

**SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES**

PROCUREMENT CODE

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ARTICLE 1
GENERAL PROVISIONS

10. GENERALLY. (SC Code §§ 11-35-10, -70; SC Reg. § 19-445-2000)

10.1 **Adoption.** Effective June 4, 2008, 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 “School District Five of Lexington and Richland Counties” Procurement Code (hereafter the "Code"). (SC Code § 11-35-70)

10.2 **Prior Codes Superseded.** This Code supersedes all other prior codes, regulations, ordinances, policies, procedures, or other rules of this District regarding procurement.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

10.3 **Approval of Code.** By letter dated March 3 ,2008, 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)

10.4 **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 the Board of Trustees of the District. (SC Code § 11-35-70; SC Reg. § 19-445.2005)

10.5 **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))

20. PURPOSE AND POLICIES. (SC Code §§ 11-35-20, -70; SC Reg. § 19-445-2000)

20.1 **Purposes and Policies.** The underlying purposes and policies of this Code are:

20.1.1 To provide increased economy in District procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the District and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act; (SC Code § 11-35-20(a))

20.1.2 To foster effective broad-based competition for public procurement within the free enterprise system; (SC Code § 11-35-20(b))

20.1.3 To develop procurement capability responsive to appropriate user needs; (SC Code § 11-35-20(c))

- 20.1.4 To ensure the fair and equitable treatment of all persons who deal with the procurement system of the District which will promote increased public confidence in the procedure followed in public procurement; (SC Code § 11-35-20(f))
- 20.1.5 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; (SC Code § 11-35-20(g))
- 20.1.6 To develop an efficient and effective means of delegating roles and responsibilities; (SC Code § 11-35-20(h))
- 20.1.7 To develop a training system to train District procurement officials in the techniques and methods of public procurement; (SC Reg. § 19-445.2000(B) (2) (a))
- 20.1.8 To mandate the existence of a structured system of auditing and monitoring in order to assure adherence to the provision of this Code;
- 20.1.9 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))

25. CODE SUPERSEDES CONFLICTING LAW. (SC Code § 11-35-25)

- 25.1 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.

30. OBLIGATION OF GOOD FAITH. (SC Code § 11-35-30)

- 30.1 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.

35. DISTRICT MAY NOT DESIGNATE SURETY COMPANY. (SC Code § 11-35-35)

- 35.1 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 11-35-55 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.

40. APPLICATION OF THIS CODE. (SC Code §§ 11-35-40)

40.1 **General Application.** This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract entered into prior to its effective date. (SC Code § 11-35-40(1))

40.2 **Application to District Procurement.** This Code applies to every procurement or expenditure of funds by the District under contract as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in § 40.3 (Compliance with Federal Requirements), § 710 (Exemptions), 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 shall also apply to the disposal of District supplies as provided in Article 15 (Supply Management). (SC Code § 11-35-40(2))

40.3 **Compliance with Federal Requirements.** Where a procurement involves the expenditure of federal assistance or contract funds, the District shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in the Code. Notwithstanding, where federal assistance or contract funds are used in a procurement by the District, requirements that are more restrictive than federal requirements shall be followed. (SC Code § 11-35-40(3))

40.4 **Use of Public Funds.** The acquisition of a facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of the District which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this Code in the same manner as the District. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by generally accepted accounting principles. (SC Code § 11-35-40(4))

PAYMENT FOR GOODS AND SERVICES RECEIVED. (SC Code § 11-35-45)

45.1 **Time for Payment.**

The District is responsible for the payment of all supplies, services, or information technology within thirty (30) work days after the acceptance of the goods or services and proper invoice, whichever is received later, and shall pay an amount established in the late payment charge regulations issued by the South Carolina Comptroller General, not to exceed fifteen percent (15%) per annum on any unpaid balance which exceeds the thirty (30) 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 (30) work days after the acceptance of goods or services.

45.2 **Onset of Thirty-Day Period.** The thirty (30) work day period does not begin until the District certifies its satisfaction with the received goods or services and proper invoice. (SC Code § 11-35-45(D))

PURCHASE FROM ENTITY EMPLOYING PRISON INMATES OF ANOTHER STATE. (SC Code § 11-35-55)

55.1 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.”

70. MANDATORY AUDITS.

70.1 A procurement audit must be performed every three (3) 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 District and will be paid to the entity performing the audit. (11-35-70)

210. DETERMINATIONS. (SC Code § 11-35-210)

210.1 Written determinations expressly required by the Code must be retained in an official contract file by the District. These determinations must be documented in sufficient detail to satisfy the requirements of an audit performed pursuant to S.C. Code § 11-35-70.

310. DEFINITIONS. (SC Code § 11-35-310)

310.1 The definitions that apply to this Code are contained in the appendix attached. Unless the context clearly indicates otherwise, the definitions contained in the appendix apply to the terms used in this Code.

410. PUBLIC ACCESS TO PROCUREMENT INFORMATION. (SC Code § 11-35-410)

410.1 **Public Record.** Procurement information must be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a Request for Proposals or any type of bid solicitation, that is privileged and confidential need not be disclosed. (SC Code § 11-35-410(A))

410.2 **Privileged and Confidential Information.** 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:

410.2.1 Customer lists;

410.2.2 Design recommendations and identification of prospective problem areas under an RFP;

410.2.3 Design concepts, including methods and procedures;

410.2.4 Biographical data on key employees of the bidder. (SC Code § 11-35-410(B))

410.3 **Nondisclosure if No Award Made.** 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. (SC Code § 11-35-410(C))

410.4 **Evaluative Pre-Decisional Documents.** 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. (SC Code § 11-35-410(D))

410.5 **Identification of Confidential Information.** 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. (SC Code § 11-35-410(E))

ARTICLE 3
PROCUREMENT ORGANIZATION

510. DELEGATION OF AUTHORITY TO SUPERINTENDENT. (SC Code § 11-35-510)

510.1 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.

540. OPERATIONAL PROCEDURES; OVERSIGHT BY THE BOARD OF TRUSTEES. (SC Code §§ 11-35-540; 59-19-130 et. seq.; SC Regs. §§ 19-445.2005, .2015)

540.1 **Operational Procedures.** The Superintendent shall be authorized to develop internal operating protocols, procedures, and forms consistent with this Code (§ 11-35-540(3))

540.2 **Oversight by the Board of Trustees; Policy.** The Board shall consider and decide matters of policy within provisions of this Code including those referred to it by the Superintendent. The Board shall have the power to audit and monitor the implementation of its policies and the requirements of this Code. (§ 11-35-540(4))

710. EXEMPTIONS. (SC Code §§ 11-35-710, 59-19-270)

710.1 The Board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this 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 540.1(SC Code § 11-35-710)

840. DELEGATION OF AUTHORITY. (SC Code §§ 11-35-840; SC Reg. § 19-445.2000(B))

840.1 **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))

840.2 **Delegation by Superintendent.** (SC Code § 11-35-840)

Subject to this Code, the Superintendent may delegate his/her authority to any designee and the Chief Procurement Officer may delegate his/her authority to any designee.

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

1240. RATIFICATION OF UNAUTHORIZED PROCUREMENT. (SC Reg. § 19-445.2015)

1240.1 **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 a 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))

1240.2 **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))

1250. CONTRACTING FOR AUDITING OR ACCOUNTING SERVICES. (SC Code § 11-35-1250)

1250.1 No contract for auditing or accounting services shall be awarded without the approval of the Board or the Superintendent.

1260. CONTRACTING FOR LEGAL SERVICES. (SC Code § 11-35-1260)

1260.1 No contract for the services of attorneys shall be awarded without the approval of the Board or the Superintendent.

ARTICLE 5

SOURCE SELECTION AND CONTRACT FORMATION

1510. METHODS OF SOURCE SELECTION. (SC Code § 11-35-1510)

1510.1 **Competitive Sealed Bidding and Exceptions:** Unless an exception is otherwise provided by this Code, District contracts must be awarded by competitive sealed bidding pursuant to § 1520. Except as provided in:

1510.1.1 § 1525, Competitive Fixed Priced Bidding;

1510.1.2 § 1528, Competitive Best Value Bidding;

1510.1.3 § 1529, Competitive On-line Bidding;

1510.1.4 § 1530, Competitive Sealed Proposals;

1510.1.5 § 1540, Negotiations After Unsuccessful Competitive Sealed Bidding;

1510.1.6 § 1550, Small Purchases;

1510.1.7 § 1560, Sole Source Procurements;

1510.1.8 § 1570, Emergency Procurements;

1510.1.9 § 1575, Participation in Auction or Bankruptcy Sale;

1510.1.10 § 3020, Construction Procurement Procedures;

1510.1.11 § 3220, Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures;

1510.1.12 § 3230, Exception for Small Architect-Engineer and Land Surveying Services Contracts.

1520. COMPETITIVE SEALED BIDDING. (SC Code § 11-35-1520; SC Reg. § 19-445.2030-2090)

1520.1 **Condition for Use.** Contracts greater than fifty thousand dollars (\$50,000.00) must be awarded by competitive sealed bidding except as otherwise provided in § 1510 (Methods of Source Selection). (SC Code § 11-35-1520(1))

1520.2 **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. (SC Code § 11-35-1520(2))

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 deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

1520.2.2 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))

1520.2.2.1 **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))

1520.2.2.2 **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))

1520.2.2.3 **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))

1520.2.2.4 **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))

1520.3 **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. 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))

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).

