

# PROCUREMENT

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## BAMBERG SCHOOL DISTRICT ONE

### PROCUREMENT POLICY

Adopted June 24, 1985; Revised October 25, 1993, June 23, 1997, March 28, 2011

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### **ARTICLE 1 - GENERAL PROVISIONS**

#### **1-101 Purpose**

The underlying purposes and policies of this code are:

(a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;

(b) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;

(c) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and

#### **1-102 Application**

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

#### **1-103 Exemptions**

The board of trustees adopts the exemptions granted by the State Budget and Control board both present and future.

The board of trustees may exempt specific supplies or services from the purchasing procedures herein required or withdraw any exemptions provided for in this section.

The following exemptions are granted by the board of trustees.

- (1.) Copyrighted educational materials to include, but not be limited to the following.
  - a. books, dictionaries, textbooks, newspapers, diplomas
  - b. professional journals, technical pamphlets, periodicals, subscriptions
  - c. educational films, filmstrips, slides and transparencies
  - d. video tapes, cassettes, DVDs
  - e. standardized testing materials
- (2.) Copyrighted technology materials to include, but not be limited to the following.
  - a. computer assisted instructional materials, interactive video programs
  - b. CD-ROM documents, data bases
  - c. district adopted instructional software, including site licenses, or other support services or related information/materials only available or provided by the software provider
- (3.) Medical and/or psychological services to include, but not be limited to the following.
  - a. licensed/certified medical doctors, physicians, nurses, psychiatrists, psychologists, school psychologists, behaviorists, counselors, optometrists, dentists, etc.

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- b. hospital and clinical services, occupational and physical therapy, orientation and mobility
- c. speech, language and audiological services
- d. Hepatitis B and other vaccines
- (4.) Governmental services to include, but not be limited to the following.
  - a. services and supplies provided by the federal government, state agencies, county, city or town governments, and special purpose districts
  - b. payments of taxes, social security, annuities, credit unions
  - c. school resource officer services
  - d. professional artists utilized by S.C. Arts Commission
- (5.) Educational services to include, but not be limited to the following.
  - a. contractual, cooperative agreements, services and supplies for provision of services to students
  - b. tuitions paid to institutions of higher education
  - c. evaluation services such as visiting committees of the Southern Association of Colleges and Schools
- (6.) Policy and legal services to include, but not be limited to the following.
  - a. attorney services (subject to board approval), court recorders, expert witness services
  - b. bond rating services
  - c. legislative consultants
  - d. advertising
  - e. primary and reinsurance coverage
  - f. goods and services of a confidential/sensitive nature that would cause injury to students, staff and/or district if procured through public solicitation, as recommended by administration and approved by superintendent on an "as needed" basis
- (7.) Staff development to include, but not be limited to the following.
  - a. training provided by consultants, certified teachers/trainers or district personnel
  - b. training materials secured or prepared for instructional purposes
  - c. workshop, conference, seminar registrations
  - d. travel
- (8.) Student services to include, but not be limited to the following.
  - a. student activity funds
  - b. test scoring services
  - c. canine drug and/or weapon detection services and related support services
  - d. homebound services
  - e. home visits
  - f. instruction provided by certified teachers
  - g. professional dues and membership fees
  - h. clergy
  - i. travel
- (9.) Utilities and energy expenses.
- (10.) Artwork.
- (11.) Items purchased for resale
- (12.) Mail and delivery services
- (13.) Perishable Foods

### **1-104 Specific repealer**

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

### **1-105 Effective date**

**Bamberg School District One**

(see next page)

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This policy shall become effective March 29, 2011.

### **1-106 Supersession of conflicting laws.**

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

### **1-201 Definitions**

Unless the context clearly indicates otherwise:

"Board" means the Board of Trustees.

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

"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.

"Chief procurement officer" means the Superintendent of the District or a designee.

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

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

"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.

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

"Cost effectiveness" means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

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

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

"Days" means calendar days. In computing any period of time, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

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

"Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

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

- (a) is regularly maintained by a manufacturer or vendor of an item;
- (b) is either published or otherwise available for inspection by customers;
- (c) 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.

"Grant" means the furnishing by the 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.

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

"Invitation for bids" means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of 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.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

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

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

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

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

"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.

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"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.

"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 exempted professional services.

"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 a governmental body.

"Supplies" means all personal property.

