

Article I

GENERAL PROVISIONS

(SC Article 1 - Subarticle 1)

A. PURPOSE AND POLICIES (SC Section 11-35-20)

The underlying purposes and policies of this code are:

1. to provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing values of funds of the District;
2. to foster effective broad-based competition for public procurement within the free enterprise system;
3. to develop procurement capability responsive to appropriate user needs;
4. to consolidate, clarify and modernize the regulations governing procurement by this District;
5. to require the adoption of competitive procurement practices by the District;
6. to ensure the fair and equitable treatment of all persons who deal with the procurement system of this District;
7. to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process;
8. to develop an efficient and effective means of delegating roles and responsibilities;
9. to promote increased public confidence in the procedure followed in public procurement;
10. to permit the continued development of explicit and thoroughly considered procurement policies and practices;
11. to train procurement officials in the techniques and methods of public procurement;
12. to mandate the existence of a structured system of auditing and monitoring in order to assure adherence to the provisions of this code;

13. to provide for the coordination and control of information technology activities by the District so as to promote the efficient and effective management and procurement of information technology.

B. OBLIGATION OF GOOD FAITH (SC Section 11-35-30)

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

C. APPLICATION OF THIS CODE (SC Section 11-35-40)

1. General Application

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

2. Application to District Procurement

This code shall apply to expenditure of funds by this District under contract, including federal assistance monies, except as specified in Compliance with Federal requirements. It shall also apply to the disposal of District supplies as provided in Supply Management except real property as defined in Board policy. The provisions of this code shall apply to procurements of information technology elements.

3. Compliance with Federal Requirements

Where a procurement involves the expenditure of federal assistance or contract funds, the District shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in the code. Notwithstanding, where federal assistance or contract funds are used in a procurement by the District, requirements that are more restrictive than federal requirements shall be followed.

Article II

DETERMINATIONS

(SC Article 1 - Subarticle 3)

A. DETERMINATIONS (SC Section 11-35-210)

Written determinations and findings required by the code shall be retained in an official contract file by the District. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit.

Article III

DEFINITIONS OF TERMS USED IN THIS CODE

(SC Article 1 - Subarticle 5)

A. DEFINITIONS (SC Section 11-35-310)

Unless the context clearly indicates otherwise, the following terms shall mean:

1. **Information Technology (IT)** -- data processing, telecommunications and office systems technologies and services:
 - a. **data processing** -- the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage and printing systems, data transmission equipment, and related software such as operating systems, library and maintenance routines and applications programs.
 - b. **telecommunications** -- voice, data, message and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.
 - c. **office systems technology** -- office equipment such as typewriters, duplicating and photocopy machines, paper forms and records, microfilm and microfiche equipment, and printing equipment and services.
 - d. **services** -- the providing of consultant assistance for any aspect of information technology, systems, and networks.
2. **Board** -- the Board of Trustees of The School District of Greenville County.
3. **Business** -- any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.
4. **Buyer** -- any person duly authorized by the District to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the District within the scope of his authority.

5. **Change order** – any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.
6. **Construction** -- the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building, or other District improvements of any kind to any District real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
7. **Contract** -- all types of District agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, equipment or construction.
8. **Contract modification** – a written order signed by the Purchasing Agent, directing the contractor to make changes which the changes clause of the contract authorizes the Purchasing Agent to order without the consent of the contractor.
9. **Contractor** -- any person having a contract with the District.
10. **Cost effectiveness** -- the ability of a particular product or service to efficiently provide goods or services to the District. In determining the cost effectiveness of a particular product or service, the Purchasing Agent shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.
11. **Data** -- recorded information, regardless of form or characteristics.
12. **Days** -- calendar days. In computing any period of time prescribed by this code or the regulations, the day of the event from which the designated period of time begins to run shall not be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.
13. **Debarment** -- the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the District for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.
14. **Designee** -- a duly authorized representative of a person with formal responsibilities under the code.
15. **Employee** -- an individual receiving a salary from the District or any non-salaried individual performing services for the District.
16. **District** -- an entity governed by an elected Board of Trustees which appoints a Superintendent to carry out policies established by the Board. This refers to The School District of Greenville County hereinafter referred to as the “District.”

17. **Grant** -- the furnishing by the District, State or the United States government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award the primary purpose of which is to procure specified end products, whether in the form of supplies, services, equipment or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.
18. **Invitation for Bids** -- a written or published solicitation issued by the Purchasing Agent or Buyer for bids to contract for the procurement or disposal of stated supplies, services, equipment or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.
19. **Procurement** -- buying, purchasing, renting, leasing or otherwise acquiring any supplies, services, equipment, or construction. It also includes all functions that pertain to the obtaining of any supply, service, equipment, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
20. **Purchasing Agent** -- a person authorized by the Board to make purchases.
21. **Real Property** -- any land, all things growing on or attached thereto, and all improvements made thereto, including buildings and structures located thereon.
22. **Request for Proposals (RFP)** -- a written or published solicitation issued by the Purchasing Agent or Buyer for proposals to provide supplies, services, equipment, or construction which will ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the District. The award of the contract shall be made on the basis of evaluation factors which shall be stated in the RFP, and which shall include but not be controlled alone by the factor of price proposed to be charged.
23. **Services** -- the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services.
24. **Subcontractor** -- means any person having a contract to perform a particular service for a contractor as a part of the contractor's agreement with the District.
25. **Supplies** -- all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding real property or an interest in real property other than leasehold interests.

26. **Suspension** -- the disqualification of a vendor to receive invitations for bids, requests for proposals, or the award of a contract by the District, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a vendor is suspected upon probable cause of engaging in criminal, fraudulent or seriously improper conduct, or failure or inadequacy of performance which may lead to debarment.
27. **Term contract** -- a contract established by the Purchasing Agent or Buyer for a specific product or service for a specified time and for which it is mandatory that the District procure their requirements for such goods and services during its term.
28. **State term contract** – a term contract entered into by the State of South Carolina for a specific product or service for a specified time and for which it is in the best interests of the District it procure its requirements for such product or services in accordance with such term contract pricing.

Article IV

PUBLIC ACCESS TO PROCUREMENT INFORMATION

(SC Article 1 - Subarticle 7)

A. PUBLIC ACCESS TO PROCUREMENT INFORMATION (SC Section 11-35-410)

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a "Request for Proposals" which is privileged and confidential need not be disclosed.

At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, as defined in S.C. Section 30-4-40 (a)(1), it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying.

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

1. Customer lists;
2. Design recommendations and identification of prospective problem areas under an RFP;
3. Design concepts, including methods and procedures;
4. Biographical data on key employees of the bidder. Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

Article V

PROCUREMENT ORGANIZATIONS

(SC Article 3)

A. MANAGEMENT, ORGANIZATION, AND AUTHORITY

1. Centralization of Materials Management Authority (SC Section 11-35-510)

All rights, powers, duties, and authority relating to the procurement of supplies, equipment, services, and information technology and to the management, control, warehousing, sale, and disposal of supplies, construction, information technology, and services now vested in or exercised by a school or department under the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the District. This vesting of authority shall be subject to:

SC Sections

11-35-710	Exemptions
11-35-1250	Authority to Contract for Auditing Services,
11-35-1260	Authority to Contract for Legal Services
11-35-1270	Authority to Contract for Certain Services
11-35-1550	Small Purchases
11-35-1570	Emergency Procurements
11-35-3230	Architects-Engineer and Land Surveying Services Contracts
11-35-3620	Management of Warehouse and Inventory

2. Authority and Duties of the Board of Trustees (SC Section 11-35-540)

a. Authority to Promulgate Policies.

The Board of Trustees shall have the authority and responsibility to promulgate regulations and policies, consistent with this code, governing the procurement, management, control and disposal of any and all supplies, services, equipment and construction to be procured by the District. Such policies shall be binding in all procurements made by the District.

b. Nondelegation.