1520.3.2 **Advertising of Notice.** Notice of a solicitation must include publication in *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 (\$250,000.00), notice of the solicitation must be published in *SCBO*. (SC Code § 11-35.1520(3))

- 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))
- 1520.4 **Receipt and Safeguarding of Bids.**
- 1520.4.1 **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 1520.4.2 (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))
- 1520.4.2 **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 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))
- 1520.5 **Bid Opening.**
- 1520.5.1 **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))
- 1520.5.2 **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))
- 1520.5.3 **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))
- 1520.6 **Bid Acceptance and Bid Evaluation; Telegraphic Bids.**

- 1520.6.1 **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))
- 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)
- 1520.6.3 **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)
- 1520.6.4 **Rejection of Bids; Cancellation of Bids.**
- 1520.6.4.1 **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))
- 1520.6.4.2 **Cancellation of Bids Prior to Award.** When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening, but prior to award, when such action is consistent with §1520.6.4.1 (Application) above and the Procurement Officer determines in writing that: (SC Reg. § 19-445.2065(B))
- 1520.6.4.2.1 Inadequate or ambiguous specifications were cited in the invitation; (SC Reg. § 19-445.2065(B)(1))
- 1520.6.4.2.2 Specifications have been revised; (SC Reg. § 19-445.2065(B)(2))
- 1520.6.4.2.3 The supplies or services being procured are no longer required; (SC Reg. § 19-445-2065(B)(3))

- 1520.6.4.2.4 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))
- 1520.6.4.2.5 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))
- 1520.6.4.2.6 All otherwise acceptable bids received are at unreasonable prices; (SC Reg. § 19-445.2065(B)(6))
- 1520.6.4.2.7 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))
- 1520.6.4.2.8 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))
- 1520.6.4.3 **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))
- 1520.6.5 **Rejection of Individual Bids.**
- 1520.6.5.1 **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))
- 1520.6.5.2 **Alternate Bids.** Any bid which does not conform to the specifications contained orreferenced 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))
- 1520.6.5.3 **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))
- 1520.6.5.4 **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 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:

1520.6.5.4.1 Attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the District cannot be determined;

1520.6.5.4.2 Fails to state a price and in lieu thereof states that price shall be “price in effect at time of delivery;”

1520.6.5.4.3 States a price but qualified such price as being subject to “price in effect at time of delivery;”

1520.6.5.4.4 When not authorized by the invitation, conditions or qualifies his bid by stipulating that his/her bid is to be considered only if, prior to date of award, the bidder receives (or does not receive) award under a separate procurement;

1520.6.5.4.5 Requires the District to determine that the bidder’s product meets specifications; or

1520.6.5.4.6 Limits the rights of the District under any contract clause.

1520.6.5.4.7 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.

1520.6.5.5 **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))

1520.6.5.6 **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))

1520.6.5.7 **Unsigned Bids.** See § 1520.13.3.

1520.6.5.8 **Exceptions to Rejection Procedures.** Any bid received after the 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))

1520.6.6 **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)

1520.7 **Correction or Withdrawal of Bids; Cancellation of Awards.**

1520.7.1 **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 Business Officer or Superintendent. (SC Code. § 11-35-1520(7))

1520.7.2 **General Procedures.** A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the 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))

1520.7.3 **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))

1520.7.4 **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 Business Officer determines in writing that:

1520.7.4.1 Inadequate or ambiguous specifications were cited in the invitation;

1520.7.4.2 Specifications have been revised;

1520.7.4.3 The supplies or services being procured are no longer required;

1520.7.4.4 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;

- 1520.7.4.5 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;
- 1520.7.4.6 The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- 1520.7.4.7 Administrative error of the District discovered prior to performance; or
- 1520.7.4.8 For other reasons, cancellation is clearly in the best interest of the District.

1520.8 **Discussion with Bidders.** As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the District's sole judgment, needing clarification 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))

1520.9 **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:

- 1520.9.1 **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.
- 1520.9.2 **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.
- 1520.9.3 **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.
- 1520.9.4 **In-State vs. In-District Firm.** Tie bids involving South Carolina firms shall be resolved in favor of the firm located in the District.
- 1520.9.5 **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.

1520.10 **Award.**

- 1520.10.1 **Posting and Sending Notice.**
 Unless there is a compelling reason to reject bids as prescribed by this Code, 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 (\$50,000.00) but less than one hundred thousand dollars (\$100,000.00), 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 (\$100,000.00) or greater, notice of an intended award of a contract must be given by posting the notice for ten (10) 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 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 §4210 (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))

1520.10.2 **Application.** Except as otherwise provided herein, the contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids. (SC Reg. § 19-445.2090(A))

1520.10.3 **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 Procurement Officer determines, and gives notice, that a longer review time is necessary. The Procurement Officer shall give notice of a time extension to each bidder by posting it at the location announced at the bid opening. (SC Reg. § 19-445.2090(B))

1520.11 **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 § 1520.3 (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))

1520.12 **(Reserved For Future Use)**

1520.13 **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:

1520.13.1 Failure of a bidder to return the number of copies of signed bids required by the solicitation;

- 1520.13.2 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;
- 1520.13.3 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;
- 1520.13.4 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, 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 (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;
- 1520.13.5 Failure of a bidder to furnish an affidavit concerning affiliates;
- 1520.13.6 Failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
- 1520.13.7 Failure of a bidder to furnish cut sheets or product literature;
- 1520.13.8 Failure of a bidder to furnish certificates of insurance;
- 1520.13.9 Failure of a bidder to furnish financial statements;
- 1520.13.10 Failure of a bidder to furnish references;
- 1520.13.11 Failure of a bidder to furnish its bidder number; and
- 1520.13.12 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.

1525. COMPETITIVE FIXED PRICE BIDDING. (SC Code § 11-35-1525)

- 1525.1 **Conditions for Use.** When the District determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 1520 (Competitive Sealed Bidding), unless otherwise provided for in this § 1525 (Competitive Fixed Price Bidding). (SC Code § 11-35-1525(1))
- 1525.2. **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 pre-set maximum price which the District will pay for the services, supplies, or information technology desired. (SC Code § 11-35-1525(2))
- 1525.3 **Public Notice.** Adequate public notice of the solicitation shall be given in the same manner as provided in § 1520.3 (Notice). (SC Code § 11-35-1525(3))
- 1525.4 **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. (SC Code § 11-35-1525(4))

- 1525.5 **Evaluation.** Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible. (SC Code § 11-35-1525(5))
- 1525.6 **Discussion with Responsive Bidders.** Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed price bid. All bidders whose bids, in the Procurement Officer's sole judgment, need clarification shall be accorded such an opportunity. (SC Code § 11-35-1525(6))
- 1525.7 **Award.** Award must be made to all responsive and responsible bidders to the District's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. (SC Code § 11-35-1525(7))
- 1525.8 **Bids Received after Award.** Bidders not responding to the initial fixed price bid may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the District's original fixed price bid as authorized by the solicitation. (SC Code § 11-35-1525(8))
- 1525.9 **Remedies.** The failure of a specific offeror to receive business, once it has been added to the awarded vendors' list, shall not be grounds for a contract controversy under § 4230 (Authority to Resolve Contracts and Breach of Contract Controversies). (SC Code § 11-35-1525(9))

1528. COMPETITIVE BEST VALUE BIDDING. (SC Code § 11-35-1528)

- 1528.1 **Conditions for Use.** When the District determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive best value bidding subject to the provisions § 1520, unless otherwise provided for in this section. (SC Code § 11-35-1528(1))
- 1528.2 **Best Value Bidding.** The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific supplies, services, or information technology based on pre-determined criteria identified by the District. (SC Code § 11-35-1528(2))
- 1528.3 **Public Notice.** Adequate public notice of the solicitation shall be given in the same manner as provided in § 1520.3 (Notice). (SC Code § 11-35-1528(3))
- 1528.4. **Bid Opening.** At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award. (SC Code § 11-35-1528(4))
- 1528.5 **Evaluation Factors.** (SC Code § 11-35-1528(5)) 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 (60%). Best value bid evaluation factors may be defined to include, but are not limited to, any of the following as determined by the Procurement Officer in his sole discretion and not subject to protest:
- 1528.5.1 Operational costs that the District would incur if the bid is accepted;
 - 1528.5.2 Quality of the product or service, or its technical competency;
 - 1528.5.3 Reliability of delivery and implementation schedules;
 - 1528.5.4 Maximum facilitation of data exchange and systems integration;
 - 1528.5.5 Warranties, guarantees, and return policy;
 - 1528.5.6 Vendor financial stability;

- 1528.5.7 Consistency of the proposed solution with the District’s planning documents and announced strategic program direction;
 - 1528.5.8 Quality and effectiveness of business solution and approach;
 - 1528.5.9 Industry and program experience;
 - 1528.5.10 Prior record of vendor performance;
 - 1528.5.11 Vendor expertise with engagement of similar scope and complexity;
 - 1528.5.12 Extent and quality of the proposed participation and acceptance by all user groups;
 - 1528.5.13 Proven development methodologies and tools; and
 - 1528.5.14 Innovative use of current technologies and quality results.
- 1528.6 **Discussion with Responsive Bidders.** Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders, whose bids, in the District's sole judgment, need clarification, shall be accorded such an opportunity. (SC Code § 11-35-1528(6))
- 1528.7 **Selection and Ranking.** Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to 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. (SC Code § 11-35-1528(7))
- 1528.8 **Award.** Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the District, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. (SC Code § 11-35-1528(8))
- 1529. COMPETITIVE ON LINE BIDDING. (SC Code § 11-35-1529)**
- 1529.1 **Conditions for Use.** When the District determines that on-line bidding is more advantageous than other procurement methods provided by this Code, a contract may be entered into by competitive on-line bidding, subject to the provisions of § 1520 (Competitive Sealed Bidding), unless otherwise provided in this § 1529 (Competitive On-line Bidding). (SC Code § 11-35-1529(1))
- 1529.2 **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 § 1520 (Competitive Sealed Bidding). 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. (SC Code § 11-35-1529(2))

1529.3 **Receipt and Safeguarding of Bids.** Other than price, any information provided to the District by a bidder must be safeguarded as required by § 1520.4 (Receipt and Safeguarding of Bids) in this Code. (SC Code § 11-35-1529(3))

1529.4 **Provisions Not to Apply.** Section 1520.5 (Bid Opening) does not apply to solicitations issued pursuant to this section. (SC Code § 11-35-1529(4))

1530. COMPETITIVE SEALED PROPOSALS. (SC Code § 11-35-1530; SC Reg. §§ 19-445-2055, -2095)

1530.1 **Conditions for Use.** If the District determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive sealed proposals, subject to the provisions of § 1520 (Competitive Sealed Bidding) unless otherwise provided in this § 1530 (Competitive Sealed Proposals).

1530.2 **Public Notice.** Adequate public notice of the request for proposals must be given in the same manner as provided in § 1520.3 (Notice). (SC Code § 11-35-1530(2))

1530.3 **Receipt of Proposals.** Proposals must be opened publicly in accordance with the following procedures.

1530.3.1 Proposals shall be opened publicly by the Procurement Officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. A tabulation of proposals must be prepared in accordance with regulations promulgated by the board, must be open for public inspection after contract award, and must be made public record. Contents of competing offers must not be disclosed during the process of negotiation. (SC Code § 11-35-1530(3); SC Reg § 19-445.2095(C))

1530.3.2 All offerors must visibly mark as “confidential” each part of their proposal, which they consider to be proprietary information. (SC Reg. § 19-445.2095(C))

1530.3.3 The following provisions do not apply to competitive sealed proposals: Section 1520.2.2, Section 1520.5.2, Section 1520.5.3, Section 1520.6.1, Section 1520.8, Section 1520.10.2, and Section 1520.11.

