

# Office of the Inspector General

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## **Review of Richland County School District One's Funding, Procurement, and Construction of the Vince Ford Early Learning Center**

## I. Introduction

The South Carolina Office of the State Inspector General (SIG) was established by the South Carolina General Assembly in 2012 (Act No. 105) for the purpose of investigating and addressing allegations of fraud, waste, abuse, mismanagement, and misconduct in agencies, specifically the executive branch of state government.

The SIG's authorities are found in South Carolina Code of Laws, [§1-6-10 et seq.](#) In 2022, the South Carolina General Assembly passed S. 202 (Act No. 223) which expanded the SIG's authority, with limitations (§1-6-35), to investigate public schools and school districts, public charter schools and authorizers, and voluntary associations that establish and enforce bylaws or rules for interscholastic sports competition for public secondary schools.

By [letter dated 1/22/24](#), the State Superintendent of Education requested that the SIG conduct a review or investigation of the Richland County School District One (District) regarding the funding, procurement, and construction of the Vince Ford Early Learning Center (VFELC), as well as any different or additional allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, or wrongdoing as deemed appropriate.

The purpose of this report is to provide a road map for the District's leadership and its Board of School Commissioners to improve in its delivery of quality education to its students in a unified effort. This investigation focused on the funding, procurement, and construction of the VFELC. The SIG's report is not intended to address every individual complaint or issue conveyed to the SIG.

The SIG determined that while the Board's funding of the VFELC was permissible, the District's procurement was *unauthorized or illegal* per State law/regulation, and that substantive construction activities occurred absent requisite permit(s). The SIG did not identify criminal activity or indication of fraudulent activity during this investigation.

The SIG extends its appreciation to District superintendent, Dr. Craig Witherspoon, District staff, and members of the Board of School Commissioners for their cooperation and intentionality of seeking solutions to the issues identified by the SIG. The SIG also extends its appreciation to current and former teachers and administrators, and to the parents and constituents in the District for the candor, courage, and valuable input provided to the SIG during this investigation. In addition, the SIG is appreciative of the collaboration with the South Carolina Department of Education, the Office of the State Engineer and Division of Procurement Services of the State Fiscal Accountability Authority, the South Carolina Department of Social Services, Richland County Planning and Development Services, and persons who initiated confidential contact with the SIG.

## Table of Contents

	<u>Page</u>
I. Introduction.....	1
II. Background.....	3
A. Predicate	
B. Scope and Objectives	
C. Methodology	
D. Richland County School District One	
E. Board of School Commissioners	
III. Early Learning Center Funding.....	4
A. Early Learning Center Background	
B. Financing of the Early Learning Center	
C. Findings and Recommendations – Early Learning Center Funding	
IV. Procurement of Construction Management Services.....	7
A. District’s Procurement Code in Effect	
B. Procurement Governing Authority	
C. Procurement Process Followed by the District	
D. Procurement Methodology per the State Manual	
E. SIG Summary Analysis	
F. Bid File Retention	
G. SIG Procurement Conclusions	
H. Findings and Recommendations – Procurement of Construction Management Services	
V. Construction of the Early Learning Center.....	16
A. Zoning and DSS Approval	
B. Permitting and Construction	
C. Shutdown of VFELC Construction	
D. Findings and Recommendations – Construction of the Early Learning Center	
VI. Other Observations.....	23
A. Board Transparency – Circumvention of FOIA	
B. Findings and Recommendations – Other Observations	
VII. Conclusion.....	25
Compilation of Findings and Recommendations	
<u><a href="#">District and Board Response</a></u>	

## **II. Background**

### **A. Predicate**

By [letter dated 1/22/24](#), the State Superintendent of Education requested that the SIG conduct a review or investigation of the Richland County School District One (District) regarding the funding, procurement, and construction of the Vince Ford Early Learning Center, as well as any different or additional allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, or wrongdoing as deemed appropriate.<sup>1</sup> The SIG determined the articulated basis merited an investigation and notified the State Superintendent of Education of the initiation of an investigation by [letter dated 1/22/24](#).

### **B. Scope and Objectives**

The scope of the investigation concerned the funding, procurement, and construction of the Vince Ford Early Learning Center.

### **C. Methodology**

The SIG reviewed relevant documentation comprised of permits, licenses, reports, financial records, contracts, and other documentation provided by the District at the SIG's direction. In addition, the SIG reviewed applicable state and federal laws, regulations, and policies.

The SIG conducted interviews of District staff, Board of School Commissioners (Board) members, members of the public, subject matter experts including the Office of the State Engineer and the Division of Procurement Services of the State Fiscal Accountability Authority, the South Carolina Department of Social Services, the South Carolina Department of Education, Richland County Planning and Development Services, and persons who initiated confidential contact with the SIG.

Reviews and investigations by the SIG are conducted in accordance with professional standards set forth by the Association of Inspectors General's *Principles and Standards for Offices of Inspector General*, often referred to as the "*Green Book*." This investigation used the preponderance of evidence standard.

### **D. Richland County School District One**

The District provided a broad range of general and specialized educational services and instruction for students in pre-kindergarten (Pre-K) through grade twelve in 28 elementary schools, nine middle schools, eight high schools, five special schools and centers, two charter schools, one virtual school, five magnet programs, an adult education program, and an evening high school program. The District received funding through state appropriations, federal government programs, and its local tax base. During the 2023-24 school year, the Day-45 average daily membership enrollment for the District was 20,806 students, 68% of whom were pupils in poverty.<sup>2</sup>

Dr. Craig Witherspoon began his tenure as District superintendent on 3/23/15. At the beginning of the 2023-24 school year, Dr. Witherspoon supervised approximately 3,800 staff, including 1,693 teachers and 2,103 administrative and support staff.

Pursuant to the [SC Code of Laws, §59-20-90 \(C\)\(1\)\(a\)\(v\)](#), the State Superintendent of Education, South Carolina Department of Education (SCDE) placed the District on fiscal watch on [12/7/22](#) for significant and material deficiencies in the use of purchase cards (P-card) based on the SCDE Office of Auditing Services' follow-up

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<sup>1</sup> Pursuant to Act No. 223, South Carolina (SC) Code of Laws, §1-6-35.

<sup>2</sup> Per [Richland County School District One \(richlandone.org\)](#)

audit issued [12/6/22](#). By memorandum dated [12/8/22](#), the District notified the SCDE of its intended remediation plan. During a [12/13/22](#) Board meeting, the District’s Board voted [5-yes; 2-no] to appeal the decision by the SCDE as it pertained to the fiscal watch, which was presented to the State Board of Education [1/17/23](#), but the appeal was denied. The District’s remediation plan was later approved by the SCDE by letter dated [3/7/23](#). As of July 2024, the District remained on fiscal watch.

**E. Board of School Commissioners**

The District was governed by a Board comprised of seven members elected to four-year terms. Four Board members represented a specific district and three were at-large. During the 2023-24 school year, the Board was constituted as follows:

<b>Board of Commissioners</b>	<b>District</b>	<b>Current Term</b>
Dr. Aaron Bishop (Chair)	1	2022-2026
Angela Clyburn (Vice-Chair)	At-Large	2020-2024
Jamie Devine (Parliamentarian)	2	2020-2024
Robert Lominack (Secretary-Treasurer)	3	2022-2026
Cheryl Harris	4	2020-2024
Tamika Myers	At-Large	2020-2024
Barbara F. Weston	At-Large	2022-2026

The Board operated in accordance with the [SC Code of Laws, Title 59 - Chapter 19 - School Trustees](#) as referenced in the District’s Board policy [BBA Board Powers and Duties](#). The Board had fiscal autonomy to approve and administer the District’s budget. The Board approved a \$384,605,651 budget for the [2023-24](#) school year on [6/30/23](#).

**III. Early Learning Center Funding**

**A. Early Learning Center Background**

The District’s plan for an early learning center began in 2019, when the District identified the need for increasing early childhood intervention in the District’s [2019-2024 Strategic Plan](#) (Plan). The [South Carolina \(SC\) Code of Regulations Chapter 43 §261](#) states that public school districts must develop and submit five-year strategic plans to the SCDE for review by a peer review panel. The strategic plan must include the following components:

- Comprehensive needs assessment,
- Performance goals,
- Interim performance goals,
- Strategies and action plans,
- Evaluation of the strategies, and
- Assurances.

In March 2019, the Board approved the District’s plan and submitted it to the SCDE for approval. The District identified increasing kindergarten readiness for potential students of the District as a primary area for improvement. According to the plan, in 2017-18, only 36% of District students demonstrated kindergarten readiness upon entering school. As a result, the District determined there was a need to expand access to high-quality early childhood education and early interventions.

