District.
4. Review and Decision. (SC Code § 11-35-4210(4)) If the protest is not resolved by mutual agreement, the Procurement Director shall promptly conduct an administrative review, which in his or her discretion may include, but shall not necessarily be limited to, requesting position statements from affected parties, conducting *ex parte* interviews, seeking the assistance and opinions of other government agencies, and holding one (1) or more conferences with the affected parties. In protests seeking to set aside a Notice of Intent to Award or similar act of the District, the party selected by the District for the intended award or intended contract promptly shall be notified of the protest, shall be a party to the protest, and may appear in the matter. After the review is complete, the Procurement Director shall issue a decision in writing within ten (10) days. The decision shall state the reasons for the action taken.
5. Notice of Decision. (SC Code § 11-35-4210(5)) A copy of the decision along with a statement of appeal rights shall be mailed or otherwise furnished to the protestant and any other party intervening. The Director of Procurement Services shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the protestant's appeal rights under this Code.
6. Finality of Decision. (SC Code § 11-35-4210(6)) A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests, in writing, a further administrative review by the District Procurement Review Panel setting forth the grievance, to the Chief Financial Officer, within ten (10) days of the posting of the decision. The request for review shall set forth the reasons why the person disagrees with the decision of the Procurement Director or designee.
7. Stay of Procurement During Protests. (SC Code § 11-35-4210(7)) In the event of a timely protest, the District shall not proceed further with the solicitation or award of the contract until a decision is rendered by the Director of Procurement Services, or, in the event of timely appeal

to the District Procurement Review Panel, until a decision is rendered by the panel; provided, however, that solicitation or award of a protested contract will not be stayed if the Director of Procurement Services, after consultation with the Superintendent, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the District.

8. Reimbursement for Reasonable Costs. (SC Code § 11-35-4310(4)) In the event a protestor should have been awarded the contract under a solicitation but is not, then such party may apply to the District Procurement Review Panel for reimbursement of the actual costs, not to exceed five thousand dollars (\$5,000), incurred in connection with the solicitation including bid preparation. Upon receipt of such application the District Procurement Review Panel may order the computation of a reasonable reimbursement amount and make such recommendations to the Superintendent, as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars (\$5,000).
9. Protest Bond. (SC Code § 11-35-4215) The Procurement Director may require any Bidder or Offeror who files an action protesting the intended award or award of a contract solicited under this code and valued at one million dollars (\$1,000,000) or more to post with the Procurement Director a bond or irrevocable letter of credit payable to the Horry County Schools in an amount equal to one percent (1%) of the total potential value of the contract as determined by the Procurement Director. The Procurement Director's decision to require a bond or irrevocable letter of credit is not appealable. The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the Bidder or Offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of intended award or award of a contract of the District's request for a sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent (1%) of the District's estimate of the contact amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the Procurement Director may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the District prevails, it may request that the Procurement Review Panel allow it to recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the Bidder or Offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the Bidder or Offeror. Failure to pay such costs and charges by the Bidder or Offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting Bidder or Offeror. If the Bidder or Offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier check may be sought from the District.

B. Authority To Debar or Suspend. (SC Code § 11-35-4220)

1. Applicability. This section applies to a debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment.
2. Authority. After reasonable notice of debarment to the vendor involved, and a reasonable opportunity for the vendor to be heard, the Procurement Director shall have the authority to debar a vendor for cause from consideration for award of contracts, provided that doing so is in the best interest of the District and there is probable cause for debarment. The debarment shall be for a period as set forth by the Procurement Director. The Procurement Director may also suspend a vendor from consideration for award of contracts during an investigation where there is probable cause for debarment. The suspension shall be for a period as prescribed by the Procurement Director.

3. Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to, the following:
 - a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or professional honesty which currently, seriously and directly affects responsibility as a Contractor.
 - c. Conviction under state or federal antitrust laws arising out of the submission of bids or proposals.
 - d. Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Director to be so serious as to justify debarment action:
 - i Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
 - ii A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for debarment.
 - e. Any other cause the Procurement Director determines to be so serious and compelling as to affect responsibility as a Contractor, including debarment by another governmental entity for any cause listed herein.
 4. Decision. The Procurement Director shall issue a written decision to debar or suspend within ten (10) days of the completion of his/her administrative review of the matter. The decision shall state the specific reasons for the action taken and the period of debarment or suspension, if any.
 5. Notice of Decision. A copy of the decision along with a statement of appeal rights shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening. The Procurement Director shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal.
 6. Finality of Decision. A decision shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person requests, in writing, a review before the District Procurement Review Panel setting forth the reasons, to the Chief Financial Officer within ten (10) days of the decision. The person may also request an interview at each level. An appeal may be made within ten(10) working days of the posting of the decision.
- C. Authority To Resolve Contract and Breach of Contract Controversies. (SC Code § 11-35-4230)
1. Applicability. This section applies to controversies between the District and a Contractor or subcontractor when the subcontractor is the real party in interest, which arises under or by virtue of a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or revision. The procedure set forth in the section shall constitute the exclusive means of resolving a controversy between the District and a Contractor or subcontractor concerning a contract solicited and awarded under the provisions of the Horry County Schools Consolidated Procurement Code. Unless specifically included by the Procurement Director in conformity with the requirements of this Code for adding special contractual clauses, any arbitration clause in a contract under this Code is null and void *ab initio*.
 2. Request for Resolution and Time for Filing. Either the District or the Contractor or subcontractor when the subcontractor is the real party in interest may initiate resolution proceedings before the Director of Procurement Services by submitting a request for resolution to the Director of Procurement Services in writing setting forth the general nature of the controversy and the relief requested with enough particularity to give notice of the issues to be

decided. A request for resolution of contract controversy must be filed within one (1) year of the date the Contractor last performs work under the contract; provided however, that in the case of latent defects a request for resolution of a contract controversy must be filed within one (1) year of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

3. Authority to Attempt to Settle Contract Controversies. Prior to commencement of an administrative review as provided in subsection below, the superintendent or designee shall attempt to settle by mutual agreement a contract controversy brought under this section. The superintendent or designee shall have the authority to approve any settlement reached by mutual agreement.
4. Administrative Review and Decision. If, in the opinion of the Procurement Director after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the Procurement Director shall promptly conduct an administrative review and shall issue a decision in writing within ten (10) days of completion of the review. The decision shall state the reasons for the action taken.
5. Notice of Decision. A copy of the decision along with a statement of appeal rights shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The Director of Procurement Services shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal.
6. Finality of Decision. The decision shall be final and conclusive, unless fraudulent, or unless the Contractor requests, in writing, a review before the District Procurement Review Panel setting forth the reasons, to the Chief Financial Officer within ten (10) days of the decision. The request for review shall set forth the reasons why the person disagrees with the decision of the Procurement Director or designee. The person may also request a hearing before the Procurement Review Panel. An appeal may be made within ten (10) days of the posting of the decision.

D. Remedies.

1. Solicitation or Awards in Violation of the Law. (SC Code § 11-35-4310)
 - a. Applicability. The provisions of this section apply where it is determined by either the Director of Procurement Services or the District Procurement Review Panel upon administrative review, that a solicitation or award of a contract is in violation of the law. Following the appropriate proceedings established in this Code, the remedies set forth herein may be granted by either the Director of Procurement or by the District Procurement Review Panel.
 - b. Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:
 - i. Canceled.
 - ii. Revised to comply with the law and re-bid.
 - iii. Awarded in a manner that complies with the provisions of this code.
 - c. Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law:
 - i. The contract may be ratified and affirmed, provided it is in the best interests of the District.
 - ii. The contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.
 - d. Entitlement to Costs.
 In addition to or in lieu of any other relief, when a protest is sustained, and it is determined that the protesting Bidder or Offeror should have been awarded the contract under the solicitation but is not, then the protesting Bidder or Offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs.