1530.3.4 A tabulation of proposals must be prepared and must be open for public inspection after contract award. (SC Code § 11-35-1530(3))

1530.4 **Request for Qualifications.** (a) 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. (b) 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 (2) 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. (SC Code § 11-35-1530(4))

- 1530.5 **Evaluation Factors.** The request for proposals must state the relative importance of 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. (SC Code § 11-35-1530(5))
- 1530.6 **Discussion with Offerors.** As provided in the request for proposals, and otherwise herein, 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 such an opportunity. (SC Code § 11-35-1530(6))
- 1530.7 **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 § 1530.9 (Award). (SC Code § 11-35-1530(7))
- 1530.8 **Negotiations.** (SC Code § 11-35-1530(8)) 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:
- 1530.8.1 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;
- 1530.8.2 During the negotiation process as outlined in subsection 1530.8.1, if the Procurement Officer is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated; or
- 1530.8.3 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.
- 1530.9 **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 § 1530.8 (Negotiations) above. 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 § 1520. (SC Code § 11-35-1530(9))

1540. NEGOTIATIONS AFTER UNSUCCESSFUL COMPETITIVE SEALED BIDDING. (SC Code § 11-35-1540)

1540.1 **Negotiations After Unsuccessful Competitive Sealed Bidding.** When bids received pursuant to an invitation for bids under Section 1520 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 Superintendent, or designee above the level of the Procurement Officer that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

1540.1.1 Each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;

1540.1.2 The negotiated price is lower than the lowest rejected bid by a responsible and responsive bidder under the original solicitation;

1540.1.3 The negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

1550. SMALL PURCHASES. (SC Code § 11-35-1550; SC Reg. § 19-445.2100)

1550.1 **Authority.** The following small purchase procedures may be utilized only in conducting procurements for the District that are up to fifty thousand dollars (\$50,000.00) 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))

1550.2 **Competition and Price Reasonableness.**

1550.2.1 **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))

1550.2.2 **Purchases over \$2,500.00 to \$10,000.00.** Solicitation of written quotes from a minimum of three (3) qualified sources of supply must be made and documentation of the quotes must be attached to the purchase requisition or made a part of the contract file for a small purchase over two thousand five hundred dollars (\$2,500.00) but not in excess of ten thousand dollars (\$10,000.00). The award shall be made to the lowest responsive and responsible source. (SC Code § 11-35-1550(2)(b))

- 1550.2.3 **Purchases over \$10,000.00 up to \$50,000.00.** Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars (\$10,000.00) but not in excess of fifty thousand dollars (\$50,000.00). 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))
- 1550.3 **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 § 1520.3 (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))
- 1550.4 **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))
- 1550.4.1 **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))
- 1550.4.2 **Terms and Conditions.** Blanket purchase agreements shall contain the following provisions: (SC Reg. § 19-445.2100(B)(3))
- 1550.4.2.1 **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 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))
- 1550.4.2.2 **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))
- 1550.4.2.3 **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))

- 1550.4.2.4 **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:
- 1550.4.2.4.1 Name of supplier;
 - 1550.4.2.4.2 Blanket purchase agreement number;
 - 1550.4.2.4.3 Date of call;
 - 1550.4.2.4.4 Call number;
 - 1550.4.2.4.5 Itemized list of supplies or services furnished;
 - 1550.4.2.4.6 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
 - 1550.4.2.4.7 Date of delivery or shipment. (SC Reg. § 19-445.2100(B)(3)(d))
- 1550.4.2.5 **Invoices** - One of the following procedures should be used when invoicing:
- 1550.4.2.5.1 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;
 - 1550.4.2.5.2 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;
 - 1550.4.2.5.3 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))

- 1550.4.2.6 **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 blanket purchase agreements 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))
- 1550.4.2.7 **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))
- 1550.4.2.8 **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))
- 1550.4.2.9 **Review Procedures.** The 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))

1560. SOLE SOURCE PROCUREMENTS. (SC Code § 11-35-1560; SC Reg. § 19-445-2105)

- 1560.1 **Written Determination.** A contract may be awarded for a supply, service, information technology, or construction item without competition if, the Superintendent or Chief Business 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))
- 1560.2 **Examples.** The following are examples of circumstances which could necessitate sole source procurement:
- 1560.2.1 Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- 1560.2.2 Where a sole supplier's item is needed for trial use or testing;
- 1560.2.3 Where the item is one of a kind.
(SC Reg. § 19-445.2105(B))

1570. EMERGENCY PROCUREMENTS. (SC Code § 11-35-1570; SC Reg. § 19-445-2110)

1570.1 **Circumstances for Emergency Procurements.** Notwithstanding any other provision of this Code, the Superintendent or Chief Business 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 Business 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))

1570.2 **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)

1570.3 **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))

1570.4 **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 Business Officer or a designee of either shall be obtained prior to the procurement. (SC Reg. § 19-445.2110(D))

1570.5 **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 the appropriate fiscal 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))

1575. PROCUREMENT AT AUCTION. (SC Code § 11-35-1575)

1575.1 The District, having knowledge of either an auction or a sale of supplies from a bankruptcy, may elect to participate. The District 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) estimate 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.

1710. CANCELLATION OF SOLICITATIONS. (SC Code § 11-35-1710)

1710.1 Consistent with § 1520.6.4 (Rejection of Bids; Cancellation of Bids) and § 1520.6.5 (Rejection of Individual Bids), any solicitation under this Code may be canceled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the District. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

1810. RESPONSIBILITY OF BIDDERS AND OFFERORS. (SC Code § 11-35-1810; SC Reg. § 19-445-2125)

1810.1 **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. (SC Code § 11-35-1810(1))

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:

1810.1.1.1 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;

1810.1.1.2 A satisfactory record of performance;

1810.1.1.3 A satisfactory record of integrity;

1810.1.1.4 Qualified legally to contract with the District and State; and

1810.1.1.5 Supplied all necessary information in connection with the inquiry concerning responsibility.

1810.1.2 **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))

1810.1.3 **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:

1810.1.3.1 Evidence that such contractor possesses such necessary items;

1810.1.3.2 Acceptable plans to subcontract for such necessary items; or

- 1810.1.3.3 A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- 1810.1.4 **Justification for Contract Award.** Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible. (SC Reg. § 19-445.2125(D))
- 1810.2 **Written Determination of Nonresponsibility.** 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))
- 1810.3 **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))
- 1820. PREQUALIFICATION OF SUPPLIES AND SUPPLIERS. (SC Code § 11-35-1820; SC Reg. § 19-445.2130)**
- 1820.1 **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))
- 1820.2 **Prequalification.** Prospective suppliers may be prequalified for bidder lists, and distribution of the solicitation may be limited to pre-qualified suppliers. Suppliers who meet the prequalification standards at any time shall be added to the 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))
- 1825. PREQUALIFICATION OF CONSTRUCTION BIDDERS. (SC Code § 11-35-1825)**
- 1825.1 District criteria for pre-qualifying 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 (\$10,000,000.00) 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.
- 1825.2 Pre-qualifying 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)).
- 1830. COST OR PRICING DATA. (SC Code § 11-35-1830)**

1830.1 **Contractor Certification.** (SC Code § 11-35-1830(1)) A contractor must, except as provided in § 1830.3 (Cost or Pricing Data Not Required), submit cost or pricing data and must 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:

1830.1.1 The pricing of any contract awarded by competitive sealed proposals pursuant to Section 1530 or pursuant to sole source procurement authority as provided in Section 1560 where the total contract price exceeds an amount established by the Board, or;

1830.1.2 The pricing of any change order or contract modification which exceeds an amount established by the Board.

1830.2 **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 that was inaccurate, incomplete, or not current as of the date agreed upon between parties.

1830.3 **Cost or Pricing Data Not Required.** The requirements of this section shall not apply to contracts:

1830.3.1 Where the contract price is based on adequate price competition;

1830.3.2 Where the contract price is based on established catalog prices or market prices;

1830.3.3 Where contract prices are set by law or regulations; or

1830.3.4 Where it is determined in writing by the District that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

2010. TYPES AND FORMS OF CONTRACTS. (SC Code § 11-35-2010)

2010.1 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. 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 District than any other type or that it is impracticable to obtain the supplies, services, information technology, or construction required except under such a contract.

2020. APPROVAL OF ACCOUNTING SYSTEM. (SC Code § 11-35-2020)

2020.1 The Chief Procurement Officer may require that:

2020.1.1 The proposed contractor's accounting system permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

2020.1.2 The proposed contractor's accounting system be adequate to allocate costs in accordance with generally accepted accounting principles.

2030. MULTI-TERM CONTRACTS. (SC Code §11-35-2030. SC Reg. § 19-445.2135)

2030.1 **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 (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))

2030.2 **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))

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 canceled. (SC Reg. § 19-445.2135(A))

2030.2.2 **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))

2030.2.3 **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:

2030.2.3.1 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;

2030.2.3.2 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;

2030.2.3.3 Stabilization of the contractor’s work force over a longer period of time may promote economy and consistent quality;

2030.2.3.4 The cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

2030.3 **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. (SC Code § 11-35-2030(3))

2030.4 **Maximum Time For Use.** The maximum time for a multi-term contract is five (5) years. Contract terms of up to seven (7) years may be approved by the Superintendent. Contracts exceeding seven (7) years may be approved by the Board. (SC Code § 11-35-2030(4); SC Reg. § 19-445.2135(D))

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 canceled 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;

2030.5.4 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;

2030.5.5 Whether bidders or offerors may submit prices for:

2030.5.5.1 The first fiscal period only;

2030.5.5.2 The entire time of performance only; or

2030.5.5.3 Both the first fiscal period and the entire time of performance;

2030.5.6 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

2030.5.7 That, in the event of cancellation as provided in Section 2030.3, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

2030.6 **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 offerer to “buy in”, that is to give such bidder or offeror an undue competitive advantage in subsequent procurements. (SC Reg. § 19-445.2135(F))

2030.7 **Limitation.** Section 2030 does not apply to contracts for construction.