The Board of Trustees shall not delegate its power to promulgate policies.

c. Board Oversight.

The Board of Trustees as a whole shall consider and decide matters of policy within the provisions of this code including those referred to it by the Superintendent. The Board of Trustees shall have the power to audit and monitor the implementation of its policies and the requirements of this code.

3. Authority and Duties of the Superintendent

The Board delegates to the Superintendent all authority and responsibilities for procurement. The Superintendent may delegate such authority to the Purchasing Agent or other designees.

4. Exemptions (SC Section 11-35-710)

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

The following items will be exempted from the process:

Books, Periodicals, Newspapers, Technical Pamphlets, Standardized Tests and Testing Materials, Copyrighted Educational Materials, Filmstrips, Slides, and Transparencies

Utilities, Fuel, and Water

Travel

Workshops, Seminars, and Conferences

Professional Journals

Taxes, Social Security, Annuities, and Credit Union

Refunds on Health Insurance

Oil Company Credit Cards - purchases for gas and oil and emergency repairs

Attorneys, subject to approval by the Board

Licensed Medical Doctors and Psychiatrists

Clergy

Court Recorders

Professional Dues, Registration and Membership Fees

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

Diplomas

U. S. Postage Stamps and P. O. Boxes

Art Reproductions

Perishable Foods (Milk, Fresh Fruits, Vegetables, Meats, Fish, Eggs, etc.)

Expert witness service

The purchase of goods, products, and services from the South Carolina Department of Correction, Division of Prison Industries, including furniture refurbishing services

Services and/or supplies provided by the Division of General Services to public procurement units

Livestock, Feed, and Veterinary Supplies and Services

Local School Funds (Not allocated funds)

Information Technology equipment maintenance and service agreements

Current leased portable classrooms

Occupational therapists, physical therapists, speech therapists and Special Education Consultants

Licensed psychologists, psychological consultants, psychological evaluations and materials and residential programs for Special Education students

CD-ROM documents, data bases, computer assisted instructional materials, interactive video programs and other related materials that can only be obtained from the company providing the service.

Non-profit, civic organizations

Facilities leased for District graduation exercises or staff meetings

All exemptions granted by the State Budget and Control Board.

5. Advisory Committees and Training

a. Relationship with End Users (SC Section 11-35-1010)

The Purchasing Agent and Buyers shall maintain a close and cooperative relationship with the end users. The Purchasing Agent or Buyers shall afford each end user reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the District.

b. Advisory Groups (SC Section 11-35-1020)

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

c. Professional Development (SC Section 11-35-1030)

The Purchasing Agent shall develop and implement an organized professional development program for purchasing personnel. These activities should be correlated with the District program of staff development. Such training shall encompass the latest techniques and methods of public procurement. If deemed appropriate by the Superintendent, such training shall include a requirement for the certification of the procurement officer.

6. Auditing and Fiscal Reporting

a. Certification (SC Section 11-35-1210)

(1) Authority. The Board of Trustees may assign differential dollar limits below which the Purchasing Agent and Buyers may make direct procurements not under term contracts.

(2) Policy. Authorizations granted by the Board of Trustees to the Superintendent are subject to the following:

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

(b) responsiveness to user needs;

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

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

**b. Collection of Data Concerning Public Procurement
(SC Section 11-35-1220)**

The Purchasing Agent shall prepare statistical data concerning the procurement, use, and disposition of supplies, services and equipment. The Purchasing Agent shall prescribe forms to be used by the end users in requisitioning supplies, equipment and services. The Purchasing Agent shall limit requests for information to those items necessary for the effective operation of the purchasing system, but end users shall be required to provide information if requested.

c. Auditing and Fiscal Reporting (SC Section 11-35-1230)

The District is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which may be performed every three years by an audit firm approved by the Division of General Services. Costs associated with the internal review and audits are the responsibility of the school district and will be paid to the entity performing the audit.

d. Administrative Penalties (SC Section 11-35-1240)

Violation of these provisions shall be grounds for loss of, or reduction in, authority delegated by the Board of Trustees.

**e. Authority to Contract for Auditing Services
(SC Section 11-35-1250)**

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

**f. Authority to Contract for Legal Services
(SC Section 11-35-1260)**

No contract for the services of attorneys shall be awarded without the approval of the Board of Trustees.

g. Authority to Contract for Certain Professional Service (SC Section 11-35-1270)

For the purpose of procuring any professional services not included in the purchasing authority of this code and the ensuing regulations, where the person employed is customarily employed on a fee basis rather than by competitive bidding, the District may contract for such services, subject to this code and regulations.

Article VI

SOURCE SELECTION AND CONTRACT FORMATION

(SC Article 5)

A. DEFINITIONS OF TERMS (SC Section 11-35-1410)

Unless the context clearly indicates otherwise, the following terms shall mean:

1. **Cost-reimbursement contract** -- a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles and a fee, if any.
2. **Established catalog price** -- the price included in a catalog, price list, schedule, or other form that:
 - a. is regularly maintained by a manufacturer or vendor of an item;
 - b. is either published or otherwise available for inspection by customers;
 - c. states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.
3. **Invitation for bids** -- all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures of Competitive Sealed Bidding (See B. 5, below).
4. **Purchase description** -- specifications or any other document describing the supplies, services, equipment, or construction to be procured.
5. **Request for Proposals (RFP)** -- all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures for Competitive Sealed Proposals (See B.6, below).
6. **Responsible bidder or offeror** -- a vendor who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.
7. **Responsive bidder** -- a vendor who has submitted a bid which conforms in all material aspects to the invitation for bids or request for proposals.

B. METHODS OF SOURCE SELECTION (SC Section 11-35-1510)

Unless otherwise provided by regulations, all District contracts shall be awarded by Competitive Sealed Bidding, except as provided below:

1. Exceptions

- a. Authority to Contract for Auditing Services, (SC Section 11-35-1250);
- b. Authority to Contract for Legal Services, (SC Section 11-35-1260);
- c. Authority to Contract for Certain Services, (SC Section 11-35-1270);
- d. Fixed Priced Bidding (SC Section 11-35-1525);
- e. Competitive Best Value Bidding (SC Section 11-35-1528);
- f. Competitive On-line Bidding (SC Section 11-35-1529);
- g. Competitive Sealed Proposals, (SC Section 11-35-1530);
- h. Negotiations After Unsuccessful Competitive Sealed Bidding, (SC Section 11-35-1540) ;
- i. Small Purchases, (SC Section 11-35-1550);
- j. Sole Source Procurements, (SC Section 11-35-1560);
- k. Emergency Procurements, (SC Section 11-35- 1570);
- l. Procurements at Auction (SC Section 11-35-1575);
- m. Procurement of Information Technology, (SC Section 11-35-1580);
- n. Leasing of Real Property for the District, (SC Section 11-35-1590);
- o. Construction Procurement Procedures, (SC Section 11-35-3020);
- p. Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures, (SC Section 11-35-3220);

- q. Exception for Small Architect-Engineer and Land Surveying Services Contracts,
(SC Section 11-35-3230);
- r. State Term contracts (SC Section 11-35-310 (35)).

