
Called Executive Session of the Board of Trustees

Monday, October 23, 2017

3:00 p.m. – Rawlinson Road Middle School

A G E N D A

- I. Call to Order
- II. Executive Session: *Superintendent's Evaluation (Policies BEC, CBI)*
- III. Action as Required from Executive Session *(Policy BEC)*
- IV. Adjournment

Monthly Business Meeting of the Board of Trustees

Monday, October 23, 2017

6:00 p.m. – Rawlinson Road Middle School

A G E N D A

- I. Call to Order - Jordyn Ford – Rosewood Elementary School**
 - A. Approval of Agenda *(Policy BEDB)*
(Under consent agenda, all action items will be voted on after one motion and second to approve them without discussion. If a board member wants any action item discussed or voted on separately, the board member, before the agenda is approved, must ask that the action item be moved to the discussion item section.)
- II. Recognitions
 - A. Recognition of Platinum WorkKeys Platinum Scorers
 - B. Recognition of SC Pass and SC Ready Maximum Scorers
- III. Citizen Participation
- IV. Consent Action Agenda
 - A. Approval of Minutes
 - 1. September 18, 2017 work session (incl. data session) *(Policy BEDG)*
 - 2. September 25, 2017 business meeting *(Policy BEDG)*
 - 3. October 9, 2017 work session (incl. data session) *(Policy BEDG)*
 - B. Approval of Personnel Recommendations *(Policy BDD)*
 - C. Approval of Activity Bus Rental Requests

Learn + Grow + Connect + Thrive

- V. Action Agenda
- A. Approval of Ebenezer Avenue Naming Recommendation
- 2nd Read Policies** *(Policy BG/BGD)*
- B. Approval of Policy **GCO** – *Evaluation of Professional Staff*
- C. Approval of Policy **GCN** – *Evaluation of Instructional Staff*
- D. Approval of Policy **GCQF** – *Discipline, Suspension and Dismissal of Professional Staff*
- E. Approval of Policy **GDQD** – *Discipline, Suspension and Dismissal of Support Staff*
- F. Approval of Policy **DN** – *School Properties Disposition*
- G. Approval of Policy **DJ** – *Purchasing (and RHS' Procurement Code)*
- 1st Read Policies** *(Policy BG/BGD)*
- H. Approval of Policy **GBEBC,GBEBC-R** – *Gifts To and Solicitations of Staff*
- I. Approval of Policy **GBEC** – *Drug-free and Alcohol-free Schools/ Workplace*
- J. Approval of Policy **GBED,GBED-R** – *Tobacco-free Schools/ Staff*
- K. Approval of Policy **GBG** – *Staff/ Welfare Protection*
- L. Approval of Policy **GBGA** – *Staff Health*
- M. Approval of Certification of Delegates for the 2017 Delegate Assembly
- VI. Communications – Chet Miller - Pennies for Progress
- VII. Report of the Superintendent
- A. Announcements
- VIII. Review of October 9 School Board Work Session
- IX. Other and Future Business
- X. Executive Session(s) if needed – *(Policy BEC)*
- (1) Contractual Matter – *Sale of Property*
- (2) Personnel Matter – *Hiring*
- XI. Action as Required from Executive Session(s) *(Policy BEC)*
- XII. Adjournment

Learn + Grow + Connect + Thrive



Communications Department
Telephone: 981-1008 - Fax: 981-1094

Memorandum

TO: Dr. Kelly Pew
FROM: Mychal Frost
DATE: October 17, 2017
SUBJECT: Call to Order at October 23rd School Board Meeting

Jordyn Ford, a 4th grader at Rosewood Elementary School, will provide the “Call to Order” at the October 23rd school board meeting.

Jordyn:

Principal Deborah Greenwood says, “Jordyn’s contributions and leadership go far beyond our Rosewood school walls. This year for her 10th birthday Jordyn told her mother that she did not want a party, instead she wanted to gather donations for Children’s Attention Home. She has collected donations for clothing as well as monetary gifts. Jordyn took on this mission not to be recognized or celebrated. This was a gift from her heart to others in need. Jordyn represents what our Rosewood Lions are learning is The Rosewood Way!”

Parents: Kelly Waldrop

Siblings: none

Principal: Deborah Greenwood

Mailing Address:

2049 Pinevalley Road
Rock Hill, SC 29732

Memorandum

TO: Dr. Kelly Pew
FROM: Mychal Frost
DATE: October 17, 2017
SUBJECT: Recognitions for October 23rd School Board Meeting

A. Recognition of WorkKeys Platinum Score

ACT WorkKeys was administered to all high school juniors in South Carolina. WorkKeys is a job skills assessment system that helps employers select, hire, train, develop, and retain a high-performance workforce. This series of tests measures foundational and soft skills and offers specialized assessments to target institutional needs. Students completing the ACT WorkKeys assessments in Applied Mathematics, Locating Information, and Reading for Information earn a certificate ranging from Bronze to Platinum. A Platinum score indicates an individual has the necessary foundational skills for 99% of jobs. This year, we would like to recognize two Rock Hill High School students who achieved a Platinum score:

- Jayda Carroll-Deaton
- Margaret Templeton

B. Recognition of SC PASS and SC Ready Maximum Scorers

College- and Career-Ready Assessments, known as SC READY and SC PASS, are statewide assessments in aligned to the South Carolina College and Career Ready Standards for grades 3 through 8. On tests administered last spring, Rock Hill Schools had 17 students achieve a maximum score on either the SC PASS or SC READY assessment. Tonight, we students who scored at the highest levels.

The following students earned maximum scores on SC PASS in 2016-2017:

- Leilah Colon – Castle Heights Middle School
- Zachary Tiller – Castle Heights Middle School
- Royce Fiveash – Dutchman Creek Middle School
- Greyden Cavin – India Hook Elementary School
- Brandon Smith – Oakdale Elementary School
- Mason Martin – Rawlinson Road Middle School
- Riley Morris – Rawlinson Road Middle School
- Mckenna Smalley – Rawlinson Road Middle School
- John Hyatt – Saluda Trail Middle School
- Mason Pysell – Saluda Trail Middle School
- Tristian Jackson – Sunset Park Center for Accelerated Studies

The following students earned maximum scores on SC READY in 2016-2017:

- Jordan Berry – Dutchman Creek Middle School
- Lydia Nicholson – Dutchman Creek Middle School
- Evan Youngman – Dutchman Creek Middle School
- Jacob Young – India Hook Elementary School
- John Burton – Rawlinson Road Middle School
- Graham Nichols – Rawlinson Road Middle School

ROCK HILL SCHOOL DISTRICT THREE BOARD OF TRUSTEES

School Board Work Session
Monday, September 18, 2017
Rawlinson Road Middle School

***This work session was originally scheduled for September 11, 2017, but due to Hurricane Irma, the meeting was rescheduled for September 18, 2017.**

Data Session

The Board received their monthly data update from the administration. (*This session took place from 4:30-5:00 p.m.*)

Call to Order

The Rock Hill School District Three Board of Trustees met this date at 4:30 p.m. with members present as follows: Windy Cole, Mildred Douglas, Terry Hutchinson, Helena Miller, Ann Reid, and Jim Vining. Dr. Sharp was absent. Chairman Vining called the meeting to order and Colson Gumphrey, a 5th grader at Finley Road Elementary School led in a moment of silence and the Pledge of Allegiance. The local news media was notified of the agenda, in writing, on Friday, September 8 and again on Friday, September 15, 2017. Amanda Harris, with *The Herald*, was present.

A motion was made by Terry Hutchinson, seconded by Windy Cole to approve the agenda with one change. Item #10, Policy KF – *Community Use of School Facilities* – was moved up on the agenda to become Item #4. The agenda was unanimously approved as amended, 6-0.

New Policy DN - *School Properties Disposition* – 1st Reading

Associate Superintendent Tony Cox presented to the Board for review new policy **DN** – *School Properties Disposition*. This policy will be on the Action Agenda at the September business meeting for 1st read approval.

Policy KF, KF-R – *Community Use of School Facilities* – 2nd Reading

Mr. Cox presented to the Board for review policy **KF** and administrative rule **KF-R** – *Community Use of School Facilities*. This policy and administrative rule will be on the Action Agenda at the September business meeting for 2nd read approval.

Policy DJ – *Purchasing* – 1st Reading

Mr. Cox also presented to the Board for review policy **DJ** - *Purchasing* and The Rock Hill Schools Consolidated Procurement Code. This policy and the procurement code will be on the Action Agenda at the September business meeting for 1st read approval.

Section “G” Policies – 3rd Set – 1st Reading

Dr. Tanya Campbell, Chief Personnel Officer, reviewed with the Board the 3rd set of Section “G” policies for 1st reading. These policies will be on the September Action Agenda for 1st read approval:

Policy **GCO** – *Evaluation of Professional Staff*

Policy **GCN** – *Evaluation of Instructional Staff*

Policy **GCQF** – *Discipline, Suspension and Dismissal of Professional Staff*

Policy **GDQD** – *Discipline, Suspension and Dismissal of Support Staff*

School Board Called Work Session – Page 2
Monday, September 18, 2017
Rawlinson Road Middle School

Section “G” Policies – 2nd Set – 2nd Reading

Dr. Campbell reviewed with the Board the 2nd set of Section “G” policies for 2nd reading. These policies will be on the September Action Agenda for 2nd read approval:

Policy **GBC** – *Staff Compensation*

Policy **GCB** – *Professional Staff Contracts & Compensation*

Policy **GDB** – *Support Staff Contracts & Compensation*

Policy **GBE** – *Staff Rights and Responsibilities*

Policy **GBEA** – *Staff Ethics/Conflict of Interest*

Policy **GBEB** – *Staff Conduct*

Policy GCK, GCK-R – Professional Staff Assignments & Transfers

Dr. Campbell also reviewed with the Board policy **GCK** and administrative rule **GCK-R** – *Professional Staff Assignments & Transfers* for 2nd reading. This policy and administrative rule will be on the Action Agenda at the September work session for 2nd read approval.

Policy GBC – Staff Compensation and Policy CFC – Assignment and Transfer of Building Administrators

Finally, Dr. Campbell reviewed with the Board policy **GBC** – *Staff Compensation* and policy **CFC** – *Assignment and Transfer of Building Administrators*. Both of these policies have been recommended for elimination. These policies will be on the Action Agenda at the September work session for approval to eliminate.

Annual Millage Request

Mrs. Terri Smith, Chief Finance Officer, informed the Board of the annual millage certification that must be sent to the York County Auditor.

Dropout Prevention and Attendance Interventions

The district’s Family Outreach Coordinators and Dropout Prevention Coordinators provided to the Board as information a detailed summary of their work.

Immersion Update

Mr. Delandris Jones, the district’s World Language Coordinator presented to the Board as information an Immersion Update.

Disproportionality with Discipline/SWD

Dr. Nancy Turner, Director of Exceptional Student Education, presented to the Board as information a report on Minority Disproportionality in Special Education & School Discipline.

School Board Called Work Session – Page 3
Monday, September 18, 2017
Rawlinson Road Middle School

Other and Future Business

*Delegate Assembly – December 2 – Charleston, SC

*Superintendent's Evaluation at the October business meeting

Adjournment

On a motion by Terry Hutchinson, seconded by Helena Miller, the meeting adjourned.



Meeting of the Board of Trustees

Monday, September 25, 2017

6:00 p.m. – Rawlinson Road Middle School

I. Call to Order and Approval of Agenda

The Board of Trustees met on this date at 6:00 p.m. with members present as follows: Windy Cole; Mildred Douglas; Terry Hutchinson; Helena Miller; Ann Reid, Jane Sharp, and Jim Vining. Will Snipes, a 5th grader at Lesslie Elementary School, led in a moment of silence and the Pledge of Allegiance. Chairman Vining stated that the local news media had been notified of the agenda, in writing, on Friday, September 22, 2017.

A motion was made by Helena Miller, seconded by Ann Reid, to approve the agenda as presented. This motion was unanimously approved, 7-0.

II. Recognitions - None

III. Citizen Participation – None

IV. Consent Action Agenda

On a motion by Terry Hutchinson, seconded by Windy Cole, the following topics on the consent action agenda were unanimously approved: the minutes of the August 28, 2017 business meeting; and, the personnel recommendations as submitted by the administration.

V. Action Agenda

A–E, H, I. Approval of 2nd Read Policies

A motion was made by Terry Hutchinson, seconded by Mildred Douglas, to approve the following policies for 2nd and final read:

Policy **GCB** – *Professional Staff Contracts & Compensation*

Policy **GDB** – *Support Staff Contracts & Compensation*

Policy **GBE** – *Staff Rights and Responsibilities*

Policy **GBEA** – *Staff Ethics/Conflict of Interest*

Policy **GBC** – *Staff Compensation (for elimination)*

Policy **CFC** – *Assignment & Transfer of Building Administrators (for elimination)*

This motion was unanimously approved, 7-0.

F. Approval of Policy **GBEB** – *Staff Conduct*

A motion was made by Jane Sharp, seconded by Ann Reid, to approve Policy **GBEB** – *Staff Conduct* for 2nd and final read. This motion was unanimously approved, 7-0.

G. Approval of Policy GCK, GCK-R – Professional Staff Assignments & Transfers

A motion was made by Mildred Douglas, seconded by Ann Reid, to approve Policy **GCK, GCK-R – Professional Staff Assignments & Transfers** for 2nd and final read. Dr. Campbell distributed a revision of this policy to the Board, slightly different from what was included in the Board's packet, and requested they consider that version when approving this policy. The motion to approve this policy was unanimously approved, 7-0.

J-O. Approval of 1st Read Policies

A motion was made by Jane Sharp, seconded by Terry Hutchinson, to approve the following policies for 1st read:

Policy **GCO** – *Evaluation of Professional Staff*

Policy **GCN** – *Support Staff Contracts & Compensation*

Policy **GBE** – *Evaluation of Instructional Staff*

Policy **GCQF** – *Discipline, Suspension and Dismissal of Professional Staff*

Policy **GDQD** – *Discipline, Suspension and Dismissal of Support Staff*

Policy **DNC** – *School Properties Disposition*

Policy **DJ** – *Purchasing* – and RHS Procurement Code

This motion was unanimously approved, 7-0.

P. Approval of FY 2017-2018 Salary Schedules

A motion was made by Helena Miller, seconded by Mildred Douglas, to approve the FY 2017-2018 Salary Schedules. This motion was unanimously approved, 7-0.

VI. Communications – None

VII. Report of the Superintendent

A. Announcements

Superintendent Kelly Pew made the following announcements:

- As a member of the Olde English Consortium, our special area teachers and school-level administrators will participate in professional development workshops with peers from across the region on Monday, October 9. Also, elementary school teachers will use this day to meet with parents to update on the progress of their students. Please note there is no school for students on this day.
- Our students and staff will make-up Monday, September 11 – the day missed due to weather related to Hurricane Irma – on Friday, February 16, 2018. This is the first of three possible make-up days on our board-approved academic calendar. If additional days are needed for inclement weather make-up, we have February 19 and March 30 as available make-up days.
- The School Board will next meet on Monday, October 9 for a work session. This meeting will begin at 4pm with a data review session. The next business meeting will be Monday, October 23 at 6pm. Please note that all board meetings through at least January 2018 will be held at Rawlinson Road Middle School's auditorium. Meetings will continue to be streamed on our website and available for viewing on-demand immediately following each broadcast.

- As excitement grows for the opening of the new Montessori program, the new language immersion school, and the consolidation of programs at Sylvia Circle, there are several committees now working to recommend names for each campus. Committees are comprised of parents, teachers, and community representatives. We look forward to announcing the names in the months ahead.
- We look forward to hosting community visits this Friday, September 29, at Mt. Gallant Elementary and Dutchman Creek Middle School where visitors have an opportunity to tour each school, talk with students, and hear from school administrators about programs and services available for students. We'll start at Mt. Gallant at 8:30 and then move to Dutchman Creek at 10:15. Visitors are invited to join us for lunch at Dutchman Creek following the school tour.
- After an action-packed summer, the Build on the Rock website has been updated with photos. You are encouraged to visit the district's capital building program, "Build on the Rock," website – www.rock-hill.k12.sc.us/BuildOnTheRock - for more information. This website provides status updates on active and planned construction projects in the district. On the page, viewers can see project descriptions, before and after photographs, and construction timelines.

B. State of the District

Superintendent Kelly Pew presented the annual State-of-the-District report.

VIII. Review of School Board Work Session

Mr. Vining reviewed, for the viewing audience, the topics discussed at the September 18 work session.

IX. Other and Future Business

*Superintendent's Evaluation will be at the October 23 business meeting.

X. Executive Session(s)

A motion was made by Terry Hutchinson, seconded by Helena Miller, to adjourn open session and enter into executive session to discuss the following:

>**Contractual Matter** – Land Use Agreement

This motion was unanimously approved, 7-0.

XI. Action as required from Executive Session(s)

A motion was made by Helena Miller, seconded by Terry Hutchinson, to adjourn executive session and reconvene open session. This motion was unanimously approved, 7-0.

There was no action taken out of executive session.

XII. Adjournment

On a motion by Jane Sharp, seconded by Windy Cole, the meeting adjourned.

Secretary

APPROVED: _____
Chairman

PERSONNEL MATTERS – September 2017

The board affirmed contracts for the following certified employee(s):

Dr. Cheneir Neely	Applied Technology Center
Melodie S. Beck.....	Bellevue
Nancy Shapiro	Bellevue
Julie G. Grider	Castle Heights
Jennifer Pinti.....	Central Child Development Center
John Brandt	Dutchman Creek
Amy McMichael.....	Dutchman Creek
Tiffany Smith.....	Dutchman Creek/Saluda Trail
Bobbi Tucker	Dutchman Creek
Carrie Mann	Ebenezer Avenue
Jessica Smith.....	Ebenezer Avenue
Sara Bruschi.....	Exceptional Student Education
Amy Kahre.....	Exceptional Student Education
Diane Gardin.....	Finley Road
Megan Langston	Independence
Conrad Hayes.....	Lesslie
Joshua Honea	Northwestern
Dawn L. Pursley	Northwestern
Michelle Silva	Northwestern
Shannon Colclough.....	Oakdale
Cassandra Carroll.....	Rawlinson Road
Katrina Harris	Rawlinson Road
Loren McNeal.....	Rawlinson Road
Pamela Unruh	Rebound
Charlina Carter.....	Rock Hill High
Terri Phillips	Rock Hill High
Mark Riggs	Rock Hill High
Jihan Breedlove	Rosewood
Kristen Gainey	Rosewood
Cecile Richardson	Rosewood
Kevin Brinkley.....	Saluda Trail
Janice Blakeney	South Pointe
Teresa Pasquier.....	South Pointe
Demetria Roach	South Pointe
Melissa Scott.....	South Pointe
Jimmy Staton	South Pointe
Darrell Newman.....	Sullivan
Valerie Schoen.....	Sunset Park
Martha Elliott.....	York Road

AS INFORMATION TO THE BOARD

Resignations – Certified

Tiffany M. Rickey Dutchman Creek
Suzanne B. Williams Mt. Holly
Latasha N. Frink Northwestern
Dawn L. Pursley Northwestern
Evette S. Evans Rawlinson Road
John Combs Rock Hill High
Alexandra T. Frye Rock Hill High
Debra G. McCauley Saluda Trail
Stacie L. Dobson South Pointe
Alexandra H. Weinsz South Pointe
Christine S. McClean Sullivan
Erin B. LeCroy Sunset Park
Debra K. Nicholson York Road

Transfers – Certified

Susan H. Moore Adult Education
Tracie P. Godfrey Mt. Gallant
April L. Jones Old Pointe
Kathy H. Brown South Pointe/ATC
Humberto Guevara South Pointe

New Employees – Non-Certified

Ruth Diaz Dutchman Creek
Jordan Diggs Dutchman Creek
Cameron Pike Dutchman Creek
Lindsey Jones Ebenezer Avenue
Jamal Frazier Exceptional Student Education
Michael Hines, Jr. Exceptional Student Education
Dana Brown Independence
Lakesha Miller Information Technology
Quantavia McCrorey Northwestern
Dontavius Williams Northwestern
Nadja Canty Oakdale
Pamela Blake Richmond Drive
Emily McMillan Rosewood
Armand Broady South Pointe
Darren Shaw Sullivan
Jamilia Brevard The Children's School
Derrick Watkins The Children's School
Sharlene Matthews York Road

Resignations – Non-Certified

Zaida Baez Bellevue
Michelle Brown Finance
Richard Williams Information Technology
Wesley Evans Northwestern
John Evans Northwestern
Christine Wilkerson Rock Hill High
Kelly Hoover Rosewood

Allison Paul Sullivan
Elizabeth Haile Sunset Park
Malinda L. Murphy The Children's School

Transfers – Non-Certified

Tammy Gaither..... Belleview
Susan "Sue" Williams Castle Heights
Johnson White Dutchman Creek
Rashetia Junior Exceptional Student Education
Deborah J. Garnett..... Instruction/Challenger Program
Donna Allen Jones..... Lesslie
Atreta Stinson Lesslie
Laura Cline Northside
Jacob Herring Northwestern
Angela Faulkenberry Rawlinson Road
Calvin Hallman..... Rock Hill High
Anne Shaver Rock Hill High
Nicole Drakeford Rosewood
Kayla Blake Saluda Trail
Tracy Johnson..... Saluda Trail
Linda Lott Saluda Trail
Florida Barroso..... South Pointe
Sallie Harris The Children's School

ROCK HILL SCHOOL DISTRICT THREE BOARD OF TRUSTEES

School Board Work Session
Monday, October 9, 2017
Rawlinson Road Middle School

Data Session

The Board received their monthly data update from the administration. (*This session took place from 4:00-5:00 p.m.*)

Call to Order

The Rock Hill School District Three Board of Trustees met this date at 4:00 p.m. with members present as follows: Windy Cole, Mildred Douglas, Terry Hutchinson, Helena Miller, Ann Reid, Jane Sharp, and Jim Vining. Chairman Vining called the meeting to order and Robert Bevilacqua, a 5th grader at Mt. Holly Elementary School led in a moment of silence and the Pledge of Allegiance. The local news media was notified of the agenda, in writing, on Friday, October 6, 2017. Amanda Harris, with *The Herald*, was present.

A motion was made by Terry Hutchinson, seconded by Helena Miller, to approve the agenda. The agenda was unanimously approved as presented, 7-0.

Ebenezer Naming Committee Recommendation

Mr. Paul Holmes, chairman of the Ebenezer Naming Committee, presented to the Board, on behalf of the superintendent, the committee's recommendations for a new name for the consolidated programs/schools at the Ebenezer Avenue Elementary School campus.

The recommendations were: Choice #1 - (1) *Ebenezer Avenue Elementary School – Traditional, Montessori, Inquiry*; **and**, Choice #2 – *Ebenezer Avenue Academy – Traditional, Montessori, Inquiry*.

The committee's first choice – *Ebenezer Avenue Elementary School – Traditional, Montessori, Inquiry* - will be on the September Action Agenda for Board approval.

New Policy DN - School Properties Disposition – 2nd Reading

New Policy **DN** – *School Properties Disposition* was presented for questions. This policy will be on the Action Agenda at the October business meeting for 2nd read approval.

Policy DJ – Purchasing – 1st Reading

Policy **DJ** - *Purchasing* and The Rock Hill Schools Consolidated Procurement Code were presented for questions. This policy and the procurement code will be on the Action Agenda at the October business meeting for 2nd read approval.

Section “G” Policies – 3rd Set – 2nd Reading

The third set of Section “G” policies was presented for questions. These policies will be on the October Action Agenda for 2nd reading:

Policy **GCO** – *Evaluation of Professional Staff*

Policy **GCN** – *Evaluation of Instructional Staff*

Policy **GCQF** – *Discipline, Suspension and Dismissal of Professional Staff*

Policy **GDQD** – *Discipline, Suspension and Dismissal of Support Staff*

School Board Called Work Session – Page 2
Monday, October 9, 2017
Rawlinson Road Middle School

Section “G” Policies – 4th Set – 1st Reading

The fourth set of Section “G” policies was presented for questions. These policies will be on the October Action Agenda for 1st reading:

Policy **GBEBC, GBEBC-R** – *Gifts To and Solicitations of Staff*

Policy **GBEC** – *Drug-free and Alcohol-free Schools/Workplace*

Policy **GBED, GBED-R** – *Tobacco-free Schools/Staff*

Policy **GBG** – *Staff/Welfare Protection*

Policy **GBGA** – *Staff Health*

Activity Bus Rental Requests

Mr. Brian Vaughan, Executive Director of Facilities, presented to the Board activity bus rental requests from The Goddard School (one trip on October 27); and, from St. Anne Catholic School (several trips during the 2017-18 school year).

Mr. Vaughan noted that the October 20th trip on the St. Anne Catholic School’s request would fall before the October 23rd business meeting, where the Board would take a vote on whether or not to approve any/all of the activity bus rental requests. Chairman Vining gathered a consensus of the Board and with no objections to any of these requests, the October 20th trip will be approved, along with all of the other requests, at the October 23rd business meeting. St. Anne’s Catholic School will be allowed to use an activity bus for their October 20th trip.

Stakeholder Input Guidelines - Draft

Board Member Helena Miller presented to the Board for their consideration a proposed/draft new Policy **KAB** – *Stakeholder Input*, along with a brief presentation on the subject. After discussion, board members were asked to provide their feedback/suggestions to Mrs. Miller within the next few weeks. The Board will again discuss Stakeholder Input at the November work session.

Delegate Assembly Certification

Board Members Mildred Douglas, Helena Miller, and Ann Reid will represent the district at the Legislative Advocacy Conference and Delegate Assembly in Charleston, SC on December 1-3, 2017. The certification of these three delegates will be voted on at the October business meeting.

Land Use Agreement

Mr. Matt Dosch and Mr. Brian Hovis, with Comporium, presented to the Board their proposal (and supporting materials) to outlease a small (1/4 acre) land tract (on Mt. Gallant Road) from the Rock Hill School District for the installation and operation of a cell tower. With no objections from any Board members, Mr. Dosch and Mr. Hovis were invited into the first executive session to discuss the contract to possibly lease this property.

School Board Called Work Session – Page 3
Monday, October 9, 2017
Rawlinson Road Middle School

Other and Future Business

*Called Executive Session for the Superintendent's Evaluation on October 23 @ 3:00 p.m.

*Pennies for Progress group has requested the school district send out a reminder to vote on Nov 7

Executive Session

A motion was made by Helena Miller, seconded by Windy Cole, to adjourn open session and enter into executive session for contractual matters: lease of property; sale of property. This motion was unanimously passed, 7-0.

Action as Required from Executive Session

A motion was made by Terry Hutchinson, seconded by Ann Reid, to adjourn the executive session and reconvene open session. This motion was unanimously passed, 7-0.

There was no action taken from the executive session.

Adjournment

On a motion by Terry Hutchinson, seconded by Windy Cole, the Board voted 7-0 to adjourn the meeting.

MONTHLY BOARD REPORT

OCTOBER 23, 2017

PERSONNEL DEPARTMENT

SUMMARY

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY
ROCK HILL, SOUTH CAROLINA

1. BOARD ACTION REQUIRED

CERTIFIED

New Employees(7)

2. AS INFORMATION TO THE BOARD

ADMINISTRATIVE

Resignations(2)

CERTIFIED

Resignation(1)

NON-CERTIFIED

New Employees(7)

Resignations(9)

Transfers(2)

BOARD ACTION REQUIRED

NEW EMPLOYEES – CERTIFIED (7)

Laurel O’Sullivan	Finley Road	School nurse
Jamie Laymon	Oakdale	Kindergarten teacher
Anna Mouyeous	Rawlinson Road	Grade eight science teacher
Kim Racz	Rock Hill High	English teacher
Nancy Marty	Rosewood	Grade two teacher
Chasidy Winters	Rosewood	Grade four teacher
Pansy Bailey	York Road	.4 FTE Academic interventionist

AS INFORMATION TO THE BOARD

RESIGNATIONS – ADMINISTRATIVE (2)

Dustin Wilson	District Office/Info. Services	Communications specialist
Nicole Hatch	Facilities Services	Director of purchasing

RESIGNATION – CERTIFIED (1)

Amanda Boatwright	Oakdale	Grade three teacher
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NEW EMPLOYEES – NON-CERTIFIED (7)

Eric Boulter	Dutchman Creek	Custodian
Brenda Young	District Office/Finance	Benefits assistant
Phillip Gordon	Facilities Services	Delivery pick-up/warehouse
Shemekia Robinson	Oakdale	Kindergarten assistant
Wanda Kay Roberts	Old Pointe	Secretary/bookkeeper
Kennedy Threatt, Jr.	Rock Hill High	Special education assistant/multi-cat II
Reginald Neely	South Pointe	Custodian

RESIGNATIONS – NON-CERTIFIED (9)

Teresa Conley	Bellevue	Special education assistant/multi-cat I
David Greenwood	Bellevue	Kindergarten assistant
Jordan Diggs	Dutchman Creek	Behavior intervention program assistant
Phillip Gordon	Facilities Services	Delivery pick-up/warehouse
Anthony Torris	Flexible Learning Center	Ground maintenance worker
Kimberly Smith	Lesslie	Kindergarten assistant
Darlene Goolsby	Rock Hill High	Administrative assistant
Carol Hemphill	South Pointe	Custodian
Alexis Jacobs	South Pointe	Special education assistant/multi-cat III

TRANSFERS – NON-CERTIFIED (2)

B. Lee Black	Information Technology	Technology support technician
Adrienne Heath	Sullivan	Special education assistant/intensive support



Facilities Services
Telephone: 981-1150 - Fax: 981-1881

MEMORANDUM

To: Dr. Kelly Pew

From: Brian Vaughan

Date: October 3, 2017

Re: Activity Bus Rental Request

Attached you will find an Activity Bus Rental Request from The Goddard School for a trip to Black's Peach Farm in York, SC on October 27, 2017. It is our Administration's recommendation to approve this request.



Activity Bus Rental Request

Today's Date: 09/26/17		Name of Group/Organization: The Goddard School	
Mailing Address: 415 Clouds Way Rock Hill, SC 29732		Contact Person: Jamie Caveny drookhillsc2@goddard	Phone Number: 803- 328-0101
Date(s) Needed: Friday, October 27, 2017		Time(s) Needed: Schools.com 9:15am - 1:15pm	
Destination: Black's Peaches 1800 Black Highway York, SC 29745			
Driver Name:		Driver Needed?: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Will there be any students or staff requiring special accommodations? If so, please list No			
FEE SCHEDULE			
Mileage Rate: \$1.86 per mile	Driver Rate: \$21.21 per hour	Daily Maintenance Fee: \$25.00	

Requestor Signature: Jamie Caveny

Date: 09/26/17

Board Approved: ☐ Yes ☐ No

Date Approved:

Submit this form to: Rock Hill Schools
Attn: Brian Vaughn - Facilities Services
P. O. Drawer 10072
Rock Hill, SC 29731

MEMORANDUM

To: Dr. Kelly Pew

From: Brian Vaughan

Date: October 3, 2017

Re: Activity Bus Rental Request

Attached you will find an Activity Bus Rental Request from St. Anne Catholic School for field trips during this school year. It is our Administration's recommendation to approve this request.



Activity Bus Rental Request

Today's Date: 9/26/17		Name of Group/Organization: St. Anne Catholic School	
Mailing Address: 1698 Bird St. Rock Hill, SC 29730		Contact Person: Kym Deer	Phone Number: (803) 324-4814
Date(s) Needed: see attached		Time(s) Needed: see attached	
Destination: see attached			
Driver Name:		Driver Needed?: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Will there be any students or staff requiring special accommodations? If so, please list no			
FEE SCHEDULE			
Mileage Rate: \$1.86 per mile	Driver Rate: \$21.21 per hour	Daily Maintenance Fee: \$25.00	

Requestor Signature: **Kym Deer** Date: **9/26/17**

Board Approved: ☐ Yes ☐ No

Date Approved: _____

Submit this form to: Rock Hill Schools
Attn: Brian Vaughn - Facilities Services
P. O. Drawer 10072
Rock Hill, SC 29731

Date	Grade	Pick Up	Drop Off	# of students	Time Needed
10/6	HS	292 Munn Rd E., Fort Mill	Mint Museum, 500 S. Tryon Street, Charlotte, NC	30	9:15-3:00
10/12, 10/13	6th	1698 Bird St, Rock Hill	Camp Thunderbird, 1 Thunderbird Lane, Clover, SC	35	9:30, 1:30 following day
10/20	3rd-5th	1698 Bird St, Rock Hill	Children's Theater of Charlotte, 300 E 7th St, Charlotte, NC 28202	100	8:20-2:00
10/26	HS	292 Munn Rd E., Fort Mill	UNCC, 9201 University Blvd., Charlotte, NC		9:15-3:00
11/17	HS	292 Munn Rd E., Fort Mill	1698 Bird St, Rock Hill, SC	60	11:00-1:00
tentative 1/9-1/14	HS	292 Munn Rd E., Fort Mill	Ovens Auditorium, 2700 E. Independence Blvd, Charlotte, NC 28205	60	
1/31	HS	292 Munn Rd E., Fort Mill	1698 Bird St, Rock Hill, SC	60	8:30-12:30
2/9	6th-8th	1698 Bird St, Rock Hill	Children's Theater of Charlotte, 300 E 7th St, Charlotte, NC 28202	80	8:45-12:00
TBD	4th	1698 Bird St, Rock Hill	Winthrop	40	
3/7	HS	292 Munn Rd E., Fort Mill	High Point University, One University Parkway, High Point, NC 27268	59	8:00-3:00
3/16	3rd	1698 Bird St, Rock Hill	Discovery Place, 301 N Tryon St, Charlotte, NC 28202	40	8:00-12:45
3/29	HS	292 Munn Rd E., Fort Mill	From SPN to SAS- round trip	60	9:30-11:30
4/13	2nd	1698 Bird St, Rock Hill	Children's Theater of Charlotte, 300 E 7th St, Charlotte, NC 28202	40	8:45-12:00

Memo

TO: Dr. Kelly Pew
FROM: Anthony Cox, P.E.
DATE: October 19, 2017
SUBJECT: Ebenezer Combined Campus Name
CC: Brian Vaughan / Joya Holmes

A committee was nominated and convened under Board Policy FF, Naming of Facilities, in order to develop recommendations for a new name for the consolidated programs/schools at the Ebenezer Avenue Elementary School campus.

The committee, chaired by Mr. Paul Holmes, presented recommendations on behalf of the Superintendent to the Board of Trustees at its Work Session on October 9, 2017.

Based on the Board's response, the committee presents their recommendation for the approval of the Board at its upcoming Business Meeting on October 23, 2017.

Please find attached the memo and presentation for the Board's reference.

Memo

To: Board of Trustees, Rock Hill School District Three

From: Paul Holmes, Chair of the Ebenezer Naming Committee

Date: 10/4/17

A Committee was convened in August 2017 under Rock Hill Schools Board of Trustees Policy FF to determine a name for the Ebenezer property that represents the future of the campus and all three learning styles that will reside at this location.

Membership. Guided by Policy FF, our committee was comprised of:

Chris Beard	Principal Ebenezer Avenue Elementary School
Jackie Jones	Principal Children's School at Sylvia Circle
Paul Holmes	Community Representative (Chairman)
Deborah Allen	Children's School (Montessori) Teacher of the Year
James Daigle	Teacher, School of Inquiry
Kelly McDowell	Ebenezer Avenue Elementary Teacher of the Year
Melody Aylestock	PTO President, Children's School of Sylvia Circle
Miranda Smith	Community Representative / Parent
Rick Lee	Community Representative – at large
Dr. Joya Holmes	District Administrator (Non-Voting)
Brian Vaughan	District Support (Non-Voting)

Process. After an introductory session, an initial brainstorming and round of votes resulted in five top candidates for the new campus name. Our committee's discussions in arriving at the candidate names included:

- The importance of selecting a name that represents the past, present, and future of the campus.
- Selecting a name that represents all three programs. A "two-stage" or hyphenated name seemed to be most flexible in this regard.

An online survey was developed and published to the combined existing schools' community. The survey explained our purpose and requested ranking for these five candidates, as well as an open ended question for alternate suggestions for names. From over 600 invitations, almost 200 responses to the survey were received.

The survey results did not indicate a clear winner, or even top three candidates, but rather showed a small variance between all five of the name selections. The committee met on 10/3/17 to review survey results and finalize their recommendations per Policy FF and FF-R.

While the committee did not choose to add a new candidate from the names suggested by survey respondents, we did take into consideration the following feedback from the survey:

- Ebenezer is important to keep in the title
- The word “Traditional” is not a clear preference – there may be more modern and broadly appealing alternatives to describe the curriculum remaining at the site which is not a choice program.

Recommendation: The chair of the committee, Paul Holmes, will provide the committee’s recommendation on October 9, 2017 during the Board Work Session.

On behalf of the entire committee, thank you for the opportunity to serve the Rock Hill School District Three and the community of Rock Hill.