The District’s performance goals for improving kindergarten readiness, along with the [actual data](#) reported to the SCDE in subsequent years are depicted in Table 1:

**Table 1**

<b>Kindergarten Readiness</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>
<b>Goal Projected</b>	45%	50%	55%	60%	67%
<b>Actual</b>	<b>35%</b>	<b>27%</b>	<b>37%</b>	<b>40%</b>	<b>40%</b>
<b>Students Tested</b>	1,815	1,587	1,617	1,604	1,594

The District’s action plan for achieving the goal of 67% of students ready for kindergarten included expansion into high-quality birth to four year-old childcare options for District families.

The District received unexpended [Child Early Reading and Development Education Program](#) (CERDEP) funds from the SCDE in 2019 to fund an early childhood development program entitled [ThriveRichland](#). The District and the SCDE established memorandums of understanding in [2019](#) and [2022](#) in which the SCDE agreed to use CERDEP funding to implement [ThriveRichland](#). The District received \$1,000,000 in July 2019, and another \$1,000,000 in January 2023.

The [proposal](#) submitted by the District identified the overall goal of [ThriveRichland](#) was to increase the percentage of children beginning kindergarten ready to learn. Three priority areas were identified, one of which was the development of an “*Early Learning Lab School*.”

The proposal stated that there are two primary purposes for establishing the Early Learning Lab School:

*“First, this birth to four early learning center will serve children and families by providing exemplary early childhood education and support. The Early Learning Lab School will be designed to provide high quality care to children ages birth to four. Evidence-based decision-making will facilitate the selection and implementation of all practices, curricula, resources, and services. The lab school will work with the families and community to provide each of its students with the education, care, and support needed to be successful in kindergarten and beyond. This will require addressing the academic, social, and emotional needs of both the students and their families. The success and health of the whole child is at the center of lab school's mission.”*

*“Second, the lab school will serve as a as a centralized hub for high quality early childhood education and professional learning. Professional learning through the lab school will be made available to private and public early childhood providers. As a model for effective early childhood practices, providers may visit the lab school to observe teaching, participate in workshops, engage in communities of practice, or take advantage of other professional learning experiences customized to meet the needs of adult learners.”*

The proposal provided that the culmination of the work would be the grand opening of a flagship early childhood center that benefited children, families, and educators across South Carolina. A District official advised that as of March 2024, the [ThriveRichland](#) program serviced 413 unique children through weekly playgroups and around 24 families through in-home visitations.

**B. Financing of the Early Learning Center**

The Board approved the reallocation of \$31 million from the General Fund – Fund Balance to a capital project for the “*Early Childhood Center LR*” in a 5 (yes) - 2 (abstained) vote during its [12/13/22](#) Board meeting. At the same Board meeting, the Board unanimously voted to approve the Board chair to appoint a naming committee

for the Richland One Early Childhood Center. The SIG determined that the committee ultimately named the facility the Vince Ford Early Learning Center (VFELC) after Vince Ford, a former District Board chair and respected community leader in the Midlands of South Carolina.

The SIG reviewed the District’s Combined Statement of Revenues, Expenditures, Transfers, and Changes, in the General Fund for 2018 – 2021 and compared these documents to the Annual Comprehensive Financial Reports (ACFR) for the same time period to determine the source of the reallocated \$31 million. The ACFR was prepared by the District’s financial services department and audited by Mauldin & Jenkins, LLC, a certified public accounting firm.

The SIG’s analysis of the detailed “*Budgetary Comparison Schedules*” included in the ACFR for fiscal years [2018](#), [2019](#), [2020](#), and [2021](#) determined that the Unassigned Fund Balance increased by \$34.6 million during the four-year period. This increase resulted from accumulation of unrestricted “*revenue from Local Sources*.” This revenue was principally from local property taxes.

There were also increases in restricted “*revenue from State Sources*,” however, those increases were offset by increases in correlated expenditures and did not contribute to the Unassigned Fund Balance. It was further observed that “*restricted*” revenue sources accounted for 25-28% of total general fund revenues for the District over the same four-year period. These included EIA operating transfers into the District’s general fund for the purpose of non-federal teachers’ salary increases and applicable fringe amounts.<sup>3</sup> **These restricted revenue funds were exhausted in totality at the end of each fiscal year and, therefore, did not contribute to the accumulated fund balance** [SIG Emphasis added].

The SIG determined that the District utilized the accumulated increase in the Unassigned Fund Balance from non-restricted sources for the four-year period to fund the VFELC construction project as depicted in Table 2:

**Table 2**

<b>Fiscal Year</b>	<b>Accumulated Unassigned Fund Balance</b>
<a href="#">2017 – 2018</a>	\$2,224,684
<a href="#">2018 – 2019</a>	\$12,641,917
<a href="#">2019 – 2020</a>	\$16,030,381
<a href="#">2020 – 2021</a>	\$34,661,090

The District expended \$5,569,361 of the projected \$31 million budget for the VFELC as of 5/7/24. These funds were used for general contractor supplies, supervision, site work, erosion control, paving, site utilities, drainage, landscaping, early foundation work, structural steel, and special inspection services. Senior District officials notified the SIG that no internal discussions concerning alternate uses for the excess \$34.6 million occurred at the District.

### **C. Findings and Recommendations – Early Learning Center Funding**

**Finding Sec. III – 1:** The SIG found that the District appropriately allocated \$31 million from the District’s Unassigned Fund Balance for the VFELC construction project. **No further action is required.**

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<sup>3</sup> These funds do not have carry-over provisions and must be spent in the same fiscal year that they are assigned per the [SC Department of Education 2020-21 Funding Manual](#), pages 42-44.



**Recommendation Sec. III – 1:** The SIG recommends the District assess the financial requirements of the operational expenses associated with the VFELC to properly forecast its future operating budgets.

## **IV. Procurement of Construction Management Services**

### **A. District’s Procurement Code in Effect**

The [SC Code of Laws, §11-35-5340](#) states that school districts with annual budgets exceeding \$75 million (irrespective of the source of funds) are subject to the provisions of Chapter 35, Title 11, the *South Carolina Consolidated Procurement Code (CPC)*. Those districts with a procurement code determined to be substantially similar to the *CPC* in the written opinion of the South Carolina Division of Procurement Services (DPS) of the State Fiscal Accountability Authority (SFAA) are exempt from the provisions of the *CPC*.

A DPS official advised that the DPS had no record of an approved District code prior to May 2022. The official further advised that a District code had been submitted for approval twice and rejected twice, once in [2010](#) and again in [2015](#), because it was not determined to be “*substantially similar*” to the *CPC*. The DPS provided copies of both rejection letters.

The 2010 rejection letter listed seventeen areas of difference between the code the District submitted and the *CPC*. Seven *CPC* code sections dealing with construction procurement were completely absent from the code the District submitted. The missing code sections included “*Project Delivery Methods*,” “*Prequalification of District Construction*,” and “*Source Selection Methods Assigned to Project Delivery Methods*.”

The District provided a copy of its procurement code that was in effect prior to 7/1/22, titled [Richland County School District One Procurement Code](#), which contained the following notation on its first page, “*Revised: July 1, 2001*” (*District 2001 Code*). The *District 2001 Code* included a section titled “*Construction Procurement Procedure*,” but it contained only the following sentence:

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

The current version of the [2020 South Carolina School Facilities Planning and Construction Guide](#) (SCDE Guide) published by the SCDE contained no procurement guidance and referred districts to their established procurement codes.

The SIG obtained the oldest available version of the [South Carolina School Facilities Planning and Construction Guide, dated 2012](#), which was more contemporaneous with the *District 2001 Code*. This 2012 version of the SCDE Guide contained a list of alternative project delivery methods to competitive sealed bidding for construction contracts as defined by the [Manual for Planning and Execution of State Permanent Improvements](#)<sup>4</sup> (*State Manual*) published by the Office of the State Engineer. The SCDE 2012 manual included the following statement:

*802.1 General Procurement is the jurisdiction of each school district as set forth in the District’s Procurement Policy and/or the S.C. Procurement Code. The Office of the State Engineer should be considered as a resource and districts are advised to seek legal counsel or an agent versed in the procurement prior to advertising for bids and services.*

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<sup>4</sup> *The Manual for Planning and Execution of State Permanent Improvements* is published by the DPS for the use of governmental agencies and provides a detailed, step-by-step process for planning and executing a permanent improvement (SC Code of Laws §11-35-3240). The *Manual* is the responsibility of the Office of the State Engineer (SC Code of Regulations, §19-445.2145 (F)).



The DPS developed the [South Carolina Model School District Code](#) to aid school districts in adopting a code substantially similar to the *CPC*. The *Model Code* has been revised periodically following revisions to the *CPC*. The latest revision was effective 9/15/21 (*2021 Model Code*).

At the 4/26/22 District Board meeting, the District administration recommended first reading approval of the *Richland County School District One Procurement Code* “effective July 1, 2022 subject to the written opinion of the Office of State Fiscal Accountability Authority” (*District 2022 Code*). The District administration’s request to the Board stated, “As recommended by the state, the Administration concurs with the recommendation to accept and adopt the model school district code as written.” The Board voted unanimously to provide first-reading approval.