2. Contract Controversies. (SC Code § 11-35-4320)
The Director of Procurement Services or the District Procurement Review Panel may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.
 3. Frivolous Protests. (SC Code § 11-35-4330)
 - a. Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.
 - b. Sanctions for Violation. If a request for review, protest, pleading, motion, or other document is signed in violation of this subsection on or after appeal to the District Procurement Review Panel, the District Procurement Review Panel, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.
- E. District Procurement Review Panel. (SC Code § 11-35-4410)
1. Duties. The District Procurement Review Panel shall be charged with the responsibility of providing an administrative review and determination of formal protests of decisions arising from the solicitation and award of a contract under this Code, the debarment or suspension of a vendor from the consideration for award of contracts, a decision concerning the resolution of a contract or breach of contract controversy arising under this Code, or any other decision, policy or procedure arising from or concerning the expenditure of District funds for the procurement of any supplies, services, equipment or construction procured in accordance with the provisions of this Code. Requests for review under this paragraph shall be submitted to the Chief Financial Officer in writing, setting forth the grounds, within ten (10) days of the date of such written determinations, decisions, policies and procedures.
 2. Scope of Issues Considered. Any matter, which could have been brought before the Procurement Director in a timely and appropriate manner, but was not, shall not be the subject of review under this paragraph. This rule does not preclude additional or alternative legal arguments pertaining to the same basic matter in controversy.
 3. Membership.
 - a. The Chair of the Board of Education's Building Committee, who will chair the panel. If the Chair of the Building Committee is unavailable or unable to serve, the Chair of the Board of Education will appoint another member of the Building Committee to chair the panel as needed;
 - b. For one-year terms running from July 1 through June 30 annually, four (4) persons from the community who are well-respected representatives of several of the professions and businesses affected by this Code, including but not limited to goods and services supply, information technology supply, construction, architecture, engineering, construction management, and land surveying.
 - c. One (1) of these persons will be appointed by the Chair of the Board of Education, one (1) by the Vice-Chair of the Board of Education, one (1) by the Superintendent, and one (1) by the Chief Financial Officer, to be made in that order to assure a wide range of affected professions and businesses are represented; these persons shall recuse themselves in any matter in which they have an actual or apparent conflict of interest.
 - d. When a vacancy is created, the official responsible for originally appointing the member vacating his or her seat shall appoint the successor to complete the term of service.

- e. Members may be reappointed to succeed themselves.
- 4. Meetings. The panel shall meet as often as necessary to afford a swift resolution of the controversies submitted to it. Three (3) members present and voting shall constitute a quorum. The members of the Procurement Review Panel may be paid a *per diem* by the District for their attendance at meetings.
- 5. Administrative and Legal Support. The panel shall receive such administrative and clerical support as is necessary for the orderly transaction of business. The District will also provide the panel with independent legal counsel to assist the panel in all aspects of its operations.
- 6. Jurisdiction and Practices. The panel shall be vested with the authority to establish its own procedures for the conduct of its business and the holding of its hearings, to interview any person it deems necessary, to review all written decisions rendered, record all determinations, and make its report of the same in writing. The panel shall comply with any applicable requirements of the South Carolina Freedom of Information Act.
- 7. Determinations and Orders. When the District receives a proper appeal to the Procurement Review Panel as provided for in this Code, the Chair of the panel shall convene the panel within fifteen (15) days to conduct an administrative review of the determinations rendered. The panel shall make and record its determination within thirty (30) days of its meeting. The panel's disposition of the matter is the final District action on the matter, except when the matter is remanded to the Procurement Director for further action.

