

CHESTERFIELD COUNTY SCHOOL DISTRICT

PROCUREMENT CODE

CHESTERFIELD COUNTY DISTRICT
Procurement Department
401 West Blvd
Chesterfield, South Carolina 29709

Consolidated Procurement Code

CHESTERFIELD COUNTY DISTRICT

PROCUREMENT CODE

TABLE OF CONTENTS

	PAGE
ARTICLE I. GENERAL	
A. Purpose and Policies (SC Section 11-35-20)	9
B. Obligation of Good Faith (SC Section 11-35-30)	10
C. Application of This Code (SC Section 11-35-40).....	10
ARTICLE II. DETERMINATIONS	
A. Determinations (SC Section 11-35-210)	11
ARTICLE III. DEFINITIONS OF TERMS USED IN THIS CODE	
A. Definitions (SC Section 11-35-310).....	12
ARTICLE IV. PUBLIC ACCESS TO PROCUREMENT INFORMATION (SC Section 11-35-410).....	17
ARTICLE V. PROCUREMENT ORGANIZATION COMMITTEES AND MANAGEMENT	
A. Centralization of Materials Management Authority (SC Section 11-35-510).....	18
B. Authority and Duties of the Board	18
(SC Section 11-35-540)	
C. Authority and Duties of the Superintendent	19
D. Exemptions (SC Section 11-35-710).....	19
E. Advisory Committees and Training	
1. Relationship with End Users (SC Section 11-35-1010).....	21
2. Advisory Groups (SC Section 11-35-1020)	21
3. Procurement Training (SC Section 11-35-1030).....	22

ARTICLE V. PROCUREMENT ORGANIZATION COMMITTEES AND MANAGEMENT (CONTINUED)

F. Auditing and Fiscal Reporting

- 1. Certification (SC Section 11-35-1210)..... 22
- 2. Collection of Data Concerning Public Procurement (SC Section 11-35-1220)..... 22
- 3. Auditing and Fiscal Reporting (SC Section 11-35-1230) 23
- 4. Administrative Penalties (SC Section 11-35-1240) 23
- 5. Authority to Contract for Auditing Services (SC Section 11-35-1250)..... 23
- 6. Authority to Contract for Legal Services (SC Section 11-35-1260)..... 24
- 7. Authority to contract for Certain Professional Services (SC Section 11-35-1270) 24

ARTICLE VI. SOURCE SELECTION AND CONTRACT INFORMATION

- A. Definition of Terms (SC Section 11-35-1410)..... 25
- B. Methods of Source Selection (SC Section 11-35-1510) 26
- C. Competitive Sealed Bidding (SC Section 11-35-1520) 27
- D. Competitive Fixed Bidding (SC Section 11-35-1525)..... 32
- E. Competitive Best Value Bidding (SC Section 11-35-1528) 33
- F. Competitive On-Line Bidding (SC Section 11-35-1529)..... 35
- G. Competitive Sealed Proposals (SC Section 11-35-1530) 36
- H. Negotiations After Unsuccessful Competitive Sealed Bidding (SC Section 11-34-1540)..... 39
- I. Small Purchases (SC Section 11-35-1550) 39
- J. Sole Source Procurement (SC Section 11-35-1560)..... 41
- K. Emergency Procurement (SC Section 11-35-1570) 41
- L. Participation in Auctions (SC Section 11-35-1575) 41
- M. Information Technology Procurements (SC Section 11-35-1580) 42

**ARTICLE VI. SOURCE SELECTION AND CONTRACT INFORMATION
(CONTINUED)**

N. Cancellation of Invitations for Bids or Request
for Proposals (SC Section 11-35-1710)..... 42

O. Responsibility of Bidders and Offerors (SC Section 11-35-1810)..... 42

P. Prequalification of Supplies and Suppliers
(SC Section 11-35-1820)..... 43

Q. Prequalification of Construction Bidders (SC Section 11-35-1825)..... 43

R. Cost Pricing Data (SC Section 11-35-1830)..... 43

ARTICLE VII. CONTRACTS

A. Types of Contracts; Contract Forms (SC Section 11-35-2010) 45

B. Approval of Accounting System (SC Section 11-35-2020) 45

C. Multi-Term Contracts (SC Section 11-35-2030)..... 45

ARTICLE VIII. INSPECTION OF PLANT AND AUDIT OF RECORDS

A. Right to Inspect Plant (SC Section 11-35-2210) 47

B. Right to Audit Records (SC Section 11-35-2220)..... 47

ARTICLE IX. DETERMINATIONS AND REPORTS

A. Finality of Determination (SC Section 11-35-2410)..... 48

B. Reporting of Anticompetitive Practices (SC Section 11-35-2420) 49

C. Retention of Procurement Records (SC Section 11-35-2430) 49

D. Records of Procurement Actions (SC Section 11-35-2440) 49

ARTICLE X. SPECIFICATIONS

A. Definitions of Terms (SC Section 11-35-2610) 50

B. Issuance of Specifications (SC Section 11-35-2710) 50

ARTICLE X. SPECIFICATIONS (CONTINUED)

C. Duties of the Procurement Director and End User (SC Section 11-35-2720)..... 50

D. Assuring Competition (SC Section 11-35-2730) 50

E. Relationship with End Users (SC Section 11-35-2740)..... 50

F. Specifications Prepared by Architects and Engineers (SC Section 11-35-2750)..... 51

ARTICLE XI. MODIFICATIONS AND TERMINATION OF CONTRACTS FOR SUPPLIES, EQUIPMENT AND SERVICES

A. Contract Clauses and Their Administration (SC Section 11-35-3410) 52

ARTICLE XII. CONSTRUCTION, ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

A. Definitions of terms used in this article (SC Section 11-35-2910) 55

B. Method of Construction Contracting Administration (SC 11-35-3010)..... 55

C. Construction Procurement Procedures (SC Section 11-35-3020) 56

D. Bond & Security (SC Section 11-35-3030)..... 61

E. Contract Clauses and their Administration (SC Section 11-35-3040)..... 64

F. Cost Principles Regulations for Construction Contractors (SC Section 11-35-3050)..... 66

G. Fiscal Responsibility (SC Section 11-35-3060) 66

H. Applicability and Policy (SC Section 11-35-3210)..... 67

I. Procurement Procedures (SC Section 11-35-3220) 67

J. Exception for Small Architect Engineer and Land Surveying Services Contract (SC Section 11-35-3230) 69

ARTICLE XII. MAJOR CONSTRUCTION (CONTINUED)

K. Architect, Engineer or Construction Manager; Performance of Other Work (SC Section 11-35-3245)..... 70

L. Indefinite Delivery Contracts for Construction Items, Architectural Engineering and Land Surveying Services (SC Section 11-35-3310) 71

ARTICLE XIII. SUPPLY MANAGEMENT

A. Regulations for Sale, Lease, Transfer, and Disposal of Surplus (SC Section 11-35-3810)..... 72

B. Allocation of Proceeds from Sale or Disposal of Surplus (SC Section 11-35-3820)..... 72

C. Trade-In Sales (SC Section 11-35-3830)..... 72

D. Sale of Unserviceable Supplies and Equipment..... 73

ARTICLE XIV. LEGAL AND CONTRACTUAL REMEDIES

A. Right to Protest; Exclusive Remedy (SC Section 11-35-4210) 74

B. Posting of Bond or Irrevocable Letter of Credit (SC Section 11-35-4215)..... 76

C. Authority to Debar or Suspend (SC Section 11-35-4220) 76

D. Authority To Resolve Contract and Breach of Contract Controversies (SC Section 11-35-4230)..... 78

E. Solicitations or Awards in Violation of the Law (SC Section 11-35-4310)..... 80

F. Contract Controversies (SC Section 11-35-4320)..... 81

G. Frivolous Protests (SC Section 11-35-4330)..... 81

ARTICLE XIV. LEGAL AND CONTRACTUAL REMEDIES (CONTINUED)