EBENEZER NAMING COMMITTEE

Presentation to Board of Trustees / October 9, 2017

COMMITTEE MEMBERS

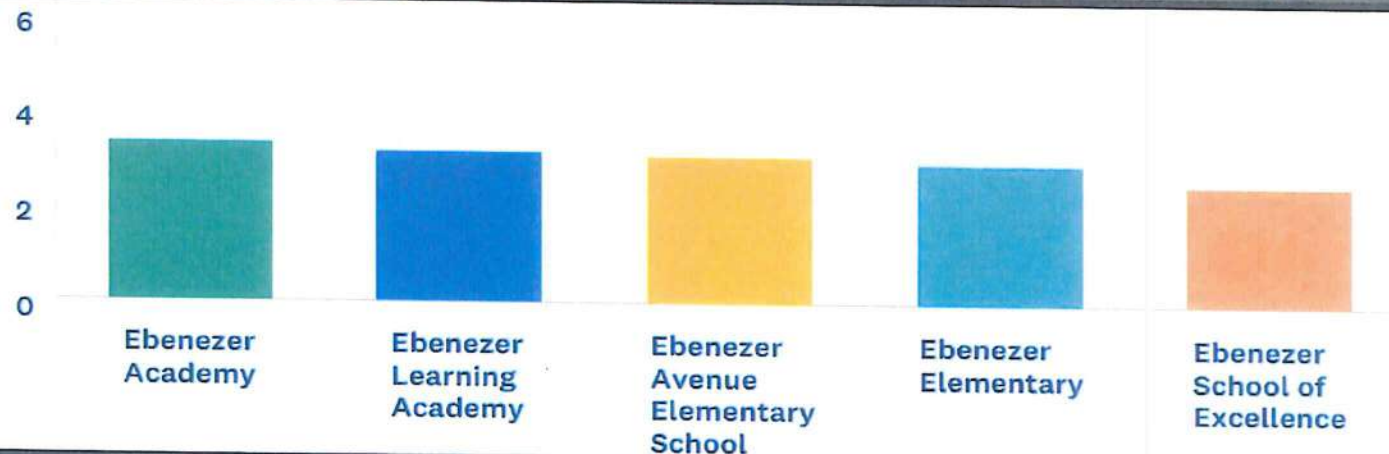
- Paul Holmes Community Representative (Chairman)
 - Chris Beard Principal Ebenezer Avenue Elementary School
 - Jackie Jones Principal Children's School at Sylvia Circle
 - Deborah Allen Children's School (Montessori) Teacher of the Year
 - James Daigle Teacher, School of Inquiry
 - Kelly McDowell Ebenezer Avenue Elementary, Teacher of the Year
 - Melody Aylestock PTO President Children's School at Sylvia Circle
 - Miranda Smith Community Representative / Parent
 - Rick Lee Community Representative at Large
- Non Voting: Dr. Joya Holmes, DO Administrator / Brian Vaughan, DO Support

PROCESS

- Follows Policy FF & FF-R
- Facilitate Group Techniques to create list of names
 - Brainstorming
 - Survey
 - Convergent Nominal Group Technique

SURVEY STATISTICS

- Surveymonkey
- Provided Committee Nominated – Top FIVE names
- Allowed submission of names for consideration



SURVEY STATISTICS

- 635 emails to Parents, Staff, SIC & PTO members
- 90 emails to DO Staff

195 Survey Responses

THE EBENEZER COMMITTEE RECOMMENDATION: CHOICE #1

Ebenezer Avenue Elementary School – Traditional, Montessori, Inquiry

Message from the Chair, Paul Holmes:

We thought this name met our objective of holding a strong regard for heritage and history with the desire to differentiate it with the choice programs being introduced. Ebenezer Avenue School is the oldest school in Rock Hill School District Three. As it was established in 1921 near downtown Rock Hill demolished in 1986, and the current school we reside in today being built in 1987.

We also thought by adding Traditional, Montessori, Inquiry to the name it would assist with letting the community know that there are multiple schools of choice here as well as the traditional students that would be zoned for this school.

THE EBENEZER COMMITTEE RECOMMENDATION: CHOICE #2

Ebenezer Avenue Academy – Traditional, Montessori, Inquiry

Message from the Chair, Paul Holmes:

We thought this name met our objective of holding a strong regard for heritage and history with the desire to differentiate it with the choice programs being introduced. Ebenezer Avenue School is the oldest school in Rock Hill School District Three. As it was established in 1921 near downtown Rock Hill demolished in 1986, and the current school we reside in today being built in 1987.

The word Academy is to intentionally replace Elementary School to encompass the three options for learning. Ebenezer Avenue Academy would offer Traditional, Montessori, and Inquiry. It is also used to bring a distinguished and scholarly tone/ring to these three options. Academy has many different meanings or definitions but it is a place of study or training in a special field (Traditional, Montessori, Inquiry). It is a society or institution of distinguished scholars, artists, or scientists. This is what we want to mold our children to grow up to be.

Christine Gammons

From: Seberina Myles
Sent: Friday, October 06, 2017 5:04 PM
To: Christine Gammons
Subject: Feedback on board policies

Hi,

I think it's a great idea to separate the teacher and administrator evaluations because they are so different. I also think it's important to provide new principals with our district as well as state evaluation requirements soon after being hired. New principals should be given the opportunity to review the evaluation policies and requirements etc. and ask questions one on one after receiving training. The evaluative process is personal and our new principals would appreciate being given this individual time and attention before being formally evaluated.

I agree with policy DN.

Have a great weekend!

Seberina Myles
Principal of Lesslie Elementary School
smyles@rhmail.org
Phone - 803-981-1910
Fax - 803-981-1916

*"Our school values learning, achievement, collaboration, and responsibility as cornerstones of our learning community."
Lesslie Elementary's Purpose Statement*



Personnel Department
Phone: 803-981-1024 - Fax: 803-981-1025

Memo

TO: Dr. Kelly Pew

FROM: Dr. Tanya Campbell

DATE: October 18, 2017

SUBJECT: "G" Policies- Personnel Policies

Attached is the third set of "G" policies that have been prepared for second read. These policies have been revised with the assistance of our legal counsel, Kathy Mahoney. The recommendations are based on the firm's work with school districts throughout the State and knowledge of revisions to State and federal laws and regulations, and they take into consideration any policy update recommendations made by SCSBA. We will not be convening a committee to review personnel policies. Employees will be given the opportunity to give feedback on the suggested revisions when Mr. Frost solicits feedback via all user email.

The District currently has a policy GCO/GCO-R which includes the evaluation process for teachers as well as administrators. It is recommended that these be divided into two separate policies since the provisions are so different for teachers and administrators. It is recommended to create a new policy GCN for instructional staff. What is currently the administrative rule (GCO-R) would become a new policy GCO, for evaluation for administrative staff only. There will no longer be an administrative rule for either GCN or GCO.

Policy GCN has been updated striking through the section on "Teachers employed in charter schools".

Other additions and deletions within the policies below are updates for clarification, legal statues, and/or wording. Additions are in red text and deletions are noted by strike through of text.

Attachments (4):

Policy GCO	Evaluation of Professional Staff
Policy GCN	Evaluation of Instructional Staff
Policy GCQF	Discipline, Suspension and Dismissal of Professional Staff
Policy GDQD	Discipline, Suspension and Dismissal of Support Staff

[DRAFT]

Policy Administrative Rule

EVALUATION OF ADMINISTRATIVE PROFESSIONAL STAFF

Code GCO-R Issued _____

The appropriate personnel will evaluate the performance of administrators fairly in accordance with applicable state law and State Board of Education regulations on a periodic basis in an effort to improve the quality of all work performance.

Every administrator will be informed of the criteria by which his/her performance is evaluated, and every employee has the right to discuss his/her performance evaluation with his/her supervisor.

All appeals will follow the district policies and procedures for governing the appeals process.

Training and Reporting

The District must provide appropriate training for all personnel responsible for conducting the evaluation process.

The District must meet all reporting requirements as outlined in law and state regulations.

Principals

A principal is the chief administrative head or director of an elementary, middle, or secondary school or of a career and technology, special education, or alternative school. Induction principals are those serving for the first time as building-level principals. These principals are considered probationary until they have completed the requirements of the Principal Induction Program (PIP) and have received an overall rating of proficient or higher on the Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP) evaluation instrument.

The evaluation cycle will be consistent with the school year as defined by law.

Evaluation Cycle for Principals

~~The evaluation cycle will be consistent with the school year as defined by law. After the induction year, principals will be evaluated annually (induction principals are those serving for the first time as building-level principals and are considered probationary until completion of the requirements of the Principal Induction Program (PIP) and receipt of an overall rating of proficient or exemplary on the PADEPP evaluation instrument in the second year of employment as a principal). A full evaluation using the PADEPP performance standards will be conducted at a minimum every other year. Evaluations on years between full evaluations will include~~

PAGE 2 – GCO-R – EVALUATION OF ADMINISTRATIVE PROFESSIONAL STAFF

~~Performance Standard 2 Instructional Leadership, performance standards rated the previous year as needs improvement, and any additional performance standards identified for growth in the principal's professional development plan. Full evaluations may be conducted each year as determined by the Superintendent.~~

Principals with Tier 1 certification

First-year principal

A first-year principal will participate in PIP. The Superintendent or his/her designee will provide the first-year principal with written and oral feedback relative to each performance standard and criterion at least at mid-year and end-of-year conferences. The Superintendent or his/her designee will observe, collect relevant data, consult with the principal on a regular and consistent basis, and provide the principal with an informal written evaluation.

Second-year principal

A second-year principal will enter the evaluation cycle. Upon completing PIP in year one and receiving an overall rating of proficient or exemplary on the PADEPP evaluation instrument in the second year of employment, the principal will be eligible for Tier 2 principal certification. If the overall rating on the PADEPP evaluation instrument in any the second year immediately subsequent to the induction year of employment as a principal is below proficient needs improvement, the principal will remain on Tier 1 certification until the District verifies to the Department of Education that the principal has achieved an overall rating of proficient or exemplary on PADEPP.

Principals with Tier 2 certification

The Superintendent or his/her designee will evaluate Tier 2 principals annually. A full The evaluation using all ~~will address each of the nine~~ PADEPP performance standards will be conducted at least every third year and accompanying criteria. The evaluation will address each of the PADEPP Performance Standards and accompanying Criteria. Principal evaluations on years between full evaluations will include Performance Standards for Instructional Leadership, Student Growth, and all Performance Standards rated the previous year as below proficient, as well as any additional Performance Standards identified in the Principal's Professional Development Plan ("PDP"). Full evaluations may be conducted every year, if the Superintendent or his/her designee chooses to do so. The principal ~~is to~~ will receive feedback from the Superintendent or his/her designee regarding the principal's ~~his/her~~ performance at least at mid-year and end-of-year conferences.

~~Each principal may respond in writing to his/her formal evaluation; however, the written response must be submitted to the evaluator within ten (10) working days of the summative conference.~~

~~All appeals will follow the District policies and procedures governing the appeal process.~~

PAGE 3 – GCO-R – EVALUATION OF ADMINISTRATIVE PROFESSIONAL STAFF

Evaluation process

The formative phase will begin with an initial review of the evaluation instrument by the evaluator with the principal. Regular conferences will be held to discuss the principal's progress and will include an analysis of the data collected during the year.

The summative phase will provide for evaluative conclusions regarding the principal's performance based on the data collected. Upon completion of the evaluation, the evaluator will meet with the principal to discuss the findings in terms of each of the PADEPP performance standards as well as the overall results. The evaluator and principal will sign the evaluation form at the conclusion of the meeting with a copy given to the principal.

After reviewing the overall results of the evaluation, the evaluator and principal will establish the principal's annual professional development plan on the basis of identified strengths and weaknesses as well as the school's renewal plan.

Each principal may respond in writing to his/her formal evaluation; however, the written response must be submitted to the evaluator within 10 working days of the summative conference.

All Other Administrators

All District Office administrators and school administrators other than principals will be evaluated annually either formally, using formal evaluation instruments approved by the Personnel Office for the administrative position held by the administrator, or informally, through a goal setting format as approved by the Personnel Office.

At the close of the preceding school year or at the beginning of a new school year, every administrator will be informed as to whether he/she will be evaluated formally or informally and given a copy of the evaluation instrument or format. Each administrator will receive a copy of the results of his/her annual performance evaluation.

Certified Teachers

Induction contract

~~All teachers who have taught less than a year will be given an induction contract. The District will design or select induction programs to provide novice teachers with special guidance and assistance at least throughout their first school year. These programs must contain criteria and/or requirements necessary for teachers to complete an induction contract year and will be in compliance with State requirements. No person may be employed as an induction teacher for more than three years.~~

Annual contract

~~The District will evaluate each individual employed under an annual/formal contract using the~~

PAGE 4 – GCO-R – EVALUATION OF ADMINISTRATIVE PROFESSIONAL STAFF

~~SAFE-T (Summative ADEPT Formal Evaluation of Classroom-based Teachers) model. Specialty-area teachers (media specialists, speech therapists, and guidance counselors) will be evaluated using the FEAT model. Both models will comply with State requirements in determining successful performance.~~

~~The District may employ teachers who have completed one or more induction years, but did not meet District criteria for success, under an annual diagnostic and assistance contract. In compliance with State guidelines, individuals employed under this contract will be provided individualized support based on the area(s) that were identified as deficient during the induction year.~~

~~*Continuing contract*~~

~~The District will conduct formal or informal evaluations of teachers during their continuing contract years. The District will evaluate all continuing contract teachers on a continuous basis. This evaluation may be formal or informal, but a formal evaluation must be conducted if there are concerns about a teacher's performance or if an employment decision needs to be made.~~

~~Teachers consistently performing according to ADEPT Performance Standards (APS) should be evaluated informally using the revised Goals Based Evaluation Model (GBE-R). Teachers who are deemed to be performing below expectations will be formally evaluated using the SAFE-T model, with specialty areas using the FEAT model, and following the appropriate criteria for successful performance.~~

~~The District must provide appropriate training for all personnel responsible for conducting the evaluation process. All teachers being evaluated will receive an orientation to the particular evaluation model being used to evaluate them.~~

Issued 3/22/04; 10/27/08, 10/24/11, 10/08/12, __/16

YORK 3 / ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GCO Evaluation of Professional Staff

Policy GCO Evaluation of Professional Staff

Issued 10/11

Purpose: To establish the basic structure for evaluation of administrators in the district to ensure accountability.

The superintendent will establish the organizational structure for professional staff, indicating lines of supervision. The appropriate personnel will evaluate the performance of every administrator fairly and on a periodic basis in an effort to improve the quality of all work performance.

The superintendent will enforce the rules, regulations and procedures necessary for conducting an efficient, effective program of evaluation in accordance with state laws and regulations.

The elements of the performance evaluation program are as follows.

- Every employee is informed of the criteria by which his/her performance is evaluated.
- Every employee has the right to receive the results of his/her performance evaluation in writing.

Principal evaluation

At a minimum, the district will use statewide standards and procedures adopted by the state board of education to evaluate all principals at least once every three years and to guide their professional development. The superintendent may add standards and criteria as established by the board and/or by the principal and superintendent in collaboration. The district may use an approved alternative evaluation process that meets state and national standards.

The district will establish an annual Professional Development Plan (PDP) based on the state evaluation program's performance standards and principal's strengths and weaknesses as related to the school's strategic plan. The district will utilize the results from principal evaluations in decisions regarding principal development, promotion, retention, and removal. Satisfactory performance on an evaluation does not guarantee reemployment as a principal.

If a principal receives an unsatisfactory rating, the district must evaluate him/her again within one year.

District administrator evaluation

At a minimum, each administrator will be evaluated yearly and will set goals in consultation with his/her supervisor that further the educational processes of the district.

Teacher evaluation

The district will use the Assisting, Developing, and Evaluating Professional Teaching (ADEPT) System to evaluate all certified teachers employed under induction, annual and continuing contracts. The district will base all evaluations on the ADEPT System Performance Standards.

The district will develop plans and procedures for teacher evaluation based on the components of ADEPT.

All evaluation results for all professional personnel will be maintained in their personnel file. The district must meet all reporting requirements as outlined in law and state board regulation.

Adopted 4/27/78; Revised 10/24/88, 2/26/90, 3/22/04, 10/27/08, 10/24/11

Legal references:

S. C. Code, 1976, as amended:

Section 59-24-40 - Evaluation of and performance standards for school principals.

S. C. Code, 1976, as amended:

Section 59-26-10 through Section 59-26-40 - A system for the training, certification, initial employment, evaluation and continuous professional development of teachers.

S. C. Acts and Joint Resolutions:

South Carolina Education Improvement Act, 1984 (512) 687, Division II, Subdivision C, Subpart 4, Section 4
- Teacher evaluation system to be fully implemented by 1984-85.

State Board of Education Regulations:

R-43-165.1 – Program for Assisting, Developing and Evaluating Principal Performance.

R-43-205.1 - Assisting, Developing, and Evaluating Professional Teaching (ADEPT).

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

YORK 3 / ROCK HILL SCHOOL DISTRICT
G - Personnel
Policy GCO Evaluation of Professional Staff
AR GCO-R Evaluation of Professional Staff

*Current
rate*

AR GCO-R Evaluation of Professional Staff

Issued 10/12

Evaluation Cycle for Principals

The evaluation cycle will be consistent with the school year as defined by law. After the induction year, principals will be evaluated annually (induction principals are those serving for the first time as building-level principals and are considered probationary until completion of the requirements of the Principal Induction Program (PIP) and receipt of an overall rating of proficient or exemplary on the PADEPP evaluation instrument in the second year of employment as a principal). A full evaluation using the PADEPP performance standards will be conducted at a minimum every other year. Evaluations on years between full evaluations will include Performance Standard 2 Instructional Leadership, performance standards rated the previous year as needs improvement, and any additional performance standards identified for growth in the principal's professional development plan. Full evaluations may be conducted each year as determined by the superintendent.

Principals with Tier 1 certification

First-year principal

A first-year principal will participate in PIP. The superintendent or his/her designee will provide the first-year principal with written and oral feedback relative to each performance standard and criterion at least at mid-year and end-of-year conferences. The superintendent or his/her designee will observe, collect relevant data, consult with the principal on a regular and consistent basis, and provide the principal with an informal written evaluation.

Second-year principal

A second-year principal will enter the evaluation cycle. Upon completing PIP in year one and receiving an overall rating of proficient or exemplary on the PADEPP evaluation instrument in the second year of employment, the principal will be eligible for Tier 2 principal certification. If the overall rating on the PADEPP evaluation instrument in the second year of employment as a principal is needs improvement, the principal will remain on Tier 1 certification until the district verifies to the department of education that the principal has achieved an overall rating of proficient or exemplary on PADEPP.

Principals with Tier 2 certification

The superintendent or his/her designee will evaluate Tier 2 principals annually. The evaluation will address each of the nine PADEPP performance standards and accompanying criteria. The principal will receive feedback regarding his/her performance at least at mid-year and end-of-year conferences.

Each principal may respond in writing to his/her formal evaluation; however, the written response must be submitted to the evaluator within ten (10) working days of the summative conference.

All appeals will follow the district policies and procedures governing the appeal process.

Certified Teachers

Induction contract

All teachers who have taught less than a year will be given an induction contract. The district will design or select induction programs to provide novice teachers with special guidance and assistance at least throughout their first school year. These programs must contain criteria and/or requirements necessary for teachers to complete an induction contract year and will be in compliance with state requirements. *No person may be employed as an*

induction teacher for more than three years.

Annual contract

The district will evaluate each individual employed under an annual/formal contract using the SAFE-T (Summative ADEPT Formal Evaluation of Classroom-based Teachers) model. Specialty area teachers (media specialists, speech therapists, and guidance counselors) will be evaluated using the FEAT model. Both models will comply with state requirements in determining successful performance.

The district may employ teachers who have completed one or more induction years, but did not meet district criteria for success, under an annual diagnostic and assistance contract. In compliance with state guidelines, individuals employed under this contract will be provided individualized support based on the area(s) that were identified as deficient during the induction year.

Continuing contract

The district will conduct formal or informal evaluations of teachers during their continuing contract years. The district will evaluate all continuing contract teachers on a continuous basis. This evaluation may be formal or informal, but a formal evaluation must be conducted if there are concerns about a teacher's performance or if an employment decision needs to be made.

Teachers consistently performing according to ADEPT Performance Standards (APS) should be evaluated informally using the revised Goals Based Evaluation Model (GBE-R). Teachers who are deemed to be performing below expectations will be formally evaluated using the SAFE-T model, with specialty areas using the FEAT model, and following the appropriate criteria for successful performance.

The district must provide appropriate training for all personnel responsible for conducting the evaluation process. All teachers being evaluated will receive an orientation to the particular evaluation model being used to evaluate them.

Issued 3/22/04; 10/27/08, 10/24/11, 10/08/12

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Policy

EVALUATION OF INSTRUCTIONAL STAFF

Code GCN Issued _____

Teachers

The District will use the ADEPT system to evaluate all certified teachers employed under induction, annual, and continuing contracts. The District will base all evaluations on the ADEPT performance standards in accordance with State Board of Education ADEPT implementation guidelines.

The District will develop plans and procedures for teacher evaluation based on the components of ADEPT outlined below.

Induction programs

All teachers who have taught less than a year will be given an induction contract. The District will develop or adopt induction programs to provide teachers with comprehensive guidance and assistance throughout each induction year. These programs must contain criteria and/or requirements necessary for teachers to complete the induction contract year and will be in compliance with State requirements. No person may be employed as an induction teacher for more than three years.

Annual contract

The District must use a valid and reliable process for evaluating and assisting teachers employed under annual contracts in accordance with State regulations. Teachers employed under an annual contract must also complete an individualized professional growth plan established by the school or District in accordance with District strategic plans and school renewal plans.

The District must establish criteria or requirements for teachers to successfully complete the first annual contract year to include a formal performance evaluation or diagnostic assistance. An annual contract teacher who has demonstrated potential but who has not yet met the formal evaluation criteria and/or requirements set by the Board is eligible for a diagnostic assistance year at the annual contract level. The District may provide this during the teacher's first annual contract year or during the annual contract year following the teacher's first unsuccessful formal evaluation. A teacher is eligible to receive only one diagnostic assistance year. A diagnostic assistance year must be followed by formal evaluation at the annual contract level during the teacher's next year of employment. During subsequent annual contract years, teachers must be evaluated or assisted in accordance with State regulations.

PAGE 2 – GCN – EVALUATION OF INSTRUCTIONAL STAFF

Teachers may not be employed under an annual contract for more than four years.

Continuing contract

Teachers employed under continuing contracts must be evaluated on a continuing basis. The District will decide whether the evaluation will be formal or informal (i.e., goals-based).

The District will develop a plan in accordance with ADEPT implementation guidelines to continuously evaluate teachers who are employed under continuing contracts. At a minimum, the District ADEPT plans for these teachers must address formal and informal evaluations and individualized professional growth plans.

If there are concerns about a continuing contract teacher's performance or conduct or if an employment decision needs to be made, the District will use the formal process for evaluating the teacher. Set forth below are examples of areas of concern an administrator may have with a teacher's performance, which may justify placing the teacher on a formal evaluation. This list is not exhaustive.

- classroom instruction
- classroom management
- interpersonal skills
- inappropriate treatment of students
- inappropriate treatment of parents/legal guardians
- inappropriate treatment of other staff members
- insubordination
- requests from more than one parent/legal guardian in a school year that his/her child be removed from the teacher's class, which are determined to have merit
- written or oral communications
- professional response
- low student achievement without appropriate explanation
- concerns with a teacher's performance in any of the performance dimensions included in the formal evaluation instrument

The District will notify a continuing contract teacher in writing on or before the date contracts are issued for the following school year, or as otherwise defined by law, if he/she is being recommended for formal evaluation during the next school year. The principal will notify the Superintendent of any continuing contract teacher placed on the State-approved formal evaluation instrument and/or an improvement/assistance plan.

Evaluation appeals

If a teacher wishes to appeal his/her evaluation results, he/she may submit an appeal to the attention of the chief personnel officer within 10 school days of the teacher receiving his/her evaluation results. In the appeal, the teacher should set forth the specific basis for the appeal which should identify a procedural error or other specific basis upon which the teacher believes the evaluation results are not valid. The chief personnel officer, upon receipt of such an appeal,

PAGE 3 – GCN – EVALUATION OF INSTRUCTIONAL STAFF

will review the appeal and any relevant information and/or documentation and issue a written decision regarding the appeal. The decision of the chief personnel officer will be final with respect to the appeal.

Teachers employed from out of State

Teachers employed from out of State who receive a South Carolina professional teaching certificate based on reciprocity are eligible for employment under an annual contract. At the annual contract level, teachers may receive either a diagnostic assistance year or a formal evaluation. Teachers must successfully complete the formal evaluation at the annual contract level before they are eligible to receive a continuing contract.

Teachers employed in charter schools

If a charter school operating within the District elects to implement the ADEPT system for evaluating teachers, it must do so in compliance with all provisions of law, State regulations, and implementation guidelines. In fulfilling these requirements, the contract between the charter school and its sponsor must include an ADEPT provision. All certified teachers in the charter school must be assisted and evaluated consistent with the sponsor's approved ADEPT plan for induction, formal evaluation, and goals-based evaluation.

The charter school ADEPT provision must address the charter school's responsibilities for ensuring the fidelity of the implementation of the system and the sponsor's responsibility in terms of staff training and program implementation. The provision must be included in the sponsor's ADEPT plan and approved by the State Board of Education prior to implementation. The sponsor agrees to disseminate all ADEPT-related information from the State Department to the charter school and to report charter school teacher data as required.

Teachers who hold a limited professional certificate

An educator who holds a valid South Carolina limited professional certificate is eligible for employment in a "regulated" public school at the annual contract level and may receive either a diagnostic assistance year or a formal evaluation. Teachers must successfully complete the formal evaluation at the annual contract level before they are eligible to move from a limited professional certificate to a full professional certificate and be employed under a continuing contract.

Training and Reporting

The District must provide appropriate training for all personnel responsible for conducting the evaluation process.

The District must meet all reporting requirements as outlined in law and State Board regulation.

PAGE 4 – GCN – EVALUATION OF INSTRUCTIONAL STAFF

Adopted ____/16

Legal references:

- A. S.C. Code, 1976, as amended:
 - 1. Section 59-26-10 through Section 59-26-40 - A system for the training, certification, initial employment, evaluation and continuous professional development of public educators.
- B. State Board of Education Regulations:
 - 1. R43-205.1 - Assisting, Developing, and Evaluating Professional Teaching (ADEPT).
- C. State Board of Education
 - 1. Guidelines for Implementation of ADEPT.

[DRAFT]

Policy

DISCIPLINE, SUSPENSION AND DISMISSAL OF PROFESSIONAL STAFF

Code GCQF Issued _____

Purpose: To establish the basic structure for discipline, suspension and dismissal of professional staff in order to ensure accountability for due process as well as a quality educational program.

It is the responsibility of the school administration to operate the public schools of the District in a manner that will maintain a broad community confidence in and support of the public schools of the District. In the absence of such support, the District cannot maintain a strong, effective public education program.

Induction and Annual Contract Teachers

The dismissal or non-renewal of certified employees who hold induction or annual contracts will be carried out in accordance with S.C. Code Ann., Section 59-26-40.

Continuing Contract Teachers

The dismissal or non-renewal of District certified employees who hold continuing contracts will be carried out in accordance with the S.C. Employment and Dismissal of Teachers Act, S.C. Code Ann., Section 59-25-410, et seq. (Rev. 2016 1990).

It is the policy of the Board to remove from employment any teacher or administrator who fails, or who may be incompetent, to give instruction in accordance with the directions of the Superintendent or who otherwise manifests an evident unfitness for teaching. Evident unfitness for teaching is manifested by conduct such as, but not limited to, the following.

- persistent neglect of duty
- willful violation of rules and regulations of the Board
- drunkenness
- conviction of a violation of the law of this State or the United States
- gross immorality
- dishonesty
- illegal use, sale or possession of drugs or narcotics

Whenever a principal or other school administrator charged with the supervision of a teacher finds it necessary to reprimand a teacher for a reason that he/she believes may lead to dismissal or cause the teacher not to be re-employed, he/she should take the following steps in consultation with the Superintendent or his/her designee.

PAGE 2 – GCQF – DISCIPLINE, SUSPENSION AND DISMISSAL OF PROFESSIONAL STAFF

Performance Concerns

If the issue involves a performance problem, the principal or designated school administrator will discuss the concern(s) with the teacher and provide the teacher with an opportunity to respond to the concerns. The administrator should, where appropriate, follow up such a conference in writing.

If an informal discussion does not resolve the matter, the principal or designated school administrator will bring the concern(s), in writing, to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be re-employed. Such efforts may include formally evaluating the teacher, placing the teacher on an improvement plan and/or some other acceptable means of notice and assistance. Except in those cases warranting immediate suspension and recommendation for termination, the administration should allow reasonable time for improvement.

Misconduct Concerns

If the issue involves misconduct, the principal or designated school administrator will immediately confer with the Superintendent or his/her designee. The Superintendent or his/her designee will advise the principal regarding appropriate actions to take. The Superintendent or his/her designee is authorized to place an employee on administrative leave, with pay, while an investigation is conducted.

Disciplinary action, up to and including a recommendation of termination, may be taken against any certified employee who is determined to have engaged in unprofessional or inappropriate conduct towards students, parents or staff members. Such conduct may include, but is not limited to, violating District policies or procedures; engaging in criminal conduct; engaging in inappropriate conduct of a sexual nature towards other employees or students; harassment, intimidation, or bullying; or making inappropriate comments to students. This includes any action or conduct communicated or performed in person, in writing, or electronically through such means as a telephone, cell phone, computer, PDA, or other telecommunication device, and includes text messaging and use of social media ~~instant messaging~~. Disciplinary action, including a recommendation of termination, may also be taken against any employee whose conduct the administration has determined has impaired the employee's ability to be an effective teacher.

Reporting Expectations

The Board directs the Superintendent to report to the State Board of Education the name and certificate number of any certified educator who is dismissed, resigns or is otherwise separated from employment with this District based on allegations of misconduct set forth in State Board of Education Regulation 43-58, including, but not limited to:

- misconduct involving drugs
- sexual misconduct
- the commission of a crime

PAGE 3 – GCQF – DISCIPLINE, SUSPENSION AND DISMISSAL OF PROFESSIONAL STAFF

- immorality
- dishonesty
- failure to comply with the provisions of a contract without the written consent of the Board
- other conduct that the Superintendent reasonably believes would constitute grounds for revocation or suspension of the employee's professional certificate

Adopted 4/27/78; Revised 2/26/90, 3/22/04, 9/24/07, __/__/16

Legal references:

- A. S.C. Code, 1976, as amended:
 - 1. Section 59-18-1300 – District accountability system.
 - 2. Section 59-25-410, et. seq. – Teacher Employment and Dismissal Act.
 - 3. Section 59-26-40 – Induction, annual, and continuing contracts; termination of employment for annual contract teachers; hearing.
- B. State Board of Education Regulations:
 - 1. R-43-58 – Disciplinary action on educator certificates.
 - 2. R-43-58.1 – Reporting terminations of certain district employees.

YORK 3 / ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GCQF Discipline, Suspension and Dismissal of Professional Staff

Policy GCQF Discipline, Suspension and Dismissal of Professional Staff

Issued 9/07

Purpose: To establish the basic structure for discipline, suspension and dismissal of professional staff in order to ensure accountability for due process as well as a quality educational program.

It is the responsibility of the school administration to operate the public schools of the district in a manner that will maintain a broad community confidence in and support of the public schools of the district. In the absence of such support, the district cannot maintain a strong, effective public education program.

Induction and Annual Contract Teachers

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The dismissal or non-renewal of district certified employees who hold continuing contracts will be carried out in accordance with the S.C. Employment and Dismissal of Teachers Act, S.C. Code Ann., Section 59-25-410, *et seq.* (Rev. 1990).

Performance Concerns

If the issue involves a performance problem, the principal or designated school administrator will discuss the concern(s) with the teacher and provide the teacher with an opportunity to respond to the concerns. The administrator should, where appropriate, follow up such a conference in writing.

If an informal discussion does not resolve the matter, the principal or designated school administrator will bring the concern(s), in writing, to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause of potential dismissal or failure to be re-employed. Such efforts may include formally evaluating the teacher, placing the teacher on an improvement plan and/or some other acceptable means of notice and assistance. Except in those cases warranting immediate suspension and recommendation for termination, the administration should allow reasonable time for improvement.

Misconduct Concerns

If the issue involves misconduct, the principal or designated school administrator will immediately confer with the superintendent or his/her designee. The superintendent or his/her designee will advise the principal regarding appropriate actions to take. The superintendent or his/her designee is authorized to place an employee on administrative leave, with pay, while an investigation is conducted.

Disciplinary action, up to and including a recommendation of termination, may be taken against any certified employee who is determined to have engaged in unprofessional or inappropriate conduct towards students, parents or staff members. Such conduct may include, but is not limited to, violating District policies or procedures; engaging in criminal conduct; engaging in inappropriate conduct of a sexual nature towards other employees or students; harassment, intimidation, or bullying; or making inappropriate comments to students. This includes any action or conduct communicated or performed in person, in writing, or electronically through such means as a telephone, cell phone, computer, PDA, or other telecommunication device, and includes text messaging and instant messaging. Disciplinary action, including a recommendation of termination, may also be taken against any employee whose conduct the administration has determined has impaired the employee's ability to be an effective teacher.

Reporting Expectations

The board directs the superintendent to report to the State Board of Education the name and certificate number of any certified educator who is dismissed, resigns or is otherwise separated from employment with this district based on allegations of misconduct set forth in State Board of Education Regulation 43-58, including, but not limited to:

- misconduct involving drugs
- sexual misconduct
- the commission of a crime
- immorality
- dishonesty
- failure to comply with the provisions of a contract without the written consent of the board
- other conduct that the superintendent reasonably believes would constitute grounds for revocation or suspension of the employee's professional certificate

Adopted 4/27/78; Revised 2/26/90, 3/22/04, 9/24/07

Legal references:

S.C. Code of Laws, 1976, as amended:

Section 59-18-1300 – District accountability system.

Section 59-25-410, et. seq. – Teacher Employment and Dismissal Act.

Section 59-26-40 – Induction, annual, and continuing contracts; termination of employment for annual contract teachers; hearing.

State Board of Education Regulations:

R-43-58 – Disciplinary action on educator certificates.

R-43-58.1 – Reporting terminations of certain district employees.

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Policy

DISCIPLINE, SUSPENSION AND DISMISSAL OF SUPPORT STAFF

Code GDQD Issued _____

~~Purpose: To establish the basic structure for the discipline, suspension and dismissal of support staff.~~

~~While it is not legally required for at-will employees, documentation of reasons for discipline, suspension or dismissal should be given to the employee. Thus, whenever a principal or other school administrator charged with the supervision of an at-will employee finds it necessary to reprimand that individual for a reason that could lead to dismissal of the employee, he/she will take the following steps:~~

~~Bring the matter in writing to the attention of the employee involved and make a reasonable effort to assist him/her to correct whatever appears to be the cause for potential dismissal.~~

~~Except in those cases warranting immediate suspension or dismissal, allow reasonable time for improvement followed by a final written explanation of failure to meet expectations.~~

~~The Board authorizes the Superintendent to discipline, suspend, or dismiss support staff as required.~~

Support staff are considered at-will employees. It will be the policy of this District to discipline and/or dismiss support staff whenever good and sufficient reasons for doing so present themselves. Accordingly, the Board authorizes the Superintendent to carry out such activities.

As appropriate, the administration is authorized to place an employee on administrative leave, with or without pay, while any necessary inquiry is conducted.

With respect to dismissal, such actions will be based on the recommendation of the employee's principal or immediate supervisor and will occur following a pre-termination opportunity before the Superintendent. At such a conference, the employee may present reasons why the recommendation of dismissal should not be accepted by the Superintendent.

Should the Superintendent decide to dismiss the employee, the notice will be in writing.

Criminal charges

The District may place on administrative leave, with or without pay, a support staff employee who has criminal charges filed against him/her. The District will investigate the actions which led to the employee's arrest and may take further disciplinary action against the employee, up to

**PAGE 2 – GDQD – DISCIPLINE, SUSPENSION AND DISMISSAL OF SUPPORT
STAFF**

and including termination, regardless of the resolution of the criminal charges.

Adopted 4/27/78; Revised 2/26/90, 5/24/04, 12/9/13, ___/16

YORK 3 /ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GDQD Discipline, Suspension and Dismissal of Support Staff

Current

Policy GDQD Discipline, Suspension and Dismissal of Support Staff

Issued 12/13

Purpose: To establish the basic structure for the discipline, suspension and dismissal of support staff.

While it is not legally required for at-will employees, documentation of reasons for discipline, suspension or dismissal should be given to the employee. Thus, whenever a principal or other school administrator charged with the supervision of an at-will employee finds it necessary to reprimand that individual for a reason that could lead to dismissal of the employee, he/she will take the following steps.

Bring the matter in writing to the attention of the employee involved and make a reasonable effort to assist him/her to correct whatever appears to be the cause for potential dismissal.

Except in those cases warranting immediate suspension or dismissal, allow reasonable time for improvement followed by a final written explanation of failure to meet expectations.

The board authorizes the superintendent to discipline, suspend, or dismiss support staff as required.

Adopted 4/27/78; Revised 2/26/90, 5/24/04, 12/9/13

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

Memo

TO: Dr. Kelly Pew
FROM: Anthony Cox, P.E.
DATE: October 18, 2017
SUBJECT: Policy DN, School Properties Disposition
CC: Glenette Neal / Brian Vaughan / Terri Smith / Nicole Hatch

The attached proposed policy was approved for first reading by the Board of Trustees at its Business Meeting on September 25, 2017.

The proposed policy is presented to the Board for second reading at the upcoming Business Meeting of the Board on October 23, 2017.

The SCSBA model policy is also included for the reference of the Board.

This proposed policy has been reviewed by legal counsel.

SCHOOL PROPERTIES DISPOSITION

Code **DN** Issued _____

Purpose: To establish the basic structure for disposition or reassignment of district real property that is no longer needed for school or district support purposes.

As authorized by state law the board may acquire real property including lands and buildings or other improvements for use as a schoolhouse or facility in support of the district's mission. As a governing body the board may purchase, have and hold such real property in fee simple title as necessary for accomplishment of the school district's mission (59-19-180). As further authorized the board may sell any real property it no longer needs for school purposes, or may lease any real property it considers unnecessary for the district's needs at the present time.

As required by state law, unless exempted by state proviso in the year of sale or of the execution of the lease, the board shall obtain consent of the York County Council before making such sale or lease (59-19-250).

In addition, the sale, lease or reassignment of any land parcels or other real property purchased after 1952 with state funds shall be approved, in advance and in writing, by the State Board of Education via the State Department of Education Office of School Facilities (OSF) (59-19-190). For the sale, lease or donation of all other real property, the district shall report the transaction to OSF for the purpose of maintaining an accurate inventory of facilities and sites (State Board Policy DO).

This policy does not apply to situations in which property is leased for a rental for civic or public purposes or for a school-age child care program as authorized by Section 59-19-125 of the South Carolina Code of Laws. It also does not apply to facility use agreements issued under Policy KF, where the District allows use of school facilities on a short-term or recurring basis but retains ultimate control of the facility.

Terms and conditions of property sales or leases shall be as negotiated and agreed, consistent with applicable federal, state and local laws and regulations. The board authorizes the superintendent or designee to negotiate all such terms and conditions and/or to procure or appoint legal and realtor representation as required. All real estate sales contracts and lease instruments shall be presented to the board for approval, unless a written resolution is approved in advance by the board authorizing Superintendent or designee execution.

Adopted _____

Legal references:

S.C. Code, 1976, as amended:

Section 59-19-120 - Rules and regulations governing use of school buildings.

Section 59-19-125 – Leasing school property for particular purposes.

Section 59-19-180 – Purchase of lands by trustees.

Section 59-19-190 – Purchase of land by trustees; reassignment or disposal of land purchased with state funds.