ARTICLE XIII
INTERGOVERNMENTAL RELATIONS

- A. Cooperative Purchasing Authorized. (SC Code § 11-35-4810)
The Procurement Department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, equipment or construction with one (1) or more public agencies in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public agencies and open-ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Selective Mandatory Opting or except as may otherwise be limited by the District through regulations.
- B. Selective Mandatory Opting. (SC Code § 11-35-4820; SC Reg. § 19-445.2155)
The District may purchase from or through the State at any time; provided, however, that the State may impose – and the District may honor -- a requirement upon the District for mandatory opting in or out of any particular contract before it is established.
- C. Sale, Acquisition or Use of Supplies by a Public Procurement Unit. (SC Code § 11-35-4830)
The Procurement Department may sell to, acquire from, or use any supplies belonging to another public agency in accordance with the competitive requirements of this code and regulations; provided, that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.
- D. Cooperative Use of Supplies or Services. (SC Code § 11-35-4840)
The Procurement Department may enter into an agreement with any other public agency for the cooperative use of supplies or services under the terms agreed upon between the parties in accordance with the competitive requirements of this code; provided, that such cooperative use of supplies or services shall take place only when the public agencies have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.
- E. Joint Use of Facilities. (SC Code § 11-35-4850)
The District may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public agency under the terms agreed upon between the parties and approved by the Board.
- F. Supply of Information and Technical Services. (SC Code § 11-35-4860)
1. Supply of Personnel. In its discretion, upon written request from another public procurement unit or external procurement activity, the District may provide personnel services to the requesting public procurement unit or external procurement activity with or without pay by the recipient governmental unit as may be agreed upon by the parties involved.
 2. Supply of Services. The informational, technical and other services of the District unit may be made available to any other public procurement unit or external procurement activity provided that the requirements of the District shall have precedence over the requesting public procurement unit or external procurement activity. The payment shall be in accordance with an agreement between the parties.
 3. District Information Services. Upon request, the Procurement Director may make available to public agencies the following services among others:
 - a. Standard forms.
 - b. Printed manuals.
 - c. Product specifications and standards.
 - d. Quality assurance testing services and methods.
 - e. Qualified products lists.
 - f. Source information.

- g. Common use commodities listings.
 - h. Supplier pre-qualification information.
 - i. Supplier performance ratings.
 - j. Debarred and suspended Bidders lists.
 - k. Forms for invitations for bids, requests for proposals, instruction to Bidders, general contract provisions and other contract forms.
 - l. Contracts or published summaries thereof, including price and time of delivery information.
4. Fees. The Procurement Director may enter into contractual arrangements for fees for services provided.
- G. Use of Payments Received by a Supplying Public Procurement Unit. (SC Code § 11-35-4870)
All payments from any public agency received by the District for supplying personnel or services shall be governed by any provisions of law and deposited in the District's general fund.
- H. Public Agencies in Compliance with Code Requirements. (SC Code § 11-35-4880)
Where the District administers a cooperative purchase in compliance with the requirements of this code, any public agency participating in such a purchase shall be deemed to have complied with this code. The District shall not enter into a cooperative purchasing agreement for the purpose of circumventing this code.
- I. Review of Procurement Requirements. (SC Code § 11-35-4890)
The Procurement Director may collect information concerning the type, cost, quality and quantity of commonly used supplies, services, equipment or construction being procured or used by the District, which shall be required to respond appropriately as a precondition for participation in cooperative purchasing. The Procurement Director shall make available all such information to any public agency upon request.

ARTICLE XIV
ASSISTANCE TO MINORITY BUSINESSES

- A. Statement of Implementation. (SC Code § 11-35-5210)
The Board of Education of the Horry County Schools intends to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process of the District. The Board of Education, therefore, takes this leadership role in setting procedures that will result in awarding contracts and subcontracts to minority business firms in order to enhance minority capital ownership, overall District and state economic development and reduce dependency on the part of minorities. The Procurement Director and Buyers shall implement this code in accordance with the provisions of Duties of the Procurement Director.
- B. Duties of the Procurement Director. (SC Code § 11-35-5220)
1. Assistance from the Procurement Director. The Procurement Director may provide appropriate staff to assist minority businesses in the interpretations of the regulations developed pursuant to this code.
 2. Special Publications. The Procurement Director and Buyers in cooperation with other appropriate private and state agencies may issue supplementary instructions designed to assist minority businesses with the District procurement procedures.
 3. Source Lists. The Purchasing Department shall maintain special source lists of minority business firms detailing the products and services, which they provide.
 4. Solicitation Mailing List. The Procurement Director and Buyers shall include and identify certified South Carolina based minority businesses on the District's Bidders' list and shall ensure that these firms are solicited on an equal basis.
- C. Regulations for Negotiation with District and State Minority Firms. (SC Code § 11-35-5230)
The District may designate such procurement contracts as it may deem appropriate for negotiation with South Carolina-based minority firms. Among the criteria that shall be used to determine such designations are:
1. The total dollar value of procurement in South Carolina.
 2. The availability of South Carolina-based minority firms.
 3. The potential for breaking the contracts into smaller units, where necessary, to accommodate such firms.
 4. Insuring that the District shall not be required to sacrifice quality of goods or services.
 5. Insuring that the price shall have been determined to be fair and reasonable, and competitive both to the District and to the Contractor and results in no loss to the District.
- Firms that subcontract with minority firms are advised that they may be eligible for an income tax credit equal to four percent (4%) of the payment to minority subcontractors. Such subcontractors must be certified as to the criteria of a minority firm as defined in State law and regulations.
- D. Minority Business Enterprise (MBE) Utilization Plan. (SC Code § 11-35-5240)
In order to emphasize the use of minority small businesses, the District shall develop a Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan should include but not be limited to:
1. Policy Statement. A policy statement expressing a commitment by the Board of Education to use MBEs in all aspects of procurement.
 2. Responsibility. The name of the MBE Liaison Office responsible for monitoring the MBE Utilization Plan.
 3. Goals. Goals that include a reasonable percentage of the District's total procurements directed toward minority vendors.
 4. Solicitation of MBEs. Solicitation of qualified minority vendors listed by the South Carolina Office of General Services, in each commodity category for which such minority vendor is qualified.

