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ARTICLE 1 - GENERAL PROVISIONS

Part A - Purposes and Application

1-101 Purpose

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

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 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 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 request which are otherwise consistent with law.

1-103 Exemptions

The School Board may exempt specific supplies or services from this Policy. The following supplies and services are exempted from this Policy:

- (a) Books, Periodicals, Newspapers, Technical Pamphlets, Standardized Tests and Testing Materials, Copy-righted Educational Materials, including software, CDROMS, videos, filmstrips, slides and transparencies.
- (b) Public Utilities
- (c) Travel
- (d) Workshops, Seminars, Conferences
- (e) Professional Journals
- (f) Taxes, Social Security, Annuities, Credit Union
- (g) Life Insurance or Supplemental Insurance
- (h) Oil Company Credit Cards - purchases for gas and oil and emergency repairs
- (i) Professional services normally obtained on a fee basis such as attorneys, accountants, physicians, or dentists, provided that no such services may be awarded without approval of the School District Board of Trustees
- (j) Clergy
- (k) Court Reporters
- (l) Professional Dues, Registration and Membership Fees
- (m) Instructional training seminars or staff development offered by the District to District employees and those contractual services necessary to provide the services for the seminar

- (n) Diplomas
- (o) U.S. Postage Stamps and Post Office Boxes
- (p) Art Reproductions
- (q) Expert witness service
- (r) Furniture refurbishing services of the Department of Corrections
- (s) Services and/or supplies provided by the Division of General Services to public procurement units
- (t) Livestock, Feed and Veterinary Supplies and Services
- (u) Local School Funds (Not allocated funds)
- (v) Banking Services

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

This Policy shall become effective as 6:00 P.M. on March 21, 2007.

Part B - Definitions of Terms Used in this Policy

1-201 Definitions.

- (1) Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (2) Catalogue price: The price, including any applicable discount available, included in a catalogue price list, schedule or other form that:
 - (a) is regularly maintained by a manufacturer or contractor;
 - (b) is either published or otherwise available for inspection by customers;
and
 - (c) states prices at which sales are currently or were last made to a significant number, or any category of buyer or buyers constituting the general buying public for the supplies or services involved.
- (3) Construction: The process of building, altering, repairing, improving, or demolishing any structure or building owned by the school district. It does not include operation, routine repair or routine maintenance of existing structures, buildings or real property.
- (4) Contract: All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

- (5) Contract modification: Any written alteration in specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (6) Contractor: Any person having a contract with the school district.
- (7) Cooperative purchasing: Procurement conducted by, or on behalf of, more than one "Public Procurement Unit."
- (8) Cost reimbursement contract: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this policy, and a fee, if any.
- (9) Data: Recorded information, regardless of form or characteristics.
- (10) Days: Calendar days. In computing any time prescribed by this code, 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 government holiday, then the period must run to the end of the next business day.
- (11) Debarment: The disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.
- (12) Emergency procurement: A method of procurement used only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions.
- (13) Employee: An individual drawing a salary from this school district, whether elected or not, and any volunteer.
- (14) Invitation for bids: All documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (15) Non-expendable supplies: All tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of more than one (1) year.
- (16) Person: Any business, individual, committee, club, other organization, or group of individuals.
- (17) Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (18) Public procurement unit: Any state, county, municipality, school district, and any other subdivision of the state or subdivision thereof, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of supplies, services, or construction.

- (19) Purchase description: The words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to, or made a part of, a "solicitation."
- (20) Quotation: A statement of the market price of securities, goods, or services; or the price specified to the correspondent. Often shortened to "quote."
- (21) Request for proposals (RFP): All documents whether attached or incorporated by reference, utilized for soliciting proposals.
- (22) Request for qualifications (RFQ): A request for qualifications from prospective offers issued prior to soliciting proposals. The RFQ must contain a description of the goods and services to be solicited by the request for proposals, the general scope of the work, the deadline for submission of information, and how prospective offerors may apply for consideration.
- (23) Response: Any bid, offer or proposal, without regard to the source selection method, which is submitted in reply to a "solicitation."
- (24) Responsible "vendor": A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (25) Responsive "vendor": A person who has submitted a response which conforms to, in all material respects, an invitation for bids or a request for proposals.
- (26) School district: As herein used, school district is intended to include the board of trustees or their authorized agent, such as, but not limited to, the superintendent, director of finance or, where applicable, director of procurement or other official responsible for procurement activity.
- (27) Service: The furnishing of labor, time or effort by a contractor. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or the providing of consultant assistance for any aspect of information technology, systems and networks.
- (28) Sole source: A method of procurement used where the district's needs can only be met by one method, means or item. Price is not an operative factor, inasmuch as the cost is not pertinent where the needs are unique and can only be satisfied through a unique one-of-a-kind acquisition.
- (29) Solicitation: Any effort, without regard to the source selection method, to obtain supplies, services or construction by the school district.
- (30) Solicitation document: The document(s) used in connection with a particular solicitation.
- (31) Supplies: All personal property including, but not limited to, equipment, materials, printing, insurance, information technology equipment and software packages.
- (32) Surplus supplies: Any supplies other than expendable supplies no longer having any use to the school district. This includes obsolete supplies, scrap materials and non-expendable supplies that have completed their useful life cycle.

(33) Term contract: A contract established for a specific product or service for a specified time and for which it is mandatory that all governmental bodies procure their requirements for the goods and services during its term.

(34) 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 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.

1-302 Compliance with Federal Requirements.

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

1-303 Standards of Conduct.

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

ARTICLE 2 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of Source Selection

2-101 Methods of Source Selection.