By letter dated [5/3/22](#), the DPS opined that the proposed District’s Procurement Code and Regulations was substantially similar to the provisions of the *CPC* in effect at the date of the opinion. At the [5/10/22](#) Board meeting, the Board voted unanimously to provide second and final approval of the *District 2022 Code*. A District official stated the *District 2022 Code* was not fully implemented until 2/1/23 following approval of changes to the delegation of authority to the superintendent.

On [4/8/22](#), months before the *District 2022 Code* was in effect, the District began the VFELC procurement process by publishing an advertisement in South Carolina Business Opportunities (SCBO) for Construction Manager At-Risk Services (CM-R). The advertisement referred interested parties to the District’s website to obtain the procurement solicitation documents, which included the requirements and a description of the procurement process to be followed. That process was conducted during April and May 2022 and concluded with the publication of an Intent to Award on [6/13/22](#), all of which took place while the previous *District 2001 Code* was still in effect.

Both the *CPC* and the *District 2022 Code* included *Article 9 Construction, Architect-Engineer, Construction Management, and Land Surveying Services* ([SC Code of Laws, §11-35-2910 through 3245](#)), which covers fourteen pages of construction procurement guidance and requirements. Those statutory requirements were absent from the *District 2001 Code*. **The SIG assessed the *District 2001 Code* did not include the necessary provisions and directives to govern the VFELC procurement** [SIG Emphasis added].

## **B. Procurement Governing Authority**

A DPS official advised that a large school district, in the absence of an approved code, was not exempt and, therefore, subject to the provisions of the *CPC* by default, per SC Code of Laws, §11-35-5340. Based on this determination and the absence of any construction procurement guidance in the *District 2001 Code*, the SIG utilized the *CPC* and the *State Manual* as the appropriate authorities to evaluate the District’s VFELC procurement process.

Chapter 11, “*Construction Management at Risk*,” of the *State Manual* provided a detailed, two-phase process for conducting a CM-R procurement, beginning with a request for qualifications (RFQ) followed by a separate request for proposals (RFP). The VFELC procurement appeared to have followed a similar process, although it did so in one step, failing to comply with the requisite two-phase process.

The *State Manual* required certain approvals by the Office of the State Engineer (OSE), while the *District 2022 Code* required the corresponding approvals by a district’s superintendent. Because the *District 2022 Code* was not in effect at the time of the District’s VFELC CM-R procurement process and the *CPC* was in effect by default, the superintendent lacked any approval authority for such an endeavor. That approval authority rested solely in the OSE.

The following abbreviated description detailing how a CM-R procurement should be conducted is based on the *State Manual* and is provided as a comparison to evaluate the actual process the District followed in the VFELC CM-R process.

### **C. Procurement Process Followed by the District**

CM-R is a project delivery method where an owner awards separate contracts for architectural and engineering services (A/E) to design a facility and a second contract to a construction manager (C/M) for construction management services, consisting of preconstruction services and management of the facility's construction. Through preconstruction services, which involve collaboration with the A/E during the design phase, the C/M gains intimate knowledge of and influence over the entire project. The collaboration may result in construction efficiencies, cost savings, and an increased possibility of a successful project with minimal issues during construction. Construction cost savings are often shared between the owner and the C/M on a percentage basis.<sup>5</sup>

In a SIG interview, the District's director of procurement stated the District's former facilities director recommended utilizing a CM-R as the project delivery method. The director of procurement assigned the VFELC procurement process to the construction contract manager (CCM), one of two procurement department managers. The director of procurement discussed the procurement solicitation document with the CCM but had not read it or followed the normal process of attaching a signed cover sheet indicating it had been reviewed and approved.

In a SIG interview, the District superintendent stated he was made aware of the CM-R project delivery method for the VFELC but had not been asked to approve the process or use of prequalification as the source selection method.

Procurement Solicitation Document – On [4/8/22](#), the District published an advertisement in SCBO for CM-R Services with the following description:

*“The District has chosen the CM-R delivery method specifically to allow concurrent design and construction activities, with the CM-R providing constructability reviews and other pre-construction services essential to the overall success of the project(s).”*

The advertisement referred interested persons to the District's website to obtain documents, which included the procurement solicitation titled “[REQUEST FOR PROPOSAL](#)” with the following description on page 1, “*Request for Qualifications for Construction Manager At-Risk Services.*” The solicitation stated the District “*may undertake construction projects within the parameters of the solicitation*” and further stated, “*The initial project will be the new construction of an Early Childhood Development Center...*” described as a 52,000 square foot facility that included classrooms, restrooms, food service, library, etc.

The solicitation further stated that the C/M would engage with the A/E through preconstruction activities to develop construction documents, after which the C/M would be responsible “*for delivering a finished facility.*”

The source selection method was described as follows:

*“Final selection of the Construction Management at-Risk firm for this project shall be made in conjunction with the Technically Superior Proposal method and Statements of Qualification, according to the District's Procurement Code.”*

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<sup>5</sup> Sharing savings is intended to incentivize the C/M to save money during project construction; however, an owner may choose not to share savings.

The solicitation's "*General Instructions*" included the following statement:

*"This document is a Request for proposal (RFP). An interested firm's response will be to **ONLY this** solicitation which will contain both the Qualification and the technical proposal of the offeror."*

The solicitation included criteria to be used by the selection committee to score the offeror's "*Qualifications Submittal*." Those criteria matched the *State Manual's* criteria for an RFQ. The solicitation also included criteria the selection committee would use to score the offeror's "*Technical Proposal*." Those criteria matched the *State Manual's* criteria for an RFP. The solicitation included a *Construction Management at-Risk Fee Proposal* form to be used for offerors to submit their "*Pre-construction Fee*" in dollars and their "*Construction Services Fee Percentage*."

Offeror Responses and Scoring – The District received responses from seven offerors, and each provided a "*Qualifications Submittal*" and a "*Technical Proposal*." In a SIG interview, the CCM stated that the selection committee scored each offeror's submissions, and four offerors were selected to be interviewed and submit fee proposals. After all scoring, the [bid evaluation results](#) dated 5/24/22 displayed the following ranking:

- [Thompson Turner Construction](#) 1,082.00 points
- [Contract Construction](#) 1,047.00 points
- [M. B. Kahn Construction](#) 1,042.60 points
- [Ajax Building](#) 1,014.60 points

Intent to Award - The District published an Intent to Award on [6/13/22](#) and named two contractors, Thompson Turner Construction and Contract Construction (CCI). In a SIG interview, the director of procurement advised there was no record of a negotiation phase with any of the offerors and stated, "*The top two were awarded based on the scores. Selected two because there were going to be multiple learning centers constructed. There was no project associated with the solicitation.*"

In a SIG interview, a representative of one of the two contractors stated, "*We thought we were interviewing for one project and wondered how they were going to award one project to multiple firms.*" The representative stated after both were invited to six design meetings, it became clear that the District intended to build two early learning centers. The contractor stated the two contractors "*worked it out*" between themselves, with CCI building the first and Thompson Turner Construction building the second.

Contract Execution and Board Approvals – Documents provided by the District included the following:

- An [AIA Document A133—Standard Form Agreement Between Owner and Construction Manager](#), dated "*as of*" 7/11/23 between the District and CCI. The agreement included CCI's "*Preconstruction Phase Services*" fee of \$200,000.00 and their construction management fee of 3.25% of the construction cost. It was signed on behalf of the District by the director of procurement.
- An [AIA Document A133 – 2019 Exhibit A – Guaranteed Maximum Price Amendment for the VFELC "Early Sitework – GMP 1"](#) that totaled [\\$3,840,729.00](#) that was dated "*as of*" 7/11/23. It was signed on behalf of the District by the director of procurement.

At the regular District Board meeting on [8/8/23](#), the director of procurement submitted a [memo](#) to the Board concerning a "*Construction Manager At-Risk Services Contract*," and noted that a "*Request for Proposal (RFP) was the procurement methodology used for the selection of this service.*" The memo stated a selection committee evaluated seven responses and selected the four highest-ranked to provide oral presentations.

Following oral presentations, two firms, Thompson Turner Construction and CCI “*were selected for award as both firms were deemed highly qualified and fully vetted.*” The director of procurement recommended the Board approve the awarding of contracts to provide CM-R services to Thompson Turner Construction and CCI “*for District Construction projects.*” Signatures of the superintendent and the chief financial officer on the memo attested to the recommendation. The Board voted unanimously to adopt the recommendation.

At the same meeting, the director of procurement submitted a second [memo](#) to the Board recommending approval of a CM-R contract with CCI for “*the pre-construction phase of the Vince Ford Early Learning Center in the amount of \$200,000.00.*” The memo also requested approval of a GMP of \$3,840,729 for the first phase of the project, identified as the “*early site work.*” The memo stated that “*Each phase of the construction will be presented for board approval,*” and the overall cost of the construction was budgeted at \$29,881,072.50, and the remaining phases of the project were:

- Phase 2 – Concrete Foundations and Structural, and
- Phase 3 – Construction of the facility, the balance of the project.