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

### **1-301 Public access to procurement information**

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act), South Carolina Code of Laws, 1976, with the exception that proprietary commercial or financial information supplied in response to a solicitation which is marked privileged and confidential is not to be disclosed. Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. 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. Evaluative documents predecisional in nature containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate them. 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.

### **1-302 Compliance with federal requirements**

Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the district shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement this code, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render the district ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law.

### **1-303 Standards of conduct**

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



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### **ARTICLE 2 - SOURCE SELECTION AND CONTRACT FORMATION**

#### **2-101 Methods of source selection**

Unless otherwise provided by law, all contracts must be awarded by competitive sealed bidding, pursuant to Section 2-102, except as provided in:

Fixed Priced Bidding;  
Competitive Best Value Bidding;  
Competitive Online Bidding;  
Competitive Sealed Proposals;  
Negotiations After Unsuccessful Competitive Sealed Bidding;  
Small Purchases;  
Sole Source Procurements;  
Emergency Procurements;  
Participation in Auction or Bankruptcy Sale;  
Source Selection Methods Assigned to Project Delivery Methods;  
Architect Engineer, Construction Management and Land Surveying Services Procurement Procedures; and  
Exception for Small Architect-Engineer and Land Surveying Services Contracts.

#### **2-102 Competitive sealed bidding**

(1) Condition for Use. Contracts greater than fifty thousand dollars must be awarded by competitive sealed bidding except as otherwise provided.

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

(3) Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids.

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

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

(6) Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reaward of awards or contracts, after award but before performance, may be permitted. 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. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness.

(8) Discussion with Bidders. Discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for

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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 and must be included with the bid.

(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, 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.

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

(11) Request for Qualifications.

(a) Before soliciting bids, the procurement officer, may issue a request for qualifications from prospective bidders. The request must contain, at a minimum, a description of the scope of work to be solicited by the invitation for bids, the deadline for submission of information, and how prospective bidders may apply for consideration. The request must require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract.

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

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

(13) Competitive fixed price bidding. When competitive sealed bidding is either not practicable or not advantageous, a contract may be entered into by competitive fixed price bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific services, supplies, or information technology based on a preset maximum price. Award must be made to all responsive and responsible bidders. Bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of

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responsibility and responsiveness. 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.

(14) Competitive best value bidding. When competitive sealed bidding is either not practicable or not advantageous, a contract may be entered into by competitive 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. 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. 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. 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. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous taking into consideration all evaluation factors set forth in the best value bid.

(15) Competitive on-line bidding. When 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.

(16) Negotiations after unsuccessful competitive sealed bidding. When bids received pursuant to an invitation for bids are considered unreasonable, or are not independently reached in open competition, or the low bid exceeds available funds and time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that: (1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate; (2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation; (3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

### **2-103 Competitive sealed proposals**

(1) Conditions for use: When competitive sealed bidding is either not practicable or not advantageous to the school district, a contract may be awarded by competitive sealed proposals. Proposals shall be solicited through a request for proposals.

(2) Public notice: Public notice of the request for proposals shall be given in the same manner, as provided in Section 2-102(3).

(3) Proposal opening: A tabulation of proposals must be prepared in accordance with regulations promulgated by the board and must be open for public inspection after contract award.

(4) Request for qualifications: Prior to soliciting proposals, and after giving adequate public notice, the district may issue a request for qualifications, experience and ability to perform the requirements of the contract from prospective offerors. After the district receives the responses, it will rank prospective offerors from most qualified to least qualified on the basis of the information provided. The district shall then invite bids from at least the top two prospective offerors in accordance with section (2) above.

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(5) Discussion with Offerors. Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the procurement officer's sole judgment, need clarification must be accorded that opportunity.

(6) Evaluation: The request for proposals shall state the evaluation factors in relative order of importance. Each responsive and responsible offeror's proposal shall be evaluated. The proposal shall then be ranked in accordance with the results of such evaluation.

(7) Negotiations with responsible offerors and revisions to proposals: The procurement officer, in his sole discretion 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:

(a) 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;

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

(c) 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.

(6) Award: The award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous. The contract file shall contain the basis on which the award is made.

### **2-104 Small purchases**

(a) Purchases not in excess of two thousand five hundred dollars. Small purchases not exceeding two thousand five hundred dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

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(b) Purchases over two thousand five hundred dollars to ten thousand dollars. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars. The award must be made to the lowest responsive and responsible sources.

