



RICHLAND ONE

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**RICHLAND COUNTY
SCHOOL DISTRICT ONE
PROCUREMENT CODE**

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RICHLAND COUNTY SCHOOL DISTRICT ONE

PROCUREMENT CODE

I. *General Provisions*

A. *General Provisions.*

1. **Purpose and Policies.** The underlying purposes and policies of this Code are:
 - a. to provide increased economy in District procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring procurements that are the most advantageous to the District;
 - b. to foster effective broad-based competition for public procurement within the free enterprise system;
 - c. to develop procurement capability responsive to appropriate user needs;
 - d. to consolidate, clarify, and modernize the procedure governing procurement in the District and permit the continued development of explicit and thoroughly considered procurement policies and practices;
 - e. to require the adoption of competitive procurement practices by the District;
 - f. to ensure the fair and equitable treatment of all persons who deal with the procurement system of this District which will promote increased public confidence in the procedures followed in public procurement;
 - g. 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; and

4. **Purchase of Goods or Services from Entity Using Prison Labor.** The District will not knowingly 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. The District reserves the right to terminate any contract if it is subsequently determined that the entity supplying the goods or services has employed or use 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

B. Determinations.

1. **Determinations.** The District shall retain written determinations and findings required by the Code in an official contract file. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit.

C. Definitions of Terms Used in this Code.

1. **Definitions.** The following words, unless the context clearly indicates otherwise, shall mean:
 - a. **“Information Technology (IT)”** means data processing, telecommunications and office systems technologies and services:
 - (1) **“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.
 - (2) **“telecommunications”** means voice, data, message and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

- (3) **“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.
- (4) **“services”** means the providing of consultant assistance for any aspect of information technology, systems, and networks.
- b. **“Board”** means the Board of School Commissioners of Richland County School District One.
- c. **“Business”** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.
- d. **“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.
- e. **“Procurement Officer”** means the person authorized by the Board to make purchases.
- f. **“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.
- g. **“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.
- h. **“Contract modification”** means a written order signed by the Procurement Officer directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

- i. **“Contractor”** means any person having a contract with the District.
- j. **“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 Officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.
- k. **“Data”** means recorded information, regardless of form or characteristics.
- l. **“Days”** means calendar days. In computing any period of time prescribed by Code or the regulations, the day of the event from which the designated period of time begins to run shall not be included. If the final day of the designated period falls on a Saturday, Sunday, or legal holiday for the District, then the period shall run to the next business day.
- m. **“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.
- n. **“Designee”** means a duly authorized representative of a person with formal responsibilities under the Code.
- o. **“Employee”** means an individual receiving any wages, including a salary, from the District.
- p. **“District”** means a governmental entity governed by an elected Board of School Commissioners, which appoints a Superintendent to carry out policies established by the Board. This refers to Richland County School District One hereinafter referred to as the “District”.
- q. **“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.

- r. **“Invitation for Bids”** means a written or published solicitation issued by the Procurement Officer or Buyer for bids 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.
- s. **“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.
- t. **“Buyer”** means any person duly authorized by the District, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the District within the scope of his/her authority.
- u. **“Real Property”** means any land, all things growing on or attached thereto, including buildings and structures located thereon.
- v. **“Request for Proposals (RFP)”** means a written or published solicitation issued by the Procurement Officer 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 shall be stated in the RFP, and which shall include but not be controlled solely by the factor of price proposed to be charged.
- w. **“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 any employment agreements or services.

- x. **“Subcontractor”** means any person having a contract to perform a particular service for a contractor as a part of the contractor’s agreement with the District.
- y. **“Supplies”** means all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding real property or an interest in real property other than leasehold interests.
- z. **“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.
- aa. **“Term contract”** means a contract established by the Procurement Officer or Buyers for a specific product or service for a specified time and for which it is mandatory that the District procure its requirements for such goods and services during the contract’s term. If the District is offered goods and services at a price that is ten percent 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 in III.E.3.

D. Public Access to Procurement Information.

1. **Public Access to Procurement Information.** Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) of the South Carolina Code with the exception that commercial or financial information obtained in response to a “Request for Proposals” 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:

- a. Customer lists;
- b. Design recommendations and identification of prospective problem areas under a RFP;
- c. Design concepts, including methods and procedures;
- d. Biographical data on key employees of the bidder.

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.

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 a party is a trade secret as defined in *S.C. Code Ann. § 30-4-40(a)(1)*, 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.

II. ***Procurement Organization***

A. **Committees and Management**

1. **Centralization of Materials Management Authority.** 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 now vested in or exercised by a school or department under the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the District. This vesting of authority shall be subject to Exemptions, Authority to Contract for Auditing Services, Authority to Contract for Legal Services, Authority to Contract for Certain Services, Small Purchases, Emergency Procurements, Exception

for Small Architect-Engineer, and Land Surveying Services Contracts, and Management of Warehouses and Inventory.

2. **Authority and Duties of the Board.**

- a. **Authority to Promulgate Policies.** The Board shall have the authority and responsibility to promulgate policies, consistent with this code, 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.
- b. **Non-delegation.** The Board shall not delegate its power to promulgate policies.
- c. **Board Oversight.** The Board acting as a whole shall consider and decide matters of policy within the provisions of this Code, including those referred to it by the Superintendent. The Board shall have the power to audit and monitor the implementation of its policies and the requirements of this Code.
- d. **Board Approval.** The Board reserves to itself the right to approve all purchase orders and contracts of \$50,000 or more, except when such purchases have received specific, prior approval. (II.A.2.d. approved 11/26/85 by the Board.)

3. **Authority and Duties of the Superintendent.** The Board delegates to the Superintendent all authority and responsibilities for procurement. The Superintendent may delegate such authority to the Procurement Officer or other designees as he deems appropriate.