H. Finality of Decision by the Board 82

ARTICLE XV. INTERGOVERNMENTAL RELATIONS

A. Definition of Terms (SC Section 11-35-4610)..... 83

B. Cooperative Purchasing Authorized (SC Section 11-35-4810) 83

C. Selective Mandatory Opting (SC Section 11-35-4820) 84

D. Sale, Acquisition or Use of Supplies by A Public Procurement Unit (SC Section 11-35-4830)..... 84

E. Cooperative Use of Supplies or Services (SC Section 11-35-4840)..... 84

F. Joint Use of Facilities (SC Section 11-35-4850)..... 84

G. Supply of Information (SC Section 11-35-4860) 85

H. Use of Payments by a Supplying Public Procurement Unit (SC Section 11-35-4870)..... 85

I. Public Agencies in Compliance with Code Requirements (SC Section 11-35-4880)..... 86

J. Review of Procurement Requirement (SC Section 11-35-4890) 86

ARTICLE XVI. ASSISTANCE TO MINORITY BUSINESSES

A. Definitions of Terms (SC Section 11-35-5010)..... 87

B. Statement of Intent and Implementation (SC Section 11-35-5210) 88

C. Duties of the Procurement Director (SC Section 11-35-5220) 88

D. Regulations for Negotiation with District and State Minority Firms (SC Section 11-35-5230) 89

E. Minority Business Enterprise (MBE) Utilization Plan SC Section 11-35-5240) 90

**ARTICLE XVI. ASSISTANCE TO MINORITY BUSINESSES
(CONTINUED)**

F. Progress Payments and Letter of Credit
(SC Section 11-35-5250)..... 91

G. Report to the Board of Trustees (SC Section 11-35-5260) 91

ARTICLE XVII. PAYMENTS FOR GOODS AND SERVICES

(SC Section 11-35-45)..... 92

ARTICLE I

GENERAL

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

The underlying purposes and policies of this code are

1. to provide increased economy in district procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurement are the most advantageous to the district and in compliance with the Ethics Government Accountability and Campaign Reform Act.
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 procedures governing procurement in this district and permit the continued development of explicit and thoroughly considered procurement policies and practices.
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 in 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; and
8. to develop an efficient and effective means of delegating roles and responsibilities to the various district fund custodians

Article I (continued)

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, irrespective of the source of the funds, including federal assistance monies. It shall also apply to the disposal of district supplies. The provisions of this code shall apply to all procurements of information technology elements by the district.
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

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

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

Unless the context clearly indicates otherwise,

1. **Information Technology** means data processing, telecommunications and office systems technologies and services:
 - a. **Data Processing** means the automated collection, storage, manipulation, and retrieval of data including: central processing units for micro, mini, and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage, printing systems, and data transmission equipment; and related software such as operating systems, library and maintenance routines, and applications programs.
 - b. **Telecommunications** means voice, data, message and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.
 - c. **Office Systems Technology** means office equipment such as typewriters, duplicating and photocopy machines, paper forms and records, microfilm, microfiche equipment, printing equipment, and services.
 - d. **Services** means the providing of consultant assistance for any aspect of information technology, systems, and networks
2. **Board** means the School board of The Chesterfield County School District.
3. **Superintendent** means the head of the district appointed by the Board to carry out policies established by the Board.

Article III (continued)

4. **Business** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.
5. **Change Order** means any written alteration in specifications, delivery point, range of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.
6. **Procurement Director** means the chief procurement officer for the district.
7. **Construction** means the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.
8. **Contract** means all types of district agreements, regardless of what they may be called, for the procurement of disposal of supplies, services or construction.
9. **Indefinite Delivery Contract/indefinite quantity contract** means a contract type used when exact delivery times and/or quantities of goods or services required under the contract are not known when contract is awarded, but a recurring need is anticipated; usually specifies minimum and maximum amounts that can be ordered within a stated time period.
10. **Contract modification** means a written order signed by the procurement director, directing the contractor to make changes which the changes clause of the contract authorizes the procurement director to order without the consent of the contractor.
11. **Contractor** means any person having a contract with the district.

Article III (continued)

12. **Cost effectiveness** means the ability of a particular product or service to efficiently provide goods or services to the district. In determining the cost effectiveness of a particular product or service, the procurement director shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.
13. **Data** means recorded information, regardless of form or characteristics.
14. **Days** means calendar days. In computing any period of time prescribed by this code or the ensuing regulations, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the district, state or federal government, then the period shall run to the end of the next business day.
15. **Debarment** means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the District, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.
16. **Designee** means a duly authorized representative of a person with formal responsibilities under the code.
17. **Employee** means an individual drawing a salary from the district, whether elected or not, and any non salaried individual performing personal services for the district.
18. **District** means an entity governed by an elected School board which appoints a superintendent to carry out policies established by the School board. This refers to the Chesterfield County School District herein after referred to as the "district".
19. **Grant** means 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, or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.

Article III (continued)

20. **Invitation** for Bids means a written or published solicitation issued by the procurement director for bids to contract for the procurement or disposal of stated supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.
21. **Office** means a nonmobile place for the regular transaction of business or performance of a particular service and staffed by at least one employee on a routine basis.
22. **Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, or services, or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
23. **Fund Custodian** means any person duly authorized by the district, in accordance with procedures prescribed by regulation, to enter into and administer contracts and make written determinations and findings with respect thereto. The fund custodians act as procurement officers for the district.
24. **Real property** means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.
25. **Request for Proposals (RFP)** means a written or published solicitation issued by the procurement director for proposals to provide supplies or services, which 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 must be made on the basis of evaluation factors which must be stated in the RFP.
26. **Services** means the furnishings 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.

Article III (continued)

27. **Subcontractor** means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the district.
28. **Supplies** means all personal property including, but not limited to, equipment, materials, printing, and insurance.
29. **Suspension** means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the district, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.
30. **State** means state government.
31. **Term Contract** means a contract established by the procurement director for a specific product or service for a specified time and for which it is mandatory that the district procure the requirements for the goods and services during its term. If the district is offered goods or services 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. A term contract may be a multi-term contract as provided in Article VII.C.
32. **End User** means any school or department of the District which utilizes any supplies, services, or construction purchased under this code.

Article IV

PUBLIC ACCESS TO PROCUREMENT INFORMATION

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" or any type of bid solicitation which is privileged and confidential need not be disclosed.

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

1. customer list;
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 predecisional in nature such as inter- or intra-district memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-district memoranda reflecting the predecisional deliberations.

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, 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.

ARTICLE V

PROCUREMENT ORGANIZATION

Committees and Management

A. **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 the district 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 the following sections:

District Articles:

Exemptions (V.D.)

Authority to Contract for Auditing Services (V.F.5.)

Authority to Contract for Legal Services (V.F.6.)

Authority to Contract for Certain Services (V.F.7.)

Small Purchases (VI.I.)

Emergency Procurements (VI.K.)

Small Architect-Engineer and Land Surveying Services Contracts (XII)

Supply Management (XIII)

B. **Authority and Duties of the Board**

(SC Section-11-35-540)

1. **Authority to Promulgate Policies.** Except as otherwise provided in this code, the Board shall have the authority and responsibility to promulgate 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.
2. **Nondelegation.** The Board shall not delegate its power to promulgate policies.
3. The Board 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 shall have the power to audit and monitor the implementation of its policies and the requirements of this code.

Article V (continued)**C. 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 Procurement Director, or other designees.

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

The board upon the recommendation of the Superintendent may exempt specific supplies or services from the purchasing procedures required in this policy. The following items will be exempt from this policy.