Section 59-19-250 – Sale or lease of school property by trustees.

SCHOOL PROPERTIES DISPOSITION

Code **DN** Issued **MODEL**

The superintendent will advise the board that certain property is no longer needed for public school purposes. The board may sell or lease school property, real or personal, whenever such property is no longer needed for school purposes.

Under certain circumstances, the board will obtain the consent of the county council (*or county board*) before making such sale or lease.

The state board of education must approve, in advance and in writing, the reassignment or disposal of parcels of land purchased after 1952 with any state funds.

The district must follow any other South Carolina Department of Education Office of District Facilities Management regulations regarding disposal of property.

(Cf. DID)

Adopted ^

Legal references:

A. S. C. Code, 1976, as amended:

1. Section 59-19-125 - Leasing school property for particular purposes.
2. Section 59-19-190 - Purchase of land by trustees; reassignment or disposal of land purchased with state funds.
3. Section 59-19-250 - Sale or lease of school property by trustees.

Memo

TO: Dr. Kelly Pew
FROM: Nicole Hatch, CPPO
DATE: October 18, 2017
SUBJECT: Policy DJ – Purchasing -&- The Rock Hill Schools Consolidated Procurement Code
CC: Cabinet

The revised Policy DJ, “Purchasing” serves as the primary reference policy for the district’s consolidated procurement code.

The existing code was approved by the Board of Trustees on July 1, 2008. A proposed revision to the code, which is substantially similar to the more recent State Model Procurement Code, is attached. This proposed code was approved for first reading by the Board at its Business Meeting of September 25, 2017.

The revised policy and attendant procurement code are presented to the Board for second reading at its upcoming Business Meeting on October 23, 2017.

Updates since first reading are administrative in nature, to tailor the policy for the District from the State template. These updates are highlighted in yellow on the attached for the reference of the Board.

PURCHASING

Code **DJ** Issued **9/99**

Purpose: To establish the basic structure for the expenditure of district funds.

It is the policy of the ~~district board to~~ that the school district shall conduct all matters involving purchasing in accordance with the ~~district's~~ Rock Hill Schools consolidated procurement code as adopted by the board.

A copy of this code can be found in the district administrative offices.

Adopted 7/22/85; Revised 10/24/88, 9/27/99

Legal references:

Section 11-35-10 (et. seq.) – South Carolina Consolidated Procurement Code.

Section 59-19-93 – Adoption of procurement code by school district; suspension of distribution of funds for noncompliance

Section 59-19-130 – Acquisition of supplies and equipment



CONSOLIDATED PROCUREMENT CODE

Effective October 2017

Table of Contents

<u>CONSOLIDATED PROCUREMENT CODE</u>	<u>0</u>
<u>ARTICLE 1.....</u>	<u>106</u>
<u>I. General Provisions.....</u>	<u>106</u>
<u>SECTION 11-35-10. Citation.</u>	<u>106</u>
<u>SECTION 11-35-20. Purpose and policies.....</u>	<u>117</u>
<u>SECTION 11-35-25. Supersession of conflicting laws.....</u>	<u>117</u>
<u>SECTION 11-35-30. Obligation of good faith.....</u>	<u>128</u>
<u>SECTION 11-35-35. Surety bonds; public entity may not designate surety company.....</u>	<u>128</u>
<u>SECTION 11-35-40. Application of Procurement Code.</u>	<u>128</u>
<u>SECTION 11-35-45. Payment for goods and services received by District.....</u>	<u>139</u>
<u>SECTION 11-35-55. Purchase of goods or services from entity employing prison inmates of another state paid less than federal minimum wage prohibited.....</u>	<u>1410</u>
<u>SECTION 11-35-70. Mandatory Audits.....</u>	<u>1511</u>
<u>SECTION 11-35-210. Determinations.....</u>	<u>1511</u>
<u>SECTION 11-35-310. Definitions.</u>	<u>1511</u>
<u>SECTION 11-35-410. Public access to procurement information.</u>	<u>1915</u>
<u>ARTICLE 3.....</u>	<u>2016</u>
<u>II. Procurement Organization</u>	<u>2016</u>
<u>SECTION 11-35-510. Centralization of materials management authority.....</u>	<u>2016</u>
<u>SECTION 11-35-530. Advisory committees.....</u>	<u>2117</u>
<u>SECTION 11-35-540. Authority and duties of the board.....</u>	<u>2117</u>
<u>SECTION 11-35-710. Exemptions.</u>	<u>2218</u>
<u>SECTION 11-35-840. Delegation of authority.</u>	<u>2420</u>
<u>SECTION 11-35-1030. Procurement training and certification.....</u>	<u>2521</u>
<u>SECTION 11-35-1240. Administrative penalties, Ratification of Unauthorized Procurement.....</u>	<u>2723</u>
<u>SECTION 11-35-1250. Authority to contract for auditing services.</u>	<u>2723</u>
<u>SECTION 11-35-1260. Authority to contract for legal services.....</u>	<u>2823</u>
<u>ARTICLE 5.....</u>	<u>2824</u>
<u>III. Source Selection and Contract Formation.....</u>	<u>2824</u>
<u>SECTION 11-35-1410. Definitions of terms used in this article.</u>	<u>2824</u>
<u>IV. Methods of Source Selection</u>	<u>2924</u>

<u>SECTION 11-35-1510. Methods of source selection.....</u>	<u>2924</u>
<u>SECTION 11-35-1520. Competitive sealed bidding.....</u>	<u>2925</u>
<u>SECTION 11-35-1524. Resident vendor preference.....</u>	<u>4136</u>
<u>SECTION 11-35-1525. Competitive fixed price bidding.....</u>	<u>4540</u>
<u>SECTION 11-35-1528. Competitive best value bidding.....</u>	<u>4540</u>
<u>SECTION 11-35-1529. Competitive online bidding.....</u>	<u>4742</u>
<u>SECTION 11-35-1530. Competitive sealed proposals.....</u>	<u>4742</u>
<u>SECTION 11-35-1540. Negotiations after unsuccessful competitive sealed bidding.....</u>	<u>4944</u>
<u>SECTION 11-35-1550. Small purchase procedures; when competitive bidding required.....</u>	<u>4944</u>
<u>SECTION 11-35-1560. Sole source procurement.....</u>	<u>5448</u>
<u>SECTION 11-35-1570. Emergency procurements.....</u>	<u>5549</u>
<u>SECTION 11-35-1575. Participation in auction or sale of supplies from bankruptcy.....</u>	<u>5651</u>
<u>SECTION 11-35-1710. Cancellation of invitation for bids or request for proposals.....</u>	<u>5751</u>
<u>SECTION 11-35-1810. Responsibility of bidders and offerors.....</u>	<u>5752</u>
<u>SECTION 11-35-1820. Prequalification of supplies and suppliers.....</u>	<u>5853</u>
<u>Section 1825- Prequalification of Construction Bidders.....</u>	<u>5954</u>
<u>SECTION 11-35-1830. Cost or pricing data.....</u>	<u>5954</u>
<u>SECTION 11-35-2010. Types of contracts; contracting documents and usage instructions.....</u>	<u>6055</u>
<u>SECTION 11-35-2020. Approval of accounting system.....</u>	<u>6155</u>
<u>SECTION 11-35-2030. Multi-term contracts.....</u>	<u>6156</u>
<u>SECTION 11-35-2210. Right to inspect plant.....</u>	<u>6459</u>
<u>SECTION 11-35-2220. Right to audit records.....</u>	<u>6459</u>
<u>SECTION 11-35-2410. Finality of determinations.....</u>	<u>6559</u>
<u>SECTION 11-35-2420. Reporting of anticompetitive practices.....</u>	<u>6660</u>
<u>SECTION 11-35-2430. Retention of procurement records.....</u>	<u>6660</u>
<u>SECTION 11-35-2440. Records of procurement actions.....</u>	<u>6661</u>
<u>ARTICLE 7.....</u>	<u>6661</u>
<u>V. Specifications.....</u>	<u>6661</u>
<u>SECTION 11-35-2610. Definitions of terms used in this article.....</u>	<u>6761</u>
<u>SECTION 11-35-2710. Issuance of specifications; duties of the board.....</u>	<u>6761</u>
<u>SECTION 11-35-2720. Duties of the chief procurement officer/District Specification Preparation and Review.....</u>	<u>6862</u>
<u>SECTION 11-35-2730. Assuring competition.....</u>	<u>6862</u>

SECTION 11-35-2740. Relationship with using agencies.	6863
SECTION 11-35-2750. Specifications prepared by architects and engineers.....	6863
ARTICLE 9.....	6863
VI. Construction, Architect-Engineer, Construction Management, and Land Surveying Services	6963
SECTION 11-35-2910. Definitions of terms used in this article.	6963
SECTION 11-35-3005. Project delivery methods authorized.	7165
SECTION 11-35-3010. Choice of project delivery method.	7266
SECTION 11-35-3020. Additional bidding procedures for construction procurement.....	7569
SECTION 11-35-3021. Subcontractor substitution.....	7671
SECTION 11-35-3023. Prequalification on District construction.....	7772
SECTION 11-35-3024. Additional procedures applicable to procurement of certain project delivery methods.	7872
SECTION 11-35-3025. APPROVAL OF CHANGES.	7973
SECTION 11-35-3030. Bonds and security.	7973
SECTION 11-35-3035. Errors and omissions insurance.....	8276
SECTION 11-35-3037. Other forms of security.	8276
SECTION 11-35-3040. Contract clauses and their administration.	8377
SECTION 11-35-3050. Cost principles regulations for construction contractors.....	8478
SECTION 11-35-3060. Fiscal responsibility.....	8478
SECTION 11-35-3070. Approval of architectural, engineering, or construction changes which do not alter scope or intent or exceed approved budget.	8478
SECTION 11-35-3210. Professional Services For Construction.	8578
SECTION 11-35-3215. Preference for resident design service; definitions; exceptions.	8579
(A) As used in this section:	8579
SECTION 11-35-3220. Qualifications based selection procedures.	8579
SECTION 11-35-3230. Exception for small architect-engineer and land surveying services contract.	8881
SECTION 11-35-3245. Architect, engineer, or construction manager; performance of other work or construction work prohibited.	8982
ARTICLE 10.....	9082
VII. Indefinite Delivery Contracts.....	9083
SECTION 11-35-3310. Indefinite delivery contracts for construction items, architectural-engineering, and land surveying services.	9083
ARTICLE 11.....	9183

VIII.	Modifications and Termination of Contracts for Supplies and Services.....	9183
	SECTION 11-35-3410. Contract clauses and their administration.	9183
ARTICLE 13	9285
IX.	Cost Principles	9285
	SECTION 11-35-3510. Cost principles required for supplies and services contracts.	9285
ARTICLE 15	9285
X.	Supply Management.....	9285
	SECTION 11-35-3810. Regulations for sale, lease, transfer and disposal of surplus property.	9385
	SECTION 11-35-3830. Trade-in sales.....	9688
	SECTION 11-35-3850. Sale of unserviceable supplies.....	9789
ARTICLE 17	9790
XI.	Legal and Contractual Remedies	9890
	SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.	9890
	SECTION 11-35-4215. Posting of bond or irrevocable letter of credit.....	10092
	SECTION 11-35-4220. Authority to debar or suspend.	10092
	SECTION 11-35-4230. Authority to resolve contract and breach of contract controversies.....	10294
	SECTION 11-35-4310. Solicitations or awards in violation of the law.	10395
	SECTION 11-35-4320. Contract controversies.	10496
	SECTION 11-35-4330. Frivolous protests.....	10496
	SECTION 11-35-4410. District Procurement Review Panel.....	10597
	SECTION 11-35-4420. Participation in review.....	10698
ARTICLE 19	10798
XII.	Intergovernmental Relations.....	10798
	SECTION 11-35-4610. Definitions of terms used in this article.	10799
XIII.	Cooperative Purchasing.....	10799
	SECTION 11-35-4810. Cooperative purchasing authorized.	10799
	SECTION 11-35-4820. Selective mandatory opting.....	108100
	SECTION 11-35-4830. Sale, acquisition, or use of supplies by a public procurement unit.....	108100
	SECTION 11-35-4840. Cooperative use of supplies or services.	108100
	SECTION 11-35-4850. Joint use of facilities.	109100
	SECTION 11-35-4860. Supply of personnel, information, and technical services.	109100
	SECTION 11-35-4870. Use of payments received by a supplying public procurement unit.....	110102
	SECTION 11-35-4880. Public procurement units in compliance with code requirements.....	110102

SECTION 11-35-4890. Review of procurement requirement.....	110102
ARTICLE 21	110102
XIV. Definitions and Certification	110102
SECTION 11-35-5010. Definitions of terms used in this article.	111102
XV. Assistance to Minority Businesses	111103
SECTION 11-35-5210. Statement of policy and its implementation.....	111103
SECTION 11-35-5220. Duties of the chief procurement officer.....	112103
SECTION 11-35-5230. Regulations for negotiation with state minority firms.	112104
SECTION 11-35-5240. Minority business enterprise (MBE) Utilization Plan.	113104
SECTION 11-35-5250. Progress payments and letters of credit.	114105
SECTION 11-35-5260. Reports of number and dollar value of contracts awarded to minority firms.	114106
ARTICLE 1.....	6
I.—General Provisions.....	6
SECTION 11-35-10. Citation.	6
SECTION 11-35-20. Purpose and policies.....	7
SECTION 11-35-25. Supersession of conflicting laws.....	7
SECTION 11-35-30. Obligation of good faith.....	8
SECTION 11-35-35. Surety bonds; public entity may not designate surety company.....	8
SECTION 11-35-40. Application of Procurement Code.....	8
SECTION 11-35-45. Payment for goods and services received by District.....	9
SECTION 11-35-55. Purchase of goods or services from entity employing prison inmates of another state paid less than federal minimum wage prohibited.....	10
SECTION 11-35-70. Mandatory Audits.....	11
SECTION 11-35-210. Determinations.....	11
SECTION 11-35-310. Definitions.	11
SECTION 11-35-410. Public access to procurement information.....	15
ARTICLE 3.....	16
II.—Procurement Organization	16
SECTION 11-35-510. Centralization of materials management authority.....	16
SECTION 11-35-530. Advisory committees.....	17
SECTION 11-35-540. Authority and duties of the board.....	17
SECTION 11-35-710. Exemptions.....	18

SECTION 11-35-840. Delegation of authority.....	20
SECTION 11-35-1030. Procurement training and certification.....	21
SECTION 11-35-1240. Administrative penalties, Ratification of Unauthorized Procurement.....	23
SECTION 11-35-1250. Authority to contract for auditing services.....	23
SECTION 11-35-1260. Authority to contract for legal services.....	23
ARTICLE 5.....	24
III.—Source Selection and Contract Formation.....	24
SECTION 11-35-1410. Definitions of terms used in this article.....	24
IV.—Methods of Source Selection.....	24
SECTION 11-35-1510. Methods of source selection.....	24
SECTION 11-35-1520. Competitive sealed bidding.....	25
SECTION 11-35-1524. Resident vendor preference.....	36
SECTION 11-35-1525. Competitive fixed price bidding.....	40
SECTION 11-35-1528. Competitive best value bidding.....	40
SECTION 11-35-1529. Competitive online bidding.....	42
SECTION 11-35-1530. Competitive sealed proposals.....	42
SECTION 11-35-1540. Negotiations after unsuccessful competitive sealed bidding.....	44
SECTION 11-35-1550. Small purchase procedures; when competitive bidding required.....	44
SECTION 11-35-1560. Sole source procurement.....	48
SECTION 11-35-1570. Emergency procurements.....	49
SECTION 11-35-1575. Participation in auction or sale of supplies from bankruptcy.....	50
SECTION 11-35-1710. Cancellation of invitation for bids or request for proposals.....	51
SECTION 11-35-1810. Responsibility of bidders and offerors.....	52
SECTION 11-35-1820. Prequalification of supplies and suppliers.....	53
Section 1825- Prequalification of Construction Bidders.....	53
SECTION 11-35-1830. Cost or pricing data.....	54
SECTION 11-35-2010. Types of contracts; contracting documents and usage instructions.....	55
SECTION 11-35-2020. Approval of accounting system.....	55
SECTION 11-35-2030. Multi term contracts.....	56
SECTION 11-35-2210. Right to inspect plant.....	59
SECTION 11-35-2220. Right to audit records.....	59
SECTION 11-35-2410. Finality of determinations.....	59
SECTION 11-35-2420. Reporting of anticompetitive practices.....	60

SECTION 11-35-2430. Retention of procurement records.....	60
SECTION 11-35-2440. Records of procurement actions.....	60
ARTICLE 7.....	61
V.—Specifications.....	61
SECTION 11-35-2610. Definitions of terms used in this article.....	61
SECTION 11-35-2710. Issuance of specifications; duties of the board.....	61
SECTION 11-35-2720. Duties of the chief procurement officer/District Specification Preparation and Review.....	62
SECTION 11-35-2730. Assuring competition.....	62
SECTION 11-35-2740. Relationship with using agencies.....	62
SECTION 11-35-2750. Specifications prepared by architects and engineers.....	63
ARTICLE 9.....	63
VI.—Construction, Architect-Engineer, Construction Management, and Land Surveying Services.....	63
SECTION 11-35-2910. Definitions of terms used in this article.....	63
SECTION 11-35-3005. Project delivery methods authorized.....	65
SECTION 11-35-3010. Choice of project delivery method.....	66
SECTION 11-35-3020. Additional bidding procedures for construction procurement.....	69
SECTION 11-35-3021. Subcontractor substitution.....	70
SECTION 11-35-3023. Prequalification on District construction.....	71
SECTION 11-35-3024. Additional procedures applicable to procurement of certain project delivery methods.....	72
3025.—Approval of Changes. (S.C. Code § 11-35-3025) ONLY IN OUR CODE.....	73
SECTION 11-35-3030. Bonds and security.....	73
SECTION 11-35-3035. Errors and omissions insurance.....	76
SECTION 11-35-3037. Other forms of security.....	76
SECTION 11-35-3040. Contract clauses and their administration.....	76
SECTION 11-35-3050. Cost principles regulations for construction contractors.....	77
SECTION 11-35-3060. Fiscal responsibility.....	77
SECTION 11-35-3070. Approval of architectural, engineering, or construction changes which do not alter scope or intent or exceed approved budget.....	78
SECTION 11-35-3210. Policy.....	78
SECTION 11-35-3215. Preference for resident design service; definitions; exceptions.....	78
SECTION 11-35-3220. Qualifications based selection procedures.....	79

SECTION 11-35-3230. Exception for small architect-engineer and land-surveying services contract.	81
SECTION 11-35-3245. Architect, engineer, or construction manager; performance of other work.	82
ARTICLE 10	82
VII.—Indefinite-Delivery Contracts	83
SECTION 11-35-3310. Indefinite-delivery contracts for construction items, architectural-engineering, and land-surveying services.	83
ARTICLE 11	83
VIII.—Modifications and Termination of Contracts for Supplies and Services	83
SECTION 11-35-3410. Contract clauses and their administration.	84
ARTICLE 13	85
IX.—Cost Principles	85
SECTION 11-35-3510. Cost principles required for supplies and services contracts.	85
ARTICLE 15	85
X.—Supply Management	85
SECTION 11-35-3810. Regulations for sale, lease, transfer and disposal.	85
SECTION 11-35-3820. Allocation of proceeds for sale or disposal of surplus supplies.	87
SECTION 11-35-3830. Trade-in sales.	88
SECTION 11-35-3850. Sale of unserviceable supplies.	89
ARTICLE 17	90
XI.—Legal and Contractual Remedies	90
SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.	90
SECTION 11-35-4215. Posting of bond or irrevocable letter of credit.	92
SECTION 11-35-4220. Authority to debar or suspend.	92
SECTION 11-35-4230. Authority to resolve contract and breach of contract controversies.	94
SECTION 11-35-4310. Solicitations or awards in violation of the law.	95
SECTION 11-35-4320. Contract controversies.	96
SECTION 11-35-4330. Frivolous protests.	96
SECTION 11-35-4410. District Procurement Review Panel	96
SECTION 11-35-4420. Participation in review	98
ARTICLE 19	98
XII.—Intergovernmental Relations	98
SECTION 11-35-4610. Definitions of terms used in this article.	98
XIII.—Cooperative Purchasing	99

SECTION 11-35-4810. Cooperative purchasing authorized.....	99
SECTION 11-35-4820. Selective mandatory opting.....	99
SECTION 11-35-4830. Sale, acquisition, or use of supplies by a public procurement unit.....	99
SECTION 11-35-4840. Cooperative use of supplies or services.....	100
SECTION 11-35-4850. Joint use of facilities.....	100
SECTION 11-35-4860. Supply of personnel, information, and technical services.....	100
SECTION 11-35-4870. Use of payments received by a supplying public procurement unit.....	101
SECTION 11-35-4880. Public procurement units in compliance with code requirements.....	101
SECTION 11-35-4890. Review of procurement requirement.....	101
ARTICLE 21.....	102
XIV.—Definitions and Certification.....	102
SECTION 11-35-5010. Definitions of terms used in this article.....	102
XV.—Assistance to Minority Businesses.....	102
SECTION 11-35-5210. Statement of policy and its implementation.....	103
SECTION 11-35-5220. Duties of the chief procurement officer.....	103
SECTION 11-35-5230. Regulations for negotiation with state minority firms.....	103
SECTION 11-35-5240. Minority business enterprise (MBE) Utilization Plan.....	104
SECTION 11-35-5250. Progress payments and letters of credit.....	105
SECTION 11-35-5260. Reports of number and dollar value of contracts awarded to minority firms.....	105

CHAPTER 35

Rock Hill Consolidated Procurement Code

ARTICLE 1

I. GENERAL PROVISIONS

SECTION 11-35-10. Citation.

(A) Adoption. Effective September 11, 2017, this document is adopted pursuant to the mandate of § 11-35-70 of the South Carolina Code of Laws, is intended to have the force and effect of law, and shall be known and may be cited as the "Rock Hill Schools Procurement Code" (hereafter the "Code"). (SC Code § 11-35-70)

(B) Prior Codes Superseded. This Code supersedes all other prior codes, regulations, ordinances, policies, procedures, or other rules of this District regarding procurement. To the extent of any conflict, this Code takes precedence over any other codes, regulations, ordinances, policies, procedures, or other rules of this District.

(C) Approval of Code. By letter dated ~~DATE~~, the District received a written opinion from the Materials Management Office ("MMO") of the South Carolina Budget & Control Board to the effect that this Code is substantially similar to the provisions of the South Carolina Consolidated Procurement Code and the regulations promulgated thereunder, as required by South Carolina Code § 11-35-70. Citing the following authority, the written opinion declines to address whether or not the exemptions granted by the Board are substantially similar as required by Section 11-35-710: *Glasscock Company, Inc. v. Sumter County*, 361 S.C. 483, 604 S.E.2d 718 (Ct. App. 2004) (rejecting argument that 11-35-50 prevents local government from exercising the flexibility provided to the state by section 11-35-710). (SC Code § 11-35-70; SC Reg. § 19-445-2005)

(D) Updating of Code. The Board of Trustees of the District intends that this Code be updated in conjunction with changes to the South Carolina Consolidated Procurement Code and the regulations promulgated thereunder; accordingly, whenever the South Carolina Consolidated Procurement Code or the regulations promulgated thereunder are updated, the Superintendent shall submit conforming updates for approval to both MMO and to Board of Trustees of the District for approval. (SC Code § 11-35-70; SC Reg. § 19-445.2005)

(E) Non-Waiver of Rights. Nothing contained in this Code shall be construed to waive any rights, remedies or defenses the District might have under any of the laws of the State of South Carolina or any other State, or under any of the laws or treaties of the United States. (SC Reg. § 19-445.2000(A))

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-20. Purpose and policies.

The underlying purposes and policies of this code are:

- (A) to provide increased economy in district procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the District and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- (B) to foster effective broad-based competition for public procurement within the free enterprise system;
- (C) to develop procurement capability responsive to appropriate user needs;
- (D) to consolidate, clarify, and modernize the law governing procurement in this District and permit the continued development of explicit and thoroughly considered procurement policies and practices;
- (E) to require the adoption of competitive procurement laws and practices by units of state and local governments;
- (F) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;
- (G) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and
- (H) to develop an efficient and effective means of delegating roles and responsibilities.
- (I) developing a training system to train District procurement officials in the techniques and methods of public procurement; (SC Reg. § 19-445.2000(B)(2)(a))
- (J) to mandate the existence of a structured system of auditing and monitoring in order to assure adherence to the provision of this Code;
- (K) to establish policies and procedures relating to the procurement, management, control, and disposal of supplies, services, equipment, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended, Title 59 of the South Carolina Code of Laws, and regulations of the State Board of Education. (SC Reg. § 19-445.2000(A))

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 11; 1997 Act No. 153, Section 1.~~

SECTION 11-35-25. Supersession of conflicting laws.

If this code applies to a procurement, the provisions of this code supersede all laws or parts of laws in conflict with it to the extent of the conflict including, but not limited to, the principles of law and equity, the common law, and the Uniform Commercial Code of this State.

~~HISTORY: 2006 Act No. 376, Section 1.~~

SECTION 11-35-30. Obligation of good faith.

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

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-35. Surety bonds; public entity may not designate surety company.

The District shall comply with Section 11-35-35 of the South Carolina Code of Law, as amended. On the date of this code's adoption, Section 11-35-35 provided as follows: If the State, or county, city, public service district, or other political subdivision of the State, or agency, department, institution, or other public entity of the State, enters into a procurement contract and requires the bidder to provide a surety bond to secure the bid or the performance or payment of the contract, the state political subdivision of the State, or public entity of the State may not exact that the surety bond be furnished by a particular surety company or through a particular agent or broker.

~~HISTORY: 2002 Act No. 253, Section 1.~~

SECTION 11-35-40. Application of Procurement Code.

(A) **General Application.** This code applies only to contracts solicited or entered into after the effective date of this code unless the parties agree to its application to a contract entered into prior to its effective date.

(B) **Application to District Procurement.** This code applies to every procurement or expenditure of funds by this District under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3C) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations). It also shall apply to the disposal of district supplies as provided in Article 15 (Supply Management). ~~No state agency or subdivision thereof may sell, lease, or otherwise alienate or obligate telecommunications and information technology infrastructure of the State by temporary proviso and unless provided for in the general laws of the State.~~

(C) **Compliance with Federal Requirements.** Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the District also shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a district as defined in Section 11-35-310(A)(18), of this code, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render the district ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code.

(D) **Use of Public Funds.** The acquisition of a facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the District ~~use of any state agency or institution of higher learning~~ which involves the use of public funds in the acquisition, financing,

construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this code in the same manner as a district. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by generally accepted accounting principles.

~~—(5) The licenses granted by the Federal Communications Commission to Greenville Technical College and Trident Technical College authorizing the use of the band of the Educational Broadband Service spectrum are exempt from the requirements of this code. If Greenville Technical College and Trident Technical College enter into contracts with third parties to lease their spectrum capacity, Greenville Technical College and Trident Technical College must not impose any pricing requirements on those third parties. Any lease agreements with third parties must be designed so that Greenville Technical College and Trident Technical College receive the market rate for the spectrum capacity.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1987 Act No. 170, Part II, Section 42; 1997 Act No. 153, Section 1; 2005 Act No. 164, Section 11; 2006 Act No. 376, Section 4; 2007 Act No. 110, Section 5; 2008 Act No. 208, Section 1; 2009 Act No. 72, Section 3.~~

SECTION 11-35-45. Payment for goods and services received by District.

(A) The District is responsible for the payment of all supplies, services, or information technology within thirty work days after the acceptance of the goods or services and proper invoice, whichever is received later, and shall pay an amount not to exceed fifteen percent per annum, as established by the South Carolina Comptroller General for state agencies, on any unpaid balance which exceeds the thirty work-day period, if the vendor specifies on the statement or the invoice submitted to the District that a late penalty is applicable if not paid within thirty work days after the acceptance of goods or services.

(B) The thirty-day period shall not begin until the District certifies its satisfaction with the received goods or services and proper invoice.

~~—(A) All vouchers for payment of purchases of services, supplies, or information technology must be delivered to the Comptroller General's office within thirty work days from acceptance of the goods or services and proper invoice. After the thirtieth work day, following acceptance or the postmark on the invoice, the Comptroller General shall levy an amount not to exceed fifteen percent each year from the funds available to the agency, this amount to be applied to the unpaid balance to be remitted to the vendor unless the vendor waives imposition of the interest penalty.~~

~~—(B) All agencies and institutions of the State are required to comply with the provisions of this section. Only the lump-sum institutions of higher education are responsible for the payment of all goods or services within thirty work days after the acceptance of the goods or services and proper invoice, whichever is received later, and shall pay an amount not to exceed fifteen percent per annum on any unpaid balance which exceeds the thirty work-day period, if the vendor specifies on the statement or the invoice submitted to such institutions that a late penalty is applicable if not paid within thirty work days after the acceptance of goods or services.~~

~~—(C) The Comptroller General shall issue written instructions to the agencies to carry out the intent of this section. All offices, institutions, and agencies of state government shall fully cooperate with the Comptroller General in the implementation of this section.~~

~~—(D) The thirty-day period shall not begin until the agency, whether or not the agency processes vouchers through the Comptroller General, certifies its satisfaction with the received goods or services and proper invoice.~~

~~HISTORY: 1982 Act No. 466, Part II, Section 9; 1992 Act No. 501, Part II, Section 41C; 1993 Act No. 178, Section 12; 1993 Act No. 181, Section 93; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 5.~~

~~SECTION 11-35-50. Political subdivisions required to develop and adopt procurement laws:~~

~~—All political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983. The State Fiscal Accountability Authority, in cooperation with the Procurement Policy Committee and subdivisions concerned, shall create a task force to draft model ordinances, regulations, and manuals for consideration by the political subdivisions. The expenses of the task force shall be funded by the General Assembly. The task force shall complete its work no later than January 1, 1982. A political subdivision's failure to adopt appropriate ordinances, procedures, or policies of procurement is not subject to the legal remedies provided in this code.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~Code Commissioner's Note~~

~~At the direction of the Code Commissioner, references in this section to the "Budget and Control Board", the "State Budget and Control Board" or the "board" were changed to the "State Fiscal Accountability Authority", the "authority", or the "Division of Procurement Services" of the "State Fiscal Accountability Authority", pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(B), effective July 1, 2015.~~

SECTION 11-35-55. Purchase of goods or services from entity employing prison inmates of another state paid less than federal minimum wage prohibited.

The District shall comply with Section 11-35-55 of the South Carolina Code of Law, as amended. On the date of this code's adoption, Section 11-35-55 provided as follows: A governmental body procuring goods or services under the Consolidated Procurement Code, and any agency or department of a political subdivision of this State procuring goods or services under the Consolidated Procurement Code or its own procurement code, may not accept any proposals from or procure any goods or services from an entity which employs or uses inmates of a correctional system of another state who are not paid at least the required federal minimum wage for work performed in the manufacturing, processing, or supplying of those goods or services.

~~HISTORY: 1991 Act No. 171, Part II, Section 67; 1997 Act No. 153, Section 1.~~

~~Subarticle 1~~

~~Purposes, Construction, and Application~~

~~SECTION 11-35-60. Dissemination of regulations:~~

~~The dissemination of regulations relating to the implementation of this code shall be in accordance with Sections 1-23-10, et seq. of the 1976 Code.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-70. Mandatory Audits.

A procurement audit must be performed every three years by an audit firm approved by the Materials Management Office. Costs associated with the internal review and audits are the responsibility of the school district and will be paid to the entity performing the audit.

~~—Irrespective of the source of funds, any school district whose budget of total expenditures, including debt service, exceeds seventy five million dollars annually is subject to the provisions of Chapter 35, Title 11, and shall notify the Director of the Office of General Services of the State Fiscal Accountability Authority of its expenditures within ninety days after the close of its fiscal year. However, if a district has its own procurement code which is, in the written opinion of the Office of General Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the district is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which must be performed every three years by an audit firm approved by the Office of General Services. Costs associated with the internal review and audits are the responsibility of the school district and will be paid to the entity performing the audit.~~

~~HISTORY: 1984 Act No. 493; 1985 Act No. 109, Section 1; 1993 Act No. 178, Section 13; 1997 Act No. 153, Section 1.~~

~~Code Commissioner's Note~~

~~At the direction of the Code Commissioner, references in this section to the "Budget and Control Board", the "State Budget and Control Board" or the "board" were changed to the "State Fiscal Accountability Authority", the "authority", or the "Division of Procurement Services" of the "State Fiscal Accountability Authority", pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(B), effective July 1, 2015.~~

Subarticle 3

Determinations

SECTION 11-35-210. Determinations.

Written determinations expressly required by the code or regulations must be retained in an official contract file of the district. These determinations must be documented in sufficient detail to satisfy the requirements of audit as provided in Section [11-35-1230 of this code](#).

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 6.~~

Subarticle 5

Definitions of Terms Used in Procurement Code

SECTION 11-35-310. Definitions.

(A) Unless the context clearly indicates otherwise:

(1) "Information Technology (IT)" means data processing, telecommunications, and office systems technologies and services:

(a) "Data processing" means the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage, printing systems, and data transmission equipment; and related software such as operating systems, library and maintenance routines, and applications programs.

(b) "Telecommunications" means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

(c) "Office systems technology" means office equipment such as typewriters, duplicating and photocopy machines, paper forms, and records; microfilm and microfiche equipment and printing equipment and services.

(d) "Services" means the providing of consultant assistance for any aspect of information technology, systems, and networks.

(2) "Board" means the Board of Education of the Rock Hill School District.

(3) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

(4) "Change order" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

~~(5) "Chief procurement officer" means (a) the management officer for information technology, (b) the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and (c) the materials management officer for all other procurements.~~

"Chief procurement officer" means a District employee, above the level of procurement officer, designated in writing by the Superintendent as having primary management responsibility for supervising procurement or disposal by the District. Unless otherwise designated in writing by the Superintendent, the Deputy Superintendent serves as the Chief Procurement Officer. The name and official District title of the person currently serving as the District's chief-Chief procurement Procurement officer—Officer must be published in the internal procurement procedures issued pursuant to Section 540 of this code.

(6) "Information Technology Management Officer" means the person holding the position as the head of the Information Technology Office of the State.

(7) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing a public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

(8) "Contract" means all types of district agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, information technology, or construction.

(9) "Contract modification" means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(10) "Contractor" means any person having a contract with the District.

(11) "Cost effectiveness" means the ability of a particular product or service to efficiently provide goods or services to the District. In determining the cost effectiveness of a particular

product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

(12) "Data" means recorded information, regardless of form or characteristics.

(13) "Days" means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, or by any order of the District procurement review panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the district or federal government, then the period shall run to the end of the next business day.

(14) "Debarment" means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the District, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

(15) "Designee" means a duly authorized representative of a person with formal responsibilities under the code.

(16) "District" means Rock Hill School District.

(17) "Employee" means an individual drawing a salary from the district, whether elected or not, and any nonsalaried individual performing personal services for the district.

~~—(18) "Governmental Body" means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.~~

(19) "Grant" means the furnishing by the District or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract.

(20) "Invitation for bids" means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of district supplies, services, information technology, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

~~—(21) "Materials Management Officer" means the person holding the position as the head of the materials management office of the State.~~

~~—(22) Reserved.~~

~~—(23) "Political subdivision" means all counties, municipalities, school districts, public service or special purpose districts.~~

(24) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, 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 contracts, and all phases of contract administration.

(25) "Procurement officer~~Officer~~" means any person duly authorized by the district, in accordance with procedures prescribed by regulation, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority. Unless

otherwise designated in writing by the Superintendent, the Director of Purchasing serves as the Procurement Officer.

~~—(26) "Purchasing agency" means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.~~

(27) "Real property" means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

(28) "Request for proposals (RFP)" means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, information technology, or construction which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the District. The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP.

(29) "Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section **11-35-310(1A)(d4)** of this code.

(30) "Subcontractor" means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the district.

(31) "Supplies" means all personal property including, but not limited to, equipment, materials, printing, and insurance.

(32) "State" means state government.

(33) "State Engineer" means the person holding the position as head of the state engineer's office.

(34) "Superintendent" means the District's chief executive official, usually known as the Superintendent.

(35) "Suspension" means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the District, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

~~—(36) "Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.~~

~~—(37) "Using agency" means any governmental body of the State which utilizes any supplies, services, information technology, or construction purchased under this code.~~

~~—(38) "Designated board office" and "designated board officer" means the office or officer designated in accordance with Section 11-35-540(5).~~

~~HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Sections 3-6; 1991 Act No. 171, Part II, Section 69B; 1993 Act No. 164, Part II, Section 9A; 1993 Act No. 178, Sections 14, 15; 1997 Act No. 153, Section 1; 2002 Act No. 333, Section 8; 2002 Act No. 356, Section 1, Part VI.P(8); 2006 Act No. 376, Sections 7, 8; 2008 Act No. 174, Section 7; 2009 Act No. 72, Section 1; 2013 Act No. 31, Section 11, eff May 21, 2013; 2014 Act No. 121 (S.22), Pt VII, Section 21, eff July 1, 2015.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

~~2009 Act No. 72, Section 6 provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued after that date; except that Sections 1, 2, and 4 of this act take effect upon and apply to solicitations issued after the first Monday in September following approval by the Governor."~~

~~Effect of Amendment~~

~~The 2013 amendment, in subsection (18), the definition of "Governmental Body", substituted "Legislative Services Agency" for "Office of Legislative Printing, Information and Technology Systems".~~

~~2014 Act No. 121, Section 21, in subsection (2), substituted "governing body of the State Fiscal Accountability Authority" for "State Budget and Control Board".~~

~~Subarticle 7~~

~~Public Access to Procurement Information~~

SECTION 11-35-410. Public access to procurement information.

(A) Procurement information must be a public record to the extent required by Chapter 4, Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

(B) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information include:

- (1) customer lists;
- (2) design recommendations and identification of prospective problem areas under an RFP;
- (3) design concepts, including methods and procedures;
- (4) biographical data on key employees of the bidder.

(C) For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made.

(D) Evaluative documents pre-decisional in nature such as inter-district or intra-district memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter-district or intra-district memoranda reflecting the pre-decisional deliberations.

