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## ARTICLE 1 - GENERAL PROVISIONS

### Part A - Purposes and Application

#### 1-101 Purpose

The purpose of this policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by this school district, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. Pursuant to the provisions of S. C. Code Ann. . 11-35-70 (1976), which apply to Richland School District Two ("District"), the District has promulgated this policy to be substantially similar to the South Carolina Consolidated Procurement Code.

#### 1-102 Application

This policy applies to all procurements not presently being solicited and to all contracts and contract renewals for the procurement of supplies, services, and construction, entered into unless the parties also agree to its application to contracts entered into prior to the effective date. The school district maintains, at its sole discretion, the prerogative to provide such items internally. It shall apply to public funds irrespective of their source. Nothing in this policy shall prevent any school district department or division from complying with the terms and conditions of any grant, gift or bequest, which are otherwise consistent with law.

#### 1-103 Exemptions

The school board may exempt specific supplies or services from this policy. The following supplies and services are exempted from this policy:

- (a) Books, periodicals, newspapers, technical pamphlets, standardized tests and testing materials, copyrighted educational materials, filmstrips, slides, transparencies, computer software used for instructional purposes and renewals of software licenses where fees are paid annually to maintain the right to use software after such hardware has been procured in accordance with this policy.
- (b) Public utilities

- (c) Travel
- (d) Workshops, seminars, conferences
- (e) Professional journals
- (f) Taxes, social security, annuities, credit union
- (g) Refunds on health insurance
- (h) Oil company credit cards - purchases for gas and oil and emergency repairs
- (i) Professional services normally obtained on a fee basis such as attorneys, accountants, physicians, or dentists, appraisers, auctioneers, clergy, court reporters and expert witness service. provided that no such services may be awarded without approval of the Board of Trustees.
- (j) Professional dues, registration and membership fees
- (k) Instructional training seminars or staff development offered by the district to district employees and those contractual services necessary to provide the services for the seminar
- (l) Diplomas
- (m) U. S. postage stamps and post office boxes
- (n) Original art objects: Before procuring any art objects such as paintings, antiques, sculptures or similar objects above \$200.00, the Superintendent shall prepare a written determination specifying the need for such objects and benefits to the District. The Board of Trustees shall have the responsibility to review such determination for approval prior to any acquisition.
- (o) The purchase of goods, products, and services from the South Carolina Department of Corrections, Division of Prison Industries.
- (p) Services and/or supplies provided by the Division of General Services to public procurement units

- (q) Videos (programmed for viewing)
- (r) Products and services provided by the District
- (s) Newspaper advertising
- (t) Local school funds
- (u) state contracts

#### 1-104 Delegation of Authority

The provisions of these Regulations apply to every delegation of authority by the Chief Procurement Officers or the head of a governmental body.

##### A. Unauthorized Procurements.

The ratification of an act obligating the District in a contract by any person without the requisite authority to do so by an appointment or delegation under the procurement policy rests with the Chief Financial Officer. It is prohibited for a procurement officer to ratify such acts. The chief financial officer shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent reoccurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable. If the price paid is unreasonable, the individual may be held pecuniarily liable for the difference.

#### 1-105 Specific Repealer

This policy repeals all previously issued policies, rules or regulations pertaining to procurement for this school district, except those dealing with the procurement of items exempted from this policy.

#### 1-106 Effective Date

This policy shall become effective at 12:01 a.m. on September 27, 2006.

## Part B - Definitions of Terms Used in This Policy

### 1-201 Definitions

- (1) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (2) Catalogue Price. The price, including any applicable discount available, included in a catalogue price list, schedule, or other form that:
  - (a) is regularly maintained by a manufacturer or contractor;
  - (b) is either published or otherwise available for inspection by customers; and
  - (c) states prices at which sales are currently or were last made to a significant number or any category of buyer or buyers constituting the general buying public for the supplies or services involved.
- (3) Construction. The process of building, altering, repairing, improving, or demolishing any structure or building owned by the school district. It does not include operation, routine repair, or routine maintenance of existing structure, buildings or real property.
- (4) Contract. All types of agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.
- (5) Contract Modification. Any written alteration in specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (6) Contractor. Any person having a contract with the school district.
- (7) Cooperative Purchasing. Procurement conducted by, or on behalf of, more than one "Public Procurement Unit."
- (8) Cost Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in

accordance with the contract terms and the provisions of this Policy, and a fee, if any.

- (9) Data. Recorded information, regardless of form or characteristics.
- (10) Days. Calendar days. In computing any period of time prescribed by this policy, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.
- (11) Employee. An individual drawing a salary from this school district, whether elected or not, and any noncompensated individual performing personal services for the school district.
- (12) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (13) Nonexpendable Supplies. All tangible supplies having an original acquisition cost of over one hundred dollars (\$100.00) per unit and a probable useful life of more than one (1) year.
- (14) Person. Any business, individual, committee, club, other organization or group of individuals.
- (15) Procurement. Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (16) Procurement officer. The person with budget responsibility who initiates the solicitation.
- (17) Public Procurement Unit. Any state, county, municipality, school district, and any other subdivision of the state or subdivision thereof, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of supplies, services, or construction.
- (18) Purchase Description. The words used in a solicitation to

describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, a "Solicitation."

- (19) Real Property. Any land, all things growing or attached thereto, and all improvements made thereto including buildings and structures located thereon.
- (20) Request for Proposals. All documents whether attached or incorporated by reference, utilized for soliciting proposals.
- (21) Response. Any bid, offer or proposal, without regard to the source selection method, which is submitted in reply to a "Solicitation."
- (22) Responsible "Vendor." A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (23) Responsive "Vendor." A person who has submitted a response which conforms to in all material respects to an invitation for bids or a request for proposals.
- (24) Routine Repair or Routine Maintenance. Those repairs and maintenance costs of \$50,000.00 or less.
- (25) School District. As herein used, school district is intended to include the Board of Trustees or their authorized agent such as but not limited to, the superintendent, director of finance or where applicable, director of procurement or other official responsible for procurement activity.
- (26) Service. The furnishing of labor, time or effort by a contractor. This term shall not include employment agreements.
- (27) Solicitation. Any effort, without regard to the source selection method, to obtain supplies, services or construction by the school district.
- (28) Solicitation Document. The document(s) used in connection with a particular solicitation.
- (29) Supplies. All property including but not limited to equipment, materials, printing, insurance, information technology equipment

and software packages, and leases of real property, excluding land or a permanent interest in land.