2210. RIGHT TO INSPECT PLANT. (SC Code § 11-35-2210)

2210.1 The 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 or subcontractor which is related to the performance of a contract awarded or to be awarded by the District.

2220. RIGHT TO AUDIT RECORDS. (SC Code § 11-35-2220)

2220.1 **Audit of Cost or Pricing Data.** All District contracts shall contain a clause setting forth the District's right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data pursuant to § 1830 (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer; provided, however, that such records shall be retained for additional periods of time beyond this three (3) year period upon request of the Chief Procurement Officer. (SC Code § 11-35-2220(1))

2220.2 **Contract Audit.** The District is entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm-fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. (SC Code § 11-35-2220(2))

2410. FINALITY OF DETERMINATIONS. (SC Code § 11-35-2410)

2410.1 **Finality.** The determinations required by the following sections are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law:

Section 1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 1528(8) (Competitive Best Value Bidding: Award), Section 1529(1) (Competitive On-line Bidding: Conditions for Use), Section 1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 1530(7) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 1530(9) (Competitive Sealed Proposals Award), Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 1560 (Sole Source Procurement), Section 1570 (Emergency Procurement), Section 1710 (Cancellation of Invitation for Bids or Requests for Proposals), Section 1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 1825 (Prequalification of Construction Bidders), Section 1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 2010 (Types and Forms of Contracts), Section 2020 (Approval of Accounting System), Section 2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 3020(2)(d) (Construction

Procurement Procedures: Negotiations after Unsuccessful Competitive Sealed Bidding), Section 3220(5) (Procurement Procedure, Selection and Ranking of the Five Most Qualified), Section 4210(7) (Stay of Procurement During Protests, Decision to Proceed), and Section 4810 (Cooperative Use of Supplies, Services, or Information Technology).

2410.2 **Periodic Review.** The Superintendent or a designee shall review samples of the determinations periodically and issue reports and recommendations on the appropriateness of the determinations made.

2420. REPORTING OF ANTICOMPETITIVE PRACTICES. (SC Code § 11-35-2420)

2420.1 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 South Carolina Attorney General's Office.

2430. RETENTION OF PROCUREMENT RECORDS. (SC Code § 11-35-2430)

2430.1 All procurement records of the District shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

2440. RECORDS OF PROCUREMENT ACTIONS. (SC Code § 11-35-2440)

2440.1 **Contents of Records.** (SC Code § 11-35-2240) The District shall submit semi-annually a record listing all contracts made pursuant to § 1560 (Sole Source Procurement) or § 1570 (Emergency Procurements) to the Superintendent. The record must contain:

2440.1.1 Each contractor's name;

2440.1.2 The amount and type of each contract;

2440.1.3 A listing of supplies, services, information technology, or construction procured under each contract.

2440.2 **Retention.** The District shall maintain these records for five (5) years.

2440.3 **Publication of Records.** A copy of these records must be submitted to the Board through the Superintendent on an annual basis and must be available for public inspection.

**ARTICLE 7
SPECIFICATIONS**

2710. ISSUANCE OF SPECIFICATIONS. (SC Reg. § 19-445-2140)

2710.1 **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))

2710.2 **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))

2710.3 **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))

2720. DISTRICT SPECIFICATION PREPARATION AND REVIEW. (SC Code § 11-35-2720)

2720.1 The District shall prepare or review, issue, revise, and maintain the specifications for supplies, services, information technology, and construction required by the District.

2730. ASSURING COMPETITION. (SC Code § 11-35-2730)

2730.1 All specifications shall be drafted so as to assure cost effective procurement of the District's actual needs and shall not be unduly restrictive.

2750. SPECIFICATIONS PREPARED BY ARCHITECTS AND ENGINEERS. (SC Code § 11-35-2750)

2750.1 The requirements of this article regarding the non-restrictiveness 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.

ARTICLE 9

CONSTRUCTION, ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

3010. CONSTRUCTION CONTRACTING ADMINISTRATION. (SC Code § 11-35-3010; SC Code Reg. § 19-445-2145)

3010.1 **Selection of Method.** The method of construction contracting administration used for a District construction project shall be determined to be that method which is most advantageous to the District and will result in the most timely, economical, and successful completion of the construction project. The District shall select the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations, including without limitation those identified in § 3010.2, that led to the selection of that particular method. (SC Code § 11-35-3010(1))

3010.2 **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:

3010.2.1.1 The results achieved on similar projects in the past and the methods used;

3010.2.1.2 Appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill District requirements;

3010.2.1.3 Appropriate and effective means of obtaining both the design and construction of the project.

3010. 2.2 **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. 2.3 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 Chief Business Officer. 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.

3020. CONSTRUCTION SERVICES PROCUREMENT PROCEDURES.

3020.1 **Source Selection.** All District construction contracts must be awarded by competitive sealed bidding pursuant to the procedures set forth in §1520 (Competitive Sealed Bidding) subject to the exceptions enumerated in § 3020.2 below, and except as provided in § 1550 (Small Purchases), § 1560 (Sole Source Procurements), § 1570 (Emergency Procurements). Competitive sealed proposals as provided in § 1530 must not be used, except in cases and in accordance with criteria as may be authorized by Section 3020.1.1. (SC Code § 11-35-3020(1))

3020.1.1 Pursuant to Section 3020.1 and the approval requirements of Section 3010, the following types of supplies, services, or construction may be procured by competitive sealed proposals:

3020.1.1.1 Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. hazardous waste remedial action).

3020.1.1.2 Design/Build or Lease-Purchase contracts where there must be selection criteria in addition to price.

- 3020.1.1.3 Energy conservation or other projects to be financed by vendors who will be paid from the District's savings.
- 3020.1.1.4 Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the District. (SC Reg. § 19-445.2095(F)(1))
- 3020.1.2 The Chief Procurement Officer shall develop and issue procedures which shall be followed by the District when using the competitive sealed proposal method of acquisition. (SC Reg. § 19-445.2095(F)(2))
- 3020.2 **Exceptions in Competitive Sealed Bidding Procedures for Construction.** (SC Code § 11-35-3020(2)) The process of competitive sealed bidding as required in § 3020(1) must be performed in accordance with the procedures outlined in Article 5 of this Code subject to the following exceptions:
- 3020.2.1 **Invitation for Bids.** Instead of § 1520.2 (Invitation for Bids), § 1520.3 (Notice) and §1520.4 (Receipt & Safeguarding of Bids) of this Code, invitations for bids for each District construction project subject to subsection 3020.1.1 must be made in the following manner. The District must be responsible for developing a formal invitation for bids for each District construction project subject to § 3020.1.1 above. 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 advertised in *SCBO*.
- 3020.2.2 **Bid Acceptance.** Instead of § 1520.6.1 (Bid Acceptance and Bid Evaluation) the following provisions apply. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code. The District's invitations for bids must set forth all requirements of the bid including, but not limited to:
- 3020.2.2.1 **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 to the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent (3%) of the prime contractor's total base bid. In addition, the District, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids any additional subcontractors who are expected to perform work 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 § 4210 (Protests) 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.

3020.2.2.2 **Failure to List.** Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

3020.2.2.3 **Subcontractor Substitution.** A prime contractor whose bid is accepted may not substitute a person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons:

3020.2.2.3.1 Upon a showing satisfactory to the District by the contractor that a subcontractor who was listed is not financially responsible;

3020.2.2.3.2 Upon a showing satisfactory to the District by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid;

3020.2.2.3.3 Upon a showing satisfactory to the District made by the contractor within four (4) working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;

3020.2.2.3.4 Upon a showing satisfactory to the District by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;

3020.2.2.3.5 Upon a showing satisfactory to the District by the contractor that the listed subcontractor is required to be licensed and does not have the license at the time it is required by law;

3020.2.2.3.6 When the listed subcontractor fails or refuses to perform its subcontract;

3020.2.2.3.7 When the work of the listed subcontractor is found by the District to be substantially unsatisfactory;

3020.2.2.3.8 Upon mutual agreement of the contractor and subcontractor;

3020.2.2.3.9 With the consent of the District for good cause shown.

- 3020.2.2.4 **Request for Substitution.** 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 prime contractor in the absence of actual malice.
- 3020.2.2.5 **Method for Substitution.** Where substitution is allowed, the prime contractor, before obtaining prices from another subcontractor, shall attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received before the submission of the prime contractor's bid. This section does not affect a contractor's ability to request withdrawal of a bid in accordance with the provisions of this Code.
- 3020.2.2.6 **Bid Tabulations.** The District shall send all responsive bidders a copy of the bid tabulation within ten (10) working days following the bid opening.
- 3020.2.3 **Notice of Intent to Award; Award.** Instead of § 1520.10 (Award), the following provisions apply. Unless there is a compelling reason to reject bids as prescribed by 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 §4210 (Protests) 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 § 4210 (Protests) of this Code.
- 3020.2.3.1 **Protest Waiting Period.** After ten (10) days' notice is given, the District may enter into a contract with the bidder named in the notice in accordance with the provisions of this Code and of the invitation for bids. The Procurement Officer must comply with § 1810 (Responsibility of Bidders and Offerors). 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 (10) day waiting period.
- 3020.2.4 **Negotiations After Unsuccessful Competitive Sealed Bidding.** Instead of § 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), the following provisions apply:
- When 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 any deductive alternates, does not exceed available funds by an amount greater than ten percent (10%) 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 (10%) without written approval of the Superintendent based on the best interest of the District.

3025. APPROVAL OF CHANGES. (S.C. Code § 11-35-3025)

3025.1 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.

3030. BONDS AND SECURITY. (SC Code § 11-35-3030; SC Reg. § 19-445-2145(C))

3030.1 Bid Bonds

3030.1.1 **Requirement for Bid Security.** Bid security is required for all competitive sealed bidding for construction contracts in excess of fifty thousand dollars (\$50,000.00) and where otherwise required by State law. Bid security is a certified cashier's check or a bond provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. Each bond must be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety. In the case of a construction contract under \$100,000.00, the District may, with the approval of the Superintendent, allow the use of a "B" rated bond when bid security is required. (SC Reg. § 19-445.2145(C) (1))

3030.1.2 **Amount of Bid Security.** Bid security must be in an amount equal to at least five percent (5%) of the amount of the bid at a minimum.

3030.1.3 **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 (1) 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, its bid must be rejected.

3030.1.4 **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 § 1520.7 (Withdrawal of Bids; Cancellation of Awards), action must not be had against the bidder or the bid security.