B. **Exemptions**

- 1. **Exemptions.** The Board may exempt specific supplies or services from the purchasing procedures herein required or withdraw any exemptions provided for in this section. The following items will be exempted from the procurement process:

- a. Books, Periodicals, Newspapers, Technical Pamphlets, Standardized Tests and Testing Materials, Copyrighted Educational Materials, Filmstrips, Education Instruction Software, Slides and Transparencies, Utilities, Fuel and Water
- b. Travel to Workshops, Seminars, Conferences by District Employees
- c. Professional Journals
- d. Advertisements in professional journals or publications
- e. Advertising time or space in newspapers, radio or television
- f. License agreements for computer software, after such software has been competitively bid, as required by the Procurement Code
- g. Animals acquired for specific or general research, testing or experimentation
- h. Expenses of evaluation committees in order to obtain or maintain accreditation, e.g. the Southern Association of Colleges and Schools
- i. Services of artists and performers approved by the S.C. Arts Commission
- j. Livestock, Feed and Veterinary Supplies
- k. Milk, Meats, Fish and Eggs
- l. Affiliations with any Credit Union
- m. Purchase of Annuities or other investment activities
- n. Oil Company Credit Cards - purchases for gas and oil and emergency repairs
- o. Attorneys, subject to approval by the Board
- p. Licensed Medical Doctors, Psychiatrists

- q. Court Reporters
- r. Professional Dues, Registration and Membership Fees
- s. Instructional or administrative training seminars or staff development offered by the District to District employees and the contractual services, if any, necessary to provide the services for the seminar
- t. Diplomas
- u. U.S. Postage Stamps and P.O. Boxes
- v. Art Reproductions
- w. Perishable Foods (to include fresh fruits and vegetables)
- x. Expert witnesses
- y. Goods, products and services from the South Carolina Department of Corrections, Division of Prison Industries
- z. Services and/or supplies provided by the Division of General Services to public procurement units.
- aa. Items purchased with local school funds/student activity funds (not allocated funds)
- bb. Procurements by the District through a cooperative purchase where the public procurement unit or external procurement activity administering the cooperative purchase complied with the requirements of the South Carolina Procurement Consolidated Code, or such other procurement code approved by the Office of General Services of the State Budget and Control Board pursuant to *S.C.Code Ann. § 11-35-70* (Supp. 2000).
- cc. Any exemption approved by the South Carolina Budget and Control Board with respect to procurements under the South Carolina Procurement Code.

C. Advisory Committees and Training

1. **Relationship with End Users.** The Procurement Officer and Buyers shall maintain a close and cooperative relationship with the end user. The Procurement Officer 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.** The Procurement Officer 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 Officer or Buyers. The Procurement Officer and Buyers shall develop methods for obtaining necessary and relevant information, whether through user committees or by surveys and other methods. The Procurement Officer and Buyers 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.** The Procurement Officer shall develop and implement an organized professional development program for purchasing personnel. These activities should be correlated when possible with the District program of staff development.

D. **Auditing and Fiscal Reporting**

1. **Certification.**
 - a. **Authority.** The Board may assign differential dollar limits below which the Procurement Officer and Buyers may make direct procurements not under term contracts.
 - b. **Policy.** Authorizations granted by the Board to the Superintendent are subject to the following:
 - (1) adherence to the provisions of this Code and the ensuing regulations, particularly concerning competitive procurement methods;
 - (2) responsiveness to user needs;
 - (3) obtaining of the best prices for value received.

- c. **Adherence to Provisions of the Code.** All 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.** The Procurement Officer shall prepare statistical data concerning the procurement use and disposition of supplies, services and equipment. The Procurement Officer shall prescribe forms to be used by the end users in requisitioning of supplies, equipment and services. The Procurement Officer 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. **Auditing and Fiscal Reporting.** The General Auditor through consultation with the Procurement Officer shall develop written plans for the auditing of procurements. The District's procurement records will be audited in accordance with the requirements of *S.C.Code Ann. § 11-35-70* (Cum. Supp. 2000), as revised from time to time, to determine compliance with this Code.
4. **Administrative Penalties.** Violation of these provisions shall be grounds for loss of or reduction in authority delegated by the Office of General Services.
5. **Authority to Contract for Auditing Services.** No contract for auditing or accounting services shall be awarded without the approval of the Board or its designee.
6. **Authority to Contract for Legal Services.** No contract for the services of attorneys shall be awarded without the approval of the Board or its designee.
7. **Authority to Contract for Certain Professional Services.** For the purpose of procuring any professional services not included in the purchasing authority of this Code and the ensuing regulations, where the person employed is customarily employed on a fee basis rather than by competitive bidding, the District may contract for such services, subject to this Code and regulations.

III. Source Selection and Contract Formation

A. Definitions of Terms Used in this Article.

1. **Definitions of Terms Used in this Article.** Unless the context clearly indicates otherwise:
 - a. **“Cost-reimbursement contract”** means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles as established by the District and a fee, if any.
 - b. **“Established catalog price”** means the price included in a catalog, price list, schedule, or other form that:
 - (1) is regularly maintained by a manufacturer or vendor of an item;
 - (2) is either published or otherwise available for inspection by customers;
 - (3) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.
 - c. **“Invitation for bids”** means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures of Competitive Sealed Bidding.
 - d. **“Purchase description”** means specifications or any other document describing the supplies, services, equipment or construction to be procured.
 - e. **“Request for Proposals (RFP)”** means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
 - f. **“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 which will assure good faith performance which may be substantiated by past performance.
 - g. **“Responsive bidder”** means a vendor who has submitted a bid, which conforms in all material aspects to the invitation for bids.

B. Methods of Source Selection.

1. **Exceptions to Sealed Bidding:** Unless otherwise provided by regulations, all District contracts shall be awarded by competitive sealed bidding, except as provided below
 - a. Fixed Priced Bidding;
 - b. Competitive Best Value Bidding;
 - c. Authority to Contract for Auditing Services;
 - d. Authority to Contract for Legal Services;
 - e. Authority to Contract for Certain Professional Services;
 - f. Competitive Sealed Proposals;
 - g. Negotiations After Unsuccessful Competitive Sealed Bidding;
 - h. Small Purchases;
 - i. Sole Source Procurements;
 - j. Emergency Procurements;
 - k. Procurement of Information Technology;
 - l. Construction Procurement Procedure;
 - m. Leasing of Real Property;
 - n. Procurement of Architect-Engineer, Construction Management and Land Surveying Services;
 - o. Procurement of Small Architect-Engineer and Land Surveying Services Contracts (less than \$25,000);
 - p. Competitive On-Line Bidding.
2. **Competitive Sealed Bidding.**
 - a. **Condition for Use.** Contracts amounting to twenty-five thousand dollars or more shall be awarded by competitive sealed bidding except as listed above.

- b. **Invitation for Bids.** An invitation for bids shall be issued in an efficient and economical manner and shall include specifications and all contractual terms and conditions applicable to the procurement.
- c. **Notice.** Adequate notice of invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of the bids. Such notice shall publication in a newspaper of general circulation in the immediate area, such as "South Carolina Business Opportunities", within a reasonable time prior to bid openings. Such notice may be by means of central electronic advertising as approved by the District. An advertisement for goods and services (not to include construction and related services) may be supplemented through publication in a local trade journal or newsletter.
- d. **Receipt and Safeguarding of Bids.** All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.
- e. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids and in the manner prescribed by regulation. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection at that time.
- f. **Bid Acceptance and Bid Evaluation.** 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.
- g. **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted in accordance with regulations. 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 by regulation, all decisions to permit the correction or withdrawal of bid, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination of appropriateness made by the Procurement Officer.

