

PROCUREMENT POLICY

for

SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

*Adopted as the Official Procurement Code by the Liberty STEAM Charter Founding Board of Directors on August 10, 2020*



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## ARTICLE 1 – GENERAL PROVISIONS

### Part A – Purpose and Application

#### 1-101 Purpose

The purpose of this Policy is to provide for the fair and equitable treatment of all involved in public purchasing by the South Carolina Public Charter School District (SCPCSD), to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

#### 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 SCPCSD 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 will apply to public funds irrespective of their source. Nothing in this Policy will prevent any SCPCSD 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 SCPCSD may exempt specific supplies or services from this Policy. The following supplies and services are exempted from this Policy:

- a. Books, periodicals, newspapers, technical pamphlets, standardized tests and other testing materials, copyrighted educational materials, filmstrips, slides and transparencies
- b. Public utilities, such as electricity, water or sewer
- c. Travel
- d. Workshops, seminars and conferences
- e. Professional journals
- f. Taxes, social security, annuities and credit unions
- g. Life insurance or supplemental insurance
- h. Refunds on health insurance
- i. Oil company credit cards – purchases for gas, oil and emergency repairs
- j. Professional services normally obtained on a fee basis, such as attorneys, auditors, accountants, physicians or dentists, provided that services are not rendered without the approval of the SCPCSD's Board of Trustees
- k. Clergy
- l. Court reporters
- m. Professional dues, registration and membership fees
- n. Instructional training or staff development offered by the SCPCSD to school employees and any contractual services that were necessary to provide the seminars
- o. Diplomas
- p. U.S. postage stamps and post office boxes
- q. Art reproductions

- r. Expert witness services
- s. Furniture refurbishing services of the Department of Corrections
- t. Services and/or supplies provided by the Division of General Services to public procurement units
- u. Livestock, feed and veterinary supplies and services
- v. Local school funds (not allocated funds)

#### 1-104 Specific Repealer

This Policy repeals all previously issued Policies, Rules or Regulations pertaining to procurement for the SCPCSD, except those dealing with the procurement of items exempted from this Policy.

#### 1-105 Effective Date

This Policy will become effective at 12:01 a. m. on July 1, 2013.

### Part B – Definitions of Terms Used in this Policy

#### 1-201 Definitions

1. Bidder – Contractor, supplier, or vendor who responds to an invitation to bid.
2. Business – Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
3. Catalog price - The stated price that is found in a published catalog of goods and services available through a company. This price refers only to the amount the consumer must pay for the item itself and does not include ancillary costs such as any taxes that must also be collected at the time of purchase, or shipping and handling costs involved with delivering the goods to the buyer.
4. Construction – The process of building, altering, repairing, improving or demolishing any structure or building owned by the school district. It does not include operation, routine repair or routine maintenance of existing structure, buildings or real property.
5. Contract – All types of agreements, regardless of what they are called, for the procurement of supplies, services or construction.
6. Contract modification – Any written alteration that may introduce or cancel specifications or terms of an existing contract while leaving intact its overall purpose and effect. Examples would be date of delivery, period of performance, price or quantity.
7. Contractor – Any person having a contract with the school district.
8. Cooperative purchasing - The sharing of procurement contracts between governmental entities.

9. Cost reimbursement contract – Contracts that provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.
10. Data – Recorded information, regardless of its form or characteristics.
11. Date of opening (opening date) – the date and time an Invitation for Bids is opened to solicit bids.
12. Employee – An individual employed for wages or salary from the school district, whether elected or not, and any non-compensated individual performing services for the school district.
13. Invitation for Bids – All documents, whether attached or incorporated by reference, utilized for soliciting bids.
14. Nonexpendable supplies – All tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of more than one year.
15. Person – Any business, individual, committee, club, group or organization.
16. Procurement – This process involves all functions that pertain to buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction, including purchase planning, selection and solicitation of sources, financing, price negotiation, making the purchase, all phases of contract administration, inventory control, and disposals.
17. Public procurement unit – Any state, county, municipality, school district, subdivision of the State, public authority, educational, health or any other entity that expends public funds for procurement of supplies, services or construction.
18. Purchase description – Words used in a solicitation to describe the supplies, services or construction to be purchased and includes specifications attached to or made a part of the solicitation.
19. Request for Proposals (RFP) – All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
20. Response – Any bid, offer or proposal, without regard to the source selection method, which is submitted in reply to a solicitation.



