

PURCHASING

Code **DJ-R** Issued **3/11**

**LATTA SCHOOL DISTRICT
PROCUREMENT CODE POLICY**

Adopted 12/02; Revised 3/11

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ARTICLE 1 - GENERAL PROVISIONS

Part A - Purposes and application

- 1-101 Purpose

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

- 1-102 Application

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

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1-103 Exemptions

The school board may exempt specific supplies or services from this policy. The following supplies and services are exempted from this policy:

- (1) Books, periodicals, newspapers, technical pamphlets, standardized tests and testing materials, copyrighted educational materials including software, CD ROMs, videos, filmstrips, slides, and transparencies;
- (2) Public utilities;
- (3) Travel;
- (4) Workshops, seminars, conferences;
- (5) Professional journals;
- (6) Taxes, Social Security, annuities, credit union;
- (7) Life insurance or supplemental insurance;
- (8) Oil company credit cards: purchases for gas and oil and emergency repairs;
- (9) Professional services normally obtained on a fee basis, such as attorneys, accountants, physicians, or dentists, provided that no such services may be awarded without approval of the school district board of trustees;
- (10) Clergy;
- (11) Court reporters;
- (12) Professional dues, registration and membership fees;
- (13) Instructional training seminars or staff development offered by the district to district employees and those contractual services necessary to provide the services for the seminar;
- (14) Diplomas;
- (15) U.S. postage stamps and post office boxes;
- (16) Art reproductions;
- (17) Expert witness services;
- (18) Furniture refurbishing services of the Department of Corrections;
- (19) Services and/or supplies provided by the Division of General Services to public procurement units;
- (20) Livestock, feed and veterinary supplies and services; and
- (21) Local school funds (not allocated funds).

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1-104 Specific repealer

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

1-105 Effective date

This policy shall become effective at 12:01 a.m. on July 1.

Part B - Definitions of terms used in this policy

1-201 Definitions

- (1) Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (2) Catalogue price: The price, including any applicable discount available, included in a catalogue price list, schedule or other form that:
 - (a) is regularly maintained by a manufacturer or contractor;
 - (b) is either published or otherwise available for inspection by customers; and
 - (c) states prices at which sales are currently or were last made to a significant number, or any category of buyer or buyers constituting the general buying public for the supplies or services involved.
- (3) Construction: The process of building, altering, repairing, improving, or demolishing any structure or building owned by the school district. It does not include operation, routine repair or routine maintenance of existing structures, buildings or real property.
- (4) Contract: All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.
- (5) Contract modification: Any written alteration in specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (6) Contractor: Any person having a contract with the school district.
- (7) Cooperative purchasing: Procurement conducted by, or on behalf of, more than one "Public Procurement Unit."
- (8) Cost reimbursement contract: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this policy, and a fee, if any.
- (9) Data: Recorded information, regardless of form or characteristics.
- (10) Days: Calendar days. In computing any time prescribed by this code, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal government holiday, then the period must run to the end of the next business day.

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- (11) Debarment: The disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.
- (12) Emergency procurement: A method of procurement used only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions.
- (13) Employee: An individual drawing a salary from this school district, whether elected or not, and any volunteer.
- (14) Invitation for bids: All documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (15) Non-expendable supplies: All tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of more than one (1) year.
- (16) Person: Any business, individual, committee, club, other organization, or group of individuals.
- (17) Procurement: Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (18) Public procurement unit: Any state, county, municipality, school district, and any other subdivision of the state or subdivision thereof, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of supplies, services, or construction.
- (19) Purchase description: The words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to, or made a part of, a "solicitation."
- (20) Quotation: A statement of the market price of securities, goods, or services; or the price specified to the correspondent. Often shortened to "quote."
- (21) Request for proposals (RFP): All documents whether attached or incorporated by reference, utilized for soliciting proposals.
- (22) Request for qualifications (RFQ): A request for qualifications from prospective offers issued prior to soliciting proposals. The RFQ must contain a description of the goods and services to be solicited by the request for proposals, the general scope of the work, the deadline for submission of information, and how prospective offerors may apply for consideration.
- (23) Response: Any bid, offer or proposal, without regard to the source selection method, which is submitted in reply to a "solicitation."
- (24) Responsible "vendor": A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (25) Responsive "vendor": A person who has submitted a response which conforms to, in all material respects, an invitation for bids or a request for proposals.

