



**AGENDA
BOARD OF TRUSTEES
REGULAR MEETING
DUTCH FORK ELEMENTARY SCHOOL'S MINI THEATRE
SEPTEMBER 12, 2016**

1. Call to order at 6:00 p.m.
2. Enter executive session to consider the following:
 - a. Selected employment items (Exhibit A)
 - b. Receipt of legal advice regarding construction
3. Call to order at 7:00 p.m.
4. Welcoming remarks
5. Invocation – Larry Haltiwanger, Board of Trustees
6. Pledge of Allegiance – Lola Gantt, a fourth grade student at Dutch Fork Elementary School
7. School Board Spotlight
8. Approval of the Agenda
9. Approval of the minutes of the August 8, 2016 board meeting
10. Welcome and brief overview of Dutch Fork Elementary School by Julius Scott, Principal
11. Superintendent's Report
 - a. Back-to-School Report
12. Public participation*

ACTION AGENDA

13. Action as Necessary or Appropriate on Matters Discussed in Executive Session
14. Approval: Agreement to resolve the issue of liquidated damages under the Construction Contract for renovations and additions to Irmo High School with China Construction Company of America

DISCUSSION AGENDA

15. Review of Board Policies regarding Procurement/Construction (Exhibit B)
16. Initial Report: Vision 2020
17. Adjourn

FOR YOUR INFORMATION

18. The next regular school board meeting will be September 26, at Ballentine Elementary School.

*The Board welcomes and encourages public participation. We respectfully ask that you adhere to the procedures and the decorum provided in board policy BEDH "Public Participation at Meetings". Your comments should be limited to three minutes. Questions asked during public participation and placed in writing will receive a written response in a timely manner.



Minutes/August 8, 2016

The Board of Trustees of School District Five of Lexington and Richland Counties met at The Center for Advanced Technical Studies with the following members present:

Mr. Robert Gantt, Chairman
Mrs. Ellen Baumgardner, Vice Chairman
Mrs. Jondy Loveless, Secretary
Mr. Larry Haltiwanger
Mrs. Jan Hammond
Ms. Beth Hutchison
Mr. Ed White
Dr. Stephen Hefner, District Superintendent

The following staff were in attendance:

Mr. Mark Bounds, Chief Information Officer
Dr. Michael Harris, Chief Student Services Officer
Dr. Allison Jacques, Chief Human Resources Officer
Dr. Christina Melton, Chief Instructional Officer
Mr. Len Richardson, Chief Finance Officer

Chairman Gantt called the meeting to order and gave welcoming remarks.

The Invocation was given by Jondy Loveless, Secretary, Board of Trustees. The Pledge of Allegiance was led by Lauren Chen, a Dutch Fork Middle School student.

The Board conducted the School Board Spotlight.

During the Superintendent's Report, Len Richardson and Scott Carlin gave an update on Capital Projects and Capital Projects' Budgets (Exhibit B); and Mark Bounds presented information on the new legislation for the Telephone Consumer Protection Act.

No one spoke during public participation.

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of August 8, 2016

	B A U M G A R D N E R	G A N T T	H A L T I W A N G E R	H A M M O N D	H U T C H I S O N	L O V E L E S S	W H I T E
1. M. Hutchison S. Baumgardner Enter executive session to consider the following: a) selected employment items (Exhibit A) ; and b) receipt of legal advice regarding construction	X	X	A	X	X	X	A
2. M. Baumgardner S. Hutchison Approve the agenda	X	X	A	X	X	X	X
3. M. Hutchison S. Hammond Approve the minutes of the July 18, 2016 board meeting	X	X	A	X	X	X	X
4. M. Hutchison S. Loveless The Board review the policy for capital projects especially with regards to approving contracts for the non-routine projects	X	X	A	X	X	X	X
5. M. Hutchison S. Hammond Approve the selected employment items (Exhibit A)	X	X	A	X	X	X	X
6. M. Hutchison S. Baumgardner Approve second and final reading of proposed revisions to board policy IJOA-E(1) "Field Trip Request" (Exhibit C)	X	X	A	X	X	X	X
7. M. Baumgardner S. White Adjourn at 8:50 p.m.	X	X	A	X	X	X	X