2. Competitive Fixed Price Bidding (SC Section 11-35-1525)

- (1) Conditions for Use. When the Purchasing Agent or designer determines in writing that use of Competitive Sealed Bidding is either not practicable or not advantageous to the District contract may be entered into by competitive Fixed Price Bidding unless otherwise provided for in this section.
- (2) Fixed Pricing Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a preset maximum price which the District will pay for such goods or services.
- (3) Public Notice. Adequate public notice of the solicitation shall be given in the same manner as provided in the Competitive Sealed Bidding Section (Article VI.B.5).
- (4) Pricing. The District shall establish, prior to issuance of the Fixed Price Bid, a maximum amount the District will pay for the good or services desired.
- (5) Evaluation. Vendors' responses to the Fixed Price Bid will be reviewed to determine if they are responsive and responsible.
- (6) Discussion with Responsive Bidders: Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the Fixed Priced Bid. All bidders, whose bids, in the District's sole judgement, need clarification shall be accorded such an opportunity.
- (7) Award. Award must be made to all responsive and responsible bidders to the District's request for competitive Fixed Price Bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
- (8) Bids Received after Award. Bidders not responding to the initial Fixed Price Bid may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the District's original Fixed Price Bid as authorized by the solicitation.
- (9) Remedies. The failure of a specific offeror to receive business, once it has been added to the awarded vendors list, shall not be grounds for a contract controversy.

3. Competitive Best Value Bidding (SC Section 11-35-1529)

(1) Conditions for Use. When the Purchasing Agent or his designee determines in writing that the use of Competitive Sealed Bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive Best Value Bidding unless otherwise provided for in this section.

(2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by the District.

(3) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in the Competitive Sealed Bidding Section (Article VI.B.5).

(4) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award, unless marked as confidential by the bidder.

(5) Evaluation Factors: The Best Value Bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best Value Bid evaluation factors may be defined to include, but are not limited to, any of the following as determined by the District in its sole discretion and not subject to protest:

- (a) Operational costs that the District would incur if the bid is accepted;
- (b) Quality of the product or service, or its technical competency;
- (c) Reliability of delivery and implementation schedules;
- (d) Maximum facilitation of data exchange and systems integration;
- (e) Warranties, guarantees, and return policy;
- (f) Vendor financial stability;
- (g) Consistency of the proposed solution with the District planning documents and announced strategic program direction;
- (h) Quality and effectiveness of business solution and approach;
- (i) Industry and program experience;
- (j) Prior record of vendor performance;
- (k) Vendor expertise with engagement of similar scope and complexity;
- (l) Extent and quality of the proposed participation and acceptance by all user groups;
- (m) Proven development methodologies and tools; and
- (n) Innovative use of current technologies and quality results.

(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the Best Value Bid. All

bidders, whose bids, in the District's sole judgement, need clarification, shall be accorded such an opportunity.

(7) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the District, considering only the evaluation factors stated in the Best Value Bid.

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

4. Competitive On-line Bidding (SC Section 11-35-1529)

a. Conditions for Use

When the District determines that on-line bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive on-line bidding, subject to the provisions of Article VI.B.5 and the ensuing regulations, unless otherwise provided in this section.

b. Bidding Process

The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependent on a variable which may be specified in the solicitation. At the Opening Date and Time the District must begin receiving real-time electronic bids. The solicitation must remain open until the Closing Date and Time. The District may require bidders to register before the Opening Date and Time and as a part of the registration, to agree to any terms, conditions or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after the Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid.

Bid prices may not be increased after the Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Article 5. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the

District may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing bidders by giving notice to all pre-existing bidders of both the new Opening Date and Time and the New Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

c. Receipt and Safeguarding of Bids

Other than price, any information provided to the District by a bidder must be safeguarded as required by Article VI.B.5.e.

d. Provisions Not to Apply

Article VI.B.5.f (Bid Opening) does not apply to solicitations issued pursuant to this section.

5. Competitive Sealed Bidding (SC Section 11-35-1520)

a. Conditions for Use.

Contracts amounting to twenty-five thousand dollars or more shall be awarded by competitive sealed bidding except as listed above in Section B.1. "Exceptions".

b. Invitation for Bids.

An invitation for bids shall be issued in an efficient and economical manner to at least three qualified sources on the bidders list appropriate for the particular procurement. It shall include specifications and all contractual terms and conditions applicable to the procurement. If the bidders list does not contain three qualified sources, invitations for bids shall be issued to such qualified sources as are available.

c. Bidders Lists.

All sources requesting to be put on a bidders list shall be so enlisted, unless the Purchasing Agent or end user makes a written determination that the source should not be enlisted in accordance with regulations of the Board. Decisions to reject enlistment shall be appealable to the Purchasing Agent and the Procurement Review Panel. The Purchasing Agent and Buyers shall ensure that the bidders lists contain all known sources interested in bidding to the District. The Purchasing Agent and Buyers shall review periodically the bidders lists of the various governmental bodies and shall require the addition to such lists of any appropriate sources which are not contained therein.

d. Notice.

Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice will include utilization of bidders lists and shall utilize publications in a newspaper of general circulation in the state, or "South Carolina Business Opportunities" or through a means of central electronic advertising as approved by the Board.

e. Receipt and Safeguarding of Bids.

All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.

f. 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 and in the manner prescribed by regulation. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection at that time.

g. Bid Acceptance and Bid Evaluation.

Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and in accordance with the regulations.

h. Correction or Withdrawal of Bids; Cancellation of Awards.

Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and re-award of awards or contracts after award but prior to performance, may be permitted in accordance with regulations. 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 by regulation, 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 Purchasing Agent.

i. Discussion with Bidders.

As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the

District's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Article IV.

j. Tie Bids.

In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:

- (1) Should there be a Greenville County firm tied with an out-of-county firm, the award shall be made automatically to the Greenville County firm.
- (2) Should there be a South Carolina firm tied with an out-of-state firm, the award shall be made automatically to the South Carolina firm.
- (3) Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State shall be resolved in favor of the South Carolina commodity.
- (4) Tie bids involving Greenville County firms shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.
- (5) Tie bids involving South Carolina firms not located within Greenville County shall be resolved by the flip of a coin in the Purchasing Department witnessed by at least two people.

These are the only conditions under which any preference is shown in a tie bid.

k. Award.

Unless there is a compelling reason to reject bids as prescribed by regulation of the Board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the posting of the award, the District may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and the posted notice must contain a statement of a bidder's right to protest and the date and location of posting must be announced at bid opening.

When a contract has a total or potential value in excess of fifty thousand dollars, in addition to the posted notice, notice of an intended award must be sent to all bidders responding to the solicitation by an appropriate method to the name and address on the bid documents.

When a contract has a total or potential value in excess of fifty thousand dollars, sixteen days after notice is given the District may enter a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. A determination of responsibility must be made before award. Such notice must contain a statement of the bidder's right to protest, except when only one response is received. When only one response is received, the notice of intended award and the sixteen-day waiting period may be waived.

l. Request for Qualifications

Prior to soliciting bids, the District may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of goods or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in accordance with Article VI. The use of the request for qualifications is subject to the approval of the Purchasing Agent.

After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest.

m. Minor Informalities and Irregularities in Bids.

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

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

- (2) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;
- (3) failure of a bidder to sign its bid but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
- (4) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if (a) the bid received indicates in some way that the bidder received the amendment such as where the amendment added another item to the solicitation and the bidder submitted a bid thereon provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price, or (b) the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders, such as an amendment correcting a typographical mistake in the name of the District;
- (5) failure of a bidder to furnish an affidavit concerning affiliates;
- (6) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
- (7) failure of a bidder to furnish cut sheets or product literature;
- (8) failure of a bidder to furnish certificates of insurance;
- (9) failure of a bidder to furnish financial statements;
- (10) failure of a bidder to furnish references;
- (11) failure of a bidder to furnish its bidder number;
- (12) failure of a bidder to indicate his contractor's license number or other evidence of license, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of Greenville County and the State of South Carolina.

6. Competitive Sealed Proposals (SC Section 11-35-1530)

a. Conditions for Use

When the Purchasing Agent or Buyers determine in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive sealed proposals subject to the provisions of Section B.5. of this Article and the ensuing regulations, unless otherwise provided for in this section. Subject to requirements of Section B.5 of this Article, the Board may provide by regulation that it is either not practicable or not advantageous to the District to procure specified types of supplies, services, or construction by competitive sealed bidding.