1. Local school funds to include student activity, clubs, athletic, or other student contests or events, PTA/PTO funds, booster club funds, fund raisers for re-sale, student pictures and yearbooks. Funds allocated from the general fund for these items are not exempt.
2. perishable foods (fresh fruits, vegetables, meats, fish, milk, and eggs);
3. purchase of one-of-a-kind items such as paintings, antiques, sculpture and similar objects;
4. published books, periodicals, newspapers, technical pamphlets, standardized tests and testing materials, copyrighted educational materials, filmstrips, slides, transparencies, instructional video, disk, cd rom documents, data bases, computer assisted instructional materials, video tapes (not blank), dictionaries, subscriptions, professional journals, science kits or lab supplies used for instructional purposes;
5. district adopted instructional software and site licensing and other related materials made available by information technology that can only be obtained from the company providing the information or service;
6. utilities, fuel, and water

Article V (continued)

7. travel, registration fees, workshops, seminars, conferences, professional dues, membership fees and permit fees. The exemption for travel is limited to reimbursements for employee travel.
8. taxes, social security, annuities, credit union, other employee deductions;
9. licensed medical doctors, psychiatrists, dentists;
10. therapy services including occupational, physical and speech;
11. hospital and medical clinic services;
12. hepatitis B vaccine;
13. attorneys, accountants and auditors, provided that no such services may be awarded without approval of the board;
14. clergy;
15. court recorders, eyewitness services;
16. tuition paid to institutions of higher learning or to other districts;
17. expense of Southern Association of College and Schools evaluation committees;
18. u. s. postage stamps and post office boxes
19. advertisements in or on professional journals, publications, radio or television;
20. items and services from the South Carolina Department of Correction, Division of Prison Industries;
21. services and/or supplies provided by the SC Office of General Services to public procurement units;
22. term contracts for supplies or services established by the State of South Carolina.
23. any state exemptions in SC Procurement Code 11-35-710.

Article V (Continued)

Items 24-31 added October 15, 2002 after approval by the Chesterfield County School District's School board:

24. Bond rating service provided that no such service may be awarded without approval of the board.
25. Student travel for competition events.
26. Student and chaperone travel expenses for field/class trips that are pre-arranged through travel agencies.
27. Services for homebound students that are ordered by a hospital or a medical institution.
28. Services for scoring of standardized test.
29. Cooperative procurements with other school districts or local government agencies.
30. Any future State exemptions.
31. Expenses of ADEPT External Evaluation Team (Teams made up of retired teachers. Teams evaluate teachers to assure compliance with state laws.)

E. Advisory Committees and Training

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

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

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

The procurement director may appoint advisory groups such as user committees to assist with specifications and procurements in specific areas and any other matters within the authority of the procurement director. The procurement director shall develop methods for obtaining necessary and relevant information, whether through user

Article V (continued)

committees or by surveys and other methods. The procurement director 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.

3. Procurement Training (SC Section 11-35-1030)

The procurement director shall develop and implement a system of procurement training for personnel.

F. Auditing and Fiscal Reporting

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

(a) Authority. The board may assign differential dollar limits below which the fund custodian of each school or department may make direct procurements not under term contracts.

(b) Policy. Authorizations granted by the board to the Superintendent are subject to the following :

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

(ii) responsiveness to user needs ;

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

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

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

The procurement director shall prepare statistical data concerning the procurement, use, and disposition of supplies, services and construction. All fund custodians shall furnish such reports as the procurement director may require concerning use, needs, and stocks on hand, and the procurement director shall prescribe forms to be used by the fund custodians in requisitioning, ordering, and reporting

Article V (continued)

supplies, services, and construction. The procurement director shall limit requests for information to those items necessary for the effective operation of the purchasing system, but the fund custodians shall be required to provide information as requested.

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

(a) The district, having its own procurement code which is substantially similar to the provisions of the South Carolina Consolidated Procurement Code, is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which must be performed every three years by an audit firm approved by the Office of General Services. Costs associated with the internal review and audits are the responsibility of the district and will be paid to the entity performing the audit.

(b) The superintendent or his designee through consultation with the procurement director shall develop written plans for the auditing of district procurements.

In procurement audits of the district thereafter, the auditors shall review the adequacy of the system's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. Any noncompliance discovered through audit must be transmitted in management letters to the district and the Board. The auditors shall provide in writing proposed corrective action to the district.

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

The board shall prescribe administrative penalties for violation of the provisions of this code and regulations.

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

5. 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.

Article V (continued)

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

No contract for the services of an attorney shall be awarded without the approval of the board.

**7. Authority to Contract for Certain Professional Services
(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, (e.g., clergy, dentists, physicians), the district may contract for such services, subject to this code and regulations which may be established by the board.

ARTICLE VI

SOURCE SELECTION AND CONTRACT FORMATION

A. Definitions of Terms

(SC Section 11-35-1410)

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

1. **Cost-reimbursement contract** means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles and a fee, if any.
2. **Established catalog price** means the price included in a catalog, price list, schedule, or other form that:
 - (a) is regularly maintained by a manufacturer or vendor of an item;
 - (b) Is either published or otherwise available for inspection by customers;
 - (c) states prices at which sales are currently or were last made to 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 set forth in competitive sealed bidding.
4. **Purchasing 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.
6. **Responsible Bidder or Offeror**--a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

Article VI (Continued)

7. **Responsive Bidder or Offeror** - a person who has submitted a bid or offer 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 law, all District contracts shall be awarded by competitive sealed bidding, except as provided in:

1. Authority to Contract for Auditing Services
(SC Section 11-35-1250) (District Article V.F.5.)
2. Authority to Contract for Legal Services
(SC Section 11-35-1260) (District Article V.F.6.)
3. Authority to Contract for Certain Professional Services
(SC Section 11-35-1270) (District Article V.F.7.)
4. Competitive Fixed Price Bidding
(SC Section 11-35-1525) (District Article VI.D.)
5. Competitive Best Value Bidding
(SC Section 11-35-1528) (District Article VI.E.)
6. Competitive On-Line Bidding
(SC Section 11-35-1529) (District Article VI.F.)
7. Competitive Sealed Proposals
(SC Section 11-35-1530) (District Article VI.G.)
8. Negotiations After Unsuccessful Competitive Sealed Bidding
(SC Section 11-35-1540) District Article VI.H.)
9. Small Purchases
(SC Section 11-35-1550) (District Article VI.I.)
10. Sole Source Procurements
(SC Section 11-35-1560) (District Article VI.IJ.)
11. Emergency Procurements
(SC Section 11-35-1570) (District Article VI.K.)

Article VI (Continued)

12. Participations in Auctions
(SC Section 11-35-1575)(District Article VI.L.)
13. Information Technology Procurements
(SC Section 11-35-1580) (District Article VI.M.)
14. Construction Procurement Procedures
(SC Section 11-35-3020)(District Article XII.C.)
15. Architect-Engineer, Construction Management and Land
Surveying Services Procurement Procedures,
(SC Section 11-35-3230) (District Article XI.I.)
16. Exception for Small Architect-Engineer and Land Surveying
Services Contracts
(SC Section 11-35-3230) (District Article XII.J.)

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

1. **Condition for Use.** Contracts amounting to more than twenty five thousand dollars shall be awarded by competitive sealed bidding except as otherwise provided in Article VI.B.
2. **Invitation for Bids.** An invitation for bids shall be issued in an efficient and economical manner and shall include specifications and all contractual terms and conditions applicable to the procurement.
3. **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 shall include utilization of publications in a newspaper of general circulation in the district, South Carolina Business Opportunities or through means of central electronic advertising as approved by the Superintendent.
4. **Receipt and Safeguarding of Bids.** All bids (including modifications) received prior to the time of opening shall be kept secure and unopened.
5. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated; the tabulation shall be open to public inspection at that time.

Article VI (Continued)

6. **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 evaluation 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.
7. **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reward 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 procurement director.
8. **Discussion with Bidders.** As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the district's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement director and shall be included with the bid.
9. **Tie Bids.** If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
 - (a) if there be a Chesterfield County Firm tied with an out of county firm, the award shall be made automatically to the Chesterfield County Firm;
 - (b) if there be a South Carolina firm tied with an out of state firm, the award shall be made automatically to the South Carolina firm;

Article VI (continued)

- (c) Tie bids involving South Carolina firms in the same taxing jurisdiction as the district's consuming location must be resolved by the flip of a coin in the office of the procurement director witnessed by at least two people.
 - (d) 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;
 - (e) Tie bids involving Chesterfield County firms shall be resolved by the flip of a coin in the office of the procurement director witnessed by at least two people;
 - (f) In all other situations where bids are tied, the award will be made to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the office of the procurement director witnessed by at least two people.
10. **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 into 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 Procurement Director or designee may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation to bids. The invitation for bids and the posted notice must contain a statement of a bidder's right to protest under Article XIV.A.1. 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 given to all bidders responding to the solicitation except when only one response is received. Such notice must contain a statement of the bidder's right to protest under Article XIV.A.1.