- h. **Discussion with Bidders.** As provided for 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 Officer's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the Procurement Officer and/or Buyer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section I.D., above.

- i. **Tie Bids.** In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
 - (1) Should there be a firm located within the District tied with an out-of-District firm, the award shall be made automatically to the firm located within the District.
 - (2) Should there be a Richland County firm tied with an out-of-County firm, the award shall be made automatically to the Richland County firm.
 - (3) Should there be a South Carolina firm tied with an out-of-state firm, the award shall be made automatically to the South Carolina firm.
 - (4) 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.
 - (5) Tie bids involving firms located within the District shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.
 - (6) Tie bids involving Richland County firms shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.

- (7) Tie bids involving South Carolina firms not located within Richland County shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.
- (8) In all other situations where bids are tied, the award will be made by the District to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.

j. **Award.** Unless there is a compelling reason to reject bids as prescribed by regulations of the District, notice of an intended award of 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 specified in the invitation for bids. Prior to the posting of the award, the District may negotiate with the lowest responsive and responsible bidder to lower his price within the scope of 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 date and location of posting must be announced at bid opening. When a contract has a 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 is received. Notice shall be given by first-class mail to the name and address on the bid documents or at the District's option via facsimile (confirmed receipt). All bidders must be given notice by the same method. Such notice must contain a statement of the bidder's right to protest.

When a contract has a potential value in excess of fifty thousand dollars (\$50,000), sixteen days after notice is given the District may enter into a contract with the bidder named in the notice in accordance with the provisions of this Code and the bid solicited. When only one response is received, the notice of intended award and the sixteen-day delay of award may be waived. A determination of responsibility must be made prior to award.

k. **Request for Qualifications.** Prior to soliciting bids, the District, through the Procurement Officer, 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 in the manner provided in Section III.B.2.c.

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 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.

- I. **Minor Informalities and Irregularities in Bids.** A minor informality or irregularity is one 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 Officer or Buyer 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:

- (1) failure of a bidder to return the number of copies of signed bids required by the solicitation;
- (2) 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;
- (3) 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;

- (4) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:
 - (a) 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
 - (b) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and it is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;
- (5) failure of a bidder to furnish an affidavit concerning affiliates;
- (6) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
- (7) failure of a bidder to furnish cut sheets or product literature;
- (8) failure of a bidder to furnish certificates of insurance;
- (9) failure of a bidder to furnish financial statements;
- (10) failure of a bidder to furnish references;

- (11) failure of a bidder to furnish its bidder number; and
- (12) the 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. **Competitive Fixed Price Bidding.**

- a. **Conditions for Use.** When the Procurement Officer 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 subject to the provisions of Section III.B.2. and the ensuing regulations, unless otherwise provided for in this section.
- b. **Fixed Price Bidding.** The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a preset maximum price which the District will pay for such goods or services.
- c. **Public Notice.** Adequate public notice of the solicitation shall be given in the same manner as provided in section Competitive Sealed Bidding Procedures.
- d. **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.
- e. **Evaluation.** Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
- f. **Discussion with Responsive Bidders.** Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed price bid. All bidders whose bids, in the Procurement Officer's sole judgment, need clarification shall be accorded such an opportunity.
- g. **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.

- h. **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.
- i. **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.

4. **Competitive Best Value Bidding.**

- a. **Condition for Use.** When the Procurement Officer 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 subject to the provisions of Section III.B.2. and the ensuing regulations, unless otherwise provided for in this section.
- b. **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.
- c. **Public Notice.** Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section III.B.2.c. (Competitive Sealed Bidding).
- d. **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.
- e. **Evaluation Factors.** The best value bid 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. Best value bid evaluation factors may include, but are not limited to, any of the following as determined by the District in its sole discretion and not subject to protest:

- (1) operational costs that the District would incur if the bid is accepted;
- (2) quality of the product or service, or its technical competency;
- (3) reliability of delivery and implementation schedules;
- (4) maximum facilitation of data exchange and systems integration;
- (5) warranties, guarantees, and return policy;
- (6) vendor financial stability;
- (7) consistency of the proposed solution with the District's planning documents and announced strategic program direction;
- (8) quality and effectiveness of business solution and approach;
- (9) industry and program experience;
- (10) prior record of vendor performance;
- (11) vendor expertise with engagement of similar scope and complexity;
- (12) extent and quality of the proposed participation and acceptance by all user groups;
- (13) proven development methodologies and tools; and
- (14) innovative use of current technologies and quality results.

f. **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 Procurement Officer's sole judgment, need clarification shall be accorded such an opportunity.

- g. **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 scope 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.
- h. **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.

5. **Competitive On-Line Bidding.**

- a. **Conditions for Use.** When the District 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, subject to the provisions of Section III.B.2 (Competitive Sealed Bidding) and the ensuing regulations, unless otherwise provided in this section.
- b. **Bidding Process.** The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in 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 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 Section III.B.2.g. 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.

- c. **Receipt and Safeguarding of Bids.** Other than price, any information provided to the District by a bidder must be safeguarded as required by Section III.B.2d. (Receipt and Safeguarding of Bids).
- d. **Provisions Not to Apply.** Section III.B.2.e. (Bid Opening) does not apply to solicitations issued pursuant to this section.

6. **Competitive Sealed Proposals.**

- a. **Conditions for Use.** When the Procurement Officer determines and states 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 subject to the provisions of Section III.B.2.
- b. **Public Notice.** Adequate public notice of the request for proposals/qualifications shall be given in the same manner as provided in Competitive Sealed Bidding Procedures.
- c. **Receipt of Proposals.** Proposals shall be opened publicly. A tabulation of proposals shall be prepared and shall be open for inspection after contract award.
- d. **Request for Qualifications.** Prior to soliciting proposals, the Procurement Officer may issue a request for qualifications from prospective offerors. This request shall contain a minimum description of the goods and 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 prospective 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 prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposal shall not be grounds for protest.