(E) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation

for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 9.~~

~~Subarticle 9~~

~~Reporting of Furniture and Certain Purchases~~

~~SECTION 11-35-450. Reporting purchases.~~

~~(A) The purchase of furniture, floor coverings, wall coverings, or other decorative or ornamental items by a governmental body must be reported to the governing board, commission, or council of the respective governmental body before the purchase, when the cost of the furniture, covering, or item exceeds one thousand dollars and it is to be used in:~~

~~— (1) an office or adjoining reception area utilized by an agency director or assistant agency director; or~~

~~— (2) a board room or a conference room used as a board room.~~

~~— (B) The reports required in subsection (A) must include the item to be purchased and its price. Upon receiving the reports, the governing board, commission, or council of the respective governmental body formally shall approve or disapprove the purchase.~~

~~HISTORY: 1989 Act No. 130, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 10.~~

ARTICLE 3

II. PROCUREMENT ORGANIZATION

~~Subarticle 1~~

~~Committees and Management~~

SECTION 11-35-510. Centralization of materials management authority.

— Except as otherwise provided herein, all rights, powers, duties, and authority relating to the procurement of supplies, construction, information technology and services for the District, and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services for the District, are hereby delegated to the Superintendent by the Board.

~~All rights, powers, duties, and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by a state governmental body pursuant to the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the appropriate chief procurement officer. This vesting of authority is subject to Sections 11-35-710 (Exemptions), 11-35-1250 (Authority to Contract~~

~~for Auditing Services), 11-35-1260 (Authority to Contract for Legal Services), Section 11-35-1550 (Small Purchases), Section 11-35-1570 (Emergency Procurements), Section 11-35-3230 (Exception for Small Architect-Engineer, and Land Surveying Services Contracts), and Section 11-35-3620 (Management of Warehouses and Inventory).~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 11.~~

SECTION 11-35-530. Advisory committees.

~~The following advisory committees may be established by the board for the purpose of advising the policy committee:~~

~~—(a) The board may appoint a purchasing policies and procedures advisory committee comprised of state and local government, and public members in accordance with regulations of the board to discuss the performance of public purchasing in the State and to consider specific methods for improvement.~~

~~—(b) The board may appoint an information technology and procedures advisory committee comprised of state and local government and public members in accordance with regulations of the board to discuss the purchasing performance of information technology for government in the State and to consider specific methods for improvement.~~

~~—(c) The board shall appoint a construction, architect-engineer, construction management, and land surveying services advisory committee comprised of state and local government and public members in accordance with regulations of the board to discuss the purchasing performance of these services in the State and to consider specific methods of improvement. The advisory committee shall be comprised of the following: the State Engineer, a state agency representative, a banker, an attorney, a representative of local government, a registered architect, a registered engineer, a licensed building contractor, and a licensed subcontractor.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-540. Authority and duties of the board.

(A) Authority to Promulgate Regulations. The District's procurement regulations, which are adopted in conjunction with this code, are binding in all procurements made by the District; provided, however, that the code takes precedence over the regulations to the extent of any conflict between them. The procurement regulations shall have the same relationship to this code as regulations promulgated under the administrative procedures act have to statutes enacted by the General Assembly.

(B) Approval of Procurement Procedures. The District shall develop internal procurement procedures consistent with this code and the procurement regulations; except, that the procurement procedures must be approved in writing by the Superintendent.

~~—(1) Authority to Promulgate Regulations. Except as otherwise provided in this code, the board may promulgate regulations, consistent with this code, governing the procurement, management, control, and disposal of all supplies, services, information technology, and construction to be procured by the State. These regulations are binding in all procurements made by the State.~~

~~—(2) Nondelegation. The board may not delegate its power to promulgate regulations.~~

~~(3) Approval of Operational Procedures. Governmental bodies shall develop internal operational procedures consistent with this code; except, that the operational procedures must be approved in writing by the appropriate chief procurement officer. The operational procedures must be consistent with this chapter. Operational procedures adopted pursuant to this chapter are exempt from the requirements of Section 1-23-140.~~

(4) The **board Board** shall consider and decide matters of policy within the provisions of this code including those referred to it by the chief procurement officers. The **Bboard** has the power to audit and monitor the implementation of its regulations and the requirements of this code.

~~(5) For every reference in this code to a "designated board office", the chief executive officer of the board shall designate the office or other subdivision of the board that is responsible for the referenced statutory role. For every reference in this code to a "designated board officer", the chief executive officer of the board shall designate the board officer or other board position that is responsible for the referenced statutory role. More than one office or officer may be designated for any referenced statutory role. All designations pursuant to this subparagraph must be submitted in writing to the chief procurement officers.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 12.~~

~~Subarticle 3~~ ~~Exemptions~~

SECTION 11-35-710. Exemptions.

The Board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this Code code or withdraw exemptions provided for in this section. Exemptions granted by the Board shall appear in any internal operating protocols or procedures adopted pursuant to Section 540.

~~—The board, upon the recommendation of the designated board office, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this chapter and for just cause by unanimous written decision limit or may withdraw exemptions provided for in this section. The following exemptions are granted from this chapter:~~

~~—(1) the construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and other emergency type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;~~

~~—(2) the purchase of raw materials by the South Carolina Department of Corrections, Division of Prison Industries;~~

~~—(3) South Carolina State Ports Authority;~~

~~—(4) Division of Public Railways of the Department of Commerce;~~

~~—(5) South Carolina Public Service Authority;~~

~~—(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operation of canteens and bookstores, except as the funds are used for the procurement of construction, architect-engineer, construction management, and land surveying services;~~

~~—(7) livestock, feed, and veterinary supplies;~~

~~—(8) articles for commercial sale by all governmental bodies;~~

~~—(9) fresh fruits, vegetables, meats, fish, milk, and eggs;~~

- ~~—(10) South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculpture, and similar objects. Before a governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval;~~
- ~~—(11) published books, periodicals, and technical pamphlets;~~
- ~~—(12) South Carolina Research Authority;~~
- ~~—(13) the purchase of supplies, services, or information technology by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries;~~
- ~~—(14) Medical University Hospital Authority, if the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1984 Act No. 309, Section 4; 1993 Act No. 181, Section 94; 1995 Act No. 7, Part II, Section 51; 1996 Act No. 459, Section 7; 1997 Act No. 153, Section 1; 2000 Act No. 264, Section 4; 2006 Act No. 376, Section 13.~~

~~Subarticle 5 Offices Created~~

~~SECTION 11-35-810. Creation of Materials Management Office.~~

~~There is hereby created, within the Office of General Services, a Materials Management Office to be headed by the Materials Management Officer.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 16; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 14.~~

~~SECTION 11-35-820. Creation of Information Technology Management Office.~~

~~—There is created within the board, the Information Technology Management Office to be headed by the Information Technology Management Officer. All procurements involving information technology, and any pre-procurement and post-procurement activities in this area, must be conducted in accordance with the regulations promulgated by the board, except as otherwise provided in this code by specific reference to the Information Technology Management Office.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 15.~~

~~SECTION 11-35-830. Creation of the Office of State Engineer.~~

~~—There is created within the board, the State Engineer's Office to be headed by the State Engineer. All procurements involving construction, architectural and engineering, construction management, and land surveying services, as defined in Section 11-35-2910, and any pre-procurement and post-procurement activities in this area, must be conducted in accordance with the "Manual for Planning and Execution of State Permanent Improvements" and with any regulations promulgated by the board, unless otherwise provided in this code by specific reference to the State Engineer's Office.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 16.~~

~~SECTION 11-35-835. Office of State Engineer to review completed documents within specified time.~~

~~—The Office of State Engineer must review properly completed schematic design, properly completed design development, and properly completed construction documents within a total of forty-five days of submission of documents.~~

~~HISTORY: 1993 Act No. 178, Section 17; 1997 Act No. 153, Section 1.~~

SECTION 11-35-840. Delegation of authority.

~~—Subject to the regulations of the board, the chief procurement officers may delegate authority to designees or to any department, agency, or official.~~

(A) **Organizational Structure.** The Superintendent shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code. (SC Reg. § 19-445.2000(B)(1))

(B) **Delegation by Superintendent.**

Subject to this code, the Superintendent may delegate his/her authority to the **Chief Procurement Officer**, who may delegate his/her authority to any designee.

(C) **Delegations in Writing.** A delegation of authority by either the Superintendent or **Chief Procurement Officer** must be in writing and be made available upon request to the public by the **Procurement Officer**. (SC Code § 11-35-1560(B))

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~SECTION 11-35-845. Oversight of permanent improvement projects.~~

~~—Each agency of state government that has total management capability as defined and certified by the State Engineer's Office must be allowed to oversee the administration of construction projects with the State Engineer's Office serving as an audit function. The State Engineer's Office shall assist those small agencies who do not have the necessary expertise in permanent improvements.~~

~~HISTORY: 1993 Act No. 178, Section 18; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 17.~~

~~Subarticle 7~~

~~Advisory Committees and Training~~

~~SECTION 11-35-1010. Relationship with using agencies.~~

~~—The chief procurement officers shall maintain a close and cooperative relationship with the using agencies. The chief procurement officers shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using agency.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~SECTION 11-35-1020. Advisory groups.~~

~~—The chief procurement officers may appoint advisory groups such as user committees to assist with respect to specifications and procurement in specific areas and with respect to any other matters within the authority of the chief procurement officers. The chief procurement officers shall develop methods for obtaining necessary and relevant information from the affected agencies, whether through user committees or by surveys and other methods. The chief procurement officers shall make every reasonable effort to ensure that such contracts are developed as will best suit the interest of the State, giving due emphasis to user needs, total costs, and open competitive methods of public purchasing.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-1030. Procurement training and certification.

~~The procurement officer shall develop a system of training for procurement in accordance with regulations by the board. The training must encompass the latest techniques and methods of public procurement. If considered appropriate by the chief procurement officers, the training must include a requirement for the district certification of the procurement officer of each purchasing agency.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 19; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 18.~~

~~Subarticle 9~~

~~Auditing and Fiscal Reporting~~

~~SECTION 11-35-1210. Certification.~~

~~—(1) Authority. The board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The designated board office shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract.~~

~~—(2) Policy. Authorizations granted by the board to a governmental body are subject to the following:~~

~~—(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;~~

~~—(b) responsiveness to user needs;~~

~~—(c) obtaining of the best prices for value received.~~

~~—(3) Adherence to Provisions of the Code. All procurements shall be subject to all the appropriate provisions of this code, especially regarding competitive procurement methods and nonrestrictive specifications.~~

~~—(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate Chief Procurement Officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the designated board office makes no material audit findings concerning procurement. As~~

~~provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the designated board office.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 7; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 19; 2011 Act No. 74, Pt V, Section 5, eff August 1, 2011.~~

~~Effect of Amendment~~

~~The 2011 amendment added subsection (4) relating to additional procurement authority for technical colleges.~~

~~SECTION 11-35-1220. Collection of data concerning public procurement.~~

~~—The chief procurement officers are authorized to prepare statistical data concerning the procurement, use, and disposition of all supplies, services, information technology, and construction. All using agencies shall furnish these reports as the chief procurement officers may require concerning use, needs, and stocks on hand, and the chief procurement officers shall prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting supplies, services, information technology, and construction. The chief procurement officers shall limit requests for information to those items necessary for the effective operation of the purchasing system, but using agencies must be required to provide information as requested.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 20.~~

~~SECTION 11-35-1230. Auditing and fiscal reporting.~~

~~—(1) The designated board office, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.~~

~~—In procurement audits of governmental bodies thereafter, the auditors from the designated board office shall review the adequacy of the system's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the State Fiscal Accountability Authority. The auditors shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations of the designated board office, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.~~

~~—(2) The Division of Budget Analysis, or other office or division within the State Fiscal Accountability Authority, in consultation with the Comptroller General, shall assume responsibility for operation and maintenance of the automated quarterly fiscal reporting procedures. The Comptroller General and the Division of Budget Analysis, or other office or division within the State Fiscal Accountability Authority, shall assume responsibility for providing quarterly reports to the General Assembly regarding the status of personnel positions, budgets, transfers, and expenditures in all state agencies, departments, and institutions in a format developed in consultation with the Legislative Audit Council. The Legislative Audit Council shall periodically review the reporting system and coordinate legislative information needs with the Office of the Comptroller General and the Division of Budget Analysis, or other office or division within the State Fiscal Accountability Authority, as necessary. All agencies, departments and institutions of state government shall report to the Comptroller General and the Division of~~

~~Budget Analysis, or other office or division within the State Fiscal Accountability Authority, any required information. The Legislative Audit Council shall undertake a periodic review of the reporting and data analysis system developed by the division for reporting both commodities purchased and those not purchased through the division's central purchasing system, and shall make recommendations for incorporating these reporting procedures into the Statewide Accounting and Reporting System (STARS) as necessary to reduce unnecessary duplication and improve efficiency, effectiveness, and accountability.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 8; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 21.~~

~~Code Commissioner's Note~~

~~At the direction of the Code Commissioner, references in this section to the "Budget and Control Board", the "State Budget and Control Board" or the "board" were changed to the "State Fiscal Accountability Authority", the "authority", or the "Division of Procurement Services" of the "State Fiscal Accountability Authority", pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(B), effective July 1, 2015.~~

SECTION 11-35-1240. Administrative penalties, Ratification of Unauthorized Procurement.

(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 Code rests with the Board. It is prohibited for the Procurement Officer to ratify such acts. The Board may delegate authority, in such amounts as the Board may determine, to ratify such acts to a person above the level of the Procurement Officer. (SC Reg. § 19-445.2015(A))

(B) **Corrective Action.** When a ratification is necessary, the Superintendent or a designee as authorized in writing above the level of the Procurement Officer, shall also prepare a written determination as to the facts and circumstances surrounding the act, corrective action taken to prevent reoccurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable. (SC Reg. § 19-445.2015(A)(3))

~~—(A) The board shall prescribe administrative penalties for violation of the provisions of this code and of regulations promulgated under it, excluding those matters under the jurisdiction of the Ethics Commission as provided by law.~~

~~—(B) Violation of these provisions is grounds for loss of or reduction in authority delegated by either the board or this code.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 22.~~

SECTION 11-35-1250. Authority to contract for auditing services.

~~—No contract for auditing or accounting services shall be awarded without the approval of the Board or the Superintendent. State Auditor except where specific statutory authority is otherwise provided.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-1260. Authority to contract for legal services.

—No contract for the services of attorneys shall be awarded without the approval of the Board or the Superintendent. ~~State Attorney General except where specific statutory authority is otherwise provided.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

ARTICLE 5

III. SOURCE SELECTION AND CONTRACT FORMATION

~~Subarticle 1~~
~~Definitions~~

SECTION 11-35-1410. Definitions of terms used in this article.

—Unless the context clearly indicates otherwise:

——(A) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles as provided in Article 13 of this chapter and a fee, if any.

——(B) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

——(1) is regularly maintained by a manufacturer or vendor of an item;

——(2) is either published or otherwise available for inspection by customers;

——(3) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies, services, or information technology involved.

——(C) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section **11-35-1520 of this code.**

——(D) "Purchase description" means specifications or other document describing the supplies, services, information technology, or construction to be procured.

——(E) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

——(F) "Responsible bidder or offeror" means 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 which may be substantiated by past performance.

——(G) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 20; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 23.~~

~~Subarticle 3~~

IV. METHODS OF SOURCE SELECTION

SECTION 11-35-1510. Methods of source selection.

—(A) Unless otherwise provided by law, all district contracts must be awarded by competitive sealed bidding, pursuant to Section 11-35-1520, except as provided in:

- (1) Section 11-35-1250 (Authority to Contract for Auditing Services);
- (2) Section 11-35-1260 (Authority to Contract for Legal Services);
- (3) Section 11-35-1525 (Fixed Priced Bidding);
- (4) Section 11-35-1528 (Competitive Best Value Bidding);
- (5) Section 11-35-1529 (Competitive Online Bidding);
- (6) Section 11-35-1530 (Competitive Sealed Proposals);
- (7) Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);
- (8) Section 11-35-1550 (Small Purchases);
- (9) Section 11-35-1560 (Sole Source Procurements);
- (10) Section 11-35-1570 (Emergency Procurements);
- (11) Section 11-35-1575 (Participation in Auction or Bankruptcy Sale);
- (12) (Reserved)
- (13) Section 11-35-3015 (Source Selection Methods Assigned to Project Delivery Methods);
- (14) Section 11-35-3220 (Architect Engineer, Construction Management and Land Surveying Services Procurement Procedures); and
- (15) Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2000 Act No. 387, Part II, Section 100A; 2006 Act No. 376, Section 24; 2008 Act No. 174, Section 8.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

SECTION 11-35-1520. Competitive sealed bidding.

(A) **Condition for Use.** Contracts greater than fifty thousand dollars (\$50,000) must be awarded by competitive sealed bidding except as otherwise provided in **§Section 1510 of this code** (Methods of Source Selection). (SC Code § 11-35-1520(1))

(B) **Invitation for Bids.** An invitation for bids must be issued in an efficient and economical manner and must include specifications and all contractual terms and conditions applicable to the procurement. (SC Code § 11-35-1520(2))

(1) **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 determined necessary for a particular procurement as determined in writing by the **Chief Procurement Officer**.

(2) The invitation for bids shall be the document used to initiate a competitive sealed bid procurement and shall include the following as applicable: (SC Reg. § 19-445.2030(4))

(a) **Bid Instructions**: 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, the maximum time for bid acceptance by the District, and any other special information; (SC Reg. § 19-445.2030(1))

(b) **Specifications**: the purchase description, evaluation factors, specifications, delivery and performance schedule, and such inspection and acceptance requirements as are not included in the purchase descriptions; (SC Reg. § 19-445.2030(2))

(c) **Terms and Conditions**: the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and (SC Reg. § 19-445.2030(3))

(d) **Confidentiality Instruction**: instructions to bidders to visibly mark as "confidential" each part of their bid, which they consider to be proprietary information. (SC Reg. § 19-445.2030(4))

(C) **Notice**. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. Notice should include publication in *South Carolina Business Opportunities* but must include, at least, publication in a newspaper of general circulation in the District. The District may give additional or wider public notice in any other media. See 1520.3.1. (SC Code § 11-35-1520(3))

(1) **Methods**. Methods of notice, which must be consistent with this Code, will be set forth in the District operational procedures created under § 540.1 (Operational Procedures).

(2) **Advertising of Notice**. Notice of a solicitation must include publication in the "South Carolina Business Opportunities" and/or a newspaper of general statewide circulation and/or a means of central electronic advertising as approved by the board. For procurements with a total potential value in excess of two-hundred and fifty thousand dollars (\$250,000), notice of the solicitation must be published in SCBO. (SC Code § 11-35.1520(3))

(3) **Costs**: The District may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement. (SC Code § 11-35.1520(3))

(D) **Receipt and Safeguarding of Bids**.

(1) **Receipt and Safeguarding of Bids**. All bids, including modifications, received before the time of opening must be kept secure and unopened except as provided in Section 1520.4 of this code² (Unidentified Bids). (SC Code § 11-35-1520(4); R. 19-445.2045(A)) 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. 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. (SC Reg. § 19-445.2045(A))

(2) **Unidentified Bids.** Unidentified bids may be opened solely for the purpose of identification and then only by an official specifically designated for this purpose by the Procurement Officer, or a designee. If a sealed bid is opened by mistake, the person who opens the bid must immediately write his/her signature and position on the envelope and deliver it to the Procurement Officer, who must immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his/her signature, and then shall immediately reseal the envelope. (SC Reg. § 19-445.2045(B))

(E) **Bid Opening.**

(1) **Postponement.** If it becomes necessary to postpone a bid opening, the Procurement Officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid opening. When the District is closed due to *force majeure*, bid opening will be postponed to the same time on the next official business day. (SC Reg. § 19-445.2050(B))

(2) **Public Opening.** Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids and in the following manner. (SC Code § 11-35-1520(5))

The Procurement Officer or a designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. The Procurement Officer or designee must then personally and publicly open all bids received prior to that time and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, must be tabulated. (SC Reg. § 19-445.2050(A))

(3) **Tabulation.** The amount of each bid together with the name of each bidder must be tabulated. The tabulation shall be open to public inspection at that time. (SC Code § 11-35-1520(5)) Only the information disclosed by the Procurement Officer or designee at the bid opening is considered to be public information under the Freedom of Information Act, Chapter 4 of Title 30, until the notice of intent to award is issued. (SC Reg. §§ 19-445.2050(C))

(F) **Bid Acceptance and Bid Evaluation; Telegraphic Bids.**

(1) **Unconditional Acceptance; Evaluation Factors.** Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not set forth in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and this Code. (SC Code § 11-35-1520(6))

(2) **Bid Acceptability Criteria.** When necessary for the best interest of the District, bid criteria to determine acceptability may include inspection, testing, quality, workmanship,

delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs. (SC Reg. § 19-445.2055)

(3) **Telegraphic Bids.** As a general rule, telegraphic bids will not be authorized. When, in the judgment of the Procurement Officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, sealed telegraphic bids may be authorized. (SC Reg. § 19-445.2060)

(4) **Rejection of Bids; Cancellation of Bids.**

(a) **Application.** Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and re-advertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement. (SC Reg. § 19-445.2065(A))

(b) **Cancellation of Bids Prior to Award.** When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with § 1520.6.4.1 (Application) above and the Procurement Officer determines in writing that: (SC Reg. § 19-445.2065(B))

(i) inadequate or ambiguous specifications were cited in the invitation; (SC Reg. § 19-445.2065(B)(1))

(ii) specifications have been revised; (SC Reg. § 19-445.2065(B)(2))

(iii) the supplies or services being procured are no longer required; (SC Reg. § 19-445-2065(B)(3))

(iv) the invitation did not provide for consideration of all factors of cost to the District, such as cost of transporting District furnished property to bidders' plants; (SC Reg. § 19-445-2065(B)(4))

(v) bids received indicate the needs of the District can be satisfied by a less expensive article differing from that on which the bids were invited; (SC Reg. § 19-445-2065(B)(5))

(vi) all otherwise acceptable bids received are at unreasonable prices; (SC Reg. § 19-445.2065(B)(6))

(vii) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or (SC Reg. § 19-445.2065(B)(7))

(viii) for other reasons, cancellation is in the best interest of the District. Determinations to cancel invitations for bids shall state the reasons therefore. (SC Reg. § 19-445.2065(B)(8))

(c) **Extension of Bid Acceptance Period.** Should administrative difficulties be encountered after bid opening, which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement. (SC Reg. § 19-445.2065(C))

(5) **Rejection of Individual Bids.**

(a) **General Application.** Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected. (SC Reg. § 19-445.2070(A))

(b) **Alternate Bids.** Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation. (SC Reg. § 19-445.2070(B))

(c) **Delivery Schedule, Nonresponsive Bids.** Any bid which fails to conform to the delivery schedule or permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive. (SC Reg. § 19-445.2070(C))

(d) **Modification of Requirements by Bidder.** (SC Reg. § 19-445-2070(D))
Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his/her liability to the District, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:

(i) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the District cannot be determined;

(ii) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"

(iii) states a price but qualified such price as being subject to "price in effect at time of delivery;"

(iv) when not authorized by the invitation, conditions or qualifies his/her bid by stipulating that his/her bid is to be considered only if, prior to date of award, the bidder receives (or does not receive) award under a separate procurement;

(v) requires the District to determine that the bidder's product meets specifications;
or

(vi) limits the rights of the District under any contract clause.

The bidders may be requested to delete objectionable conditions from bids provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders.

(e) **Price Unreasonableness.** Any bid may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. (SC Reg. § 19-445.2070(E))

(f) **Bid Guarantee Requirement.** When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected. (SC Reg. § 19-445.2070(F))

(g) **Unsigned Bids.** See **Section§ 1520-13.3 of this code.**

(h) **Exceptions to Rejection Procedures.** Any bid received after the Chief Procurement Officer or designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the District office indicated in the solicitation prior to bid opening. (SC Reg. § 19-445.2070(H))

(6) **All or None Qualifications.** Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that the award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affects the rights of the other bidders. (SC Reg. § 19-445.2075)

(G) Correction or Withdrawal of Bids; Cancellation of Awards.

(1) **Correction, Cancellation, Withdrawal of Bids.** Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with this Code. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this Code. Except as otherwise provided, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the Chief Procurement Officer or the Superintendent. (SC Code. § 11-35-1520(7))

(2) **General Procedures.** A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the Chief Procurement Officer. Each written request must document the fact that the bidder or offeror's mistake is clearly an error that will cause him substantial loss. (SC Reg. § 19-445.2085(A))

(3) **Correction Creates Low Bid.** To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake, in the judgment of the Procurement Officer, is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition. (SC Reg. § 19-445.2085(B))

(4) **Cancellation of Award Prior to Performance.** (SC Reg. § 19-445.2085(C)) When it is determined after an award or a notice of award has been issued but before performance has begun that the District's requirements for the goods or services have changed or have not been

met, the award or contract may be canceled and either re-awarded or a new solicitation issued, if the Superintendent or **Chief Procurement Officer** determines in writing that:

- (a) Inadequate or ambiguous specifications were cited in the invitation;
- (b) Specifications have been revised;
- (c) The supplies or services being procured are no longer required;
- (d) The invitation did not provide for consideration of all factors of cost to the District, such as cost of transporting state furnished property to bidders' plants;
- (e) Bids received indicate that the needs of the District can be satisfied by a less expensive article differing from that on which the bids were invited;
- (f) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (g) Administrative error of the District discovered prior to performance; or
- (h) For other reasons, cancellation is clearly in the best interest of the District.

(H) **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 must be accorded that opportunity. Clarification of a bidder's bid must be documented in writing by the Procurement Officer and must be included with the bid. Documentation concerning the clarification must be subject to disclosure upon request as required by § 410 (Public Access to Procurement Information). (SC Code. § 11-35-1520(8))

(I) **Tie Bids.** (SC Code. § 11-35-1520(9)) In the event two (2) or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined in the following order of priority:

(1) **In-State vs. Out-of-State Firms.** Should there be a South Carolina firm tied with an out-of-state firm, the award shall be made automatically to the South Carolina firm.

(2) **In-State vs. Out-of-State Products.** Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the state shall be resolved in favor of the South Carolina commodity.

(3) **MBE Firms.** Tie bids involving a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.

(4) **In-State vs. In-District Firm.** Tie bids involving South Carolina firms shall be resolved in favor of the firm located in the District.

(5) **All Other Ties.** In all other situations in which bids are tied, the award must be made to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie must be resolved by the flip of a coin witnessed by the Procurement Officer. All responding vendors must be invited to attend.

(J) **Award.**

(1) **Posting and Sending Notice.**

Unless there is a compelling reason to reject bids as prescribed by this **Codecode**, notice of an award or an intended award of a contract to the lowest responsive and responsible bidder(s) whose bid meets the requirements set forth in the invitation for bids must be given by posting such notice at a location specified in the invitation for bids. For contracts with a total or potential value in excess of fifty thousand dollars but less than one hundred thousand dollars, notice of the award of a contract must be given by posting and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract must be given by posting the notice for ten days before entering into a contract and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. Before the posting of the award, the District may negotiate with the lowest responsive and responsible bidder to lower his/her bid within the scope of the invitation for bids. The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder's right to protest pursuant to **§Section 4210 of this code** (Protests). When only one response is received, the notice of intent to award and the delay of award may be waived. (SC Code. § 11-35-1520(10))

(2) **Application.** Except as otherwise provided herein, the contract shall be awarded to the lowest responsive and responsible bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids. (SC Reg. § 19-445.2090(A))

(3) **Time of Award.** The District shall issue the notice of intent to award or award on the date announced at the bid opening unless the Chief Procurement Officer determines, and gives notice, that a longer review time is necessary. The Chief Procurement Officer shall give notice of a time extension to each bidder by posting it at the location announced at the bid opening. (SC Reg. § 19-445.2090(B))

(K) **Request for Qualifications ("RFQ").** Before soliciting bids, the District may issue a request for qualifications from prospective bidders. The request must contain, at a minimum, a description of the scope of work to be solicited by the invitation for bids, the deadline for submission of information, and how prospective bidders may apply for consideration. The request must 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 must be given in the manner provided in **Section§ 1520.3 of this code** (Notice). After receipt of the responses to the request for qualifications from prospective bidders, the rank of the prospective bidders must be determined in writing from most qualified to least qualified on the basis of the information provided. Bids then must be solicited from at least the top two prospective bidders by means of an invitation for bids.

The determination regarding how many bids to solicit is not subject to review under Article 17. (SC Code § 11-35-1520(11))

(L) (Reserved)

(M) **Minor Informalities and Irregularities in Bids.** (SC Code § 11-35-1520(13)) A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The Procurement Officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the District. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

- (1) failure of a bidder to return the number of copies of signed bids required by the solicitation;
- (2) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;

(3) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;

- (4) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:

_____ (a) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid on it, provided that the bidder states under oath that it received the amendment before bidding and that the bidder will stand by its bid price or

_____ (b) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality, or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the District;

- (5) failure of a bidder to furnish an affidavit concerning affiliates;

(6) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;

- (7) failure of a bidder to furnish cut sheets or product literature;

- (8) failure of a bidder to furnish certificates of insurance;

(9) failure of a bidder to furnish financial statements;

(10) failure of a bidder to furnish references;

(11) failure of a bidder to furnish its bidder number; and

(12) notwithstanding Title 40, the failure of a bidder to indicate his/her contractor's license number or other evidence of licensure, except that a contract must not be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.

~~(1) Condition for Use. Contracts greater than fifty thousand dollars must be awarded by competitive sealed bidding except as otherwise provided in Section 11-35-1510.~~

~~—(2) Invitation for Bids. An invitation for bids must be issued in an efficient and economical manner and must include specifications and all contractual terms and conditions applicable to the procurement.~~

~~—(3) Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in "South Carolina Business Opportunities" or a means of central electronic advertising as approved by the designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.~~

~~—(4) Receipt and Safeguarding of Bids. All bids, including modifications, received before the time of opening must be kept secure and unopened, except as provided by regulation of the board.~~

~~—(5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time.~~

~~—(6) Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.~~

~~—(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reaward of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made the Chief Procurement Officer or the Superintendent by the chief procurement officers or head of a purchasing agency.~~

~~—(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 procuring agency's sole judgment, needing clarification must be accorded that opportunity. Clarification of a bidder's bid must be documented in writing by the procurement officer and must be included with the bid. Documentation concerning the clarification must be subject to disclosure upon request as required by Section 11-35-410.~~

~~—(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined in the following order of priority:~~

~~—(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 a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.~~

~~—(d) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the district's consuming location.~~

~~—(e) In all other situations in which bids are tied, the award must be made to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie must be resolved by the flip of a coin witnessed by the procurement officer. All responding vendors must be invited to attend.~~

~~—(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location specified in the invitation for bids. For contracts with a total or potential value in excess of fifty thousand dollars but less than one hundred thousand dollars, notice of the award of a contract must be given by posting and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract must be given by posting the notice for ten days before entering into a contract and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. Before the posting of the award, the procuring agency 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 a notice of award or notice of intent to award must contain a statement of a bidder's right to protest pursuant to Section 11-35-4210(1). When only one response is received, the notice of intent to award and the delay of award may be waived.~~

~~—(11) Request for Qualifications.~~

~~—(a) Before soliciting bids, the procurement officer, may issue a request for qualifications from prospective bidders. The request must contain, at a minimum, a description of the scope of work to be solicited by the invitation for bids, the deadline for submission of information, and how prospective bidders may apply for consideration. The request must 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 must be given in the manner provided in Section 11-35-1520(3).~~

~~—(b) After receipt of the responses to the request for qualifications from prospective bidders, the rank of the prospective bidders must be determined in writing from most qualified to least qualified on the basis of the information provided. Bids then must be solicited from at least the top two prospective bidders by means of an invitation for bids. The determination regarding how many bids to solicit is not subject to review under Article 17.~~

~~—(12) (Reserved)~~

~~—(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the District. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:~~

~~—(a) failure of a bidder to return the number of copies of signed bids required by the solicitation;~~

~~—(b) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;~~

~~—(c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;~~

~~—(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:~~

~~—(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, on it, if the bidder states under oath that it received the amendment before bidding and that the bidder will stand by its bid price; or~~

~~—(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the district;~~

~~—(e) failure of a bidder to furnish an affidavit concerning affiliates;~~

~~—(f) failure of a bidder to execute the certifications with respect to equal opportunity and affirmative action programs;~~

~~—(g) failure of a bidder to furnish cut sheets or product literature;~~

~~—(h) failure of a bidder to furnish certificates of insurance;~~

~~—(i) failure of a bidder to furnish financial statements;~~

~~—(j) failure of a bidder to furnish references;~~

~~—(k) failure of a bidder to furnish its bidder number; and~~

~~—(l) notwithstanding Title 40, the failure of a bidder to indicate his contractor's license number or other evidence of licensure, except that a contract must not be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.~~

HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 2; 1992 Act No. 442, Section 2; 1993 Act No. 178, Section 21; 1993 Act No. 181, Section 95; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 25.

SECTION 11-35-1524. Resident vendor preference.

(A) For purposes of this section:

(1) "End product" means the tangible product described in the solicitation including all component parts and in final form and ready for the state's intended use.

(2) "Grown" means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product that is locally derived from the product cultivated, raised, caught, or harvested.

(3) "Labor cost" means salary and fringe benefits.

(4) "Made" means to assemble, fabricate, or process component parts into an end product, the value of which, assembly, fabrication, or processing is a substantial portion of the price of the end product.

(5) "Manufactured" means to make or process raw materials into an end product.

(6) "Office" means a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each.

(7) "Services" means services as defined by Section 11-35-310(A)(29) of this code and also includes services as defined in Section 11-35-310(A)(1)(d) of this code.

(8) "South Carolina end product" means an end product made, manufactured, or grown in South Carolina.

(9) "United States end product" means an end product made, manufactured, or grown in the United States of America.

(B) (1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by seven percent the price of any offer for a South Carolina end product.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product. A preference must not be applied to an item for which a bidder does not qualify.

(4) If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a nonqualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220 of this code. If a contractor violates this provision, the State may terminate the contract for cause and, in addition, the contractor shall pay to the State an amount equal to twice the difference between the price paid by the State and the bidder's evaluated price for a substituted item.

(5) If a bidder is requesting this preference, the bidder, upon request of the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement pursuant to subsection (E)(6) of this section.

(C) (1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either:

_____(a) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract;

_____(b) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or

_____(c) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of the bidder's total bid price.

(2) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product or work, as applicable. A preference must not be applied to an item for which a bidder does not qualify.

(3) If a bidder is requesting this preference, the bidder, upon request by the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference and, for the preference claimed pursuant to subsection (C)(1) (iii) of this section, must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which bidder relies in qualifying for the preference, the services those individuals are to perform, and documentation of the bidder's labor cost for each person identified. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement under subsection (E)(6) below.

(D) (1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by two percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds twenty percent of bidder's total bid price.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by four percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds forty percent of bidder's total bid price.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of work. A preference must not be applied to an item for which a bidder does not qualify.

(4) Subject to other limits in this section, an offeror may benefit from applying for more than one of, or from multiple applications of, the preferences allowed by items (D)(1) and (D)(2).

(5) (a) In its bid, a bidder requesting any of the preferences allowed by items (D)(1) and (D)(2) must identify the subcontractor to perform the work, the work the subcontractor is to perform, and the bidder's factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement.

(b) If a bidder is requesting a preference allowed by items (D)(1) or (D)(2), upon request by the procurement officer, the bidder shall identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which the bidder relies in qualifying for the preference, the services those individuals are to perform, the employer of those persons, the bidder's relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. Bidder's failure to provide this information promptly will be grounds to deny the preference and for enforcement pursuant to subsection (E)(6) below of this section.

(c) If a contract is awarded to a bidder that received the award as a result of a preference allowed by items (D)(1) or (D)(2), the contractor may not substitute any business for the subcontractor on which the bidder relied to qualify for the preference, unless first approved in writing by the procurement officer. A substitution in violation of this subitem is grounds for debarment pursuant to Section 11-35-4220 of this code. If a contractor violates this provision, the procurement officer may terminate the contract for cause. If the contract is not terminated, the procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference.

(E) (1) A business is not entitled to any preferences unless the business, to the extent required by law, has:

(a) paid all taxes assessed by the State; and

(b) registered with the South Carolina Secretary of State and the South Carolina Department of Revenue.

(2) The preferences provided in subsections (B) and (C)(1)(i) and (ii) do not apply to a single unit of an item with a price in excess of fifty thousand dollars or a single award with a total potential value in excess of five hundred thousand dollars.

(3) The preferences provided in subsections (C)(1)(iii) and (D) do not apply to a bid for an item of work by the bidder if the annual price of the bidder's work exceeds fifty thousand dollars or the total potential price of the bidder's work exceeds five hundred thousand dollars.

(4) A solicitation must provide potential bidders an opportunity to request the preferences that apply to a procurement. By submitting a bid and requesting that a preference be applied to that bid, a business certifies that its bid qualifies for the preference for that procurement. For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation. If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210 of this code. If two or more bidders are tied after the application of the preferences allowed by this section, the tie must be resolved as provided in Section 11-35-1520(9). Price adjustments required by this section for purposes of evaluation and application of the preferences do not change the actual price offered by the bidder.

(5) This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2B)(a1) or (b2), or Section 11-35-1530, or Article 9, Chapter 35 of this code.

(6) Pursuant to Section 11-35-4220 of this code, a business may be debarred if

_____ (a) the business certified that it qualified for a preference,

_____ (b) the business is not qualified for the preference claimed, and

_____ (c) the certification was made in bad faith or under false pretenses. If a contractor has invalidly certified that a preference is applicable, the chief procurement officer may terminate the contract for cause, and the chief procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder.

(7) The sum of all preferences allowed by items (D)(1) and (D)(2) of this section, when applied to the price of a line item of work, may not exceed six percent unless the bidder maintains an office in this State. Under no circumstances may the cumulative preferences applied to the price of a line item exceed ten percent.

(8) As used in items (C)(1)(iii), (D)(1)(b), and (D)(2)(b), the term "documented commitment" means a written commitment by the bidder to employ directly an individual, and by the individual to be employed by the bidder, both contingent on the bidder receiving the award.

(9) The remedies available in this section are cumulative of and in addition to all other remedies available at law and equity.

~~HISTORY: 1997 Act No. 153, Section 1; 2002 Act No. 333, Section 10; 2009 Act No. 72, Section 2.~~

~~Editor's Note~~

~~2009 Act No. 72, Section 6 provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued after that date; except that Sections 1, 2, and 4 of this act take effect upon and apply to solicitations issued after the first Monday in September following approval by the Governor."~~

SECTION 11-35-1525. Competitive fixed price bidding.