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- 2710.2 **Use of Functional or Performance Descriptions.** Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the District. To facilitate the use of such criteria, the District must endeavor to include as a part of its purchase requisitions the principal functional or performance needs to be met. 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 often not practicable in construction, apart from the procurement of supply type items for a construction project. (SC Reg. § 19-445.2140(C))
- 2710.3 **Preference for Commercially Available Products.** It is the general policy of this District to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable. (SC Reg. § 19-445.2140(D))
2720. **DISTRICT SPECIFICATION PREPARATION AND REVIEW.** (SC Code § 11-35-2720)
- 2720.1 The District shall prepare or review, issue, revise, and maintain the specifications for supplies, services, information technology, and construction required by the District.
2730. **ASSURING COMPETITION.** (SC Code § 11-35-2730)
- 2730.1 All specifications shall be drafted so as to assure cost effective procurement of the District's actual needs and shall not be unduly restrictive.
2750. **SPECIFICATIONS PREPARED BY ARCHITECTS AND ENGINEERS.** (SC Code § 11-35-2750)
- 2750.1 The requirements of this article regarding the non-restrictiveness of specifications apply to each solicitation and include, among other things, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for District contracts.

ARTICLE 9

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

3010. **CONSTRUCTION CONTRACTING ADMINISTRATION.** (SC Code § 11-35-3010; SC Code Reg. § 19-445-2145)
- 3010.1 **Selection of Method.** The method of construction contracting administration used for a District construction project shall be determined to be that method which is most advantageous to the District and will result in the most timely, economical, and successful completion of the construction project. The District shall select the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations, including without limitation those identified in § 3010.2, that led to the selection of that particular method. (SC Code § 11-35-3010(1))
- 3010.2 **Considerations.** (SC Reg. § 19-445-2145(A)) This Subsection contains provisions applicable to the selection of the appropriate method of administration of construction contracts, that is, the contracting method and

configuration which is most advantageous to the District and will result in the most timely, economical, and otherwise successful completion of the construction project. Before choosing the construction contracting method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the District. The District shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the District's needs.

3010.2.1 **Selecting the Method of Construction Contracting.** In selecting the construction contracting method, the District should consider:

3010.2.1.1 The results achieved on similar projects in the past and the methods used;

3010.2.1.2 Appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill District requirements;

3010.2.1.3 Appropriate and effective means of obtaining both the design and construction of the project.

3010.2.2 **Criteria for Selection.** Before choosing the construction method, a careful assessment must be made by the District of the requirements the project must satisfy and those other characteristics that would be in the best interest of the District. The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including what sources of funding are available.

3010.2.3 The District should consider whether a price can be obtained that is fair and reasonable when considered together with the benefit to the District potentially obtainable from such a contract.

3010.3 **Written Determination.** (SC Reg. § 19-445-2145(A)(4))

The District shall make a written determination that must be reviewed by the Chief Business Officer. The determination shall prescribe the construction contracting method chosen and set forth the facts and considerations which led to the selection of that method. This determination shall demonstrate that the requirements and financing of the project were all considered in making the selection.

3020. CONSTRUCTION SERVICES PROCUREMENT PROCEDURES.

3020.1 **Source Selection.** All District construction contracts must be awarded by competitive sealed bidding pursuant to the procedures set forth in §1520 (Competitive Sealed Bidding) subject to the exceptions enumerated in § 3020.2 below, and except as provided in § 1550 (Small Purchases), § 1560 (Sole Source Procurements), § 1570 (Emergency Procurements). Competitive sealed proposals as provided in § 1530 must not be used, except in cases and in accordance with criteria as may be authorized by Section 3020.1.1. (SC Code § 11-35-3020(1))

3020.1.1 Pursuant to Section 3020.1 and the approval requirements of Section 3010, the following types of supplies, services, or construction may be procured by competitive sealed proposals:

3020.1.1.1 Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. hazardous waste remedial action).