21. Responsible vendor – Any 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.
22. Responsive vendor – A person who has submitted a response which conforms in all material respects to an invitation for bids or a request for proposals.
23. SCPCSD – South Carolina Public Charter School District
24. School District – As herein used, school district is intended to include the Board of Trustees or their authorized agent, such as, but not limited to, the Superintendent, Director of Finance or, where applicable, Director or Procurement or other official responsible for procurement activity.
25. Service – The furnishing of labor, time or effort by a contractor. This term does not include employment agreements.
26. Solicitation – Any effort, without regard to the source selection method, to obtain supplies, services or construction by the school district.
27. Solicitation document – The document (s) used in connection with a particular solicitation.
28. Supplies – All property, including, but not limited to, equipment, materials, printing, insurance, information technology equipment and software packages, and leases of real property, excluding land or a permanent interest in land.
29. Surplus supplies – Any supplies, other than expendable supplies, no longer having use to the school district. This includes obsolete supplies, scrap materials and nonexpendable supplies that have completed their useful life cycle.
30. Vendor – Any person submitting a response to a solicitation.

## Part C – Compliance with State and Federal Requirements

### 1-301 Public Access to Procurement Information

Procurement information will 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.

## 1-302 Compliance with Federal Requirements

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

## 1-303 Standards of Conduct

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

# ARTICLE 2 – SOURCE SELECTION AND CONTRACT FORMATION

## Part A – Methods of Source Selection

### 2-101 Methods of Source Selection

Unless otherwise required by law or this Policy, all school district contracts will be awarded by competitive sealed bidding, pursuant to Section 2-102, except as provided in:

- a. Section 2-103 (Competitive Sealed Proposals) Over \$50,000
- b. Section 2-104 (Small Purchases) Up to \$50,000
- c. Section 2-105 (Sole Procurement)
- d. Section 2-106 (Emergency Procurement)
- e. Section 4-301 (Architect – Engineer or Land Surveying Services)

### 2-102 Competitive Sealed Bidding

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

- c. instructions to bidders to visibly mark as confidential each part of their bid that they consider to be proprietary information
4. Public Notice – Public notice of the invitation for bids will be given. The notice may be included in a publication in a newspaper of general circulation at a reasonable time prior to bid opening. Bidding time will be set at a reasonable time to provide bidders time to prepare their bids. A minimum of seven (7) days will be provided, unless a shorter time is deemed necessary for a particular procurement as determined by the school district.
5. Bid Opening – Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The dollar amount of each bid, other relevant information and name of each bidder will be recorded. The record and each bid will be open to public inspection after an award. Only the information disclosed at bid opening is considered to be public information until an award is made. An amendment postponing bid openings may be issued only when an emergency or unanticipated event beyond the control of bidders interrupt normal government operations.
6. Bid Acceptance and Bid Evaluation – Bids will be accepted without alteration or correction, except as authorized in this Policy. If necessary for the best interest of the school district, the invitation for bids may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Criteria that will affect the bid price and be considered in evaluation for award will be measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids will set forth the cost criteria to be used. No cost criteria may be used in bid evaluations that are not set forth in the invitation for bids.
7. Correction or Withdrawal of Bids / Cancellation of Awards – Corrections or withdrawal of inadvertently erroneous bids before or after an award or cancellation of awards or contracts based on such mistakes may be permitted where appropriate. After bid openings, no change in bid prices or other provisions of bids prejudicial to the interest of the school district or fair competition will be permitted. A bidder must submit a written request to either correct or withdraw a bid to the school district. Each written request must document the fact that the bidder's mistake is clearly an error that will cause substantial loss to his or her business. In order to maintain the integrity of the competitive sealed bidding process, a bidder will not be permitted to correct a bid mistake that would cause the bidder to have the low bid after the bid opening unless, by the judgment of the school district, the mistake is clearly evident from examining the bid document. An example would be extension of unit prices or errors in addition.