Article VI (continued)

When a contract has a total of 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. When only one response is received, the notice of intended award and the sixteen day delay of award may be waived. A determination of responsibility must be made before award in accordance with Article VI.O.

11. **Request for Qualifications.** Prior to soliciting bids, the district, acting through the Procurement Director, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the 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, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in Article VI.C.3. The use of the request for qualifications is subject to the approval of the Superintendent.

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 prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest under Article XIV.A.

12. **Minor Informalities and Irregularities in Bids.** A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect, or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The Procurement Director or his designee 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

Article VI (continued)

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:

- (a) failure of a bidder to return the number of copies of signed bids required by the solicitation;
- (b) 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;
- (c) 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;
- (d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:
 - (i) the bid received indicates in some way that the bidder received the amendment such as where the amendment added another item to the solicitation and the bidder submitted a bid 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
 - (ii) the amendment has no effect or merely a trivial or negligible effect on quality, or delivery, and is not prejudicial to bidder.
- (e) failure of a bidder to furnish an affidavit concerning affiliates;

Article VI (continued)

- (f) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
- (g) failure of bidder to furnish cut sheets or product literature;
- (h) failure of a bidder to furnish certificates of insurance;
- (i) failure of a bidder to furnish financial statements;
- (j) failure of a bidder to furnish references;
- (k) failure of a bidder to furnish its bidder number;
- (l) failure of a bidder to indicate his contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of Chesterfield County and the State of South Carolina.

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

1. **Conditions for Use.** When the procurement director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the district, a contract may be entered into by competitive fixed price bidding subject to the provisions of Article VI.C. and the ensuing regulations, unless otherwise provided for in this section.
2. **Fixed Price Bidding.** The purpose of fix-priced bidding is to provide multiple sources of supply for specific goods or services based on a pre-set 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 Article VI.C.3.
4. **Pricing.** The District shall establish, prior to issuance of the fixed-price bid, a maximum amount the District will pay for the goods or services desired.

Article VI (continued)

5. **Evaluation.** Vendors responses to the fixed-price bid will 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 judgment 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 furnished evidence of responsibility and responsiveness to the district's original fixed price bid as authorized by the solicitation.
 9. **Remedies.** The failure of specific offeror to receive business, once it has been added to the awarded "vendors" list, shall not be grounds for a contract controversy under Article XIV.D.
- E. **Competitive Best Value Bidding. (SC Section 11-35-1528)**
1. **Conditions for Use.** When the procurement director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into by competitive best value bidding subject to the provisions of Article VI.C. and the ensuing regulations 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 Article VI.C.3.

Article VI (continued)

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.

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's 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 judgment need clarification, shall be accorded such an opportunity.

Article VI (continued)

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 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.

F. Competitive On-Line Bidding (SC Section 11-35-1529)

1. **Conditions for Use.** When the procurement director 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.C. and the ensuing regulations, unless otherwise provided in this section.
2. **Bidding Process.** The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependent on a variable specified in the solicitation. At the Opening Date and Time, the District must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. The district may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the

Article VI (continued)

then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Article VI.C. 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.

3. **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.C.4.
4. **Provisions Not to Apply.** Article VI.C.5. (Bid Opening) shall not apply to solicitations issued pursuant to this section.

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

1. **Conditions for Use.** When the procurement director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the district, a contract may be entered into by competitive sealed proposals subject to the provisions of Article VI.C. and the ensuing regulations, unless otherwise provided for in this section.
2. **Public Notice.** Adequate public notice of the request for proposals shall be given in the same manner as provided in Article VI.C.3.
3. **Receipt of Proposals.** Proposals shall be opened publicly in accordance with regulations of the board. A tabulation of proposals shall be prepared in accordance with regulations promulgated by the board and shall be open for public inspection after contract award.

Article VI (continued)

4. **Request for Qualifications.** Prior to soliciting proposals, the procurement director or his designee 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 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 perspective 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 the top 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 under Article XIV.A.

5. **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.
6. **Discussion with Offerors.** As provided in the request for proposals, discussions may be conducted with apparent responsive offerors who submit proposals for the purpose of clarification to assure full understanding of the requirements of the request for proposal. All offerors, whose proposals in the district 's sole judgment needed clarification, shall be accorded such an opportunity.
7. **Selection and Ranking.** Proposals shall be evaluated using only the criteria stated in the request for proposal 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 proposal. If price is an initial evaluation factor, award shall be made in accordance with Article VI.G.9. below.

Article VI (continued)

8. **Negotiations.** Whether price was an evaluation factor or not, the district, through the procurement director or his designee, may, in its sole discretion and not subject to challenge through a protest filed under Article XIV.A., 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 Article VI.G.8., 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 be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.

9. **Award.** The 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 Article VI.G.8. The contract file

Article VI (continued)

10. 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.C.10.

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

When bids by the district 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 fund custodian, and it is determined in writing by the Superintendent that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

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

**I. Small Purchases. Bid Procedures on procurements not exceeding twenty five thousand dollars
(SC Section 11-35-1550)**

1. **Authority.** The following small purchase procedures may be utilized in conducting procurements for the district that are less than \$25,000.00 in actual or potential value. Purchases must not be artificially divided so as to constitute a small purchase under this section.
2. **Competition and Price Reasonableness.**
 - (a) Purchases Not in Excess of \$1,500.00. Small purchases not exceeding \$1,500.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchases must be distributed equitably

Article VI (continued)

among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase “not in excess of” may more than offset potential savings in detecting instance of overpricing. Action to verify the reasonableness of the price need be taken only when the fund custodian suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

- (b) Purchases from \$1,500.01. to \$5,000.00. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.
- (c) Purchases from \$5,000.01 to \$10,000.00. Solicitation of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible sources.
- (d) Purchases from \$10,000.01 to \$25,000.00. Written solicitation of sealed quotes, bids, or proposals shall be made. The procurement must be advertised at least once in the South Carolina Business Opportunities publication, through a means of central electronic advertising as approved by the Superintendent or a local newspaper serving the district's region. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

3. Protest Rights.

The provisions of Section 11-35-4210 shall not apply to contracts awarded under the procedures set forth in this section.

- 4. All competitive procurements above \$25,000.01 must be advertised at least once in the South Carolina Opportunities publication, through means of central electronic advertising approved by the Superintendent or a local newspaper serving the district's region. The district may charge vendors the cost incurred for copying and mailing

Article VI (Continued)

bid or proposal documents in response to a procurement advertised in the “South Carolina Business Opportunities” and other publications.

J. 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 the superintendent, 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. In cases of reasonable doubt, competition must be solicited. A decision by the fund custodian 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. The fund custodian’s decision must be submitted in writing to the superintendent for approval before making the procurement.

Any violation of these regulations by a fund custodian shall, upon recommendation of the Superintendent , result in the temporary suspension of the fund custodian’s ability to procure supplies, services or construction items under this section.

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

Notwithstanding any other provision of this code, fund custodian may make or authorize others to make emergency procurements only when there exists immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided that, such emergency procurements shall be made with as much competition as is practical 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.

L. Participation in Auctions (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

Article VI (Continued)

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.

M. Information Technology Procurements

(SC Section 11-35-1580)

The information technology department shall be responsible for assessing the need for and use of information technology.

Every fund custodian will rent, purchase or lease any information technology equipment, software, or contract for consulting or other services in the field of information technology through the district's procurement department. This also includes providing for the disposal of all information technology property surplus to the needs of a using department.