(c) Purchases over ten thousand dollars up to fifty thousand dollars. Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

### **2-105 Sole source procurement**

A contract may be awarded for a supply, service, information technology, or construction item without competition if the Superintendent determines in writing that there is only one source for the required supply, service, information technology, or construction item. 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 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.

### **2-106 Emergency procurement**

Notwithstanding any other provision of this code, the chief procurement 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; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

### **2-107 Cancellation of Solicitations**

Any solicitation under this code may be cancelled, or any or all bids or proposals may be rejected in whole or part when it is in the best interest of the District.

### **2-108 Rejection of individual responses**

Any response which fails to conform to the essential requirements of the specification shall be rejected. For example, responses should be rejected in which the vendor:

- (a) attempts to protect against future changes in conditions, such as increased costs, if total possible cost to the school district cannot be determined;
- (b) fails to state a price or states a price but qualifies such price and states that the price shall be subject to the "price in effect at time of deliveries";
- (c) when not authorized by the solicitation, conditions or qualifies a response by stipulating that the response is to be considered only if, prior to the date of award, the vendor receives (or does not receive) an award under a separate procurement;

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- (d) requires the school district to determine that the vendor's product meets the school district's specifications; or
- (e) limits the rights of the school district under any contract clause.

Any response received after the school district has declared that the time set for opening has arrived shall be rejected unless the response was in the possession of the school district and was misplaced. In such an event, the misplaced response will be considered along with other previously received responses.

### **2-109 Minor informalities or irregularities in bids or offers:**

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the solicitation, having no affect or merely a trivial or negligible effect on price, quality, quantity or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, other vendors. The school district shall either give the vendor an opportunity to cure any deficiency resulting from a minor informality or irregularity in a response, or waive any such deficiency where it is to the advantage of the school district. Such communication or determination shall be in writing.

### **2-201 Responsibility of vendors**

(1) Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract 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.

(2) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed without prior written consent by the bidder or offeror.

### **2-202 Cost or price data**

(1) Required submission relative to the award of contracts: A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000. The submission of such cost or pricing data relating to the award of a contract is not required where:

- (a) the contract price is based on adequate price competition;
- (b) the contract price is set by law or regulation; or
- (c) it is determined in writing that such requirement may be waived and the determination states the reasons for such waiver.

(2) Required submissions relating to change orders or contract modifications: A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding. The submission of such cost or pricing data relating to the pricing of a change order or contract modification is not required where:

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- (a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
- (b) it is determined in writing that such requirement may be waived and the determination states the reason for such waiver.

(3) Certificate required: A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

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

### **2-301 Types of contracts**

Any type of contract may be used, except that the use of a cost-plus-a-percentage-of-cost contract must be approved by the chief procurement officer. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, may be used only when a determination is prepared showing that the contract is likely to be less costly any other type or that it is impracticable to obtain the supplies, services, information technology, or construction required except under that contract.

### **2-302 Approval of Accounting Systems**

The chief procurement officer may require that: (1) the proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated; (2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

### **2-303 Multi-year contracts**

(1) The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them.

(2) 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.

(3) The normal maximum time for a multi-year contract is five years. Contracts exceeding five years must be approved by the board.

### **2-304 Blanket purchase agreements**

Blanket purchase agreements shall contain the following provisions:

#### **Bamberg School District One**

(see next page)

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- (a) terms and conditions of the agreement, including a statement that the supplier shall furnish supplies or services commonly described in general terms, if and when requested by the school district during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the contractor is in a position to furnish.
- (b) the extent of the obligation, including a statement that the school district is obligated only to the extent of authorized costs actually placed against the blanket purchase agreement, i.e., there are no minimum volume requirements.
- (c) a list of names of individuals authorized to place orders under the blanket purchase agreement, identified by organizational component, and the dollar limitation per order for each individual to be furnished by the school district.
- (d) the statement that all shipments under the blanket purchase agreement, except subscriptions and other charges for newspapers, magazines and other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information: name of contractor; blanket purchase agreement number; date of order; order number; itemized list of supplies or services furnished; quantity, unit price and extension of each item less applicable discounts; and date of delivery or shipment.
- (e) an itemized and a summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a delivery period, identifying the delivery tickets covered therein, stating their total dollar value and supported by receipted copies of the delivery tickets.