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

(a) Section 2-103 (Competitive Sealed Proposals);

(b) Section 2-104 (Small Purchases);

(c) Section 2-105 (Sole Procurement);

(d) Section 2-106 (Emergency Procurement);

(e) Section 4-101 and 4-102 (Selection of Method of Construction Contract); or

(f) Section 4-301 (Architect-Engineer or Land Surveying Services).

2-102 Competitive Sealed Bidding.

(1) Conditions for Use. While the preferred procurement technique, competitive sealed bidding should not be used in all instances. This is a price determinate method of procurement and is best applied where the needs of the District are precise and certain and may be secured from any number of potential suppliers. Contracts of \$50,000.00 or more must be awarded by competitive sealed bidding.

(2) Invitation for Bids. The Invitation for Bids shall be the document used to initiate a competitive sealed bid procurement and shall include the following:

(a) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, and any other special information;

(b) the purchase description, specifications, delivery and performance schedule, and such inspection and acceptance requirements as are not included in the purchase descriptions;

(c) all contract terms and conditions, including warranty and bonding or other security requirements as applicable; and

(d) instructions to bidders to visibly mark as confidential each part of their bid which they consider to be proprietary information.

(e) a statement of a bidder's right to protest under 6-201.

(3) Public Notice. Public notice of the invitation for bids must be given. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement, as determined by the school district.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The dollar amount of each bid, and such other relevant information, together with the name of each bidder, shall be recorded; the record and each bid shall be open to the public inspection after award. Only the information disclosed at bid opening is considered to be public information until an award is actually made. An amendment postponing bid openings may be issued only when emergency or unanticipated events beyond the control of bidders interrupt normal government operations. The date and location for the posting of the notice of an intended award will be announced at bid opening.

- (5) Bid Acceptance and Bid Evaluation. Bids shall be accepted without alteration or correction, except as authorized in this Policy. When necessary for the best interest of the School District, the Invitation for Bids may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the cost criteria to be used. No cost criteria may be used in bid evaluation that is not set forth in the Invitation for Bids.
- (6) Correction or withdrawal of Bids; Cancellation of Awards. Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid openings no change in bid prices or other provisions of bids prejudicial to the interest of the School District or fair competition shall be permitted. A bidder must submit a written request to either correct or withdraw a bid to the School District. Each written request must document that the fact that the bidder's mistake is clearly an error that will cause him substantial loss. In order to maintain the integrity of the competitive sealed bidding process, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake, in the judgment of the School District, is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination.
- (7) Award. Notice of an award or an intended award to the lowest responsive and responsible bidders must be given by posting the notice at a location specified in the invitation for bids. Prior to the posting of the award, the school district may negotiate an adjustment in the bid price, with the lowest responsive and responsible bidder to bring the bid within the scope of the invitation for bids. The notice shall contain a statement of a bidder's right to protest under 6-201. If a contract exceeds \$50,000, but is less than \$100,000, notice of award must also 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 of \$100,000 or greater the school district may contract with the bidder named in the notice 10 days after notice is posted and sent to responsive bidders. The posting date must appear on the face of all these notices. The notice of intent to award and the 10-day delay of award may be waived when only one response is received.
- (8) Request for Qualification. The district may follow the process set forth under 2-103(4).

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 practicable or not advantageous to the School District, a contract may be awarded to competitive sealed proposals. Competitive sealed proposals should be used when both the needs of the School District and the costs to satisfy those needs are important and the methods, or items to satisfy those needs are not clear and precise. While price is an important factor, it is considered less significant than fully meeting the District's needs. The ultimate purpose of this method of procurement is to provide flexibility to the District while taking into consideration various options and the costs of each. Proposals shall be solicited through a Request for Proposals.
- (2) Public Notice. Public Notice of the Request for Proposals shall be given in the same manner as provided in Section 2-102(3)
- (3) Proposal Opening. Proposals shall be publicly opened but only the names of the offerors disclosed at the proposal opening. Contents of competing proposals shall not be disclosed during the process of opening or negotiation. All proposals shall be opened for public inspection after contract award. Proprietary or confidential information marked as such in each proposal shall not be disclosed without written consent of the offeror.
- (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. At a minimum, the request must 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 must also contain the deadline for submission of information and how prospective offerors may apply for consideration.

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 must then invite bids from at least the top two prospective offerors in accordance with section (2) above.

- (5) Negotiations with Responsible Offerors and Revisions to Proposals. As provided in the Request for proposals, negotiations may be conducted with any offeror submitting a proposal appearing to be eligible for contract award pursuant to the selection criteria set forth in the Request for Proposals. All apparently eligible offerors shall be afforded the opportunity to submit best and final proposals if negotiations with any other offeror results in a material alteration to the Request for Proposals and such alteration has a cost consequence that may alter the order of offerors' price quotations contained in their initial proposals. In conducting negotiations, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (6) Evaluation Factors. 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 proposals shall then be ranked in accordance with the results of such evaluation.
- (7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the School District taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

2-104 SMALL PURCHASES. (SC Code § 11-35-1550; SC Reg. § 19-445.2100)

- (1) **Authority.** The following small purchase procedures may be utilized only in conducting procurements for the District that are up to fifty thousand dollars (\$50,000) in actual or potential value. Procurement requirements shall not be artificially divided by the District so as to constitute a small purchase pursuant to this section. (SC Code § 11-35-1550(1))
- (2) **Competition and Price Reasonableness.**
- (a) **Small purchases not exceeding \$2,000.00.** Small purchases not exceeding \$2,000.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. 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 or designee suspects that the price may not be reasonable, e.g., by comparison to previous price paid, or personal knowledge of the item involved. (SC Code § 11-35-1550(2)(a))
- (b) **Purchases over \$2,000 to \$10,000.** Solicitation of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition for a small purchase over \$2,000 but not in excess of \$10,000. The award shall be made to the lowest responsive and responsible sources. (SC Code § 11-35-1550(2)(b))
- (c) **Purchases over \$10,000 up to \$50,000.** Written solicitation of written quotes, bids, or proposals must be made for a small purchase over \$10,000 but not in excess of \$50,000. The procurement shall be advertised at least once in accordance with § 1520.3 (Notice). A copy of the written solicitation and written quotes shall 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. (SC Code § 11-35-1550(2)(c))

- (3) **Requirement to Advertise.** All competitive procurements above \$10,000.00 must be advertised in accordance with § 2-102 (3) (PublicNotice). The District may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement so advertised. (SC Code § 11-35-1550(3))

2-105 Sole Source Procurement.