N. 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.

O. Responsibility of Bidders and Offerors

(SC Section 11-35-1810)

1. **Determination of Responsibility.** Responsibility of the bidder or offeror shall be ascertained for each contract let by the district based upon full disclosure to the procurement director or his designee 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.

2. **Determination of Non-responsibility.** A written determination of non-responsibility 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 non-responsibility with respect to such bidder or offeror.

Article VI (Continued)

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

P. Prequalification of Supplies and Suppliers (SC Section 11-35-1820)

The district shall be authorized to provide by regulation for prequalification of suppliers or supplies.

Q. Prequalification of Construction Bidders. (SC Section 11-35-1825)

The School District shall develop a procedure and a list of criteria for prequalifying construction bidders. The criteria shall include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. The District may use the prequalification process only for projects where the construction involved is unique in nature or over ten million dollars in value as determined by and subject to the approval of the School District. All prequalification projects shall be under the supervision of the School District. When the pre-qualification process is employed, only those bidders who are prequalified 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 under Section 11-35-4210 or any other provision of the code.

R. Cost or Pricing Data (SC Section 11-35-1830)

1. **Contractor Certification.** A contractor shall submit cost or pricing data and shall except as provided in subsection (3) of this section certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:
 - (a) the pricing of any contract awarded by competitive sealed proposals pursuant to Article VI.G. or pursuant to the sole source procurement authority as provided in Article VI.J. where the total contract price exceeds an amount established by the board in regulations; or

Article VI (Continued)

- (b) the pricing of any change order or contract modification which exceeds an amount established by the board in regulations.
- 2. **Price Adjustment.** Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the district , including profit or fee, shall be adjusted to exclude any significant sums by which the district finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as the date agreed upon between parties.
- 3. **Cost or Pricing Data Not Required.** The requirements of this section shall not apply to contracts:
 - (a) where the contract price is based on adequate price competition;
 - (b) where the contract price is based on established catalog prices or market prices;
 - (c) where the contract prices are set by law or regulations; or
 - (d) where it is determined in writing in accordance with regulations promulgated by the board that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

Article VII

CONTRACTS

A. **Types of Contracts; Contract Forms** (SC Section 11-35-2010)

1. **Types of Contracts.** Subject to the limitations 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 is prepared showing that such a contract is likely to be less costly to the district than any other type or that it is impractical to obtain the supplies, services, or construction required except under such a contract. Cost reimbursement contracts and cost plus a percentage of cost contracts must be approved by the Superintendent.

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 procurement director or his 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

Article VII (Continued)

by regulation of the board 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 period, shall be subject to the availability appropriation of funds thereof.

2. **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing by the district:
 - 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 interest of the district by encouraging effective competition or otherwise promoting economies in district procurement.

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.

5. The maximum time for any multi-term contract is five years. Contract terms of up to seven years may be approved by the superintendent. Contracts exceeding seven years must be approved by the board.

Article VIII

INSPECTION OF PLANT AND AUDIT OF RECORDS

A. **Right to Inspect Plant** (SC Section 11-35-2210)

The superintendent or his designee 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 any contract awarded or to be awarded by the district.

B. **Right to Audit Records** (SC Section 11-35-2220)

1. **Audit of Cost or Pricing Data.** All district contracts shall contain a clause setting forth the district's right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data pursuant to Article VI.Q. to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the procurement director provided, however, that such records shall be retained for additional periods of time beyond this three year period upon request of the procurement director.
2. **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 procurement director .

Article IX

DETERMINATIONS AND REPORTS

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:

Article

- VI.C.7. Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards
- VI.C.11. Competitive Sealed Bidding: Request for Qualifications
- VI.D.1. Competitive Fixed Price Bidding: Conditions for Use
- VI.E.1. Competitive Best Value Bidding: Conditions for Use
- VI.E.8. Competitive Best Value Bidding: Award
- VI.G.1. Competitive Sealed Proposals, Conditions for Use
- VI.G.4. Competitive Sealed Proposals: Request Qualifications
- VI.G.8. Competitive Sealed Proposals: Negotiations
- VI.G.7. Competitive Sealed Proposals, Selection and ranking of Prospective Offerors
- VI.G.9. Competitive Sealed Proposals: Award
- VI.H. Negotiations After Unsuccessful Competitive Sealed Bidding
- VI.J. Sole Source Procurement
- VI.K. Emergency Procurement
- VI.O.2. Responsibility of Bidders and Offerors, Determination of Non-responsibility
- VI.Q. Prequalification of Construction Bidders
- VI.R.3. Cost or Pricing Data, Cost or Pricing Data Not Required
- VII.A. Types and Forms of Contracts
- VII.B. Approval of Accounting System
- VII.C. Multi-term Contracts, Determination Prior to Use
- XII.I.5. Procurement Procedure, Selection and Ranking of the Five Most Qualified
- XIV.A.7. Stay of Procurement During Protests, Decision to Proceed

Article IX (Continued)

B. Reporting of Anticompetitive Practices

(SC Section 11-35-2420)

When any information or allegations concerning anticompetitive practices among any bidders or offerors come to the attention of any employee of the District, immediate notice of the relevant facts shall be transmitted to the Superintendent.

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 upon request and proper receipt thereof.

D. Records of Procurement Actions

(SC Section 11-35-2440)

1. **Contents of Records.** The procurement director shall submit semi-annually a record listing all contracts made under Article VI.J. Sole Source Procurement and Article VI.K. Emergency Procurements to the Superintendent. 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 procurement director shall maintain these records for five years.

2. **Publication of Records.** 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

A. Definitions of Terms (SC Section 11-35-2610)

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

B. Issuance of Specifications; Duties of the Board (SC Section 11-35-2710)

The board shall promulgate regulations governing the preparation, maintenance and content of specifications for supplies, services, and construction required by the district.

C. Duties of the Procurement Director and End User (SC Section 11-35-2720)

The procurement director shall prepare or review, issue, revise, and maintain the specifications for supplies, services and construction required by the District, except for supplies, services and construction items procured by the district pursuant to Articles VI.I., VI.K., and XII.J., the specification for which shall be prepared and maintained by the end user in accordance with the provisions of this article and regulations promulgated hereunder.

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 (Section 11-35-2740)

The procurement director shall obtain advice and assistance from the end users in the development of specifications. Specifications shall be drawn in such a manner as to insure maximum cost effective procurement, consistent with regulations.

Article X (Continued)

**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 each solicitation and include, among other things, 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

A. Contract Clauses and Their Administration (SC Section 11-35-3410)

1. Contract Clauses

The board 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

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

Article XI (continued)

- (i) by unit prices specified in the contract or subsequently agreed upon;
 - (ii) by the costs attributable to the events or situations under such clauses with adjustment for profit or fee, all specified in the contract or subsequently agreed upon;
 - (iii) by agreement on a fixed price adjustment;
 - (iv) by rates determined by the Public Service Commission and set forth in the applicable tariffs;
 - (v) in such other manner as the contracting parties may mutually agree; or
 - (vi) in the absence of agreement by the parties, through unilateral determination by the district of the cost attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the district in accordance with applicable sections of the regulations issued under Article XIV of this chapter and subject to the provisions of Article IV of this chapter..
- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provision of Article VI.Q.

3. Additional Contract Clauses

The board 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;

Article XI (continued)

- (c) termination of the contract in whole or in part for the convenience of the district.

4. Modification of Clauses

The procurement director may vary the clauses promulgated by the board under subsections 1 and 3 of this section 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 variation; shall be stated in the invitation for bids or request for proposals.

Article XII

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

DEFINITIONS

A. **Definitions of terms used in this article (SC Section 11-35-2910)**

1. "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as defined by the laws of the state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparations of operating and maintenance manuals, and other related services.
2. "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property.
3. "Construction management services" are those professional services associated with a system in which the district directly contracts with a professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of a district project in a manner that contributes to the control of time, cost and quality of construction as specified in the construction management contract.