3020.1.1.2 Design/Build or Lease-Purchase contracts where there must be selection criteria in addition to price.

- 3020.1.1.3 Energy conservation or other projects to be financed by vendors who will be paid from the District's savings.
- 3020.1.1.4 Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the District. (SC Reg. § 19-445.2095(F)(1))
- 3020.1.2 The Chief Procurement Officer shall develop and issue procedures which shall be followed by the District when using the competitive sealed proposal method of acquisition. (SC Reg. § 19-445.2095(F)(2))
- 3020.2 **Exceptions in Competitive Sealed Bidding Procedures for Construction.** (SC Code § 11-35-3020(2)) The process of competitive sealed bidding as required in § 3020(1) must be performed in accordance with the procedures outlined in Article 5 of this Code subject to the following exceptions:
- 3020.2.1 **Invitation for Bids.** Instead of § 1520.2 (Invitation for Bids), § 1520.3 (Notice) and § 1520.4 (Receipt & Safeguarding of Bids) of this Code, invitations for bids for each District construction project subject to subsection 3020.1.1 must be made in the following manner. The District must be responsible for developing a formal invitation for bids for each District construction project subject to § 3020.1.1 above. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids must be advertised in *SCBO*.
- 3020.2.2 **Bid Acceptance.** Instead of § 1520.6.1 (Bid Acceptance and Bid Evaluation) the following provisions apply. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this Code. The District's invitations for bids must set forth all requirements of the bid including, but not limited to:
- 3020.2.2.1 **Construction Subcontractors.** The District, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors who are expected to perform work to the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent (3%) of the prime contractor's total base bid. In addition, the District, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids any additional subcontractors who are expected to perform work 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 pursuant to § 4210 (Protests) or another provision of this Code. A bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform a portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform that work under the terms of the invitation for bids, the bidder shall list himself in the

appropriate place in his bid and not subcontract that work except with the approval of the District for good cause shown.

3020.2.2.2 **Failure to List.** Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

3020.2.2.3 **Subcontractor Substitution.** A prime contractor whose bid is accepted may not substitute a person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons:

3020.2.2.3.1 Upon a showing satisfactory to the District by the contractor that a subcontractor who was listed is not financially responsible;

3020.2.2.3.2 Upon a showing satisfactory to the District by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid;

3020.2.2.3.3 Upon a showing satisfactory to the District made by the contractor within four (4) working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;

3020.2.2.3.4 Upon a showing satisfactory to the District by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;

3020.2.2.3.5 Upon a showing satisfactory to the District by the contractor that the listed subcontractor is required to be licensed and does not have the license at the time it is required by law;

3020.2.2.3.6 When the listed subcontractor fails or refuses to perform its subcontract;

3020.2.2.3.7 When the work of the listed subcontractor is found by the District to be substantially unsatisfactory;

3020.2.2.3.8 Upon mutual agreement of the contractor and subcontractor;

3020.2.2.3.9 With the consent of the District for good cause shown.

- 3020.2.2.4 **Request for Substitution.** The request for substitution must be made to the District in writing. This written request does not give rise to a private right of action against the prime contractor in the absence of actual malice.
- 3020.2.2.5 **Method for Substitution.** Where substitution is allowed, the prime contractor, before obtaining prices from another subcontractor, shall attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received before the submission of the prime contractor's bid. This section does not affect a contractor's ability to request withdrawal of a bid in accordance with the provisions of this Code.
- 3020.2.2.6 **Bid Tabulations.** The District shall send all responsive bidders a copy of the bid tabulation within ten (10) working days following the bid opening.
- 3020.2.3 **Notice of Intent to Award; Award.** Instead of § 1520.10 (Award), the following provisions apply. Unless there is a compelling reason to reject bids as prescribed by this Code, 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 must be given by posting the notice at a location that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest pursuant to § 4210 (Protests) of this Code and the date and location of posting must be announced at bid opening. In addition to posting notice, the District promptly shall send all responsive bidders a copy of the notice of intended award and of the bid tabulation. The mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest pursuant to § 4210 (Protests) of this Code.
- 3020.2.3.1 **Protest Waiting Period.** After ten (10) days' notice is given, the District may enter into a contract with the bidder named in the notice in accordance with the provisions of this Code and of the invitation for bids. The Procurement Officer must comply with § 1810 (Responsibility of Bidders and Offerors). If, at 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 ten (10) day waiting period.
- 3020.2.4 **Negotiations After Unsuccessful Competitive Sealed Bidding.** Instead of § 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), the following provisions apply:
- When bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the District that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less any deductive alternates, does not exceed available funds by an amount greater than ten percent (10%) of the construction budget established for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder. The District may change the scope of the work to reduce the

cost to be within the established construction budget but may not reduce the cost below the established construction budget more than ten percent (10%) without written approval of the Superintendent based on the best interest of the District.