### **2-401 Right to audit records**

(1) Audit of Cost or Pricing Data. The District has the right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. A contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the chief procurement officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the chief procurement officer.

(2) Contract Audit. The District shall may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the chief procurement officer.

### **2-501 Reporting of anti-competitive practices**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, the relevant facts shall be transmitted to the solicitor's office.



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### **2-502 Procurement records**

(1) Contract file: All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained in a contract file.

(2) Retention of procurement records: All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules recommended by the South Carolina Department of Archives and History. If a contract is being funded in whole or in part by assistance from a federal agency, then all procurement records pertaining to that contract shall be maintained for three years from the close-out date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement, or for a longer period if required by such federal agency.

### **2-503 Finality of determinations.**

Written determinations made under this code are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law.

## **ARTICLE 3 - SPECIFICATIONS**

### **3-101 Specifications**

As used in this article, the term "specifications" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may also include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Specifications shall, to the extent practicable, emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to meet the needs of the school district.

All specifications shall be drafted so as to promote overall economy for the purpose of satisfying the school district's needs, and to encourage maximum free and open competition in satisfying the school district's needs, and may not be unduly restrictive.

It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is not often practicable in construction, apart from the procurement of supply type items for a construction project.

Specifications for construction may be prepared on a project-by-project basis by the architect and/or engineer retained by the school district.

## **ARTICLE 4 - CONSTRUCTION**

### **4-101 DEFINITIONS**

(1) "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as defined by the laws of this State, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations,

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consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

(2) "Construction manager agent" means a business that has been awarded a separate contract to provide construction management services but not construction.

(3) "Construction manager at-risk" means a business that has been awarded a separate contract to provide both construction management services and construction using the construction management at-risk project delivery method. A contract with a construction manager at-risk may be executed before completion of design.

(4) "Construction management services" are those professional services associated with contract administration, project management, and other specified services provided in connection with the administration of a project delivery method defined in this code.

(5) "Construction management at-risk" means a project delivery method in which the district awards separate contracts, one for architectural and engineering services to design an infrastructure facility and the second to a construction manager at-risk for both construction of the infrastructure facility according to the design and construction management services.

(6) "Design-bid-build" means a project delivery method in which the district sequentially awards separate contracts, the first for architectural and engineering services to design an infrastructure facility and the second for construction of the infrastructure facility according to the design.

(7) "Design-build" means a project delivery method in which the district enters into a single contract for design and construction of an infrastructure facility.

(8) "Design requirements" means the written description of the infrastructure facility to be procured pursuant to this article, including:

(a) required features, functions, characteristics, qualities, and properties that are required by the State;

(b) the anticipated schedule, including start, duration, and completion; and

(c) estimated budgets as applicable to the specific procurement, for design, construction, operation, and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

(9) "Independent peer reviewer services" are additional architectural and engineering services to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care.

(10) "Infrastructure facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment, or portion thereof.

(11) "Proposal development documents" means drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

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### **4-102 Project delivery methods authorized.**

(1) The following project delivery methods are authorized for procurements relating to infrastructure facilities:

- (a) design-bid-build;
- (b) construction management at-risk; and
- (c) design-build.

(2) In addition to those methods identified in item (1), the board may approve as an alternate project delivery method any combination of design, construction, finance, and services for operations and maintenance of an infrastructure facility.

(3) Participation in a report or study that is later used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in a construction management at-risk, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless the participation provides the business with a substantial competitive advantage.

### **4-103 Choice of project delivery method.**

The project delivery method used for a construction project must be that method which is most advantageous and results in the most timely, economical, and successful completion of the construction project.

### **4-104 Source selection methods assigned to project delivery methods.**

(1) Design-bid-build: the Qualifications Based Selection must be used to procure architect-engineer, construction management, and land surveying services. Competitive sealed bidding must be used to procure construction in design-bid-build procurements.

(2) Construction Management at-risk. Contracts for construction management at-risk must be procured by Competitive Sealed Bidding or Competitive Sealed Proposals.

(3) Design-build. Contracts for design-build must be procured by competitive sealed proposals.

### **4-105 Additional bidding procedures for construction procurement.**

The process of competitive sealed bidding must be performed in accordance with the procedures outlined in Article 2 of this code subject to the following exceptions:

(a) Invitation for Bids. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement.