CONSTRUCTION SERVICES

B. **Method of construction contracting administration (SC11-35-3010)**

Selection of Method. The method of construction contracting administration used for a district construction project shall be determined to be that method which is most advantageous to the district and will result in the most timely, economical, and successful completion of the construction project. The district shall select in accordance with

Article XII (continued)

regulations of the board the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations which led to the selection of that particular method.

C. Construction procurement procedures (SC Section 11-35-3020)

1. Source Selection. All district construction contracts shall be awarded by competitive sealed bidding pursuant to the procedures set forth in Article VI.C. subject to the exceptions enumerated in subsection (2) of this section and except as provided in Articles VI.I., VI.J. and VI.K. Competitive sealed proposals as provided in Article VI.G. shall not be used, except in such cases and in accordance with criteria as may be authorized and prescribed by regulation of the board.
2. Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by subsection (1) of this section shall be performed in accordance with the procedures outlined in Article VI of the district code subject to the following exceptions:
 - (a) Invitation for Bids. In lieu of Article VI.C.2 invitations for bids for each district construction project subject to subsection (1) of this section shall be made in the following manner. The district shall be responsible for developing a formal invitation for bids for each district construction project subject to subsection (1) of this section. The invitation shall include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids shall be filed with the department of education and shall be formally advertised in a local newspaper serving the region or in the SC Business Opportunities.
 - (b) Bid Acceptance. In lieu of Article VI.C.6. the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The district's invitation for bids shall set forth all requirements of the bid including, but not limited to:

Article XII (continued)

- (i) The district, in consultation with the architect-engineer assigned to the project, shall identify by specialty, in the invitation for bids, all subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the district, in consultation with the architect-engineer assigned to the project, may identify by specialty, in the invitation for bids, any subcontractors who are expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable under Article XIV.A. or any other provision of this code. Any bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the invitations for bids. If the bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of the district for good cause shown.
- (ii) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.
- (iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons.
 - (a) upon a showing satisfactory to the district by the contractor that a subcontractor who was listed is not financially responsible;

Article XII (continued)

- (b) upon a showing satisfactory to the district by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid.
- (c) upon a showing satisfactory to the district by the contractor within four working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;
- (d) upon showing satisfactory to the district by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;
- (e) upon a showing satisfactory to the district by the contractor that the listed subcontractor is required to be licensed and does not have the license by the time it is required by law;
- (f) when the listed subcontractor fails or refuses to perform his subcontract;
- (g) when the work of the listed subcontractor is found by the district to be substantially unsatisfactory.
- (h) upon mutual agreement of the contractor and subcontractor;
- (i) with the consent of the district for good cause shown.

Article XII (continued)

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

- (iv) Where substitution is allowed, the prime contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received prior to the submission of the prime contractor's bid. Nothing in this section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code and the regulations promulgated under it.
- (v) The district shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.
- (c) In lieu of Article VI.C.10. the following provisions apply 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 which has been specified in the invitation for bids. The invitation of bids and the posted notice must contain a statement of the bidder's right to protest under Article XIV.A.1. and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the district shall promptly send all responsive bidders a copy of the notice of intended award and a copy of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest under Article XIV.A.1.

Sixteen days after notice is given the district may enter into a contract with the bidder named in the notice in accordance with the provisions of the code and of the bid solicited. A determination of responsibility must be made before award in accordance with Article VI.O.

Article XII (continued)

If, at a bid opening, only one bid is received and determined to be responsive and responsible and within the district's construction budget, award may be made without the sixteen day waiting period.

- (d) Negotiations After Unsuccessful Competitive Sealed Bidding. In lieu of Article VI.H., the following provisions apply:
 - (1) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the district that circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five percent of the construction budget established for that portion of the work. The district may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent without approval by the superintendent.
 - (2) When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the district is able to identify additional funds for the project, as certified by the superintendent, in the amount of the difference between the lowest base bid and the approved available funds for the project, the district shall submit its request to use such additional funds to the board for approval.

Article XII (continued)

D. Bond and Security

(SC Section 11-35-3030)

1. Bid Security.

- (a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in excess of one hundred thousand dollars and such other contracts as may be prescribed by the board. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form which may be established by regulation of the board.
- (b) Amount of Bid Security. Bid security shall be in an amount equal to at least five percent of the amount of the bid at a minimum but no more than 10%.
- (c) Rejection of bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder cannot cure these deficiencies within one working day of bid opening, his bid shall be rejected.
- (d) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening pursuant to Article VI.C.8.no action shall be had against the bidder or the bid security.

Article XII (continued)

2. Contract Performance Payment Bonds.

- (a) When Required-Amounts. When a construction contract is awarded pursuant to Article XII.C. the following bonds or security shall be delivered to the district and shall become binding on the parties upon the execution of the contract:
 - (i) a performance bond satisfactory to the District, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent of the price specified in the contract;
 - (ii) a payment bond satisfactory to the District, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the contract price.
 - (iii) in the case of a construction contract valued at one hundred thousand dollars or less, the district may waive the requirements of (i) and (ii) above.
- (b) Authority to Require Additional Bonds. Nothing in subsection (2) of this section shall be construed to limit the authority of the board to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in item (a) of such subsection in accordance with regulations promulgated by the board.
- (c) Suits on Payment Bonds-Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work specified in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material was furnished or

Article XII (continued)

supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person. Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship expressed or implied with the contractor furnishing such payment bond, shall have a right of action on the payment bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or applied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such written notice to the contractor shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

- (d) Suits on Payment Bonds-Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

3. Bonds Forms and Copies.

- (a) Bond Forms. The board shall promulgate by regulation the form of the bonds required by this section.
- (b) Certified Copies of Bonds. Any person may request and obtain from the district a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Article XII (continued)

4. Retention.

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

E. Contract clauses and their administration. (SC Section 11-35-3040)

- 1. **Contract Clauses.** District construction contracts and subcontracts promulgated by regulation pursuant to Section VII may include clauses providing for adjustments in prices, time of performance and other appropriate contract provisions including, but not limited to:
 - (a) the unilateral right of the district to order in writing:
 - (i) all changes in the work within the scope of the contract, and
 - (ii) all changes in the time of performance of the contract that do not alter the scope of the contract work;
 - (b) variations occurring between estimated quantities of work in the contract and actual quantities;
 - (c) suspension of work ordered by the district.
 - (d) site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site condition clauses promulgated by the board need not be included in a contract;
 - (i) when the contract is negotiated; or
 - (ii) when the parties have otherwise agreed with respect to the differing site conditions.

Article XII (continued)

2. Price Adjustments.

- (a) Adjustments in price pursuant to clauses promulgated under subsection (1) of this section shall be computed and documented with a written determination. The price adjustment agreed upon shall approximate the actual cost to the contractor and all costs incurred by the contractor shall be justifiably compared with prevailing industry standards, including reasonable profit. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:
 - (i) by unit prices specified in the contract or subsequently agreed upon;
 - (ii) by the costs attributable to the events or situations under such clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon;
 - (iii) by agreement on a fixed price adjustment;
 - (iv) in such other manner as the contracting parties may mutually agree: or
 - (v) in the absence of agreement by the parties, through unilateral determination by the district of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the district in accordance with applicable sections of the regulations issued under this chapter and subject to the provisions of Article XIV.
- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Article VI.Q.

Article XII (continued)

3. Additional Contract Clauses.

The construction contracts and subcontracts promulgated pursuant to Article VII.A.2. may include clauses providing for appropriate remedies which cover as a minimum:

- (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 Required Clauses

The Superintendent or designee above the level of the procurement director may vary the clauses promulgated by the board under subsection (1) and subsection (3) of this section for inclusion in any particular construction 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 variation be stated in the invitation for bids.

**F. Cost principles regulations for construction contractors.
(SC Section 11-35-3050)**

The board may promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in construction contracts which provide for the reimbursement of costs.