3030.2 Performance Bonds and Payment Bonds.

3030.2.1 **When Required-Amounts.** When a construction contract is awarded pursuant to Section § 3020, the following bonds or security must be delivered to the District and shall become binding on the parties upon the execution of the contract:

- 3030.2.1.1 **Performance Bond.** A performance bond satisfactory to the District, executed by a surety company meeting the criteria set forth below, or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent (100%) of the price specified in the contract;
- 3030.2.1.2 **Payment Bond.** A payment bond satisfactory to the District, executed by a surety company meeting the criteria set forth below, or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price;
- 3030.2.1.3 **Bond Requirements.** In the case of a construction contract valued at fifty thousand dollars (\$50,000.00) or less, the District may waive the requirements of § 3030.2.1.1 and/or § 3030.2.1.2, provided that the District has otherwise protected itself.
- 3030.2.1.4 **Criteria.** Where bonds are required by § 3030.2.1.1 and § 3030.2.1.2, the contractor must provide a certified cashier's check in the full amount of the performance and payment bonds or may provide, and pay the cost of, performance and payment bonds in the form of AIA Document A311 "PERFORMANCE BOND AND LABOR AND MATERIAL BOND." Each bond shall be in the full amount of the Contract Sum, issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. In the case of construction under \$100,000, the Superintendent may allow the use of a "B" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety. (SC Reg. § 19-445-2145(C)(2))
- 3030.2.2 **Authority to Require Additional Bonds.** Subsection 3030.2 (Contract Performance and Payment Bonds) does not limit the authority of the District to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in § 3030.1, when the District deems such bonds to be in the best interests of the District.
- 3030.2.3 **Suits on Payment Bonds.** S.C. Code Ann. § 11-35-3030(2)(c)-(d) provides for legal actions on payment bonds.
- 3030.2.4 **Contractor Obligation to Subcontractors.** Nothing in this Code affects or relieves any contractor's obligations to its subcontractors and suppliers under S.C. Code §§ 29-6-10 et seq. ("Payments to Contractors, Subcontractors, and Suppliers").

3030.3 **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.

3030.4 **Retention**

3030.4.1 **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 District or general contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment must be no more than three and one-half percent (3.5%).

3030.4.2 **Release of Retained Funds.** When the work to be performed on a District construction project or pursuant to a District construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor 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 any retention previously withheld from him by the prime contractor.

3030.5 **Bonds for Bid Security and Contract Performance.** The requirement of a bond for bid security on a construction contract, pursuant to § 3030.1, and construction contract performance bond pursuant to § 3030.2, may not include a requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.

3040. CONTRACT CLAUSES AND THEIR ADMINISTRATION. (SC Code § 11-35-3040)

3040.1 **Contract Clauses.** The District 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:

3040.1.1 The unilateral right of the District to order in writing:

3040.1.2 All changes in the work within the scope of the contract, and

3040.1.3 All changes in the time of performance of the contract which do not alter the scope of the contract work;

3040.1.4 Variations occurring between estimated quantities of work in the contract and actual quantities;

3040.1.5 Suspension of work ordered by the District;

3040.1.6 Site conditions differing from those indicated in the contract or ordinarily encountered.

3040.2 **Price Adjustments.**

3040.2.1 **Computation of Price Adjustments.** Adjustments in price pursuant to clauses referenced in § 3040.1 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:

- 3040.2.1.1 By unit prices specified in the contract or subsequently agreed upon;
- 3040.2.1.2 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;
- 3040.2.1.3 By agreement on a fixed price adjustment;
- 3040.2.1.4 In another manner as the contracting parties may mutually agree (including by methods provided for in the contract); or
- 3040.2.1.5 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 and subject to the provisions of Article 17 this Code.

3040.2.6 **Submission of Price Adjustments.** A contractor is required to submit cost or pricing data if an adjustment in contract price is subject to the provisions of § 1830 (Cost or Pricing Data).

3040.3 **Additional Contract Clauses.** The construction contracts and subcontracts may include clauses providing for appropriate remedies that cover as a minimum:

- 3040.3.1 Specified excuses for delay or nonperformance;
- 3040.3.2 Termination of the contract for default;
- 3040.3.3 Termination of the contract in whole or in part for the convenience of the District.

3040.4 **Contract Forms.**

Pursuant to Code Section 2010, the following Contract Forms, whose AIA Edition, if any, is designated by the Chief Procurement Officer shall be used, as applicable.

(1) Contracts for Services may be as follows:

- (a) Land surveyor: The District may use a letter contract written for each individual project.
- (b) Architect-Engineer: The district may use AIA Document B141-1997 or B151-1997, with modifications prepared by the District or Architect-Engineer.
- (c) Architect-Engineer/Construction-Management: For the Architect-Engineer, the district may use B141/CM, with modifications prepared by the District or Architect-Engineer. For the managers, it may use AIA Document B801, with modifications prepared District or construction manager.
- (d) Construction: the District may use AIA Document A101, 1997 Edition or AIA Document A101/CM. Other contract forms may be used as are approved by the Chief Procurement Officer.
- (e) For Contracts under Section 3230, the District may use a letter contract written for each individual project. The format and description of services shall be as approved by the Chief Procurement Officer.
- (f) For Construction under Section 1550, the district may use a letter contract written for each individual project. The format and description of services shall be as approved by the Chief Procurement Officer.

(2) Bidding Documents may be as follows:

(a) Instruction to bidders may be AIA Document A701, with modifications prepared by the District or the Architect-Engineer.

(b) General Conditions of the Contract for Construction may be AIA Document A201, with Supplementary Conditions and/or modifications prepared by the District or Architect-Engineer; or AIA A201/CM, with Supplementary Conditions and/or modifications prepared by the District or the Architect-Engineer/Construction Manager.

(c) Bid Form and Change Order prepared by the Architect-Engineer, Construction Manager or District may be used.

(d) Construction under Section 1550 and 1530 may be in a format and description of services approved by the Chief Procurement Officer.

3050. COST PRINCIPLES FOR CONSTRUCTION CONTRACTORS. (SC Code § 11-35-3050)

3050.1 The District may establish, in the construction project documents for each project, any cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in construction contracts which provide for the reimbursement of costs.

3210. PROFESSIONAL SERVICES FOR CONSTRUCTION. (SC Code §§ 11-35-3210)

3210.1 **Applicability.** Architect-engineer, construction management, and land surveying services shall be procured as provided in Section 3220 (Procurement Procedures for Professional Services for Construction) except as authorized by § 1560 (Sole Source Procurements), § 1570 (Emergency Procurements), and § 3230 (Exception for Small Architect, Engineer or Land Surveying Services). (SC Code §§ 11-35-3210(1))

3210.2 **Policy.** It is the policy of this District 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. (SC Code §§ 11-35-3210(2))

3220. PROCUREMENT PROCEDURES FOR PROFESSIONAL SERVICES FOR CONSTRUCTION. (SC Code § 11-35-3220)

3220.1 **District Selection Committee.** The District shall establish its own architect-engineer, construction management, and land surveying services selection committee, referred to as the "District Selection Committee", that must be composed of those individuals whom the Board of Trustees or its designee determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The Superintendent or his qualified responsible designee shall sit as a permanent member of the District Selection Committee for the purpose of coordinating and accounting for the committee's work. Final selection and award of contracts for architect/engineer and surveying services must be approved by the Board of Trustees.

3220.2 **Advertisement of Project Description.**

3220.2.1 The District Selection Committee shall be responsible for:

3220.2.1.1 Developing a description of the proposed project;

3220.2.1.2 Enumerating all required professional services for that project; and

- 3220.2.1.3 Preparing a formal invitation to firms for submission of information.
- 3220.2.2 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 invitation must be advertised formally in *SCBO*.
- 3220.3 **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 (15) 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, and any other information that the particular invitation may require.
- 3220.4 **Interviews with Interested Firms.** Following receipt of information from all interested persons and firms, the District Selection Committee shall hold interviews with at least three (3) 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 (3) persons or firms respond to the advertisement, the committee shall hold interviews with those that did respond. The District Selection Committee's determination as to which are to be interviewed shall be in writing and based upon its review and evaluation of all submitted materials. The written report of the District Selection Committee must list specifically the names of all persons and firms that responded to the advertisement and enumerate the reasons of the District Selection Committee for selecting those to be interviewed. The purpose of the interviews is to provide the further information that may be required by the District Selection Committee to fully acquaint it with the relative qualifications of the several interested firms.
- 3220.5 **Selection and Ranking of the Three (3) Most Qualified.**
- 3220.5.1 The District Selection Committee shall evaluate each of the persons or firms interviewed in view of their:
- 3220.5.1.1 Past performance;
 - 3220.5.1.2 Ability of professional personnel;
 - 3220.5.1.3 Demonstrated ability to meet time and budget requirements;
 - 3220.5.1.4 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;
 - 3220.5.1.5 Recent, current, and projected work loads of the firms;
 - 3220.5.1.6 Creativity and insight related to the project;
 - 3220.5.1.7 Related experience on similar projects;
 - 3220.5.1.8 Volume of work awarded by the District to the person or firm during the previous five (5) years, with the objective of effectuating an equitable distribution of contracts by the 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 District work; and

3220.5.1.9 Any other special qualification required pursuant to the solicitation of the District.

3220.5.2 Based upon these evaluations, the District Selection Committee shall select the three (3) persons or firms that, in its judgment, are the best qualified, ranking the three (3) in priority order. The District Selection Committee's report ranking the three (3) chosen persons or firms must be in writing and include data substantiating its determinations.

3220.6 **Notice of Selection and Ranking.** When it is determined by the District that the ranking report is final, written notification of the highest ranked person or firm must be sent immediately to all firms interviewed.

3220.7 **Negotiation of Contract.** The Superintendent or a designee shall negotiate a contract for services with the most qualified person or firm at a compensation that is fair and reasonable to the District. If the Superintendent or 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, and negotiations must be continued in the same manner until agreement is reached.

3230. EXCEPTION FOR SMALL ARCHITECT/ENGINEER AND LAND SURVEYING SERVICES. (SC Code § 11-35-3230)

3230.1 **Authority.** The District securing architect-engineer or land surveying services, which are estimated not to exceed twenty-five thousand dollars (\$25,000.00) may award contracts by direct negotiation and selection, taking into account:

3230.1.1 The nature of the project;

3230.1.2 The proximity of the architect-engineer or land surveying services to the project;

3230.1.3 The capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;

3230.1.4 Past performance; and

3230.1.5 The ability to meet project budget requirements.

3230.2 **Maximum Fees Payable to One Person or Firm.** Fees paid during the twenty-four (24) month period immediately preceding negotiation of the contract by the District for professional services performed by an architectural-engineering or land surveying firm pursuant to § 3230.1 must not exceed seventy-five thousand dollars (\$75,000.00). Persons or firms seeking to render professional services pursuant to this section shall furnish the District 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.