At this regular District Board meeting on [8/8/23](#), the Board voted to adopt the above recommendation, with two members abstaining. Whereas, during its [12/13/22](#) Board meeting, the Board approved the reallocation of \$31 million from the General Fund – Fund Balance to a capital project for the “*Early Childhood Center LR*” in a 5 (yes) - 2 (abstained) vote.

The SIG did not identify any further District Board actions approving the remaining two phases of the project; however, the District provided an [AIA Document A133 – 2019 Exhibit A for Phase 2 \(GMP 2\)](#) of the project for \$3,150,357 that was dated “*as of*” 10/30/23. It was signed on behalf of the District by the director of procurement. In a SIG interview, the director of procurement advised a requisition had been submitted for Phase 2 (GMP 2) but it was canceled on 1/4/24 after it was discovered the Board had not approved Phase 2.

During a SIG interview, a senior CCI official advised that some work had been performed on GMP 2 and a “*little bit of work*” had been performed on GMP 3. A monthly [payment application from CCI](#) for the period ended 12/31/23 showed the “*contract sum to date*” was \$28,747,354.

A [change order dated 10/30/23](#) modified the cost savings split between the District and CCI from 75% owner, 25% C/M to 100% owner, 0% C/M. The director of procurement signed the change order on behalf of the District on 12/12/23.

#### **D. Procurement Methodology per the State Manual**

Required Approval for Use of a CM-R Project Delivery Method – Governmental bodies subject to the *CPC* must prepare a written determination that a CM-R will be the most advantageous method and submit the determination to the OSE for approval (SC Code of Laws, §11-35-3220 (8)). Following the 7/1/22 effective date of the *District 2022 Code*, the superintendent is required to provide the written determination per *District 2022 Code R2145(B)(4)* as follows:

*“The Superintendent shall make a written determination. The determination shall describe the project delivery method (Section 3005), source selection method (Section 3015 and 1510), and additional procurement procedures (3023 and 3024(2))....Any determination to use a project delivery method other than design-bid-build must explain why the use of design-bid-build is not practical or advantageous to the District.”*

Creation of Selection Committee – The selection committee is responsible for directing and conducting the district’s efforts during the source selection process, including evaluating, scoring, and recommending the best firm to carry out the project. After approval of the project delivery method, the OSE appoints a non-voting

chair of the selection committee. Members of the selection committee are appointed by the agency head (superintendent) and include the project manager and individuals determined to be qualified to evaluate the proposals. The OSE must concur with all committee appointments. The committee should consist of a minimum of five voting members (*State Manual 11.5 (A) through (E)*). After the 7/1/22 effective date of the *District 2022 Code*, the superintendent appoints the members of a permanent selection committee. He or she (or his or her designee) shall sit on the committee for the purpose of coordinating and accounting for the committee's work (*District 2022 Code, §3220 (1)*).

Request for Qualifications (RFQ) (*State Manual 11.8*) – The prequalification method allows governmental bodies to limit participation in a solicitation to only those firms it determines capable of conducting the project. Prequalification may only be used based on a written determination by the governmental body that the method is in its best interest. The written determination is submitted to the OSE for approval (*State Manual 11.8.2*). The RFQ must describe the general scope of work to be performed and state the selection criteria used to qualify firms, including at least the following factors:

- Past performance and references from designers and owners,
- Description of the CM-R project management approach,
- Bonding capacity/financial stability, and
- Related experience on CM-R projects of a similar size and scope.

Advertisement of RFQ – The district must place an advertisement in SCBO for “*Construction Management at Risk Services*,” which includes preconstruction and construction management services. The ad must describe the general scope of work (*State Manual 11.8.7 (A)*).

Evaluation and Ranking of Prospective Offerors – The selection committee members individually evaluate the offerors using only the published evaluation criteria and rank them from least qualified to most qualified. The committee must then review the individual scoring and create a list of the most qualified offerors by consensus. A minimum of three offerors must be interviewed, and a minimum of two must be qualified to proceed to the RFP phase (*State Manual 11.8.10*).

Notifications to Offerors – Within ten days of the ranking, the committee chair or project manager must notify the qualified offerors in writing that they have been selected to provide proposals for the project. The project manager is also required to notify those who are not qualified (*State Manual 11.8.12*).

Request for Proposals (RFP) (*State Manual 11.9*) – The RFP is not advertised. Proposals are requested from those offerors the committee determined to be qualified. The RFP must describe the nature and scope of the project as explicitly as possible and include the evaluation factors to be used to select the successful offeror. Only the relative importance of each factor is published. The evaluation factors should include at least the following:

- Qualifications of the offeror's CM-R staff to be assigned to the project,
- Proposed staff's related experience on projects of similar size and complexity,
- Ability to perform the requirements of the contract,
- History of on-time and on-schedule prior CM-R projects, and
- Proposed CM-R pre-construction fee in dollars and the proposed construction management fee as a percentage of the construction cost.

Interviews, Evaluations, Ranking, and Recommendation – All interviews should occur on the same day with all voting members of the committee present. Fees or compensation may not be discussed during the



interviews. Members individually evaluate and score the offerors only on the factors listed in the RFP and the offerors' interviews. Fee proposals are scored based on their mathematical relationships. After all scoring, the committee must meet and explain any significant variations in scores for the record. The committee then arrives at a consensus on the highest-ranking offeror. The project manager prepares a committee report for the agency head and includes the offeror the committee recommends for negotiation and award (*State Manual 11.14.2 and 11.14.3*).

Approval/Rejection of the Recommendation – The agency head or the governing board makes the final selection decision based on the committee's recommendation and must provide a written approval or rejection of the committee's report. The committee's recommendation may not be overturned unless the agency head or board determines in writing that there was no rational basis for the committee's decision, the committee did not follow the evaluation factors, or the committee exercised its discretion arbitrarily or capriciously. If the agency head or the governing board decides to reject the committee's recommendation, the agency must cancel the procurement and start a new process (*State Manual 11.15*).

Negotiations of the Contract – Following approval by the agency head or board, negotiations with the recommended offeror are conducted in the following areas:

- The pre-construction services to be provided by the C/M,
- The C/M's percentage fee for construction management,
- The percentages used to split savings between the district and the C/M, and
- Proposal revisions, provided the revisions are within the general scope of the RFP.

The project manager must control negotiations and may be assisted by an advisor. If the negotiations fail with the highest-ranking offeror, the district may begin negotiations with the second-highest-ranking offeror, and so on. If negotiations fail with all offerors, the district may reopen negotiations with any offeror (*State Manual 11.16*).

Notice of Intent to Award – Following successful negotiations, the agency must submit a "*Request for Concurrence in Posting a Notice of Intent to Award CM-R Contract*" to the OSE, along with supporting documentation. The OSE has (5) five business days to approve the request. After approval, the agency publishes the "*Notice of Intent to Award CM-R Contract*" (*State Manual 11.17.1 (A)*). Copies of the Intent to Award must be mailed to each offeror (*State Manual 11.17.1 (C)*). The publication of an Intent to Award communicates an acceptance of an offer and creates a contractual obligation on the part of the offeror to perform under the terms of the offer, pending the passage of the "*protest period*."

Contract Execution Waiting Period (Protest Period) – Any offeror aggrieved by the agency's decision may protest the contract award to the OSE within seven business days after the Intent to Award is posted. If a protest is received, no contract may be executed until and then only if the protest is resolved in favor of the agency. If no protest is received, a contract may be executed after the seven days have passed (*State Manual 11.18*).

Executing the Contract – Following the protest period, the district and the selected offeror execute a contract using the American Institute of Architects "*AIA Document A133, Standard Form Agreement Between Owner and Construction Manager as Constructor, SCOSE Version*", with "*AIA A201 (SCOSE Version)*" used as the General Conditions to the contract (*State Manual 11.16.2*)

Negotiating a Guaranteed Maximum Price (GMP) (*State Manual 11.22*) – Once all design documents are finalized and at a time agreed to by the C/M and the agency, the C/M provides the construction GMP.

The CM-R process intends to award a single GMP for the entire project, but separate GMPs may be awarded in phased construction. The *State Manual* advises that awarding multiple GMPs is problematic to the scope, management of the budget, and the quality of the work and states that “*the number of phases (GMPs) should be kept to a minimum.*” The agency may negotiate the GMP in the following areas:

- The cost of the construction,
- The general conditions, and
- The CM-R contingency.

If the negotiations are successful, the district and the C/M execute a change order to the CM-R contract on form “*AIA Document A133 – 2019 Exhibit A, SCOSE Version.*” If the negotiations are unsuccessful, the district will terminate the contract and proceed with the facility's construction using the design-bid-build process (*State Manual §11.22.3 (C)*).