- e. **Evaluation factors.** The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require numerical weighting for each factor. Price may, but need not be, an evaluation factor.
- f. **Discussion with Offerors.** As provided in the request for proposals, discussions may be conducted with apparent responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals in the Procurement Officer's sole judgment needed 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 weightings 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 Section III.B.6.i. below.
- h. **Negotiations.** Whether price was an initial evaluation factor or not, the District, through the Procurement Officer, may, in its sole discretion and not subject to challenge through a protest filed under Article IX, proceed in any of the manners indicated below:

- (1) negotiate price with the highest ranking 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; or
- (2) 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; or
- (3) during the negotiation process as outlined in subsections (1) and (2) above, if the District is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated;
- (4) 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 an opportunity to submit their best and final offer.

In conducting negotiations, there must be no disclosure of any 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 evaluation factors set forth in the request for proposals unless the District determines to utilize one of the options provided in Section III.B.6.h. 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 notification of intent to award the contract shall be the same as those stated in Section III.B.2.j.

7. **Negotiations After Unsuccessful Competitive Sealed Bidding.** When bids received pursuant to an invitation for bids are considered unreasonable by the District, or 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 Officer, or the District's designee above the level of the Procurement Officer, 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:

- a. each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
- b. the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
- c. the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

8. **Bid Procedures on Procurements not Exceeding \$25,000.00.**

a. **Authority.** The following small purchase procedures may be utilized in conducting procurements that are less than Twenty-Five Thousand (\$25,000) Dollars in actual or potential value. However, procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

b. **Competition and Price Reasonableness.**

- (1) **Purchases not in excess of \$1,500.00.** Small purchases not exceeding \$1,500.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The Procurement Officer or Buyer indicates by signature on the purchase order that: "Price is fair and reasonable." Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before 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 needs to be taken only when the Procurement Officer or Buyer suspects that the price may not be reasonable; e.g., comparison to previous price paid, or personal knowledge of the item involved.

- (2) **Purchases from \$1,500.01 to \$5,000.00.** Solicitations of verbal or written quotes from a minimum of three qualified sources of supply shall be made and the award will be made to the lowest, responsive and responsible source.
 - (3) **Purchases from \$5,000.01 to \$10,000.00.** Solicitation of written quotations from three qualified sources of supply shall be made and the award will be made to the lowest, responsive and responsible source.
 - (4) **Purchases from \$10,000.01 to \$24,999.99.** Written solicitation of written quotes, bids or proposal shall be made by the Procurement Officer or Buyer. A notice of the written solicitation shall be placed in The State Newspaper or South Carolina Business Opportunities or through a means of central electronic advertising. A copy of the written solicitation and written quotes shall be maintained in the quote file. The award will be made to the lowest responsive and responsible source, or when a request proposal process is used, the highest ranking offeror.
- c. **Protest Rights.** The provisions of Article IX, Legal and Contractual Remedies, of the Procurement Code do not apply to contracts awarded under the procedures set forth in this section.
- d. **Procurements of \$25,000 or More.** All competitive procurements of \$25,000.00 or more must be advertised in The State Newspaper or South Carolina Business Opportunities or through a means of central electronic advertising. The District may charge vendors the costs incurred for copying and mailing bid or proposal documents requested in response to a procurement advertised in The State Newspaper or South Carolina Business Opportunities.

- e. **Dollar Limit Changes.** If the dollar limits established in *S.C.Code Ann. § 11-35-1550* (Supp. 1999) (Bid procedures on procurements not exceeding twenty-five dollars), are increased, the increased limits shall automatically be incorporated into this Section III.B.8. without necessity of this Code being amended.
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- 9. **Sole Source Procurement.** A contract may be awarded for a supply, service or construction item without competition, when the Superintendent or his designee above the level of the Procurement Officer determines, in writing, that there is only one source of supply available. Written documentation must include the determination and the basis of the proposed sole source procurement. Any delegation of authority with respect to sole source determinations shall be submitted in writing to the Procurement Officer. In cases of reasonable doubt, competition must be solicited. Any violation of these regulations by the District shall, upon approval of the majority of the Board, result in the temporary suspensions not to exceed one year, of the District's ability to procure supplies, services or construction items under this section.

 - 10. **Emergency Procurements.** Notwithstanding any other provision of this Code, the Procurement Officer or a designee 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 as defined in the District's Regulations; 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.

 - 11. **Participation in Auctions.** The District may, in its sole discretion, elect to participate in any auction of which it has knowledge. 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 a 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 a maximum price it can pay for each item desired. The District shall not bid more than the maximum price at the auction.

12. **Leasing of Real Property for the District.**

- a. **Designation as Single Central Broker.** The Executive Director of Finance, or such other person as designated in writing by the Superintendent, is hereby designated as the single central broker for the leasing of real property. The District shall not enter into any lease agreement or renew any existing lease except in accordance with these provisions.
- b. **Notification as to Need When District-Owned Property is Unavailable.** When the District needs to acquire real property for its operations or any part thereof and District-owned property is not available, it shall notify the Board. Such notification shall indicate the amount and location of space desired, the purpose for which it shall be used and such other information as the Board may deem necessary. Upon receipt of any such request, the Executive Director of Finance, or the Superintendent's designee, shall conduct an investigation of available space, which would adequately meet the District's requirements, including specific locations, which may be suggested and preferred by the District. When suitable space has been located which the District agrees meets necessary requirements and standards for leasing, the Board shall give approval to the Executive Director of Finance, or the Superintendent's designee, to enter into a lease agreement. All proposed lease renewals shall be submitted to the Board by the time specified. The Executive Director of Finance shall be responsible for short-term leases of District facilities for related functions; e.g., Township Auditorium for District graduation exercises.

- C. **Cancellation of Invitations for Bids or Request for Proposals.** Any solicitation under this Code may be canceled, 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.

D. **Responsibility of Bidders and Offerors.**

1. **Responsibility of Bidders and Offerors.**

- a. **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 Officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The District shall by regulation establish standards of responsibility that shall be enforced in all District contracts.
- b. **Determination of Nonresponsibility.** A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.
- c. **Right of Nondisclosure.** 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.

2. **Prequalification of Supplies, Suppliers and Services.** The District shall be authorized to provide by regulation for prequalification of suppliers, supplies or services.

3. **Prequalification of Construction Bidders.** The District may develop a procedure and a list of criteria for prequalifying construction bidders. The criteria shall include, but are not 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 prequalification process only for projects where the construction is unique in nature or over ten million dollars in value. When the prequalification process is employed, only those bidders who are prequalified through this procedure are entitled to submit a bid for the project. The determination of which bidders are prequalified, and therefore entitled to bid, shall not be grounds for protest.