- | **—(A) Conditions for Use.** When a purchasing agency 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 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section.
- | **—(B) Fixed Price Bidding.** The purpose of fixed price bidding is to provide multiple sources of supply for specific services, supplies, or information technology based on a preset maximum price which the District will pay for such services, supplies, or information technology.
- | **—(C) Public Notice.** Adequate public notice of the solicitation shall be given in the same manner as provided in Section **11-35-1520(C3) of this code.**
- | **—(D) Pricing.** The District shall establish, before issuance of the fixed price bid, a maximum amount the District will pay for the services, supplies, or information technology desired.
- | **—(E) Evaluation.** Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
- | **—(F) Discussion with Responsive Bidders.** Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed price bid. All bidders whose bids, in the district's sole judgment, need clarification shall be accorded such an opportunity.
- | **—(G) Award.** Award must be made to all responsive and responsible bidders to the district's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
- | **—(H) Bids Received After Award.** Bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of responsibility and responsiveness to the district's original fixed price bid as authorized by the solicitation.
- | **—(I) Remedies.** The failure of a specific offeror to receive business, once it has been added to the awarded vendors' list, shall not be grounds for a contract controversy under Section 11-35-4230.

HISTORY: 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 26.

SECTION 11-35-1528. Competitive best value bidding.

- | **—(A) Conditions for Use.** When a purchasing agency 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 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section.
- | **—(B) Best Value Bidding.** The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific supplies, services, or information technology based on pre-determined criteria identified by the District.

—**(C) Public Notice.** Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section **11-35-1520(3C) of this code**.

—**(D) Bid Opening.** At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.

—**(E) Evaluation Factors.** The best value bid must state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following as determined by the procurement officer in its sole discretion and not subject to protest:

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

—**(F) Discussion with Responsive Bidders.** Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders whose bids, in the district's sole judgment, need clarification shall be accorded such an opportunity.

—**(G) Selection and Ranking.** Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the 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.

—**(H) Award.** Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the District, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

HISTORY: 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 27.

SECTION 11-35-1529. Competitive online bidding.

—(A) **Conditions for Use.** When a purchasing agency determines that on-line bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive on-line bidding, subject to the provisions of Section [11-35-1520 of this code](#) and the ensuing regulations, unless otherwise provided in this section.

—(B) **Bidding Process.** The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependent on a variable specified in the solicitation. At the Opening Date and Time, the District must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. The District may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section [11-35-1520 of this code](#). If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the District may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing bidders by giving notice to all pre-existing bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

—(C) **Receipt and Safeguarding of Bids.** Other than price, any information provided to the District by a bidder must be safeguarded as required by Section [11-35-1520\(D4\) of this code](#).

—(D) **Provisions Not to Apply.** Section [11-35-1524](#) and paragraph (E5) (Bid Opening) of Section [11-35-1520 of this code](#) do not apply to solicitations issued pursuant to this section.

HISTORY: 2000 Act No. 387, Part II, Section 100B.

SECTION 11-35-1530. Competitive sealed proposals.

—(A) **Conditions for Use.** If a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive sealed proposals subject to the provisions of Section [11-35-1520 of this code](#) and the ensuing regulations, unless otherwise provided in this section. The board may provide by regulation that it is either not practicable or not advantageous to the District to procure specified types of supplies, services, information technology, or construction by competitive sealed bidding. Contracts for the design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery methods specified in Article 9 of this code must be entered into by competitive sealed proposals, except as otherwise provided in Sections [11-35-1550](#) (Small purchases), [11-35-1560](#) (Sole source procurements), and [11-35-1570](#) (Emergency procurements) [of this code](#).

—**(B) Public Notice.** Adequate public notice of the request for proposals must be given in the same manner as provided in Section **11-35-1520(3C) of this code**.

—**(C) Receipt of Proposals.** Proposals must be opened publicly in accordance with regulations of the board. A tabulation of proposals must be prepared in accordance with regulations promulgated by the board and must be open for public inspection after contract award.

—**(D) Request for Qualifications.**

(1) Before soliciting proposals, the procurement officer may issue a request for qualifications from prospective offerors. The request must contain at a minimum a description of the scope of the work to be solicited by the request for proposals and must state the deadline for submission of information and how prospective offerors may apply for consideration. The request must require information only on their qualifications, experience, and ability to perform the requirements of the contract.

(2) After receipt of the responses to the request for qualifications from prospective offerors, rank of the prospective offerors must be determined in writing from most qualified to least qualified on the basis of the information provided. Proposals then must be solicited from at least the top two prospective offerors by means of a request for proposals. The determination regarding how many proposals to solicit is not subject to review pursuant to Article 17.

—**(E) Evaluation Factors.** The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.

—**(F) Discussion with Offerors.** As provided in the request for proposals, and under regulations, 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, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the procurement officer's sole judgment, need clarification must be accorded that opportunity.

—**(G) Selection and Ranking.** Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must 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 must be made in accordance with Section **11-35-1530(9I) of this section below**.

—**(H) Negotiations.** Whether price was an evaluation factor or not, the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(1) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion;

(2) during the negotiation process as outlined in item (a1) above, if the procurement officer is unsuccessful in his first round of negotiations, he may reopen negotiations with any offeror with whom he previously negotiated; or

(3) the procurement officer may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.

—(I) **Award.** Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the District, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the procurement officer determines to utilize one of the options provided in Section ~~11-35-1530(8H)~~ of this section. The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section ~~11-35-1520(J10)~~ of this code.

HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 12; 1993 Act No. 178, Section 22; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 28; 2008 Act No. 174, Section 9.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-1540. Negotiations after unsuccessful competitive sealed bidding.

When bids received pursuant to an invitation for bids under Section ~~11-35-1520~~ of this code are considered unreasonable by the district, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer, the head of a purchasing agency, or the designee of either officer above the level of procurement officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

(1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;

(2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;

(3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-1550. Small purchase procedures; when competitive bidding required.

(A) **Authority.** The following small purchase procedures may be utilized only in conducting procurements for the District that are up to fifty thousand dollars (\$50,000) in actual or

potential value. Procurement requirements shall not be artificially divided by the District so as to constitute a small purchase pursuant to this section. (SC Code § 11-35-1550(1))

(B) Competition and Price Reasonableness.

(1) **Small purchases not exceeding \$2,500.00.** Small purchases not exceeding two thousand five hundred dollars (\$2,500.00) may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the Procurement Officer suspects that the price may not be reasonable, e.g., by comparison to previous price paid, or personal knowledge of the item involved. (SC Code § 11-35-1550(2)(a))

(2) **Purchases over \$2,500 to \$10,000.** Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes to the purchase requisition to the purchase requisition for a small purchase over two thousand five hundred dollars (\$2,500) but not in excess of ten thousand dollars (\$10,000). The award shall be made to the lowest responsive and responsible sources. (SC Code § 11-35-1550(2)(b))

(3) **Purchases over \$10,000 up to \$50,000.** Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars \$10,000 but not in excess of fifty thousand dollars \$50,000. The procurement shall be advertised at least once in South Carolina Business Opportunities or a newspaper of general circulation in the District or a means of central electronic advertising approved by the board. A copy of the written solicitation and written quotes must be attached to the purchase requisition or made a part of the contract file. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest-ranking offeror. (SC Code § 11-35-1550(2)(c))

(C) **Requirement to Advertise.** All competitive procurements above ten thousand dollars (\$10,000.00) must be advertised at least once in the South Carolina Business Opportunities or a newspaper of general circulation in the District or a means of central electronic advertising as approved by the board in accordance with **Section§-1520(C)-3 of this code** (Notice). The District may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement. (SC Code § 11-35-1550(3))

(D) **Establishment of Blanket Purchase Agreements "BPA".** A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents. (SC Reg. § 19-445.2100(B)(1))

(1) **Alternate Sources.** To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive

sources shall be given an equal opportunity to furnish supplies or services under such agreements. (SC Reg. § 19-445.2100(B)(2))

(2) **Terms and Conditions.** Blanket purchase agreements shall contain the following provisions: (SC Reg. § 19-445.2100(B)(3))

(a) **Description of agreement** -- a statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the procurement officer or his/her authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish. (SC Reg. § 19-445.2100(B)(3)(a))

(b) **Extent of obligation** -- a statement that the District is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement. (SC Reg. § 19-445.2100(B)(3)(b))

(c) **Notice of individuals authorized to place calls and dollar limitations** -- a provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer. (SC Reg. § 19-445.2100(B)(3)(c))

(d) **Delivery tickets** - a requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) name of supplier;

(ii) blanket purchase agreement number;

(iii) date of call;

(iv) call number;

(v) itemized list of supplies or services furnished;

(vi) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and

(vii) date of delivery or shipment. (SC Reg. § 19-445.2100(B)(3)(d))

(e) **Invoices** One of the following procedures should be used when invoicing:

(i) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing

period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets;

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

(SC Reg. § 19-445.2100(B)(3)(e))

(f) **Competition Under Blanket Purchase Agreement.** Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources. (SC Reg. § 19-445.2100(C))

(g) **Calls Against Blanket Purchase Agreement.** Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed on a District purchase order form. Documentation of calls shall be limited to essential information. (SC Reg. § 19-445.2100(D))

(h) **Receipt and Acceptance of Supplies or Services.** Acceptance of supplies or services shall be indicated by signature and date on the appropriate form by the authorized District representative after verification and notation of any exceptions. (SC Reg. § 19-445.2100(E))

(i) **Review Procedures.** The Chief Procurement Officer or designee shall review blanket purchase agreement files at least semi-annually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months. (SC Reg. § 19-445.2100(F))

~~—(1) **Authority.** The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to fifty thousand dollars in actual or potential value. A district may conduct its own procurement up to fifty thousand dollars in actual or potential value, and a district that has received procurement certification pursuant to Section 11-35-1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with this code. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.~~

~~—(2) **Competition and Price Reasonableness.**~~

~~—(a) Purchases not in excess of two thousand five hundred dollars. Except as provided in item (d), small purchases not exceeding two thousand five hundred dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the district suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.~~

~~—(b) Purchases over two thousand five hundred dollars to ten thousand dollars. Except as provided in item (d), solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars. The award must be made to the lowest responsive and responsible sources.~~

~~—(c) Purchases over ten thousand dollars up to fifty thousand dollars. Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.~~

~~—(d) For public institutions of higher learning in this State excluding technical colleges, small purchase amounts to which the provisions of item (a) apply are those purchases not exceeding ten thousand dollars, and for these purchases item (b) does not apply. In addition, purchasing cards of the institution for these purchases also may be used by officials or employees of the institution as the governing board approves.~~

~~—(3) All competitive procurements above ten thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.~~

~~—(4) The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and these procurements may be conducted pursuant to subsection (2)(b).~~

~~—(5) For a technical college authorized by the State Board for Technical and Comprehensive Education, small purchase amounts to which the provisions of subsection (2)(a) apply are those purchases up to an amount not to exceed ten thousand dollars. If authority is approved, a technical college may use purchasing cards for these purchases up to the amount approved by the State Board for Technical and Comprehensive Education.~~

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 23; 1993 Act No. 164, Part II, Section 11A; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 29; 2011 Act No. 74, Pt V, Section 6, eff August 1, 2011.
Effect of Amendment

~~The 2011 amendment, in subsections (2)(a) and (2)(b), in the second sentences, inserted "Except as provided in subitem (d) below,"; added subsection (2)(d) relating to institutions of higher learning and purchases not exceeding ten thousand dollars; in subsection (4), substituted "subsection (2)(b)" for "Section 11-35-1550"; and added subsection (5) relating to technical colleges and purchases not exceeding ten thousand dollars.~~

SECTION 11-35-1560. Sole source procurement.

(A) **Written Determination.** A contract may be awarded for a supply, service, information technology, or construction item without competition if, the Superintendent or Chief Procurement Officer determines in writing that there is only one source for the required supply, service, information technology, or construction item. (SC Code § 11-35-1560)(A)) Sole source procurement is not permissible unless there is only a single supplier. Written documentation must include the determination and basis for the proposed sole source procurement. In cases of reasonable doubt, competition must be solicited. Any decision by a District that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. (SC Code § 11-35-1560)(B))

(B) **Examples.** The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) where the item is one of a kind.

~~—(A) A contract may be awarded for a supply, service, information technology, or construction item without competition if, the Superintendent or Chief Procurement Officer under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item.~~

~~—(B) These regulations must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the chief procurement officer or the head of a district with respect to sole source determinations must be submitted in writing to the Materials Management Officer. In cases of reasonable doubt, competition must be solicited. Any decision by a district that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.~~

~~—(C) A violation of these regulations by a purchasing agency, upon recommendation of the designated board office with approval of the majority of the State Fiscal Accountability Authority, must result in the temporary suspension, not to exceed one year, of the violating district's ability to procure supplies, services, information technology, or construction items pursuant to this section.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 30.~~

~~Code Commissioner's Note~~

~~At the direction of the Code Commissioner, references in this section to the "Budget and Control Board", the "State Budget and Control Board" or the "board" were changed to the "State Fiscal Accountability Authority", the "authority", or the "Division of Procurement Services" of the "State Fiscal Accountability Authority", pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(B), effective July 1, 2015.~~

SECTION 11-35-1570. Emergency procurements.

(A) **Circumstances for Emergency Procurements.** Notwithstanding any other provision of this Code, the Superintendent or Chief Procurement Officer or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. (SC Code § 11-35-1570)

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed an emergency the Superintendent or Chief Procurement Officer or a designee of either. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten: (1) the functioning of the District; (2) the preservation or protection of property; or (3) the health or safety of any person. (SC Reg. § 19-445.2110(B))

(B) **Written Determination.** A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. (SC Code § 11-35-1570)

(C) **Limitations.** Emergency procurements shall be made with as much competition as is practicable under the circumstances. Emergency procurement shall be limited to those supplies, services, equipment, or construction items necessary to meet the emergency. (SC Reg. § 19-445.2110(C)) The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained. (SC Reg. § 19-445.2110(E))

(D) **Conditions.** The District may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the Superintendent the Chief Procurement Officer or a designee of either shall be obtained prior to the procurement. (SC Reg. § 19-445.2110(D))

(E) **Failed Competitive Sealed Bidding.** Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by Chief Procurement Officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made. (SC Reg. § 19-445.2110(F))

~~Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-1575. Participation in auction or sale of supplies from bankruptcy.

~~—The DA district, having knowledge of either an auction or a sale of supplies from a bankruptcy, may elect to participate. In the event tThe Ddistrict shall (a) survey the needed items being offered to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the district shall determine the maximum price that it can pay for each item desired. At the auction or sale, the district shall not exceed the maximum price so determined.~~

~~HISTORY: 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 31.~~

SECTION 11-35-1580. Information technology procurements.

~~—(1) Information Technology Management Office. The Information Technology Management Office shall be responsible for:~~

- ~~—(a) assessing the need for and use of information technology;~~
- ~~—(b) administering all procurement and contracting activities undertaken for governmental bodies involving information technology in accordance with this chapter;~~
- ~~—(c) providing for the disposal of all information technology property surplus to the needs of a using agency;~~
- ~~—(d) evaluating the use and management of information technology;~~
- ~~—(e) operating a comprehensive inventory and accounting reporting system for information technology;~~
- ~~—(f) developing policies and standards for the management of information technology in state government;~~
- ~~—(g) initiating a state plan for the management and use of information technology;~~
- ~~—(h) providing management and technical assistance to state agencies in using information technology; and~~
- ~~—(i) establishing a referral service for state agencies seeking technical assistance or information technology services.~~

~~—(2) Exemptions from the Requirements of this Section. The office may establish by regulation categories of procurement for information technology which shall be exempted from the requirements of this section.~~

~~—(3) Training and Certification. The office may establish a training and certification program in accordance with Section 11-35-1030.~~

~~HISTORY: 1997 Act No. 153, Section 1.~~

~~Subarticle 5
Cancellation of Solicitations~~

SECTION 11-35-1710. Cancellation of invitation for bids or request for proposals.

—Any solicitation under this code may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the State. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~Subarticle 7
Responsibility of Bidders and Offerors~~

SECTION 11-35-1810. Responsibility of bidders and offerors.

(A) **Determination of Responsibility.** Responsibility of the bidder or offeror shall be ascertained for each contract let by the District based upon full disclosure to the Chief Procurement Officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. (SC Code § 11-35-1810(1))

(1) **District Standards of Responsibility.** (SC Reg. § 19-445.2125(A)) Factors to be considered in determining whether the District standards of responsibility have been met include whether a prospective contractor has:

- (a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (b) a satisfactory record of performance;
- (c) a satisfactory record of integrity;
- (d) qualified legally to contract with the District and State; and
- (e) supplied all necessary information in connection with the inquiry concerning responsibility.

(2) **Duty of Bidder / Offeror to Supply Information.** The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable. (SC Reg. § 19-445.2125(B); S.C. Code. § 11-35-1810(2))

(3) **Demonstration of Responsibility.** (SC Reg. § 19-445.2125(C)) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (a) evidence that such contractor possesses such necessary items;
- (b) acceptable plans to subcontract for such necessary items; or
- (c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(4) **Justification for Contract Award.** Before awarding a contract, the Chief Procurement Officer must be satisfied that the prospective contractor is responsible. (SC Reg. § 19-445.2125(D))

(B) **Written Determination of Non-responsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Procurement Officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file. (SC Reg. § 19-445.2125(E))

(C) **Right to Nondisclosure.** Except as otherwise required by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the District without prior written consent by the bidder or offeror. (SC Code § 11-35-1810(3))

~~—(1) Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by the District based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The board shall by regulation establish standards of responsibility that shall be enforced in all district contracts.~~

~~—(2) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the board. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.~~

~~—(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the board, the Office of the Attorney General, or the purchasing agency without prior written consent by the bidder or offeror.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-1820. Prequalification of supplies and suppliers.

(A) **Qualified Products Lists ("QPL").** The District is authorized to develop qualified products lists (QPL) when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy District requirements. The procedures and criteria for the inclusion of a product on the QPL must be

available to prospective vendors for consideration of adding their product to the list. (SC Reg. § 19-445.2130(A))

(B) **Prequalification.** Prospective suppliers may be prequalified for bidder lists, and distribution of the solicitation may be limited to prequalified suppliers. Suppliers who meet the prequalification standards at any time shall be added to the prequalified list for subsequent solicitations. The fact that a prospective supplier has been prequalified does not necessarily represent a finding of responsibility. (SC Reg. § 19-445.2130(B))

~~—The board shall be authorized to provide by regulation for prequalification of suppliers or supplies.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

Section 1825- Prequalification of Construction Bidders

(A) District criteria for prequalifying construction bidders and sub-bidders must include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. The District may use the prequalification process only for projects where the construction involved is unique in nature or over ten million dollars (\$10,000,000) in value as determined by and subject to the approval of the Board. When the prequalification process is employed, only those bidders or sub-bidders who are prequalified through this procedure may submit a bid for the project. The determination of which bidders and sub-bidders are pre-qualified, and entitled to bid, is not protestable pursuant to § 4210 (Protests) or other provisions of this code.

(B). Prequalifying Construction Bidders. In accordance with Section 1825.1, the District shall adopt a procedure and a list of criteria for prequalifying construction bidders. (S.C. Regs. § 19-445.2145(G)).

SECTION 11-35-1830. Cost or pricing data.

(A) **Contractor Certification.** A contractor shall, except as provided in subsection (3C) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:

(1) the pricing of any contract awarded by competitive sealed proposals pursuant to Section 11-35-1530 or pursuant to the sole source procurement authority as provided in Section 11-35-1560 where the total contract price exceeds an amount established by the board in regulations; or

(2) the pricing of any change order or contract modification which exceeds an amount established by the board in regulations.

(B) **Price Adjustment.** Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the District, including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between parties.

(C) **Cost or Pricing Data Not Required.** The requirements of this section shall not apply to contracts:

- (1) where the contract price is based on adequate price competition;
- (2) where the contract price is based on established catalog prices or market prices;
- (3) where contract prices are set by law or regulations; or
- (4) where it is determined in writing in accordance with regulations promulgated by the board that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

~~HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 9; 1997 Act No. 153, Section 1.~~

~~Subarticle 9
Types and Forms of Contracts~~

SECTION 11-35-2010. Types of contracts; contracting documents and usage instructions.

(A) Types of Contracts. Subject to the limitations of this section, any type of contract that will promote the best interests of the District may be used, except that the use of a cost-plus-a-percentage-of- cost contract must be approved by the ~~Superintendent~~ ~~appropriate chief—procurement—officer~~. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, may be used only when a determination sufficient for external audit is prepared showing that the contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the supplies, services, information technology, or construction required except under that contract.

(B)(1) As used in this section:

(a) "Contracting document" means a standardized or model instrument, or a component part of it, for use as a contract, invitation for bids, request for proposals, request for qualifications, or instruction to bidders including, but not limited to, a contract clause or solicitation provision.

(b) "Usage instructions" means directions regarding conditions for use of a contracting document, completion of a contracting document, and the process for obtaining permission, if possible, to omit or depart from the contracting document's established content for a particular solicitation or contract.

(2) Contracting documents may be published as internal operating procedures. Contracting documents may be accompanied by usage instructions.

~~—(c) The board may adopt formally a contracting document, as developed by the appropriate chief procurement officer, for mandatory use by all governmental bodies only after notice of the proposed adoption has been published in the State Register and the board has provided the public at least sixty days to make written comments. If a contracting document is adopted by the board, the contracting document must be published in the State Register, accompanied by usage instructions, and used by all governmental bodies in accordance with its usage instructions. The chief procurement officers are not required to submit for board approval contracting documents used in connection with either solicitations issued or contracts awarded by the board or its offices.~~

~~—(d) Notwithstanding item (c) above, the board may promulgate contracting documents as regulations.~~

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 25; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 33.

SECTION 11-35-2020. Approval of accounting system.

~~—The Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer~~ may require that:

(A) the proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

~~—(B) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.~~

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-2030. Multi-term contracts.

(A) **Specified Period.** Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any a period of more than one (1) year unless approved in a manner prescribed herein. The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them. (SC Code § 11-35-2030(1))

(B) **Determination Prior to Use.** Before the utilization of a multi-term contract, it must be determined in writing that: estimated requirements cover the period of the contract and are reasonably firm and continuing and such a contract serves the best interests of the District by encouraging effective competition or otherwise promotes economies in procurement. (SC Code § 11-35-2030(2))

(1) **Appropriateness.** A multi-term contract is appropriate when it is in the best interest of the District to obtain uninterrupted services extending over one fiscal period, where the performance of such services involves high start-up costs, or when a changeover of service contracts involves high phase-in/phase-out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one fiscal period is necessary to best meet the District's needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled. (SC Reg. § 19-445.2135(A))

(2) **Objective.** The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which

involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts. (SC Reg. § 19-445.2135(B))

(3) **Conditions of Use.** (SC Reg. § 19-445.2135(D)) (1) A multi-term contract may be used when it is determined in writing by the Procurement Officer that:

(a) special production of definite quantities or the furnishing of long-term services are required to meet District needs; or

(b) a multi-term contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement. (2) The following factors are among those relevant for such a determination:

(i) firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(ii) lower production cost 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;

(iii) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(iv) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(C) **Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled. (SC Code § 11-35-2030(3))

(D) **Maximum Time For Use.** The maximum time for a multi-term contract is five (5) years. Contract terms of up to seven years may be approved by the Superintendent. Contracts exceeding seven years may be approved by the Board. (SC Code § 11-35-2030(4); SC Reg. § 19-445.2135(D))

(E) **Solicitation.** (SC Reg. § 19-445.2135(E)) The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the District's rights or the contractor's rights under any termination clause in the contract;

(4) that the Procurement Officer must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

| (ia) the first fiscal period only;

| (iib) the entire time of performance only; or

| (iiic) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and

(7) that, in the event of cancellation as provided in Section 2030.3, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

(F) **Award.** Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that the award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements. (SC Reg. § 19-445.2135(F))

(G) **Limitation.** Section 2030 does not apply to contracts for construction.

~~(1) Specified Period. Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any a period of more than one year unless approved in a manner prescribed by regulation of the board. The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them.~~

~~—(2) Determination Prior to Use. Before the utilization of a multi-term contract, it must be determined in writing by the appropriate district that:~~

~~—(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and~~

~~—(b) such a contract serves the best interests of the District by encouraging effective competition or otherwise promoting economies in district procurement.~~

~~—(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.~~ When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

~~—(4) The maximum time for a multiterm contract is five years. Contract terms of up to seven years may be approved by the designated board officer. Contracts exceeding seven years must be approved by the board.~~

~~2030.5 Solicitation.~~ (SC Reg. § 19-445.2135(E)) The solicitation shall state:

~~2030.5.1 the estimated amount of supplies or services required for the proposed contract period;~~

~~2030.5.2 that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);~~

~~2030.5.3 that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the District's rights or the contractor's rights under any termination clause in the contract;~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 34.~~

~~Subarticle 11~~

~~Inspection of Plant and Audit of Records~~

SECTION 11-35-2210. Right to inspect plant.

~~—The Chief Procurement Officer appropriate chief procurement officer~~ or his designee is authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or subcontractor which is related to the performance of a contract awarded or to be awarded by the District.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 35.~~

SECTION 11-35-2220. Right to audit records.

(A) Audit of Cost or Pricing Data. All ~~district~~ District contracts shall contain a clause setting forth the district's right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data pursuant to Section 11-35-1830 to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the ~~Chief Procurement Officer~~; provided, however, that such records shall be retained for

additional periods of time beyond this three-year period upon request of the Chief Procurement Officer ~~chief procurement officer~~.

(B) Contract Audit. The District shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer ~~chief procurement officer~~.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~Subarticle 13~~

~~Determinations and Reports~~

SECTION 11-35-2410. Finality of determinations.

(A) The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: Section 11-35-1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 11-35-1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 11-35-1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 11-35-1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 11-35-1528(8) (Competitive Best Value Bidding: Award), Section 11-35-1529(1) (Competitive Online Bidding: Conditions for Use), Section 11-35-1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 11-35-1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 11-35-1530(7) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 11-35-1530(9) (Competitive Sealed Proposals Award), Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11-35-1560 (Sole Source Procurement), Section 11-35-1570 (Emergency Procurement), Section 11-35-1710 (Cancellation of Invitation for Bids or Requests for Proposals), Section 11-35-1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 11-35-1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 11-35-2010 (Types and Forms of Contracts), Section 11-35-2020 (Approval of Accounting System), Section 11-35-2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 11-35-3010(1) (Choice of Project Delivery Method), Section 11-35-3020(2)(d) (Construction Procurement Procedures: Negotiations after Unsuccessful Competitive Sealed Bidding), Section 11-35-3023 (Prequalification on District Construction), Section 11-35-3220(5) (Procurement Procedure, Selection and Ranking of the Five Most Qualified), Section 11-35-4210(7) (Stay of Procurement During Protests, Decision to Proceed), and Section 11-35-4810 (Cooperative Use of Supplies, Services, or Information Technology).

(B) The Superintendent, ~~chief~~ Chief Procurement Officer or their designees shall review samples of the determinations periodically, and issue reports and recommendations on the appropriateness of the determinations made.

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 26; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 36; 2008 Act No. 174, Section 10.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

SECTION 11-35-2420. Reporting of anticompetitive practices.

—When any information or allegations concerning anticompetitive practices among any bidders or offerors, come to the attention of any employee of the District, immediate notice of the relevant facts shall be transmitted to the Attorney General.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-2430. Retention of procurement records.

—All procurement records of ~~governmental bodies~~the District shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History after consultation with the Attorney General. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-2440. Records of procurement actions.

(A) (1) Contents of Records. ~~A The district~~ District as defined in Section 11-35-310(18) shall submit quarterly a record listing all contracts made pursuant to Section 11-35-1560 (Sole Source Procurement) or Section 11-35-1570 (Emergency Procurements) to the Superintendent ~~chief procurement officers~~. The record must contain:

- (a) each contractor's name;
- (b) the amount and type of each contract;
- (c) a listing of supplies, services, information technology, or construction procured under each contract.

__ (2) The ~~chief procurement officers~~ District shall maintain these records for five years.

(B) Publication of Records. A copy of the record must be submitted to the board on an annual basis and must be available for public inspection.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 37.

ARTICLE 7

V. SPECIFICATIONS

~~Subarticle 1~~
Definitions

SECTION 11-35-2610. Definitions of terms used in this article.

—As used in this article, the term "specifications" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may also include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

Subarticle 3
Specifications

SECTION 11-35-2710. Issuance of specifications; duties of the board.

~~—The board shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services, information technology, and construction required by the State.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 38.~~

(A) **Purpose of Specifications.** The purpose of a specification is to serve as a basis for obtaining supplies, services, information technology, or construction items adequate and suitable for the District's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the District that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the District's requirements. All specifications shall be written in a non-restrictive manner so as to describe the requirements to be met. (SC Reg. § 19-445.2140(B))

(B) **Use of Functional or Performance Descriptions.** Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the District. To facilitate the use of such criteria, the District must endeavor to include as a part of its purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project. (SC Reg. § 19-445.2140(C))

(C) **Preference for Commercially Available Products.** It is the general policy of this District to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable. (SC Reg. § 19-445.2140(D))

SECTION 11-35-2720. Duties of the chief procurement officer/District Specification Preparation and Review.

—The District's chief procurement officer may prepare or review, issue, revise, and maintain the specifications for supplies, services, information technology, and construction required by the District.

~~—The chief procurement officers may prepare or review, issue, revise, and maintain the specifications for supplies, services, information technology, and construction required by the State, except for supplies, services, information technology, and construction items procured by the governmental bodies pursuant to Sections 11-35-1550, 11-35-1570, and 11-35-3230, the specification for which must be prepared and maintained by the using agencies in accordance with the provisions of this article and regulations promulgated under it and monitored periodically by the chief procurement officers.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 39.~~

SECTION 11-35-2730. Assuring competition.

—All specifications shall be drafted so as to assure cost effective procurement of the District's actual needs and shall not be unduly restrictive.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-2740. Relationship with using agencies.

~~—The chief procurement officers shall obtain advice and assistance from the personnel of the using agencies in the development of specifications, whether through user committees or through the advisory committees, and may delegate in writing to a using agency the authority to prepare and utilize its own specifications. Specifications shall be drawn in such a manner as to ensure maximally cost effective procurement, consistent with regulations promulgated by the board.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-2750. Specifications prepared by architects and engineers.

—The requirements of this article regarding the nonrestrictiveness of specifications apply to each solicitation and include, among other things, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for district contracts.

HISTORY: 1981 Act No. 148, Section 1; 1986 Act No. 510, Section 10; 1997 Act No. 153, Section 1, June 13, 1997.

ARTICLE 9

VI. CONSTRUCTION, ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

~~Subarticle 1~~ ~~Definitions~~

SECTION 11-35-2910. Definitions of terms used in this article.

(A) "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.

(B) "Construction manager agent" means a business that has been awarded a separate contract with the district to provide construction management services but not construction.

(C) "Construction manager at-risk" means a business that has been awarded a separate contract with the district to provide both construction management services and construction using the construction management at-risk project delivery method. A contract with a construction manager at-risk may be executed before completion of design.

(D) "Construction management services" are those professional services associated with contract administration, project management, and other specified services provided in connection with the administration of a project delivery method defined in Section **11-35-3005 of this code** (Project Delivery Methods Authorized).

(E) "Construction management at-risk" means a project delivery method in which the district awards separate contracts, one for architectural and engineering services to design an infrastructure facility and the second to a construction manager at-risk for both construction of the infrastructure facility according to the design and construction management services.

(F) "Design-bid-build" means a project delivery method in which the district sequentially awards separate contracts, the first for architectural and engineering services to design an infrastructure facility and the second for construction of the infrastructure facility according to the design.

(G) "Design-build" means a project delivery method in which the district enters into a single contract for design and construction of an infrastructure facility.

(H) "Design-build-finance-operate-maintain" means a project delivery method in which the district enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. Money appropriated by the State is not used to pay for a part of the services provided by the contractor during the contract period.

(I) "Design-build-operate-maintain" means a project delivery method in which the district enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the money required to pay for the services provided by the contractor during the contract period are either appropriated by the

State before the award of the contract or secured by the State through fare, toll, or user charges.

(J) "Design requirements" means the written description of the infrastructure facility to be procured pursuant to this article, including:

(1) required features, functions, characteristics, qualities, and properties that are required by the State;

(2) the anticipated schedule, including start, duration, and completion; and

(3) estimated budgets as applicable to the specific procurement, for design, construction, operation, and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

(K) "Independent peer reviewer services" are additional architectural and engineering services that a district shall acquire, as designated in the Manual for Planning and Execution of State Permanent Improvement, in design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care. If a district elects not to contract with the independent peer reviewer proposed by the successful offeror, the independent peer reviewer must be selected through competitive sealed proposals.

(L) "Infrastructure facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment, or portion thereof, that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

(M) "Operations and maintenance" means a project delivery method in which the district enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(N) "Proposal development documents" means drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2008 Act No. 174, Section 11.

Editor's Note

2008 Act No. 174, Section 1, provides as follows:

"The General Assembly finds that:

"(1) it adopted a modified version of the 1979 ABA Model Procurement Code for State and Local Governments when it enacted 1981 Act No. 148. Since then, the ABA has revised its recommended model by adopting the 2000 ABA Model Procurement Code for State and Local Governments, which it developed in cooperation with, among others, the National Association

of State Procurement Officials, the National Institute of Governmental Purchasing, the American Consulting Engineers Council, the Design Professionals Coalition, the Council on the Federal Procurement of A/E Services, the Engineers Joint Contracts Document Committee, and the National Society of Professional Engineers. One of the primary goals of the revision project was to encourage the competitive use of new forms of project delivery in public construction procurement; and

"(2) it is the intent of the General Assembly to facilitate the use of these alternate forms of project delivery by adopting, as modified herein, those portions of the new model code related to Article 5 (Procurement of Infrastructure Facilities and Services) of the model code. To that end, the relevant official comments to the model code, and the construction given to the model code, should be examined as persuasive authority for interpreting and construing the new code provisions created by this act."

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

Subarticle 3 Construction Services

SECTION 11-35-3005. Project delivery methods authorized.

(A) The following project delivery methods are authorized for procurements relating to infrastructure facilities:

- (1) design-bid-build;
- (2) construction management at-risk;
- (3) operations and maintenance;
- (4) design-build;
- (5) design-build-operate-maintain; and
- (f) design-build-finance-operate-maintain.

(B) In addition to those methods identified in item (1), the board, by regulation, and the State Engineer, in accordance with Section 11-35-3010, may:

(1) approve as an alternate project delivery method any combination of design, construction, finance, and services for operations and maintenance of an infrastructure facility; and

(2) allow or require the district to follow any of the additional procedures established by Section ~~11-35-3024~~ **11-35-3024 of this code**.

(3) Participation in a report or study that is later used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in a construction management at-risk, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless the participation provides the business with a substantial competitive advantage. In the Manual for Planning and Execution of State Permanent Improvements, the State Engineer may establish guidance for the application of this item by governmental bodies.

HISTORY: 2008 Act No. 174, Section 2.

Editor's Note

2008 Act No. 174, Section 1, provides as follows:

"The General Assembly finds that:

"(1) it adopted a modified version of the 1979 ABA Model Procurement Code for State and Local Governments when it enacted 1981 Act No. 148. Since then, the ABA has revised its recommended model by adopting the 2000 ABA Model Procurement Code for State and Local Governments, which it developed in cooperation with, among others, the National Association of State Procurement Officials, the National Institute of Governmental Purchasing, the American Consulting Engineers Council, the Design Professionals Coalition, the Council on the Federal Procurement of A/E Services, the Engineers Joint Contracts Document Committee, and the National Society of Professional Engineers. One of the primary goals of the revision project was to encourage the competitive use of new forms of project delivery in public construction procurement; and

"(2) it is the intent of the General Assembly to facilitate the use of these alternate forms of project delivery by adopting, as modified herein, those portions of the new model code related to Article 5 (Procurement of Infrastructure Facilities and Services) of the model code. To that end, the relevant official comments to the model code, and the construction given to the model code, should be examined as persuasive authority for interpreting and construing the new code provisions created by this act."

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3010. Choice of project delivery method.

A. Selection of Method. The project delivery method used for a district construction project must be that method which is most advantageous to the District and results in the most timely, economical, and successful completion of the construction project. The district shall select the appropriate project delivery method for a particular project and shall state in writing the facts and considerations leading to the selection of that particular method.

B. Considerations. (SC Reg. § 19-445-2145(A)) This Subsection contains provisions applicable to the selection of the appropriate method of administration of construction contracts, that is, the contracting method and configuration which is most advantageous to the District and will result in the most timely, economical, and otherwise successful completion of the construction project. Before choosing the construction contracting method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the District. The District shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the District's needs.

~~3010.2.1 Selecting the Method of Construction Contracting~~

~~In selecting the construction contracting method, the District should consider the results achieved on similar projects in the past and the methods used.~~

~~3010. 2.2 appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill District requirements;~~

~~3010. 2.3 appropriate and effective means of obtaining both the design and construction of the project.~~

~~3010. 2.4 Criteria for Selection~~

~~Before choosing the construction method, a careful assessment must be made by the District of the requirements the project must satisfy and those other characteristics that would be in the best interest of the District~~

~~The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including what sources of funding are available.~~

~~3010. 2.5 The District should consider whether a price can be obtained that is fair and reasonable when considered together with the benefit to the District potentially obtainable from such a contract.~~

~~3010.3 **Written Determination.** (SC Reg. § 19-445-2145(A)(4))~~

~~The District shall make a written determination that must be reviewed by the Executive Director of Administrative Services. The determination shall prescribe the construction contracting method chosen and set forth the facts and considerations which led to the selection of that method. This determination shall demonstrate that the requirements and financing of the project were all considered in making the selection.~~

~~**(2) State Engineer's Office Review.** The governmental body shall submit its written report stating the facts and considerations leading to the selection of the particular project delivery method to the State Engineer's Office for its review.~~

~~**—(3) Approval or Disagreement by State Engineer's Office.** The State Engineer's Office has ten days to review the data submitted by the governmental body to determine its position with respect to the particular project delivery method recommended for approval by the governmental body, and to notify the governmental body of its decision in writing. If the State Engineer's Office disagrees with the project delivery method selected, it may contest it by submitting the matter to the board for decision. Written notification by the State Engineer's Office to the governmental body of its intention to contest the project delivery method selected must include its reasons. The board shall hear the contest at its next regularly scheduled meeting after notification of the governmental body. If the board rules in support of the State Engineer's Office position, the governmental body shall receive written notification of the decision. If the board rules in support of the governmental body, the governmental body must be notified in writing and by that writing be authorized to use that project delivery method as previously recommended by the governmental body on the particular construction project.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2008 Act No. 174, Section 12;~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

SECTION 11-35-3015. Source selection methods assigned to project delivery methods.