(30) Surplus Supplies. Any supplies other than expendable supplies no longer having any use to the school district. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

(31) Vendor. Any person submitting a response to a solicitation.

### Part C - Compliance with State and Federal Regulations

#### 1-301 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), South Carolina Code of Laws, 1976, with the exception that proprietary commercial or financial information supplied in response to a solicitation or request for proposal which is marked privileged and confidential is not to be disclosed.

#### 1-302 Compliance with Federal Requirements

Where procurement involves the expenditure of federal assistance or contract funds, the school district shall also comply with such federal law and authorized regulations which are mandatory and which are not otherwise contained therein.

#### 1-303 Standards of Conduct

In all procurement actions for this school district, the provisions of Chapter 13, Title 8 (State Ethics Law), South Carolina Code of Laws, 1976, shall be complied with.

## ARTICLE 2 - SOURCE SELECTION AND CONTRACT FORMATION

### Part A - Methods of Source Selection

#### 2-101 Methods of Source Selection

Unless otherwise required by law or this policy, all school district contracts shall be awarded by competitive sealed bidding, pursuant to

Section 2-102, except as provided herein:

- (a) Section 2-103 (Competitive Fixed Price Bidding);
- (b) Section 2-104 (Competitive Best Value Bidding);
- (c) Section 2-105 (Competitive Sealed Proposals);
- (d) Section 2-106 (Small Purchases);
- (e) Section 2-107 (Sole Source Procurement);
- (f) Section 2-108 (Emergency Procurement);
- (g) Section 4-301 (Architect-Engineer or Land Surveying Services).

2-102 Competitive Sealed Bidding

- (1) Conditions for Use. While the preferred procurement technique, competitive sealed bidding should not be used in all instances. This is a price determinate method of procurement and is best applied where the needs of the district are precise and certain and may be secured from any number of potential suppliers.
- (2) Invitation for Bids. The invitation for bids shall be the document used to initiate a competitive sealed bid procurement and shall include the following:
  - (a) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, and any other special information;
  - (b) the purchase description, specifications, delivery and performance schedule, and such inspection and acceptance requirements as are not included in the purchase descriptions;
  - (c) all contract terms and conditions, including warranty and bonding or other security requirements as applicable; and
  - (d) instructions to bidders to visibly mark as confidential each part of their bid which they consider to be proprietary

information.

(3) Public Notice. Public notice of the Invitation for Bids shall be given. Such notice shall include publication in a newspaper of general circulation or the South Carolina Business Opportunities published by the Division of General Services, a reasonable time prior to bid opening. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined by the school district.

(4) Receipt and Safeguarding of Bids.

A. Procedures Prior to Bid Opening.

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in Subsection B below, unopened in a secure place. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall be taken to insure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to district employees, and then only on a need to know basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Financial Officer, or his designee. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid chief financial officer. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids number, and his signature, and then shall immediately reseal the envelope.

- (5) 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. The dollar amount of each bid, and such other relevant information, together with the name of each bidder, shall be recorded and announced; the record shall be open to public inspection at that time. Only the information disclosed at bid opening is considered to be public information until an award is actually made. An amendment postponing bid openings may be issued only when emergency or unanticipated events beyond the control of bidders interrupt normal government operations.
- (6) Bid Acceptance and Bid Evaluation. Bids shall be accepted without alteration or correction, except as authorized in this policy. When necessary for the best interest of the school district, the invitation for bids may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the cost criteria to be used. No cost criteria may be used in bid evaluation that are not set forth in the invitation for bids.
- (7) Correction or Withdrawal of Bids; Cancellation of Awards. Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid openings, no change in bid prices or other provisions of bids prejudicial to the interest of the school district or fair competition shall be permitted. A bidder must submit a written request to either correct or withdraw a bid to the school district. Each written request must document the fact that the bidder's mistake is clearly an error that will cause him substantial loss. In order to maintain the integrity of the competitive sealed bidding process, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake, in the judgement of the school district, is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written

determination.

- (8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the District's sole judgment, needing clarification shall be accorded such an opportunity.
- (9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
  - (a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.
  - (b) Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.
  - (c) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the District.
  - (d) Tie bids involving South Carolina firms in the District must be resolved by the flip of a coin in the office of the chief financial officer or his designee witnessed by all interested parties.
  - (e) 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 bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the office of the chief financial officer or his designee witnessed by all interested parties.
- (10) Notice of Award and Award. Unless there is a compelling reason to reject bids, notice of an award or 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 bid 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 under Article 6 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 one hundred thousand dollars, 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 response is received. Such notice must contain a statement of the bidder's right to protest under Article 6.

When a contract has a total or potential value in excess of one hundred thousand dollars, ten days after notice is given the District may enter a contract with the bidder named in the notice in accordance with the provisions of this policy and of the bid solicited. When only one response is received, the notice of intended award and the ten day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 2-201.

In the event all bids exceed available funds as certified by the school district fiscal officer, the school district is authorized, in situations where the chief financial officer determines that time or economic considerations preclude re-solicitation of work or a reduced scope, to negotiate a contract in order to bring the bid within the amount of available funds, provided that:

- a. each responsible bidder who submitted a bid under the original solicitation is notified of the termination 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; and
- c. the negotiated price is the lowest negotiated price offered by any responsible and responsible offeror.

(11) Request for Qualifications. Prior to soliciting bids, the procuring agency, acting through the authorized 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 2-102(3). The use of the request for qualifications is subject to the approval of the Chief Financial Officer.