4. **Cost or Pricing Data.**

- a. **Contractor Certification.** A contractor shall, except as provided in Subsection c. of this Section, submit cost and 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 a date specified by the District if:
 - (1) the pricing of any contract awarded by Competitive Sealed Proposals or pursuant to Sole Source Procurement exceeds an amount established by the District in its regulations; or
 - (2) the pricing of any change order or contract modification exceeds an amount established by the District in its regulations.

- b. **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 pricing data was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date specified by the District.

- c. **Cost or Pricing Data Not Required.** The requirements of this Section shall not apply to contracts:
 - (1) where the contract price is based on adequate price competition;
 - (2) where the contract price is based on established catalog prices or market prices;
 - (3) where contract prices are set by law or regulations; or
 - (4) where it is determined in writing in accordance with regulations promulgated by the District that the requirements of this Section may be waived and the reasons for such waiver are stated in writing.

E. **Contracts.**

1. **Types of Contracts.** Subject to the limitation of this section, any type of contract which will promote the best interests of the District may be used. 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 it is impracticable to obtain the supplies, services, equipment, or construction required except under such a contract approved by the Board.
2. **Approval of Accounting System.** The Procurement Officer or a designee may require that:
 - a. the proposed contractor's accounting system permit timely development of all necessary cost data in the form required by the specific contract type contemplated;
 - b. the proposed contractor's accounting system be adequate to allocate costs in accordance with generally accepted accounting principles.
3. **Multi-Term Contracts.**
 - a. **Specified 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 year unless approved in a manner prescribed by regulation; provided, 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 therefor.
 - b. **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - (1) that estimated requirements cover the period of the contract and are reasonably firm and continuing;
 - (2) that such a contract will serve the best interests of the District by encouraging effective competition.

- c. **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 cancelled.
- d. **Maximum Length.** The maximum time for any multi-term contract is five years. Contracts exceeding five years must be approved by the Board.

F. Inspection of Plant and Audit of Records

- 1. **Right to Inspect Plant.** The Senior Associate of Management Services, Procurement Officer, Buyers, the Director of Food Services, Director of Maintenance and Director of Facilities, or such other person(s) as designated by the Superintendent, 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.
- 2. **Right to Audit Records.**
 - a. **Right to Audit 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 who has submitted cost or pricing data pursuant to Section III.D.4 (Cost or Pricing Data) to the extent such books and records relate to such cost or pricing data. The contract shall further provide that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain its books and records relating to the cost and pricing data for a period of three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Procurement Officer.
 - b. **Right to Audit Contracts.** 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. The contractor shall maintain such books and records for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Procurement Officer or Buyer.

G. **Determinations and Reports**

1. **Finality of Determinations.** The determinations required by Section III.B.2.g. (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section III.B.2.k. (Competitive Sealed Bidding: Request for Qualifications), Section III.B.3.a. (Competitive Fixed Price Bidding: Conditions for Use), Section III.B.4.a. (Competitive Best Value Bidding: Conditions for Use), Section III.B.4.h. (Competitive Best Value Bidding: Award) Section III.B.6.a. (Competitive Sealed Proposals, Conditions for Use), Section III.B.6.d. (Competitive Sealed Proposals, Request for Qualifications), Section III.B.6.h. (Competitive Sealed Proposals, Negotiations), Section III.B.6.g. (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section III.B.6.i. (Competitive Sealed Proposals Award), Section III.B.7. (Negotiations After Unsuccessful Competitive Sealed Bidding), III.B.9. (Sole Source Procurement), Section III.B.10. (Emergency Procurements), Section III.D.1.b. (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section III.D.3. (Prequalification of Construction Bidders), Section III.E.1 (Types of Contracts), Section III.E.2. (Approval of Accounting System), Section III.E.3.b. (Multi-Term Contracts, Determination Prior to Use) and Section IX.A.1.g (Stay of Procurement During Protests, Decision to Proceed) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law. The Procurement Officer shall review samples of such determinations periodically and issue reports and recommendations on the appropriateness of the determinations made.
2. **Reporting of Anticompetitive Practices.** 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 Officer.
3. **Retention of Procurement Records.** 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 or a designee upon request and proper receipt therefor.

4. **Records of Procurement Actions.**

a. **Contents of Record.** The District shall submit semi-annually a record listing all contracts made under Sole Source Procurement or Emergency Procurements to the Board. The record shall contain:

- (1) each contractor's name;
- (2) the amount and type of each contract;
- (3) a listing of the supplies, services, equipment, or construction procured under each contract.

Purchasing Services shall maintain these records for five years.

b. **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.

IV. **Specifications**

A. **Definitions.**

1. **Definitions of Terms.** As used within this Article IV, the term "specifications" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, equipment, or construction item. It may also include a description of any requirement for inspection, testing or preparing a supply, service, equipment, or construction item for delivery.

B. **Specifications.**

1. **Issuance of Specifications.** The Board shall promulgate regulations governing the preparation, maintenance and content of specifications for supplies, services, equipment, and minor construction required by the District.

2. **Duties of the Procurement Officer and the End User.** The Procurement Officer or Buyers shall prepare or review, issue, revise and maintain the specifications for supplies, services, equipment, and minor construction required by the District.
3. **Assuring Competition.** All specifications shall be drafted so as to assure cost effective procurement of the District's actual needs and shall not be unduly restrictive.
4. **Relationship with End Users.** The Procurement Officer or Buyers may obtain advice and assistance from the 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. Procurement Officer and Buyers shall have final approval of specification completeness and corrections.
5. **Specifications Prepared by Architects and Engineers.** The requirements of this Article regarding the non-restrictiveness of specifications shall apply to, among others, all specifications prepared by architects, engineers, designers, draftsmen and land surveyors for District contracts.

V. ***Construction Procurement Procedure***

- A. The District will use the South Carolina School Facilities Planning and Construction Guide, which will be administered by the Office of School Facilities Planning.

VI. ***Modifications and Termination of Contracts for Supplies, Equipment and Services***

A. **Contract Clauses and Their Administration.**

1. **Contract Clauses.** The District may promulgate regulations requiring 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
 - a. 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;
 - b. variations occurring between estimated quantities of work in a

contract and actual quantities.

2. **Price Adjustments.** Adjustments in price shall be documented with a 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. The District may require that the costs be itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable.
3. **Additional Contract Clauses.** The District shall be authorized to promulgate regulations requiring the inclusion in District supplies, equipment and services contracts of clauses providing for appropriate remedies and covering the following subjects;
 - 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.
4. **Modification of Clauses.** The Procurement Officer may vary the clauses promulgated by the District under subsection 1 and subsection 3 of this section for inclusion in any particular District contract; provided, that any 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.