(A) **Scope.** This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 11-35-3005 of this code (Project delivery methods authorized), except as provided in Sections 11-35-1550 (Small Purchases), 11-35-1560 (Sole Source Procurement), and 11-35-1570 (Emergency Procurements) of this code.

(B) **Design-bid-build:**

(1) **Design.** Architect-engineer, construction management, and land surveying services. The qualifications based selection process in Section 11-35-3220 of this code (Qualifications Based Selection Procedures) must be used to procure architect-engineer, construction management, and land surveying services, unless those services are acquired in conjunction with construction using one of the project delivery methods provided in Section 11-35-3015 (C3), (E5), (6F), (7G), and (8H) of this code.

(2) **Construction.** Competitive sealed bidding, as provided in Section 11-35-1520 of this code (Competitive Sealed Bidding), must be used to procure construction in design-bid-build procurements.

(C) Construction Management at-risk. Contracts for construction management at-risk must be procured as provided in either Section 11-35-1520 (Competitive Sealed Bidding) or Section 11-35-1530 (Competitive Sealed Proposals) of this code.

(D) Operations and Maintenance. Contracts for operations and maintenance must be procured as set forth in Section 11-35-1510 (Methods of Source Selection) of this code.

(E) **Design-build.** Contracts for design-build must be procured by competitive sealed proposals, as provided in Section 11-35-1530 of this code (Competitive Sealed Proposals), except that the regulations may describe the circumstances under which a particular design-build procurement does not require the submission of proposal development documents as required in Section 11-35-3024(B2)(2b) of this code.

(F) **Design-build-operate-maintain.** Contracts for design-build-operate-maintain must be procured by competitive sealed proposals, as provided in Section 11-35-1530 of this code (Competitive Sealed Proposals).

(G) **Design-build-finance-operate-maintain.** Contracts for design-build-finance-operate-maintain must be procured by competitive sealed proposals, as provided in Section 11-35-1530 of this code (Competitive Sealed Proposals).

(H) **Other.** Contracts for an alternate project delivery method approved pursuant to Section 11-35-3005(B2) of this code must be procured by a source selection method provided in Section 11-35-1510 of this code, as specified by the authority approving the alternative project delivery method.

HISTORY: 2008 Act No. 174, Section 3.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3020. Additional bidding procedures for construction procurement.

—Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by Section 11-35-3015(B2)(2b) of this code must be performed in accordance with the procedures outlined in Article 5 of this code subject to the following exceptions:

~~(a) Invitation for Bids. Each governmental body is responsible for developing a formal invitation for bids for each state construction project. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids must be filed with the State Engineer's Office and must be advertised formally in an official state government publication. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.~~

(A) **Bid Acceptance.** Instead of Section 11-35-1520(F6), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The district's invitation for bids must set forth all requirements of the bid including, but not limited to:

(1) **Construction Subcontractors.** The district, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the district, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids a subcontractor who is expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable pursuant to Section 11-35-4210 of this code or another provision of this code. A bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform a portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform that work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract that work except with the approval of the district for good cause shown.

(2) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

(3) The district shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

(B) **Notice of Intent to Award; Award.** Instead of Section 11-35-1520(10J) of this code, the following provisions apply:

(1) Unless there is a compelling reason to reject bids as prescribed by regulation of the board this code, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest pursuant to Section 11-35-4210(A1) of this code and the date and location of posting must be

announced at bid opening. In addition to posting notice, the district promptly shall send all responsive bidders a copy of the notice of intended award and of the bid tabulation. The mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest pursuant to Section ~~11-35-4210(1A)~~ of this code.

(2) After ten days' notice is given, the ~~district~~ District may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. The procurement officer must comply with Section ~~11-35-1810~~ of this code.

(3) If, at bid opening, only one bid is received and determined to be responsive and responsible and within the district's construction budget, award may be made without the ten-day waiting period.

(C) Negotiations after Unsuccessful Competitive Sealed Bidding. Instead of Section ~~11-35-1540~~ of this code, the following provisions apply:

(1) If bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the district that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder. The district may change the scope of the work to reduce the cost to be within the established construction budget but may not reduce the cost below the established construction budget more than ten percent without a written request by the agency and the written approval of the chief procurement officer based on the best interest of the State.

(2) If the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the district is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the district shall submit its request to use those additional funds to the board and the Joint Bond Review Committee in accordance with Sections 2-47-40 and 2-47-50.

~~HISTORY: 1981 Act No. 148, Section 1; 1981 Act No. 179 Section 16; 1992 Act No. 442, Section 1; 1993 Act No. 178, Section 27; 1993 Act No. 164, Part II, Section 65; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 40; 2008 Act No. 174, Section 13.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

SECTION 11-35-3021. Subcontractor substitution.

(A) After notice of an award or intended award has been given, whichever is earlier, the prospective contractor identified in the notice may not substitute a business as subcontractor in place of a subcontractor listed in the prospective contractor's bid or proposal, except for one or more of the following reasons:

(1) upon a showing satisfactory to the district by the prospective contractor that:

(a) the listed subcontractor is not financially responsible;

(b) the listed subcontractor's scope of work did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the subcontractor's original bid;

(c) the listed subcontractor was listed as a result of an inadvertent clerical error, but only if that request is made within four working days of opening;

(d) the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prospective contractor after the subcontractor had represented to the prospective contractor that the subcontractor could obtain a performance and payment bond; and

(e) the listed subcontractor must be licensed and did not have the license at the time required by law;

(2) if the listed subcontractor fails or refuses to perform his subcontract;

(3) if the work of the listed subcontractor is found by the district to be substantially unsatisfactory;

(4) upon mutual agreement of the contractor and subcontractor; and

(5) with the consent of the district for good cause shown.

(B) The request for substitution must be made to the district in writing. This written request does not give rise to a private right of action against the prospective contractor in the absence of actual malice.

(C) If substitution is allowed, the prospective contractor, before obtaining prices from another subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received before the submission of the prospective contractor's offer. This section does not affect a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code and the regulations promulgated pursuant to it.

(D) This section applies to a procurement conducted using the source selection methods authorized by Section 11-35-3015(2)(b), (3), (5), (6), (7), and (8).

~~HISTORY: 2008 Act No. 174, Section 4.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

SECTION 11-35-3023. Prequalification on District construction.

(A) In accordance with this section and procedures published by the State Engineer, a district may limit participation in a solicitation for construction to only those businesses, including potential subcontractors, that are prequalified. The prequalification process may be used only with the approval and supervision of the State Engineer's Office. If businesses are prequalified, the district must issue a request for qualifications. Adequate public notice of the request for qualifications must be given in the manner provided in Section 11-35-1520(3C) of this code. The request must contain, at a minimum, a description of the general scope of work to be acquired, the deadline for submission of information, and how businesses may apply for consideration. The evaluation criteria must include, but not be limited to, prior performance,

recent past references on all aspects of performance, financial stability, and experience on similar construction projects. Using only the criteria stated in the request for qualifications, businesses must be ranked from most qualified to least qualified. The basis for the ranking must be determined in writing. If fewer than two businesses are prequalified, the prequalification process must be canceled. The determination regarding how many offers to solicit is not subject to review pursuant to Article 17 of this code. Section 11-35-1520(4D) (Request for Qualifications) and Section 11-35-1530(4D) (Request for Qualifications) of this code do not apply to a procurement of construction.

(B) In a design-bid-build procurement, the prequalification process may be used only if the construction involved is unique in nature, over ten million dollars in value, or involves special circumstances, as determined by the State Engineer. In a design-bid-build procurement, the minimum requirements for prequalification must be published in the request for qualifications. Offers must be sought from all businesses that meet the published minimum requirements for prequalification.

~~HISTORY: 2008 Act No. 174, Section 4.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

SECTION 11-35-3024. Additional procedures applicable to procurement of certain project delivery methods.

(A) **Applicability.** In addition to the requirements of Section 11-35-1530 of this code (Competitive Sealed Proposals), the procedures in this section apply as provided in items (2), (3), and (4) below.

(B) **Content of Request for Proposals.** A Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain:

(1) must include design requirements;

(2) must solicit proposal development documents; and

(3) may, if the district determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:

(a) prequalify offerors in accordance with Section 11-35-3023 of this code by issuing a request for qualifications in advance of the request for proposals;

(b) select, pursuant to procedures designated in the Manual for Planning and Execution of State Permanent Improvements, a short list of responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award before discussions and evaluations pursuant to Section 11-35-1530 of this code, if the number of proposals to be short-listed is stated in the Request for Proposals and prompt public notice is given to all offerors as to which proposals have been short-listed; or

(c) pay stipends to unsuccessful offerors, if the amount of the stipends and the terms under which stipends are paid are stated in the Request for Proposals.

(C) **Evaluation Factors.** A Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain must:

(1) state the relative importance of
____(a) demonstrated compliance with the design requirements,
____(b) offeror qualifications,
____(c) financial capacity,
____(d) project schedule,
____(e)—price, or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements, and
____(f) other factors, if any; and

____(2) in circumstances designated in the Manual for Planning and Execution of State Permanent Improvements, require each offeror to identify an Independent Peer Reviewer whose competence and qualifications to provide that service must be an additional evaluation factor in the award of the contract.

(D) Unless excused by the State Engineer, the State Engineer's Office shall oversee the evaluation process for a procurement of construction if factors other than price are considered in the evaluation of a proposal.

~~HISTORY: 2008 Act No. 174, Section 4.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

~~3025. APPROVAL OF CHANGES. (S.C. Code § 11-35-3025) ONLY IN OUR CODE~~

~~The District may approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts which do not alter the original scope or intent of the project and which do not exceed the previously approved project budget.~~

SECTION 11-35-3030. Bonds and security.

—(A) Bid Security.

(1) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in a design-bid-build procurement in excess of fifty thousand dollars **(\$50,000)** and other contracts as may be prescribed by the State Engineer's Office. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form that may be established by regulation of the board.

(2) Amount of Bid Security. Bid security must be in an amount equal to at least five percent of the amount of the bid at a minimum.

(3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the

bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected.

(4) Withdrawal of Bids. After the bids are opened, they must 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 ~~11-35-1520~~(G7) of this code, action must not be had against the bidder or the bid security.

—(B) Contract Performance Payment Bonds.

(1) When Required-Amounts. The following bonds or security must be delivered to the district and become binding on the parties upon the execution of the contract for construction:

(a) a performance bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(b) a payment bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(c) in the case of a construction contract valued at fifty thousand dollars ~~(\$50,000)~~ or less, the ~~D~~istrict may waive the requirements of (ia) and (ib) above, if the district has protected the State;

(d) in the case of a construction manager at-risk contract, the solicitation may provide that bonds or security are not required during the project's preconstruction or design phase, if construction does not commence until the requirements of (ia) and (ib) above have been satisfied.

(2) Authority to Require Additional Bonds. Item ~~(2B)~~ does not limit the authority of the board to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in sub-item ~~(a1)~~ of that item in accordance with regulations promulgated by the board.

(3) Suits on Payment Bonds-Right to Institute. A person who has furnished labor, material, or rental equipment to a bonded contractor or his subcontractors for the work specified in the contract, and who has not been paid in full for it before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by the person or material or rental equipment was furnished or supplied by the person for which the claim is made, has the right to sue on the payment bond for the amount, or the balance of it, unpaid at the time of institution of the suit and to prosecute the action for the sum or sums justly due the person. A remote claimant has a right of action on the payment bond only upon giving written notice to the contractor within ninety days from the date on which the person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which the claim is made, stating with substantial accuracy the amount claimed as unpaid and the name of the party to whom the material or rental equipment was furnished or supplied or for whom the labor was done or performed. The written notice to the bonded contractor must be served personally or served by mailing the notice by registered or certified

mail, postage prepaid, in an envelope addressed to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. The aggregate amount of a claim against the payment bond by a remote claimant may not exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. The written notice to the bonded contractor must generally conform to the requirements of Section 29-5-20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, payment by the bonded contractor may not lessen the amount recoverable by the remote claimant. The aggregate amount of claims on the payment bond may not exceed the penal sum of the bond. A suit under this section must not be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, "bonded contractor" means the contractor or subcontractor furnishing the payment bond, and "remote claimant" means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no expressed or implied contractual relationship with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

(4) Suits on Payment Bonds-Where and When Brought. Every suit instituted upon a payment bond must be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed; except that a suit must not be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in the suit.

(C)-(3) Bonds Forms and Copies.

—**(a1) Bonds Forms.** The board shall promulgate by regulation the form of the bonds required by this section.

—**(b2) Certified Copies of Bonds.** A person may request and obtain from the district a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

(43) Retention.

(a) Maximum amount to be withheld. In a contract or subcontract for construction which 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 State 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.

(b) Release of Retained Funds. When the work to be performed on a state construction project or pursuant to a state construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor is considered a separate division of the

contract for the purpose of retention. As each division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract must be released forthwith to the prime contractor, who, within ten days of its receipt, shall release to the subcontractor responsible for the completed work the full amount of retention previously withheld from him by the prime contractor.

(54) Bonds for Bid Security and Contract Performance. The requirement of a bond for bid security on a construction contract, pursuant to subsection (1), and a construction contract performance bond, pursuant to subsection (2), may not include a requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Sections 29-31; 1993 Act No. 164, Part II, Section 10A; 1997 Act No. 153, Section 1; 2000 Act No. 240, Section 2; 2002 Act No. 253, Section 3; 2005 Act No. 97, Section 1; 2006 Act No. 376, Section 41; 2008 Act No. 174, Section 14; 2014 Act No. 264 (S.1026), Section 3, eff June 6, 2014.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

Effect of Amendment

2014 Act No. 264, Section 3, in subsection (c), fourth sentence from the end, substituted "generally conform to the requirements of Section 29-5-20(B) and sent by certified or registered mail" for "be served personally or sent by fax or by electronic mail or by registered or certified mail, postage prepaid," and added the last sentence relating to time for bringing suit.

SECTION 11-35-3035. Errors and omissions insurance.

—Regulations shall be promulgated that specify when a district shall require offerors to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods set forth in **Section 11-35-3005(1A)(a1), (d4), (e5), and (f6) of this code.**

HISTORY: 2008 Act No. 174, Section 5.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3037. Other forms of security.

—The **D**istrict may require one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately or as one element of another project delivery method:

(**aA**) operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations;

(**bB**) letters of credit in an amount appropriate to cover the cost to the district of preventing infrastructure service interruptions for a period up to twelve months; and

(eC) appropriate written guarantees from the contractor, or depending upon the circumstances, from a parent corporation, to secure the recovery of procurement costs to the district if the contractor defaults in performance.

HISTORY: 2008 Act No. 174, Section 5.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3040. Contract clauses and their administration.

~~(A)-(1)~~ **Contract Clauses.** State construction contracts and subcontracts may include clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions including, but not limited to:

~~(1)(a)~~ the unilateral right of a district to order in writing:

~~(i)(a)~~ all changes in the work within the scope of the contract, and

~~(ii)(b)~~ all changes in the time of performance of the contract which do not alter the scope of the contract work;

~~(b)(c)~~ variations occurring between estimated quantities of work in the contract and actual quantities;

~~(e)(d)~~ suspension of work ordered by the district;

~~(d)(e)~~ site conditions differing from those indicated in the contract or ordinarily encountered.

~~(B)-(2)~~ Price Adjustments.

~~(a)(1)~~ Adjustments in price pursuant to clauses adopted or promulgated pursuant to Section **11-35-20103040(A)(1) of this code** must be computed and documented with a written determination. The price adjustment agreed upon must approximate the actual cost to the contractor and all costs incurred by the contractor must be justifiably compared with prevailing industry standards, including reasonable profit. Costs must be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon after that as practicable, and must be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:

~~(i)(a)~~ by unit prices specified in the contract or subsequently agreed upon;

~~(ii)(b)~~ by the costs attributable to the events or situations under those clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon;

~~(iii)(c)~~ by agreement on a fixed price adjustment;

~~(iv)(d)~~ in another manner as the contracting parties may mutually agree; or

~~(v)(e)~~ in the absence of agreement by the parties, through unilateral determination by the district of the costs attributable to the events or situations under those clauses, with adjustment of profit or fee, all as computed by the district in accordance with applicable sections of the regulations issued pursuant to this chapter and subject to the provisions of Article 17 of this **chaptercode**.

~~(b)(2)~~ A contractor is required to submit cost or pricing data if an adjustment in contract price is subject to the provisions of Section 11-35-1830.

~~(C)-(3)~~ **Additional Contract Clauses.** The construction contracts and subcontracts may include clauses providing for appropriate remedies that cover as a minimum:

~~(1)-(a)~~ specified excuses for delay or nonperformance;

~~(2)-(b)~~ termination of the contract for default;

~~(3)-(c)~~ termination of the contract in whole or in part for the convenience of the district.

~~(D)-(4)~~ **Modification of Required Clauses.** The ~~chief~~ **Chief procurement Procurement officer Officer** may vary the clauses promulgated by the board pursuant to subsection (1) and subsection (3) of this section for inclusion in a particular construction contract if the variations are supported by a written determination that states the circumstances justifying the variations, if notice of a material variation is stated in the invitation for bids.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 42.

SECTION 11-35-3050. Cost principles regulations for construction contractors.

—The board may ~~promulgate issue~~ regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in construction contracts which provide for the reimbursement of costs.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

~~SECTION 11-35-3060. Fiscal responsibility.~~

~~—Every contract modification, change order, or contract price adjustment under a construction contract with the State is subject to Sections 2-47-40 and 2-47-50.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 43.~~

SECTION 11-35-3070. Approval of architectural, engineering, or construction changes which do not alter scope or intent or exceed approved budget.

—~~A district~~ **The District** may approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts, within the district's certification, which do not alter the original scope or intent of the project and which do not exceed the previously approved project budget.

HISTORY: 2008 Act No. 174, Section 6.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

Subarticle 5

Architect-Engineer, Construction Management, and Land Surveying Services

SECTION 11-35-3210. ~~Policy~~ Professional Services For Construction.

~~—Policy.—~~It is the policy of this State to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 32; 1997 Act No. 153, Section 1; 2008 Act No. 174, Section 15.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3215. Preference for resident design service; definitions; exceptions.

—(A) As used in this section:

(1) "Design services" means architect-engineer, construction management, or land surveying services as defined in Section 11-35-2910 and awarded pursuant to Section 11-35-3220 of this code.

(2) "Resident" means a business that employs, either directly or through consultants, an adequate number of persons domiciled in South Carolina to perform a majority of the design services involved in the procurement.

—(B) A business responding to an invitation involving design services shall submit a certification with its response stating whether the business is a resident for purposes of the procurement. Submission of a certification under false pretenses is grounds for suspension or debarment.

—(C) An award to a nonresident of a contract involving design services must be supported by a written determination explaining why the award was made to the selected firm.

—(D) In an evaluation conducted pursuant to Section 11-35-3220 of this code, a resident firm must be ranked higher than a nonresident firm if the agency selection committee finds the two firms otherwise equally qualified.

—(E) This section does not apply to a procurement if either the procurement does not involve construction or the design services are a minor accompaniment to a contract for nondesign services.

HISTORY: 2006 Act No. 375, Section 1; 2009 Act No. 72, Section 4.

Editor's Note

2009 Act No. 72, Section 6 provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued after that date; except that Sections 1, 2, and 4 of this act take effect upon and apply to solicitations issued after the first Monday in September following approval by the Governor."

SECTION 11-35-3220. Qualifications based selection procedures.

—(A) ~~Agency—District~~ **Selection Committee.** ~~A—The~~ district shall establish its own architect-engineer, construction management, and land surveying services selection committee,

referred to as the "District Selection Committee", which must be composed of those individuals the Superintendent determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The Superintendent or their qualified responsible designee shall sit as a permanent member of the agency selection committee for the purpose of coordinating and accounting for the committee's work. ~~To assist an agency selection committee in the selection of firms to be employed for significant or highly technical projects and to facilitate prompt selections, the agency selection committee may invite the State Engineer or his designee to sit as a nonvoting member of the committee.~~

—(B)(1) **Advertisement of Project Description.** The agency selection committee is 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.

~~(2)-(C)~~ The invitation must 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 agency selection committee shall file a copy of the project description and the invitation with the State Engineer's Office. The invitation must be advertised formally in an official state government publication. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method for subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.~~

—(C)(D) **Response to Invitation.** The date for submission of information from interested persons or firms in response to an invitation must not be less than fifteen days after publication of the invitation. Interested architect- engineer, construction management, and land surveying persons or firms shall 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 their successor forms or similar information as the board may prescribe by regulation, and other information that the particular invitation may require.

—(D)(E) **Interviews with Interested Firms.** Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least three persons or firms who respond to the committee's advertisement and who are considered most qualified on the basis of information available before the interviews. A list of firms selected for interview must be sent to all firms that submitted information in response to the advertisement, before the date selected for the interviews. If less than three persons or firms respond to the advertisement, the committee shall hold interviews with those that did respond. The ~~District Selection Committee's agency selection committee's~~ determination as to which are to be interviewed must be in writing and based upon its review and evaluation of all submitted materials. The written report of the committee must list specifically 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 is to provide the further information that may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

—(E)(F) **Selection and Ranking** of the Three Most Qualified.

(1) The ~~District Selection Committee~~ agency 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 workloads of the firms;
- (f) creativity and insight related to the project;
- (g) related experience on similar projects;
- (h) volume of work awarded by the using agency to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts by the ~~State District~~ among qualified firms including Minority Business Enterprises certified by the South Carolina Office of Small and Minority Business Assistance and firms that have not had previous ~~state District~~ work; and
- (i) any other special qualification required pursuant to the solicitation of the using agency.

(2) Based upon these evaluations, the ~~District Selection Committee~~ agency selection committee shall select the three persons or firms that, in its judgment, are the best qualified, ranking the three in priority order. The ~~District Selection Committee's~~ agency selection committee's report ranking the three chosen persons or firms must be in writing and include data substantiating its determinations.

~~(F)-(G)~~ Notice of Selection and Ranking. When it is determined by the ~~agency District~~ that the ranking report is final, written notification of the highest ranked person or firm must be sent immediately to all firms interviewed.

~~(G)-(H)~~ Negotiation of Contract. The Superintendent or its designee shall negotiate a contract for services with the most qualified person or firm at a compensation that is fair and reasonable to the ~~State District~~. If the Superintendent or its designee is unable to negotiate a satisfactory contract with this person or firm, negotiations must be terminated formally. Negotiations must commence in the same manner with the second and then the third most qualified until a satisfactory contract is negotiated. If an agreement is not reached with one of the three, additional persons or firms in order of their competence and qualifications must be selected after consultation with the ~~District Selection Committee~~ agency selection committee, and negotiations must be continued in the same manner until agreement is reached.

~~(I) State Engineer's Office Review. The Superintendent head of the district shall submit the following documents to the State Engineer's Office for its review:~~

- ~~(1) the written report of the agency selection committee, listing the persons or firms that responded to the invitation to submit information and enumerating the reasons of the committee for selecting the particular ones to be interviewed;~~
- ~~(2) the written ranking report of the agency selection committee and all data substantiating the determinations made in that report; and~~
- ~~(3) the tentative contract between the district and the selected person or firm.~~

~~—(I) Approval or Disagreement by State Engineer's Office. The State Engineer's Office has ten days to review the data submitted by the agency selection committee, and to determine its position with respect to the particular person or firm recommended for approval by the agency. If the State Engineer's Office disagrees with the proposal, it may contest the proposal by submitting the matter to the board for decision. In the event of approval, the State Engineer's Office shall notify immediately in writing the district and the person or firm selected of the award and authorize the district to execute a contract with the selected person or firm. In the event of disagreement, the State Engineer's Office immediately shall notify the district in writing of its intention to contest the ranking and the reasons for it. All contract negotiations by the governing body must be suspended pending a decision by the board concerning a contested ranking. The board shall hear contests at its next regularly scheduled meeting after notification of the district. If the board rules in support of the State Engineer's Office position, the district shall submit the name of another person or firm to the State Engineer's Office for consideration, selected in accordance with the procedures prescribed in this section. If the board rules in support of the district, the district must be notified in writing and authorized to execute a contract with the selected person or firm.~~

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 33; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 44; 2008 Act No. 174, Section 16.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3230. Exception for small architect-engineer and land surveying services contract.

—(A) **Procurement Procedures for Certain Contracts.** A district securing architect-engineer or land surveying service which is estimated not to exceed twenty-five thousand dollars **(\$25,000)** may award contracts by direct negotiation and selection, taking into account:

- (1) the nature of the project;
- (2) the proximity of the architect-engineer or land surveying services to the project;
- (3) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
- (4) past performance; and
- (5) ability to meet project budget requirements.

—(B) **Maximum Fees Payable to One Person or Firm.** Fees paid during the twenty-four **(24)** month period immediately preceding negotiation of the contract by a single district for professional services performed by an architectural-engineering or land surveying firm pursuant to Section **11-35-3230(A1) of this code** may not exceed seventy-five thousand dollars **(\$75,000)**. Persons or firms seeking to render professional services pursuant to this section shall furnish the district with whom the firm is negotiating a list of professional services, including fees paid for them, 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.

~~—(C) Submission of Contracts to State Engineer's Office. Copies of contracts, including the negotiated scope of services and fees, awarded pursuant to this section must be submitted to the State Engineer's Office for information.~~

~~(C)~~ **(D) Splitting of Larger Projects Prohibited.** A district may not break a project into small projects for the purpose of circumventing the provisions of Section ~~11-35-3220~~ of this code and this section.

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 34; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 45; 2008 Act No. 174, Section 17.

Editor's Note

2008 Act No. 174, Section 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

SECTION 11-35-3240. Manual for planning and execution of state permanent improvements.

~~—As relates to this code and the ensuing regulations, a "Manual for Planning and Execution of State Permanent Improvements" may be published by the board or its designee for use by governmental bodies and included, by reference, in the regulations of the board. The manual may be revised as the board considers necessary, except that proposed changes are not effective until the board has provided the public at least sixty days to make written comments after notice of the proposed changes is published in South Carolina Business Opportunities.~~

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 46.

SECTION 11-35-3245. Architect, engineer, or construction manager; performance of other work or construction work prohibited.

—(A) An architect or engineer performing design work, or a construction manager performing construction management services, both as described in Section 11-35-2910(1A) and (3C) of this code, under a contract awarded pursuant to the provisions of Section 11-35-3220 or Section 11-35-3230 of this code, may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction management firm has greater than a five percent interest.

—(B) For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. If the construction manager performs or is responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of State Code Section 41-15-210, then the construction management firm is subject to all applicable fines and penalties.

—(C) This section applies only to procurements for construction using the design-bid-build project delivery method.

~~HISTORY: 1991 Act No. 4, Section 1; 1994 Act No. 345, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 47; 2008 Act No. 174, Section 18.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

ARTICLE 10

VII. INDEFINITE DELIVERY CONTRACTS

SECTION 11-35-3310. Indefinite delivery contracts for construction items, architectural-engineering, and land surveying services.

~~—(A) **General Applicability.** Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedures in Section 11-35-3015(2B)(b2) of this code and for architectural-engineering and land-surveying services pursuant to Section 11-35-3220 of this code.~~

~~—(1) **Construction Services.** When construction services contracts are awarded, each contract must be limited to a total expenditure of seven hundred fifty thousand dollars (\$750,000) for a two-year period with individual project expenditures not to exceed one hundred fifty thousand dollars (\$150,000); however, for public institutions of higher learning, and for technical college service contracts authorized by the State Board for Technical and Comprehensive Education, these limits shall be one million dollars for total expenditures and two hundred fifty thousand dollars for individual expenditures within the time periods specified. The District shall establish working procedures for indefinite delivery construction contracts in compliance with S.C. Regulation section 19-445.2(H).~~

~~—(2) **Architectural-Engineering and Land-Surveying Services.** When architectural-engineering and land-surveying services contracts are awarded, each contract must be limited to a total expenditure of three hundred thousand dollars (\$300,000) for a two-year period with individual project expenditures not to exceed one hundred thousand dollars (\$100,000); however, for public institutions of higher learning, and for technical college service contracts authorized by the State Board for Technical and Comprehensive Education, these limits shall be five hundred thousand dollars for total expenditures and two hundred thousand dollars for individual expenditures within the time periods specified.~~

~~(B) **Small Indefinite Delivery Contracts.** Small indefinite delivery contracts for architectural-engineering and land-surveying services may be procured as provided in Section 11-35-3230 of this code. A contract established under this section must be subject to and included in the limitations for individual and total contract amounts provided in Section 11-35-3230 of this code, and any regulations promulgated except that for public institutions of higher learning, and for technical college delivery contracts authorized by the State Board for Technical and Comprehensive Education, the individual and total contract limits shall be fifty thousand and one hundred fifty thousand dollars, respectively.~~

~~HISTORY: 1993 Act No. 178, Section 35; 1997 Act No. 153, Section 1; 2008 Act No. 174, Section 19; 2011 Act No. 74, Pt V, Section 7, eff August 1, 2011.~~

~~Editor's Note~~

~~2008 Act No. 174, Section 21, provides as follows:~~

~~"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."~~

~~Effect of Amendment~~

~~The 2011 amendment rewrote the section.~~

ARTICLE 11

VIII. MODIFICATIONS AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

SECTION 11-35-3410. Contract clauses and their administration.

—(A) **Contract Clauses.** The board may promulgate regulations requiring the inclusion in state supplies, services, and information technology contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(1) the unilateral right of a district to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance; and

(2) variations occurring between estimated quantities of work in a contract and actual quantities.

—(B)(1) **Price Adjustments.** Adjustments in price pursuant to clauses ~~promulgated-issued~~ under subsection (~~1A~~) of this section shall be computed and documented with a written determination. The price adjustment agreed upon shall approximate the actual cost to the contractor, and all costs incurred by the contractor shall be justifiable compared with prevailing industry standards, including a reasonable profit. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:

(a) by unit prices specified in the contract or subsequently agreed upon;

(b) by the costs attributable to the events or situations under such clauses with adjustment for profit or fee, all specified in the contract or subsequently agreed upon;

(c) by agreement on a fixed price adjustment;

(d) by rates determined by the Public Service Commission and set forth in the applicable tariffs;

(e) in such other manner as the contracting parties may mutually agree; or

(f) in the absence of agreement by the parties, through unilateral determination by the district of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the district in accordance with applicable sections of the regulations issued under Article 13 of this chapter and subject to the provisions of Article 17 of this chapter.

(21) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 11-35-1830.

—(C) **Additional Contract Clauses.** The board shall be authorized to promulgate regulations requiring the inclusion in state supplies, services, and information technology contracts of clauses providing for appropriate remedies and covering the following subjects:

- (1) specified excuses for delay or nonperformance;
- (2) termination of the contract for default; and
- (3) termination of the contract in whole or in part for the convenience of the district.

—(D) **Modification of Clauses.** The Chief Procurement Officer may vary the usual clauses customarily included by the District under ~~§ Sections 3410-1(A) and § 3410-4(D) of this code~~ in any particular District contract.

~~The Chief Procurement Officer chief procurement officer may vary the clauses promulgated by the board under subsection (1) and subsection (3) of this section for inclusion in any particular state contract; provided, that any variations are supported by a written determination that states the circumstances justifying such variations; and provided, further, that notice of any such material variations shall be stated in the invitation for bids or request for proposals.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 48.~~

ARTICLE 13

IX. COST PRINCIPLES

SECTION 11-35-3510. Cost principles required for supplies and services contracts.

—The District may establish cost principles that must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in supplies, services, and information technology contracts that provide for the reimbursement of costs.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 49.~~

ARTICLE 15

X. SUPPLY MANAGEMENT

~~Subarticle 1
Warehouses and Inventory~~

~~SECTION 11-35-3620. Management of warehouses and inventory.~~

~~—Until such time as the General Assembly may act upon the warehousing and inventory management plan, all powers and responsibilities for management of warehouses and inventory shall be vested in the agency owning, renting, or leasing the warehouses or inventory.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~Subarticle 3~~

SECTION 11-35-3810. Regulations for sale, lease, transfer and disposal of surplus property.

(A) Subject to existing provisions of law, the board shall ~~promulgate~~ adopt regulations governing:

- (1) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods; (SC Code § 11-35-3810(1))
- (2) the transfer of excess supplies between schools and departments. (SC Code § 11-35-3810(2))

(B) Definition. Surplus property is all District owned supplies and equipment, not in actual public use, with remaining useful life and available for disposal. This definition and the ensuing provisions exclude the disposal of solid and hazardous wastes as defined by any federal, state or local statutes and regulations. (§19-445.2150(A)(1))

(C) Determination of Sale Price. (SC Reg. §19-445.2150(C)(2)). The sale price for all items will be established by the Chief Procurement Officer or the Chief Procurement Officer's designee. The Chief Procurement Officer or his/her designee shall have the final authority to accept or reject bids received via public sale. The following categories and methods will be used:

- (1) Vehicles: NADA loan value shall be used for the sale price. In certain instances, the most recent public sale figures and consultation with the generating governmental body shall be the basis for a sale price. (SC Reg. §19-445.2150(C)(2))
- (2) Boats, motors, heavy equipment, farm equipment, airplanes and other items with an acquisition cost in excess of \$5,000: The sale price shall be set from the most recent public sale figures and/or any other method necessary to establish a reasonable value including consultation with the generating district office. (SC Reg. §19-445.2150(C)(2))
- (3) Miscellaneous items with an acquisition cost of \$5,000 or less such as office furniture and machines, shop equipment, cafeteria equipment, etc.: A sale price will be assessed in accordance with the current fair market value. (SC Reg. §19-445.2150(C)(2))

(D) Public Sale of Surplus Property. (SC Reg. §19-445.2150(D)). All surplus property shall be offered through competitive sealed bids, ~~or public auction~~ or equivalent online auction or surplus sales process or service.

(1) When surplus property is sold via the competitive sealed bid process, notification of such sale shall be given through a Notice of Sale to be posted at the District Office at least fifteen (15) days prior to the bid opening date. The sale shall also be announced through advertisement in newspapers of general circulation and/or the South Carolina Business Opportunities publication. The Notice of Sale shall list the supplies or property offered for sale; designate the location and how property may be inspected; and state the terms and conditions of sale and instructions to bidders including the place, date, and time set for bid opening. Bids shall be opened publicly. (SC Reg. §19-445.2150(D)(2))

(2) Award shall be made in accordance with the provisions set forth in the Notice of Sale and to the highest responsive and responsible bidder provided that the price offered by such bidder is deemed reasonable by the Chief Procurement Officer or his/her designee. Where such price is not deemed reasonable, the bids may be rejected in whole, or in part, and the sale negotiated beginning with the highest bidder provided the negotiated sale price is higher than the highest responsive and responsible bid. In the event of a tie bid the award will be made in accordance with the tie bid procedure set forth in Section 1520.9 of the Code. (SC Reg. §19-445.2150(D)(2))

(3) Property may also be sold at a public auction by an experienced auctioneer. The Notice of Sale shall include, at a minimum, all terms and conditions of the sale and a statement clarifying the authority of the designee of the Chief Procurement Officer or his/her designee, to reject any and all bids. These auctions will be advertised in a newspaper of general circulation or *South Carolina Business Opportunities* or on the radio, or both. (SC Reg. §19-445.2150(D)(2))

(3)(4) Property may also be sold through the procured services of an online auctioning or surplus sales service. Such service shall be based on a master agreement under terms consistent with this Code. Fees for this service, if any, shall not incur a financial burden for the District relative to the disposal of the surplus items.

(E) Property sold to the public shall be paid for in full at the time of purchase. Transactions shall be documented by a Bill of Sale enumerating all conditions of the sale i.e., "as is, where is," etc. and must be signed by the purchaser. Personal checks with proper identification, certified checks, or money orders made payable to the District or cash shall be accepted as a form of payment. A copy of the Bill of Sale shall be presented to the purchaser and a copy along with the payment shall be forwarded to the Executive Director of Finance. (SC Reg. §19-445.2150(F)(7))

(F) **Other Means of Disposal.** (SC Reg. §19-445.2150(D)(3)) Some types and classes of items can be sold or disposed of more economically by some other means of disposal including barter. In such cases, and also where the nature of the supply or unusual circumstances necessitate its sale to be restricted or controlled, the Superintendent may employ such other means, including but not limited to appraisal, provided the Superintendent makes a written determination that such procedure is advantageous to the District.

(G) **Unauthorized Disposal.**

- (1) The ratification of an act of unauthorized and/or improper disposal of District property by any persons without the requisite authority to do so by an appointment or delegation under the Code rests with the **Chief Procurement Officer**. (SC Reg. §19-445.2150(I)(1))
- (2) Corrective Action and Liability. In all cases, the **Chief Procurement Officer** shall prepare a written determination describing the facts and circumstances surrounding the act, corrective action being taken to prevent recurrence, and action taken against the individual committing the act and shall report the matter in writing to the Superintendent within ten (10) days after the determination. (SC Reg. §19-445.2150(I)(2))

(H) Designation of Surplus Property. (SC Reg. §19-445.2150(D)(4)). Upon written determination by the Superintendent **or designee** that surplus property items are needed to comply with programs authorized by the board, the Superintendent may designate surplus property items for disposal in order to comply with the program requirements. The Superintendent **or designee** will develop and implement internal guidelines and procedures for the disposal of surplus property items designated as necessary to comply with the program requirements established by the Board.

(I) Authority to Debar or Suspend. (SC Reg. §19-445.2150(J)). The procedures and policies set forth in Section 4220 of the **thisProcurement** Code shall apply to the disposal of District property. The authority to debar a person from participation in the public sales of District-owned property shall rest with the **Chief Procurement Officer**.