(1) **Conditions for Use.** This method of procurement is the least competitive and therefore should have limited use. In those instances, however, where the District's needs can only be met by one method, means or item, sole source is an appropriate, and necessary, method of procurement. Price is not an operative factor, inasmuch as the cost is not pertinent where the needs are unique and can only be satisfied through a unique one-of-a-kind acquisition. The determination as to whether a procurement shall be made as a sole source shall be made by the School District. Such determination and the basis thereof shall be in writing and shall include an explanation as to why no other source will be suitable or acceptable to meet the need.

(2) **Award.** A contract may be awarded for a supply, service, or construction item without competition when the School District determines in writing that there is only one source for the required supply, service, or construction item. The following are examples of circumstances which could necessitate sole source procurements:

- (a) where the compatibility of equipment, accessories or replacement parts is the paramount consideration;
- (b) where a unique item is needed for trial use or testing;
- (c) where a unique item is to be procured for resale;
- (d) where the item is one of a kind; and
- (e) printed forms, pamphlets, and brochures, exclusive of printing equipment.

2-106 Emergency Procurement.

Notwithstanding any other provision of this Policy, the School District may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, or where normal daily operations are affected; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. If emergency considerations exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may also be made. A written determination shall be made stating the basis for an emergency procurement and for the selection of the particular Vendor. Emergency procurements shall be limited to that of supplies services or construction items necessary to meet the emergency.

2-107 Rejection of Response.

(1) **Rejection of All Responses.** A compelling reason should exist to reject all Responses. Every effort shall be made to anticipate changes in a requirement prior to the

date of opening and to notify all prospective Vendors of any resulting modifications or cancellation, thereby permitting Vendors to change their Responses and preventing the unnecessary exposure of Responses. As a general rule, a Solicitation should not be cancelled and readvertised after opening due solely to increased requirements for the items being procured; an award should be made on the initial Solicitation and the additional quantity required should be treated as a new procurement. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the Solicitation shall be cancelled. The Solicitation may be cancelled after opening, but prior to an award, when it is determined in writing that:

- (a) inadequate or ambiguous specifications were cited in the Solicitation;
- (b) specifications have been revised;
- (c) supplies or services being procured are no longer required;
- (d) The specification did not provide for consideration of all factors of costs to the School District, such as cost of transportation;
- (e) Responses received indicate that the needs of the School District can be satisfied by a less expensive article differing from that on which the Responses were invited;
- (f) All-otherwise acceptable Responses received are at unreasonable prices;
- (g) The Responses were not independently arrived at an open competition, were collusive or were submitted in bad faith; or
- (h) For other reasons, cancellation is clearly in the best interest of the School District.

(2) Rejection of Individual Responses. Any Response which fails to conform to the essential requirements of the Solicitation, such as bid security, shall be rejected. Any bid which does not conform to the specifications contained or referenced in the Invitation for Bids may be rejected unless the Invitation for Bids authorized the submission of alternate bids and said alternates meet the requirements specified in the Invitation for Bids. Any Response which fails to conform to the delivery schedule or permissible alternates thereto stated in the Solicitation may be rejected as nonresponsive. Ordinarily, a Response should be rejected when the Vendor attempts to impose conditions which would limit his liability to the School District, since to allow the Vendor to impose such conditions would be prejudicial to other Vendors. For example, responses should be rejected in which the Vendor:

- (a) attempts to protect against future changes in conditions, such as increased costs, if total possible cost to the School District cannot be determined;
- (b) fails to state a price or states a price but qualifies such price and states that the price shall be subject to the "price in effect at time of deliveries";
- (c) when not authorized by the Solicitation, conditions or qualifies a Response by stipulating that the Response is to be considered only if, prior to the date of award, Vendor receives (or does not receive) an award under a separate procurement;
- (d) requires the School District to determine that the Vendor's product meets the School District's specifications; or
- (e) limits the rights of the School District under any contract clause.

(3) Any Response received after the School District has declared that the time set for opening has arrived shall be rejected unless the Response was in the possession of the School District and was misplaced. In such an event, the misplaced Response will be considered along with other previously received responses.

(4) Minor Information 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 trivial or negligible affect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and -the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other Vendors. The School District shall either give the Vendor an opportunity to cure any deficiency resulting from a minor informality or irregularity in a Response or waive any such deficiency where it is to the advantage of the School District. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

- (a) failure of a Vendor to return the number of copies of signed Responses required by the Solicitation;
- (b) failure to furnish the required information concerning the number of the Vendor's employees or failure to make a representation concerning his size status;
- (c) failure of a Vendor to sign his Response, but only if (I) the firm submitting the Response has formally adopted or authorized the execution of documents by typewritten, printed or rubber-stamped signature and submits evidence of such authorization and the Response carries such a signature; or (ii) the unsigned Response is accompanied by other material indicating the Vendor's intention to be bound by the unsigned Response such as the submission of a price guarantee with the Response or a letter signed by the Vendor with the Response referring to and clearly identifying the Response itself;
- (d) failure of a Vendor to acknowledge receipt of an amendment to a Solicitation, but only if (I) the Response received clearly indicates that the Vendor received the amendments, such as where the amendment added another item to the Solicitation and the Vendor submitted a Response thereon, or (ii) the amendment clearly would have no affect or merely a trivial or negligible affect on price, quality, quantity, delivery or the relative standing of Vendors, such as an amendment correcting a typographical mistake in the name of the School District, (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 nonresponsibility of a Vendor shall be made. The unreasonable failure of a Vendor to promptly supply information in connection with an

inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such Vendor. Factors to be considered in determining the responsibility of a Vendor include whether the prospective contractor has:

- 1) 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;
- 2) a satisfactory record of past performance;
- 3) a satisfactory record of integrity;
- 4) qualified legally to contract with the School District; and
- 5) supplied all necessary information in connection with an inquiry concerning responsibility. A copy of the written determination of nonresponsibility shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made a part of procurement file.