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 under Article 6.

- (12) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2-103 Competitive Fixed Price Bidding.

- (1) Conditions for Use. When the Chief Financial Officer, or his designee, 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 2-102, unless otherwise provided for in this section.
- (2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a pre-set maximum price which the District will pay for such goods or services.
- (3) Public Notice. Adequate public notice of the solicitation shall be given in the same manner as provided in Section 2-102(3).

- (4) 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.
- (5) Evaluation. Vendors responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
- (6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed priced bid. All bidders, whose bids, in the District's sole judgment, need clarification shall be afforded such an opportunity.
- (7) 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.
- (8) 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.
- (9) 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 under Article 6.

2-104 Competitive Best Value Bidding.

- (1) Conditions for Use. When the District 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 2-102, unless otherwise provided for in this section.
- (2) 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.
- (3) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section 2-102(3).

- (4) 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.
- (5) 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 be defined to include, but are not limited to the following:
- (a) Operational costs that the District would incur if the bid is accepted;
  - (b) Quality of the product or service, or its technical competency;
  - (c) Reliability of delivery and implementation schedules;
  - (d) Maximum facilitation of data exchange and systems integration;
  - (e) Warranties, guarantees, and return policy;
  - (f) Vendor financial stability;
  - (g) Consistency of the proposed solution with the District's planning documents and announced strategic program direction;
  - (h) Quality and effectiveness of business solution and approach;
  - (i) Industry and program experience;
  - (j) Prior record of vendor performance;
  - (k) Vendor expertise with engagement of similar scope and complexity;
  - (l) Extent and quality of the proposed participation and acceptance by all user groups;
  - (m) Proven development methodologies and tools; and

- (n) Innovative use of current technologies and quality results.
- (6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders, whose bids, in the District's sole judgment, need clarification shall be accorded such an opportunity.
- (7) 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 determine the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the District, considering only the evaluation factors stated in the best value bid.
- (8) 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 the external audit.

2-105 Competitive Sealed Proposals

- (1) Conditions for Use. When the school district determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the school district, a contract may be awarded by competitive sealed proposals. Competitive sealed proposals should be used when both the needs of the school district and the costs to satisfy those needs are important and the methods, or items to satisfy those needs are not clear and precise. While price is an important factor, it is considered less significant than fully meeting the district's needs. The ultimate purpose of this method of procurement is to provide flexibility to the district while taking into consideration various options and the costs of each. Proposals shall be solicited through a Request for Proposals.
- (2) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 2-102(3).

- (3) Proposal. Proposals shall be publicly opened by the chief financial officer or his designee in the presence of one or more witnesses, but only the names of the offerors shall be disclosed at the proposal opening. Contents of competing proposals shall not be disclosed during the process of opening or negotiation. A tabulation of those offering a proposal shall be made available for public inspection after contract award. All offerors must visibly mark as "confidential" each part of their proposal which they consider to be proprietary information.
- (4) Request for Qualifications. Prior to soliciting proposals, the district, acting through the authorized procurement officer, may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.

After receipt of the responses to the request for qualifications from prospective offerors, the perspective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest under Article 6.

- (5) Discussions with Offerors. As provided in the request for proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals, in the district's sole judgment, needed clarification shall be accorded such an opportunity.
- (6) Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weighting that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to

the District, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with Section 2-103(9) below.

- (7) Negotiations. Whether price was an evaluation factor or not, the District, through the chief financial officer, may, in its sole discretion and not subject to challenge through a protest filed under Article 6, proceed in any of the manners indicated below:
- (a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the District, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the District in its sole discretion; or
  - (b) 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
  - (c) during the negotiation process as outlined in subsections (a) and (b) above, if the District is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated.
  - (d) If, after following the procedures set forth in Section 2-103(8), a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers.

In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors. Negotiations to include matters affecting the scope of the contract are permitted as long as the changes are within the general scope of the request for proposal.

- (8) Evaluation Factors. The request for proposals shall state the relative importance of the factors to be considered in evaluation proposals but shall not require a numerical weighting for each factor. Price may, but need not be, an evaluation factor.
- (9) Award. Award shall be made to the responsive offeror whose proposal is determined in writing to be most advantageous to the school district taking into consideration price and the evaluation factors set forth in the request for proposals, unless the district determines to utilize one of the negotiation options provided in this section. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

2-106 Small Purchases

Any single procurement not exceeding fifty thousand dollars (\$50,000.00) must be made by the school district in accordance with this paragraph; provided, however, that such procurement shall not be artificially divided so as to constitute a small purchase. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on an "all or none" basis. In such cases, suppliers shall be advised of this award procedure at the time quotations are requested.

- (a) Small purchases not exceeding twenty-five hundred dollars (\$2,500.00) must be accomplished without competitive quotations if the prices are considered to be reasonable. The district annotate the purchase requisition as follows: "Price is fair and reasonable" and sign such purchase requisition. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.
- (b) Small purchases from twenty-five hundred dollars and one cent (\$2,500.01) to ten thousand dollars (\$10,000.00) must be accomplished if verbal solicitation of three written quotes from a minimum of three qualified sources of supply are solicited. The award must made to the lowest responsive and responsible sources
- (c) Small purchases from ten thousand dollars and one cent (\$10,000.01) to fifty thousand dollars (\$50,000.00) must have

written solicitations of quotes, bids or proposals. Such documentation shall be attached to the purchase requisition. Solicitations in this category must be advertised in a newspaper of general circulation or in the South Carolina Business Opportunities prior to purchase.

The provisions of section 6-201 regarding protest rights do not apply to contracts awarded under the procedures set forth in this section.