OSE Concurrence with the Request for Authority to Execute Exhibit A – Establishing a GMP constitutes a change to the contract amount, and the agency must request approval from the OSE before executing Exhibit A. In phased construction with multiple GMPs, the agency must seek OSE approval of each before proceeding (*State Manual §11.23*).

Notice to Proceed – The agency must issue a Notice to Proceed after the OSE approves execution of each Exhibit A (GMP) (*State Manual §11.24*).

Other Related Requirements – *State Manual §11.25 through 11.39*, which cover Inspection and Testing Services, Building/Construction Permit, Change Orders, Substantial Completion, Final Completion, and other topics, require interaction with and approvals by the OSE.

### **E. SIG Summary Analysis**

When the VFELC procurement was conducted, the District did not have a procurement code determined to be substantially similar to the *CPC*. As such, the District was subject to the *CPC* (SC Code of Laws, §11-35-5340). The *District 2001 Code*, in effect during the VFELC procurement, was not adequate to govern the procurement because it lacked the construction procurement provisions contained in *Article 9* of the *CPC* (SC Code of Laws, §11-35-2910 through 3245) or the corresponding sections in the *District 2022 Code*, which the District did not put into effect until 7/1/22 after the VFELC procurement process (*District 2022 Code §2910 through 3245*).

Since the District was subject to the *CPC*, it failed to prepare a written determination that the use of the CM-R project delivery method for the VFELC procurement was the most advantageous method and submit it to the OSE for approval as required by SC Code of Laws, §11-35-3010 (2)(3). Further, the District did not seek approval for the use of prequalification as part of the source selection process for the VFELC procurement as required by SC Code of Laws, §11-35-3023. The District did not seek the required approval of each GMP/Exhibit A by the OSE as required by the *State Manual 11.23* or seek other required approvals from the OSE per *State Manual §11.25 through 11.39*.

The District's director of procurement did not follow the normal process of reviewing and providing written approval of the VFELC solicitation document prepared by the CCM. The resulting solicitation document departed from the prescribed process in the *State Manual*. It contained inconsistent and contradictory language stating it was an RFQ and alluded to “*multiple projects*” but identified one specific project. Still, the remainder of the document described a combined RFQ and RFP process, where an RFP, with its “*Technical Proposal*” and “*Fee Proposal*,” aims to award a CM-R contract to a single offeror instead of qualifying multiple offerors for multiple projects.



The publication of the Intent to Award on [6/13/22](#) to not one but two offerors furthered the incorrect assumption that the process undertaken was only an RFQ. Interviews with District procurement officials concerning the process resulted in contradictory explanations and understanding. The director of procurement stated the process was a qualification of offerors, which was confirmed by the request to the District's Board on 8/8/23 to award contracts to both offerors "*for District Construction projects.*"

The CCM, the author of the solicitation and the official who supervised the process, stated the goal was "*to compete those two contractors to see who would give you the best guaranteed maximum price*" indicating the intended result was the award of two CM-R contracts to two competing offerors for one project. The possibility of multiple contractors was not publicized in the solicitation. Had it been, the solicitation did not provide instructions to the offerors on how they would operate together in performing CM-R functions, particularly pre-construction functions. Two DPS officials remarked they had never heard of an instance where two offerors were awarded contracts to perform the same services. **The District placed two offerors in an unworkable situation** [SIG Emphasis added].

The District did not follow the process for awarding a CM-R contract per the *State Manual*, the *CPC*, or the process depicted in the *District 2022 Code*, which the District did not adopt until after the VFELC procurement process. The failure to comply with the prescribed process and, hence, the procurement statutes resulted in what the regulation categorizes as an *unauthorized or illegal procurement*. The CCI CM-R contract was *void ab initio* because the procurement process was defective.

The SIG determined that by awarding an unauthorized procurement, the District mismanaged the \$31 million allocated by the Board for the "*Early Childhood Center LR*" on 12/13/22. The District must now resolve the situation by following the process required by [South Carolina \(SC\) Code of Regulations, §19-445.2015](#) "*Unauthorized or Illegal Procurements.*"

#### **F. Bid File Retention**

The SIG requested all procurement-related documents regarding the solicitation and selection of CM-R services regarding the VFELC from the District via subpoena on 1/21/24. Initially, the District informed the SIG that some components of the bid file were missing. Two senior District officials initially told the SIG that a former employee unlawfully removed the procurement file from the District's office when s/he resigned, in violation of the SC Code of Laws, §30-1-30.

The records that were allegedly taken included the scored evaluations for all bidders. The [SC Code of Regulations, Chapter 12 §902.21](#) states that records of each bid submitted by vendors selling goods and/ or services to the school district must be retained for three years before being destroyed.

**The SIG determined that the former employee did not unlawfully remove the records from the District's office** [SIG Emphasis added]. In actuality, the District failed to properly maintain the records in a manner that was accessible and trackable. Due to poor record retention procedures, the records were misplaced after the former employee departed the District. District officials were unable to locate the records for more than two months after the SIG initially requested their production.

On or about 4/15/24, the District produced the misplaced records to the SIG. The SIG reviewed internal and external District correspondence and determined that the District lost the bid file as early as 7/13/23. The SIG determined that by failing to maintain the complete bid file in a manner that was easily accessible and trackable, the District risked violating Chapter 12 §902.21 of the SC Code of Regulations.

## **G. SIG Procurement Conclusions**

The SIG did not identify criminal activity or indication of fraudulent activity during this investigation. The documentation related to the procurement code provided by the District lacked approval by DPS authenticating the District's 2001 procurement code. Whereas DPS/SFAA provided the SIG with two (2) letters of rejection dated 2010 and 2015 denying approval of the District's 2001 procurement code. Accordingly, per SC Code of Laws, §11-35-5340, the State's default *CPC* was “*the procurement code*” in effect when in 2022 the District attempted to execute the contract(s) for the VFELC. Because the District failed to comply with the *CPC*, the contract(s) for the construction of the VFELC was, per the DPS chief procurement officer (CPO)/OSE, “*void ab initio*”.

The District must now follow the procedures set forth in [SC Code Regulations, §19-445.2015](#) [“*Unauthorized or Illegal Procurements*”] to address the defects and failures. The CPO has an [FAQ](#) summarizing that process.

## **H. Findings and Recommendations – Procurement of Construction Management Services**

**Finding Sec. IV – 1:** The *District 2001 Code* in effect during the VFELC procurement process lacked *Article 9 Construction, Architect-Engineer, Construction Management, and Land Surveying Services* of the *CPC* (SC Code of Laws, §11-35-2910 through 3245) and therefore was not sufficient to govern the VFELC procurement process.

**Finding Sec. IV – 2:** The District did not have a procurement code that was consistent with the *CPC* and therefore, the District was subject to the *CPC*.

**Finding Sec. IV – 3:** The procurement process the District utilized for the VFELC procurement did not comply with the requirements of the *CPC* and the *State Manual* and the District did not seek approvals from the OSE as required by the *CPC* and the *State Manual*.

**Finding Sec. IV – 4:** The District published an Intent to Award that awarded contracts to two contractors to provide the same services on one project, an action that was not permissible by state statute.

**Finding Sec. IV – 5:** The District mismanaged the \$31 million allocated by the Board for the “*Early Childhood Center LR*” on 12/13/22 by awarding an unauthorized procurement.

**Recommendation Sec. IV – 5:** The District should rectify the situation in accordance as required by [SC Code of Regulations, §19-445.2015](#) “*Unauthorized or Illegal Procurements*.”

**Finding Sec. IV – 6:** The District mismanaged the retention of the CM-R services bid file for the VFELC, putting the District at risk of violating the Chapter 12 §902.21 of the SC Code of Regulations.

**Recommendation Sec. IV – 6:** The District should implement internal controls to ensure all bid files required to be retained be stored in a matter that is retrievable and accessible.

## **V. Construction of the Early Learning Center**

### **A. Zoning and DSS Approval**

On 4/28/23, the District submitted a rezoning application to the [Richland County Planning and Development Commission](#) (RCP&D). The District met with RCP&D personnel and had concerns regarding operating some of the services offered at the VFELC in the current zoning district. Presently and at the time of the application,

the zoning district for 2812 Rawlinson Road, Columbia, South Carolina 29209 is Residential, Single-Family Low-Density (RS-LD).

An RCP&D official advised the District that while schools are allowed within RS-LD with special requirements, functions such as dental and health care services that would be at the VFELC require a change in zoning. The official advised that the District submit a rezoning application to change the zoning district from RS-LD to Office Institutional (OI).

The SIG determined that a secondary reason for seeking rezoning was that South Carolina Department of Social Services (DSS) approval of a child care center is prohibited in RS-LD zoning district, but permitted under an OI zoning district. The SIG determined that DSS approval would have been required if the District were to service younger than school age children as originally intended by the Board.