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- (26) School district: As herein used, school district is intended to include the board of trustees or their authorized agent, such as, but not limited to, the superintendent, director of finance or, where applicable, director of procurement or other official responsible for procurement activity.
- (27) Service: The furnishing of labor, time or effort by a contractor. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or the providing of consultant assistance for any aspect of information technology, systems and networks.
- (28) Sole source: A method of procurement used where the district's needs can only be met by one method, means or item. Price is not an operative factor, inasmuch as the cost is not pertinent where the needs are unique and can only be satisfied through a unique one-of-a-kind acquisition.
- (29) Solicitation: Any effort, without regard to the source selection method, to obtain supplies, services or construction by the school district.
- (30) Solicitation document: The document(s) used in connection with a particular solicitation.
- (31) Supplies: All personal property including, but not limited to, equipment, materials, printing, insurance, information technology equipment and software packages.
- (32) Surplus supplies: Any supplies other than expendable supplies no longer having any use to the school district. This includes obsolete supplies, scrap materials and non-expendable supplies that have completed their useful life cycle.
- (33) Term contract: A contract established for a specific product or service for a specified time and for which it is mandatory that all governmental bodies procure their requirements for the goods and services during its term.
- (34) Vendor: Any person submitting a response to a solicitation.

Part C - Compliance with state and federal regulations

1-301 Public access to procurement information

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act), South Carolina Code of Laws, 1976, with the exception that proprietary commercial or financial information supplied in response to a solicitation which is marked privileged and confidential is not to be disclosed.

1-302 Compliance with federal requirements

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

1-303 Standards of conduct

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

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ARTICLE 2 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of source selection

2-101 Methods of source selection

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

- (1) Section 2-103(Competitive sealed proposals);
- (2) Section 2-104(Small purchases);
- (3) Section 2-105(Sole procurement);
- (4) Section 2-106(Emergency procurement);
- (5) Section 4-301 (Architect-engineer or land surveying services).

2-102 Competitive sealed bidding

- (1) Conditions for use: The preferred procurement technique, competitive sealed bidding, should not be used in all instances. This is a price determinate method of procurement and is best applied where the needs of the district are precise and certain and may be secured from any number of potential suppliers. Contracts of \$50,000 or more must be awarded by competitive sealed bidding.
- (2) Invitation for bids: The invitation for bids must be the document used to initiate a competitive sealed bid procurement and must include the following:
 - (a) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, and any other special information;
 - (b) the purchase description, specifications, delivery and performance schedule, and such inspection and acceptance requirements as are not included in the purchase descriptions;
 - (c) all contract terms and conditions, including warranty and bonding or other security requirements as applicable;
 - (d) instructions to bidders to visibly mark as confidential each part of their bid which they consider to be proprietary information; and
 - (e) a statement of a bidder's right to protest under 6-201.
- (3) Public notice: Public notice of the invitation for bids must be given. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement, as determined by the school district.
- (4) Bid opening: Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The dollar

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amount of each bid and such other relevant information, together with the name of each bidder, must be recorded; the record and each bid must be open to public inspection at that time. Only the information disclosed at the bid opening is considered to be public information until an award is actually made. An amendment postponing bid openings may be issued only when emergency or unanticipated events beyond the control of bidders interrupt normal government operations. The date and location for the posting of the notice of an intended award must be announced at bid opening.

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

2-103 Competitive sealed proposals

- (1) Conditions for use: When the school district determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the

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school district, a contract may be awarded by competitive sealed proposals. Competitive sealed proposals should be used when both the needs of the school district and the costs to satisfy those needs are important, and the methods or items to satisfy those needs are not clear and precise. While price is an important factor, it is considered less significant than fully meeting the district's needs. The ultimate purpose of this method of procurement is to provide flexibility to the district, while taking into consideration various options and the costs of each. Proposals must be solicited through a request for proposals.

- (2) Public notice: Public notice of the request for proposals must be given in the same manner, as provided in Section 2-102(3).
- (3) Proposal opening: Proposals must be publicly opened, but only the names of the offerors disclosed at the proposal opening. Contents of competing proposals must not be disclosed during the process of opening or negotiation. All proposals shall be recorded at the time of opening and must be opened for public inspection after contract award. Proprietary or confidential information marked as such in each proposal must not be disclosed without written consent of the offeror.
- (4) Request for qualifications: Prior to soliciting proposals, and after giving adequate public notice, the district may issue a request for qualifications, experience and ability to perform the requirements of the contract from prospective offerors. At a minimum, the request must contain a description of the goods or services to be solicited by the invitation for bids and the general scope of the work. The request must also contain the deadline for submission of information and how prospective offerors may apply for consideration.