All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes will be supported by written documentation.

8. Award – The contract will be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the specifications and criteria set forth in the invitation for bids. If all bids exceed available funds as certified

by the school district fiscal officer and in situations where time or economic considerations preclude re-solicitation of work at a reduced scope, the school district is authorized to negotiate an adjustment in the bid price with the low responsive and responsible bidder. This adjustment includes changes in the bid requirements, in order to bring the bid within the amount of available funds.

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

## 2-103 Competitive Sealed Proposals

1. Conditions for Use – When the school district determines in writing that the use of competitive sealed bidding is either not practical or advantageous to the school district, a contract may be awarded by competitive sealed proposals. Competitive sealed proposals should be used when both the needs of the school district and the costs to satisfy those needs are important and the methods or items to satisfy those needs are not clear and precise. While price is an important factor, it is considered less significant than fully meeting the needs of the school district. The ultimate purpose of this method of procurement is to provide flexibility to the school district while taking into consideration various options and the costs of each. Proposals will be solicited through a request for proposals.
2. Public Notice – Public notice of the request for proposals will be given in the same manner as provided in Section 2-102 (3).
3. Proposal Opening – Proposals will be publicly opened, but only the names of the bidders will be disclosed at the opening of the proposal. Contents of competing proposals will not be disclosed during the process of opening or negotiation. All proposals will be opened for public inspection after the contract is awarded. Proprietary or confidential information marked as such in each proposal will not be disclosed without written consent of the bidder.
4. Request for qualifications – Prior to soliciting proposals, and after giving adequate public notice, the school district may issue a request for qualifications, experience and ability to perform the requirements of the contract from prospective bidders. At a minimum, the request will contain a description of the goods or services to be solicited by the invitation for bids and the general scope of the work. The request will also contain the deadline for submission of information and how prospective bidders may apply for consideration.

The responses that are received by the school district will be ranked from most to least qualified on the basis of the information provided. The school district will then invite bids from, at a minimum, the top two prospects in accordance with section 2 above.

5. Negotiations with Responsible Bidders and Revisions to Proposals – Pursuant to the selection criteria outlined in the request for proposals, negotiations may be conducted with any bidder submitting a proposal that appears to be eligible for the contract award. These bidders will be given the opportunity to submit best and final proposals, if negotiations with any other bidder results in a material alteration to the request for proposals and such alteration has a cost consequence that may alter the order of the bidders' price quotations included in their initial proposals. When conducting negotiations, there will be no disclosure of any information derived from the proposals submitted by competing bidders.
6. Evaluation Factors – The request for proposals will state the evaluation factors in relative order of importance. Price may, but need not, be an initial evaluation factor. Each responsive and responsible bidder's proposal will be evaluated. The proposal will then be ranked in accordance with the results of this evaluation.
7. Award – An award will be made to the responsible bidder whose proposal is determined in writing to be most advantageous to the school district taking into the consideration the evaluation factors outlined in the request for proposals. No other factors or criteria will be used in the evaluation. The contract file will contain the basis on which the award is made.