G. Fiscal responsibility (SC Section 11-35-3060)

Every contract modification, change order, or contract price adjustment under a construction contract with the District shall be subject to the procedures outlined in Sections 3A and 3B of Act 761 of 1976 which were added pursuant to Sections 2-47-40 and 2-47-50.

Article XII (continued)

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

H. Applicability and policy (SC Section 11-35-3210)

1. **Applicability.** Architect-engineer, construction management, and land surveying services shall be procured as provided in Article XII.I. except as authorized by Articles VI.J., VI.K., and XII.J.
2. **Policy.** It is the policy of this District to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

I. Procurement procedures. (SC Section 11-35-3220)

1. **Selection Committee.** The district shall establish its own architect-engineer, construction management, and land surveying services selection committee hereinafter referred to as the selection committee, which shall be composed of those individuals whom the superintendent determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project
2. **Advertisement of Project Description.** The selection committee shall be responsible for:
 - (a) developing a description of the proposed project,
 - (b) enumerating all required professional services for that project, and
 - (c) preparing a formal invitation to firms for submission of information.

The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The invitation shall be formally advertised as stated in Article VI.C.3.

Article XII (continued)

3. **Response to Invitation.** The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of a current and accurate Federal Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, or such similar information as the board may prescribe by regulation, and any other information which the particular invitation may require.
4. **Interviews with Interested Firms.** Following receipt of information from all interested persons and firms, the selection committee shall hold interviews with at least five persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than five persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the district selection committee to fully acquaint itself with the relative qualifications of the several interested firms.
5. **Selection and Ranking of the Five Most Qualified.** The selection committee shall evaluate each of the persons or firms interviewed in view of their:
 - (a) past performance;
 - (b) the ability of professional personnel;
 - (c) demonstrated ability to meet time and budget requirements;

Article XII (continued)

- (d) location;
- (e) recent, current, and projected workloads of the firms;
- (f) creativity and insight related to the project; and
- (g) related experience on similar projects.

Based upon these evaluations, the selection committee shall select the five persons or firms which, in its judgment, are the best qualified, ranking the five in priority order. The selection committee's report ranking the five chosen persons or firms shall be in writing and shall include data substantiating its determinations.

- 6. **Notice of Selection and Ranking.** When it is determined by the district that the ranking report is final, written notification of the selection immediately shall be sent to all firms interviewed.
- 7. **Negotiation of Contract .**The district shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the District. Should the district be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third, fourth and fifth most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one of the five, additional persons or firms in order of their competence and qualifications shall be selected after consultation with the selection committee, and negotiations shall be continued in the same manner until agreement is reached.

J. **Exception for small architect-engineer and land surveying services contract. (SC Section 11-35-3230)**

- 1. **Procurement Procedures for Certain Contracts.** District securing architect-engineer or land surveying service which is estimated not to exceed \$25,000 may employ the architects, engineers, or land surveyors by direct negotiation and selection, taking into account:
 - (a) the nature of the project,

Article XII (continued)

- (b) the proximity of the architect-engineer or land surveying services to the project,
 - (c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time,
 - (d) past performance, and
 - (e) ability to meet project budget requirements.
2. **Maximum Fees Payable to One Person or Firm.** Fees paid during the twenty-four month period immediately preceding negotiation of the contract by district for professional services performed by any one architectural-engineering or land surveying firm pursuant to Article XII.J.1. shall not exceed seventy-five thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the district a list of professional services, including fees paid therefore, performed for the district during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.
3. **Approval of Contracts by the district.** All contracts negotiated pursuant to this section shall be submitted for approval to the superintendent in accordance with regulations to be established by the board prior to the awarding and execution of the contracts.
4. **Splitting of Larger Projects Prohibited.** The district may not break a project into small projects for the purpose of circumventing the provisions of Article XII.I. and this section.
- K. **Architect, engineer, or construction manager; performance of other work. (SC Section 11-35-3245)**

No architect or engineer performing design work, or construction manager performing construction management services as described in Article XII.A., pursuant to a contract awarded under any provision of this code may perform other work on that project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction

Article XII (continued)

management firm has greater than a five percent interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. Should the construction manager perform or be responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of SC Code Section 41-15-210, then the construction management firm is subject to all applicable fines and penalties.

INDEFINITE DELIVERY CONTRACTS**L. Indefinite delivery contracts for construction items, architectural-engineering and land surveying services.(SC Section 11-35-3310)**

1. **General Applicability.** Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedures set forth in Article XII.C. and for architectural-engineering and land surveying services pursuant to Article XII.I.
 - (a) **Construction Services.** When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred fifty thousand dollars for a two-year period with individual project expenditures not to exceed one hundred fifty thousand dollars.
 - (b) **Architectural-Engineering and Land Surveying Services.** When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of three hundred thousand dollars for a two-year period with individual project expenditures not to exceed one hundred thousand dollars.
2. **Small Indefinite Delivery Contracts.** Small indefinite delivery for architectural-engineering and land surveying services may be procured as provided in Article XI.J.. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided in Article XI.J. and any regulations promulgated thereunder.

Article XIII

Supply Management

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

The board shall promulgate regulations governing:

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

**B. 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 procurement director. Such sales shall be held at such places and in such manner as, in the judgment of the procurement director, 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 procurement director shall deposit the proceeds from such sales, less expense of the sales, in the district capital improvement fund.

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

1. **Trade-in Value.** Unless otherwise provided by law, the district may trade-in personal property, the trade-in value of which may be applied to the procurement or lease of like items. The trade-in value of such personal property shall not exceed an amount as specified in regulations promulgated by the board.

Article XIII (Continued)

2. **Approval of Trade-In Sales.** When the trade-in value of personal property exceeds the specified amount, the district shall have the authority to determine whether:
 - (a) the subject personal property shall be traded in and the value applied to the purchase of new like items; or
 - (b) the property shall be classified as surplus and sold in accordance with the provisions of Article XIII.B. The district's determination shall be in writing.
3. **Record of Trade-In Sales.** The district shall submit annually to the board a record listing all trade-in sales made under subsections 1 and 2 of this section.

D. Sale of unserviceable supplies and equipment

District may sell any supplies owned by it after such supplies have become entirely unserviceable and can properly be classified as "junk" in accordance with procedures established by the Board. All sales of unserviceable supplies by the district shall be made in public to the highest bidder, after advertising for fifteen days and the funds from such sales shall be deposited into the district's capital improvement fund.

Article XIV

LEGAL AND CONTRACTUAL REMEDIES

- A. **Right to Protest; procedure; settlement of protest; administrative review and decision; notice of decision; finality; stay of procurement pending; exclusivity of remedy.**

(SC Section 11-35-4210)

1. **Right to Protest; Exclusive remedy** Any prospective bidder, offeror or contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the procurement director in the manner stated in subsection (2) below within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment 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 procurement director in the manner stated in subsection (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 Chesterfield County School District Procurement Code.

2. **Protest Procedure.** A protest under subsection (1). above shall be in writing, submitted to the procurement director 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. **Duty and Authority to Attempt to Settle Protests.** Prior to commencement of an administrative review as provided in subsection (4), the procurement director or designee 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.

Article XIV (continued)

The procurement director shall have the authority to approve any settlement reached by mutual agreement.

4. **Administrative Review and Decision.** If in the opinion of the procurement director, after reasonable attempt, a protest cannot be settled by mutual agreement, the superintendent 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 4 of this section along with a statement of appeal rights under Article XIV.A. shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The superintendent shall also post a copy of the decision at a date 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 Article XIV.A.6.
6. **Finality of Decision.** A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the board within ten days of posting of the decision in accordance with Article XIV.A.5. The request for review shall be directed to the superintendent, and shall be in writing, setting forth the reasons why the person disagrees with the decision of the superintendent. The person may also request a hearing before the board.
7. **Stay of Procurement During Protests** In the event of a timely protest under subsection (1), the district shall not proceed further with the solicitation or award to the contract until a decision is rendered by the superintendent, or in the event of timely appeal to the board, until a decision is rendered by the board provided, however, that solicitation or award of protested contract will not be stayed if the superintendent, makes a determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the district.