Competitive Sealed Proposals should include but not be limited to, the general scope of the proposal, criteria for selection, information required to be submitted, activities to be performed, and relevant costs. An award shall be made to the offeror whose proposal is considered to be most advantageous to the School District.

b. Request for Proposal.

Proposals shall be solicited from at least three qualified sources, when such sources are available, through a request for proposals.

c. Public Notice.

Adequate public notice of the request for proposals shall be given in the same manner as provided in Competitive Sealed Bidding procedures. (See Section B.5.d. above)

Adequate notice for the request for qualifications shall be given in the manner provided in Section B.6.e. below).

d. Receipt of Proposals.

Proposals shall be opened publicly. A tabulation of proposals shall be prepared and shall be open for public inspection after contract award.

e. Request for Qualifications.

Prior to soliciting proposals, the Purchasing Agent may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum, a description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.

After receipt of the responses to the request for qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest.

f. Evaluation Factors.

The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may, but need not be, an initial evaluation factor.

g. Discussion with Responsive Offerors.

As provided in the request for proposals, discussions may be conducted with responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals in the Purchasing Agent's or Buyer's sole judgment needed clarification shall be accorded such an opportunity.

h. Selection and Ranking.

Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the District, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with Section B.6.i. below.

i. Award.

Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the District, taking into consideration price and the evaluation factors set forth in the request for proposal, unless the District determines to utilize one of the options provided in the negotiation section of Article VI.B.7. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

j. Negotiations.

Whether price was an evaluation factor or not, the District may, in its sole discretion and not subject to challenge through a protest, proceed in any of the manners indicated below:

(a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the District with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the District in its sole discretion; or

(b) negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the District with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the District in its sole discretion; or

(c) during the negotiation process as outlined in subsections (a) and (b) above, if the District is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated.

(d) If, after following the procedures set forth in this section, a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers. In conducting negotiations, there must no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.

k. Award After Unsuccessful Competitive Sealed Bidding

Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the District, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the District determines to utilize one of the options provided in Article VI.B.6.j The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

Procedures and requirements for the notification of intent to award the contract shall be the same as those stated in Article VI.B.5.

7. Negotiations After Unsuccessful Competitive Sealed Bidding (SC Section 11-35-1540)

When bids received pursuant to an invitation for bids are unreasonable, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the Purchasing Agent, or the designee above the level of Purchasing Agent, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- a. each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
- b. the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
- c. the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

8. Small Purchases (SC Section 11-35-1550)

Any procurement not exceeding the dollar amounts established in regulations and updated periodically may be made by the District in accordance with small purchase procedures provided, however, that purchase shall not be artificially divided so as to constitute a small purchase.

9. Sole Source Procurement (SC Section 11-35-1560)

A contract may be awarded for a supply, service, or construction item without competition when, under regulations promulgated by the Board, an employee above the level of the Purchasing Agent determines in writing that there is only one source for the required supply, service, or construction item. These regulations must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement.

Any delegation of authority by an officer above the level of the Purchasing Agent with respect to sole source determinations must be submitted in writing to the Purchasing Agent. In cases of reasonable doubt, competition must be solicited. Any decision by an employee of the District that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

Any violation of these regulations by the Purchasing Department shall, upon recommendation of the Superintendent or his designee with the approval of the

majority of the District Procurement Review Board, result in the temporary suspension not to exceed one year of the Purchasing Department's authority to procure supplies, services, or construction items under this section.

10. Emergency Procurements (SC Section 11-35-1570)

Notwithstanding any other provision of this code, the Purchasing Agent, or a designee may make, or authorize others to make, emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulation provided that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractors shall be included in the contract file.

11. Procurements at Auction (SC Section 11-35-1575)

The District having knowledge of an auction may elect to participate. The District shall (a) survey the needed items being offered at auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the District shall determine the maximum price that it can pay for each item desired. At the auction, the District shall not exceed the maximum price so determined.

**12. Leasing of Real Property for the District
(SC Section 11-35-1590)**

a. Designation of the Superintendent or his designee as Single Central Broker.

The Superintendent or his designee is hereby designated as the single central broker for the leasing of real property. The District shall not enter into any lease agreement or renew any existing lease except in accordance with the provisions of this Section and with Board approval.

b. Notification as to Need when District-Owned Property is Unavailable

When the District needs to acquire real property for its operations or any part thereof because District-owned property is not available, it shall notify the Board of Trustees. Such notification shall indicate the amount and location of space desired, the purpose for which it shall be used, and such other information as the Board of Trustees may require.

Upon receipt of any such request, the Superintendent or his designee shall conduct an investigation of available space which would adequately meet the

District's requirements, including specific locations which may be suggested and preferred by the District. When suitable space has been located which the District agrees meets necessary requirements and standards for leasing, the Board of Trustees shall give approval to the Superintendent or his designee to enter into a lease agreement. All proposed lease renewals shall be submitted to the Board of Trustees by the time specified. The Superintendent or his designee shall be responsible for short-term leases of District facilities for related functions.

13. Cancellation of Invitations for Bids or Requests for Proposals (SC Section 11-35-1710)

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the District. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

14. Responsibility of Bidders and Offerors (SC Section 11-35-1810)

a. Determination of Responsibility

Responsibility of the bidder or offeror shall be ascertained for each contract awarded by the District based upon full disclosure to the Purchasing Agent concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The District shall by regulation establish standards of responsibility that shall be enforced in all District contracts.

b. Determination of Nonresponsibility

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

c. Right of Nondisclosure

Except as otherwise provided by regulations, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the District without prior written consent of the bidder or offeror.

15. Pre-qualification of Supplies and Suppliers (SC Section 11-35-1820)

The District shall be authorized to provide by regulation for pre-qualification of suppliers or supplies.

**16. Pre-qualification of Construction Bidders or Contractors
(SC Section 11-35-1825)**

The District shall develop a procedure and list of criteria for pre-qualifying construction bidders. The criteria shall include, but not be limited to, prior experience on similar construction projects. The District may use the pre-qualification process only for projects where the construction involved is over ten million dollars in value as determined by and subject to the approval of the Facilities Management Department.

When the pre-qualification process is employed, only those bidders who are pre-qualified through this procedure are entitled to submit a bid for the project. The determination of which bidders are pre-qualified, and thereby entitled to bid, is not protestable.

Article VII

CONTRACTS

A. TYPES AND FORMS OF CONTRACTS (SC Section 11-35-2010)

1. Types of Contracts

Subject to the limitation of this section, any type of contract which will promote the best interests of the District may be used.

A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall be used only when a determination sufficient for external audit is prepared showing that such a contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the supplies, services, equipment, or construction required except under such a contract. Cost-reimbursement contracts and cost-plus-a-percentage-of-cost contracts must be approved by the Board.

2. Contract Forms

The Board shall promulgate by regulation the form of the contracts to be used in connection with District purchasing and construction. The District may enter into a contract or agreement without using the form promulgated pursuant to the Board's regulation when the contract or agreement is for the rental of equipment valued at ten thousand dollars or less and the duration of the contract or agreement does not exceed ninety days.

B. Approval of Accounting System (SC Section 11-35-2020)

The Purchasing Agent or a designee may require that:

1. the proposed contractor's accounting system permit timely development of all necessary cost data in the form required by the specific contract type contemplated;
2. the proposed contractor's accounting system be adequate to allocate costs in accordance with generally accepted accounting principles.

C. Multi-Term Contracts (SC Section 11-35-2030)

1. Specified Period

Unless otherwise provided by law, a contract for supplies, equipment, or services shall not be entered into for any period of more than one year unless approved in a manner prescribed by regulation provided that the term of the contract and 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 therefor.