2-203 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 cost-reimbursement or a 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 proposal 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 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 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 accomplished 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;

(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-priced 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 subcontract, unless a shorter period is otherwise authorized in writing.

Part E - Reports and Records

2-501 Reporting of Anticompetitive Practices.

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

2-502 Procurement Records.

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

(2) Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules 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 (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 description 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. Governing Provisions for Construction Procurement.

a. Introduction. The Board has the responsibility for assessing building needs, both current and future, and for developing and conducting a building program to meet those needs within the limits of the resources of the District. Included are all the ancillary tasks required for successful accomplishment of each project to include site selection and purchase, furniture and equipment selection, and so forth. Colleton County Schools will conduct its building program in accordance with the regulations of the State Department of Education and the procedures set forth herein.

b. Authority and Approval.

i. Local. The local authority is established in accordance with the South Carolina School Facilities Planning & Construction Guide prepared by the Office of School Planning & Building. The approval process for construction projects and their funding will include the Chief Officer for Construction Services, the Superintendent, and ultimately the Board of Education as directed by the Superintendent and/or Board policy. The Director of Procurement Services and the Chief Officer for Finance will recommend contract award(s) for each project within the approved budget.

ii. State. (SC Code § 59-23-210 et seq.)

4-102. Professional Services for Construction. (SC Code § 11-35-3210 et seq.; SC Reg. § 19- 445-2145(D))

The procedure for acquiring these services is set forth below.

1. Invitation. The District will announce its requirements for these services through Dodge-McGraw Hill and newspaper advertisements and will mail invitations for proposals to firms on District's bid list and/or firms listed in the records of the Office of School Facilities Planning.

2. Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen (15) days after publication of the invitation. Interested Architect, Engineer, construction management and land surveying persons or firms shall be required to respond to the invitation with the submission of a current and accurate Federal Standard Form 254, Architect, Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect, Engineer and Related Services Questionnaire for Specific Project, or such similar information as the Board may prescribe by policy, and any other information which the particular invitation may require.

3. Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the Superintendent's appointed architectural selection committee shall hold interviews with at least five (5) persons or firms who have responded to the advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to

the date selected for the interviews. If less than five (5) persons or firms have responded to the advertisement, the committee shall hold interviews with those who did respond. The selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the selection committee to fully acquaint it with the relative qualifications of the several interested firms.

4. Selection and Ranking of the Five Most Qualified. The selection committee shall evaluate each of the persons or firms interviewed in view of their:
 - a. Past performance.
 - b. Ability of professional personnel.
 - c. Willingness to meet time and budget requirements.
 - d. Location.
 - e. Recent, current and projected work loads of the firms.
 - f. Creativity and insight related to the project.
 - g. Related experience on similar projects.

Based upon these evaluations, the selection committee shall select the five (5), which, in its judgment, are the most qualified, ranking the five (5) in priority order. The selection committee's report ranking the five (5) chosen persons or firms shall be in writing and shall include data substantiating its determinations. When the ranking report is final, written notification of the election and order of preference shall be immediately sent to all that responded to the selection committee's invitation to submit information.

5. Negotiation of Contract. The Superintendent, Chief Officer for Construction Services or their designees shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the District. Should the Superintendent, Chief Officer for Construction Services or other designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, fourth and fifth most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one (1) of the five (5), additional persons or firms in order of their competence and qualifications shall be selected after consultation with the selection committee, and negotiations shall be continued in the same manner until agreement is reached. Once agreement has been reached, either the Superintendent, Chief Officer for Construction Services, designee or the selection committee will submit its recommendation to the Board for approval. Upon Board approval, the Superintendent or his designee will be authorized to execute a contract with the selected person or firm. If Board approval is not received, additional persons or firms shall be selected in order of their competence and qualifications by the selection committee and negotiations shall be continued in the same manner until further agreement and Board approval is received.

6. Non-Architect Approvals and Projects. Where agreed to in advance by the Office of School Facilities, the services of the architect may be deleted and comparable basic

services of a professional engineer, landscape architect or other specialist may be substituted, as provided for in the Guide §106.

7. Exception for Small Architect, Engineer, and Land Surveying Services. The District may secure Architect, Engineer or land surveying services, which are estimated not to exceed \$25,000 by direct negotiation and selection. In this event, the following sequence will be followed:

a. Maximum Fees Payable for Single Procurement. Services, which are estimated not to cost in excess of \$25,000, may be acquired by direct negotiation and selection, taking into account the:

i. Nature of the project.
ii. Proximity of the Architect, Engineer or land surveying services to the project.

iii. Capability of the architect, engineer, or land surveyor to produce the required services within a reasonable time.

iv. Past performance.

v. Ability to meet project budget requirements.

b. Maximum Fees Payable to One (1) Person or Firm. Fees paid during the twenty-four (24) month period immediately preceding negotiation of small contracts by the District for professional services performed by any one (1) architectural, engineering or land-surveying firm pursuant to this section shall not exceed \$75,000. The Director of Procurement will verify through Accounts Payable the fees paid by the District during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

c. Splitting of Large Projects Prohibited. No project may be subdivided for the purpose of circumventing these provisions.

d. Authorizing Services. A purchase order shall be used to authorize these services.