3025. APPROVAL OF CHANGES. (S.C. Code § 11-35-3025)

3025.1 The District may approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts which do not alter the original scope or intent of the project and which do not exceed the previously approved project budget.

3030. BONDS AND SECURITY. (SC Code § 11-35-3030; SC Reg. § 19-445-2145(C))

3030.1 Bid Bonds

3030.1.1 **Requirement for Bid Security.** Bid security is required for all competitive sealed bidding for construction contracts in excess of fifty thousand dollars (\$50,000.00) and where otherwise required by State law. Bid security is a certified cashier's check or a bond provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. Each bond must be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety. In the case of a construction contract under \$100,000.00, the District may, with the approval of the Superintendent, allow the use of a "B" rated bond when bid security is required. (SC Reg. § 19-445.2145(C) (1))

3030.1.2 **Amount of Bid Security.** Bid security must be in an amount equal to at least five percent (5%) of the amount of the bid at a minimum.

3030.1.3 **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 must be given one (1) working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, its bid must be rejected.

3030.1.4 **Withdrawal of Bids.** After the bids are opened, they must 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 § 1520.7 (Withdrawal of Bids; Cancellation of Awards), action must not be had against the bidder or the bid security.

3030.2 Performance Bonds and Payment Bonds.

3030.2.1 **When Required-Amounts.** When a construction contract is awarded pursuant to Section § 3020, the following bonds or security must be delivered to the District and shall become binding on the parties upon the execution of the contract:

- 3030.2.1.1 **Performance Bond.** A performance bond satisfactory to the District, executed by a surety company meeting the criteria set forth below, or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent (100%) of the price specified in the contract;
- 3030.2.1.2 **Payment Bond.** A payment bond satisfactory to the District, executed by a surety company meeting the criteria set forth below, or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price;
- 3030.2.1.3 **Bond Requirements.** In the case of a construction contract valued at fifty thousand dollars (\$50,000.00) or less, the District may waive the requirements of § 3030.2.1.1 and/or § 3030.2.1.2, provided that the District has otherwise protected itself.
- 3030.2.1.4 **Criteria.** Where bonds are required by § 3030.2.1.1 and § 3030.2.1.2, the contractor must provide a certified cashier's check in the full amount of the performance and payment bonds or may provide, and pay the cost of, performance and payment bonds in the form of AIA Document A311 "PERFORMANCE BOND AND LABOR AND MATERIAL BOND." Each bond shall be in the full amount of the Contract Sum, issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the contract price. In the case of construction under \$100,000, the Superintendent may allow the use of a "B" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety. (SC Reg. § 19-445-2145(C)(2))
- 3030.2.2 **Authority to Require Additional Bonds.** Subsection 3030.2 (Contract Performance and Payment Bonds) does not limit the authority of the District to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in § 3030.1, when the District deems such bonds to be in the best interests of the District.
- 3030.2.3 **Suits on Payment Bonds.** S.C. Code Ann. § 11-35-3030(2)(c)-(d) provides for legal actions on payment bonds.
- 3030.2.4 **Contractor Obligation to Subcontractors.** Nothing in this Code affects or relieves any contractor's obligations to its subcontractors and suppliers under S.C. Code §§ 29-6-10 et seq. ("Payments to Contractors, Subcontractors, and Suppliers").

3030.3 **Certified Copies of Bonds.** A 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 is prima facie evidence of the contents, execution, and delivery of the original.

3030.4 **Retention**

3030.4.1 **Maximum amount to be withheld.** In a contract or subcontract for construction which 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 must be no more than three and one-half percent (3.5%).

3030.4.2 **Release of Retained Funds.** When the work to be performed on a District construction project or pursuant to a District construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor is considered a separate division of the contract for the purpose of retention. As each division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract must be released forthwith to the prime contractor, who, within ten days of its receipt, shall release to the subcontractor responsible for the completed work the full amount of any retention previously withheld from him by the prime contractor.

3030.5 **Bonds for Bid Security and Contract Performance.** The requirement of a bond for bid security on a construction contract, pursuant to § 3030.1, and construction contract performance bond pursuant to § 3030.2, may not include a requirement that the surety bond be furnished by a particular surety company or through a particular agent or broker.

