PROCUREMENT
AUDIT AND
CERTIFICATION

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CHARLESTON COUNTY SCHOOL DISTRICT
AGENCY
JULY 1, 1984 - JULY 31, 1987
DATE
Mr. Richard W. Kelly  
Division Director  
Division of General Services  
1201 Main Street, Suite 400  
Columbia, South Carolina 29201

Dear Rick:

Attached is the final Charleston County School District audit report and recommendations made by the Office of Audit and Certification. Also, incorporated into the report are the District's responses to the issues raised by the staff.

As indicated in items I., II.B and V. of the report, there are three unresolved issues.

1) The District's small purchase threshold at which competition is required. The District is currently appealing a Court of Appeals ruling to the State Supreme Court. (Reference page 8, item I)

2) The District's Board of Trustees has not approved their Minority Business Enterprise Utilization Plan. (Reference page 13, item B)

3) We recommend that certain sections of the District's procurement code be changed to bring them in agreement with Act 510 of 1986 which amended the South Carolina Consolidated Procurement Code. The District has refused to accept this recommendation. (Reference page 26, item B)

At this point, the remaining question is, How do we handle the unresolved issues? Charleston County School District has appealed the decision of this agency not to accept their small purchase threshold all the way to the State Supreme Court. Hopefully, item number one above will be resolved soon by the Supreme Court.
Item number two above is a violation of the District's procurement code and the Consolidated Procurement Code. Both codes require preparation of a Minority Business Enterprise Utilization Plan.

I believe item number three above is a violation of Section 11-35-70 of the Consolidated Procurement Code. This section covers school districts whose annual budgets exceed seventy-five million dollars. It allows such school districts to develop their own procurement codes if, in the written opinion of the Division of General Services, they are substantially similar to the Consolidated Procurement Code.

This Division has taken the position that school district procurement codes must remain substantially similar to the State Code. We have required that appropriate changes be made to school district procurement codes when the Consolidated Procurement Code has been changed.

Section IV.B. of the District's procurement code states:

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

Further, Section 11-35-1240 of the Consolidated Procurement Code states:

The board shall prescribe administrative penalties for violation of the provisions of this code and of regulations promulgated thereunder, excluding those matters under the jurisdiction of the Ethics Commission as provided by law.

These options have not become necessary in the past, but are available. We will continue to work toward the resolution of these issues. However, I feel there is little hope for compromise. So, I recommend that the report be submitted to the Budget and Control Board for their information.

Sincerely,
James J. Forth, Jr.
Assistant Division Director

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September 9, 1988

Mr. James J. Forth, Jr.
Assistant Division Director
Division of General Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

We have examined the procurement policies and procedures of the Charleston County School District for the period July 1, 1984 through July 31, 1987. As a part of our examination, we made a study and evaluation of the system of internal control over procurement transactions to the extent we considered necessary.

The purpose of such evaluation was to establish a basis for reliance upon the system of internal control to assure adherence to the Consolidated Procurement Code and State and District procurement policy. Additionally, the evaluation was used in determining the nature, timing and extent of other auditing procedures that were necessary for developing an opinion on the adequacy, efficiency and effectiveness of the procurement system.

The administration of the Charleston County School District is responsible for establishing and maintaining a system of internal control over procurement transactions. In fulfilling this responsibility, estimates and judgements by management are required to assess the expected benefits and related costs of control procedures. The objectives of a system are to provide
management with reasonable, but not absolute, assurance of the integrity of the procurement process, that affected assets are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and are recorded properly.

Because of inherent limitations in any system of internal control, errors or irregularities may occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions, or that the degree of compliance with the procedures may deteriorate.

Our study and evaluation of the system of internal control over procurement transactions as well as our overall examination of procurement policies and procedures were conducted with due professional care. They would not, however, because of the nature of audit testing, necessarily disclose all weaknesses in the system.

The examination did, however, disclose conditions enumerated in this report which we believe to be subject to correction or improvement.

Corrective action based on the recommendations described in these findings will in all material respects place the Charleston County School District in compliance with Act 493 of 1984 as amended by Act 109 of 1985 and its procurement code.

R. Vaught Shealy, Manager
Audit and Certification
INTRODUCTION

The Office of Audit and Certification conducted an examination of the internal procurement operating procedures and policies of the Charleston County School District. Our on-site review was conducted May 27, 1987 through August 7, 1987 and was made under authority as described in Act 493 of 1984 as amended by Act 109 of 1985. The examination was directed principally to determine whether, in all material respects, that the procurement system's internal controls were adequate and the procurement procedures, as outlined in the Internal Procurement Operating Procedures Manual, were in compliance with the South Carolina Consolidated Procurement Code and its ensuing regulations.