VII. ***Cost Principles***

- A. The District may promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in supplies and service contracts which provide for the reimbursement of costs.

VIII. ***Supply Management***

A. **Disposal of Surplus and Unserviceable Property**

1. **Regulations for Sale, Lease, Transfer and Disposal.** The District shall promulgate regulations governing:

- a. the sale, lease, or disposal of surplus and unserviceable supplies by public auction, competitive sealed bidding or other appropriate methods designated by such regulations;
 - b. the transfer of excess supplies and equipment between locations and departments.
2. **Allocation of Proceeds from Sale or Disposal of Surplus.** The sale of all District owned supplies, equipment or property not in actual public use shall be conducted and directed by Purchasing Services. Such sales shall be held at such places and in such manner as in the judgment of the Procurement Officer 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. The Procurement Officer shall deposit the proceeds from such sales to an account of the general fund or capital fund.
 3. **Trade-in Sales.** The District may trade-in property, the trade-in value of which may be applied to the purchase of new items.

IX. ***Legal and Contractual Remedies***

A. **Administrative Resolution Of Controversies**

1. **Right to protest; procedure; settlement of protest; administrative review and decision; notice of decision; finality; stay of procurement pending; exclusivity of remedy.**
 - a. **Right to Protest; Exclusive remedy.**
 - (1) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract or award of a contract shall protest to the Procurement Officer in the manner stated in Subsection b. below within fifteen 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.
 - (2) 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 Officer in the manner stated in Subsection b. below within fifteen days of the date of notification of award is posted in accordance with the Code.

- (3) The rights and remedies granted in this Section 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 this Procurement Code.
- b. **Protest Procedure.** A protest under Subsection a. above shall be in writing, submitted to the Procurement Officer 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.
 - c. **Duty and Authority to Attempt to Settle Protests.** The Procurement Officer shall have authority, prior to the commencement of an administrative review, to settle and resolve by mutual agreement a protest of an aggrieved bidder, offeror, contractor or subcontractor, actual or prospective, concerning the solicitation or award of a contract.
 - d. **Administrative Review and Decision.** If the protest is not resolved by mutual agreement, the Procurement Officer shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.
 - e. **Notice of Decision.** A copy of the decision along with a statement of appeal rights shall be mailed or otherwise furnished immediately to the protestor and any other party intervening. The Procurement Officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative appeal; 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.
 - f. **Finality of Decision.** 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 Senior Associate for Management Services within ten days of the posting of the decision. The request for the review will be directed to the Procurement Officer, who shall forward the request to the Senior Associate for Management Services, and shall set forth in writing the reasons why the person disagrees with the decision of the Procurement Officer. A person adversely affected by the decision of the Senior Associate for Management Services may request review and a hearing before the District Procurement Review Panel. The request for the review shall set forth in writing the reasons why the person disagrees with the decision of the Senior Associate for Management Services, and must be delivered to the Procurement Officer within ten days of the posting of the decision of the Senior Associate for Management Services. The Procurement Officer shall forward the request to the District Procurement Review Panel for its consideration.

- g. **Stay of Procurement During Protest.** The District shall not proceed further with the solicitation or award of the contract until a decision is rendered by the Procurement Officer; or in the event of timely appeal to the Senior Associate for Management Services until a decision is rendered by the Senior Associate for Management Services; or in the event of timely appeal to the District Procurement Review Panel until a decision is rendered by the District Procurement Review Panel; provided, however, that the solicitation or award of a protested contract will not be stayed if the Procurement Officer, after consultation with the Senior Associate for Management Services and 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.
- 2. **Posting of Bond or Irrevocable Letter of Credit.** The District may request that the Procurement Officer require any bidder or offeror who files an action protesting the intended award or award of a contract and valued at one million dollars or more to post with the Procurement Officer a bond or irrevocable letter of credit payable to the District in an amount equal to one percent of the total potential value of the contract as determined by the Procurement Officer. The Procurement Officer's decision to require a bond or irrevocable letter of credit is not subject to challenge through a protest filed

under Section IX.A.1. 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 purchasing agency's request for sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the District's estimate of the contract amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the Procurement Officer 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 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's check may be sought from the District.

3. **Authority to Debar or Suspend.**

a. **Authority.** After reasonable notice of debarment to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the Procurement Officer shall have the authority to debar a person 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 Procurement Officer may also suspend a person or firm from consideration for award of contracts during an investigation where there is probable cause for debarment. The period of debarment or suspension shall be for a period as set forth by the Procurement Officer.

b. **Causes for Debarment or Suspension.** The causes for

debarment or suspension shall include, but not be limited to, the following:

- (1) 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;
 - (2) 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;
 - (3) conviction, under state or federal antitrust laws arising out of the submission of bids or proposals;
 - (4) violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify debarment action:
 - (a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one 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;
 - (5) violation of an Order of the District Procurement Review Panel; and
 - (6) any other cause the Procurement Officer 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.
- c. **Decision.** The Procurement Officer shall issue a written decision to debar or suspend within ten days of the

completion of his administrative review. The decision shall state the specific reasons for the action taken, if any, and the period of debarment or suspension.

- d. **Notice of Decision.** A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening. The notice must include a statement of the person's right to appeal. In addition, the Procurement Officer must post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and such copy must include the posting date annotated on its face and a statement of the appeal rights.
 - e. **Finality of Decision.** A decision shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person requests further administrative review by the Senior Associate for Management Services within ten days of the posting of the decision. The request for review will be directed to the Procurement Officer, who shall forward the request to the Senior Associate for Management Services, and shall be in writing, setting forth the reasons why the person disagrees with the decision of the Procurement Officer. The person may also request a review and hearing before the Procurement Review Panel. The request for the review shall set forth in writing the reasons why the person disagrees with the decision of the Senior Associate for Management Services, and must be delivered to the Procurement Officer within ten days of the posting of the decision of the Senior Associate for Management Services. The Procurement Officer shall forward the request to the District Procurement Review Panel for its consideration.
4. **Authority to Resolve Contract and Breach of Contract Controversies.**
- a. **Applicability.** This section applies to controversies between the District and a contractor or subcontractor when the subcontractor is the real party in interest, which arise 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 rescission.
 - b. **Request for Resolution; 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 Procurement Officer by submitting a request for resolution in writing setting forth the general nature of the controversy and the relief requested with enough particularity to give notice to the issues to be decided. A request for resolution of contract controversy must be filed within one 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 year of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