After the district receives the responses, it will rank prospective offerors from most qualified to least qualified on the basis of the information provided. The district must then invite bids from at least the top two prospective offerors in accordance with section (2) above.

- (5) Negotiations with responsible offerors and revisions to proposals: As provided in the request for proposals, negotiations may be conducted with any offeror submitting a proposal appearing to be eligible for contract award pursuant to the selection criteria set forth in the request for proposals. All apparently eligible offerors must be afforded the opportunity to submit best and final proposals, if negotiations with any other offeror result in a material alteration to the request for proposals and such an alteration has a cost consequence that may alter the order of offerors' price quotations contained in their initial proposals. In conducting negotiations, there must be no disclosure of information derived from proposals submitted by any competing offerors.
- (6) Evaluation factors: The request for proposals shall state the evaluation factors in relative order of importance. Price may but need not be an initial evaluation factor. Each responsive and responsible offeror's proposal must be evaluated. The proposal must then be ranked in accordance with the results of such evaluation.
- (7) Award: The award must be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the school district, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria must be used in the evaluation. The contract file shall contain the basis on which the award is made.

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2-104 Small purchases

Any single procurement not exceeding \$50,000 may be made by the school district in accordance with this paragraph; provided, however, that such procurements shall not be artificially divided so as to constitute a small purchase. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all or none" basis. In such cases, suppliers must be advised of this award procedure at the time quotations are requested.

- (1) Small purchases not exceeding \$2,500 may be accomplished without competitive quotations, if the prices are considered to be reasonable. The district shall annotate the purchase requisition as follows: "Price is fair and reasonable" and sign such purchase requisition. Such purchases must be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.
- (2) Small purchases from \$2,500.01 to \$10,000 may be accomplished, if verbal or written quotes from a minimum of three qualified sources of supply are made and it is documented that the procurement is to the advantage of the school district, price and other factors considered, including the administrative costs of the purchase. Such documentation must be attached to the purchase requisition.
- (3) Small purchases from \$10,000.01 to \$50,000 may be accomplished, if written solicitation of written bids, proposals or quotes from five qualified sources of supply are obtained and it is documented that the procurement is to the advantage of the school district, price and other factors considered, including the administrative costs of the purchase. Such documentation shall be attached to the purchase requisition. When prices are solicited by telephone, the vendors must be requested to furnish written evidence of such quotation.

2-105 Sole source procurement

- (1) Conditions for use: This method of procurement is the least competitive and, therefore, should have limited use. In those instances, however, where the district's needs can only be met by one method, means or item, sole source is an appropriate and necessary method of procurement. Price is not an operative factor, inasmuch as the cost is not pertinent where the needs are unique and can only be satisfied through a unique one-of-a-kind acquisition. Such determination as to whether a procurement must be made as a sole source must be made by the school district. Such determination and the basis thereof must be in writing and must include an explanation as to why no other source will be suitable or acceptable to meet the need.
- (2) Award: A contract may be awarded for a supply, service or construction item without competition when the school district determines in writing that there is only one source for the required supply, service or construction item. The following are examples of circumstances which could necessitate sole source procurements:
 - (a) where the compatibility of equipment, accessories or replacement parts is the paramount consideration;
 - (b) where a unique item is needed for trial use or testing;
 - (c) where a unique item is to be procured for resale;

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- (d) where the item is one of a kind; and
- (e) printed forms, pamphlets, and brochures, exclusive of printing equipment.