(b) Bid Acceptance. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The governmental body's invitation for bids must set forth all requirements of the bid including, but not limited to:

- (i) identify by specialty in the invitation for bids all subcontractors who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, identify by specialty in the invitation for bids a subcontractor who is expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable. A bidder in response to an invitation for bids shall set forth in his bid the name of only those

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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 governmental body for good cause shown.

(ii) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

(iii) The governmental body shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

### (c) Award

(i) Unless there is a compelling reason to reject bids, 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 and the date and location of posting must be announced at bid opening. In addition to posting notice, the governmental body 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.

(ii) After ten 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 bid solicited.

(iii) If, at bid opening, only one bid is received and determined to be responsive and responsible and within the construction budget, award may be made without the ten-day waiting period.

(d) Negotiations after Unsuccessful Competitive Sealed Bidding. If bids received pursuant to an invitation for bids exceed available funds, and it is determined that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less deductive alternates, does not exceed available funds, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder.

### **4-106. Subcontractor substitution.**

(1) After notice of an award or intended award has been given, whichever is earlier, the prospective contractor identified in the notice may not substitute a business as subcontractor in place of a subcontractor listed in the prospective contractor's bid or proposal, except for one or more of the following reasons:

(a) upon a showing satisfactory to the district by the prospective contractor that:

(i) the listed subcontractor is not financially responsible; (ii) the listed subcontractor's scope of work did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the subcontractor's original bid; (iii) the listed subcontractor was listed as a result of an inadvertent clerical error, but only if that request is made within four working days of opening; (iv) the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prospective contractor after the subcontractor had represented to the prospective contractor that the subcontractor could obtain a performance and payment bond; and (v) the listed subcontractor must be licensed and did not have the license at the time required by law;

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- (b) if the listed subcontractor fails or refuses to perform his subcontract;
  - (c) if the work of the listed subcontractor is unsatisfactory to the district;
  - (d) upon mutual agreement of the contractor and subcontractor; and
  - (e) with the consent of the district for good cause shown.
- (2) The request for substitution must be made to the district in writing. This written request does not give rise to a private right of action against the prospective contractor in the absence of actual malice.
- (3) If substitution is allowed, the prospective contractor, before obtaining prices from another subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received before the submission of the prospective contractor's offer. This section does not affect a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code.

### **4-107 Prequalification**

The District may limit participation in a solicitation for construction to only those businesses, including potential subcontractors, that are prequalified. The evaluation criteria must include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects.

### **4-108 Additional procedures applicable to procurement of certain project delivery methods.**

- (1) Applicability. In addition to the requirements of Competitive Sealed Proposals, the procedures in this section apply as provided in items (2), (3), and (4) below.
- (2) Content of Request for Proposals. A Request for Proposals for design-build:
- (a) must include design requirements;
  - (b) must solicit proposal development documents; and
  - (c) may, if the governmental body determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:
    - (i) prequalify offerors by issuing a request for qualifications in advance of the request for proposals;
    - (ii) select a short list of responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award before discussions and evaluations; or
    - (iii) pay stipends to unsuccessful offerors, if the amount of the stipends and the terms under which stipends are paid are stated in the Request for Proposals.
- (3) Evaluation Factors. A Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain must:
- (a) state the relative importance of (i) demonstrated compliance with the design requirements, (ii) offeror qualifications, (iii) financial capacity, (iv) project schedule, (v) price, or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements, and (vi) other factors, if any; and

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(b) may require each offeror to identify an Independent Peer Reviewer whose competence and qualifications to provide that service must be an additional evaluation factor in the award of the contract.

### **4-109. Bond and security.**

#### (1) Bid Security.

(a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in a design-bid-build procurement in excess of fifty thousand dollars. Bid security must be in an amount equal to at least five percent of the amount of the bid at a minimum.

(b) When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected.

(c) 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 action must not be had against the bidder or the bid security.

#### (2) Contract Performance and Payment Bonds.

(a) When Required-Amounts. The following bonds or security must be delivered and become binding on the parties upon the execution of the contract for construction:

(i) a performance bond meeting the same criteria required by the State for construction projects under the Office of the State Engineer, in an amount equal to one hundred percent of the portion of the contract price;

(ii) a payment bond meeting the same criteria required by the State for construction projects under the Office of the State Engineer for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal to one hundred percent of the portion of the contract price;

(iii) in the case of a construction manager at-risk contract, the solicitation may provide that bonds or security are not required during the project's preconstruction or design phase, if construction does not commence until the requirements of (i) and (ii) above have been satisfied.