3230.3 **Splitting of Large Projects Prohibited.** The District may not break a project into small projects for the purpose of circumventing the provisions of §§ 3220-3230.

3245. CONSTRUCTION WORK PROHIBITED BY ARCHITECT OR ENGINEER. (SC Code § 11-35-3245)

3245.1 **"Other Work".** An architect or engineer performing design work, or construction manager performing "construction management services" as defined in this Code, under a contract awarded pursuant to the provisions of § 3220 (Procurement Procedures for Professional Services for Construction) or § 3230 (Exception for Small Architect/Engineer Land Surveying Services), 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 (5%) interest. (SC Code § 11-35-3245(a))

3245.2 **Exceptions.** 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 S.C. Code Ann. § 41-15-210, then the construction management firm is subject to all applicable fines and penalties. (SC Code § 11-35-3245(b))

ARTICLE 10

INDEFINITE DELIVERY CONTRACTS

3310. INDEFINITE DELIVERY. (SC Code § 11-35-3310)

3310.1 **General Applicability.** Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedure in § 3020 (Construction Services Procurement Procedures) and for architectural-engineering and land surveying services pursuant to § 3220 (Procurement Procedures for Professional Services for Construction).

3310.1.1 **Construction services.** When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred fifty thousand dollars (\$750,000.00) for a two (2) year period with individual project expenditures not to exceed one hundred fifty thousand dollars (\$150,000.00).

3310.1.2 **Architectural-Engineering and Land Surveying Services.** When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of three hundred thousand dollars (\$300,000.00) for a two (2) year period with individual project expenditures not to exceed one hundred thousand dollars (\$100,000.00). (SC Code § 11-35-3310(1))

3310.2 **Small Indefinite Delivery Contracts.** Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in § 3230 of this Code. A contract established under this

section shall be subject to and included in the limitations for individual and total contract amounts provided in § 3230 of this Code. (SC Code § 11-35-3310(2))

3310.2.1 With regard to Section 3310, the District will establish working procedures for indefinite delivery construction contracts. (S.C. Regs. § 19-445.2145(H)).

ARTICLE 11

MODIFICATIONS AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

3410. AMENDMENTS TO AND TERMINATION OF CONTRACTS FOR SUPPLIES, EQUIPMENT AND SERVICES. (SC Code § 11-35-3410).

3410.1 **Contract Clauses.** The District may require the inclusion in 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:

3410.1.1 **Change in Work:** the unilateral right of the District to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance; and

3410.1.2 **Change in Quantity:** variations occurring between estimated quantities of work in a contract and actual quantities.

3410.2 **Price Adjustments.**

3410.2.1 **Adjustment Computation.** Adjustments in price pursuant to clauses used pursuant to § 3410.1 above 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:

3410.2.1.1 By unit prices specified in the contract or subsequently agreed upon;

3410.2.1.2 By the costs attributable to the events or situations under such clauses with adjustment for profit or fee, all specified in the contract or subsequently agreed upon;

3410.2.1.3 By agreement on a fixed price adjustment;

3410.2.1.4 By rates determined by the Public Service Commission and set forth in the applicable tariffs;

3410.2.1.5 In such other manner as the contracting parties may mutually agree; or

3410.2.1.6 In the absence of agreement by the parties, through unilateral determination by the District of the costs attributable to the events or situations under such

clauses, with adjustment of profit or fee, all as computed by the District in accordance with sections of this Code concerning “Cost Principles” and subject to the provisions of Article 17 of this chapter.

- 3410.2.2 **Submittals.** A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 1830 (Cost or Pricing Data).
- 3410.3 **Additional Contract Clauses.** The District may, in supplies, services, and information technology contracts, require the inclusion of contract clauses providing for appropriate remedies and covering the following subjects:
- 3410.3.1 Specified excuses for delay or nonperformance;
- 3410.3.2 Termination of the contract for default; and
- 3410.3.3 Termination of the contract in whole or in part for the convenience of the District.
- 3410.4 **Modification of Clauses.** The Chief Procurement Officer may vary the usual clauses customarily included by the District under § 3410.1 and § 3410.4 in any particular District contract.

ARTICLE 12

LEASES, LEASE/PAYMENT, INSTALLMENT PURCHASE AND RENTAL OF PERSONAL PROPERTY

3450. **LEASES, LEASE/PAYMENT, INSTALLMENT PURCHASE, AND RENTAL OF PERSONAL PROPERTY.**
- 3450.1 **Justification.** The District, when entering into an agreement other than an outright purchase, is responsible for the justification of such action. Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of this Code.
- 3450.2 **Procedures.** Upon written justification by the Procurement Officer of such alternate method, the following procedures will be followed:
- 3450.2.1 Installment purchases will require the Procurement Officer to submit both a justification and purchase requisition to the Chief Business Officer or his designee for processing.
- 3450.2.2 All lease/purchase and installment sales contracts must contain an explicitly stated rate of interest to be incurred by the District under the contract.

ARTICLE 13

COST PRINCIPLES

3510. **COST PRINCIPLES REQUIRED FOR SUPPLIES AND SERVICES CONTRACTS.** (S.C. Code § 11-35-3510).
- 3510.1 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.

ARTICLE 15
REGULATIONS FOR SALE, LEASE, TRANSFER AND DISPOSAL

3810. REGULATIONS FOR SALE, LEASE, TRANSFER AND DISPOSAL. (SC Code § 11-35-3810)

3810.1 Subject to this code and existing provisions of law, the Board shall adopt rules governing:

3810.1.1 The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods; (SC Code § 11-35-3810(1))

3810.1.2 The transfer of excess supplies between schools and departments. (SC Code § 11-35-3810(2))

3810.2 **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))

3810.3 **Determination of Sale Price.** (SC Reg. §19-445.2150(C)(2)). The sale price for all items will be established by the Procurement Officer or designee. The Procurement Officer or his designee shall have the final authority to accept or reject bids received via public sale. The following categories and methods will be used:

3810.3.1 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))

3810.3.2 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))

3810.3.3 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))

3810.4. **Public Sale of Surplus Property.** (SC Reg. §19-445.2150(D)). All surplus property shall be offered through competitive sealed bids or public auction.

3810.4.1 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))

3810.4.2 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 Procurement Officer or his 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))

- 3810.4.3 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 Procurement Officer or his 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))
- 3810.5 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 Internal Operations Cashier. (SC Reg. §19-445.2150(F)(7))
- 3810.6 **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.
- 3810.7 **Unauthorized Disposal.**
- 3810.7.1 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 Business Officer. (SC Reg. §19-445.2150(I)(1))
- 3810.7.2 Corrective Action and Liability. In all cases, the Chief Business 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))
- 3810.8 **Designation of Surplus Property.** (SC Reg. §19-445.2150(D)(4)). Upon written determination by the Superintendent that surplus property items are needed to comply with programs authorized by the Board, legislature or by executive order of the governor exercising his statutory authority, the Superintendent may designate surplus property items for disposal in order to comply with the program requirements. The Superintendent 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, legislature or the governor.
- 3810.9 **Authority to Debar or Suspend.** (SC Reg. §19-445.2150(J)). The procedures and policies set forth in Section 4220 of the Procurement Code shall apply to the disposal of District property. The authority to debar a person from participation in the public sales of State-owned property shall rest with the Chief Procurement Officer.

3820. ALLOCATION OF PROCEEDS FOR SALE OR DISPOSAL OF SURPLUS SUPPLIES. (SC Code § 11-35-3820)

3820.1 Except as provided in Section 3830, the sale of all District owned supplies, or personal property not in actual public use must be conducted and directed by the designated District office. The sales must be held at such places and in a manner as in the judgment of the designated District office is most advantageous to the District. Unless otherwise determined, sales must be by either public auction or competitive sealed bid to the highest bidder. Each school shall inventory and report to the designated District office all surplus property not in actual public use held by that school for sale.

3830. TRADE-IN SALES. (SC Code § 11-35-3830)

3830.1 **Trade-in Value.** 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 § 3830.2.3. (SC Code § 11-35-3830(1))

3830.2 **Approval of Trade-in Sales.** When the trade-in value of personal property of the District exceeds the specified amount, the Board shall have the authority to determine whether: (SC Code § 11-35-3830(2))

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))

3830.2.2 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))

3830.2.3 The 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 Procurement Officer shall refer the matter to the Chief Business Officer for disposition. The Chief Business 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 designee, shall make a written determination as to its reasonableness and document such trade-in transaction. (SC Reg. §19-445.2150(G))

3830.3 **Record of Trade-in Sales.** The designated District office shall submit quarterly to the Chief Business officer a record listing all trade-in sales made under subsections (1) and (2) of this section. (SC Code § 11-35-3830(3))

3850. SALE OF UNSERVICEABLE SUPPLIES. (SC Code § 11-35-3850)

3850.1 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 (15) days. (SC Code § 11-35-3850)

3850.2 **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))

ARTICLE 17
LEGAL AND CONTRACTUAL REMEDIES

4210. PROTESTS (RIGHT TO PROTEST; PROCEDURE; SETTLEMENT OF PROTEST; ADMINISTRATIVE REVIEW AND DECISION; NOTICE OF DECISION; FINALITY; STAY OF PROCUREMENT PENDING; EXCLUSIVITY OF REMEDY.) (SC Code § 11-35-4210)

4210.1 **Right to Protest; Exclusive Remedy.** (SC Code § 11-35-4210)

4210.1.1 **Protest of Solicitation.** 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 in the manner stated in § 4210.2 below within fifteen (15) days of the date of issuance of the Invitation for Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment 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.

4210.1.2 **Protest of Intended Award or Award.** 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 in the manner stated in subsection 4210.2.2 within ten (10) 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 § 4210.1.1 (Protest of Solicitation) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

4210.1.3 **Exclusive Right and Remedy.** 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 bidders, offerors, contractors, or subcontractors against the District.

4210.1.4 **Minimum Value Required.** The rights and remedies granted by subsection 4210.1.1 and Section § 4410.1.2 are not available for contracts with an actual or potential value of up to fifty thousand dollars (\$50,000.00).