Two senior DSS officials advised the SIG that the District held meetings with the DSS to discuss the possibility of DSS approval of the VFELC. However, no formal application was submitted by the District due to zoning restrictions making approval impossible. DSS approved child care facilities were not permitted in RS-LD zoning districts.

By letter dated [8/22/23](#), the superintendent formally withdrew the District's request for a zoning change for the VFELC. The SIG determined that by withdrawing the permit, the District could no longer service children as originally intended by the Board.

After consulting with DSS officials, the District believed that if the age range of the children being serviced at the VFELC was changed from six-weeks-old through five-years-old to 30 months and a day to five-years-old, then they would not require DSS approval.

The District based this decision on conversations held with DSS officials and an analysis the [2021 International Building Code \(IBC\) §308.5 and IBC §308.5.1](#). Both sections deal with occupancy classification and use, specifically regarding child day care facilities and whether or not the classification should be in Institutional Group I or Educational Group E.

IBC §308.5 states the following:

*“Institutional Group I-4 occupancy shall include buildings and structures occupied by more than five persons of any age who receive custodial care for fewer than 24 hours per day by persons other than parents or guardians; relatives by blood, marriage or adoption; and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following:*

*Adult day care*

*Child day care”*

IBC §308.5.1 states the following:

*“A child day care facility that provides care for more than five but not more than 100 children 2 ½ years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.”*

The District opined that the VFELC would not require DSS approval if the occupancy classification was Education Group E instead of Institutional Group I-4, according to the International Building Code (IBC). The IBC per §305.2 provides the following regarding Group E, day care facilities:

*“This group includes buildings and structures or portions thereof occupied by more than five children older than 2 ½ years of age who receive educational, supervision, or personal care services for fewer than 24 hours per day.”*

By email dated [11/1/23](#), the District notified the [Office of School Facilities \(OSF\)](#) of their decision to change the age range of the VFELC to only include children age 30 months and older in order to meet the Group E occupancy classification. A senior DSS official advised the SIG that the IBC occupancy classification has no bearing on whether or not a child care facility meets the requirements to be an approved child care facility. The overriding requirement for child care licensing, registration, or approval is the age of the children in the facility, not the occupancy classification.

The [SC Code of Laws, §63-13-10 through §63-13-1240](#), referred to as the South Carolina Child Care Licensing Law, defines childcare facilities and provides a list of ages and programs that are exempt from requiring licensure, registration, or approval according to a senior DSS official. The South Carolina Child Care Licensing Law lists the following applicable exemptions:

- an educational facility, whether private or public, which operates solely for educational purposes in grade one or above;
- five-year-old kindergarten programs; and
- kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age.

It further states that a childcare center is any facility that regularly receive 13 or more children for childcare. The SIG assessed that the VFELC failed to meet any of the aforementioned exemptions for childcare facilities and the expectation was that the VFELC would regularly serve more than three children.

The SIG determined that in order to operate as initially intended (infants), the VFELC would need to be an approved DSS childcare center.

The SIG determined that per Proviso 1.48, FY 2023-24 General Appropriations Bill, Part 1B, the VFELC 4K program may be exempt from DSS oversight and approval if the program participated in CERDEP. Per Proviso 1.48, *“4K programs in public schools and non-profit independent schools participating in CERDEP are not required to be approved, registered, or licensed by the Department of Social Services in order to participate in CERDEP. Instead, the Department of Education and the Office of First Steps are responsible for ensuring that providers deliver high-quality educational programs pursuant to Section 59-156-160.”*

The SIG assessed that there is no such exemption for a 3K program. Additionally, this exemption does not extend to non-CERDEP 4K programs. Therefore, the SIG determined that the District required approval from the DSS in order to operate a full-day 3K program at the VFELC.

Senior DSS officials and senior SCDE officials advised the SIG that the DSS and the SCDE had a mutual understanding that 4K and 3K programs at public schools do not require DSS licensure, registration, or approval. No formal written memorandum of agreement or understanding existed. However, the DSS provided the SIG with a pair of letters from the early 2000s sent by the then DSS state director to the SCDE.

Via an unsigned letter, dated 9/20/01, and sent to the SCDE general counsel, the former DSS state director opined that three and four-year-old child development programs in public schools established in SC Code of Laws, §59-19-340 fell outside the scope of those covered under SC Code of Laws, §20-7-2700. The SIG determined that §20-7-2700 was repealed and replaced by [§63-13-20](#) (Act No. 361 of 2008).

At that time, the former DSS state director determined that three and four-year-old child development programs fell under the oversight of the SCDE and not the DSS. For this reason, along with a lack of adequate funding, the DSS informed the SCDE that it would not be licensing public three-year-old and four-year-old child development programs.

The SIG determined that SC Code of Laws, §59-19-340 referred to 4K programs and not 3K programs. SC Code of Laws, §59-19-340 reads as follows:

*“Child development programs for three and four-year-old children.*

*The board of trustees of each school district may establish and provide for the education of children who will attain the age of four on or before September first of the applicable school year in child development programs. The board of trustees of school districts having programs serving three and four-year-olds on the date of enactment of this section may continue to serve three-year-old children.”*

A current senior SCDE official advised the SIG that the SCDE’s interpretation of the SC Code of Laws governing the SCDE’s role in monitoring 3K and 4K programs no longer aligns with that of past administrations. The SIG determined that the lack of a memorandum of agreement and clarity in the DSS’s scope of responsibility for full-day 3K and 4K programs exposed all districts operating full-day 3K or non-CERDEP 4K programs to the risk of being non-compliant with the South Carolina Child Care Licensing Law.

The District informed the SIG that the District offered 52 Pre-K programs, 45 of which were 4K and 7 of which were 3K. The District offers no Pre-K programs that are licensed, approved, or registered by the DSS. The District’s website stated that all traditional schools offering Pre-K fall under CERDEP guidelines and therefore exempt from requiring licensure, registration, or approval by DSS per Proviso 1.48.

Through its analysis, the SIG determined that the 4K Montessori programs at Brockman Elementary, Caughman Road Elementary, and Logan Elementary as well as the Language Immersion program at Carver-Lyon, lasting for more than four hours a day were not exempt by law from DSS licensure, registration, or approval. The SIG also determined that all 3K programs, whether Montessori or traditional, offered by the District that last for more than four hours, were not exempt by law from DSS approval.

The SIG reviewed data provided by the DSS and determined that as of 6/25/24, there were approximately 2,323 child care programs either licensed, approved, or registered by the DSS with the authority to service children between the ages of three and four.

## **B. Permitting and Construction**

On 1/27/23, the District created a construction project with the SCDE’s OSF via the OSF submission portal. The OSF serves as the building official for school districts and implements and enforces the applicable building codes, regulatory or statutory requirements, and those requirements set forth in the South Carolina School Facilities Planning and Construction Guide. The OSF is responsible for the review of construction documents, the issuance of building permits, conducting inspections, and issuing certificates of occupancy for all new construction, additions, renovations, and alterations within all school district properties.

On 5/8/23, the District submitted SCDE Form F7 “[Review Document Transmittal Form](#)” regarding the VFELC for an “*Early Learning Center: ‘I4’ Occupancy for Infants through Preschool with ‘B’ Occupancy for Family Services Center.*” On 5/16/23, the OSF completed a tabletop review of the design development drawings with the District and the project was subsequently moved forward into the construction documents phase in which the OSF reviewed the construction plans and specifications.



On [10/25/23](#), the OSF reviewer notified the architect that the tabletop review of construction documents would be postponed until concerns regarding the age range of the occupants was addressed and a determination was made by the SCDE legal office. The SCDE was concerned about the age of the occupants falling below their statutory authority of three years of age.

On 11/16/23, the OSF held a tabletop review of the construction documents submitted by the District for the VFELC. Through interviews and record review, the SIG learned that the OSF reviewer was under direction from his/her supervisor to conduct the tabletop review, but not issue a building permit to the District until the jurisdiction and concerns over the age range of the occupants was cleared up by the SCDE legal office.

At the 11/16/23 tabletop, District officials opined that the OSF reviewer told them that a building permit was forthcoming. This allegation was denied by the OSF reviewer and the SIG was unable to corroborate this claim by the District.

The SIG reviewed correspondence between the architect hired by the District and the OSF director on 11/29/23, after the tabletop review, regarding a conversation the architect had with the OSF reviewer on 11/28/23. In the exchange, the architect stated that the OSF reviewer told the architect that the OSF would not be issuing a building permit. The architect then inquired about the OSF's reasoning for denying a building permit and asked the OSF to reconsider their decision.

Through interviews with District staff and contractors, the SIG determined that work commenced for phase two of the construction project on 11/29/23, which included projects such as early foundation and steel framing work despite the absence of a building permit. The SIG assessed earlier in this report that [AIA Document A133 – 2019 Exhibit A for Phase 2 \(GMP 2\)](#) was not approved by the Board. As a result, commencing work on phase two of the project prior to receiving a building permit and prior to Board approval exposed the District to wasteful expenditures, contractual liabilities, costs associated with project delays, reputation damage, and insurance issues.