2-106 Emergency procurement

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

2-107 Rejection of responses

- (1) Rejection of all responses: A compelling reason should exist to reject all responses. Every effort must be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective vendors of any resulting modifications or cancellation, thereby permitting vendors to change their responses and preventing the unnecessary exposure of responses. As a general rule, a solicitation should not be canceled and readvertised after opening, due solely to increased requirements for the items being procured; an award should be made on the initial solicitation, and the additional quantity required should be treated as a new procurement. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the solicitation must be canceled. The solicitation may be canceled after opening, but prior to an award, when it is determined in writing that:
 - (a) inadequate or ambiguous specifications were cited in the solicitation;
 - (b) specifications have been revised;
 - (c) supplies or services being procured are no longer required;
 - (d) the specification did not provide for consideration of all factors of costs to the school district, such as cost of transportation;
 - (e) responses received indicate that the needs of the school district can be satisfied by a less expensive article differing from that on which the responses were invited;
 - (f) all otherwise acceptable responses received are at unreasonable prices;
 - (g) the responses were not independently arrived at in open competition, were collusive or were submitted in bad faith; or
 - (h) for other reasons, cancellation is clearly in the best interest of the school district.
- (2) Rejection of individual responses: Any response which fails to conform to the essential requirements of the specification, such as bid security, must be rejected. Any bid which does not conform to the specifications contained or referenced in

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the invitation for bids may be rejected, unless the invitation for bids authorized the submission of alternate bids and said alternates meet the requirements specified in the invitation for bids. Any response which fails to conform to the delivery schedule or permissible alternates thereto stated in the solicitation may be rejected as non-responsive. Ordinarily, a response should be rejected when the vendor attempts to impose conditions which would limit his liability to the school district, since to allow the vendor to impose such conditions would be prejudicial to other vendors. For example, responses should be rejected in which the vendor:

- (a) attempts to protect against future changes in conditions, such as increased costs, if total possible cost to the school district cannot be determined;
 - (b) fails to state a price or states a price but qualifies such price and states that the price shall be subject to the "price in effect at time of deliveries";
 - (c) when not authorized by the solicitation, conditions or qualifies a response by stipulating that the response is to be considered only if, prior to the date of award, the vendor receives (or does not receive) an award under a separate procurement;
 - (d) requires the school district to determine that the vendor's product meets the school district's specifications; or
 - (e) limits the rights of the school district under any contract clause.
- (3) Any response received after the school district has declared that the time set for opening has arrived shall be rejected unless the response was in the possession of the school district and was misplaced. In such an event, the misplaced response shall be considered along with other previously received responses.
- (4) Minor informalities or irregularities in bids or offers: A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the solicitation, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, other vendors. The school district must either give the vendor an opportunity to cure any deficiency resulting from a minor informality or irregularity in a response, or waive any such deficiency where it is to the advantage of the school district. Such communication or determination must be in writing. Examples of minor informalities or irregularities include, but are not limited to:
- (a) failure of a vendor to return the number of copies of signed responses required by the solicitation;
 - (b) failure to furnish the required information concerning the number of the vendor's employees or failure to make a representation concerning his size status;
 - (c) failure of a vendor to sign his response, but only if (i) the firm submitting the response has formally adopted or authorized the execution of documents by typewritten, printed or rubber-stamped signature and submits evidence of such authorization and the response carries such a signature; or (ii) the unsigned response is accompanied by other material indicating the vendor's intention to be bound by the unsigned response, such as the submission of a

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price guarantee with the response, or a letter signed by the vendor with the response referring to and clearly identifying the response itself.

- (d) failure of a vendor to acknowledge receipt of an amendment to a solicitation, but only if (i) the response received clearly indicates that the vendor received the amendments, such as where the amendment added another item to the solicitation and the vendor submitted a response thereon, or (ii) the amendment clearly would have no affect or merely a trivial or negligible affect on price, quality, quantity, delivery or the relative standing of vendors, such as an amendment correcting a typographical mistake in the name of the school district, or (iii) there is a failure to furnish an affidavit concerning affiliates, if required.

Part B - Vendor qualifications and duties

2-201 Responsibility of vendors

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

- (1) the appropriate financial, material, equipment, facilities, personnel resources, and expertise available, or the ability to attain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of past performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the school district; and
- (5) supplied all necessary information in connection with an inquiry concerning responsibility. A copy of the written determination of non-responsibility shall be sent promptly to the non-responsible bidder or offeror. The final determination must be made a part of the procurement file.

2-202 Cost or price data

- (1) Required submission relative to the award of contracts: A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000. The submission of such cost or pricing data relating to the award of a contract is not required where:
 - (a) the contract price is based on adequate price competition;
 - (b) the contract price is set by law or regulation; or
 - (c) it is determined in writing that such requirement may be waived and the determination states the reasons for such waiver.
- (2) Required submissions relating to change orders or contract modifications: A contractor must submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding. The submission of such cost or pricing data relating to the pricing of a change order or contract modification is not required where:

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- (a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
 - (b) it is determined in writing that such requirement may be waived and the determination states the reason for such waiver.
- (3) Certificate required: A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, must certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (4) Price adjustment provision required: Any contract awarded, change order or contract modification under which submission and certification of cost or pricing data are required must contain a provision stating the price to the school district, including profit or fee, must be adjusted to exclude any significant sums by which the school district finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the school district and the contractor.