3040. **CONTRACT CLAUSES AND THEIR ADMINISTRATION.** (SC Code § 11-35-3040)

3040.1 **Contract Clauses.** The District construction contracts and subcontracts may include clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions including, but not limited to:

3040.1.1 The unilateral right of the District to order in writing:

3040.1.2 All changes in the work within the scope of the contract, and

3040.1.3 All changes in the time of performance of the contract which do not alter the scope of the contract work;

3040.1.4 Variations occurring between estimated quantities of work in the contract and actual quantities;

3040.1.5 Suspension of work ordered by the District;

3040.1.6 Site conditions differing from those indicated in the contract or ordinarily encountered.

3040.2 **Price Adjustments.**

3040.2.1 **Computation of Price Adjustments.** Adjustments in price pursuant to clauses referenced in § 3040.1 must be computed and documented with a written determination. The price adjustment agreed upon must approximate the actual cost to the contractor and all costs incurred by the contractor must be justifiably compared with prevailing industry standards, including

reasonable profit. Costs must be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon after that as practicable, and must be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:

- 3040.2.1.1 By unit prices specified in the contract or subsequently agreed upon;
- 3040.2.1.2 By the costs attributable to the events or situations under those clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon;
- 3040.2.1.3 By agreement on a fixed price adjustment;
- 3040.2.1.4 In another manner as the contracting parties may mutually agree (including by methods provided for in the contract); or
- 3040.2.1.5 In the absence of agreement by the parties, through unilateral determination by the District of the costs attributable to the events or situations under those clauses, with adjustment of profit or fee, all as computed by the District and subject to the provisions of Article 17 this Code.

3040.2.6 **Submission of Price Adjustments.** A contractor is required to submit cost or pricing data if an adjustment in contract price is subject to the provisions of § 1830 (Cost or Pricing Data).

3040.3 **Additional Contract Clauses.** The construction contracts and subcontracts may include clauses providing for appropriate remedies that cover as a minimum:

- 3040.3.1 Specified excuses for delay or nonperformance;
- 3040.3.2 Termination of the contract for default;
- 3040.3.3 Termination of the contract in whole or in part for the convenience of the District.

3040.4 **Contract Forms.**

Pursuant to Code Section 2010, the following Contract Forms, whose AIA Edition, if any, is designated by the Chief Procurement Officer shall be used, as applicable.

(1) Contracts for Services may be as follows:

- (a) Land surveyor: The District may use a letter contract written for each individual project.
- (b) Architect-Engineer: The district may use AIA Document B141-1997 or B151-1997, with modifications prepared by the District or Architect-Engineer.
- (c) Architect-Engineer/Construction-Management: For the Architect-Engineer, the district may use B141/CM, with modifications prepared by the District or Architect-Engineer. For the managers, it may use AIA Document B801, with modifications prepared District or construction manager.
- (d) Construction: the District may use AIA Document A101, 1997 Edition or AIA Document A101/CM. Other contract forms may be used as are approved by the Chief Procurement Officer.
- (e) For Contracts under Section 3230, the District may use a letter contract written for each individual project. The format and description of services shall be as approved by the Chief Procurement Officer.
- (f) For Construction under Section 1550, the district may use a letter contract written for each individual project. The format and description of services shall be as approved by the Chief Procurement Officer.

(2) Bidding Documents may be as follows:

- (a) Instruction to bidders may be AIA Document A701, with modifications prepared by the District or the Architect-Engineer.
- (b) General Conditions of the Contract for Construction may be AIA Document A201, with Supplementary Conditions and/or modifications prepared by the District or Architect-Engineer; or AIA A201/CM, with Supplementary Conditions and/or modifications prepared by the District or the Architect-Engineer/Construction Manager.
- (c) Bid Form and Change Order prepared by the Architect-Engineer, Construction Manager or District may be used.
- (d) Construction under Section 1550 and 1530 may be in a format and description of services approved by the Chief Procurement Officer.

3050. COST PRINCIPLES FOR CONSTRUCTION CONTRACTORS. (SC Code § 11-35-3050)

- 3050.1 The District may establish, in the construction project documents for each project, any cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in construction contracts which provide for the reimbursement of costs.