## 2-107 Sole Source Procurement

- (1) Conditions for Use. This method of procurement is the least competitive and therefore should have limited use. In those instances, however, where the district's needs can only be met by one method, means or item, sole source is an appropriate, and necessary, method of procurement. Price is not an operative factor, inasmuch as the cost is not pertinent where the needs are unique and can only be satisfied through a unique one-of-a-kind acquisition. The determination as to whether a procurement shall be made as a sole source shall be made by the Superintendent or his designee. Such determination and the basis thereof shall be in writing and shall include an explanation as to why no other source will be suitable or acceptable to meet the need. Any delegation of sole source authority outside those listed in this sub-section, must be done by the Superintendent and must be at an organizational level above that of the Procurement Officer.
- (2) Award. A contract may be awarded for a supply, service, or construction item without competition when the school district determines in writing that there is only one source for the required supply, service, or construction item. The following are examples of circumstances, which could necessitate sole source procurement:
  - (a) where the compatibility of equipment, accessories or replacement parts is the paramount consideration;
  - (b) where a unique item is needed for trial use or testing;
  - (c) where a unique item is to be procured for resale;
  - (d) where the item is one of a kind; and
  - (e) printed forms, pamphlets, and brochures, exclusive of

printing equipment.

2-108 Emergency Procurement

Notwithstanding any other provision of this policy, the school district may make or authorize the Superintendent or his designee to make emergency procurement when there exists a threat to public health, welfare, or safety under emergency conditions, or where normal daily operations are affected; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances.

If emergency considerations exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may also be made. A written determination shall be made stating the basis for an emergency procurement and for the selection of the particular vendor. Emergency procurement shall be limited to that of supplies services or construction items necessary to meet the emergency. Any delegation of emergency authority outside of those listed here in this sub-section must be done by the Superintendent.

2-109 Rejection of Responses

- (1) Rejection of All Responses. A compelling reason should exist to reject all responses. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective vendors of any resulting modifications or cancellation, thereby permitting vendors to change their responses and preventing the unnecessary exposure of responses.

As a general rule, a solicitation should not be canceled and readvertised after opening due solely to increased requirements for the items being procured; an award should be made on the initial solicitation and the additional quantity required should be treated as a new procurement. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the solicitation shall be canceled. The solicitation may be canceled after opening, but prior to an award, when it is determined in writing that:

- (a) inadequate or ambiguous specifications were cited in the solicitation;
- (b) specifications have been revised;
- (c) supplies or services being procured are no longer required;

- (d) the solicitation did not provide for consideration of all factors of costs to the school district, such as cost of transportation;
  - (e) responses received indicate that the needs of the school district can be satisfied by a less expensive article differing from that on which the responses were invited;
  - (f) all otherwise acceptable responses received are at unreasonable prices;
  - (g) the responses were not independently arrived at in open competition, were collusive or were submitted in bad faith; or
  - (h) for other reasons, cancellation is clearly in the best interest of the school district.
- (2) Rejection of Individual Responses. Any response which fails to conform to the essential requirements of the specification, such as bid security, shall be rejected. Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation for bids authorized the submission of alternate bids and said alternates meet the requirements specified in the invitation for bids. Any response which fails to conform to the delivery schedule or permissible alternates thereto stated in the solicitation may be rejected as nonresponsive. Ordinarily, a response should be rejected when the vendor attempts to impose conditions which would limit his liability to the school district, since to allow the vendor to impose such conditions would be prejudicial to other vendors. For example, responses should be rejected in which the vendor:
- (a) attempts to protect against future changes in conditions, such as increased costs, if total possible cost to the school district cannot be determined;
  - (b) fails to state a price or states a price but qualifies such price and states that the price shall be subject to the "price in effect at time of deliveries";
  - (c) when not authorized by the solicitation, conditions or qualifies a response by stipulating that the response is to

be considered only if, prior to the date of award, vendor receives (or does not receive) an award under a separate procurement;

- (d) requires the school district to determine that the vendor's product meets the school district's specifications; or
  - (e) limits the rights of the school district under any contract clause.
- (3) Any response received after the school district has declared that the time set for opening has arrived shall be rejected unless the response was in the possession of the school district and was misplaced. In such an event, the misplaced response will be considered along with other previously received responses.
- (4) Minor Informalities or Irregularities in Bids or Offers. 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 solicitation, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other vendors. The school district shall either give the vendor an opportunity to cure any deficiency resulting from a minor informality or irregularity in a response or waive any such deficiency where it is to the advantage of the school district. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:
- (a) failure of a vendor to return the number of copies of signed responses required by the solicitation;
  - (b) failure to furnish the required information concerning the number of the vendor's employees or failure to make a representation concerning his size status;
  - (c) failure of a vendor to sign his response, but only if (i) the firm submitting the response has formally adopted or authorized the execution of documents by typewritten, printed or rubber-stamped signature and submits evidence of such authorization and the response carries such a

signature; or (ii) the unsigned response is accompanied by other material indicating the vendor's intention to be bound by the unsigned response such as the submission of a price guarantee with the response or a letter signed by the vendor with the response referring to and clearly identifying the response itself;

- (d) failure of a vendor to acknowledge receipt of an amendment to a solicitation, but only if (i) the response received clearly indicates that the vendor received the amendments, such as where the amendment added another item to the solicitation and the vendor submitted a response thereon, or (ii) the amendment clearly would have no affect or merely a trivial or negligible affect on price, quality, quantity, delivery or the relative standing of vendors, such as an amendment correcting a typographical mistake in the name of the school district, or (iii) there is a failure to furnish an affidavit concerning affiliates, if required.

#### 2-110 Lease and/or Rental of Office Space and other Real Property

The Superintendent or his designee shall negotiate all leases of real property.

### Part B - Vendor Qualifications and Duties

#### 2-201 Responsibility of Vendors

A written determination of nonresponsibility of a vendor shall be made. The unreasonable failure of a vendor to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such vendor. Factors to be considered in determining the responsibility of a vendor include whether the prospective contractor has:

- (a) the appropriate financial, material, equipment, facilities and personnel resources and expertise available, or the ability to attain them, necessary to indicate its capability to meet all contractual requirements;
- (b) a satisfactory record of past performance;
- (c) a satisfactory record of integrity;
- (d) qualified legally to contract with the school district; and

- (e) supplied all necessary information in connection with an inquiry concerning responsibility. A copy of the written determination of nonresponsibility shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made a part of the procurement file.