Term Contract -- a contract established by the Purchasing Agent or Buyer for a specific product or service for a specified time and for which it is mandatory that the District procure its requirements for the goods and services during its term. If the District is offered goods or services at a price that is at least ten percent less than the term contract price for the same goods or services, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. If the vendor holding the term contract meets the lower price, then the District must purchase from the contract vendor.

2. Determination Prior to Use

Prior to the utilization of a multi-term contract, it shall be determined in writing:

- a. that estimated requirements cover the period of the contract and are reasonably firm and continuing;
- b. that such a contract will serve the best interests of the District by encouraging effective competition.

3. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

4. Maximum Performance Period of a Contract

The maximum time period of performance for any multi-term contract is five years. Contract terms exceeding five years and up to seven years, inclusive, shall be approved by the Superintendent. Contracts exceeding seven complete years shall be approved by the Board.

Article VIII

INSPECTION OF PLANT AND AUDIT OF RECORDS

(SC Article 5 - Subarticle 11)

A. RIGHT TO INSPECT PLANT (SC Section 11-35-2210)

Employees designated by the Superintendent shall be authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

B. RIGHT TO AUDIT RECORDS (SC Section 11-35-2220)

1. Contract Audit.

The District shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Purchasing Agent or Buyer.

Article IX

DETERMINATIONS AND REPORTS

(SC Article 5 - Subarticle 13)

A. FINALITY OF DETERMINATIONS (SC Section 11-35-2410)

The determinations required by the following shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law:

SC Sections

11-35-1520 (8)	Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards
11-35-1530 (1)	Competitive Sealed Proposals, Conditions for Use
11-35-1530 (9)	Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors
11-35-1530 (10)	Competitive Sealed Proposals Award
11-35-1540	Negotiations After Unsuccessful Competitive Sealed Bidding
11-35-1560	Sole Source Procurement
11-35-1570	Emergency Procurement
11-35-1810 (2)	Responsibility of Bidders and Offerors, Determination of Nonresponsibility
11-35-1830 (3)	Cost or Pricing Data, Cost or Pricing Data Not Required
11-35-2010	Types and Forms of Contracts
11-35-2020	Approval of Accounting System
11-35-2030 (2)	Multi-Term Contracts, Determination Prior to Use
11-35-3220 (5)	Procurement Procedure, Selection and Ranking of the Five Most Qualified
11-35-4210 (7)	Stay of Procurement During Protests, Decision to Proceed
11-35-1520 (11)	Competitive Sealed Bidding: Request for Qualifications
11-35-1525 (1)	Competitive Fixed Price Bidding: Condition for Use
11-35-1528 (8)	Competitive Best Value Bidding: Award
11-35-1530 (4)	Competitive Sealed Proposals: Request for Qualifications

**B. REPORTING OF ANTICOMPETITIVE PRACTICES
(SC Section 11-35-2420)**

When any information or allegations concerning anti-competitive practices among any bidders or offerors, come to the attention of any employee of the District, immediate notice of the relevant facts shall be transmitted to the Purchasing Agent.

**C. RETENTION OF PROCUREMENT RECORDS
(SC Section 11-35-2430)**

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

**D. RECORDS OF PROCUREMENT ACTIONS
(SC Section 11-35-2440)**

1. Contents of Record.

The District shall submit semi-annually a record listing all contracts made under Sole Source Procurement or Emergency Procurements to the Superintendent or his designee. The record shall contain:

- a. each contractor's name;
- b. the amount and type of each contract;
- c. a listing of the supplies, services, equipment, or construction procured under each contract.

The Purchasing Department shall maintain these records for five years.

2. Publication of Record.

A copy of the record shall be submitted to the Board, through the Superintendent, on an annual basis and shall be available for public inspection.

Article X

SPECIFICATIONS

(SC Article 7)

A. DEFINITIONS OF TERMS (SC Section 11-35-2610)

Specifications -- any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, equipment, or construction item. It may also include a description of any requirement for inspecting, testing or preparing a supply, service, equipment, or construction item for delivery.

B. ISSUANCE OF SPECIFICATIONS (SC Section 11-35-2710)

The Board shall promulgate regulations governing the preparation, maintenance and content of specifications for supplies, services, equipment, and minor construction required by the District.

C. DUTIES OF THE PURCHASING AGENT AND THE END USER (SC Section 11-35-2720)

The Purchasing Agent or Buyers shall prepare or review, issue, revise, and maintain the specifications for supplies, services, equipment, and minor construction required by the District.

D. ASSURING COMPETITION (SC Section 11-35-2730)

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

E. RELATIONSHIP WITH END USERS (SC Section 11-35-2740)

The Purchasing Agent or Buyers may obtain advice and assistance from the end users in the development of specifications. Specifications shall be drawn in such a manner as to insure maximally cost-effective procurement, consistent with regulations.

F. SPECIFICATIONS PREPARED BY ARCHITECTS AND ENGINEERS (SC Section 11-35-2750)

The requirements of this article regarding the non-restrictiveness of specifications shall apply to, among others, all specifications prepared by architects, engineers, designers, draftsmen and land surveyors for District contracts.

Article XI

MODIFICATIONS AND TERMINATION OF CONTRACTS FOR SUPPLIES, EQUIPMENT, AND SERVICES

(SC Article 11)

A. CONTRACT CLAUSES AND THEIR ADMINISTRATION (SC Section 11-35-3410)

1. Contract Clauses

The District may promulgate regulations requiring the inclusion in District supplies, equipment, and services contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

- a. the unilateral right of the District to order, in writing, changes in the work within the scope of the contract and temporary stopping of the work or delaying performance;
- b. variations occurring between estimated quantities of work in a contract and actual quantities.

2. Price Adjustments

Adjustments in price shall be documented with a written change order. The price adjustment agreed upon shall approximate the actual cost to the contractor, and all costs incurred by the contractor shall be justifiable compared with prevailing standards, including a reasonable profit.

3. Additional Contract Clauses

The District shall be authorized to promulgate regulations requiring the inclusion in District supplies, equipment and services contracts of clauses providing for appropriate remedies and covering the following subjects:

- a. specified excuses for delay or nonperformance;
- b. termination of the contract for default;
- c. termination of the contract in whole or in part for the convenience of the District.

4. Modification of Clauses

The Purchasing Agent may vary the clauses promulgated by the District under subsections 1 and 3 of this Article for inclusion in any particular District contract provided that any variations are supported by a written determination that states the circumstances justifying such variations and provided, further, that notice of any such material variations shall be stated in the invitation for bids or request for proposals.

Article XII

MAJOR CONSTRUCTION

A. PROCUREMENT OF CONSTRUCTION

The Office of School Facilities Planning will follow the District's Procurement Code and the guidelines set forth in Article 9 of the South Carolina Consolidated Procurement Code, when determining:

- Construction requirements,
- Sealed bidding procedures, and
- bonding and bid security requirements.

All references to the State Engineer in Article 9 are not applicable. The District's Board of Trustees is the approving authority for construction contracts.

B. CONSTRUCTION PROCEDURES

The District will use the South Carolina School Facilities Planning and Construction Guide which will be administered by the Office of School Facilities Planning.

Article XIII

SALE, LEASE, TRANSFER, AND DISPOSAL OF SURPLUS PROPERTY

(SC Article 13 Subarticle 3)

A. DISPOSAL OF SURPLUS AND UNSERVICEABLE PROPERTY

1. Regulations for Sale, Lease, Transfer and Disposal (SC Section 11-35-3810)

The District shall promulgate regulations governing:

- a. the sale, lease, or disposal of surplus and unserviceable supplies by public auction, competitive sealed bidding, or other appropriate methods designated by such regulations;
- b. the transfer of excess supplies and equipment between locations and departments.