4210.2 **Protest Procedure**

4210.2.1 **Solicitation.** A protest pursuant to subsection § 4210.1.1 (Protest of Solicitation) 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 within the time provided in § 4210.1.1 above.

- 4210.2.2 **Intended Award or Award.** A protest pursuant to § 4210.1.2 (Protest of Intended Award or Award) must be in writing and must be received by the Chief Procurement Officer within the time limits established by § 4210.1.2. At any time after filing a protest, but no later than fifteen (15) 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 § 4210.1.2. 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.
- 4210.3 **Duty and Authority to Attempt to Settle Protests.** Before commencement of an administrative review as provided in § 4210.4 below, the Chief Procurement Officer or his designee 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 his designee has the authority to approve any settlement reached by mutual agreement.
- 4210.4 **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 shall commence the administrative review no later than fifteen (15) days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten (10) days of completion of the review. The decision must state the reasons for the action taken.
- 4210.5 **Notice of Decision.** A copy of the decision under § 4210.4 along with a statement of appeal rights pursuant to § 4210.6 (Finality) below must be mailed or otherwise furnished immediately to the protestant and other party intervening. The Chief Procurement Officer also shall post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such 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 § 4210.6 (Finality) of this Code.
- 4210.6 **Finality.** A decision pursuant to § 4210.4 above is final and conclusive, unless fraudulent, or unless a person adversely affected by the decision requests, in writing, a further administrative review by the District Procurement Review Panel pursuant to § 4410.1 within ten (10) days of the posting of the decision in accordance with § 4210.5 above. The request for review must be directed to the Chief Procurement Officer, who shall forward the request to the 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.
- 4210.7 **Stay of Procurement During Protests.** In the event of a timely protest pursuant to § 4210.1, the 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, 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, after consultation with the Superintendent, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the District.

4210.8 **Notice of Chief Procurement Officer Address.** Notice of the address of the 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 of solicitation.

4215. POSTING OF BOND OR IRREVOCABLE LETTER OF CREDIT. (SC Code § 11-35-4215)

4215.1 **Right to Require Protest Bond or Irrevocable Letter of Credit.** The Superintendent may require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article 5 (Source Selection and Contract Formation) of this code and valued at one million dollars (\$1,000,000) or more to post with the District a bond or irrevocable letter of credit payable to the District in an amount equal to one percent (1%) of the total potential value of the contract as determined by the Superintendent. The Superintendent's decision to require a bond or irrevocable letter of credit is not appealable under § 4210 (Protests). The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of intended award or award of a contract of the District's request for sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent (1%) of the District's estimate of the contract amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the Superintendent may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the District prevails, it may request that the Procurement Review Panel allow it to recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier's check may be sought from the District.

4220. AUTHORITY TO DEBAR OR SUSPEND. (SC Code § 11-35-4220)

4220.1 **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 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 District and there is probable cause for debarment. The 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.

4220.2 **Causes for Debarment or Suspension.** The causes for debarment or suspension shall include, but not be limited to:

- 4220.2.1 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;
- 4220.2.2 Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a contractor;
- 4220.2.3 Conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- 4220.2.4 Violation of contract provisions, as set forth below, of a character regarded by the Chief Procurement Officer to be so serious as to justify debarment action:
- 4220.2.4.1 Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- 4220.2.4.2 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;
- 4220.2.5 Violation of an order of the Chief Procurement Officer or the Procurement Review Panel; and
- 4220.2.6 Any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as a contractor or subcontractor, including debarment by another governmental entity for any cause listed in § 4420.2.
- 4220.3 **Decision.** The Chief Procurement Officer shall issue a written decision to debar or suspend within ten (10) 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.
- 4220.4 **Notice of Decision.** A copy of the decision pursuant to § 4420.3 and a statement of appeal rights pursuant to § 4220.5 must be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening. The 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 § 4220.5.
- 4220.5 **Finality of Decision.** A decision pursuant to § 4220.3 above 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 § 4410, within ten (10) days of posting the decision in accordance with § 4220.4. The request for review must be directed to the Chief Procurement Officer, who shall forward the request to the 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 Panel.
- 4220.6 **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 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.

4230. AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES. (SC Code § 11-35-4230)

- 4230.1 **Applicability.** This section applies to controversies between the District and a contractor or subcontractor when the subcontractor is the real party in interest, which 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 rescission. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between the 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 this Code.
- 4230.2 **Request for Resolution; Time for Filing.** Either the District or the contractor or subcontractor, when the subcontractor is the real party in interest, may initiate resolution proceedings before the Chief Procurement Officer by submitting a request for resolution to the 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.
- 4230.3 **Duty and Authority to Attempt to Settle Contract Controversies.** Before commencement of an administrative review as provided in § 4230.4 below, the Chief Procurement Officer or his designee shall attempt to settle by mutual agreement a contract controversy brought pursuant to this section. The Chief Procurement Officer shall have the authority to approve any settlement reached by mutual agreement.
- 4230.4 **Administrative Review and Decision.** If, in the opinion of the Chief Procurement Officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the Chief Procurement Officer or his designee promptly shall conduct an administrative review and issue a decision in writing within ten (10) days of completion of the review. The decision shall state the reasons for the action taken.
- 4230.5 **Notice of Decision.** A copy of the decision pursuant to § 4230.4 above and a statement of appeal rights pursuant to § 4230.6 below must be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The 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 under § 4230.6.

4230.6 **Finality of Decision.** A decision pursuant to § 4230.4 is final and conclusive, unless fraudulent, or unless a person adversely affected requests further administrative review by the District Procurement Review Panel pursuant to § 4410.1 within ten (10) days of posting the decision in accordance with § 4230.5. The request for review must be directed to the Chief Procurement Officer, who shall forward the request to the 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 Panel.

4310. SOLICITATION OR AWARDS IN VIOLATION OF THE LAW. (SC Code § 11-35-4310)

4310.1 **Applicability.** The provisions of this section apply where it is determined by either the 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 after review under § 4210, or by the District Procurement Review Panel after review under § 4410.

4310.2 **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:

4310.2.1 Canceled;

4310.2.2 Revised to comply with the law and re-bid; or

4310.2.3 Awarded in a manner that complies with the provisions of this Code.

4310.3 **Remedies After Award.** If, after an award of a contract, it is determined that the solicitation or award is in violation of law:

4310.3.1 The contract may be ratified and affirmed, provided it is in the best interests of the District; or

4310.3.2 The contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

4310.4 **Entitlement to Costs.** In addition to or in lieu of any other relief, when a protest submitted under § 4210 (Protests) 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.

4320. CONTRACT CONTROVERSY REMEDIES. (SC Code § 11-35-4320)

4320.1 **Remedies.** Remedies available in a contract controversy brought under the provisions of § 4230. The Chief Procurement Officer or the Procurement Review Panel, in the case of review under § 4410, may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.

4330. FRIVOLOUS PROTESTS. (SC Code § 11-35-4330)

4330.1 **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. (SC Code § 11-35-4330(1))

4330.2 **Sanctions for Violation.** If a request for review, protest, pleading, motion, or other document that is filed with the Chief Procurement Officer 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. (SC Code § 11-35-4330(2))

4330.3 **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 Chief Procurement Officer. A motion for sanctions pursuant to this section must be filed with the Panel no later than fifteen (15) 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.

4410. DISTRICT PROCUREMENT REVIEW PANEL. (SC Code § 11-35-4410)

4410.1 **Creation.** There is created the District's Procurement Review Panel which is charged with the responsibility to review and determine de novo:

4410.1.1 Requests for review of written determinations of the Chief Procurement Officer issued under §§ 4210.6, 4220.5, and 4230.6; and

4410.1.2 Requests for review of other written determinations, decisions, policies, and procedures as arise from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this Code; except that a matter that could have been brought before the Chief Procurement Officer in a timely and appropriate manner pursuant to §§ 4210, 4220, or 4230, but was not, must not be the subject of review under this paragraph. Requests for review under this paragraph must be submitted in writing to the Chief Procurement Officer for submission to the Procurement Review Panel, setting forth the grounds, within fifteen (15) days of the date of the written determinations, decisions, policies, and procedures. The Chief Procurement Officer shall immediately submit such requests to the panel, through its Chairman.

4410.2 **Membership.** The Procurement Review Panel will be composed of

4410.2.1 A member of the Board appointed by the Board, who will chair the Panel;

4410.2.2 For one year terms running from July 1 through June 30 annually, four persons from the community who are well respected representatives of several of the professions and businesses affected by this Code, including, but not limited to:

(i) goods and services

(ii) information technology

(iii) construction

(iv) architecture, engineering, construction management, and land surveying.

4410.2.2.1 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 District's Chief Business Officer, in that order; these persons shall recuse themselves in any matter in which they have an actual or apparent conflict of interest.

4410.2.4 When a vacancy is created, the official responsible for originally appointing the member vacating his or her seat shall appoint the successor to complete the term of service..

4410.3 Members may be reappointed to succeed themselves.

4410.3 **Meetings.** The Panel shall meet as often as necessary to afford a swift resolution of the controversies submitted to it. Four members present and voting constitute a quorum. In the case of a tie vote, the decision of the Chief Procurement Officer is sustained and final. The members of the Procurement Review Panel may be paid per diem, mileage, and subsistence by the District.

4410.4 **Administrative and Legal Support.** The Panel shall receive such administrative and clerical support as is necessary for the orderly transaction of business. The District will also provide the Panel with independent legal counsel to assist the Panel in all aspects of its operations.

4410.5. **Jurisdiction and Practices.** The Panel is vested with the authority to establish its own procedures for the conduct of its business and the holding of its hearings:

- Issue subpoenas
- Interview any person it considers necessary, and
- Record all determinations.

Any party aggrieved by a subpoena issued pursuant to this provision shall apply to the Panel for relief.

4410.6. **Determinations and Orders.**

Within fifteen (15) days of receiving a grievance filed pursuant to Section 4210.6, 4220.5, 4230.6 or 4410.1.2, the chairman shall either convene the review panel to conduct an administrative review or schedule a hearing to facilitate its administrative review. Except for grievances filed pursuant to § 4230.6 (Contract Controversies), the Panel shall record its determination within ten (10) working days and communicate its decision to those involved in the determination. In matters designated by the Panel as complex, the Panel shall record its determination within thirty (30) days.