3210. PROFESSIONAL SERVICES FOR CONSTRUCTION. (SC Code §§ 11-35-3210)

- 3210.1 **Applicability.** Architect-engineer, construction management, and land surveying services shall be procured as provided in Section 3220 (Procurement Procedures for Professional Services for Construction) except as authorized by § 1560 (Sole Source Procurements), § 1570 (Emergency Procurements), and § 3230 (Exception for Small Architect, Engineer or Land Surveying Services). (SC Code §§ 11-35-3210(1))
- 3210.2 **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. (SC Code §§ 11-35-3210(2))

3220. PROCUREMENT PROCEDURES FOR PROFESSIONAL SERVICES FOR CONSTRUCTION. (SC Code § 11-35-3220)

- 3220.1 **District Selection Committee.** The District shall establish its own architect-engineer, construction management, and land surveying services selection committee, referred to as the "District Selection Committee", that must be composed of those individuals whom the Board of Trustees or its designee determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The Superintendent or his qualified responsible designee shall sit as a permanent member of the District Selection Committee for the purpose of coordinating and accounting for the committee's work. Final selection and award of contracts for architect/engineer and surveying services must be approved by the Board of Trustees.

3220.2 Advertisement of Project Description.

- 3220.2.1 The District Selection Committee shall be responsible for:
 - 3220.2.1.1 Developing a description of the proposed project;
 - 3220.2.1.2 Enumerating all required professional services for that project; and

- 3220.2.1.3 Preparing a formal invitation to firms for submission of information.
- 3220.2.2 The invitation must 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 must be advertised formally in *SCBO*.
- 3220.3 **Response to Invitation.** The date for submission of information from interested persons or firms in response to an invitation must not be less than fifteen (15) days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall 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 their successor forms or similar information, and any other information that the particular invitation may require.
- 3220.4 **Interviews with Interested Firms.** Following receipt of information from all interested persons and firms, the District Selection Committee shall hold interviews with at least three (3) persons or firms who respond to the committee's advertisement and who are considered most qualified on the basis of information available before the interviews. A list of firms selected for interview must be sent to all firms that submitted information in response to the advertisement, before the date selected for the interviews. If less than three (3) persons or firms respond to the advertisement, the committee shall hold interviews with those that did respond. The District Selection Committee's determination as to which are to be interviewed shall be in writing and based upon its review and evaluation of all submitted materials. The written report of the District Selection Committee must list specifically the names of all persons and firms that responded to the advertisement and enumerate the reasons of the District Selection Committee for selecting those to be interviewed. The purpose of the interviews is to provide the further information that may be required by the District Selection Committee to fully acquaint it with the relative qualifications of the several interested firms.
- 3220.5 **Selection and Ranking of the Three (3) Most Qualified.**
- 3220.5.1 The District Selection Committee shall evaluate each of the persons or firms interviewed in view of their:
- 3220.5.1.1 Past performance;
 - 3220.5.1.2 Ability of professional personnel;
 - 3220.5.1.3 Demonstrated ability to meet time and budget requirements;
 - 3220.5.1.4 Location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
 - 3220.5.1.5 Recent, current, and projected work loads of the firms;
 - 3220.5.1.6 Creativity and insight related to the project;
 - 3220.5.1.7 Related experience on similar projects;
 - 3220.5.1.8 Volume of work awarded by the District to the person or firm during the previous five (5) years, with the objective of effectuating an equitable distribution of contracts by the District among qualified firms

including Minority Business Enterprises certified by the South Carolina Office of Small and Minority Business Assistance and firms that have not had previous District work; and

- 3220.5.1.9 Any other special qualification required pursuant to the solicitation of the District.
- 3220.5.2 Based upon these evaluations, the District Selection Committee shall select the three (3) persons or firms that, in its judgment, are the best qualified, ranking the three (3) in priority order. The District Selection Committee's report ranking the three (3) chosen persons or firms must be in writing and include data substantiating its determinations.
- 3220.6 **Notice of Selection and Ranking.** When it is determined by the District that the ranking report is final, written notification of the highest ranked person or firm must be sent immediately to all firms interviewed.
- 3220.7 **Negotiation of Contract.** The Superintendent or a designee shall negotiate a contract for services with the most qualified person or firm at a compensation that is fair and reasonable to the District. If the Superintendent or designee is unable to negotiate a satisfactory contract with this person or firm, negotiations must be terminated formally. Negotiations must commence in the same manner with the second and then the third most qualified until a satisfactory contract is negotiated. If an agreement is not reached with one of the three, additional persons or firms in order of their competence and qualifications must be selected after consultation with the District Selection Committee, and negotiations must be continued in the same manner until agreement is reached.