8. Construction Work Prohibited by Architect or Engineer. No architect or engineer performing design work, or construction manager performing construction management services pursuant to a contract awarded under any provision of this Article may perform other work on that project as a Contractor or subcontractor either directly or through a business in which he architect, or his architectural or engineering construction management firm has greater than a five percent (5%) 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. Should the construction manager perform or be responsible for safety compliance and other incidental construction activities, and these support activities are in noncompliance with the provisions of S.C. Code Ann. § 41-15-210, then the construction management firm is subject to all applicable fines and penalties.

4-103. Real Property Acquisition. (SC Code § 59-1 9-180 et seq.; Guide, Division 2)

a. Site Acquisition. Site purchase will be scheduled on the long range capital improvements priority list the same as building projects. Once a site purchase is scheduled the following sequence of events is used:

i. Identify the general area in which the site is needed. This is done by identifying the attendance areas to be served by the proposed school. Since the proposed building will have a life expectancy of fifty (50) years or greater, it is essential that an evaluation of the area be made on a long-term basis.

ii. Identify several vacant tracts in the area of interest. Compare and contrast these sites in terms of access, utilities, topography, zoning, services, costs, etc.

iii. Obtain an appraisal of the several most advantageous sites.

iv. Obtain State Department of Education approval pursuant to S.C. Code Ann. § 59-23-310.

v. If negotiations are successful, complete the transaction according to the Board and the State Department of Education procedures. If negotiations are unsuccessful, switch attention to the second most advantageous site.

vi. If unable to successfully negotiate the purchase of a satisfactory site, condemnation can be used. See the following section.

b. Condemnation. Condemnation can be used to acquire property under certain conditions. Essentially, condemnation is for circumstances where no usable property can be acquired at or around market value. To exercise condemnations follow this sequence.

i. Obtain from the Board a Resolution of Need, stating that the subject property is necessary for school purposes. The Board should also authorize the administration to proceed through legal channels to acquire the property through condemnation.

ii. With condemnation authorized, make a final effort to negotiate an agreement with the property owner.

iii. If negotiations are still unsuccessful, instruct the school attorney to proceed with condemnation.

4-104. Construction Contracting Administration. (SC Code § 11-35-3010; SC REG. § 19-445-2145; Guide, Division 8)

To the extent clearly applicable, particularly with regard to required specifications, the District will adhere to the South Carolina School Facilities Planning and Construction Guide (“Guide”) administered by the Office of School Facilities Planning. However, given the size and scope of the District’s building program needs, the Colleton County Schools Board of Education finds that the Guide is inadequate to assure that the purposes of this Procurement Code are met during the initial phases of District construction projects. Therefore, to serve the purposes of this Code and to ensure operations are substantially similar to the State Procurement Code, the following specific bidding and contracting procedures are hereby adopted, and are to be interpreted and applied consistent with the interpretations and applications of the parallel and analogous provisions of the South Carolina State Consolidated Procurement Code, including

implementing Regulations of the Budget and Control Board, and administrative decisions of the State Procurement Review Panel. The District may seek opinions and assistance from appropriate State officers for the purpose of administering this Code and resolving any controversies arising hereunder with regard to construction projects.

4-105. Selection of Method.

The method of construction contracting administration used for a District construction project shall be determined to be that method which is most advantageous to the District and will result in the most timely, economical, and successful completion of the construction project. The District shall select the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations that led to the selection of that particular method. The District shall make a written determination that must be reviewed by the Director of Procurement Services. The determination shall describe the construction contracting method chosen and set forth the facts and considerations, which led to the selection of that method. This determination shall demonstrate that the requirements and financing of the project were all considered in making the selection. In selecting the construction contracting method, the District should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill District requirements. The District shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the District's needs. In each instance, consideration should be given to all the appropriate and effective means of obtaining both the design and construction of the project. Before choosing the construction contracting method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the District. The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including what sources of funding are available. The District should consider whether a price could be obtained that is fair and reasonable when considered together with the benefit to the District potentially obtainable from such a contract.

4-106. Construction Services Procurement Procedures. (SC Code § 11-35-3020)

a. Source Selection. All District construction contracts should normally be awarded by competitive sealed bidding except as provided in cases of small purchase procurements, sole-source procurements, or emergency procurements. Competitive sealed proposals (see paragraph c. below) and multi-step sealed bidding may be authorized by the Superintendent.

b. Competitive Sealed Bidding Procedure. Competitive sealed bidding shall be performed in a manner not inconsistent with the provisions of this Code governing competitive sealed bidding except as addressed by a specific provision set forth in this Article:

i. Invitation for Bids. (SC Code § 11-35-3020(2)(a)) In lieu of Section 2-102(2) of this Code, the following provisions apply. The Procurement Department shall be responsible for developing a formal invitation for bid for each District construction project subject to competitive sealed bidding. The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement, except that all applicable provisions of this Code may be incorporated by reference. A copy of each invitation for bids shall be adequately formally advertised; the manner in which this official publication shall be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication will be distributed shall be decided by the Director of Procurement Services.

ii. Construction Subcontractors. (SC Code § I I-35-3020(2)(b))

a) The Procurement Department, in consultation with the Architect, Engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work to the prime Contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent (3%) of the prime Contractor's total base bid. In addition, the Procurement Department, in consultation with the Architect, Engineer assigned to the project, may identify by specialty in the invitation for bids any additional subcontractors who are expected to perform work that is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable under this Code.

b) Any Bidder in response to an invitation for bids shall set forth in its bid the name of only those subcontractor(s) that will perform the work as identified in the invitation for bids. If the Bidder determines to use his own employees to perform any portion of the work for which it would otherwise be required to list a subcontractor and if the Bidder is qualified to perform such work under the terms of the Invitation for bids, the Bidder shall list itself in the appropriate place in his bid and not subcontract any of that work except with the approval of the District for good cause shown. Failure to complete the list provided for in the Invitation for bids renders the Bidder's bid unresponsive.

c) No prime Contractor to whom the contract is awarded shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one (1) or more of the following reasons:

(1) Upon a showing satisfactory to the District by the Contractor that a subcontractor who was listed is not financially responsible.