(b) Authority to Require Additional Bonds. Item (2) 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 above.

(3) Certified Copies of Bonds. A person may request and obtain from the governmental body 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.

(4) Retention. Contracts which provide for progress payments in installments based upon an estimated percentage of completion, may provide for a percentage of the contract's proceeds to be retained by the district or general contractor pending completion of the contract or subcontract.

**4-110 Contract clauses and their administration.**

- (1) Construction contracts and subcontracts may include clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions.
- (2) Price Adjustments. A 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.

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

**4-201 Policy.**

It is the policy of the Board 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.

**4-202 Qualifications based selection procedures.**

- (1) Selection Committee. The district shall convene an architect-engineer, construction management, and/or land surveying services selection committee to make an informed decision as to the most competent and qualified firm for the proposed project.
- (2) The selection committee is responsible for developing a description of the proposed project and preparing a formal invitation to firms for submission of information including the project title, the general scope of work, a description of professional services required for that project, the submission deadline, and how interested firms may apply for consideration.
- (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 days after publication of the invitation.
- (4) Interviews with Interested Firms. Following receipt of the responses, the selection committee shall hold interviews with at least three persons or firms who respond to the committee's advertisement and who are considered most qualified on the basis of information available before the interviews. The selection committee's determination as to which are to be interviewed must be in writing and based upon its review and evaluation of all submitted materials. A list of firms selected for interview must be sent to all firms that submitted information in response to the advertisement, before the date selected for the interviews. If less than three persons or firms respond to the advertisement, the committee shall hold interviews with those that did respond. The purpose of the interviews is to provide the further information that may be required by the selection committee to fully acquaint itself with the relative qualifications of the several interested firms.
- (5) Selection and Ranking of the Three Most Qualified.

- (a) The selection committee shall evaluate each of the persons or firms interviewed in view of their:
  - (i) past performance;
  - (ii) the ability of professional personnel;

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- (iii) demonstrated ability to meet time and budget requirements;
- (iv) 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;
- (v) recent, current, and projected workloads of the firms;
- (vi) creativity and insight related to the project;
- (vii) related experience on similar projects;
- (viii) volume of work awarded by the using agency to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts by the State among qualified firms including Minority Business Enterprises certified by the South Carolina Office of Small and Minority Business Assistance and firms that have not had previous state work; and
- (ix) any other special qualification required pursuant to the solicitation of the using agency.

(b) Based upon these evaluations, the selection committee shall select the three persons or firms that, in its judgment, are the best qualified, ranking the three in priority order.

(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.

(7) Negotiation of Contract. The district shall negotiate a contract for services with the most qualified person or firm at a compensation that is fair and reasonable. If the district 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 agency selection committee, and negotiations must be continued in the same manner until agreement is reached.

### **4-203 Exception for small architect-engineer and land surveying services contract.**

(1) Architect-engineer or land surveying service estimated not to exceed twenty-five thousand dollars may be awarded by direct negotiation and selection.

(2) Fees paid during the twenty-four month period immediately preceding negotiation of the contract for professional services performed by an architectural-engineering or land surveying firm pursuant to this authority may not exceed seventy-five thousand dollars.

### **4-204 Architect, engineer, or construction manager; performance of other work.**

(a) This section applies only to procurements for construction using the design-bid-build project delivery method. An architect or engineer performing design work, or a construction manager performing construction management 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 interest. 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.

## **INDEFINITE DELIVERY CONTRACTS**

### **4-301 Indefinite delivery contracts for construction items, architectural-engineering and land surveying services.**



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(1) General Applicability. Using the authorized source selection methods, contracts may be awarded on an as-needed basis for construction services and for architectural-engineering and land surveying services.

(a) Construction Services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred fifty thousand dollars for a two-year period with individual project expenditures not to exceed one hundred fifty thousand dollars.

(b) Architectural-Engineering and Land Surveying Services. When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of three hundred thousand dollars for a two-year period with individual project expenditures not to exceed one hundred thousand dollars.

(2) Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in § 4-202.