4410.7 **Finality.** Notwithstanding another provision of law, the decision of the Procurement Review Panel is final as to administrative review and may be appealed only to the circuit court. The standard of review is as provided by the provisions of the South Carolina Administrative Procedures Act. The filing of an appeal does not automatically stay a decision of the panel.

ARTICLE 19

COOPERATIVE PURCHASING

4810. COOPERATIVE PURCHASING AUTHORIZED. (SC Code § 11-35-4810)

4810.1 All rights, powers, duties and authority granted to the District by Title 11, Chapter 35, Article 19 of the South Carolina Code of Laws are hereby vested in the Superintendent provided that the District conduct cooperative purchasing in accordance with Title 11, Chapter 35, Article 19 of the Code including the requirement that should

the District participate in a multi-state, multi-party solicitation, thirty (30) days notice of the proposed multi-party solicitation shall 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 (in this case, District offices) through South Carolina vendors.

4880. DISTRICT IN COMPLIANCE WITH CODE REQUIREMENTS. (SC Code § 11-35-4880)

4880.1 Where a public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this Code, the District participating in such a purchase shall be deemed to have complied with this Code. The District shall not enter into a cooperative purchasing agreement for the purpose of circumventing this Code.

ARTICLE 21

ASSISTANCE TO MINORITY BUSINESS

5210. STATEMENT OF IMPLEMENTATION. (SC Code § 11-35-5210)

5210.1 The District recognizes that the General Assembly, in SC Code Ann. 11-35-5210, has declared 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 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 District. The Board therefore sets these procedures that will result in awarding contracts and subcontracts to minority business firms in order to enhance minority capital ownership, overall District and State economic development and reduce dependency on the part of minorities.

5210.2 For purposes of this Article, the term "minority business" means a business holding a Certificate of Eligibility issued by the South Carolina Small and Minority Business Assistance Office (SMBAO). (SC Reg § 19-455.2160(B))

5220. DUTIES OF THE PROCUREMENT OFFICER. (SC Code § 11-35-5220)

5220.1 **Assistance.** The District shall provide appropriate staff to assist minority businesses with the District's procurement procedures and in the interpretation of this Code.

5220.2 **Special Publications.** The District in cooperation with other appropriate private and state agencies may issue supplementary instructions designed to assist minority businesses with the District procurement procedures.

5220.3 **Source Lists.** The District shall maintain special source lists of minority business firms detailing the products and services, which they provide.

5220.4 **Solicitation Mailing List.** The District shall include and identify certified South Carolina based minority business on the District's bidders list and shall ensure that these firms are solicited on an equal basis.

5220.5 **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 may be waived for an MBE.

5230. REGULATIONS FOR NEGOTIATION WITH DISTRICT AND STATE MINORITY FIRMS. (SC Code § 11-35-5230(A))

5230.1 The District may designate such procurement contracts as it may deem appropriate for negotiation with SMBAO certified, South Carolina-based minority firms. Among the criteria that shall be used to determine such designations are:

5230.1.1 The total dollar value of procurements in the District.

5230.1.2 The availability of South Carolina-based minority firms.

5230.1.3 The potential for breaking the contracts into smaller units, where necessary, to accommodate such firms.

5230.1.4 Ensuring that the District shall not be required to sacrifice quality of goods or services.

5230.1.5 Ensuring that the price has been determined to be fair and reasonable, and competitive both to the District and to the contractor.

5240. MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION PLAN. (SC Code § 11-35-5240(1))

5240.1 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:

5240.1.1 A policy statement expressing a commitment by the Board of Trustees to use MBEs in all aspects of procurement;

5240.1.2 The name of the MBE Liaison Officer responsible for monitoring the MBE Utilization Plan;

5240.1.3 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 procurements. Upon petition by the District, the Board may authorize an MBE utilization plan that establishes a goal of less than ten percent (10%).

5240.1.4 Solicitation of certified minority vendors listed by the South Carolina Office of Small and Minority Business Assistance, in each commodity category for which the minority vendor is qualified.

5240.1.5 Procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation;

5240.1.6 Procedures to be used when the governmental body subcontracts the scope of service to another governmental body.

5250. PROGRESS PAYMENTS AND LETTER OF CREDIT. (SC Code § 11-35-5250)

5250.1 **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.

5250.2 **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.

5260. REPORT TO THE BOARD OF TRUSTEES. (SC Code § 11-35-5260)

5260.1 The Superintendent shall report annually in writing to the Board concerning the number and dollar value of contracts awarded to eligible certified South Carolina-based MBEs during the preceding fiscal year. These records must be maintained to evaluate the progress of this program.

APPENDIX A
DEFINITIONS

“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 the State of South Carolina, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, 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. (SC Code § 11-35-2910(1))

"Board" means the Board of Trustees of School District Five of Lexington and Richland Counties. (SC Code § 11-35-310(2))

“Brand Name or Equal Specification” means a specification which uses one or more manufacturer's names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet District requirements, and which provides for the submission of equivalent products. (SC Reg § 19-445.2140(A)(2))

“Brand Name Specification” means a specification limited to one or more items by the manufacturer’s name or catalog number. (SC Reg § 19-445.2140(A)(1))

"Business" means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture or any other legal entity. (§ 11-35-310(3))

"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. (§ 11-35-310(4))

"Chief Business Officer" means the officer of the District reporting directly to the Superintendent, who is responsible for District business operations and finance and is delegated this role by the Superintendent. The Superintendent may provide for the division or sharing of duties and powers assigned by this Code to the "Chief Procurement Officer" to more than one person. Unless otherwise provided by the Superintendent, the "Chief Business Officer" serves as the "Chief Procurement Officer."

“Chief Procurement Officer” means District employee designated by the Superintendent within the administrative structure of the District has having primary management responsibility for procurement by the District. The Superintendent may provide for the division or sharing of duties and powers assigned by this Code to the "Chief Procurement Officer" to more than one person. Unless otherwise provided by the Superintendent, the "Chief Business Officer" serves as the "Chief Procurement Officer." (§ 11-35-310(5))

"Construction" means the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property. (SC Code § 11-35-310(7); see also SC Code § 11-35-2910(2))

"Construction management services" are those professional services associated with a system in which the District directly contracts with a professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of a District project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract. (SC Code § 11-35-2910(3))

"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. (§ 11-35-310(8))

"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. (§ 11-35-310(9))

"Contractor" means any person having a contract with School District Five of Lexington and Richland Counties. (§ 11-35-310(10))

"Cost effectiveness" means the ability of a particular product or service to efficiently provide goods or services to the District. In determining the cost effectiveness of a particular product or service, the Procurement Officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award. (§ 11-35-310(11))

"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 Code and a fee, if any. (§ 11-35-1410(1))

"Data" means recorded information, regardless of form or characteristics. (§ 11-35-310(12))

"Days" means calendar days. In computing any period of time prescribed by this Code, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday or a legal holiday for the District, then the period shall run to the end of the next business day. (§ 11-35-310(13))

"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. (§ 11-35-310(14))

"Designee" means a duly authorized representative of a person with formal responsibilities under the Code. (§ 11-35-310(15))

"District" means School District Five of Lexington and Richland Counties.

"Employee" means an individual receiving a salary from the District, and any non-salaried individual performing personal services for the District. (§ 11-35-310(16))

"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. (§ 11-35-1410(2))

"Grant" means the furnishing by the District, State 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. (§ 11-35-310(19))

"Information Technology (IT)" means data processing, telecommunications, and office systems technologies and services: (§ 11-35-310(1))

(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. (§ 11-35-310(1)(a))

(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. (§ 11-35-310(1)(b))

(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. (§ 11-35-310(1)(c))

(d) "services" means the providing of consultant assistance for any aspect of information technology, systems, and networks. (§ 11-35-310(1)(d))

"Invitation for Bids" means a written or published solicitation issued by the Procurement Officer for bids to contract for the procurement or disposal of stated 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. (SC Code § 11-35-310(20))
The term “invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in § 1520, Competitive Sealed Bidding. (§ 11-35-1410(3))

“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))

“Office” means a non-mobile place for the regular transaction of business or performance of a particular service and staffed by at least one employee on a routine basis. (SC Code § 11-35-310(22))

"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, equipment or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. (SC Code § 11-35-310(24))

"Procurement Officer" means any person duly authorized by the District, in accordance with procedures prescribed by this Code, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the District within the scope of his authority. (SC Code § 11-35-310(25))

“Purchase description” means specifications or other document describing the supplies, services, information technology, or construction to be procured. (§ 11-35-1410(4))

“Qualified Products List” means an approved list of supplies, services, equipment or construction items described by model or catalog number, which, prior to competitive solicitation, the District has determined will meet the applicable specification requirements. (SC Reg § 19-445.2140(A)(3))

“Real Property” means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon. (SC Code § 11-35-310(27))

"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 will ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the District. The award of the contract shall be made on the basis of evaluation factors, which must be stated in the RFP. (SC Code § 11-35-310(28)) The term "Request for Proposals (RFP)" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals. 11-35-1410(5))

"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. (§ 11-35-1410(6))

"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. (§ 11-35-1410(7))

"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 defined above as "Information Technology IT services." (§ 11-35-310(29))

"South Carolina Business Opportunities" (*SCBO*) means the official state government publication issued by the State Budget and Control Board, as referenced in S.C. Reg. § 19-44.2040. (SC Reg § 19-44.2040(A))

"Specification for a Common or General Use Item" means a specification, which has been developed and approved for repeated use in procurements. (SC Reg § 19-445.2140(A)(5))

"Specifications" means any technical or purchase description or other description of the physical, functional, or performance characteristics, or of the nature of a supply, service, equipment or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, equipment or construction item for delivery. (SC Code 11-35-2610)

"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. (§ 11-35-310(30))

"Supplies" means all personal property including, but not limited to, equipment, materials, printing, and insurance. (§ 11-35-310(31))

"Surplus property" is all District-owned supplies and equipment, not in actual public use, with remaining useful life and available for disposal. This definition exclude the disposal of solid and hazardous wastes as defined by any federal, state or local statutes and regulations. Property so defined as solid or hazardous waste shall not be relocated, nor title assumed under the authority of this Code. (SC Reg § 19-445.2150(A)(1))

"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 vendor is suspected upon probable cause of engaging in criminal, fraudulent or seriously improper conduct or failure or inadequacy of performance which may lead to debarment. (§ 11-35-310(34))

[Revised 4/2/90, 4/6/92, 2/7/94, 9/25/00, 12/11/00, 3/12/01, 1/14/02, 4/28/08](#)