Article XIV (continued)**B. Posting of Bond or Irrevocable Letter of Credit****(SC Section 11-35-4215)**

The procurement director may require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article VI of this code and valued at one million dollars or more to post with the procurement director a bond or irrevocable letter of credit payable to the district in an amount equal to one percent of the total potential value of the contract as determined by the procurement director. The procurement director's decision to require a bond or irrevocable letter of credit is not appealable under Article XIV.A. 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 as 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 or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the district's estimate of the contact amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the procurement director 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, the district may recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier check may be sought from the district requesting the bond or irrevocable letter of credit.

C. Authority to Debar or Suspend**(SC Section 11-35-4220)**

1. **Authority.** After reasonable notice to the person or firm involved and a reasonable opportunity for such person or firm to be heard,

Article XIV (continued)

the procurement director shall have the authority to debar a person for a 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 procurement director may also suspend a person or firm from consideration for award of contracts during an investigation where there probable cause for debarment. The period of debarment or suspension shall be as prescribed by the procurement director.

2. **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 or private contractor 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 of 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 procurement director to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts 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;

Article XIV (continued)

- (e) violation of an order of the Board; and
 - (f) any other cause the procurement director 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.
- (3) **Decision.** The procurement director 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.
- (4) **Notice of Decision.** A copy of the decision under this subsection 3 of this section along with a statement of appeal rights under Article XIV.A. shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The superintendent shall also post a copy of the decision at a date 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 Article XIV.C.5.
- (5) **Finality of Decision.** A decision under subsection 3 of this section shall be final and conclusive, unless fraudulent or unless the debarred or suspended person request further administrative review by the Superintendent within ten days of the posting of the decision in accordance with Article XIV.C.4. The request for review shall be directed to the superintendent and shall be in writing, setting forth the reasons why the person disagrees with the decision of the superintendent. The person may also request a hearing before the board.

**D. 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

Article XIV (continued)

party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. This 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 Chesterfield County District 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 superintendent by submitting a request for resolution to the procurement director 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 below, the procurement director or designee above the level of the procurement director shall attempt to settle by mutual agreement a contract controversy brought under this section. The procurement director or designee above the level of procurement director shall have the authority to approve any settlement reached by mutual agreement.
4. **Administrative Review and Decision.** If, in the opinion of the procurement director after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the superintendent 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 4 of this section, and a statement of appeal rights under section Article XIV.D.6., shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The

Article XIV (continued)

superintendent shall also post a copy of this 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 Article XIV.D.

6. **Finality of Decision.** A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Board within ten days of the posting of the decision in accordance with Article XIV.D.5. The request for review shall be directed to the superintendent who shall forward the request to the board and shall be in writing setting forth the reasons why the person disagrees with the decision of the superintendent. The person may also request a hearing before the board.

E. **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 superintendent or the Board 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 superintendent under Article XIV.A. or the Board 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 the 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

Article XIV (continued)

(b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.

4. **Entitlement to Costs.** In addition to or in lieu of any other relief when a protest submitted under Article XIV.A. is sustained, and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs.

F. Contract Controversies (SC Section 11-35-4320)

Remedies available in a contract controversy brought under the provisions of Article XIV.D.. The superintendent or the board may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.

G. 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 the signer has read such document, that 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 that 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 board, the board, 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.

Article XIV (continued)

H. Finality of Decision by the Board

The decision of the board 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

A. **Definitions of Terms** **(SC Section 11-35-4610)**

As used in this article, unless the context clearly indicates otherwise:

1. **Cooperative Purchasing** means procurement conducted by, or on behalf of, more than one public procurement unit.
2. **Local public procurement unit** means any political subdivision or unit thereof which expends public funds for the procurement of supplies, services, or construction.
3. **Mandatory opting** is 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 board.
4. **Procurement Department** means the procurement department of the district.

B. **Cooperative Purchasing Authorized** **(SC Section 11-35-4810)**

The district's procurement department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Article XV.C. selective mandatory opting, or except as may otherwise be limited by the board through regulations.

Article XV (continued)**C. Selective Mandatory Opting (SC Section 11-35-4820)**

As prescribed in regulation by the State, the 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 procurement department may sell to, acquire from, or use any supplies belonging to another public procurement unit 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 Procurement Department may enter into an agreement with any other public procurement unit 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.

Article XV (Continued)

G. Supply of Information (SC Section 11-35-4860)

1. District Information Services

Upon request, the procurement director may make available to public procurement units the following services among others:

- (a) standard forms,
- (b) printed manuals,
- (c) products specifications and standards,
- (d) quality assurance testing services and methods,
- (e) qualified products lists,
- (f) source information,
- (g) common use commodities listings,
- (h) supplier pre-qualification 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 delivery information.

2. Fees. The Procurement Director may enter into contractual arrangements and publish a schedule of fees for services provided.

H. Use of Payments by a Supplying Public Procurement Unit (SC Section 11-35-4870)

All payments from any public procurement unit received by the district for supplying personnel or services shall be deposited in the district's general fund.

Article XV (continued)

**I. Public Agencies in Compliance with Code Requirments
(SC Section 11-35-4880)**

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

**J. Review of Procurement Requirement
(SC Section 11-35-4890)**

The procurement director 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 procurement units, which shall be required to respond appropriately as precondition for participation in cooperative purchasing. The procurement director shall make available all such information to any public procurement unit upon request.

ARTICLE XVI

ASSISTANCE TO MINORITY BUSINESSES

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** for the purpose of this article, means a United States citizen who is economically and socially disadvantaged.

(a) Socially disadvantaged individuals are 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 American (including American Indians, Eskimos, Aleuts and Native Hawaiians)
- Asian Pacific Americans, and other minorities to be designated by the board.

(b) **Economically disadvantaged individuals** are 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** means 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.

Article XVI (Continued)

- (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. **Statement of Intent.** The School board of the Chesterfield County District 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 School board, 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. **Implementation.** The procurement director shall implement this code in accordance with the provisions of duties of the procurement director below:

C. Duties of the Procurement Director (SC Section 11-35-5220)

- 1. **Assistance from the Procurement Director.** The procurement director may provide appropriate staffs to assist minority businesses in the interpretations of the regulations developed pursuant to this code.
- 2. **Special Publications.** The procurement director in cooperation with other appropriate private and state agencies may issue supplementary instructions designed to assist minority businesses with the District procurement procedures.

Article XVI (Continued)

3. **Source Lists.** The procurement director shall maintain special source lists of minority business firms detailing the products and services which they provide.

**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 firms as defined in Article XVI.A in this section and any regulations which may be promulgated thereunder.
 - (a) the tax credit is limited to a maximum of ten 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.

Article XVI (continued)

- (b) Any firm desiring to be certified as minority firm shall make application to the Small and Minority Business Assistance Office 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 available for audit by the Department of Revenue 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 annually 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 School board 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 Office of the Governor, in each commodity category for which such minority vendors is qualified.
5. procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation;

Article XVI (continued)

6. procedures to be used when the District subcontracts the scope of service to another district. The responsible district may set goals for the subcontractor in accordance with the MBE goal and the responsible district may allow the subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.

F. Progressive Payments and Letter of Credit (SC Section 11-35-5250)

1. **Progress Payments.** The Superintendent or designee may make special provisions for progress payments, and letters of credit, as deemed reasonable to assist minority business to carry out the terms of a contract pursuant to regulations which may be promulgated by the School board.
2. **Letter of Contract Award.** When a minority business firm certified by the Department of Revenue receives a contract with the district, the superintendent or designee 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 School board (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

- A. **Payment for goods and services received by the district.**
(SC Section 11-35-45)
 - 1. All invoices for payment of purchases of goods or services shall be delivered to the Chesterfield County School District's Office.
 - 2. All payment for purchases of goods or services shall be paid by the district within thirty work days after the acceptance of the goods or services and proper invoice, whichever is received later.