## **ARTICLE 5 - PROPERTY MANAGEMENT**

### **5-101 Disposal of Personal Property**

(1) District personal property identified for disposal shall be disposed of through commercially reasonable methods or as provided in subsection (2) below.

(2) District personal property identified for disposal may be donated, loaned, leased, or sold at a discount to another governmental entity or to a public benefit nonprofit corporation upon such terms as will provide sufficient consideration to the District and the public through any combination of direct payment and indirect public benefits from the subsequent use of the property.

## **ARTICLE 6 - LEGAL AND CONTRACTUAL REMEDIES**

### **6-101 Waiver and exhaustion**

The remedies provided in this article to actual or prospective bidders, offerors and contractors shall be exclusive and shall be exhausted prior to the commencement of an action at law or in equity against the school district, its officers or employees. Nothing herein should be construed as a waiver of sovereign, or other, immunity, either partially or fully, if otherwise available and applicable.

### **6-201 Authority to resolve protested solicitations and awards**

(1) Right to Protest; Exclusive Remedy.

(a) 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 subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) 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

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in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(c) The rights and remedies granted in this article to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of the bidders, offerors, contractors, or subcontractors against the State.

(d) The rights and remedies granted by this subsection (1) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

### (2) Protest Procedure.

(a) A protest pursuant to subsection (1)(a) 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 appropriate chief procurement officer within the time provided in subsection (1).

(b) A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). 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.

(3) Duty and Authority to Attempt to Settle Protests. Before commencement of an administrative review as provided in subsection (4), the chief procurement officer or a 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.

(4) Administrative Review and Decision. If in the opinion of the chief procurement officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the chief procurement officer shall conduct promptly an administrative review. The chief procurement officer or his designee shall commence the administrative review no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the review. The decision must state the reasons for the action taken.

(5) Notice of Decision. A copy of the decision under subsection (4) along with a statement of appeal rights pursuant to subsection (6) 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 the posted decision must indicate the date of posting on its face.

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel.

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(7) Automatic Stay of Procurement During Protests. In the event of a timely protest pursuant to subsection (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 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 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.

(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 solicitation.

(9) The chief procurement officer may require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under this code and valued at one million dollars or more to post with the appropriate chief procurement officer a bond or irrevocable letter of credit payable to the District in an amount equal to one percent of the total potential value of the contract as determined by the appropriate chief procurement officer. The chief procurement officer's decision to require a bond or irrevocable letter of credit is not appealable. The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of intended award or award of a contract of the purchasing agency's request for sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the requesting agency'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 appropriate chief procurement officer may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the 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.

### **6-202 Authority to debar or suspend**

(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.

(2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to:

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- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or another offense indicating a lack of business integrity or professional honesty which currently, seriously, and directly affects responsibility as a state contractor;
- (c) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- (d) 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:
  - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; 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;
- (e) violation of an order of a chief procurement officer or the Procurement Review Panel; and
- (f) 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 this subsection.

(3) Decision. The chief procurement officer shall issue a written decision to debar or suspend within ten days of the completion of his administrative review of the matter. The decision must state the action taken, the specific reasons for it, and the period of debarment or suspension, if any.

(4) Notice of Decision. A copy of the decision pursuant to subsection (3) and a statement of appeal rights pursuant to subsection (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.

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel within ten days of the posting of the decision in accordance with subsection (4). The request for review must be directed to the chief procurement officer, who shall forward the request to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel.

(6) 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.

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### **6-203 Solicitations or awards in violation of the law.**

(1) Applicability. The provisions of this section apply where it is determined by either the chief procurement officer or the 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 or by the Procurement Review Panel.

(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:

- (a) canceled;
- (b) revised to comply with the law and rebid; or
- (c) awarded in a manner that complies with the provisions of this code.

(3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law;

- (a) the contract may be ratified and affirmed, provided it is in the best interests of the State; or
- (b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

(4) Entitlement to Costs. In addition to or in lieu of any other relief, when a protest 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.

### **6-204 Frivolous protests.**

(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.

(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document that is filed with the chief procurement officer or the Procurement Review Panel is signed in violation of this subsection, the 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.