Part C - Types of contracts

2-301 Types of contracts

Subject to the limitations of this section, any type of contract which will promote the best interest of the school district may be used; provided that the use of cost-reimbursement or a cost-plus-percentage-of-cost contract may not be used unless the school district makes a determination in writing approved by the board that such contract is likely to be less costly to the school district than any other type, or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

2-302 Multi-year contracts

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

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

- (a) vendors are not willing or able to compete because of high start-up costs or capital investment;

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- (b) lower production costs because of larger quantity or service requirements and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;
 - (c) stabilization of the contractor's workforce over a longer period of time may promote economy and consistent qualities; and
 - (d) the cost and burden of contract solicitation, award and administration of the procurement may be reduced.
- (3) Evaluation: Care should be taken when evaluating multi-year against prices for the first fiscal period that a determination on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in" so as to give such bidder or offeror an undue competitive advantage in subsequent procurements.
- (4) Solicitation document: The solicitation document must state the following:
- (a) the estimated amount of supplies or services required for the proposed contract;
 - (b) that a unit price must be given for each supply or service, and that such unit prices shall be the same throughout the contract term (except to the extent price adjustments are authorized in the solicitation or the resulting contract);
 - (c) that the multi-year contract will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first fiscal year; provided, however, this does not affect either the school district's rights or the contractor's rights under any other termination clause in the contract;
 - (d) that the school district must notify the contractor on a timely basis that the funds are not available for the continuation of the contract for a subsequent fiscal year;
 - (e) whether vendors may submit prices for the first fiscal period only, the entire time of performance only, or both the first fiscal period and the entire time of performance; and
 - (f) that a multi-year contract may be awarded and how such an award will be determined, including, if prices for the first fiscal period and the entire time of performance are submitted, how such prices will be compared.
- (5) Termination due to unavailability of funds in succeeding fiscal period: All multi-year contracts must contain a clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be terminated.

2-303 Blanket purchase agreements

- (1) Conditions for use: A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual solicitation documents. To the extent

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practicable, blanket purchase agreements for items of the same type should be awarded concurrently with more than one supplier.

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

Part D - Audits of records

2-401 Right to audit records

- (1) Audit of cost or pricing data: The school district may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 2-202 to the extent that such books and records

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relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which the cost or pricing data is required, must maintain such books and records that relate to such cost or pricing data for three (3) years from the date of the final payment under the contract, unless a shorter period is otherwise authorized in writing.

- (2) Contract audit: The school district must be entitled to audit the books and records of a contractor or subcontractor under any contract or subcontract other than a firm fixed-price contract, to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records must be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years under the subcontract, unless a shorter period is otherwise authorized in writing.

Part E - Reports and records

2-501 Reporting of anti-competitive practices

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, the relevant facts must be transmitted to the school district attorney and the superintendent.

2-502 Procurement records

- (1) Contract file: All determinations and other written records pertaining to the solicitation, award or performance of a contract must be maintained in a contract file.
- (2) Retention of procurement records: All procurement records must be retained and disposed of in accordance with records retention guidelines and schedules recommended by the South Carolina Department of Archives and History. If a contract is being funded in whole or in part by assistance from a federal agency, then all procurement records pertaining to that contract must be maintained for three (3) years from the close-out date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement, or for a longer period if required by such federal agency.

ARTICLE 3 - SPECIFICATIONS

Part A - Specifications

3-101 Importance of specifications

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

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

Part A - Management of construction contracting

4-101 Selection of method of construction contract

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

4-102 Contract administration

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

Part B - Construction contract clauses and fiscal responsibility

4-201 Standard clauses

The school district may establish standard contract clauses for use in its contracts. Such contract clauses and additional clauses or variations must be stated in the invitation for bids or request for proposals.

4-202 Modifications

Every contract modification, change order or contract price adjustment under a construction contract with the school board in excess of \$5,000 must be subject to prior approval by the school board after receiving a report from the fiscal officer of the school district as to the effect of the contract modification, change order or contract price adjustment on the total project budget or the total contract budget.