2-202 Cost or Price Data

- (1) Required Submission Relative to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars (\$100,000.00). The submission of such cost or pricing data relating to the award of a contract is not required where:
  - (a) the contract price is based on adequate price competition;
  - (b) the contract price is set by law or regulation; or
  - (c) it is determined in writing that such requirement may be waived and the determination states the reasons for such waiver.
- (2) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts award by competitive sealed bidding. The submission of such cost or pricing data relating to the pricing of a change order or contract modification is not required where:
  - (a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
  - (b) it is determined in writing that such requirement may be waived, and the determination states the reason for such waiver.
- (3) Certificate Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or

contract modification.

- (4) Price Adjustment Provision Required. Any contract awarded, change order, or contract modification under which submission and certification of cost or pricing data are required shall contain a provision stating the price to the school district, including profit or fee, shall be adjusted to exclude any significant sums by which the school district finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the school district and the contractor.

#### 2-203 Prequalification of Construction Bidders

The District may prequalify construction bidders according to established criteria, including the following: prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. The District may use the pre-qualification process only for projects which are unique in nature or over ten million dollars in value, as approved by the Board.

When the pre-qualification process is employed, only bidders who are pre-qualified through this procedure are entitled to submit a bid for the project. The determination of which bidders are pre-qualified, and thereby entitled to bid, is not protestable under Article 6 of this policy or any other provision of this policy.

#### 2-204 Qualified Products Lists

A qualified products list may be developed with the approval of the Chief Financial Officer when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy District requirements. The procedure for the inclusion of a product on the qualified products list must be available to prospective vendors for consideration of their product.

### Part C - Types of Contracts

#### 2-301 Types of Contracts

Subject to the limitations of this section, any type of contract which will promote the best interest of the school district may be used; provided that the use of cost-reimbursement or a cost-plus-percentage-

of-cost contract shall not be used unless it contains a guaranteed maximum contract amount. Such a contract may be used only when a determination by the school district is made in writing that such contract is likely to be less costly to the school district than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

## 2-302 Multi-Year Contracts

- (1) Definition. A multi-year contract is a contract for supplies or services for a period of more than one year.
- (2) Specified Period. A contract for supplies or services may be entered into for a period of time not to exceed five (5) years, provided the term of the contract and the 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 of funds therefor.
- (3) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing:
  - (a) that established requirements cover the period of the contract and are reasonably firm and continuing; and
  - (b) that such a contract will serve the best interests of the school district by encouraging effective competition or otherwise promoting savings in school district procurement.

The following factors are among those relevant to such a determination:

- (a) vendors are not willing or able to compete because of high start-up costs or capital investment;
- (b) lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;
- (c) stabilization of the contractor's workforce over a longer period of time may promote economy and consistent qualities; and

- (d) the cost and burden of contract solicitation, award and administration of the procurement may be reduced.
- (4) Evaluation. Care should be taken when evaluating multi-year against prices for the first fiscal period that a determination on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in" so as to give such bidder or offeror an undue competitive advantage in subsequent procurement.
- (5) Solicitation Document. The solicitation document shall state the following:
  - (a) the estimated amount of supplies or services required for the proposed contract;
  - (b) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract term (except to the extent price adjustments are authorized in the solicitation or the resulting contract);
  - (c) that the multi-year contract will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first fiscal year; provided, however, this does not affect either the school district's rights or the contractor's rights under any other termination clause in the contract;
  - (d) that the school district must notify the contractor on a timely basis that the funds are not available for the continuation of the contract for a subsequent fiscal year;
  - (e) whether vendors may submit prices for the first fiscal period only, the entire time of performance only, or both the first fiscal period and the entire time of performance; and
  - (f) that a multi-year contract may be awarded and how such an award will be determined including, if prices for the first fiscal period and the entire time of performance are submitted, how such prices will be compared;
- (6) Termination Due to Unavailability of Funds in Succeeding Fiscal Period. All multi-year contracts shall contain a clause stating

that when funds are not appropriated, or otherwise made available, to support continuation of performance in a subsequent fiscal period, the contract shall be terminated.

## 2-303 Blanket Purchase Agreements

- (1) Conditions for Use. A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by the eliminating the need for issuing individual solicitation documents. To the extent practicable, blanket purchase agreements for items of the same type should be awarded concurrently with more than one supplier.
- (2) Contract Terms. Blanket purchase agreements shall contain the following provisions:
  - (a) terms and conditions of the agreement including a statement that the supplier shall furnish supplies or services, commonly described in general terms, if and when requested by the school district during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the contractor is in a position to furnish.
  - (b) the extent of the obligation including a statement that the school district is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement, i.e., there are no minimum volume requirements.
  - (c) a list of names of individuals authorized to place orders under the blanket purchase agreement, identified by organizational component, and the dollar limitation per order for each individual to be furnished by the school district.
  - (d) blanket purchase agreements, except subscriptions and other charges for newspapers, magazines and other periodicals, shall be accompanied by delivery tickets or sales slips and will specify the following:
    - (i) name of contractor;

- (ii) blanket purchase agreement number;
  - (iii) date of order;
- (e) an itemized and a summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a delivery period, identifying the delivery tickets covered therein stating their total dollar value and supported by receipted copies of the delivery tickets.

#### Part D - Audit of Records

##### 2-401 Right to Audit Records

- (1) Audit of Cost or Pricing Data. The district may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 2-202 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which the cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of the final payment under the contract, unless a shorter period is agreed to in writing.
- (2) Contract Audit. The school district shall be entitled to audit the books and records of a contractor or subcontractor under any contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years under the subcontract, unless a shorter period is otherwise authorized in writing.