(2) Upon a showing satisfactory to the District by the Contractor that the scope of work bid by a listed subcontractor did not include a portion

of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid.

(3) Upon a showing satisfactory to the District made by the Contractor that the subcontractor was listed as a result of an inadvertent clerical error.

(4) Upon a showing satisfactory to the District by the Contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime Contractor after the subcontractor had represented to the prime Contractor that he could obtain a performance and payment bond.

(5) Upon a showing satisfactory to the District by the Contractor that the listed subcontractor is required to be licensed and does not have the license at the time it is required to perform; however, where a bid is non-responsive because at the Bid Opening it lists a subcontractor who, at the moment the bid was submitted, was not sufficiently licensed under State law to perform the work for which it was listed, such non-responsiveness is not subject to cure by substitution.

(6) When the listed subcontractor fails or refuses to perform his subcontract.

(7) When the work of the listed subcontractor is found by the District to be substantially unsatisfactory.

(8) Upon mutual agreement of the Contractor and subcontractor.

(9) With the consent of the District for good cause shown.

d) The request for substitution must be made to the District in writing. This written request does not give rise to any private right of action against the prime Contractor in the absence of actual malice.

e) Where substitution is allowed, the prime Contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one (1) subcontractor whose bid was received prior to the submission of the prime Contractor's bid. Nothing in this section affects a Contractor's ability to request withdrawal of a bid in accordance with the provisions of this Code.

iii. Receipt and Safeguarding of bids. See Article IV of this Code.

iv. Bid Opening. The provisions of Section 2-102(4) of this Code apply, except that the Procurement Department shall send all responsive Bidders a copy of the bid tabulation within ten (10) working days following the bid opening.

v. Bid Evaluation and Acceptance.

a) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids or instructions to Bidders. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code. Specific criteria for evaluation of the responsiveness of bids and responsibility determinations shall be as published in the Bid Instructions and related project documents for each project, including the mandatory clauses established in this Code; provided however, that any provision of law which preempts the project documents — including but not limited to provisions of federal law or regulations applicable to specific projects, or the State Contractor licensure laws — necessarily must also be considered in making responsiveness and responsibility determinations for each bid.

b) Identification of the apparent low Bidder will be based on the “base bid” work and the alternates, if any, which the District actually chooses to implement.

vi. Correction or Withdrawal of Erroneous Bids. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards or contracts after award but prior to performance may be permitted.

a) Prior to the bid opening date and time, a bid submitted may be modified or withdrawn by notice to the District’s Director of Procurement Services. Any modifications to a response prior to bid opening must be handled in the same manner as the response to the competitive sealed bidding. Such notice shall be in writing with the signature of the individual signing the original bid documents and shall be mailed or hand delivered to the Office of Procurement Services to be received no later than the bid opening date and time. No explanation for withdrawal is required. If sufficient time does not allow for delivery of the bid withdrawal by the bid opening date and time, a facsimile may be transmitted prior to the bid opening date and time. A change in any base bid, alternate bid or unit pricing amounts shall be worded so as not to reveal the original amount submitted in the sealed bid. Should the change in base bid or any alternate bid result in an overall increase in the total bid price, the Bidder shall be required to submit a revised bid security for the corrected bid price or a confirmation from the bond surety that the difference is incorporated in the original Bid Bond. A withdrawn bid may be resubmitted up to the published bid opening date and time provided it is in full conformance with the Bid Instructions at the time of resubmission.

b) After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the District or fair competition shall be permitted. Except as otherwise provided, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts after award but prior to performance, shall be supported by a written determination of appropriateness made by the Director of Procurement Services. A Bidder must submit in writing a request to withdraw a bid to

the Director of Procurement Services. Each written request must document the fact that the Bidder's mistake is clearly an error that will cause the Bidder substantial loss, as set forth in paragraph c) below To maintain the integrity of the competitive sealed bidding system, a Bidder shall not be permitted to correct a bid mistake after bid opening that would cause such Bidder to have the low bid unless the mistake, in the judgment of the Director of Procurement Services, is clearly evident from examining the bid document.

c) For the District to give consideration to the withdrawal after the bid opening date and time, when a clerical error has been made, the following conditions shall be met:

(1) A request for withdrawal is received by the District's Director of Procurement Services, in writing, on company stationery, via United States mail or facsimile, with the signature of the original signatory on the Official Bid Form within three (3) consecutive days following the bid opening date and time; and

(2) The bid was submitted in good faith; and

(3) The mistake was a clerical error, such as misplacement of a decimal point rather than an error in Judgment; and

(4) Objective evidence drawn from the original work papers, documents, and other materials used in the preparation of the bid demonstrates clearly that the mistake was an unintentional error in arithmetic or other such mistake; and

(5) The bid price is substantially lower than the next lowest bid indicating a mistake may have been made, and requiring the Bidder to honor the bid price would be unconscionable.