- c. **Duty and Authority to Attempt to Settle Contract Controversies.** Prior to the commencement of an administrative review, the Procurement Officer shall attempt to settle by mutual agreement a contract controversy. The Procurement Officer shall have the authority to approve any settlement reached by mutual agreement.
- d. **Administrative Review and Decision.** If, in the opinion of the Procurement Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Procurement Officer shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.
- e. **Notice of Decision.** A copy of the decision and a statement of appeal rights shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The Procurement Officer shall also post a copy of the decision at a time and place communicated to all parties participating in the 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.
- f. **Finality of Decision.** A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further review, in writing, setting forth the reasons why the person disagrees with the decision, to the Procurement Officer within ten days of the posting of the decision. The request for review shall be directed to the Procurement Officer and shall be in writing, setting forth the reasons why the person disagrees with the decision of the

Procurement Officer. The Procurement Officer shall forward the request for further administrative review to the Senior Associate for Management Services. The person may also request a review and hearing before the District Procurement Review Panel. The request for the review shall set forth in writing the reasons why the person disagrees with the decision of the Senior Associate for Management Services, and must be delivered to the Procurement Officer within ten days of the posting of the decision of the Senior Associate for Management Services. The Procurement Officer shall forward the request to the District Procurement Review Panel for its consideration.

B. Remedies:

1. Solicitations or Awards in Violation of the Law.

- a. **Applicability.** The provisions of this section apply where it is determined by either the Procurement Officer, the Senior Associate for Management Services, or the District Procurement Review Panel upon administrative review that a solicitation or award of a contract is in violation of law. The remedies set forth herein may be granted after review, by the Procurement Officer, Senior Associate for Management Services, or District Procurement Review Panel.
- b. **Remedies Prior To Award.** If, prior to award of a contract, it is determined that a solicitation or proposed contract is in violation of law, the solicitation or proposed contract may be:
 - (1) canceled;
 - (2) revised to comply with the law and rebid; or,
 - (3) 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;
 - (1) the contract may be ratified and affirmed, provided it is in the best interest of the District; or
 - (2) 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 submitted 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.** In any contract controversy brought under the provisions of Section IX.A.4. (Authority to Resolve Contract and Breach of Contract Controversies) the Procurement Officer, Senior Associate for Management Services, or District Procurement Review Panel may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or the applicable law.
3. **Frivolous Protests:**
 - 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, 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.

C. Review Panel

1. District Procurement Review Panel.

- a. **Creation.** The District Procurement Review Panel shall be charged with the responsibility to review and determine de novo:
 - (1) requests for review of written determinations of the Senior Associate for Management Services under Sections IX.A.1.f., IX.A.3.e. and IX.A.4.f.; and
 - (2) requests for review of other written determination of written determinations, decisions, policies,, and procedures as arise from or concern procurement of supplies, or services procured in accordance with the provision of this Code and any regulations drafted by the District; provided, however, that any matter which could have been brought before the Procurement Officer and Senior Associate for Management Services in a timely and appropriate manner under Sections IX.A.1., IX.A.3. or IX.A.4, but was not, shall not be the subject of review. Requests for review pursuant to this provision shall be directed to the Procurement Officer and shall be in writing, setting forth the grounds, within fifteen days of the date of such written determinations, decisions, policies and procedures. The Procurement Officer shall forward the request to the District Procurement Review Panel.
- b. **Membership.** The panel shall be composed of five members, all of whom shall be lay citizens.
- c. **Chairperson and Meetings.** The chairperson of the panel shall be appointed by the chairperson of the Board. The panel shall meet as often as necessary to afford a swift resolution of the controversies submitted to it. Three members present and voting shall constitute a quorum.
- d. **Administrative Support.** The panel shall receive such administrative and clerical support as is necessary for the orderly transaction of business.
- e. **Jurisdiction.** The District Procurement Review Panel shall

be vested with authority to:

- (1) establish its own rules and procedures for the conduct of its business and holding of its hearings;
 - (2) interview any person it deems necessary;
 - (3) review all written decisions rendered or such other documents or evidence submitted or deemed necessary;
 - (4) record all determinations; and
 - (5) make a report and recommendation to the Board.
- f. **Procedure.** Within fifteen days of receiving a grievance filed under Sections IX.A.1.f., IX.A.3.e., IX.A.4.f. or IX.C.1.a.(2), the chairperson shall convene the review panel to conduct an administrative review of the determinations rendered. The panel shall within thirty days record its determination and make a report and recommendation to the Board. The Board may affirm, alter or reject the recommendation of the panel. The Board, through its chairperson, shall communicate its decision to those involved in the determination.
- g. **Finality.** The decision of the Board is final as to administrative review and may be appealed to the Circuit Court under the provisions of the South Carolina Administrative Act.

X. ***Intergovernmental Relations***

A. **Definitions**

1. **Definitions of Terms used in this Article.**

- a. **“Cooperative purchasing”** means procurement conducted by, or on behalf of, more than one public procurement unit.
- b. **“Local public procurement unit”** means any political subdivision or unit thereof which expends public funds for the procurement of supplies, services, equipment or construction.

- c. **“Mandatory opting”** is 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.
- d. **“Purchasing Services”** means the procurement unit of the District.

B. Cooperative Purchasing

1. **Cooperative Purchasing Authorized.** Purchasing Services may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services, equipment or construction with one 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.
2. **Selective Mandatory Opting.** The District may in accordance with State regulations purchase from or through the State at any time; provided, however, that the State may impose a requirement upon the District for mandatory opting in or out of any particular contract before it is established.
3. **Sale, Acquisition or Use of Supplies by Purchasing Services.** Purchasing Services may sell to, acquire from, or use any supplies belonging to another public agency in accordance with the requirements of Articles III (Source Selection and Contract Formation) and VIII (Supply Management) of this Code; 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.
4. **Cooperative Use of Supplies or Services.** Purchasing Services may enter into an agreement in accordance with the requirements of Articles III (Source Selection and Contract Formation) and VIII (Supply Management) of this Code with any other public agency for the cooperative use of supplies or services under the terms agreed upon between the parties; 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.

5. **Joint Use of Facilities.** 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.