#### Part E - Reports and Records

##### 2-501 Reporting of Anticompetitive Practices

When for any reason collusion or other anticompetitive practices are

suspected among any bidders or offerors, the relevant facts shall be transmitted to the school district attorney and the superintendent.

## 2-502 Procurement Records

- (1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained in a contract file.
- (2) Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the school district. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement or for a longer period if required by such federal agency.

## ARTICLE 3 - SPECIFICATIONS

### Part A - Specifications

#### 3-101 Importance of Specifications

The school district shall prepare and issue specifications for supplies, services, and construction required by the school district. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to meet the needs of the school district. All specifications shall be drafted so as to promote overall economy for the purpose of satisfying the school district's needs, and to encourage maximum free and open competition in satisfying the school district's needs, and may not be unduly restrictive. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is not often practicable in construction, apart from the procurement of supply type items for a construction project. Specifications for construction may be prepared on a project-by-project basis by the architect and/or engineer retained by the school district.

ARTICLE 4 - PROCUREMENT OF CONSTRUCTION,  
ARCHITECT/ENGINEER AND LAND SURVEYING SERVICES

Part A - Management of Construction Contracting

4-101 Selection of Method of Construction Contract

Procurement of construction services will be done in accordance with section 2-102 of this policy except as provided for in the South Carolina School Facilities Planning and Construction Guide prepared by the South Carolina Department of Education and except as enumerated in the following provisions of this Article. The school district shall have discretion to select the appropriate construction contracting method for a particular project. The method of construction contracting administration used by the District shall be determined to be that method which is most advantageous to the District and will result in the most timely, economical, and successful completion of the construction project. The school district shall include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting for each project. In selecting the construction contracting method, the school district should consider the results achieved on similar projects in the past and the methods used.

4-102 Contract Administration

The school district shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions in the contract.

Part B - Construction Contract Clauses and Fiscal Responsibility

4-201 Standard Clauses

The school district may establish standard contract clauses for use in its contracts. Such contract clauses and additional clauses or variations shall be stated in the invitation for bids or request for proposals.

4-202 Bond and Security

- (1) Bid Security.

- (a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in excess of fifty thousand dollars and such other contracts as may be prescribed by the District. Bid security shall be a bond provided by a surety company meeting the criteria established by the Board or otherwise supplied in a form which may be established by the Board.
  - (b) Amount of Bid Security. Bid security shall be in an amount equal to at least five percent of the amount of the bid at a minimum
  - (c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder cannot cure these deficiencies within one working day of bid opening, his bid shall be rejected.
  - (d) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening pursuant to Section 2-102(8) no action shall be had against the bidder or the bid security.
- (2) Contract Performance Payment Bonds.
- (a) When Required--Amounts. When a construction contract is awarded, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:
    - (i) a performance bond satisfactory to the District, executed by a surety company meeting the criteria established by the Board, or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent of the price specified in the contract;
    - (ii) a payment bond satisfactory to the District, executed by a surety company meeting the criteria

established by the Board, or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the contract price;

(iii) in the case of a construction contract valued at one hundred thousand dollars or less, the District may waive the requirements of (i) and (ii) above.

(b) Authority to Require Additional Bonds. Nothing in subsection (2) of this section shall be construed to limit the authority of the District to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in item (a) of such subsection.

(c) Suits on Payment Bonds - Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work specified in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person. Any person having such a direct contractual relationship with a subcontractor of the subcontractor, but no contractual relationship expressed or implied with the contractor furnishing such payment bond, shall have a right of action on the payment bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such written notice to the contractor shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an

envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

- (d) Suits on Payment Bonds - Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction sitting in Richland County, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material supplied by the person bringing suit.
- (e) Retention - Maximum amount to be withheld. In any contract or subcontract for construction which contract or subcontract provides for progress payments in installments based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the District or general contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment must be no more than three and one-half percent.

#### 4-203 Modifications

Every contract modification, change order, or contract price adjustment under a construction contract with the school board in excess of fifty thousand (\$50,000.00) shall be subject to prior approval by the school board after receiving a report from the fiscal officer of the school district as to the effect of the contract modification, change order or contract price adjustment on the total project budget or the total contract budget.

### Part C - Architect/Engineer and Land Surveying Services

#### 4-301 Selection Process

The architect/engineer and land surveying services selection will be done in accordance with the requirements of the South Carolina School Facilities Planning and Construction Guide, and as enumerated in the following Provisions.

- (1) District Selection Committee. The District's architect-engineer, construction management and land surveying services selection committee hereinafter referred to as the district selection committee, shall be composed of those individuals whom

the Superintendent shall deem to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The chief financial officer or his qualified, responsible designee shall sit as a permanent member of the district selection committee for the purpose of coordinating and accounting for the committee's work.

- (2) Advertisement of Project Description. The district selection committee shall be responsible for (a) developing a description of the proposed project, (b) enumerating all required professional services for that project, and (c) preparing a formal invitation to firms for submission of information.

The invitation shall include but not be limited to the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The invitation shall be formally advertised in the South Carolina Business Opportunities or in a newspaper of general circulation or by an electronic advertised means.

- (3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of a current and accurate Federal Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, or such similar information as the District may require, and any other information which the particular invitation may require.

- (4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the district selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than three persons or firms have responded to the advertisement, the committee shall

hold interviews with those that did respond. The district selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the district selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

- (5) Selection and Ranking of the Three Most Qualified. The district selection committee shall evaluate each of the persons or firms interviewed in view of their:
- (a) past performance;
  - (b) the ability of professional personnel;
  - (c) demonstrated ability to meet time and budget requirements;
  - (d) location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project
  - (e) recent, current, and projected work loads of the firms;
  - (f) creativity and insight related to the project;
  - (g) related experience on similar projects;
  - (h) volume of work awarded by the District to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts by the District among qualified firms including Minority Business Enterprises and firms that have not had previous District work; and
  - (i) Any other special qualification required pursuant to the solicitation of the District.