2. Allocation of Proceeds from Sale or Disposal of Surplus (SC Section 11-35-3820)

The sale of all District owned supplies, equipment or property not in actual District use shall be conducted and directed by the Purchasing Department. Such sales shall be held at such places and in such manner as, in the judgment of the Purchasing Agent, will be most advantageous to the District. Unless otherwise determined, sales shall be by either public auction or competitive sealed bid to the highest bidder.

The Purchasing Agent shall be responsible for the disposal of surplus and unserviceable supplies and material of a vocational career center by public auction, competitive sealed bidding, or other appropriate methods as designated by regulations.

Proceeds from such sales, less expense of the sale, shall be deposited through the District Accounting Department and credited to the general office and maintenance account or the students activity accounts of the center providing the supplies and material. Documentation of such sale shall be on file in the Purchasing Department.

3. Trade-in Sales (SC Section 11-35-3830)

The District may trade-in property, the trade-in value of which may be applied to the purchase or lease of new items.

Article XIV

LEGAL AND CONTRACTUAL REMEDIES

(SC Article 17)

A. RESOLVING PROTESTS (SC Section 11-35-4210)

1. Right to Protest; Exclusive remedy

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Purchasing Agent in the manner stated in subsection A.2. below within fifteen days of the date of issuance of the Invitation for Bids or Request for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Purchasing Agent in the manner stated in subsection A.2. below within fifteen days of the date notification of award is posted in accordance with this code.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the District at common law or otherwise for the loss or potential loss of an award of a contract under the School District of Greenville County Procurement Code.

2. Protest Procedure and Protest Bond (SC Section 11-35-4215)

A protest under subsection A.1. above shall be in writing, submitted to the Purchasing Agent and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

3. Protest Bond (SC Section 11-35-4215)

The District may request that the Purchasing Agent require any bidder or offeror who files an action protesting the intended award or award of a contract solicited and valued at one million dollars or more, to post with the Purchasing Agent a bond or irrevocable letter of credit payable to The School District of Greenville County in an amount equal to one percent of the total potential value of the contract, as determined by the Purchasing Agent. The Purchasing Agent's decision to require a bond or irrevocable letter of credit is not appealable. The

bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.

For protests of intended award or award of a contract of the District's request for a Sole Source procurement or Emergency procurement, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the District's estimate of the contract amount for the intended award or award of a contract for a Sole Source procurement or Emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the Purchasing Agent may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the District prevails, it may recover all reasonable reimbursement costs and charges associated with the protest that shall be included in the final order or judgement, excluding attorney's fees.

Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, Sole Source procurement or Emergency procurement; the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to supply such costs and charges by the bidder or offeror protesting the intended award or award of a contract, shall result in forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit, money order or cashier's check may be sought from the District.

4. Duty and Authority to Attempt to Settle Protests

The Purchasing Agent shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The Purchasing Agent shall have the authority to approve any settlement reached by mutual agreement.

5. Administrative Review and Decision

If, in the opinion of the Purchasing Agent, after reasonable attempt, a protest cannot be settled by mutual agreement, the Purchasing Agent shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

6. Notice of Decision

A copy of the decision under subsection A.5. above along with a statement of appeal rights under Section G below shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

The Purchasing Agent shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review. Such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right of appeal provided in Section G below.

7. Review of Decision; Appeal Procedure

a. Appeal to the Superintendent

In any decision of the Purchasing Agent regarding the solicitation, solicitation amendment(s) and award of a contract, the debarment or suspension of a vendor from the consideration for award of contracts, the resolution of a contract or breach of contract controversy, or any other policy or procedure arising from or concerning the expenditure of District funds for the procurement of supplies, services, equipment or construction procured in accordance with the provisions of this code and the ensuing regulations, the decision of the Purchasing Agent or his designee shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals it to the Superintendent or his designee within ten days of the posting date, as noted on the face of the decision. Such an appeal shall be in writing and shall set forth specifically and in detail both the basis for the protest and the points of disagreement with the first decision. If in the opinion of the Superintendent or his designee, after reasonable attempt, a protest cannot be settled by mutual agreement, the Superintendent or his designee shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

b. Appeal to the Board of Trustees

The decision of the Superintendent or his designee shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals it to the Procurement Review Panel, which is composed of five Board members appointed by the chairman of the Board of Trustees, within ten days of receiving it. Such an appeal shall be in writing and shall set forth specifically and in detail both the basis for the protest and the points of disagreement with the Superintendent's decision. The Procurement Review Panel will make a recommendation for a response to the Board of Trustees within thirty days of receiving the appeal. At its next regularly scheduled meeting, the Board will consider the recommendation of the Procurement Review Panel. The Board may affirm, alter, or deny the Panel's recommendation. The chairman of the Board shall communicate the Board's decision to the appealing party within five days.

b. Finality of Decision

All decisions of the Board of Trustees shall be final.

8. Actions Not Stayed

Procurements shall be stayed unless the Purchasing Agent makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the District.

B. AUTHORITY TO DEBAR OR SUSPEND (SC Section 11-35-4220)

1. Applicability

This Section applies to a debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment.

2. Authority

After reasonable notice to the person or firm involved and a reasonable opportunity for such person or firm to be heard, the Purchasing Agent shall have the authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interest of the District and there is probable cause for debarment. The Purchasing Agent may also suspend a person or firm from consideration for award of contracts during an investigation where there is probable cause for debarment. The period of debarment or suspension shall be as prescribed by the Purchasing Agent.

3. Causes for Debarment or Suspension

The causes for debarment or suspension shall include, but not be limited to, the following:

- a. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public, private, or District 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 professional honesty which currently seriously and directly affects responsibility as a District contractor;

- c. conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- d. violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:
 - (1) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (2) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- e. violation of an order of the Procurement Review Panel;
- f. any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity for any cause listed herein; and
- g. filing of three or more protests by any aggrieved or prospective bidder, offeror, contractor or sub-contractor within one fiscal year when the two previous protests by the same party were not upheld and were determined to be of a frivolous or malicious nature by the Purchasing Agent.

4. Decision

The Purchasing Agent shall issue a written decision to debar or suspend within ten days of the completion of his administrative review of the matter. The decision shall state the action taken, the specific reasons therefore, and the period of debarment or suspension, if any.

5. Notice of Decision

A copy of the decision under this section and a statement of appeal rights under Section G below shall be mailed, or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

The Purchasing Agent shall also post a copy of the decision at a time and place communicated to all parties participating in the administrative review. Such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section G below.

6. Review of Decision; Appeal Procedure

a. Appeal to the Superintendent

In any decision of the Purchasing Agent regarding the solicitation, solicitation amendment(s) and award of a contract, the debarment or suspension of a vendor from the consideration for award of contracts, the resolution of a contract or breach of contract controversy, or any other policy or procedure arising from or concerning the expenditure of District funds for the procurement of supplies, services, equipment or construction procured in accordance with the provisions of this code and the ensuing regulations, the decision of the Purchasing Agent or his designee shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals it to the Superintendent or his designee within ten days of the posting date, as noted on the face of the decision. Such an appeal shall be in writing and shall set forth specifically and in detail both the basis for the protest and the points of disagreement with the first decision. If, in the opinion of the Superintendent or his designee, after reasonable attempt, a protest cannot be settled by mutual agreement, the Superintendent or his designee shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

b. Appeal to the Board of Trustees

The decision of the Superintendent or his designee shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals it to the Procurement Review Panel within ten days of receiving it. Such an appeal shall be in writing and shall set forth specifically and in detail both the basis for the protest and the points of disagreement with the Superintendent's decision. The Procurement Review Panel will make a recommendation for a response to the Board of Trustees within thirty days of receiving the appeal. At its next regularly scheduled meeting, the Board will consider the recommendation of the Procurement Review Panel. The Board may affirm, alter, or deny the Panel's recommendation. The chairman of the Board shall communicate the Board's decision to the appealing party within five days.

c. Finality of Decision

All decisions of the Board of Trustees shall be final.