d) Negligence or error on the part of any Bidder in preparing a bid confers no right of withdrawal or modification after the bid opening date and time. The decision *of* the District to accept or not accept the withdrawal or modification of a bid after the bid opening date and time shall be solely at the discretion of the District's Director of Procurement Services and in accordance with this Code.

e) No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other services for the Bidder to whom the contract is awarded or shall otherwise benefit from the contract.

vii. Notice of Intent to Award. (SC Code § 11-35-3020(2)(C))

a) Unless there is a compelling reason to reject bids, Notice of Intent to Award a contract to the lowest responsive and responsible Bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such

notice at a location which has been 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 under this Code and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the Procurement Department shall promptly send all responsive Bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the Bidder's right to protest under this Code.

b) For purposes of this Article, the Notice of Intent to Award does not constitute "award." Award occurs when the contract is executed between the Contractor and the District, and not sooner. A determination of responsibility must be made before award.

c) Sixteen (16) days after notice is given the District may enter into a contract with the Bidder named in the Notice of Intent to Award. If, after bid opening, only one (1) bid is received and determined to be responsive and responsible and within the District's construction budget, award may be made without the sixteen (16) day waiting period.

viii. Negotiations After Unsuccessful Competitive Sealed Bidding. (SC Code § 11-35-3020(2)(d)) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the District that circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive Bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five percent (5%) of the construction budget established for that portion of the work. The District may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent (10%) without approval of the Superintendent. When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the District is able to identify additional funds for the project in the amount of the difference between the lowest base bid and the approved available funds for the project, the administration shall submit its request to use such additional funds to the Superintendent for approval.

c. Competitive Sealed Proposals. (SC Reg. § 19-445.2095(F)). Pursuant to the provisions of Section 2-103 of this Code, the following types of services or construction may be procured by competitive sealed proposals:

i. Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. 1-lazardous waste remedial action).

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

iii. Energy conservation or other projects to be financed by vendors who will be paid from the District's savings.

iv. Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the District.

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.

4-203. Bonds and Security. (SC Code § 11-35-3030; SC Reg. § 19-445-2145(C))

a. Bid Security.

i. Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in excess of one hundred thousand dollars (\$100,000), such other contracts as may be prescribed by the Office of School Facilities, and where otherwise required by State law. Bid Security shall be a certified cashier's check or a bond provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. In the case of a construction contract under one hundred thousand dollars (\$100,000), the agency may, with the approval of the Superintendent or designee, allow the use of a "B" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety.

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

iii. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a Bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one (1) working day from bid

opening to cure such deficiencies. If the Bidder cannot cure these deficiencies within one (1) working day of bid opening, his bid shall be rejected.

iv. Withdrawal of Bid. If a Bidder is permitted to withdraw its bid before bid opening pursuant to the provisions on Withdrawal of Bids in this Code no action shall be had against the Bidder or the bid security.

b. Contract Performance and Payment Bonds.

i. Required Bonds. When a Notice of Intent to Award is acknowledged by a Contractor, the following bonds or security shall be delivered with the Contractor's acknowledgement of the Notice of Intent to Award to the Procurement Department, and shall become binding on the parties upon the execution of the contract:

(a). A performance bond satisfactory to the District, executed by a surety company meeting the criteria established set forth below, or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent (100%) of the price specified in the contract.

(b). A payment bond satisfactory to the District, executed by a surety company meeting the criteria established below, or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price.

(c). In the case of a construction contract valued at one hundred thousand dollars (\$100,000) or less, the District may waive the requirements of (1) and (2) above, provided that the District is protected.

(d). Criteria. The Contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in the form of AIA Document A311 "Performance Bond and Labor and Material Bond," as may be amended by the District. The District will supply the required version of Document A311 or District form. Each bond shall be in the full amount of the Contract Sum, issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. In the case of construction under \$100,000, the District may, with the approval of the Superintendent or designee, allow the use of a "B" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety.

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

iii. Suits on Payment Bonds. S.C. Code Ann. § 11-35-3020(2)(c)-(d) provides for legal actions on payment bonds.

iv. Bond Copies. Any person may request and obtain from the Procurement Department 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 shall be prima facie evidence of the contents, execution and delivery of the original.

v. Additional Bond Requirements. See S.C. Code §29-6-250 for additional bond requirements for projects over \$50,000.

c. Retention. (SC Code § 11-35-3030(4))

i. Maximum amount to be withheld. In any contract or subcontract for construction which contract or subcontract provides for progress payments in installments based upon an estimated percentage of completion, with a percentage of the contract's proceeds to be retained by the District or general Contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment shall be no more than ten percent (10%).

ii. Release of Retained Funds. When the work to be performed on a District construction project or pursuant to a District construction contract is to be performed by multiple prime Contractors or by a prime Contractor and multiple subcontractors, the work contracted to be done by each individual Contractor or subcontractor will be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed that portion of the retained funds which is allocable to the completed division of the contract shall be released forthwith to the prime Contractor, who shall, within ten (10) days of its receipt, release to the subcontractor responsible for the completed work the full amount of any retention previously withheld from him by the prime Contractor.

4-204. Contract Clauses And Their Administration (SC Code § 11-35-3040)

a. Contract Clauses. Colleton County Schools construction contracts and subcontracts may include clauses providing for adjustments in prices, time of performance and other appropriate contract provisions including but not limited to:

- i. The unilateral right to order in writing:
- (a). All changes in the work within the scope of the contract.
 - (b). All changes in the time of performance of the contract that do not alter the scope of the contract work.
 - (c). Variations occurring between estimated quantities of work in the contract and actual quantities.
 - (d). Suspension of work.

(e). Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site condition clauses promulgated by the Board need not be included in a contract.

(f). When the contract is negotiated.