~~—(1) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods designated by such regulations;~~
~~—(2) the transfer of excess supplies between agencies and departments.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~**SECTION 11-35-3820. Allocation of proceeds for sale or disposal of surplus supplies.**~~

~~—Except as provided in Section 11-35-1580 and Section 11-35-3830 and the regulations pursuant to them, the sale of all state-owned supplies, or personal property not in actual public use must be conducted and directed by the Division of General Services of the Department of Administration. The sales must be held at such places and in a manner as in the judgment of the Division of General Services is most advantageous to the State. Unless otherwise determined, sales must be by either public auction or competitive sealed bid to the highest bidder. Each district shall inventory and report to the division all surplus personal property not in actual public use held by that district for sale. The division shall deposit the proceeds from the sales, less expense of the sales, in the state general fund or as otherwise directed by regulation. This policy and procedure applies to all governmental bodies unless exempt by law.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 50; 2014 Act No. 121 (S.22), Pt V, Section 7.U, eff July 1, 2015.~~

~~Effect of Amendment~~

~~2014 Act No. 121, Section 7.U, substituted "Division of General Services of the Department of Administration" for "designated board office"; substituted "Division of General Services" for "designated board office"; substituted "report to the division" for "report to the designated~~

~~board office"; and substituted "The division shall deposit" for "The designated board office shall deposit".~~

SECTION 11-35-3830. Trade-in sales.

(A) Unless otherwise provided by law, the District may trade-in personal property, the trade-in value of which may be applied to the procurement or lease of like items. The trade-in value of such personal property shall not exceed an amount specified in § 3830(B)(3)-2.3. (SC Code § 11-35-3830(1))

(B) Approval of Trade-in Sales. When the trade-in value of personal property of the District exceeds the specified amount, the ~~board~~ **Chief Procurement Officer** shall have the authority to determine whether: (SC Code § 11-35-3830(2))

- (1) the subject personal property shall be traded in and the value applied to the purchase of new like items; or (SC Code § 11-35-3830(2)(a))
- (2) the property shall be classified as surplus and sold in accordance with the provisions of Section 3820. The District's determination shall be in writing and be subject to the provisions of this Code. (SC Code § 11-35-3830(2)(b))
- (3) The Chief Procurement Officer may trade in personal property, whose original unit purchase price did not exceed \$5,000, the trade in value of which must be applied to the purchase of new items. When the original unit purchase price exceeds \$5,000, the Chief Procurement Officer shall refer the matter to the **Chief Procurement Officer** for disposition. The **Chief Procurement Officer** shall have the authority to determine whether the property shall be traded in and the value applied to the purchase of new like items or classified as surplus and sold in accordance with the provisions of Section 3820 of the Code. When the original purchase price exceeds \$100,000, the Superintendent or his/her designee, shall make a written determination as to its reasonableness and document such trade-in transaction. (SC Reg. §19-445.2150(G))

(C) Record of Trade-in Sales. The ~~Chief~~ Procurement Officer shall submit quarterly to the **Chief Procurement Officer** a record listing all trade-in sales made under subsections (1) and (2) of this section. (SC Code § 11-35-3830(3))

~~(1) Trade-in Value. Unless otherwise provided by law, governmental bodies may trade in personal property, the trade-in value of which may be applied to the procurement or lease of like items. The trade-in value of such personal property shall not exceed an amount as specified in regulations promulgated by the board.~~

~~—(2) Approval of Trade-in Sales. When the trade-in value of personal property of a district exceeds the specified amount, the board shall have the authority to determine whether:~~

~~—(a) the subject personal property shall be traded in and the value applied to the purchase of new like items; or~~

~~—(b) the property shall be classified as surplus and sold in accordance with the provisions of Section 11-35-3820. The board's determination shall be in writing and be subject to the provisions of this chapter.~~

~~—(3) Record of Trade in Sales. Governmental bodies shall submit quarterly to the materials management officer a record listing all trade in sales made under subsections (1) and (2) of this section.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~SECTION 11-35-3840. Licensing for public sale of certain publications and materials.~~

~~—The division may license for public sale publications, including South Carolina Business Opportunities, materials pertaining to training programs, and information technology products that are developed during the normal course of its activities. The items must be licensed at reasonable costs established in accordance with the cost of the items. All proceeds from the sale of the publications and materials must be placed in a revenue account and expended for the cost of providing the services.~~

~~HISTORY: 1982 Act No. 466, Part II, Section 26; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 51; 2014 Act No. 121 (S.22), Pt V, Section 7.U, eff July 1, 2015.~~

~~Effect of Amendment~~

~~2014 Act No. 121, Section 7.U, substituted "The division" for "The State Budget and Control Board", and substituted "normal course of its activities" for "normal course of the board's activities".~~

SECTION 11-35-3850. Sale of unserviceable supplies.

(A) The District may sell any supplies owned by it after the supplies have become entirely unserviceable and can properly be classified as "junk", in accordance with procedures established by the board. All sales of unserviceable supplies by the District must be made in public to the highest bidder, after advertising for fifteen days. (SC Code § 11-35-3850)

(B) Definition and Sale of Junk. Junk is District-owned supplies and equipment having no remaining useful life in public service or the cost to repair or to refurbish the property in order to return it to public use would exceed the value of like used equipment with remaining useful life. (SC Reg. §19-445.2150(H))

~~Governmental bodies approved by the board may sell any supplies owned by it after the supplies have become entirely unserviceable and can properly be classified as "junk", in accordance with procedures established by the designated board office. All sales of unserviceable supplies by the district must be made in public to the highest bidder, after advertising for fifteen days, and the funds from the sales must be credited to the account of the district owning and disposing of the unserviceable supplies.~~

~~HISTORY: 2006 Act No. 376, Section 2.~~

~~Editor's Note~~

~~This section was formerly codified as Section 11-35-4020.~~

ARTICLE 17

XI. LEGAL AND CONTRACTUAL REMEDIES

Subarticle 1

Administrative Resolution Of Controversies

SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.

(A) Right to Protest; Exclusive Remedy.

(1) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the **Chief Procurement Officer** ~~appropriate-chief-procurement-officer~~ in the manner stated in subsection **(B2)(1a)** within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(2) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the **Chief Procurement Officer** ~~appropriate-chief-procurement-officer~~ in the manner stated in subsection **(B2)(2b)** within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to **(B)(1a)** as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(3) The rights and remedies granted in this article to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of the bidders, offerors, contractors, or subcontractors against the State.

(4) The rights and remedies granted by **subsection (1A)-) of this section and Section 11-35-4410(1A)(b2) of this code** are not available for contracts with an actual or potential value of up to fifty thousand dollars **(\$50,000)**.

(B) Protest Procedure.

(1) A protest pursuant to subsection **(A1)(1a)** must be in writing, filed with the chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the **Chief Procurement Officer** ~~appropriate-chief-procurement-officer~~ within the time provided in subsection (1).

(2) A protest pursuant to subsection **(A1)(b2)** must be in writing and must be received by the Chief Procurement Officer within the time limits established by subsection **(A1)(2b)**. At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection **(1A)(b2)**. A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(C) **Duty and Authority to Attempt to Settle Protests.** Before commencement of an administrative review as provided in subsection **(4D) of this section**, the Chief Procurement

Officer, or their designees may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The Chief Procurement Officer, or their designee has the authority to approve any settlement reached by mutual agreement.

(D) **Administrative Review and Decision.** If in the opinion of the Chief Procurement Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Chief Procurement Officer shall conduct promptly an administrative review. The Chief Procurement Officer or his designee shall commence the administrative review no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the review. The decision must state the reasons for the action taken.

(E) **Notice of Decision.** A copy of the decision under subsection (4D) of this section along with a statement of appeal rights pursuant to Section 11-35-4210(F6) of this code must be mailed or otherwise furnished immediately to the protestant and other party intervening. The Chief Procurement Officer, or his designee, also shall post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and the posted decision must indicate the date of posting on its face and must be accompanied by a statement of the right to appeal provided in Section 11-35-4210(F6) of this code.

(F) **Finality of Decision.** A decision pursuant to subsection (4D) of this section is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the District Procurement Review Panel pursuant to Section 11-35-4410(1A) of this code within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the Chief Procurement Officer, who shall forward the request to the panel or to the District procurement review panel, and must be in writing, setting forth the reasons for disagreement with the decision of the Chief Procurement Officer. The person also may request a hearing before the District procurement review panel. The Chief Procurement Officer and an affected district shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

(G) **Automatic Stay of Procurement During Protests.** In the event of a timely protest pursuant to subsection (1A) of this section, the State-District shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the Chief Procurement Officer-appropriate-chief-procurement-officer, or, in the event of timely appeal to the District Procurement Review Panel, until a decision is rendered by the panel; except that solicitation or award of a protested contract is not stayed if the Chief Procurement Officer-appropriate-chief-procurement-officer, after consultation with the Superintendent head-of-the-using-agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the StateDistrict.

(H) **Notice of Chief Procurement Officer Address.** Notice of the address of the Chief Procurement Officer appropriate-chief-procurement-officer must be included in every notice of an intended award and in every invitation for bids, request for proposals, or other type solicitation.

HISTORY: 1981 Act No. 148, Section 1; 1985 Act No. 109, Section 2; 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 52.

SECTION 11-35-4215. Posting of bond or irrevocable letter of credit.

—The Superintendent may ~~agency may request that the appropriate chief procurement officer~~ require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article 5 of this code and valued at one million dollars **(\$1,000,000)** or more to post ~~with the appropriate chief procurement officer~~ **District** a bond or irrevocable letter of credit payable to ~~the State of South Carolina~~ **Rock Hill School District Three of York County** in an amount equal to one percent of the total potential value of the contract as determined by the Superintendent ~~appropriate chief procurement officer~~. The ~~Superintendent's chief procurement officer's~~ decision to require a bond or irrevocable letter of credit is not appealable under Section **11-35-4210 of this code**. The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of intended award or award of a contract of the ~~purchasing agency's~~ **District's** request for sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the ~~requesting agency's~~ **District's** estimate of the contract amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the ~~Superintendent the appropriate chief procurement officer may accept a cashier's check or money order in the amount~~ of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the ~~agency~~ **District** prevails, it may request that the District procurement review panel allow it to recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier's check may be sought from the ~~agency~~ **District**. ~~requesting the bond or irrevocable letter of credit.~~

HISTORY: 1997 Act No. 153, Section 1.

SECTION 11-35-4220. Authority to debar or suspend.

—**(A) Authority.** After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the ~~Chief Procurement Officer~~ ~~appropriate chief procurement officer~~ has the authority to debar a person for cause from consideration for award of contracts or subcontracts if doing so is in the best interest of the ~~State~~ **District** and there is probable cause for debarment. The ~~Chief Procurement Officer~~ ~~appropriate chief procurement officer~~ also may suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. The period of debarment or suspension is as prescribed by the ~~Chief Procurement Officer~~ ~~appropriate chief procurement officer~~.

—**(B) Causes for Debarment or Suspension.** The causes for debarment or suspension shall include, but not be limited to:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or another offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a state contractor;

(3) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character regarded by the ~~Chief Procurement Officer~~ ~~appropriate-chief-procurement-officer~~ to be so serious as to justify debarment action:

(a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment;

(5) violation of an order of a chief procurement officer or the District procurement review panel; and

(6) any other cause the ~~Chief Procurement Officer~~ ~~appropriate-chief-procurement-officer~~ determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed in this subsection.

—**(C) Decision.** The ~~Chief Procurement Officer~~ ~~appropriate-chief-procurement-officer~~ shall issue a written decision to debar or suspend within ten days of the completion of his administrative review of the matter. The decision must state the action taken, the specific reasons for it, and the period of debarment or suspension, if any.

—**(D) Notice of Decision.** A copy of the decision pursuant to subsection (C) of this section and a statement of appeal rights pursuant to Section ~~11-35-4220(E5)~~ of this code must be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening. The ~~Chief Procurement Officer~~ ~~appropriate-chief-procurement-officer~~ also shall post a copy of the decision at a time and place communicated to all parties participating in the administrative review and the posted decision must indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section ~~11-35-4220(5E)~~ of this code.

—**(E) Finality of Decision.** A decision pursuant to subsection (3C) of this section is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the District procurement review panel pursuant to Section ~~11-35-4410(1A)~~ of this code, within ten days of the posting of the decision in accordance with Section ~~11-35-4220(D4)~~ of the code. The request for review must be directed to the ~~Chief Procurement Officer~~ ~~appropriate-chief-procurement-officer~~, who shall forward the request to the panel, or to the District procurement review panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of ~~Chief Procurement Officer~~ ~~the~~

~~appropriate chief procurement officer~~. The person also may request a hearing before the District procurement review panel. The appropriate chief procurement officer and any affected district must have the opportunity to participate fully in any review or appeal, administrative or legal.

—(F) **Scope of Debarment.** Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organization elements, or commodities. The ~~debarring official~~**Chief Procurement Officer** may extend the debarment decision to include any principals and affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond. For purposes of this section, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment. For purposes of this section, the term "principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions.

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 53.

SECTION 11-35-4230. Authority to resolve contract and breach of contract controversies.

(A)(A) Applicability. This section applies to controversies between a district and a contractor or subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between a district and a contractor or subcontractor, when the subcontractor is the real party in interest, concerning a contract solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code.

(B)(B) Request for Resolution; Time for Filing. Either the ~~district~~**District** or the contractor or subcontractor, when the subcontractor is the real party in interest, may initiate resolution proceedings ~~before the appropriate chief procurement officer~~ by submitting a request for resolution to the ~~Chief Procurement Officer~~**appropriate chief procurement officer** in writing setting forth the specific nature of the controversy and the specific relief requested with enough particularity to give notice of every issue to be decided. A request for resolution of contract controversy must be filed within one year of the date the contractor last performs work under the contract; except that in the case of latent defects a request for resolution of a contract controversy must be filed within three years of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

~~(C)(C)~~ Duty and Authority to Attempt to Settle Contract Controversies. Before commencement of an administrative review as provided in subsection (4D) of this section, the ~~Chief Procurement Officer-appropriate-chief procurement officer~~ or their designee shall attempt to settle by mutual agreement a contract controversy brought pursuant to this section. The ~~Chief Procurement Officer-appropriate-chief procurement officer~~ has the authority to approve any settlement reached by mutual agreement.

~~(D)(D)~~ Administrative Review and Decision. If, in the opinion of the ~~Chief Procurement Officer-appropriate-chief procurement officer~~, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the ~~Chief Procurement Officer-appropriate-chief procurement officer~~ or his designee promptly shall conduct an administrative review and issue a decision in writing within ten days of completion of the review. The decision must state the reasons for the action taken.

~~(E)(E)~~ Notice of Decision. A copy of the decision pursuant to subsection (4D) of this section and a statement of appeal rights under Section 4230(F) of this code 11-35-4230(6) must be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The ~~Chief Procurement Officer-appropriate-chief procurement officer~~ also shall post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and the posted decision must indicate the date of posting on its face and must be accompanied by a statement of the right to appeal provided in Section 11-35-4230(6F) of this code.

(F) Finality of Decision. A decision pursuant to subsection (4D) of this section is final and conclusive, unless fraudulent or unless a person adversely affected requests a further administrative review by the District Procurement Review Panel pursuant to Section 11-35-4410(A1) of this code within ten days of the posting of the decision in accordance with Section 11-35-4230(5E) of this code. The request for review must be directed to the ~~Chief Procurement Officer-appropriate-chief procurement officer~~, who shall forward the request to the panel, or to the District Procurement Review Panel, and must be in writing setting forth the reasons why the person disagrees with the decision of the ~~Chief Procurement Officer~~. The person also may request a hearing before the District Procurement Review Panel. The appropriate chief procurement officer and any affected district shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 54.~~

~~Subarticle 2~~ ~~Remedies~~

SECTION 11-35-4310. Solicitations or awards in violation of the law.

(A) Applicability. The provisions of this section apply where it is determined by either the ~~Chief Procurement Officer-appropriate-chief procurement officer~~ or the District Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by either the ~~Chief Procurement Officer-appropriate-chief procurement officer~~ after review under Section

11-35-4210 of this code or by the District Procurement Review Panel after review under Section **11-35-4410(A1) of this code**.

(B) Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:

- (1) canceled;
- (2) revised to comply with the law and rebid; or
- (3) awarded in a manner that complies with the provisions of this code.

(C) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law;

- (1) the contract may be ratified and affirmed, provided it is in the best interests of the District; or
- (2) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

(D) Entitlement to Costs. In addition to or in lieu of any other relief, when a protest submitted under Section **11-35-4210 of this code** is sustained, and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs.

HISTORY: 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1.

SECTION 11-35-4320. Contract controversies.

—Remedies available in a contract controversy brought under the provisions of Section **11-35-4230 of this code**. The ~~Chief Procurement Officer~~ **appropriate chief procurement officer** or the District Procurement Review Panel, in the case of review under Section **11-35-4410(A1) of this code**, may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.

HISTORY: 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1.

SECTION 11-35-4330. Frivolous protests.

(A) Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read the document, to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and it is not interposed for an improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

(B) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document that is filed with the **Chief Procurement Officer or the District Procurement Review Panel** is signed in violation of this subsection, the District Procurement Review Panel, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction that may include an order to pay to the other party or

parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

(C) Filing. A motion regarding a matter that is not otherwise before the panel may not be filed until after a final decision has been issued by the appropriate chief procurement officer. A motion for sanctions pursuant to this section must be filed with the panel no later than fifteen days after the later of either the filing of a request for review, protest, motion, or other document signed in violation of this section, or the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions.

HISTORY: 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 55.

Subarticle 3
Review Panel

SECTION 11-35-4410. District Procurement Review Panel.

(A) Creation. There is created the District's Procurement Review Panel which is charged with the responsibility to review and determine de novo:

(1) requests for review of written determinations of the ~~Deputy Superintendent~~Chief Procurement Officer pursuant to Sections ~~11-35-4210(6E)~~, ~~11-35-4220(5E)~~, and ~~11-35-4230(6F)~~; and

(2) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the ~~Deputy Superintendent~~Chief Procurement Officer in a timely and appropriate manner pursuant to Sections ~~11-35-4210~~, ~~11-35-4220~~, or ~~11-35-4230 of this code~~, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the District procurement review panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(B) Membership. The panel must be composed of:

(1) A member of the Board, appointed by the Board Chairman, who will chair the Panel;

(2) For one year terms running from July 1 through June 30 annually, four persons from the community (either residing or employed by or owning businesses headquartered within the Rock Hill School District 3 boundary). None of these persons shall be an employee of the Rock Hill School District Three, and each should be well respected representatives of one or more of the professions and businesses affected by this Code, including, but not limited to:

(a) goods and services

(b) information technology

(c) construction

(d) architecture, engineering, construction management, and land surveying.

(3) One of these persons will be appointed ~~by the Chair of the Board of Trustees, one by the Vice Chair of the Board of Trustees, one by the Superintendent, and one by the Chief Procurement~~ **Official Officer**, and one by the Procurement Officer, in that order;

(4) When a vacancy is created, including annual new appointments, the official responsible for originally appointing the member vacating his or her seat shall appoint the successor to complete the term of service.

(5) Members may be reappointed to succeed themselves.

(C) Chairperson and Meetings. The panel ~~shall elect a chairman from the members at large and~~ shall meet as often as necessary to afford a swift resolution of the controversies submitted to it.

(1) Three members present and voting shall constitute a quorum. In the case of a tie vote, the decision of the ~~Chief Procurement Officer~~ Superintendent is sustained and final.

(2) At-large members of the panel ~~may~~ must be paid per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees. Current amounts and rates offered shall be as listed in the district Purchasing Procedures Manual.

(3) Members of the panel shall recuse themselves in any matter in which they have an actual or apparent conflict of interest.

(D) Jurisdiction.

(1) Notwithstanding the provisions of Chapter 23, Title 1 or another provision of law, the Administrative Procedures Act does not apply to administrative reviews conducted by either the chief procurement officer or the District procurement review panel. The District procurement review panel is vested with the authority to:

(a) establish its own rules and procedures for the conduct of its business and the holding of its hearings;

(b) issue subpoenas;

(c) interview any person it considers necessary; and

(d) record all determinations.

(2) A party aggrieved by a subpoena issued pursuant to this provision shall apply to the panel for relief.

~~HISTORY: 1981 Act No. 148, Section 1; 1982 Act No. 431, Section 1; 1993 Act No. 178, Section 36; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 56; 2006 Act No. 387, Section 11.~~

SECTION 11-35-4420. Participation in review.

—The Chief Procurement Officer and Chief Procurement officer of the district shall have the opportunity to participate fully as a party in a matter pending before the District procurement

review panel and in an appeal of a decision of the District procurement review panel, whether administrative or judicial.

HISTORY: 2006 Act No. 376, Section 3.

ARTICLE 19

XII. INTERGOVERNMENTAL RELATIONS

Subarticle 1 Definitions

SECTION 11-35-4610. Definitions of terms used in this article.

—As used in this article, unless the context clearly indicates otherwise:

(A) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.

(B) "External procurement activity" means:

(1) any buying organization not located in this State which would qualify as a public procurement unit;

(2) buying by the United States government.

(C) "Local public procurement unit" means any political subdivision or unit thereof which expends public funds for the procurement of supplies, services, or construction.

(D) "Mandatory opting" is the requirement for a local procurement unit to choose whether to utilize a state contract before it is established as prescribed in regulation by the board.

(E) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(F) "State public procurement unit" means the offices of the chief procurement officers and any other purchasing agency of this State.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

Subarticle 3

XIII. COOPERATIVE PURCHASING

SECTION 11-35-4810. Cooperative purchasing authorized.

—Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units or external procurement activities 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 and open-ended state public procurement unit contracts which shall be made available to local

public procurement units, except as provided in Section **11-35-4820 of this code** or except as may otherwise be limited by the board through regulations.

However, thirty days' notice of a proposed multi-state solicitation must be provided through central advertising and such contracts may be only awarded to manufacturers who will be distributing the products to South Carolina governmental bodies through South Carolina vendors; provided, however, that the provisions of this paragraph do not apply to public institutions of higher learning if the institution demonstrates a cost savings to the Office of State Procurement in regard to the multi-state solicitation and procurement.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2011 Act No. 74, Pt V, Section 8, eff August 1, 2011.~~

~~Effect of Amendment~~

~~The 2011 amendment in the second undesignated paragraph substituted "days" for "days", substituted "must" for "shall", and added the exception at the end relating to demonstrated cost savings.~~

SECTION 11-35-4820. Selective mandatory opting.

—As prescribed in regulation by the board, any local public procurement unit may purchase from or through the State at any time; provided, however, that the board may impose a requirement upon the localities for mandatory opting in or out of any particular contract before it is established. Mandatory opting shall be imposed only where it is necessary to obtain more cost effective contracts for the State.

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

SECTION 11-35-4830. Sale, acquisition, or use of supplies by a public procurement unit.

—Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity in accordance with the requirements of Articles 5 and 15 of this chapter; provided, that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.

~~HISTORY: 1981 Act No. 148, Section 1; 1982 Act No. 431, Section 2; 1997 Act No. 153, Section 1.~~

SECTION 11-35-4840. Cooperative use of supplies or services.

—Any public procurement unit may enter into an agreement in accordance with the requirements of Articles 5 and 15 of this chapter with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties; provided, that such cooperative use of supplies or services shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.

~~HISTORY: 1981 Act No. 148, Section 1; 1982 Act No. 431, Section 3; 1997 Act No. 153, Section 1.~~

SECTION 11-35-4850. Joint use of facilities.

—Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-4860. Supply of personnel, information, and technical services.

(A) Supply of Personnel. Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement activity, to provide personnel services to the requesting public procurement unit or external procurement activity with or without pay by the recipient governmental unit as may be agreed upon by the parties involved.

(B) Supply of Services. The informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement activity provided, that the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement activity. The payment shall be in accordance with an agreement between the parties.

(C) State Information Services. Upon request, the chief procurement officers may make available to public procurement units or external procurement activities the following services among others:

- (1) standard forms;
- (2) printed manuals;
- (3) product specifications and standards;
- (4) quality assurance testing services and methods;
- (5) qualified product lists;
- (6) source information;
- (7) common use commodities listings;
- (8) supplier prequalification information;
- (9) supplier performance ratings;
- (10) debarred and suspended bidders lists;
- (11) forms for invitations for bids, requests for proposals, instruction to bidders, general contract provisions and other contract forms;
- (12) contracts or published summaries thereof, including price and time of delivery information.

(D) State Technical Services. The State, through the chief procurement officers, may provide the following technical services among others:

- (1) development of products specifications;

(2) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(3) use of product testing and inspection facilities;

(4) use of personnel training programs.

(E) Fees. The chief procurement officers may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (3) and (4) of this section.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153.

SECTION 11-35-4870. Use of payments received by a supplying public procurement unit.

—All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying personnel or services shall be governed by any provisions of law concerning nonbudgeted revenue of the recipient entity.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-4880. Public procurement units in compliance with code requirements.

—Where the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this code, any public procurement unit participating in such a purchase shall be deemed to have complied with this code. Public procurement units shall not enter into a cooperative purchasing agreement for the purpose of circumventing this code.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-4890. Review of procurement requirement.

—To the extent possible, the chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by local public procurement units, which shall be required to respond appropriately as a precondition for participation in state contracts as governed by regulations promulgated by the board. The chief procurement officer shall make available all such information to any public procurement unit upon request.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

ARTICLE 21

Assistance to Minority Businesses

Subarticle 1

XIV. DEFINITIONS AND CERTIFICATION

SECTION 11-35-5010. Definitions of terms used in this article.

~~—The board Board may promulgate adopt~~ regulations establishing detailed definitions of the following terms using, in addition to the criteria set forth in this section, such other criteria as it may deem desirable.

~~(A±) "Minority person" for the purpose of this article, means a United States citizen who is economically and socially disadvantaged.~~

~~{a1} "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, and other minorities to be designated by the board or designated agency.~~

~~(b2) "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.~~

~~(2B) A "socially and economically disadvantaged small business" means any small business concern which:~~

~~(a1) is at least fifty-one percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged.~~

~~(b2) in the case of a concern which is a corporation, fifty-one percent of all classes of voting stock of such corporation must be owned by an individual determined to be socially and economically disadvantaged.~~

~~(c3) in the case of a concern which is a partnership, fifty-one percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.~~

~~Subarticle 3~~

XV. ASSISTANCE TO MINORITY BUSINESSES

SECTION 11-35-5210. Statement of policy and its implementation.

(A) Statement of Policy. The South Carolina General Assembly declares that business firms owned and operated by minority persons have been historically restricted from full participation in our free enterprise system to a degree disproportionate to other businesses. ~~The General Assembly believes that it is in the state's best interest to assist minority-owned businesses to develop fully as a part of the state's policies and programs which are designed to promote balanced economic and community growth throughout the State. The General Assembly, therefore, wishes~~**Board intends** to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process of the ~~State~~**District**. The ~~General Assembly~~**Board of Trustees of Rock Hill School District Three of York County**, therefore, takes this leadership role in setting procedures that will result in

awarding contracts and subcontracts to minority business **enterprise (MBE)** firms in order to enhance minority capital ownership, overall state economic development and reduce dependency on the part of minorities.

(B) Implementation. ~~The Board~~**Chief procurement officers** shall implement the policy set forth in subsection ~~(1A)~~ of this section in accordance with the provisions of Section ~~11-35-5220~~ **of this code**.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1.

SECTION 11-35-5220. Duties of the chief procurement officer.

(A) Assistance from the ~~Chief Procurement Officers~~**District**. The ~~chief procurement officers~~**District** shall provide appropriate **staffs** to assist minority businesses with the procurement procedures developed pursuant to this code.

(B) Special Publications. The ~~chief procurement officers~~**District** in cooperation with other appropriate private and state agencies may issue supplementary instructions designed to assist minority businesses with ~~the state district~~ procurement procedures.

(C) Source Lists. ~~Chief procurement officers~~**The District** shall maintain special source lists of minority business firms detailing the products and services which they provide. These lists shall be made available to agency purchasing personnel.

(D) Solicitation Mailing Lists. The ~~District~~**chief procurement officers** shall include and identify **certified South Carolina based** minority businesses on the ~~state's District's~~ bidders' list and shall ensure that these firms are solicited on an equal basis within nonminority firms.

(E) Training Programs. The ~~District~~ **chief procurement officers** shall work with appropriate state offices and minority groups in conducting seminars to assist minority business owners in learning how to do business with the State.

(F) Fee Waivers. Upon request by an MBE certified by the Small and Minority Business Assistance Office, user or subscription fees for services provided by the ~~chief procurement officers~~**District** may be waived for an MBE.

HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 57.

SECTION 11-35-5230. Regulations for negotiation with state minority firms.

(A) The ~~board~~**District** shall ~~promulgate regulations that~~ designate such procurement contracts as it may deem appropriate for negotiation with certified, South Carolina-based minority firms, as defined by this subarticle. Among the criteria that shall be used to determine such designations are:

- (1) The total dollar value of procurement in South Carolina.
- (2) The availability of South Carolina-based minority firms.
- (3) The potential for breaking the contracts into smaller units, where necessary, to accommodate such firms.
- (4) Insuring that the State shall not be required to sacrifice quality of goods or services.

(5) Ensuring that the price has been determined to be fair and reasonable, and competitive both to the State and to the contractor.

~~(B)(1) Firms with state contracts that subcontract with minority firms shall be eligible for an income tax credit equal to four percent of the payments to minority subcontractors for work pursuant to a state contract. Such subcontractors must be certified as to the criteria of a minority firm as defined in Section 11-35-5010 of this code and any regulations which may be promulgated thereunder.~~

~~—(2) The tax credit is limited to a maximum of fifty thousand dollars annually. A firm is eligible to claim a tax credit for a period of ten years from the date the first income tax credit is claimed.~~

~~—(3) Any firm desiring to be certified as a minority firm shall make application to the Small and Minority Business Assistance Office (SMBAO) as defined by Section 11-35-5270, on such forms as may be prescribed by that office.~~

~~—(4) Firms claiming the income tax credit shall maintain evidence of work performed for a state contract by minority subcontractors and shall present such evidence on a form and in a manner prescribed by the Department of Revenue at the time of filing its state income tax return and claim such credit at the time of filing. All records shall be available for audit by the Department of Revenue in accordance with prevailing tax statutes.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 181, Section 96; 1995 Act No. 76, Section 8; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 58.~~

~~Editor's Note~~

~~1995 Act No. 76, Section 25, provides as follows:~~

~~"Upon approval by the Governor, this act is effective for taxable years beginning after 1995."~~

SECTION 11-35-5240. Minority business enterprise (MBE) Utilization Plan.

(A) To emphasize the use of minority small businesses, the District shall develop a Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan must include, but not be limited to:

~~—(1) the name of the governmental body;~~

~~(21) a policy statement expressing a commitment by the Board of Trustees governmental body to use MBEs in all aspects of procurement;~~

~~(32) the name of the coordinator responsible for monitoring the MBE Utilization Plan;~~

~~(43) goals that include expending with Minority Business Enterprises certified by the Office of Small and Minority Business Assistance an amount equal to ten percent (10%) of the District's total dollar amount of funds expended;~~

~~(54) solicitation of certified minority vendors, a current list of which must be supplied by the Office of Small and Minority Business Assistance, in each commodity category for which the minority vendor is qualified. The current listing of qualified minority vendors must be made available by the Office of Small and Minority Business Assistance on a timely basis;~~

~~(65) procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation;~~

~~(76) procedures to be used when the district governmental body subcontracts the scope of service to another governmental body; the district responsible governmental body may set goals for the subcontractor in accordance with the MBE goal and the responsible governmental~~

body may allow the subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.

~~(B) MBE utilization plans must be submitted to the SMBAO for approval no later than July thirtieth, annually. Upon petition by the governmental body, SMBAO may authorize an MBE utilization plan that establishes a goal of less than ten percent of the governmental body's total dollar amount of funds expended. Progress reports must be submitted to the SMBAO no later than thirty days after the end of each fiscal quarter and contain the following information:~~

~~— (1) number of minority firms solicited;~~

~~— (2) number of minority bids received;~~

~~— (3) total dollar amount of funds expended on contracts awarded to minority firms certified pursuant to Section 11-35-5230; and~~

~~— (4) total dollar amount of funds expended.~~

~~(C) For purposes of this section, and notwithstanding the Administrative Procedures Act, the executive director of the board shall establish a definition for the phrase "total dollar amount of funds expended".~~

~~HISTORY: 1981 Act No. 148, Section 1; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 59.~~

SECTION 11-35-5250. Progress payments and letters of credit.

(A) Progress Payments. The District may make special provisions for progress payments and letters of credit, as deemed reasonable to assist minority vendors to carry out the terms of a contract.

(B) Letter of Contract Award. Upon request, when an MBE receives a District contract, the Chief Procurement Officer shall furnish a letter, stating the dollar value, the duration of, the payment schedule, and other information concerning the contract, which may be used by the certified minority firm to negotiate lines of credit with lending institutions.

~~—(1) Progress Payments. The chief procurement officers may make special provisions for progress payments and letters of credit, as deemed reasonable to assist minority businesses to carry out the terms of a state contract pursuant to regulations which may be promulgated by the board.~~

~~—(2) Letter of Contract Award. When a minority business firm certified by the Department of Revenue receives a contract with the District, the appropriate chief procurement officer shall furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the minority firm in negotiating lines of credit with lending institutions.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 181, Section 97; 1997 Act No. 153, Section 1.~~

SECTION 11-35-5260. Reports of number and dollar value of contracts awarded to minority firms.

—The Superintendent shall report annually in writing to the Board concerning the number and dollar value of contracts awarded to a firm certified as a minority firm pursuant to Section

11-35-5230 during the preceding fiscal year. These records must be maintained to evaluate the progress of this program.

~~HISTORY: 1981 Act No. 148, Section 1; 1995 Act No. 145, Part II, Section 15; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 60.~~

SECTION 11-35-5270. Division of Small and Minority Business Contracting and Certification.

~~—The Division of Small and Minority Business Contracting and Certification must be established within the Department of Administration to assist the Department of Administration and the Department of Revenue in carrying out the intent of this article. The responsibilities of the division include, but are not limited to, the following:~~

~~—(1) assisting the chief procurement officers and governmental bodies in developing policies and procedures which will facilitate awarding contracts to small and minority firms;~~

~~—(2) assisting the chief procurement officers in aiding small and minority owned firms and community based business in developing organizations to provide technical assistance to minority firms;~~

~~—(3) assisting with the procurement and management training for small and minority firm owners;~~

~~—(4) assisting in the identification of responsive small and minority firms;~~

~~—(5) receiving and processing applications to be registered as a minority firm in accordance with Section 11-35-5230(B);~~

~~—(6) revoking the certification of any firm that has been found to have engaged in any of the following:~~

~~—(a) fraud or deceit in obtaining the certification;~~

~~—(b) furnishing of substantially inaccurate or incomplete information concerning ownership or financial status;~~

~~—(c) failure to report changes which affect the requirements for certification;~~

~~—(d) gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of his business; or~~

~~—(e) wilful violation of any provision of this article.~~

~~—(7) After a period of one year, the division may reissue a certificate of eligibility provided acceptable evidence has been presented to the commission that the conditions which caused the revocation have been corrected.~~

~~HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 181, Section 98; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 61; 2014 Act No. 121 (S.22), Pt V, Section 7.V, eff July 1, 2015.~~

~~Effect of Amendment~~

~~2014 Act No. 121, Section 7.V, rewrote the section.~~

ARTICLE 23

Statewide Provisions

~~SECTION 11-35-5300. Prohibition of contracting with discriminatory business.~~

~~—(A) A public entity may not enter into a contract with a business to acquire or dispose of supplies, services, information technology, or construction unless the contract includes a representation that the business is not currently engaged in, and an agreement that the~~

~~business will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in this article.~~

~~—(B) For purposes of this section:~~

~~—(1) "Boycott" means to blacklist, divest from, or otherwise refuse to deal with a person or firm when the action is based on race, color, religion, gender, or national origin of the targeted person or entity. "Boycott" does not include:~~

~~—(a) a decision based on business or economic reasons, or the specific conduct of a targeted person or firm;~~

~~—(b) a boycott against a public entity of a foreign state when the boycott is applied in a nondiscriminatory manner; and~~

~~—(c) conduct necessary to comply with applicable law in the business's home jurisdiction.~~

~~—(2) "Public entity" means the State, or any political subdivision of the State, including a school district or agency, department, institution, or other public entity of them.~~

~~—(3) A "jurisdiction with whom South Carolina can enjoy open trade" includes World Trade Organization members and those with which the United States has free trade or other agreements aimed at ensuring open and nondiscriminatory trade relations.~~

~~—(C) This section does not apply if a business fails to meet the requirements of subsection (A) but offers to provide the goods or services for at least twenty percent less than the lowest certifying business. Also, this section does not apply to contracts with a total potential value of less than ten thousand dollars.~~

~~—(D) Failure to comply with a provision of this section is not grounds for a protest filed pursuant to Section 11-35-4210 or any other preaward protest process appearing in a procurement ordinance adopted by a political subdivision pursuant to Section 11-35-50 or Section 11-35-70, or similar law.~~

~~HISTORY: 2015 Act No. 63 (H.3583), Section 1, eff June 4, 2015.~~

~~Editor's Note~~

~~2015 Act No. 63, Section 5, provides as follows:~~

~~"Section 5. This act takes effect upon approval by the Governor and does not apply to contracts entered into before the effective date of this act."~~



Personnel Department
Phone: 803-981-1024 - Fax: 803-981-1025

Memo

TO: Dr. Kelly Pew

FROM: Dr. Tanya Campbell

DATE: October 19, 2017

SUBJECT: "G" Policies- Personnel Policies

Attached is the fourth set of "G" policies that have been prepared for first read. These policies have been revised with the assistance of our legal counsel, Kathy Mahoney. The recommendations are based on the firm's work with school districts throughout the State and knowledge of revisions to State and federal laws and regulations, and they take into consideration any policy update recommendations made by SCSBA. We will not be convening a committee to review personnel policies. Employees will be given the opportunity to give feedback on the suggested revisions when Mr. Frost solicits feedback via all user email.

Most additions and deletions within the policies below are updates for clarification, legal statutes, and/or wording. Additions are in red text and deletions are noted by strike through of text.

Based on board feedback, the wording has been corrected within Policy GBGA. That correction is in blue font.

Attachments (7):

GBEBC	Gifts To and Solicitations of Staff
GBEBC-R	Administrative Rule
GBEC	Drug-Free and Alcohol-Free Schools/Workplace
GBED	Tobacco-Free Schools/Staff
GBED-R	Administrative Rule

GBG
GBGA

Staff/Welfare Protection
Staff Health

[DRAFT]

Policy

GIFTS TO AND SOLICITATIONS OF STAFF

Code GBEBC Issued _____

Purpose: To establish the basic structure regarding solicitation of staff members and the giving of gifts to staff members.

Selling items for personal profit

In the interest of preserving a completely professional relationship between District employees and those whom they serve, it is the policy of the Board not to permit school employees to sell on school premises for personal profit products of any kind to students, staff, or patrons of the school in which they teach.