#### 2-104 Small Purchases

1. Small purchases up to \$2,500 may be completed without competitive quotations if the prices are considered to be reasonable. The school district will note the purchase requisition as: "Price is fair and reasonable" and sign such purchase requisition. Purchases will be fairly distributed among qualified suppliers. If deemed reasonable, a quotation will be solicited from suppliers other than the prior when placing a repeat order.
2. Small purchases from \$2,501 - \$10,000 may be completed with written quotations from at least three qualified suppliers. It must be documented that the procurement is to the advantage of the school district, with consideration of the price, administrative costs and other factors, and this documentation must be attached to the purchase requisition. If a price is solicited by phone, the vendor will need to furnish a written quotation.
3. Small purchases from \$10,001 - \$50,000 may be completed with written quotations from at least three qualified suppliers and advertisement in South Carolina Business Opportunities or a newspaper of general circulation in the District. Electronically is an option if Board approved.

#### 2-105 Sole Source Procurement

1. Conditions for Use – This method of procurement is the least competitive and will have limited use. In instances, where the school district's needs can only be met by one method, means or item, sole source procurement will be appropriate. Cost is not pertinent where the needs are unique and can only be satisfied through a unique purchase.

Determination regarding whether procurement will be made as a sole source will be made by a committee consisting of employees of the school district office. The requester must explain, in writing, why no other source is suitable or acceptable to meet the needs of the school district.

2. Award – A contract may be awarded for a supply, service or construction item without competition when the school district determines, in writing, that there is only one source for the item. Examples would be:
  - a. where the compatibility of equipment, accessories or replacement parts is the vital consideration,
  - b. where a unique item is needed for trial use or testing,
  - c. where a unique item is to be procured for resale,
  - d. where the item is one of a kind, and
  - e. printed forms, pamphlets and brochures exclusive of printing equipment.

#### 2-106 Emergency Procurement

Aside from any other provision of this Policy, the school district may make or authorize others to make emergency procurements when there is a threat to public health, welfare or safety under emergency conditions or where normal daily operations are affected provided that these procurements will be made with as much competition that is practical under the circumstances. If emergency considerations develop after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may also be made. A written determination will be made stating the basis for an emergency procurement and for the selection of the particular vendor. These procurements will be limited to supplies, services and construction items necessary to meet the emergency.

#### 2-107 Rejection of Responses

1. Rejection of All Responses – Every effort will be made to anticipate changes in requirements prior to the date of opening and to notify all prospective vendors of any resulting modifications or cancellation, thereby permitting vendors to change their responses and preventing the unnecessary exposure of responses.

As a general rule, a solicitation will not be cancelled and re-advertised after opening due solely to increased requirements for the item being procured. An award will be made on the initial solicitation, and the additional quantity required will be treated as a new procurement. A solicitation will be cancelled when it is determined prior to an award but after the opening date that the requirements of availability and specifications have not been met.

A compelling reason must exist to reject all responses. The solicitation may be cancelled when it is determined in writing that:

- a. inadequate or vague specifications were cited in the solicitation,
- b. specifications have been revised,

- c. supplies or services being procured are no longer required,
  - d. the solicitation did not provide for consideration of all factors of costs to the school district,
  - e. responses received indicate that the needs of the school district can be satisfied in a less expensive way other than that which the responses were invited,
  - f. all otherwise acceptable responses received are unreasonably priced,
  - g. the responses were not independently derived in open competition, collusive or submitted in bad faith, or
  - h. for other reasons, cancellation is clearly in the best interest of the school district.
2. Rejection of Individual Responses – Any response that fails to conform to the essential requirements of the solicitation, such as bid security, will be rejected. Any bid that does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation for bids allowed the submission of alternate bids and the alternates met the requirements specified. Any responses that fail to conform to the delivery schedule or permissible alternates stated in the solicitation may be objected as non-responsive. Ordinarily, a response should be rejected when the vendor attempts to impose conditions that would limit his liability to the school district, since imposing this condition would be prejudicial to other vendors. Examples of responses that should be rejected:
- a. The vendor attempts to protect against future changes in conditions, such as increased costs, if total possible cost to the school district cannot be determined,
  - b. The vendor fails to state a price or states a price but restricts this price and states that the price will be subject to the “price in effect at the time of deliveries,”
  - c. When not authorized by the solicitation, the vendor restricts their response by stipulating that the response is only to be considered if, prior to the date of award, the vendor receives or does not receive an award under a separate procurement,
  - d. The vendor requires the school district to determine that their product meet the specifications of the school district, or
  - e. The vendor limits the rights of the school district under any contract clause.
3. Any responses received after the school district has declared that the time set for opening has arrived will be rejected, unless the response was in the possession of the school district but misplaced. In this event, the misplaced response will be considered along with the other responses previously received.
4. Minor Informalities or Irregularities in Bids or Offers – A minor informality or irregularity is one that is merely a matter of form or an 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.