7. Actions Not Stayed

Procurements shall be stayed unless the Purchasing Agent makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the District.

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

1. Applicability

This section applies to controversies between the District and a contractor or subcontractor when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

The procedure set forth in this section shall constitute the exclusive means of resolving a controversy between the District and a contractor or subcontractor concerning a contract solicited and awarded under the provisions of The School District of Greenville County Procurement Code.

2. Request for Resolution; Time for filing

Either the District or the contractor (or subcontractor when the subcontractor is the real party in interest) may initiate resolution proceedings before the Purchasing Agent by submitting a request for resolution to the Purchasing Agent in writing setting forth the general nature of the controversy and the relief requested with enough particularity to give notice of the issues to be decided. A request for resolution of contract controversy must be filed within one year of the date the contractor last performs work under the contract. In the case of latent defects, a request for resolution of a contract controversy must be filed within one year of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.

3. Duty and Authority to Attempt to Settle Contract Controversies

Prior to commencement of an administrative review as provided in subsection C.4. below, the Purchasing Agent shall attempt to settle by mutual agreement a contract controversy brought under this section. The Purchasing Agent shall have the authority to approve any settlement reached by mutual agreement.

4. Administrative Review and Decision

If, in the opinion of the Purchasing Agent, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the Purchasing Agent shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

5. Notice of Decision

A copy of the decision under subsection C.4. above, and a statement of appeal rights under Section G below, shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings.

The Purchasing Agent shall also post a copy of the decision at a time and place communicated to all parties participating in the administrative review and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section G below.

6. Review of Decision; Appeal Procedure

a. Appeal to the Superintendent

In any decision of the Purchasing Agent regarding the solicitation, solicitation amendment(s) and award of a contract, the debarment or suspension of a vendor from the consideration for award of contracts, the resolution of a contract or breach of contract controversy, or any other policy or procedure arising from or concerning the expenditure of District funds for the procurement of supplies, services, equipment or construction procured in accordance with the provisions of this code and the ensuing regulations, the decision of the Purchasing Agent or his designee shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals it to the Superintendent or his designee within ten days of the posting date, as noted on the face of the decision. Such an appeal shall be in writing and shall set forth specifically and in detail both the basis for the protest and the points of disagreement with the first decision. If, in the opinion of the Superintendent or his designee, after reasonable attempt, a protest cannot be settled by mutual agreement, the Superintendent or his designee shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

b. Appeal to the Board of Trustees

The decision of the Superintendent or his designee shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision appeals it to the Procurement Review Panel within ten days of receiving it. Such an appeal shall be in writing and shall set forth specifically and in detail both the basis for the protest and the points of disagreement with the Superintendent's decision. The Procurement Review Panel will make a recommendation for a response to the Board of Trustees within thirty days of receiving the appeal. At its next regularly scheduled meeting, the Board will consider the recommendation of the Procurement Review Panel. The Board may affirm, alter, or deny the Panel's recommendation. The chairman of the Board shall communicate the Board's decision to the appealing party within five days.

c. **Finality of Decision**

All decisions of the Board of Trustees shall be final.

7. Actions Not Stayed

Procurements shall be stayed unless the Purchasing Agent makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the District.

**D. Solicitations or Awards in Violation of the Law
(SC Section 11-35-4310)**

1. Applicability

The provisions of this section apply where it is determined by either the Purchasing Agent or the Procurement Review Panel upon administrative review that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by either the Purchasing Agent after review or by the Procurement Review Panel after review.

2. Remedies Prior to Award

If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:

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

3. Remedies After Award

If, after an award of a contract, it is determined that the solicitation or award is in violation of law:

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

4. Reimbursement for Reasonable Costs

If the result of an appeal is a determination that the protester should have been awarded the contract under a solicitation, but was not, the protester may apply to the Procurement Review Panel of the Board of Trustees for reimbursement of the actual costs that the protester incurred in connection with the solicitation, including bid preparation. Upon receipt of the application, the Procurement Review Panel shall consider the matter and make a recommendation to the Board whether, and in what amount, a reasonable reimbursement should be made to the protester.

E. CONTRACT CONTROVERSIES (SC Section 11-35-4320)

For remedies available in a contract controversy brought under the provisions of Section C above, the Purchasing Agent or the Procurement Review Panel, in the case of review under Section G.1. below may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.

F. FRIVOLOUS PROTESTS (SC Section 11-35-4330)

1. Signature on Protest Constitutes Certificate

The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that:

- a. the signer has read such document,
- b. to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and
- c. it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

2. Sanctions for Violation

If a request for review, protest, pleading, motion, or other document is signed in violation of this subsection on or after appeal to the Procurement Review Panel, the Procurement Review Panel, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

G. PROCUREMENT REVIEW PANEL (SC Section 11-35-4410)

1. Creation

There is hereby created The School District of Greenville County Procurement Review Panel. It shall be charged with the responsibility to review and determine over again (“de novo”):

- a. Requests for review of other written determinations, decisions, policies, and procedures as arise from, or concern, the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations provided that any matter which could have been brought before the Purchasing Agent in a timely and appropriate manner, but was not, shall not be the subject of review under this paragraph.

Requests for review under this paragraph shall be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determinations, decisions, policies, and procedures.

2. Membership

The panel shall be composed of five Board members appointed by the Board chairman.

3. Chairpersons and Meetings

The Panel shall elect a chairman from the members at large and shall meet as often as necessary to afford a swift resolution of the controversies submitted to it.

4. Jurisdiction

Notwithstanding the provisions of SC Code Section 1-23-10 et seq. or any other provision of law, the Procurement Review Panel shall be vested with the authority to:

- a. establish its own rules and procedures for the conduct of its business and the holding of its hearings;
- b. issue subpoenas;
- c. interview any person it deems necessary; and
- d. record all determinations.

5. Procedure

Within fifteen days of receiving a grievance filed, the chairman shall convene the Review Panel to conduct an administrative review. The Review Panel shall record its determination within thirty days and shall communicate its decision to those involved in the determination.

In the alternative, the chairman, within ten days may appoint a hearing officer to conduct the administrative review and report his recommendations to the Review Panel for its determination. If a hearing officer is appointed, his report shall be submitted to the Review Panel within ten days after his appointment and the Review Panel must still record its decision within thirty days after being convened for this purpose.

6. Finality

The decision of the Procurement Review Panel is final as to administrative review and may be appealed to the Circuit Court under the provisions of the South Carolina Administrative Procedures Act.

Article XV

INTERGOVERNMENTAL RELATIONS

(SC Article 19)

A. DEFINITIONS OF TERMS (SC Section 11-35-4610)

Unless the context clearly indicates otherwise, the following terms shall mean:

1. Cooperative purchasing -- procurement conducted by, or on behalf of, more than one public procurement unit.
2. Local public procurement unit -- any political subdivision or unit thereof which expends District funds for the procurement of supplies, services, equipment, or construction.
3. Mandatory opting -- the requirement for a local procurement unit to choose whether to utilize a state contract before it is established as prescribed in regulation by the State.
4. Purchasing Department -- the procurement unit of the District.

B. COOPERATIVE PURCHASING AUTHORIZED (SC Section 11-35-4810)

The District's Purchasing Department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, equipment, or construction with one or more public agencies 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 agencies and open-ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Selective Mandatory Opting or except as may otherwise be limited by the District through regulations.

C. SELECTIVE MANDATORY OPTING (SC Section 11-35-4820)

As prescribed in regulation by the State, the School District may purchase from or through the State at any time; provided, however, that the State may impose a requirement upon the District for mandatory opting in or out of any particular contract before it is established. Mandatory opting shall be imposed only where it is necessary to obtain more cost effective contracts for the State.