Based upon these evaluations, the district selection committee shall select the three persons or firms which, in its judgment, are the best qualified, ranking the three in priority order. The district selection committee's report ranking the three chosen persons or firms shall be in writing and shall include data substantiating its determinations.

- (6) Notice of Selection and Ranking. When it is determined by the Superintendent that the ranking report is final, written notification of the selection shall be immediately sent to all firms interviewed.

- (7) Negotiation of Contract. The Board of Trustees or its designee shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the District. Should the Board or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one of the three, additional persons or firms in order of their competence and qualifications shall be selected after consultation with the district selection committee, and negotiations shall be continued in the same manner until agreement is reached.

4-302 Exception for Small Architect-Engineer and Land Surveying Services Contract.

- (1) Procurement Procedures for Certain Contracts. When securing architect-engineer or land surveying service which is estimated not to exceed twenty-five thousand, the District may employ the architects, engineers, or land surveyors by direct negotiation and selection, taking into account (a) the nature of the project, (b) the proximity of the architect-engineer or land surveying services to the project, (c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time, (d) past performance, and (e) ability to meet project budget requirements.
- (2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty-four month period immediately preceding negotiation of the contract by the District for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 4-301 shall not exceed seventy-five thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the District a list of professional services, including fees paid therefor, performed for the District during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.
- (3) Splitting of Larger Projects Prohibited. The District shall not break a project into small projects for the purpose of

circumventing the provisions of this section.

Part D - Construction Related Indefinite Delivery Contracts

4-401 Indefinite Delivery Contracts for Construction Items, Architectural-Engineering and Land Surveying Services.

- (1) General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedures set forth in section 4-101 and for architectural-engineering and land surveying services pursuant to the procedures in section 4-301.
  - (a) Construction services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of \$750,000.00 for a two year period with individual project expenditures not to exceed \$150,000.00.
  - (b) Architectural-engineering and Land Surveying Services. When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of \$300,000.00 for a two year period with individual project expenditures not to exceed \$100,000.00.
- (2) Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in section 4-302. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided in section 4-302.

Part E- Definitions of Terms Used in This Article.

- (1) "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the laws of this State, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

- (2) "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 District real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
  
- (3) "Construction management services" are those professional services associated with a system in which the District directly contracts with a professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of a District project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.

ARTICLE 5 - PROPERTY MANAGEMENT

Part A - Disposition of Surplus Property

5-101 Sale

- (1) Surplus supplies and property shall be disposed of through competitive sealed bids or public auction. In the event some types and classes of items can be sold or disposed of more readily and advantageously by other means, the school district may employ such other means including, but not limited to, barter or appraisal.
- (2) When making sales by competitive sealed bidding or public auction, notice of the sale should be given by at least fifteen (15) days before the date set for opening bids. Newspaper advertisement or notice in other publications must also be used. Bids shall be publicly opened. The notice of sale shall include the provisions upon which the award shall be made to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable to the school district. Where such price is not acceptable, the school district may reject the bids in whole or in part and negotiate the sale provided that the negotiated sale price is higher than the highest responsive and responsible bid.

Part B - Proceeds

5-201 General Fund

Proceeds from the sale, lease, or disposal of surplus supplies and property shall be deposited in the school district general fund, except that, upon direction of the Board of Trustees, the proceeds shall be deposited in a fund designated by the Board.

ARTICLE 6 - LEGAL AND CONTRACTUAL REMEDIES

Part A - Exclusive Remedies

6-101 Waiver and Exhaustion

The remedies provided in this article to actual or prospective bidders, offerors and contractors shall be exclusive and shall be exhausted prior

to the commencement of an action at law or in equity against the school district, its officers or employees. Nothing herein should be construed as a waiver of sovereign, or other, immunity either partially or fully, if otherwise available and applicable.

## Part B - Resolution of Protests

### 6-201 Authority to Resolve Protested Solicitations and Awards

- (1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest. The protest must be submitted to the Chief Financial Officer in writing, setting forth the grounds and facts applicable thereto for the protest, within fifteen (15) days of the issuance of the invitation or other solicitation documents, whichever is applicable, or any amendment thereto if the amendment is at issue. With respect to a protest of an intended award or award of the contract, a protest must be filed within ten (10) days from the date notification of award is posted in accordance with this policy. The filing of a protest will allow the bidder five additional days to perfect his protest. The filing of a protest shall not stay solicitation or award of a contract unless fraudulent.
- (2) Authority to Resolve Protests. Prior to an administrative hearing, the chief financial officer shall have authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. The remedies, if any, shall be in accordance with part D of this article.
- (3) Administrative Review and Decision. After a reasonable attempt to resolve a protest by mutual agreement, the superintendent will conduct an administrative hearing and shall issue a decision in writing within fifteen business days. The decision shall:
  - (a) state the reasons for the action taken; and
  - (b) inform the protestant of its right to administrative review as provided in part C of this article.
- (4) Notice of Decision. A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- (5) Finality of Decision. A decision under subsection (3) of this section shall be final and conclusive, as to administrative review, unless the debarred or suspended person appeals administratively as provided in part C of this article.

6-202 Authority to Debar or Suspend

- (1) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the school district, after consultation with the school district attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The school district, after consultation with the school district attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.
  
- (2) Causes for Debarment or Suspension. The causes for debarment of suspension include the following:
  - (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  
  - (b) conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a school district contractor;
  
  - (c) conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;
  
  - (d) violation of contract provisions, as set forth below, of a character which is so serious as to justify debarment or suspension action;
    - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  
    - (ii) 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 or suspension.

- (e) any other cause which is so serious and compelling as to affect responsibility as a school district contractor, including debarment or suspension by another governmental entity for cause.
  - (f) for violation of the ethical standards set forth in South Carolina State Ethics Act.
- (3) Decision. The superintendent shall issue a written decision within thirty (30) days to debar or suspend. The decision shall:
- (a) state the reasons for the action taken; and
  - (b) inform the debarred or suspended person involved of its rights to administrative review as provided in Part C of this article.
- (4) Notice of Decision. A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (5) Finality of Decision. A decision under subsection (3) of this section shall be final and conclusive, as to administrative review, unless the debarred or suspended person appeals administratively as provided in Part C of this article.