Examples of minor informalities or irregularities include, but are not limited to:

- a. Failure of a vendor to return the number of copies of signed responses required by the solicitation
- b. Failure to furnish the required information concerning the number of the vendor's employees or failure to make a representation concerning their size status
- c. Failure of a vendor to sign their response, but only if :
  - i. The firm submitting the response has formally adopted or authorized the execution of documents by typewritten, printed or rubber-stamped signature and submits evidence of such authorization and the response carries such a signature, or
  - ii. The unsigned response is accompanied by other material indicating the vendor's intention to be bound by the unsigned response such as the submission of a price guarantee with the response or a letter signed by the vendor with the response referring to and clearly identifying the response itself.
- d. Failure of a vendor to acknowledge receipt of an amendment to a solicitation, but only if:
  - i. The response received clearly indicates that the vendor received the amendments, such as where the amendment added another item to the solicitation and the vendor submitted a response thereon,
  - ii. The amendment clearly would have no affect or merely a trivial or negligible effect on price, quality, quantity, delivery or the relative standing of vendors, such as an amendment correcting a typographical mistake in the name of the School District, or
  - iii. There is a failure to furnish an affidavit concerning affiliates, if required.

## Part B – Vendor Qualifications and Duties

### 2-201 Responsibility of Vendors

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

- a. The appropriate financial, material, equipment, facilities and personnel resources and expertise available, or the ability to attain them, necessary to indicate its capability to meet all contractual requirements,
- b. A satisfactory record of past performance,
- c. A satisfactory record of integrity,
- d. Qualified legally to contract with the school district, and
- e. Supplied all necessary information in connection with an inquiry concerning responsibility. A copy of the written determination of non-responsibility shall be sent



promptly to the non-responsible bidder or offeror. The final determination shall be made a part of the procurement file.

## 2-202 Cost or Price Data

1. Required Submission Relative to the Award of Contracts - A prospective contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars (\$100,000). 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:
  - 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 that 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.

## Part C – Types of Contracts

### 2-301 Types of Contracts

Subject to the limitations of this Section, any type of contract which will promote the best interest of the School District may be used, provided that the use of a cost-reimbursement or cost-plus-a-percentage-of-cost contract shall not be used unless it contains a guaranteed maximum contract amount. Such a contract may be used only when a determination by the District is made in writing that such contract is likely to be less costly to the School District than

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

## 2-302 Multi-Year Contracts

1. Specified Period - A contract for supplies or services may be entered into for a period of time not to exceed five (5) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.
2. Determination Prior to Use – Prior to the utilization of a multi-year contract, it shall be determined in writing:
  - a. That estimated requirements cover the period of the contract and are reasonably firm and continuing and
  - b. That such a contract will serve the best interest of the school district by encouraging effective competition or otherwise promoting savings in school district procurement.