By letter dated [12/15/23](#), the SCDE General Counsel advised the District that based on the submissions for the VFELC project, the District failed “*to establish that the building(s) being proposed for construction will be used for K-12 classroom instruction.*” As a result, the SCDE’s stance was that the VFELC “*is not a public school building for purposes of Chapter 23, and therefore does not fall under the review and approval of the Superintendent or her designee.*”

After the 12/15/23 letter from the SCDE, the District continued construction on the VFELC without a building permit. The SIG identified several state statutes, county ordinances, and regulations that require owners to obtain the appropriate permits and/or approval prior to construction to include the following:

- [SC Code of Laws, §4-25-210](#);
- [SC Code of Laws, §6-9-110 \(A\)\(2\)](#);
- [2020 South Carolina School Facilities Planning and Construction Guide](#)<sup>6</sup>;
- [SC Code of Laws, §59-23-210 \(B\)](#);
- [2021 South Carolina Building Code §105.1](#); and
- [Richland County Ordinance §6-43](#).

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<sup>6</sup> The [2020 South Carolina School Facilities Planning and Construction Guide](#) was incorporated by reference in SC Code of Laws §59-23-210 (A). Section 109.1 of the Guide expressly states: “*The design professionals must be responsible for obtaining all design-related permits and approvals. Status of permits and approvals must be submitted to the OSF along with final review documents.*” Section §109.5.2 explains: “*A permit must be obtained and the OSF must be provided with a permit copy **prior** to advertising a project for bids*” [SIG Emphasis added].

### C. Shutdown of VFELC Construction

On 10/6/23, the South Carolina Department of Health and Environmental Control issued a “*National Pollutant Discharge Elimination System (NPDES) Permit For Stormwater Discharges From Construction Activities SCR100000*.” This permit enabled the District to execute its [Comprehensive Stormwater Pollution Prevention Plan](#) (C-SWPPP). The permitting entity cautioned: “*Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. ... You are responsible for obtaining any other federal, state, or local permit that may be required for this project.*”

Senior District officials advised the SIG that construction activities began on 10/9/23 after the receipt of the NPDES Permit. However, the District continued construction activities beyond the scope of its C-SWPPP before obtaining an OSF building permit.

The SIG determined through interviews with industry professionals that school districts and contractors seldom, if ever, wait for OSF building permits before commencing construction.

The District continued construction activities without a permit until 1/18/24 when the Richland County government administrator notified the superintendent of an impending Stop Work Order for the construction site to be posted the following day.

By email dated 1/18/24, the superintendent notified the Richland County government administrator, the District Board chair, the District general counsel, and the District chief operating officer that construction would be halted until the District adjusted “*information regarding age/grade span of*” the VFELC.

On 1/19/24, the Richland County building official posted a stop-work order on the construction site to stop the District from construction until a building permit was obtained.

OSF staff members advised the SIG that they were aware that school districts (in clear contradiction to the express language in the SCDE guide) commenced construction projects before building permits were issued. Staff stated that the OSF does not have the statutory authority to take punitive or administrative actions against school districts that begin construction before the issuance of a building permit. The OSF director stated that while the OSF could technically issue a stop-work order, it could not be enforced.

The [SC Code of Laws, §40-11-110 \(13\)](#) identifies the “*failure to obtain a building permit as required by a local or state government before engaging in construction*” as grounds for disciplinary action against a contractor’s license by the South Carolina Contractor’s licensing Board. The SIG assessed that the District’s failures put the contractor’s license at risk of adverse action by the South Carolina Contractor’s licensing board.

The Board voted to amend the plan for the VFELC to serve children in 3K through 2<sup>nd</sup> grade during its 1/23/24 meeting.

In total, the SIG determined that the District changed the age-ranges to be serviced at the VFELC at least four times from 3/3/23 through 1/23/24. A breakdown of the planned age ranges is depicted in Table 3.

**Table 3**

<b>Date Ranges</b>	<b>Age Ranges Serviced</b>
3/3/2023 through 5/8/2023	<a href="#">Infants to Toddlers</a>
5/8/2023 - 9/8/2023	<a href="#">Infants to Preschoolers</a>
9/8/2023 - 11/1/2023	<a href="#">Six-weeks-old to Five-years-old</a>
11/1/2023 - 1/23/2024	<a href="#">30 months and a day to Five-years-old</a>
1/23/2024 – Present	<a href="#">3K to Second Grade</a>



By letter dated [1/26/24](#), the superintendent notified OSF of the District’s intent to “serve children, generally, 30 months + 1 day, but more specifically, 3K through 2<sup>nd</sup> grade.”

In the 1/26/24 letter, the superintendent sought reconsideration/appeal of OSF’s determination that it did not have the authority to grant a building permit to the District for the VFELC. The District also estimated that the shutdown of the project would cost “more than \$2,234.11 per day in construction management costs, \$600 per day in security fees for the site, as well as costs that cannot be quantified at this time.”

By letter dated [2/8/24](#), SCDE general counsel clarified the SCDE’s position regarding the District’s request for an appeal. The letter read as follows:

*“As you are aware, Section 1.10 of the SC School Facilities Planning and Construction Guide allows for an appeal for “orders, decisions or determinations made by the OSF relative to the application and interpretation of the codes referenced in [the] Guide.” The Department has previously stated, and here reiterates, that it is not in a position to further review submissions related to the subject facility until clarity is provided by the State Inspector General, and therefore cannot at this time issue such an order, decision or determination regarding an appeal of a specific building code referenced within the Guide.”<sup>7</sup>*

The SIG determined that the District’s mismanagement of the VFELC construction project resulted in the Stop Work Order being issued by the Richland County building official. A senior District official advised the SIG that costs associated with the shutdown as of 5/14/24 were estimated as depicted in Table 4:

**Table 4**

<b>Associated Costs</b>	<b>Amount</b>
Additional Construction & Site Costs	\$220,727
Site Water Mitigation Supplies	\$2,560
Claimed Damages to Adjacent Property Owners	\$62,791
Additional Site Security	\$66,000
<b>Total</b>	<b>\$352,078</b>

In total, the shutdown cost the District a minimum of \$352,078 as of 5/14/24. The SIG identified additional costs, such as additional weeks of work for a third-party inspector, which could not yet be quantified. These additional weeks of service will be added to the end of the project and the District was not able to provide an accurate estimate.

#### **D. Findings and Recommendations – Construction of the Early Learning Center**

**Finding Sec. V – 1:** The District violated state law and local county ordinance by commencing construction without a building permit from the SCDE. In addition, the District commenced work on phase two of the project without prior approval of the Board. In doing so, the District exposed itself to wasteful expenditures, contractual liabilities, costs associated with project delays, reputation damage, and insurance issues.

**Recommendation Sec. V – 1:** The District should comply with the SC Code of Laws and obtain a building permit prior to beginning construction activities.

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<sup>7</sup> The SIG inquired with the South Carolina Administrative Law Court and was not able to identify any pending appeal by the District; nor, per a review of the Richland County Fifth Judicial Index, is there any pending administrative appeal at the circuit court level.

**Finding Sec. V – 2:** The District wasted \$352,078 on associated costs depicted in Table 4 by executing the VFELC construction project without a building permit.

**Recommendations Sec. V – 2:** The District should implement internal controls to comply with applicable statutes, ordinances, and regulations when conducting construction projects. Alternatively, if limited internal controls did exist, then the applicable consequences should be applied accordingly.

**Finding Sec. V – 3:** The SIG determined that the District (and state-wide public school districts operating similar 3K and 4K programs) are non-compliant in operating non-exempt 3K and 4K programs more than four hours a day without oversight from the DSS. The SIG further determined ambiguity exists between the SCDE and the DSS regarding the approval/regulation of these programs.

**Recommendation Sec. V – 3a:** The District, the SCDE, and the DSS should work with the legislature to determine what Pre-K educational programs require oversight by the DSS.

**Recommendation Sec. V – 3b:** The SIG recommends the SCDE and the DSS develop provisional guidance for all public school districts operating non-exempt 3K and 4K programs regarding existing compliance for the upcoming 2024-25 school year.

## **VI. Other Observations**

### **A. Board Transparency – Circumvention of FOIA**

On 2/1/24, the Board voted to go into executive session to receive “*legal advice related to construction project*” and “*legal advice regarding Inspector General investigation*” without disclosing the specific construction project about which legal advice was to be received. Following the executive session, the Board, in agenda item 4.01, voted to accept the “*recommendations as outlined*” that were received in executive session, but did not disclose the recommendations, citing attorney-client privilege.