#### 6-203 Authority to Resolve Contract and Breach of Contract Controversies

- (1) Applicability. This section applies to controversies between the school district and a contractor and which arises under, or by virtue of, a contract between them. This includes without limitation controversies based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- (2) Authority. The chief financial officer is authorized to settle and resolve a controversy described in subsection (1) of this section.
- (3) Administrative Review and Decision. If such a controversy is

not resolved by mutual agreement, the superintendent shall hold an administrative hearing and shall promptly issue a decision in writing within thirty (30) days. The decision shall:

- (a) state the reason for the action taken; and
  - (b) inform the contractor of its rights to review as provided in part C of this article.
- (4) Notice of Decision. A copy of the decision under subsection (3) of this section shall be mailed or otherwise furnished immediately to the contractor.
  - (5) Finality of Decision. The decision under subsection (3) of this section shall be final and conclusive, unless the contractor appeals administratively as provided in this article.
  - (6) Failure to Render Timely Decision. If the written decision required under subsection (3) of this section is not entered within thirty (30) days after written request for a said decision, or within such longer period as may be agreed upon, then the contractor shall proceed as if an adverse decision had been received.

#### Part C - Administrative Appeals

##### 6-301 School District Superintendent

Prior to commencing any other action at law or in equity, a party aggrieved from a determination by the superintendent which is authorized in Section 6-201, 6-202, or 6-203 of this article, shall seek review of such determination to the school district board of trustees.

##### 6-302 Procedures

- (1) Time Limit for Filing an Appeal. A determination by the superintendent shall be final and conclusive unless any person adversely affected by the decision requests a review by the school district board of trustees, in writing, setting forth the reasons for such review, to the school district superintendent within ten (10) days of its receipt of the decision.
- (2) Upon receipt of an appeal from an aggrieved party, the school district superintendent shall schedule a review of the appeal. The protestant may also request an appearance before the school

district board of trustees. The board of trustees, within ten (10) days of completion of its review, shall, in writing, affirm, alter or deny the decision. Such decision shall include findings of fact and conclusions of law including a statement of the underlying facts supporting such findings. The decision shall also state whether the:

- (a) solicitation or award being contested was in accordance with this policy, and the terms and conditions of the solicitation documents;
  - (b) debarment or suspension being contested was in accordance with this policy, and in the best interest of the school district; and
  - (c) contract and breach of contract determination being contested was in accordance with this policy, and in the best interest of the school district.
- (3) The administrative review by the school district board of trustees shall not be limited to any prior determination. Any prior staff determination shall not be conclusive as to any findings and conclusions. Any person who is aggrieved by a final decision shall have exhausted all administrative remedies available within this article prior to seeking judicial review. The decision of the board of trustees shall be presumed final and conclusive unless such proceedings for review are instituted by filing a petition in the Circuit Court within thirty (30) days after such final decision.

#### Part D - Solicitations or Awards in Violation of Law

##### 6-401 Applicability of This Part

The provisions of this part apply where it is determined administratively or upon administrative review, that a solicitation or award of a contract is in violation of this policy.

##### 6-402 Remedies Prior to an Award

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of this policy, then the solicitation or proposed award shall be:

- (a) canceled; or

(b) revised to comply with this policy.

#### 6-403 Remedies After an Award

If after an award it is determined that a solicitation or award of a contract is in violation of this policy, then:

- (a) if the person awarded the contract has not acted fraudulently or in bad faith:
  - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the school district; and
  - (ii) the person who should have been awarded the contract may be reimbursed for the actual expenses reasonably incurred in connection with the solicitation, including reparation, not to exceed five thousand dollars (\$5,000.00).
- (b) if the person awarded the contract has acted fraudulently or in bad faith:
  - (i) the contract may be declared null and void; or
  - (ii) the contract may be ratified and affirmed if such action is in the best interest of the school district, without prejudice to the school district's right to such damages as may be appropriate.

## ARTICLE 7 - INTERGOVERNMENTAL RELATIONS

### Part A - Cooperative Purchasing

#### 7-101 Cooperative Purchasing Authorization

The school district may either participate in, sponsor, conduct, or administer a cooperative purchasing program for the procurement of supplies, services, or construction with one or more public procurement units 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 procurement units, including use of state contracts.

The school district shall, prior to conducting procurement activities hereunder, explore the availability of satisfying its needs through utilization of pre-existing contracts between the State's Division of General Services and private vendors and shall use such arrangements if cost effective, and otherwise advantageous to the school district. The school district may procure services, supplies, or construction items through the contracts established by the General Services Division of the State of South Carolina as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), South Carolina Code of Laws, 1976, independent of the requirements of this policy.

#### 7-102 Sale, Acquisition, or Use of Supplies

The school district may sell to, acquire from, or use any supplies belonging to another public solicitation unit independent of the requirements of this policy.

#### 7-103 Cooperative Use of Supplies and Services

The school district may enter into an agreement, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties independent of the requirements of this policy.

#### 7-104 Joint Use of Facilities

The school district may enter into agreements for the common use of lease warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.



ARTICLE 8 - MINORITY BUSINESSES

Part A - Minority Businesses

8-101 Minority Businesses

The school district will maintain the list of minority businesses compiled by the Governor's Office of Small and Minority Business Assistance and where appropriate will solicit those businesses on such list for each procurement for which they are qualified.

8-102 Annual Plan and Report

The District shall develop a plan of goals of the District toward minority business participation, which plan shall be submitted annually to the Board of Trustees for approval. In addition, the District shall report at least annually to the Board of Trustees concerning the number and dollar value of contracts awarded to eligible minority businesses during the preceding fiscal year. These records shall be maintained to evaluate the progress of this program.