5. Project Division Procedures. Procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation.
6. Subcontracting to Governmental Body. Procedures to be used when the District subcontracts the scope of service to another governmental body; the responsible governmental body may set goals for the subcontractor in accordance with the MBE goal and the responsible governmental body may allow the subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.
7. Assistance to MBEs. Assistance to MBEs seeking to do business with the District may include, but not be limited to:
 - a. Referral Service. Federal and state governments provide several organizations to assist small and minority businesses. The District should maintain reference files of such organizations and make this reference information available to minority firms who need assistance.
 - b. Split Projects. The MBE plan should outline procedures to be used when it is considered feasible to divide larger projects into smaller tasks to allow small and minority business participation.
 - c. Contractor Requirements. The plan should include instruction to Contractors concerning the use of minority subcontractors. Solicitations should require all Bidders to address the use of minority subcontractors. Such utilization of minority subcontractors shall be made a part of the quarterly and annual report.
8. Progress Reports. Progress reports will be submitted quarterly to the Chief Financial Officer not later than fifteen (15) days after the last day of each fiscal quarter. Annual reports will be submitted to the Superintendent not later than sixty (60) days after the end of the fiscal year.

E. Progress Payments and Letter of Credit. (SC Code § 11-35-5250)

1. Progress Payments.
 - a. Upon request from the Contractor, progress payments may be made on a monthly basis or upon completion of a stated percentage of the contract, normally upon completion of twenty-five percent (25%), fifty percent (50%), or seventy-five percent (75%) of the contract. Progress payments may be made at more frequent intervals if deemed in the best interest of the District.
 - b. Preliminary Requirements. If requested by the Procurement Director, the Contractor shall furnish a breakdown of contract costs at the time the progress payment is requested. Materials delivered to the site but not used and site preparation may be included in the contract costs. Upon payment of the progress payment, all on-site materials become the property of the District.
 - c. Retention. In arranging progress payments, the Chief Financial Officer or the Chief Construction Officer shall cause to be retained five percent (5%) of the estimated amount until final completion and acceptance of the contract work. However, if the appropriate Director finds that satisfactory progress is being achieved during any period for which progress payment is requested and there is no reason to believe satisfactory progress will not continue, he may authorize such payment to be made in full without retention of a percentage.
 - d. Contractor Responsibility. All material and work covered by progress payments shall become the property of the District but this provision shall not relieve the Contractor from the responsibility for all materials and work or the restoration of any damage to work until the contract has been completed and all terms of the contract fulfilled.
2. Letter of Credit. Upon request, when a certified South Carolina based minority firm receives a District contract, the Chief Financial Officer or the Chief Construction Officer shall furnish a letter stating the dollar value, the duration, payment schedule, and other information concerning the contract, which may be used by the certified minority firm to negotiate lines of credit with a lending institution. When such lines of credit are established, the lending institution may request jointly with the owner in writing that such payments by the District relating to that

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contract be made jointly to the minority firm and the lending institution establishing the line of credit.

- G. Report to the Board of Education. (SC Code § 11-35-5260) The Superintendent shall report annually in writing to the Board concerning the number and dollar value of contracts awarded to eligible certified South Carolina-based minority businesses during the preceding fiscal year. These records shall be maintained to evaluate the progress of this program.