(g). When the parties have otherwise agreed with respect to the risk of differing site conditions.

b. Price Adjustments.

i. Adjustments in price pursuant to clauses promulgated under subsection 4-204(a) of this section shall be computed and documented with a written determination. The price adjustment agreed upon shall approximate the actual cost to the Contractor and all costs incurred by the Contractor shall be justifiably compared with prevailing industry standards, including reasonable profit. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one (1) of the following ways is the most valid approximation of the actual cost to the Contractor:

(a). By unit prices specified in the contract or subsequently agreed upon.

(b). By the costs attributable to the events or situations under such clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon.

(c). By agreement on a fixed price adjustment.

(d). In such other manner as the contracting parties may mutually agree.

(e). In the absence of agreement by the parties, through unilateral determination by the District of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the District and subject to the process for contract dispute resolution provided by this Code.

ii. A Contractor shall be required to submit cost or pricing data if any adjustment in contract price is sought.

c. Additional Contract Clauses. The construction contracts and subcontracts may include clauses providing for appropriate remedies, which cover as a minimum:

i. Specified excuses for delay or nonperformance;

ii. Termination of the contract for default;

iii. Termination of the contract in whole or in part for the convenience of the District.

iv. Liquidated damages in case of late completion and/or certification for occupancy.

d. Modification of Required Clauses. The Director of Procurement Services may vary the clauses referenced subsection F(a) and subsection F(c) of this section in any particular construction contract; provided, that any variations from the usual and

customary clauses on these matters appearing in the District's standard construction contract models are supported by a written determination that states the circumstances justifying such variations; and provided, further, that notice of any such material variation be stated in the invitation for bids.

e. Changes to Architect, Engineer and Construction Contracts.

i. Change Orders which significantly change the scope of the project or cause the budget authorized for the project by the Superintendent to be exceeded shall be submitted for review by the Office of School Facilities and Planning when so required by the provisions of Guide § 9.05(c).

ii. Change Orders which do not significantly change the scope of the project or exceed the budget authorized by the Board may be executed by the Superintendent or designee without prior approval.

4-205. Cost Principles Regulations for Construction Contractors.

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

4-206. Sole Source Construction Procurement. See Article IV of this Code.

4-207. Emergency Construction Procurement. See Article IV of this Code.

4-208. Indefinite Delivery.

a. General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services and for architectural-engineering and land surveying services pursuant to the procedure in this Article X.

i. Construction services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of \$750,000.00 for a two-year period with individual project expenditures not to exceed \$150,000.00.

ii. Architectural-engineering and Land Surveying Services. When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of \$300,000.00 for a two-year period with individual project expenditures not to exceed \$100,000.00.

b. Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural, engineering and land surveying services may be procured as provided in subsection 4-102(7) of this Article. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided subsection 4-102(7) of this Article.

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 the 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. Newspaper 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.

NOTE: SC Code Annotated Section 59-19-250 provides that school trustees may sell or lease school property after first obtaining the consent of the county board of education or, in those counties which do not have a county board of education, the governing body of the county. South Carolina Code Annotated Section 59-19-190 requires that a board obtain prior written approval of the state board of education prior to the reassignment or disposal of land purchased after 1952 with any state funds.

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 of law or in equity against the School District, its officers or employees. Nothing herein should be construed as a waiver of sovereign, or other, immunity either partially or fully, if otherwise available and applicable.

Part B - Resolution of Protests

6-201 Authority to Resolve Protested Solicitations and Awards.

(1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest. The protest must be submitted in writing to the Superintendent, setting forth the grounds and facts applicable thereto for the protest, and the relief requested within ten (10) days of the date notification of the award is posted in accordance with this policy. 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 must conduct a review and 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. A copy must be posted at a date and place communicated to all parties in the administrative review. This copy will have on it the date of posting and statement of the right to appeal.

(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 or 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 a basis for debarment or suspension.

(e) any other cause which is so serious and compelling as to affect responsibility as a School District contractor, including debarment or suspension by another governmental entity for cause.

(f) for violation of the ethical standards set forth in South Carolina State Ethics Act.

(3) Decision. The Superintendent shall issue a written decision within thirty (30) days to debar or suspend. The decision shall:

(a) state the reasons for the action taken; and

(b) inform the debarred or suspended person involved of its rights to administrative review as provided in Part C of this Article.

(4) Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) Finality of Decision. A decision under Subsection (3) of this Section shall be final and conclusive, as to administrative review, unless the debarred or suspended person appeals administratively as provided in Part C of this Article.

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

(1) Applicability. This Section applies to controversies between the School District and a contractor and which arises under, or by virtue of, a contract between them. This includes without limitation controversies based 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. The remedies, if any, shall be in accordance with Part D of this Article.

(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 must 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 must be:

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

6-403 Remedies After an Award.

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

- (a) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the School District; and
 - (ii) the person who should have been awarded the contract may be reimbursed for the actual expenses reasonably incurred in connection with the Solicitation, including preparation, not to exceed five thousand dollars (\$5,000.00).
- (b) if the person awarded the contract has acted fraudulently or in bad faith:
 - (i) the contract may be declared null and void; or
 - (ii) the contract may be ratified and affirmed if such action is in the best 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 either participate in, sponsor, conduct, or administer a Cooperative Purchasing program for the procurement of supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units, including use of State contracts. The School District shall, prior to conducting procurement activities hereunder, explore the availability of satisfying its needs through utilization of pre-existing contracts between the State's Division of General Services and private vendors and shall use such arrangements if cost effective, and otherwise advantageous to the School District. The School District may procure 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 Businesses

8-101 Minority Businesses

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

This Procurement Policy is hereby adopted and made effective as of March 21, 2007.

John Barnes, Chairman

ATTEST:

Secretary

COLLETON COUNTY
SCHOOL DISTRICT

PROCUREMENT
POLICY

EFFECTIVE AS OF _____,