The following statutes are applicable:

- [SC Code of Laws, §30-4-70 \(b\)](#) “Meetings which may be closed”

*Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.*

- [SC Code of Laws, §30-4-90 \(a\)](#) “Minutes of meetings of public bodies”

*All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:*

- (1) *The date, time and place of the meeting.*
- (2) *The members of the public body recorded as either present or absent.*
- (3) **The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken** [SIG Emphasis added].
- (4) *Any other information that any member of the public body requests be included or reflected in the minutes.*

In a prior case, [\*Miramonti v Richland County School District One\*](#), the South Carolina Court of Appeals affirmed a Richland County circuit court ruling that the Board, as a matter of law, violated FOIA by failing to specify the purpose of the executive session and by voting in executive session. The circuit court also enjoined the Board from future FOIA violations, which injunction the Board did not appeal. In its opinion, the Court of Appeals stated, “*The Board’s cavalier disregard of FOIA reflects a clear abuse of power.*”<sup>8</sup>

On 2/16/24, the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina held hearings on a lawsuit, filed on 2/7/24, brought against the District by a parent in response to the executive session matter. The parent argued that the District’s Board entered the session illegally and then undertook a secretive act by voting on the measures that were discussed.

In an order issued 5/16/24 for [\*Wallace v. Richland County School District One\*](#) it was ruled the Board failed to give a specific enough reason to enter into a private session and that the votes that were then taken after the private session were illegal. The order stated that:

*“...it cannot be correct that a public body can go behind closed doors, have a course of action proposed (even by a lawyer), and then return to public session and vote to approve what was said behind closed doors without ever publicly stating the action approved. Such a rule defies common sense, is contrary to the core purpose of FOIA, and would create a loophole that renders FOIA’s public meeting provisions meaningless.”*

The order went on to void the votes that occurred and prohibited any action being taken on them: “[T]he Court finds that the February 1 votes on the Executive Session Items are void *ab initio* and that Richland One should be restrained from acting on those votes...Richland One’s actions were **unlawful and void *ab initio***.”<sup>9</sup> [SIG Emphasis added]

The District was also ordered to pay the plaintiff for attorney’s fees and costs related to the lawsuit pursuant to the SC Code of Laws §30-4-100 (b). Therefore, the SIG determined that the District’s circumvention of FOIA ultimately resulted in a waste to taxpayers of a minimum of \$10,462.

## **B. Findings and Recommendations – Other Observations**

**Finding Sec. VI – 1:** The District failed to adhere to FOIA in January 2024 in relation to matters concerning both VFELC and the SIG’s investigation related to its’ funding, procurement, and construction that resulted in a waste of at least \$10,462.

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<sup>8</sup> [\*Miramonti v. Richland Cnty. Sch. Dist. One\*](#), 438 S.C. 612, 618, 885 S.E.2d 406, 409 (Ct. App. 2023).

<sup>9</sup> [\*Clint Wallace vs Richland County School District One\*](#), Richland County Circuit Court Order dated May 16, 2024, Jocelyn Newman, Circuit Court Judge, [2024CP4000829](#), p. 8, 9, and 10.

**Recommendation Sec. VI – 1:** The SIG recommends the District adopt procedures that enhance its proactiveness of the proper disclosure of publicly available information to avoid costs associated with legal non-compliance of FOIA that result in waste of public funds.

## **VII. Conclusion**

The SIG determined that the Board’s funding of the VFELC was permissible. However, as detailed above, the District’s failures and mismanagement produced a \$31 million *unauthorized or illegal* procurement. The District must now resolve the situation by following the process required by [SC Code of Regulations, §19-445.2015](#).

The SIG determined that the District did not follow the process for awarding a CM-R contract per the *State Manual*, the *CPC*, or the process depicted in the *District 2022 Code*, which the District did not adopt until after the VFELC procurement process. The failure to comply with the prescribed process and, hence, the procurement statutes resulted in an unauthorized or illegal procurement. The CCI CM-R contract was *void ab initio* because the procurement process was defective.

In addition, the District violated state law and local county ordinance by commencing construction without a building permit from the SCDE. In doing so, the District exposed itself to wasteful expenditures, contractual liabilities, costs associated with project delays, reputation damage, and insurance issues. The SIG determined that the District’s mismanagement of the VFELC construction project resulted in the Stop Work Order being issued by the Richland County building official, as well as shutdown costs at a minimum of \$352,078 in waste to the District as of 5/14/24 - depicted in Table 4.

The SIG identified several areas of concern as detailed in the Findings and Recommendations sections of this report. The SIG did not identify criminal activity or indication of fraudulent activity during this investigation.

The SIG extends its appreciation to the District superintendent, Dr. Witherspoon, District staff, and members of the Board of School Commissioners for their cooperation and intentionality of seeking solutions to the issues identified by the SIG. The SIG also extends its appreciation to current and former teachers and administrators, and to the parents and constituents in the District for the candor, courage and valuable input provided to the SIG during this investigation.

In addition, the SIG is appreciative of the collaboration with the South Carolina Department of Education, the Office of the State Engineer and Division of Procurement Services of the State Fiscal Accountability Authority, the South Carolina Department of Social Services, Richland County Planning and Development Services, and persons who initiated confidential contact with the SIG.

## Compilation of Findings and Recommendations

### Section III - Early Learning Center Funding

**Finding Sec. III – 1:** The SIG found that the District appropriately allocated \$31 million from the District’s Unassigned Fund Balance for the VFELC construction project. **No further action is required.**

**Recommendation Sec. III – 1:** The SIG recommends the District assess the financial requirements of the operational expenses associated with the VFELC to properly forecast its future operating budgets.

### Section IV - Procurement of Construction Management Services

**Finding Sec. IV – 1:** The *District 2001 Code* in effect during the VFELC procurement process lacked *Article 9 Construction, Architect-Engineer, Construction Management, and Land Surveying Services* of the *CPC* ([SC Code of Laws, §11-35-2910 through 3245](#)) and therefore was not sufficient to govern the VFELC procurement process.

**Finding Sec. IV – 2:** The District did not have a procurement code that was consistent with the *CPC* and therefore, the District was subject to the *CPC*.

**Finding Sec. IV – 3:** The procurement process the District utilized for the VFELC procurement did not comply with the requirements of the *CPC* and the *State Manual* and the District did not seek approvals from the OSE as required by the *CPC* and the *State Manual*.

**Finding Sec. IV – 4:** The District published an Intent to Award that awarded contracts to two contractors to provide the same services on one project, an action that was not permissible by state statute.

**Finding Sec. IV – 5:** The District mismanaged the \$31 million allocated by the Board for the “*Early Childhood Center LR*” on 12/13/22 by awarding an unauthorized procurement.

**Recommendation Sec. IV – 5:** The District should rectify the situation in accordance as required by [SC Code of Regulations, §19-445.2015](#) “*Unauthorized or Illegal Procurements.*”

**Finding Sec. IV – 6:** The District mismanaged the retention of the CM-R services bid file for the VFELC, putting the District at risk of violating the Chapter 12 §902.21 of the SC Code of Regulations.

**Recommendation Sec. IV – 6:** The District should implement internal controls to ensure all bid files required to be retained be stored in a matter that is retrievable and accessible.

### Section V - Construction of the Early Learning Center

**Finding Sec. V – 1:** The District violated state law and local county ordinance by commencing construction without a building permit from the SCDE. In addition, the District commenced work on phase two of the project without prior approval of the Board. In doing so, the District exposed itself to wasteful expenditures, contractual liabilities, costs associated with project delays, reputation damage, and insurance issues.

**Recommendation Sec. V – 1:** The District should comply with the SC Code of Laws and obtain a building permit prior to beginning construction activities.

**Finding Sec. V – 2:** The District wasted \$352,078 on associated costs depicted in Table 4 by executing the VFELC construction project without a building permit.

**Recommendations Sec. V – 2:** The District should implement internal controls to comply with applicable statutes, ordinances, and regulations when conducting construction projects. Alternatively, if limited internal controls did exist, then the applicable consequences should be applied accordingly.

**Finding Sec. V – 3:** The SIG determined that the District (and state-wide public school districts operating similar 3K and 4K programs) are non-compliant in operating non-exempt 3K and 4K programs more than four hours a day without oversight from the DSS. The SIG further determined ambiguity exists between the SCDE and the DSS regarding the approval/regulation of these programs.

**Recommendation Sec. V – 3a:** The District, the SCDE, and the DSS should work with the legislature to determine what Pre-K educational programs require oversight by the DSS.

**Recommendation Sec. V – 3b:** The SIG recommends the SCDE and the DSS develop provisional guidance for all public school districts operating non-exempt 3K and 4K programs regarding existing compliance for the upcoming 2024-25 school year.

## **Section VI – Other Observations**

**Finding Sec. VI – 1:** The District failed to adhere to FOIA in January 2024 in relation to matters concerning both VFELC and the SIG’s investigation related to its’ funding, procurement, and construction that resulted in a waste of at least \$10,462.

**Recommendation Sec. VI – 1:** The SIG recommends the District adopt procedures that enhance its proactiveness of the proper disclosure of publicly available information to avoid costs associated with legal non-compliance of FOIA that result in waste of public funds.