3230. EXCEPTION FOR SMALL ARCHITECT/ENGINEER AND LAND SURVEYING SERVICES. (SC Code § 11-35-3230)

- 3230.1 **Authority.** The District securing architect-engineer or land surveying services, which are estimated not to exceed twenty-five thousand dollars (\$25,000.00) may award contracts by direct negotiation and selection, taking into account:
 - 3230.1.1 The nature of the project;
 - 3230.1.2 The proximity of the architect-engineer or land surveying services to the project;
 - 3230.1.3 The capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
 - 3230.1.4 Past performance; and
 - 3230.1.5 The ability to meet project budget requirements.
- 3230.2 **Maximum Fees Payable to One Person or Firm.** Fees paid during the twenty-four (24) month period immediately preceding negotiation of the contract by the District for professional services performed by an architectural-engineering or land surveying firm pursuant to § 3230.1 must not exceed seventy-five thousand dollars (\$75,000.00). Persons or firms seeking to render professional services pursuant to this section shall furnish the District a list of professional services, including fees paid for them, 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.

3230.3 **Splitting of Large Projects Prohibited.** The District may not break a project into small projects for the purpose of circumventing the provisions of §§ 3220-3230.

3245. **CONSTRUCTION WORK PROHIBITED BY ARCHITECT OR ENGINEER.** (SC Code § 11-35-3245)

3245.1 **"Other Work".** An architect or engineer performing design work, or construction manager performing "construction management services" as defined in this Code, under a contract awarded pursuant to the provisions of § 3220 (Procurement Procedures for Professional Services for Construction) or § 3230 (Exception for Small Architect/Engineer Land Surveying Services), may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction management firm has greater than a five percent (5%) interest. (SC Code § 11-35-3245(a))

3245.2 **Exceptions.** 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. If the construction manager performs or is responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of S.C. Code Ann. § 41-15-210, then the construction management firm is subject to all applicable fines and penalties. (SC Code § 11-35-3245(b))

ARTICLE 10

INDEFINITE DELIVERY CONTRACTS

3310. **INDEFINITE DELIVERY.** (SC Code § 11-35-3310)

3310.1 **General Applicability.** Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedure in § 3020 (Construction Services Procurement Procedures) and for architectural-engineering and land surveying services pursuant to § 3220 (Procurement Procedures for Professional Services for Construction).

3310.1.1 **Construction services.** When construction services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred fifty thousand dollars (\$750,000.00) for a two (2) year period with individual project expenditures not to exceed one hundred fifty thousand dollars (\$150,000.00).

3310.1.2 **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 (\$300,000.00) for a two (2) year period with individual project expenditures not to exceed one hundred thousand dollars (\$100,000.00). (SC Code § 11-35-3310(1))

3310.2 **Small Indefinite Delivery Contracts.** Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in § 3230 of this Code. A contract established under this

section shall be subject to and included in the limitations for individual and total contract amounts provided in § 3230 of this Code. (SC Code § 11-35-3310(2))

3310.2.1 With regard to Section 3310, the District will establish working procedures for indefinite delivery construction contracts. (S.C. Regs. § 19-445.2145(H)).

ARTICLE 11

MODIFICATIONS AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES

3410. AMENDMENTS TO AND TERMINATION OF CONTRACTS FOR SUPPLIES, EQUIPMENT AND SERVICES. (SC Code § 11-35-3410).

3410.1 Contract Clauses. The District may require the inclusion in supplies, services, and information technology contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

3410.1.1 Change in Work: 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; and

3410.1.2 Change in Quantity: variations occurring between estimated quantities of work in a contract and actual quantities.

3410.2 Price Adjustments.

3410.2.1 Adjustment Computation. Adjustments in price pursuant to clauses used pursuant to § 3410.1 above 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 industry 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 whichever one of the following ways is the most valid approximation of the actual cost to the contractor:

3410.2.1.1 By unit prices specified in the contract or subsequently agreed upon;

3410.2.1.2 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;

3410.2.1.3 By agreement on a fixed price adjustment;

3410.2.1.4 By rates determined by the Public Service Commission and set forth in the applicable tariffs;

3410.2.1.5 In such other manner as the contracting parties may mutually agree; or

3410.2.1.6 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