Part C - Architect/Engineer and surveying services

4-301 Public announcement and selection process

- (1) Public announcement: It is the policy of the school district to publicly announce all requirements for architect/engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualification of fair and reasonable prices. In the procurement of architect/engineer and land surveying services, the school district must submit a statement of qualifications and performance data.
- (2) Selection process: The school district must conduct discussions with no less than three firms regarding the contract and must select the firm deemed most qualified to provide the required services. The selection must be made in order of preference, based on criteria established and published by the school district.

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- (3) Negotiation: The school district must negotiate a contract with the highest qualified firm for architect/engineer and land surveying services at a compensation which is considered to be fair and reasonable to the school district. In making this decision, the school district must take into account the established value, scope, complexity, and professional nature of the services to be rendered. Should the school district be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm must be terminated, and the school district must then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the school district must terminate negotiations. The school district must then undertake negotiations with the third most qualified firm. Should the school district be unable to negotiate a contract with any of the selected firms, the school district must select additional firms in order of their competence and qualifications, and the school district must continue negotiations in accordance with this section until an agreement is reached.

ARTICLE 5 - PROPERTY MANAGEMENT

Part A - Disposition of surplus property

5-101 Sale

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

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

Part B - Proceeds

5-201 General fund

Proceeds from the sale, lease or disposal of surplus supplies and property must be deposited in the school district general fund.

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ARTICLE 6 - LEGAL AND CONTRACTUAL REMEDIES

Part A - Exclusive remedies

6-101 Waiver and exhaustion

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

Part B - Resolution of protests

6-201 Authority to resolve protested solicitations and awards

- (1) Right to protest: Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest. The protest must be submitted in writing to the superintendent, setting forth the grounds and facts applicable thereto for the protest, and the relief requested, within 10 days of the date notification of the award is posted in accordance with this policy. The filing of a protest must not stay solicitation or award of a contract unless fraudulent.
- (2) Authority to resolve protests: The superintendent shall have authority to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract. The remedies, if any, must be in accordance with part D of this article.
- (3) Decision: If the protest is not resolved by mutual agreement, the superintendent must conduct a review and issue a decision in writing within 10 days. The decision must:
 - (a) state the reasons for the action taken; and
 - (b) inform the protestant of its appeal rights, as provided in part C of this article.
- (4) Notice of decision: A copy of the decision under subsection (3) of this section must be mailed or otherwise furnished immediately to the protestant and any other party intervening. A copy must be posted at a date and place communicated to all parties in the administrative review. This copy will have on it the date of posting and statement of the right to appeal.
- (5) Finality of decision: A decision under subsection (3) of this section shall be final and conclusive, as to administrative review, unless any adversely affected person appeals administratively, as provided in part C of this article.

6-202 Authority to debar or suspend

- (1) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the school district, after consultation with the school district attorney, shall have authority to debar a person for cause from consideration for award of contracts or subcontracts. The debarment must not be for a period of more than three (3) years. The school district, after consultation with the school district attorney, shall have authority to suspend a person from

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consideration for award of contracts if there is probable cause for debarment. The suspension must not be for a period exceeding three (3) months.

- (2) Causes for debarment or suspension: The causes for debarment or suspension include the following:
 - (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (b) conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or professional business honesty which currently, seriously, and directly affects responsibility as a school district contractor or subcontractor;
 - (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 so serious as to justify debarment or suspension action;
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered to be a basis for debarment or suspension.
 - (e) any other cause which is so serious and compelling as to affect responsibility as a school district contractor or subcontractor, including debarment or suspension by another governmental entity for cause.
 - (f) for violation of the ethical standards set forth in South Carolina State Ethics Act.
- (3) Decision: The superintendent must issue a written decision within ten (10) days to debar or suspend. The decision must:
 - (a) state the reasons for the action taken; and
 - (b) inform the debarred or suspended person involved of his rights to administrative review as provided in Part C of this article.
- (4) Notice of decision: A copy of the decision under subsection (3) of this section must be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (5) Finality of decision: A decision under subsection (3) of this section shall be final and conclusive unless the debarred or suspended person appeals administratively as provided in Part C of this article.