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

- a. Vendors are not willing or able to compete because of high start-up costs or capital investment,
  - b. Lower production costs because of larger quantity or service requirements and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices,
  - c. Stabilization of the contractor’s workforce over a longer period of time may promote economy and consistent qualities, and
  - d. The cost and burden of contract solicitation, award and administration of the procurement may be reduced.
3. Evaluation - Care should be taken when evaluating multi-year prices against prices for the first fiscal period that a determination on the basis of prices for the first period does not permit the successful bidder or offeror to “buy in” so as to give such bidder or offeror an undue competitive advantage in subsequent procurements.
  4. Solicitation Document – The solicitation document shall state the following:
    - a. The estimated amount of supplies or services required for the proposed contract,
    - b. That a unit price shall be given for each supply or service and that such unit prices shall be the same throughout the contract term (except to the extent price adjustments are authorized in the solicitation or the resulting contract),
    - c. That the multi-year contract will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first fiscal year, provided, however, this does not affect

either the school district's rights or the contractor's rights under any other termination clause in the contract,

- d. That the school district must notify the contractor on a timely basis that the funds are not available for the continuation of the contract for a subsequent fiscal year,
  - e. Whether vendors may submit prices for the first fiscal period only, the entire time of performance only or both the first fiscal period and the entire time of performance, and
  - f. That a multi-year contract may be awarded and how such an award will be determined including, if prices for the first fiscal period and the entire time of performance are submitted, how such prices will be compared.
5. Termination Due to Unavailability of Funds in Succeeding Fiscal Period – All multi-year contracts shall contain a clause stating that when funds are not appropriated, or otherwise made available, to support continuation of performance in a subsequent fiscal period the contract shall be terminated.

## 2-303 Blanket Purchase Agreements

1. Conditions for Use – A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual solicitation documents. To the extent practicable, blanket purchase agreements for items of the same type should be awarded concurrently with more than one supplier.
2. Contract Terms – Blanket purchase agreements shall contain the following provisions:
  - a. Terms and conditions of the agreement including a statement that the supplier shall furnish supplies or services, commonly described in general terms, if and when requested by the School District during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the contractor is in a position to furnish.
  - b. The extent of the obligation including a statement that the School District is obligated only to the extent of authorized 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:
    - i. Name of contractors,
    - ii. Blanket purchase agreement number,
    - iii. Date of order,
    - iv. Order number,

- v. Itemized list of supplies or services furnished,
  - vi. Quantity, unit price and extension of each item less applicable discounts, and
  - vii. 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 first occurs, for all deliveries made during a billing period, identifying the delivery tickets covered therein stating their total dollar value and supported by receipted copies of the delivery tickets.

#### Part D – Audit of Records

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

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

#### Part E – Reports and Records

##### 2-501 Reporting of Anti-competitive Practices

When for any reason collusion or other anticompetitive practices are suspected among any bidder or offerors, the relevant facts shall be transmitted to the School District Attorney, School District Compliance Officer and the Superintendent.

##### 2-502 Procurement Records

1. Contract File – All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained in a contract file.
2. Retention of Procurement Records – All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the School District. If a contract is being funded in whole or in part by assistance from a

Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement or for a longer period if required by such Federal agency.

## ARTICLE 3 – SPECIFICATIONS

### Part A – Specifications

#### 3-101 Importance of Specifications

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

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

### Part A - Management of Construction Contracting

#### 4-101 Selection of Method of Construction Contract

The School District will utilize the South Carolina School Facilities Planning and Construction Guide prepared by the South Carolina Department of Education for new construction, additions or renovations of structures used in connection with public education. The School District shall have discretion to select the appropriate construction contracting method for a particular project. In determining which method to use, the School District shall consider its requirements, resources, and the potential contractor's capabilities. The School District shall include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting for each project. In selecting the construction contracting method, the School District should consider the results achieved on similar projects in the past and the methods used.

#### 4-102 Contract Administration

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

## Part B - Construction Contract Clauses and Fiscal Responsibility

### 4-201 Standard Clauses

The School District may establish standard contract clauses for use in its contracts. Such contract clauses and additional clauses or variations shall be stated in the Invitation for Bids or Request for Proposals.

### 4-202 Modifications

Every contract modification, change order, or contract price adjustment under a construction contract with the School Board in excess of five thousand dollars (\$5,000) shall be subject to prior approval by the School Board after receiving a report from the fiscal officer of the School District as to the effect of the contract modification, change order or contract price adjustment on the total project budget or the total contract budget.