Soliciting of staff

Only organizations, businesses, or individuals affiliated with the District may solicit funds from staff members within the schools or distribute flyers or other materials related to fund drives through the schools without the approval of the Superintendent or his/her designee. Staff members will not be made responsible or assume responsibility for the collection of any money or distribution of any fund drive literature within the schools without such activity having the Superintendent's approval of the Superintendent or his/her designee. Additionally, staff members will be told that they are not obligated to participate in any fund drive. The Board expects such activities to be kept to a minimum.

Gifts to staff members

Staff members may accept no personal gifts, bonuses or gratuities from companies engaged in business or seeking to do business with the District -- consistent with guidelines issued by the State Ethics Commission. Exceptions to this policy are the acceptance of minor items that are generally distributed by the company or organization through their public relations program. Any gifts received as the result of the District's business, financial or operational affairs will accrue to the school system as a unit.

Adopted 4/27/78; Revised 2/26/90, 2/23/93, 10/23/00, 9/23/13, ___/17

Legal references:

- A. S.C. Code, 1976, as amended:
 - 1. Section 8-13-100, et seq. - Ethics, government accountability and campaign reform.
 - 2. Section 8-15-10, et seq. - Local or local and state officers and employees generally.
 - 3. Section 16-17-420 - Prohibits activities that disturb school.

YORK 3 / ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GBEC Gifts to and Solicitations of Staff

Policy GBEC Gifts to and Solicitations of Staff

Issued 9/13

Purpose: To establish the basic structure regarding solicitation of staff members and the giving of gifts to staff members.

Selling items for personal profit

In the interest of preserving a completely professional relationship between district employees and those whom they serve, it is the policy of the board not to permit school employees to sell on school premises for personal profit products of any kind to students, staff, or patrons of the school in which they teach.

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(Cf. KF)

Adopted 4/27/78; Revised 2/26/90, 2/23/93, 10/23/00, 9/23/13

Legal references:

S. C. Code, 1976, as amended:

Section 8-13-100, et seq. - Ethics, government accountability and campaign reform.Section 8-15-10, et seq. - Local or local and state officers and employees generally.Section 16-17-420 - Prohibits activities that disturb school.

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Administrative Rule

GIFTS TO AND SOLICITATIONS BY STAFF

Code GBEBC-R Issued _____

Schools and the District office are often contacted in regard to supporting fundraising events or activities that are being held in the community. To address such requests, the following administrative rule will become effective immediately:

- (1) Schools and the central office in Rock Hill School District Three will continue to participate in the annual United Way campaign or other community initiatives with the expressed approval of the Superintendent. However, while employees may be encouraged to participate, participation will still be voluntary.
- (2) No school or the District office will designate a District employee to sell tickets or collect money for tickets for any fundraising activity that is not sponsored by the school or the District.
- (3) The Office of Information Services will continue to inform employees of school and community fundraisers with contact numbers so employees can order tickets or make arrangements for donations on their personal time.
- (4) Posters or flyers publicizing a community fundraiser, and approved by the Office of Information Services, may also be made available to the schools for the purpose of keeping employees better informed and connected to the community.

Issued 2/11/08; Revised ____/17

YORK 3 /ROCK HILL SCHOOL DISTRICT**G - Personnel****Policy GBEBG Gifts to and Solicitations of Staff****AR GBEBG-R Gifts To And Solicitations By Staff****AR GBEBG-R Gifts To And Solicitations By Staff**

Issued 2/08

Schools and the district office are often contacted in regard to supporting fundraising events or activities that are being held in the community. To address such requests, the following administrative rule will become effective immediately:

- (1) Schools and the central office in Rock Hill School District Three will continue to participate in the annual United Way campaign or other community initiatives with the expressed approval of the superintendent. However, while employees may be encouraged to participate, participation will still be voluntary.
- (2) No school or the district office will designate a district employee to sell tickets or collect money for tickets for any fundraising activity that is not sponsored by the school or the district.
- (3) The Office of Information Services will continue to inform employees of school and community fundraisers with contact numbers so employees can order tickets or make arrangements for donations on their personal time.
- (4) Posters or flyers publicizing a community fundraiser, and approved by the Office of Information Services, may also be made available to the schools for the purpose of keeping employees better informed and connected to the community.

Issued 2/11/08

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Policy

DRUG-FREE AND ALCOHOL-FREE SCHOOLS/WORKPLACE

Code GBEC Issued _____

Purpose: To establish the basic structure to ensure the Board's vision of a workplace and school environment free of drugs and alcohol.

The School District is committed to providing a drug and alcohol free learning environment and workplace. Drug and alcohol abuse at school or in connection with school-sponsored activities on or off school grounds threatens the health and safety of our students and our employees and adversely affects the educational mission of the schools.

Employees

No employee will unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any drug on or in the workplace. "Drug" means any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, any counterfeit drug, imitation controlled substance, "lookalike" substance, synthetic drug or designer drug (bath salts and synthetic marijuana) or any other controlled substance as defined by the act and regulation cited below. No employee will manufacture, distribute, dispense, possess, use or be under the influence of alcohol on or in the workplace.

"Workplace" means the site for the performance of work. That includes any school building or any school premises and any school-owned vehicle or any other school-approved vehicle used to transport students to and from school or school activities. It also includes off-school property during any school-sponsored or school-approved activity, event or function such as a field trip or athletic event where students are under the jurisdiction of the School District.

As a condition of employment, each employee ~~must~~ will notify his/her supervisor immediately of his/her arrest or conviction of any criminal drug or alcohol statute. ~~for a violation occurring in the workplace as defined above. The employee must notify the supervisor no later than forty-eight (48) hours after such arrest or conviction.~~

As a condition of employment, each employee must abide by the terms of the School District policy respecting a drug-free and alcohol-free workplace.

Any employee who violates the terms of this policy will be subject to disciplinary action including, but not limited to, nonrenewal, suspension or termination at the discretion of the Board.

The Board will take such action in accordance with district policies and regulations as well as

PAGE 2 – GBEC – DRUG-FREE AND ALCOHOL-FREE SCHOOLS/WORKPLACE

applicable State and federal law.

The Board directs the administration to establish a drug-free awareness program in the District to include information on the dangers of drug and alcohol abuse in the workplace, the District's policy on a drug-free and alcohol-free workplace, and any drug or alcohol counseling available to employees as well as any available rehabilitation and employee assistance programs.

Employee drug testing

Any employee who appears to be under the influence of drugs or alcohol in such a way that would adversely affect the performance of his or her duties or the image of the District will be immediately placed on administrative leave, with pay, pending an investigation. Consistent with the Board's intent to discover, prevent and prohibit the illicit possession, use, sale and influence of drugs or alcohol controlled substances, the Board adopts the following employee drug and alcohol testing policy. This policy applies to employees on school premises, at school-related activities, while on or about school business, or in off-duty hours where such off-duty usage affects the employee's on-the-job conduct or activities.

An employee may be required to submit to drug and alcohol testing as the law permits and the needs of the school and District if a supervisor has "reasonable suspicion" to suspect an employee may be under the influence of alcohol or drugs. "Reasonable suspicion" exists if the employee's supervisor believes the actions or appearance or conduct of an employee are indicative of the use of drugs or alcohol. Such determination shall be made on a case by case basis.

Any employee who, when requested by his/her supervisor to do so, refuses to submit as herein prescribed to an established drug and/or alcohol test for, or who shows a positive result from, such test will be subject to dismissal from employment with the District.

All District employees who drive school buses and/or other District vehicles that require a commercial driver's license (CDL) will undergo alcohol and controlled substance testing in compliance with the Omnibus Transportation Employee Testing Act of 1991, as provided in Policy EEAE/EEAE-R (Bus Safety Program).

~~All employees may be required to submit to drug testing as the law permits and the needs of this school system dictate. Drug testing may be required upon the occurrence of any one of the following.~~

- ~~• Written authorization from the Superintendent to test a particular group of employees whose work involves public safety factors or other areas recognized by legal authority as warranting such testing without individualized suspicion of drug usage or possession.~~
- ~~• Reasonable cause to suspect — reasonable cause to suspect may exist if any one of the following is present; aberrant behavior, observation of drug usage, observation of drug paraphernalia or items which look like drugs in the employee's possession or control. However, these examples are by no means exhaustive and the ultimate determination as to whether probable cause exists must be made on a case-by-case basis.~~

PAGE 3 – GBEC – DRUG-FREE AND ALCOHOL-FREE SCHOOLS/WORKPLACE

- ~~Following certain accidents involving a school vehicle. The types of accidents for which drug testing will be required will be determined by transportation department guidelines (see policy EEAE).~~

~~Drug testing will be performed using the administrative and screening procedures developed by the administration. The Board will approve administrative procedures. The provisions of this policy will be enacted only in the most compelling circumstances as determined by the Superintendent.~~

Adopted 6/24/91; Revised 1/29/04, 11/26/12, ___/17

Legal references:

- A. Federal statutes:
 - 1. Drug-Free Workplace Act 102 Stat. 4305-4308.
 - 2. Controlled Substances Act (21 U.S. C. 812) - Schedules I through V of Section 202.
- B. Federal regulations:
 - 1. 54 F.R. 4946 (1/31/89) - Relating to the Drug-Free Workplace Act.
 - 2. 21 CFR 1300.11 through 1300.15 - Defining controlled substances.
- C. S.C. Code, 1976, as amended:
 - (Alcohol)
 - 1. S.C. Constitution Article XVII, Section 14 - Must be over 21 to possess distilled liquors.
 - 2. Section 16-17-530 - Students who come to school in an intoxicated condition or conduct themselves in a disorderly or boisterous manner could be arrested for a misdemeanor.
 - 3. Section 59-67-150 - Drinking alcoholic liquors on a school bus is prohibited.
 - (Drugs)
 - 4. Section 44-53-110 et seq. – Definitions; Lists of illicit drugs.
 - 5. Section 44-53-140 - Student addicted or dependent upon a drug may seek counseling concerning treatment or therapy from a guidance counselor or teacher without fear of legal action.
 - 6. Section 44-53-370 - Unlawful for any person to possess scheduled drug unless obtained by valid prescription.
 - 7. Section 44-53-440 - Person over 18 who distributes a controlled substance to person under 18 shall be guilty of felony and sentenced to no more than 20 years with no suspension or probation.

YORK 3 / ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GBEC Drug-Free and Alcohol-Free Schools/Workplace

*Current***Policy GBEC Drug-Free and Alcohol-Free Schools/Workplace**

Issued 11/12

Purpose: To establish the basic structure to ensure the board's vision of a workplace and school environment free of drugs and alcohol.

The school district is committed to providing a drug and alcohol free learning environment and workplace. Drug and alcohol abuse at school or in connection with school-sponsored activities on or off school grounds threatens the health and safety of our students and our employees and adversely affects the educational mission of the schools.

Employees

No employee will unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any drug on or in the workplace. "Drug" means any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, any counterfeit drug, imitation controlled substance, "lookalike" substance, synthetic drug or designer drug (bath salts and synthetic marijuana) or any other controlled substance as defined by the act and regulation cited below. No employee will manufacture, distribute, dispense, possess, use or be under the influence of alcohol on or in the workplace.

"Workplace" means the site for the performance of work. That includes any school building or any school premises and any school-owned vehicle or any other school-approved vehicle used to transport students to and from school or school activities. It also includes off-school property during any school-sponsored or school-approved activity, event or function such as a field trip or athletic event where students are under the jurisdiction of the school district.

As a condition of employment, each employee will notify his/her supervisor of his/her arrest or conviction of any criminal drug statute for a violation occurring in the workplace as defined above. The employee must notify the supervisor no later than forty-eight (48) hours after such arrest or conviction.

As a condition of employment, each employee must abide by the terms of the school district policy respecting a drug-free workplace.

An employee who violates the terms of this policy will be subject to disciplinary action including, but not limited to, nonrenewal, suspension or termination at the discretion of the board.

The board will take such action in accordance with district policies and regulations as well as applicable state and federal law.

The board directs the administration to establish a drug-free awareness program in the district to include information on the dangers of drug and alcohol abuse in the workplace, the district's policy on a drug-free and alcohol-free workplace, and any drug or alcohol counseling available to employees as well as any available rehabilitation and employee assistance programs.

Employee drug testing

Consistent with the board's intent to discover, prevent and prohibit the illicit possession, use, sale and influence of controlled substances, the board adopts the following employee drug testing policy. This policy applies to employees on school premises, at school-related activities, while on or about school business, or in off-duty hours where such off-duty usage affects the employee's on-the-job conduct or activities.

All employees may be required to submit to drug testing as the law permits and the needs of this school system dictate. Drug testing may be required upon the occurrence of any one of the following.

- Written authorization from the superintendent to test a particular group of employees whose work involves public safety factors or other areas recognized by legal authority as warranting such testing without individualized suspicion of drug usage or possession.
- Reasonable cause to suspect -- reasonable cause to suspect may exist if any one of the following is present; aberrant behavior, observation of drug usage, observation of drug paraphernalia or items which look like drugs in the employee's possession or control. However, these examples are by no means exhaustive and the ultimate determination as to whether probable cause exists must be made on a case-by-case basis.
- Following certain accidents involving a school vehicle. The types of accidents for which drug testing will be required will be determined by transportation department guidelines (see policy EEAE).

Drug testing will be performed using the administrative and screening procedures developed by the administration. The board will approve administrative procedures. The provisions of this policy will be enacted only in the most compelling circumstances as determined by the superintendent.

(Cf. JICH; EEAE; ADB)

Adopted 6/24/91; Revised 1/29/04, 11/26/12

Legal references:

Federal statutes:

Drug-Free Workplace Act 102 Stat. 4305-4308.

Controlled Substances Act (21 U.S.C. 812) - Schedules I through V of Section 202.

Federal regulations:

54 F.R. 4946 (1/31/89) - Relating to the Drug-Free Workplace Act.

21 CFR 1300.11 through 1300.15 - Defining controlled substances.

S. C. Code of Laws, 1976, as amended:

(Alcohol)

S.C. Constitution Article XVII, Section 14 - Must be over 21 to possess distilled liquors.

Section 16-17-530 - Students who come to school in an intoxicated condition or conduct themselves in a disorderly or boisterous manner could be arrested for a misdemeanor.

Section 59-67-150 - Drinking alcoholic liquors on a school bus is prohibited.

(Drugs)

Section 44-53-110 et seq. - Definitions; Lists of illicit drugs.

Section 44-53-140 - Student addicted or dependent upon a drug may seek counseling concerning treatment or therapy from a guidance counselor or teacher without fear of legal action.

Section 44-53-370 - Unlawful for any person to possess scheduled drug unless obtained by valid prescription.

Section 44-53-440 - Person over 18 who distributes a controlled substance to person under 18 shall be guilty of felony and sentenced to no more than 20 years with no suspension or probation.

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Policy

TOBACCO-FREE SCHOOLS/STAFF

Code **GBED** Issued _____

Purpose: To establish the basic structure for the tobacco-free schools and staff.

The Board believes that tobacco use and exposure to secondhand smoke (environmental tobacco smoke) are hazardous to the health of human beings, especially children. Therefore, the Board affirms that one of the best methods of instruction is one that is provided within a 100% tobacco-free environment.

Goal

The goal of this policy is to provide a 100% tobacco-free, smoke-free environment for all students, staff and visitors within all District facilities, vehicles and buses, and on all District and grounds and at all District-sponsored events ~~by doing the following.~~

- ~~• exhibiting healthy behavior for all students, staff, visitors and the entire community~~
- ~~• utilizing proven and effective science-based tobacco use prevention curricula~~
- providing access to cessation counseling or referral services for all students and staff

Procedures

The District will do the following:

- Prohibit the use and/or possession of all tobacco products or paraphernalia in all District facilities, vehicles and buses, and on all District grounds and at all District-sponsored events, by all students, staff, and visitors. Tobacco products include, but are not limited to, cigarettes, cigars, pipes, smokeless tobacco, and alternative nicotine products such as e-cigarettes and snuff by all students, staff, contractor or other workers, and visitors.
- Ensure that tobacco use prevention programs, as recommended by the South Carolina Department of Health and Environmental Control, the South Carolina Department of Alcohol and Other Drug Abuse Services and the South Carolina Department of Education, are an integral part of District substance abuse prevention efforts.
- Provide and/or refer to cessation services for students and staff.

Ensure that violations of the South Carolina Youth Access to Tobacco Prevention Act of 2006 are communicated to appropriate law enforcement agencies.

Enforcement

PAGE 2 – GBED – TOBACCO-FREE SCHOOLS/STAFF

The District will enforce this policy by determining appropriate disciplinary actions for violators, including students, staff, and visitors. Students will be disciplined consistent with the Tobacco Use by Students Policy and Administrative Rule (JICG/JICG-R) and school handbooks. Employees violating this policy are subject to disciplinary action. On an initial violation of this policy, an employee will be given an oral warning and notified that his/her conduct is in violation of District policy. Further violations, depending on the severity, will result in a written reprimand to the employee and may ultimately jeopardize the individual's employment with the District. Visitors violating the policy may be asked to leave, may forfeit any fee charged for admission, and may be referred to law enforcement for repeated violations of this policy.

~~Education and assistance~~

~~The District will be responsible for providing appropriate cessation counseling and/or referral services for staff members.~~

Tobacco industry marketing or sponsorship

The District will not knowingly accept any contributions or gifts, money or materials from the tobacco industry. The District will not knowingly participate in any type of services that are funded by the tobacco industry. In addition, any gear, paraphernalia, clothing, etc., that advertises tobacco use or tobacco products will not be allowed on District grounds or in the possession of faculty, staff or students at District-sponsored events.

Adopted 11/23/93; Revised 1/29/04, 11/27/06, 10/24/11, ___/17

Legal references:

- A. United States Code:
 - 1. 20 U.S.C. 6081 - Pro-Children Act of 1994.
- B. S.C. Code, 1976, as amended:
 - 2. Section 44-95-10 et seq. - Clean Indoor Air Act of 1990 and penalties for violations.
 - 3. Section 16-17-490 - Contributing to the delinquency of a minor (school board rules and regulations may be exempt under certain circumstances).
 - 4. Section 16-17-500 - Supplying minors with tobacco or cigarettes.
 - 5. Section 59-67-150 - Qualifications of bus driver; drinking or smoking on bus.
 - 6. Sections 16-17-500 and 501 - Youth Access to Tobacco Prevention Act of 2006.

YORK 3 / ROCK HILL SCHOOL DISTRICT
G - Personnel
Policy GBED Tobacco-Free Schools/Staff

Current

Policy GBED Tobacco-Free Schools/Staff

Issued 10/11

Purpose: To establish the basic structure for the tobacco-free schools and staff.

The board believes that tobacco use and exposure to secondhand smoke (environmental tobacco smoke) are hazardous to the health of human beings, especially children. Therefore, the board affirms that one of the best methods of instruction is one that is provided within a 100% tobacco-free environment.

Goal

The goal of this policy is to provide a 100% tobacco-free, smoke-free environment for all students, staff and visitors within all district facilities, vehicles and grounds and at all district-sponsored events by doing the following.

- exhibiting healthy behavior for all students, staff, visitors and the entire community
- utilizing proven and effective science-based tobacco use prevention curricula
- providing access to cessation counseling or referral services for all students and staff

Education and assistance

The district will be responsible for providing appropriate cessation counseling and/or referral services for staff members.

Tobacco industry marketing or sponsorship

The district will not accept any contributions or gifts, money or materials from the tobacco industry. The district will not participate in any type of services that are funded by the tobacco industry. In addition, any gear, paraphernalia, clothing, etc., that advertises tobacco use or tobacco products will not be allowed on district grounds or in the possession of faculty, staff or students at district-sponsored events.

(Cf. ADC, JICG)

Adopted 11/23/93; Revised 1/29/04, 11/27/06, 10/24/11

Legal references:

United States Code:

20 U.S.C. 6081 - Pro-Children Act of 1994.

S.C. Code, 1976, as amended:

Section 44-95-10 et seq. - Clean Indoor Air Act of 1990 and penalties for violations.

Section 16-17-490 - Contributing to the delinquency of a minor (school board rules and regulations may be exempt under certain circumstances).

Section 16-17-500 - Supplying minors with tobacco or cigarettes.

Section 59-67-150 - Qualifications of bus driver; drinking or smoking on bus.

Sections 16-17-500 and 501 - Youth Access to Tobacco Prevention Act of 2006.

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Administrative Rule

~~TOBACCO-FREE SCHOOLS/STAFF~~

Code GBED-R Issued _____

Procedures

- ~~• Prohibit the use and/or possession of all tobacco products or paraphernalia including, but not limited to, cigarettes, cigars, pipes, smokeless tobacco and snuff by all students, staff and visitors.~~
- ~~• Ensure that tobacco use prevention programs, as recommended by the South Carolina Department of Health and Environmental Control, the South Carolina Department of Alcohol and Other Drug Abuse Services and the South Carolina Department of Education, are an integral part of District substance abuse prevention efforts.~~
- ~~• Provide and/or refer to cessation services for students and staff.~~

Enforcement

~~The District will enforce this policy by determining appropriate disciplinary actions for staff violating this policy such as the following:~~

- ~~• verbal reprimands~~
- ~~• written notification placed in personnel file~~
- ~~• suspension~~
- ~~• mandatory enrollment in a tobacco education program~~
- ~~• voluntary enrollment in a cessation program~~

Adopted 10/24/11

YORK 3 /ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GBED Tobacco-Free Schools/Staff

AR GBED-R Tobacco-Free Schools/Staff

*Current***AR GBED-R Tobacco-Free Schools/Staff**

Issued 10/11

Procedures

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- suspension
- mandatory enrollment in a tobacco education program
- voluntary enrollment in a cessation program

Adopted 10/24/11

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Policy

STAFF WELFARE/PROTECTION

Code GBG Issued _____

Purpose: To establish the basic structure for the defense of District employees in certain legal actions.

The District is obligated by law, as provided for in S.C. Code Ann. § 59-17-110, to defend employees in legal actions resulting from acts done or omitted in good faith in the course of their employment. This requirement applies to civil or criminal actions or special proceedings in the courts of this State or of the United States.

Any employee needing legal assistance in a legal action arising out of his/her employment must submit a request in writing to the Superintendent. The Superintendent will bring the request to the Board's attention to determine whether legal assistance will be provided to the employee appropriate and consistent with the intent of the law. The employee will be notified whether the Board has approved the employee's request. If the request for a legal defense is approved, the Board will delegate to the Superintendent the responsibility to notify the employee and work out the arrangements for a legal defense for the employee.

Adopted 2/26/90; Revised 1/29/04, ____/17

Legal references:

- A. S.C. Code, 1976, as amended:
 - 1. Section 59-17-110 - Duty of school districts to defend actions or proceedings against their employees.
- B. ~~Attorney General's Opinion:~~
 - 1. ~~September 14, 1995 - To Rep. Worley from Charles Condon.~~

YORK 3 /ROCK HILL SCHOOL DISTRICT

G - Personnel

Policy GBG Staff Welfare/Protection

Current

Policy GBG Staff Welfare/Protection

Issued 1/04

Purpose: To establish the basic structure for the defense of district employees in certain legal actions.

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Adopted 2/26/90; Revised 1/29/04^

Legal references:

S.C. Code, 1976, as amended:

Section 59-17-110 - Duty of school districts to defend actions or proceedings against their employees.

Attorney General's Opinion:

September 14, 1995 - To Rep. Worley from Charles Condon.

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY

[DRAFT]

Policy

STAFF HEALTH

Code GBGA Issued _____

Purpose: To establish the basic structure for health screening of District employees.

Health screening

The District will not initially hire any person to work in any public school or kindergarten until that person has been appropriately evaluated for tuberculosis according to guidelines approved by the South Carolina Department Board of Health and Environmental Control. The District will not require re-evaluation for employment in consecutive years unless otherwise indicated by such guidelines.

Any person applying for a position in any of the District's schools, including kindergarten, will, as a prerequisite to employment, secure a health certificate from a licensed physician certifying that such person does not have tuberculosis in an active stage.

The physician will make the aforesaid certificate on a form supplied by the South Carolina Department of Health and Environmental Control.

If the District has questions or concerns regarding the ability ~~physical or mental capability~~ of an employee to perform the essential functions of his/her position, with or without reasonable accommodations, the District may require an employee to submit appropriate medical information ~~appropriate health examination at the District's expense.~~

Communicable diseases

The Board defines a chronic communicable disease as a persistent or recurring infection that may be transmitted to a susceptible person by contact with an infected individual. The National Centers for Disease Control and Prevention will be the definitive authority on the identification and transmission of chronic communicable diseases.

~~It is not the policy of the District to automatically suspend employees with a chronic communicable disease. It is the policy of the District, however, to protect the health of members of the community by implementing a program of education, prevention and reporting with respect to chronic communicable diseases in cooperation with State and local public health agencies.~~

The policy of the Board will be to attempt to provide a safe and secure environment for all students and employees. Under certain circumstances, the presence of communicable diseases in

the school environment may pose a threat to the health and safety of students and employees. In an effort to maintain a balance between the need to educate all eligible students, to protect student and employee rights and to control communicable diseases, decisions regarding the employment status of employees with communicable diseases will be made on a case-by case basis.

Communicable diseases

Employees with communicable diseases, including acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, will be permitted to attend school in accordance with the procedures in this policy.

Except where otherwise provided by law, employees will inform their principal/supervisor or the chief human resources officer if they have a communicable disease that poses any significant health or safety risk to students or staff members. If the principal/supervisor is notified of the employee's condition, he/she will notify the chief human resources officer. Upon receiving notice that an employee has a communicable disease, the chief human resources officer will ensure that a committee consisting of the employee's supervisor, the employee's personal physician, appropriate public health professionals and appropriate district personnel is formed to monitor and/or evaluate the employee's health status.

In cases involving AIDS or HIV infection, the committee periodically will monitor the health status of the employee. Evaluation of the employee's potential for transmitting the HIV should be made by the physician evaluating the employee's status. The physician will be asked to provide a written opinion describing the employee's present health status and making recommendations regarding work status. The chief human resources officer will consult with the district's legal counsel prior to making any decision/recommendation regarding work status. Information shared during the monitoring process is strictly confidential.

With respect to other reported communicable diseases, the committee will review each case individually to determine the means of transmittal, the employee's infectious duration, to what degree the employee's presence poses a risk to other staff and to students, and the probability of transmittal.

Generally, employees with AIDS/HIV infection should be permitted to attend school and school activities without restriction, provided their health status allows. Sound, evidence-based guidelines, used in accordance with these procedures, will be used to determine whether an employee, in his/her current position, with any communicable disease, poses a significant risk to the health and safety of other persons. If this risk cannot be eliminated by any reasonable measure, including placement in alternative employment, attendance by the employee may be prohibited or restricted.

If the employee's disease constitutes a disability, and the employee is otherwise qualified to perform his/her job, a specific determination will be made as to whether a reasonable accommodation can be made. Any prohibition or restriction on attendance will continue, subject to periodic reevaluation, unless and until the risk to others has been abated. The district reserves

the right to require a satisfactory certificate from one or more licensed physicians that the employee's attendance is no longer a risk to others.

Information regarding the medical condition of employees is highly confidential and may only be disseminated on a strict need-to-know basis. Accordingly, information may only be provided to those who need the information to protect the health and safety of the employee, students and staff and only to the extent necessary to accomplish that end. All personnel informed of the condition of the employee are to be directed that this information is to be held in the strictest confidence.

Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the HIV status of a student or other staff member. Information regarding the medical condition of employees and students must be maintained in strict confidence and may only be revealed consistent with State law and regulation.

Bloodborne pathogens

The District has prepared and implemented a model exposure-control plan for all employees. This plan includes appropriate training for all employees as well as universal precautions that all employees must take when dealing with blood and other bodily fluids. A copy of the plan is on file in all schools.

All employees are required to consistently follow infection control guidelines in all settings and at all times, including playgrounds and school buses. Schools will operate according to the standards promulgated by the U.S. Occupational Safety and Health Administration for the prevention of bloodborne infections. Equipment and supplies needed to apply the infection control guidelines will be maintained and kept reasonably accessible.

If a situation occurs at school in which a person might have been exposed to an infectious agent, such as an instance of blood-to-blood contact, school authorities will counsel that person (or, if a minor, alert a parent/legal guardian) to seek appropriate medical evaluation.

To prevent the spread of communicable disease, DHEC or the Centers for Disease Control and Prevention (CDC) guidelines for necessary health and safety precautions, including handling of blood and bodily fluids, will be distributed by the administration from time to time and should be followed by all school employees. Appropriate training for all employees is provided by the District's school nurse. A bloodborne pathogens exposure control plan has been developed and is updated annually.

Staff development

All school staff members will participate in a planned educational program that conveys factual and current information about HIV and other bloodborne pathogens; provides guidance on infection control procedures; informs about current law and State, District and school policies; and assists staff to maintain productive parent/legal guardian and community relations. Certain employees will also receive additional training as appropriate to their positions and

responsibilities.

Staff Health

~~The District may reassign an employee with a chronic communicable disease to a position that limits student/employee contact. Alternatively, the District may place the employee on medical leave if medical judgment substantiates that said employee poses a significant health threat to students and/or other employees. The School Board reserves the right to remove or exclude any employee whose physical condition would interfere with his/her ability to work or would expose other students or employees to infection.~~

~~Employees with AIDS or HIV (human immunodeficiency virus) should be under no work restrictions in the District, unless medical impairments exist which are so severe as to be a hazard for the employee, District students or other employees. Such employees present no appreciable infection risk to others under normal school working conditions.~~

~~The District will make decisions regarding appropriate placement of employees known to school officials to have AIDS or HIV infection (upon adequate documentation from the employee's physician) on a case-by-case basis.~~

~~When an employee has been removed or excluded as provided above, the School Board may require a satisfactory certificate from one or more licensed physicians that the employee's presence is no longer a risk to the employee or to others at school.~~

~~This District will notify other staff and students of the existence of a communicable disease in accordance with regulations and guidelines propounded by the South Carolina Department of Health and Environmental Control.~~

~~The District will not screen employees for AIDS or HIV infection as a condition for school employment. The identity of any employee with AIDS or HIV infection and any medical record for such an employee will be confidential.~~

~~The Superintendent will be responsible for assuring that procedural safeguards are used when determining the employment status of employees with chronic communicable diseases.~~

Adopted 2/26/90; Revised 5/28/90, 1/25/93, 1/29/04, __/17

Legal references:

- A. S.C. Code, 1976, as amended:
 - 1. Section 44-29-150 and 160 - Tuberculin test required of new employees.
 - 2. Section 44-29-200 - Attendance of teachers or pupils with contagious or infectious disease may be prohibited.
- B. Federal regulations:
 - 1. U.S. Occupational Safety and Health Administration, CFR 1910.134 - Respiratory protection.
 - 2. U.S. Occupational Safety and Health Administration, CFR 1910.1030 - Bloodborne pathogens.

PAGE 5 – GBGA – STAFF HEALTH

- C. State Board of Education Regulations:
 - ~~1. R-43-207 - Annual statement of mental and physical fitness required.~~
 - 1. R-43-207 - All personnel will be screened for tuberculosis.
- D. Department of Health and Environmental Control Regulations:
 - 1. R-61-20 - Communicable diseases.
 - 2. R-61-22 - Evaluation of school employees for tuberculosis.

YORK 3 /ROCK HILL SCHOOL DISTRICT
G - Personnel
Policy GBGA Staff Health

Current

Policy GBGA Staff Health

Issued 1/04

Purpose: To establish the basic structure for health screening of district employees.

Health screening

The district will not initially hire any person to work in any public school or kindergarten until that person has been appropriately evaluated for tuberculosis according to guidelines approved by the South Carolina Board of Health and Environmental Control. The district will not require re-evaluation for employment in consecutive years unless otherwise indicated by such guidelines.

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The physician will make the aforesaid certificate on a form supplied by the South Carolina Department of Health and Environmental Control.

If the district has questions or concerns regarding the physical or mental capability of an employee, the district may require an appropriate health examination at the district's expense.

Communicable diseases

The board defines a chronic communicable disease as a persistent or recurring infection that may be transmitted to a susceptible person by contact with an infected individual. The National Centers for Disease Control will be the definitive authority on the identification and transmission of chronic communicable diseases.

It is not the policy of the district to automatically suspend employees with a chronic communicable disease. It is the policy of the district, however, to protect the health of members of the community by implementing a program of education, prevention and reporting with respect to chronic communicable diseases in cooperation with state and local public health agencies.

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Adopted 2/26/90; Revised 5/28/90, 1/25/93, 1/29/04

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South Carolina Code, 1976, as amended:

Section 44-29-150 and 160 - Tuberculin test required of new employees.

Section 44-29-200 - Attendance of teachers or pupils with contagious or infectious disease may be prohibited.

State Board of Education Regulations:

R-43-207 - Annual statement of mental and physical fitness required.

Department of Health and Environmental Control Regulations:

R-61-20 - Communicable diseases.

R-61-22 - Evaluation of school employees for tuberculosis.

ROCK HILL SCHOOL DISTRICT THREE OF YORK COUNTY



The South Carolina School Boards Association

TO: Board Chairmen and District Superintendents
FROM: Scott T. Price, Executive Director
RE: **Certification of Delegates for the
2017 Delegate Assembly**



DATE: September 7, 2017

SCSBA's annual business meeting will take place on **Saturday, December 2, 2017**, at 2 p.m., at the Charleston Marriott in Charleston, South Carolina. This meeting is being held in conjunction with the Legislative and Advocacy Conference.

According to the SCSBA Constitution, *Article V*, the Delegate Assembly is the policy-making body of the association and is composed of certified voting delegates from active member boards. The number of votes allocated to each board is based on pupils enrolled in public elementary and secondary schools as per the ADM from the State Department of Education.

I am enclosing the official voting delegate certification form. On the form, you will find how many votes your district is allowed and the rules of the Delegate Assembly from SCSBA's Constitution.

Please take a moment to list the name(s) of your delegate(s) and designate how many votes each delegate will represent. Please choose alternate delegates as well. Anyone who is not a certified voting delegate or a certified alternate delegate will **not** be allowed to vote during the Delegate Assembly. **There will be strict adherence to this rule.**

Please discuss this information at your next board meeting. All certification forms must be received in the SCSBA office by **Tuesday, November 14, 2017**. You may email your signed form to Judy LeGrand at jlegrand@scsba.org, mail a hard copy, or fax to 1.877.859.6439.

Thank you for your attention to this important matter. I look forward to hearing from you soon.

STP/jjl

cc: Board Secretaries

Enclosure

2017 SCSBA Delegate Assembly

Official Voting Delegates Certification Form

Rock Hill
Your district is allowed 6 votes.

Certification deadline: Tuesday, November 14, 2017

Certification of Delegates from SCSBA's Constitution:

Article V, Section 4. Each active member board will certify its voting delegate to SCSBA before the deadline date for such certification. An alternate delegate for each voting delegate will also be named and certified. **In no case will a member of a member board be allowed to serve as an official delegate unless certified by the member board as a delegate or alternate prior to the designated deadline for certification.**

Official Voting Delegates

The following board members have been designated as official voting delegates at the annual business meeting on Saturday, December 2, 2017. Please list each delegate attending along with an alternate. Include name and number of votes assigned to each delegate.

Check one (if a delegate is also serving as an alternate, check both boxes)

	Name	Number of votes
<input type="checkbox"/> delegate <input type="checkbox"/> alternate		
<input type="checkbox"/> delegate <input type="checkbox"/> alternate		
<input type="checkbox"/> delegate <input type="checkbox"/> alternate		
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<input type="checkbox"/> delegate <input type="checkbox"/> alternate		

This form is not official until we have the appropriate signatures listed below.

Superintendent

Board Chairman

For delegates to be certified, this form must be returned by November 14, 2017 to:
Judy LeGrand, SCSBA, 111 Research Drive, Columbia, SC 29203; email: jlegrand@scsba.org
Or fax: 1-877-859-6439. Thank you.

Communications – Pennies for Progress

Chet Miller



Communications Department
Telephone: 981-1008 - Fax: 981-1094

Memorandum

TO: Dr. Kelly Pew
FROM: Mychal Frost
DATE: October 19, 2017
SUBJECT: Announcements for October 23rd School Board Meeting

Get Out the Vote

There are two upcoming elections that will impact citizens of both Rock Hill and York County. Next Tuesday, you are encouraged to participate in the runoff election to elect the next mayor of Rock Hill. The following week on November 7, you are encouraged to go to the polls and make your voice heard on the pennies for progress referendum.

Upcoming Board Meetings

The School Board will next meet on Monday, November 13 for a work session. The meeting will begin at 4 p.m. with a data review session. The next business meeting will be Monday, November 27 at 6 p.m. Please note that all board meetings through at least February 2018 will be held at Rawlinson Road Middle School's auditorium. Meetings will continue to be streamed on our website and available for viewing on-demand immediately following each broadcast.

Naming Committees

As excitement grows for the opening of the new Montessori program, the new language immersion school, and the consolidation of programs at Sylvia Circle, there are several committees now working to recommend names for each campus. Committees are comprised of parents, teachers, and community representatives. We look forward to announcing additional names at future board meetings.

Upcoming Community Visits

We look forward to hosting community visits this Friday, October 27, 2017, at Independence Elementary and Rock Hill High School where visitors will have an opportunity to tour each school, talk with students, and hear from school administrators about programs and services available for students. We'll start at Independence at 8:30 a.m. and then move to Rock Hill High at 10:15. Visitors are invited to join us for lunch at Rock Hill High following the school tour.

Follow Capital Program Updates

The Build on the Rock website has been updated with photos. You are encouraged to visit the district's capital building program, "Build on the Rock," website – www.rock-hill.k12.sc.us/BuildOnTheRock -- for more information. This website provides status updates on active and planned construction projects in

the district. On the page, viewers can see project descriptions, before and after photographs, and construction timelines.

At its work session on October 9, 2017, held at the Rawlinson Road Middle School, the board:

- held its monthly data session;
- reviewed Policy **DN** – *School Properties disposition*;
- reviewed Policy **DJ** – *Purchasing* with the new procurement code;
- discussed Section “**G**” policies (2 sets);
- received activity bus rental requests;
- discussed Stakeholder input guidelines;
- identified board members who will serve as delegates at upcoming Legislative Advocacy Conference;
- received information from Comporium on proposed land lease;
- discussed other and future business; and,
- held an executive session for contractual matters.

Other and Future Business

Jim Vining

Executive Session

- (1) Contractual Matter – *Sale of Property*
- (2) Personnel Matter – *Hiring*

Action as Required from Executive Session

Adjournment