D. SALE, ACQUISITION OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT (SC Section 11-35-4830)

The Purchasing Department may sell to, acquire from, or use any supplies belonging to another public agency in accordance with the competitive requirements of this code and regulations provided that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.

E. COOPERATIVE USE OF SUPPLIES OR SERVICES (SC Section 11-35-4840)

The Purchasing Department may enter into an agreement with any other public agency for the cooperative use of supplies or services under the terms agreed upon between the parties in accordance with the competitive requirements of this code and regulations provided that such cooperative use of supplies or services shall take place only when the public agencies have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.

F. JOINT USE OF FACILITIES (SC Section 11-35-4850)

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

G. SUPPLY OF INFORMATION (SC Section 11-35-4860)

1. District Information Services

Upon request, the Purchasing Agent may make available to public agencies the following services among others:

- a. standard forms;
- b. printed manuals;
- c. product specifications and standards;
- d. quality assurance testing services and methods;
- e. qualified products lists;
- f. source information;
- g. common use commodities listings;

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

2. Fees

The Purchasing Agent may enter into contractual arrangements for fees for services provided.

H. USE OF PAYMENTS RECEIVED BY A SUPPLYING PUBLIC PROCUREMENT UNIT (SC Section 11-35-4870)

All payments from any public agency received by the District for supplying personnel or services shall be governed by any provisions of law and deposited in the District's general fund.

I. PUBLIC AGENCIES IN COMPLIANCE WITH CODE REQUIREMENTS (SC Section 11-35-4880)

Where the District administers a cooperative purchase in compliance with the requirements of this code, any other public agency participating in such a purchase shall be deemed to have complied with this code. Public agencies shall not enter into a cooperative purchasing agreement for the purpose of circumventing this code.

J. REVIEW OF PROCUREMENT REQUIREMENT (SC Section 11-35-4890)

The Purchasing Agent may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, equipment, or construction being procured or used by local public agencies, which shall be required to respond appropriately as a precondition for participation in cooperative purchasing. The Purchasing Agent shall make available all such information to any public agency upon request.

Article XVI

ASSISTANCE TO MINORITY BUSINESSES

(SC Article 21)

A. DEFINITIONS OF TERMS (SC Section 11-35-5010)

The District may promulgate regulations establishing detailed definitions of the following terms using, in addition to the criteria set forth, such other criteria as it may deem desirable.

1. **Minority person** -- a United States citizen who is economically and socially disadvantaged.
 - a. Socially disadvantaged individuals -- those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to:
 - Black Americans
 - Hispanic Americans
 - Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians)
 - Asian Pacific Americans
 - Asians
 - Women, regardless of race or origin.
 - b. Economically disadvantaged individuals -- those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
2. A socially and economically disadvantaged small business -- any small business concern which:
 - a. is at least fifty-one percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged.
 - b. in the case of a concern which is a corporation, fifty-one percent of all classes of voting stock or such corporation must be owned by an individual determined to be socially and economically disadvantaged.

- c. in the case of a concern which is a partnership, fifty-one percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.

**B. STATEMENT OF INTENT AND IMPLEMENTATION
(SC Section 11-35-5210)**

1. The Board of Trustees of The School District of Greenville County intends to ensure that those businesses owned and operated by minorities are afforded the opportunity to participate fully in the overall procurement process of the District. The Board of Trustees, therefore, takes this leadership role that will result in awarding contracts and subcontracts to minority business firms in order to enhance minority capital ownership, overall District and state economic development, and reduce dependency on the part of minorities.
2. The Purchasing Agent and Buyers shall implement this code in accordance with the provisions of Duties of the Purchasing Agent.

C. DUTIES OF THE PURCHASING AGENT (SC Section 11-35-5220)

1. Assistance from the Purchasing Agent

The Purchasing Agent shall provide appropriate staff to assist minority businesses in the interpretations of the regulations developed pursuant to this code.

2. Special Publications

The Purchasing Agent and Buyers in cooperation with other appropriate private and state agencies may issue supplementary instructions designed to assist minority businesses with the District procurement procedures.

3. Source Lists

The Purchasing Department shall maintain special source lists of minority business firms detailing the products and services which they provide.

4. Solicitation Mailing List

The Purchasing Agent and Buyers shall include and identify certified South Carolina based minority businesses on the District's bidders lists and shall ensure that these firms are solicited on an equal basis.

**D. REGULATIONS FOR NEGOTIATION WITH DISTRICT AND STATE
MINORITY FIRMS (SC Section 11-35-5230)**

1. The District may promulgate regulations that designate such procurement contracts as it may deem appropriate for negotiation with certified, South Carolina-based minority firms.

Among the criteria that shall be used to determine such designations are:

- a. The total dollar value of procurement in South Carolina.
 - b. The availability of South Carolina-based minority firms.
 - c. The potential for breaking the contracts into smaller units, where necessary, to accommodate such firms.
 - d. Insuring that the District shall not be required to sacrifice quality of goods or services.
 - e. Insuring that the price shall have been determined to be fair, reasonable, and competitive to the District and to the contractor and results in no loss to the District.
2. Firms that subcontract with minority firms shall be eligible for an income tax credit equal to four percent of the payments to minority subcontractors. Such subcontractors must be certified as to the criteria of a minority firm as defined in this code (Section A above) and any regulations which may be promulgated thereunder.
 - a. The tax credit is limited to a maximum of twenty-five thousand dollars annually. A firm shall be eligible to claim a tax credit for a period of five years from the date the first income tax credit is claimed.
 - b. Any firm desiring to be certified as a minority firm shall make application to the Small and Minority Business Assistance Office (SMBAO) on such forms as may be prescribed by that office.
 - c. Firms claiming the income tax credit shall maintain evidence of work performed for a District contract by minority subcontractors and shall present such evidence on a form and in a manner prescribed by the Department of Revenue at the time of filing its state income tax return and claim such credit at the time of filing. All records shall be available for audit by the Department of Revenue in accordance with prevailing tax statutes.

**E. MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION PLAN
(SC Section 11-35-5240)**

In order to emphasize the use of minority small businesses, the District shall develop a Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan should include, but not be limited to:

1. A policy statement expressing a commitment by the Board of Trustees to use MBE's in all aspects of procurement;
2. The name of the coordinator responsible for monitoring the MBE Utilization Plan;
3. Goals that include a reasonable percentage of the District's total procurements directed toward minority vendors.
4. Solicitation of qualified minority vendors, a current list of which shall be supplied by the Division of General Services, in each commodity category for which such minority vendor is qualified. The current listing of qualified minority vendors shall be made available to the District by the Division of General Services on a timely basis.
5. Procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation;
6. Procedures to be used when the District subcontracts the scope of service to another governmental body. The responsible governmental body may set goals for the subcontractor in accordance with the MBE goal and the responsible governmental body may allow the subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.

F. PROGRESS PAYMENTS AND LETTER OF CREDIT (SC Section 11-35-5250)

1. Progress Payments

The Superintendent or his designee may make special provisions for progress payments, and letters of credit, as deemed reasonable to assist minority businesses to carry out the terms of a contract pursuant to regulations which may be promulgated by the Board.

2. Letter of Contract Award

When a minority business firm certified by the Department of Revenue receives a contract with the District, the Purchasing Agent shall furnish a letter, upon request, stating the dollar value, duration of, and other information about the contract, which may be used by the minority firm in negotiating lines of credit with lending institutions.

G. REPORT TO THE BOARD OF TRUSTEES (SC Section 11-35-5260)

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

Article XVII

PAYMENTS FOR GOODS OR SERVICES

These presently employed regulations are intended to comply with Section 17 of Act 148 of 1981 as amended.