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

### 4-301 Public Announcement and Selection Process

1. Public Announcement - It is the policy of the School District to publicly announce all requirements for Architect-Engineer and Land Surveying services and to negotiate such contracts on the basis of demonstrated competence and qualification at fair and reasonable prices. In the procurement of Architect-Engineer and Land Surveying services, the School District shall request firms to submit a statement of qualifications and performance data.
2. Selection Process - The School District shall conduct discussions with no less than three (3) firms regarding the contract and shall select the firm deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the School District.
3. Negotiation - The School District shall negotiate a contract with the highest qualified firm for Architect-Engineer or Land Surveying services at a compensation which is considered to be fair and reasonable to the School District. In making this decision, the School District shall take into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the School District be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be terminated and the School District shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the School District shall terminate negotiations. The School District shall then undertake negotiations with the third most qualified firm. Should the School District be unable to negotiate a contract with any of the selected firms, the School District shall select additional firms in order of their competence and qualifications, and the School District shall continue negotiations in accordance with this Section until an agreement is reached.

## ARTICLE 5 - PROPERTY MANAGEMENT

Part A - Disposition of Surplus Property

5-101 Sale

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

Part B - Proceeds

5-201 General Fund

Proceeds from the sale, lease, or disposal of surplus supplies and property shall be deposited in the School District general fund.

ARTICLE 6 - LEGAL AND CONTRACTUAL REMEDIES

Part A - Exclusive Remedies

6-101 Waiver and Exhaustion

The remedies provided in this article to actual or prospective bidders, offerors and contractors shall be exclusive and shall be exhausted prior to the commencement of an action at law or in equity against the School District, its officers or employees. Nothing herein should be construed as a waiver of sovereign, or other, immunity either partially or fully, if otherwise available and applicable of contracts. The debarment shall not be for a period of more than three (3) years. The School District, after consultation with the School District Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

## Part B – Resolution of Protests

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

1. Right to Protest – Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest. The protest shall be submitted in writing, setting forth the grounds and facts applicable thereto for the protest, within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto, to the Superintendent. The filing of a protest shall not stay the solicitation or award of a contract unless fraudulent.
2. Authority to Resolve Protests – The Superintendent shall have authority to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract. The remedies, if any, shall be in accordance with Part D of this Article.
3. Decision – If the protest is not resolved by mutual agreement, the Superintendent shall issue a decision in writing within ten (10) days. The decision shall:
  - a. State the reasons for the action taken, and
  - b. Inform the protestant of its right to administrative review as provided in Part C of this Article.
4. Notice of Decision – A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
5. Finality of Decision – A decision under Subsection (3) of this Section shall be final and conclusive, unless any person adversely affected by the decision appeals administratively as provided in Part C of this Article.

### 6-202 Authority to Debar or Suspend

1. Authority – After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the School District, after consultation with the School District Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The School District, after consultation with the School District Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.
2. Causes for Debarment or Suspension - The causes for debarment of suspension include the following:



- a. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - b. conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a School District contractor;
  - c. conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;
  - d. violation of contract provisions, as set forth below, of a character which is so serious as to justify debarment or suspension action:
    - i. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - ii. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment or suspension.
  - e. any other cause which is as serious and compelling as to affect responsibility as a School District contractor, including debarment or suspension by another governmental entity for cause.
  - f. for violation of the ethical standards set forth in South Carolina State Ethics Act.
3. Decision - The Superintendent shall issue a written decision within thirty (30) days to debar or suspend. The decision shall:
- a. state the reasons for the action taken; and
  - b. inform the debarred or suspended person involved of its rights to administrative review as provided in Part C of this Article.
4. Notice of Decision - A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
5. Finality of Decision - A decision under Subsection (3) of this Section shall be final and conclusive, as to administrative review, unless the debarred or suspended person appeals administratively as provided in Part C of this Article.