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6-203 Authority to resolve contract and breach of contract controversies

- (1) Applicability: This section applies to controversies between the school district and a contractor and which arises under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- (2) Authority: The superintendent is authorized to settle and resolve a controversy described in subsection (1) of this section.
- (3) Decision: If such a controversy is not resolved by mutual agreement, the superintendent must promptly conduct an administrative review and issue a decision in writing within ten (10) days. The decision must:
 - (a) state the reason for the action taken; and
 - (b) inform the contractor of its rights to review, as provided in part C of this article.
- (4) Notice of decision: A copy of the decision under subsection (3) of this section must be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings.
- (5) Finality of decision: The decision under subsection (3) of this section shall be final and conclusive, unless the contractor appeals administratively, as provided in this article.
- (6) Failure to render timely decision: If the written decision required under subsection (3) of this section is not entered within ten (10) days after written request for a said decision, or within such longer period as may be agreed upon, then the contractor must proceed as if an adverse decision had been received.

Part C - Administrative appeals

6-301 School district superintendent

Prior to commencing any other action at law or in equity, a party aggrieved from a determination by the superintendent which is authorized in Section 6-201, 6-202, or 6-203 of this article must seek review of such determination to the school district board of trustees.

6-302 Procedures

- (1) Time limit for filing an appeal: A determination by the superintendent shall be final and conclusive unless any person adversely affected by the decision requests a review by the school district board of trustees, in writing, setting forth the reasons for such review, to the school district superintendent within 10 (ten) days of its receipt of the decision.
- (2) Upon receipt of an appeal from an aggrieved party, the school district superintendent must schedule a review of the appeal. The protestant may also request an appearance before the school district board of trustees. The board of trustees, within 10 days of completion of its review, must, in writing, affirm, alter or deny the decision. Such decision must include findings of fact and conclusions of law, including a statement of the underlying facts supporting such findings. The decision must also state whether the:

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- (a) solicitation or award being contested was in accordance with this policy and the terms and conditions of the solicitation documents;
 - (b) debarment or suspension being contested was in accordance with this policy and in the best interest of the school district; and
 - (c) contract and breach of contract determination being contested was in accordance with this policy and in the best interest of the school district.
- (3) The administrative review by the school district board of trustees must not be limited to any prior determination. Any prior staff determination must not be conclusive as to any findings and conclusions. Any person who is aggrieved by a final decision must have exhausted all administrative remedies available within this article prior to seeking judicial review. The decision of the board of trustees must be presumed final and conclusive unless such proceedings for review are instituted by filing a petition in the Circuit Court within 30 days after such final decision.

Part D - Solicitations or awards in violation of law

6-401 Applicability of this part

The provisions of this part apply where it is determined administratively or upon administrative review, that a solicitation or award of a contract is in violation of this policy.

6-402 Remedies prior to an award

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

- (1) canceled;
- (2) revised to comply with this policy and rebid; or
- (3) awarded in a manner that complies with the provisions of this policy.

6-403 Remedies after an award

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

- (1) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the school district; and
 - (b) the person who should have been awarded the contract may be reimbursed for the actual expenses reasonably incurred in connection with the solicitation, including reparation, not to exceed \$5,000.
- (2) if the person awarded the contract has acted fraudulently or in bad faith:
 - (a) the contract may be declared null and void; or

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- (b) the contract may be ratified and affirmed, if such action is in the best interest of the school district, without prejudice to the school district's right to such damages as may be appropriate.

ARTICLE 7 - INTERGOVERNMENTAL RELATIONS

Part A - Cooperative purchasing

7-101 Cooperative purchasing authorized

The school district may either participate in, sponsor, conduct, or administer a cooperative purchasing program for the procurement of supplies, services or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units, including use of state contracts.

The school district must, prior to conducting procurement activities hereunder, explore the availability of satisfying its needs through utilization of pre-existing contracts between the state's Division of General Services and private vendors, and must use such arrangements, if cost effective and otherwise advantageous to the school district. The school district may procure services, supplies or construction items through the contracts established by the General Services Division of the state of South Carolina, as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), South Carolina Code of Laws, 1976, independent of the requirements of this policy.

7-102 Sale, acquisition, or use of supplies

The school district may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of this policy.

7-103 Cooperative use of supplies and services

The school district may enter into an agreement with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties, independent of the requirements of this policy.

7-104 Joint use of facilities

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

ARTICLE 8 - MINORITY BUSINESSES

Part A - Minority businesses

8-101 Minority businesses

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

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