6. **Supply of Personnel, Information and Technical Services.**

a. **Supply of Personnel.** Purchasing Services, in its discretion, upon written request from another public agency, may provide personnel services to the requesting public agency with or without pay by requesting public agency as may be agreed upon by the parties involved.

b. **Supply of Services.** The informational, technical, and other services of Purchasing Services may be made available to other public agencies provided that the requirements of Purchasing Services to the District shall have precedence over the requesting public agency. Payment, if any, shall be in accordance with an agreement reached between the parties.

c. **District Information Services.** Upon request, the Procurement Officer may make available to public agencies the following services among others:

- (1) standard forms;
- (2) printed manuals;
- (3) product specifications and standards;
- (4) quality assurance testing services and methods;
- (5) qualified products lists;
- (6) source information;
- (7) common use commodities listings;
- (8) supplier prequalification information;
- (9) supplier performance ratings;

- (10) debarred and suspended bidders lists;
 - (11) forms for invitations for bids, requests for proposals, instruction to bidders, general contract provisions and other contract forms;
 - (12) contracts or published summaries thereof, including price and time of delivery information.
- d. **Fees.** The Procurement Officer may enter into contractual arrangements for fees for services provided.
7. **Use of Payments Received by Purchasing Services.** All payments from any public agency received by the District for supplying services shall be governed by any provisions of law and deposited in the District's general funds.
8. **Public Agencies in Compliance with Code Requirements.** 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. Public agencies shall not enter into a cooperative purchasing agreement for the purpose of circumventing the South Carolina Procurement Code.
9. **Review of Procurement Requirement.** The Procurement Officer may collect information concerning the type, cost, quality and quantity of commonly used supplies, services, equipment or construction being procured or used by local public agencies, which shall be required to respond appropriately as a precondition for participation in cooperative purchasing. The Procurement Officer shall make available all such information to any public agency upon request.

XI. ***Assistance to Small/Women/Minority Businesses***

A. **Definitions and Certification.**

1. **Definitions of Terms Used in this Article.** The District may promulgate regulations establishing detailed definitions of the following terms using, in addition to the criteria set forth, such other criteria as it may deem desirable.

- a. **“Minority person”** means a United States citizen who is economically and socially disadvantaged.
 - (1) **“Socially disadvantaged individuals”** means 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.
 - (2) **“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 who are not socially disadvantaged.

- b. A **“socially and economically disadvantaged small business”** means any small business concern:
 - (1) is at least fifty-one percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged.
 - (2) In the case of a concern which is a corporation, fifty-one percent of all classes of voting stock or such corporation must be owned by an individual determined to be socially and economically disadvantaged.
 - (3) In the case of a concern which is a partnership, fifty-one percent of the partnership interest must be owned by an individual 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.

B. Assistance to Small/Women/Minority Businesses

1. **Statement of Policy and Implementation.**

- a. **Statement of Policy.** The Board believes it is in the District's best interest for small, women and minority businesses to have the opportunity to fully participate in the overall procurement process of the District. The Board, therefore, takes the leadership role that will result in awarding contracts and subcontracts to small/women/minority business firms in order to enhance small/women/minority capital ownership, overall District and State economic development and reduce dependency on the part of small businesses, women and minorities.
- b. **Implementation.** The Procurement Officer and Buyers shall implement this Code in accordance with the provisions of Duties of the Procurement Officer.

2. **Duties of the Procurement Officer.**

- a. **Assistance from the Procurement Officer.** The Procurement Officer may provide appropriate staff to assist minority businesses in the interpretations of the regulations developed pursuant to this Code.
- b. **Special Publications.** The Procurement Officer 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.
- c. **Source Lists.** Purchasing Services shall maintain special source lists of minority business firms detailing the products and services, which they provide. These lists shall be made available to Purchasing Services personnel.
- d. **Solicitation Mailing List.** The Procurement Officer and Buyers shall include and identify certified, South Carolina-based minority businesses on the District's bidder's list and shall ensure that these firms are solicited on an equal basis.

3. **Regulations for Negotiation with District and State Small/Women/Minority Firms.**

- a. The District may promulgate regulations that designate such procurement contracts as it may deem appropriate for negotiation with certified, South Carolina-based small/women/minority firms. Among the criteria that shall be used to determine such designations are:
 - (1) The total dollar value of procurement in the District.
 - (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) Ensuring that the District shall not be required to sacrifice quality of goods or services.
 - (5) Ensuring 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.

- b. Firms that subcontract with minority firms may under specified circumstances be eligible for a State income tax credit equal to four percent of the payments to minority subcontractors (not to exceed \$25,000 annually for a maximum of five [six] consecutive years). See *S.C.Code Ann.* § 11-35-5230 (Supp. 2000) and § 12-6-3350 (2000). Although the District believes that contracts issued pursuant to this Code qualify as “state contracts” for the purposes of the aforementioned statutes and income tax credit, taxpayers seeking such credit are advised to seek competent tax advice from a professional. Pursuant to the statutes, subcontractors must be certified as to the criteria of a minority firm as defined in the South Carolina Code and any regulations which may be promulgated thereunder.

4. **Small/Women/Minority Business Enterprise (MBE) Utilization Plan.** In order to emphasize the use of small/women/minority businesses, the District shall develop a Small/Women/Business Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan should include but not be limited to:

- a. A policy statement expressing a commitment by the District to use MBE’s in all aspects of procurement;

- b. The name of the coordinator responsible for monitoring the MBE Utilization Plan;
- c. Goals that include a reasonable percentage of the District's total procurements directed toward minority vendors;
- d. Solicitation of qualified minority vendors, a current list of which shall be supplied by the Small and Minority Business Assistance Office (SMBAO), in each commodity category for which such minority vendor is qualified;
- e. Procedures to be used when it is necessary to divide total project requirements into smaller tasks, which will permit, increased MBE participation;
- f. 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.

5. **Progress Payments and Letter of Credit.**

- a. **Progress Payments.** The Executive Director of Financial Services may make special provisions for progress payments as deemed reasonable to assist minority businesses to carry out the terms of a contract pursuant to regulations which may be promulgated by the Board.
- b. **Letter of Contract Award.** When a minority business firm certified by the Department of Revenue and/or Small and Minority Business Assistance Office (SMBAO) receives a contract with the District, the Procurement Officer shall furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the minority firm in negotiating lines of credit with lending institutions.

6. **Report to the Board.** 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.

XII. ***Payments for Goods and Services Received by the District.***

A. **Payment for Goods and Services.**

1. All vouchers for payment or purchases goods or services shall be delivered to the Accounts Payable within thirty workdays from acceptance of the goods or services and proper invoice. After the thirtieth workday, following acceptance of the postmark on the invoice, Accounts Payable shall levy an amount not to exceed fifteen percent per annum from the funds available to the District, such amount to be applied to unpaid balance to be remitted to the vendor unless the vendor waives imposition of the penalty.
2. The thirty-day period shall not begin until the District certifies its satisfaction with the received goods or services and proper invoice.