1. Applicability - This Section applies to controversies between the School District and a contractor and which arises under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
2. Authority - The Superintendent is authorized to settle and resolve a controversy described in Subsection (1) of this Section.
3. Decision - If such a controversy is not resolved by mutual agreement, the Superintendent shall promptly issue a decision in writing within thirty (30) days. The decision shall:
  - a. state the reason for the action taken; and
  - b. inform the contractor of its right to review as provided in Part C of this Article.
4. Notice of Decision - A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the contractor.
5. Finality of Decision - The decision under Subsection (3) of this Section shall be final and conclusive, unless the contractor appeals administratively as provided in this Article.
6. Failure to Render Timely Decision - If the written decision required under Subsection (3) of this Section is not entered within thirty (30) days after written request for a said decision, or within such longer period as may be agreed upon, then the Contractor shall proceed as if an adverse decision had been received.

### Part C - Administrative Appeals

#### 6-301 School District Superintendent

Prior to commencing any other action at law or in equity, a party aggrieved from a determination by the Superintendent which is authorized in Section 6-201, 6-202, or 6-203 of this Article, shall seek review of such determination to the School District Board of Trustees.

#### 6-302 Procedures

1. Time Limit for Filing an Appeal - A determination by the Superintendent shall be final and conclusive unless any person adversely affected by the decision requests a review by the School District Board of Trustees, in writing, setting forth the reasons for such review, to the School District Superintendent within ten (10) days of its receipt of the decision.
2. Upon receipt of an appeal from an aggrieved party, the School District Superintendent shall schedule a review of the appeal. The protestant may also request an appearance before the School District Board of Trustees. The Board of Trustees, within ten (10) days of completion of its review, shall, in writing, affirm, alter or deny the decision. Such decision shall include findings of fact and conclusions of law including a statement of the underlying facts supporting such findings. The Decision shall also state whether the:
  - a. solicitation or award being contested was in accordance with this Policy, and the terms and conditions of the solicitation documents;

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

Part D - Solicitations or Awards in Violation of Law

6-401 Applicability of this Part

The provisions of this Part apply where it is determined administratively or upon administrative review, that a Solicitation or award of a contract is in violation of this Policy.

6-402 Remedies Prior to an Award

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

- a. canceled; or
- b. revised to comply with this Policy.

6-403 Remedies After an Award

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

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

## ARTICLE 7 - INTERGOVERNMENTAL RELATIONS

### Part A - Cooperative Purchasing

#### 7-101 Cooperative Purchasing Authorized

The School District may participate in, sponsor, conduct, or administer a Cooperative Purchasing program for the procurement of supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units, including use of State contracts. The School District shall, prior to conducting procurement activities hereunder, explore the availability of satisfying its needs through utilization of pre-existing contracts between the State's Division of General Services and private vendors and shall use such arrangements if cost effective, and otherwise advantageous to the School District. The School District may procure supplies, services, or construction items through the contracts established by the General Services Division of the State of South Carolina as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), South Carolina Code of Laws, 1976, independent of the requirements of this Policy.

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

The School District may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of this Policy.

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

The School District may enter into an agreement, with any Public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties independent of the requirements of this Policy.

#### 7-104 Joint Use of Facilities

The School District may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public Procurement Unit under the terms agreed upon between the parties.

## ARTICLE 8 - MINORITY BUSINESSES

### Part A - Minority and Women- owned Businesses

#### 8-101 Minority and Women-owned Businesses

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

## ARTICLE 9 – NON-DISCRIMINATION CLAUSE

The South Carolina Public Charter School District does not discriminate on the basis of race, color, national origin, sex, disability, age, religion, or immigrant status in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following persons have been designated to handle the nondiscrimination policies. For questions pertaining to Section 504 contact the Director of Student Services, questions pertaining to Title IX contact the Director of School Development at 3710 Landmark Drive, Suite 201, Columbia, SC 29204, 803/734-8322.