### **6-301 Review Panel.**

(1) There is created the District Procurement Review Panel which is charged with the responsibility to review and determine:

- (a) requests for review of written determinations of the chief procurement officer pursuant to Sections 6-201(6) and 6-202(5); and

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(b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code; except that a matter which could have been brought before the chief procurement officer in a timely and appropriate manner pursuant to Sections 6-201 or 6-202 but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(2) Membership. The panel must be composed of five members appointed by the Board who must be representative of the professions governed by this title including, but not limited to:

- (i) goods and services;
- (ii) information technology procurements;
- (iii) construction;
- (iv) architects and engineers;
- (v) construction management;
- (vi) land surveying services;
- (vii) government procurement; or
- (viii) public contract administration.

(3) Chairperson and Meetings. The panel shall elect a chairman from the members at large and shall meet as often as necessary to afford a swift resolution of the controversies submitted to it. Four members present and voting shall constitute a quorum. In the case of a tie vote, the decision of the chief procurement officer is final. Members must be reimbursed for meals, lodging, and travel in accordance with current allowances.

(4) Jurisdiction.

(a) Notwithstanding the provisions of Chapter 23, Title 1 or another provision of law, the Administrative Procedures Act does not apply to administrative reviews conducted by either a chief procurement officer or the Procurement Review Panel. The Procurement Review Panel is vested with the authority to:

- (i) establish its own rules and procedures for the conduct of its business and the holding of its hearings;
- (ii) issue subpoenas;
- (iii) interview any person it considers necessary; and
- (iv) record all determinations.

(b) A party aggrieved by a subpoena issued pursuant to this provision shall apply to the panel for relief.

(5) Procedure. Within fifteen days of receiving an appeal, the chairman shall either convene the review panel to conduct an administrative review or schedule a hearing to facilitate its administrative review. The review panel shall record its determination within ten working days and communicate its decision to those involved in the determination. In matters designated by the review panel as complex, the review panel shall record its determination within thirty days.

(6) Finality. Notwithstanding another provision of law, including the Administrative Procedures Act, 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 7 - INTERGOVERNMENTAL RELATIONS

### **7-101 Cooperative purchasing authorized.**

The District may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which shall be made available to local public procurement units

### **7-102 Sale, acquisition or use of supplies by a public procurement unit.**

The District may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity.

### **7-103 Cooperative use of supplies or services.**

The District may enter into an agreement with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

### **7-104 Joint use of facilities.**

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

### **7-105 Supply of personnel, information and technical services.**

(1) Supply of Personnel. The District is authorized, in its discretion, upon written request from another public procurement unit or external procurement activity, to provide personnel services to the requesting public procurement unit or external procurement activity with or without pay by the recipient governmental unit as may be agreed upon by the parties involved.

(2) Supply of Services. The informational, technical, and other services of the District may be made available to any other public procurement unit or external procurement activity. The payment shall be in accordance with an agreement between the parties.

(3) Information Services. The District may obtain from public procurement units or external procurement activities the following services among others:

- (a) standard forms;
- (b) printed manuals;
- (c) product specifications and standards;
- (d) quality assurance testing services and methods;
- (e) qualified product lists;

- (f) source information;
- (g) common use commodities listings;
- (h) supplier prequalification information;
- (i) supplier performance ratings;
- (j) debarred and suspended bidders lists;
- (k) forms for invitations for bids, requests for proposals, instruction to bidders, general contract provisions and other contract forms;
- (l) contracts or published summaries thereof, including price and time of delivery information.

(4) State Technical Services. The District may obtain through the State the following technical services among others:

- (a) development of products specifications;
- (b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
- (c) use of product testing and inspection facilities;
- (d) use of personnel training programs.

#### **7-106 Public procurement units in compliance with code requirements.**

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

### **ARTICLE 8 - MINORITY BUSINESSES**

#### **8-101 Minority businesses**

A "minority business" for purposes of this article is one that is certified as a "socially and economically disadvantaged small business" by the South Carolina Small and Minority Business Assistance Office (SMBAO).

#### **8-102 Assistance Program**

- (1) The District may provide assistance to businesses in applying for SMBAO certification.
- (2) The District may provide training and assistance with procedures of this code.
- (3) The District may make special provisions for progress payments to assist minority businesses to carry out the terms of a District contract pursuant to the code.
- (4) When a minority business receives a contract with the District, upon request the chief procurement officer shall furnish a letter stating the dollar value and duration of, and other information about the contract, which may be used by the minority firm in negotiating lines of credit with lending institutions.