As with our audits of state agencies, our work was directed also toward assisting the school district in promoting the underlying purposes of the Consolidated Procurement Code which we believe to be applicable to all governmental bodies and which are outlined in Code Section 11-35-20, to include:

1. to ensure the fair and equitable treatment of all persons who deal with the procurement system of this State;

2. to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds of the State;

3. to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process.
SCOPE

Our examination encompassed a detailed analysis of the internal procurement operating procedures of the Charleston County School District and the related policies and procedures manual to the extent we deemed necessary to formulate an opinion on the adequacy of the system to properly handle procurement transactions.

The Office of Audit and Certification of the Division of General Services reviewed procurement transactions for the period July 1, 1984 - May 28, 1987, for compliance testing and performed other audit procedures through July 31, 1987 that we considered necessary in the circumstances to formulate this opinion. Our review of the system included, but was not limited to, the following areas:

(1) adherence to applicable laws, regulations and internal policy;
(2) procurement staff and training;
(3) adequate audit trails and purchase order registers;
(4) evidences of competition;
(5) small purchase provisions and purchase order confirmations;
(6) emergency and sole source procurements;
(7) source selections;
(8) file documentation of procurements;
(9) inventory and disposition of surplus property;
SUMMARY OF AUDIT FINDINGS

Our audit of the procurement system of Charleston County School District, hereinafter referred to as the District, produced findings and recommendations in the following areas:

I. Compliance With Act 493 of 1984, As Amended By Act 109 of 1985

Act 493 of 1984, which brought the District under the purview of the South Carolina Consolidated Procurement Code unless its procurement code was determined to be substantially similar by the Division of General Services of the State Budget and Control Board was passed by the General Assembly on June 27, 1984. The District did not make the agreed upon changes to its procurement code until April 27, 1987, nearly three years later. Further, as of this date, there remains one unresolved issue.

II. Required Determinations and Reports Not Prepared

A. Sole Source and Emergency Procurements

Some written determinations supporting sole source and emergency procurements have not been prepared. Reports have not been submitted to the Board of Trustees.
B. Minority Business Enterprise Utilization Plan

A Minority Business Enterprise Plan has not been approved by the District and required reports have not been prepared.

III. Procurement of Architect and Engineering Services

The District has not advertised procurements of these services as required.

IV. General Violations of the District's Procurement Code

A. Procurements Made Without Competition

Eight procurements were awarded without soliciting competition.

B. Improper Procurement Methodology

Four procurements were made by the small purchase method instead of the required sealed bid process.

C. Sealed Bid Procedures Violated

In four cases, the required minimum number of bids was not solicited.

D. Written Determinations Not Prepared for Proposals

In two cases, required written determinations were not prepared to support the use of request for proposals instead of invitations for bids.

E. Maintenance Contracts Extended Without Competition

One contract has been extended without competition being solicited.
V. **Review of the District's Procurement Code**

Changes in law require the District to modify and add to it's Code and regulations.

VI. **Effectiveness and Efficiency**

Several changes can be made which could improve the purchasing system.
RESULTS OF EXAMINATION

I. Compliance With Act 493 of 1984, As Amended by Act 109 of 1985

On June 27, 1984, the General Assembly passed Act 493 of 1984 which stated:

Notwithstanding any other provision of law, any school district whose budget of total revenues as shown in the most recently published annual report of the State Superintendent of Education exceeds seventy-five million dollars annually is subject to the provisions of Chapter 35 of Title 11, Code of Laws of South Carolina 1976 (South Carolina Consolidated Procurement Code); provided, however, that if a district has its own procurement code which is in the written opinion of the Division of General Services of the State Budget and Control Board substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the district is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which shall be performed every three years by the Division of General Services.

At that time, Charleston County School District's budget of total revenues exceeded seventy-five million dollars. Thus, as of the date the above legislation was enacted, the District was covered by the South Carolina Consolidated Procurement Code.

The District elected to develop a substantially similar procurement code rather than accept the State Code. Over the next fourteen months the District worked with the Division of General Services in an attempt to develop a mutually acceptable document, with limited success.

In August 1985 the State Procurement Review Panel ruled that, in the absence of an approved substantially similar
alternative procurement code, those school districts effected by Act 493 of 1984 were under the South Carolina Consolidated Procurement Code as of the date it was enacted. On August 26, 1985, the Division of General Services informed the District of this ruling and formally notified them that if recommended changes were not received by September 30, 1985, the District would be considered fully under the State Procurement Code.

The District appealed this action to the State Procurement Review Panel. On January 31, 1986, the State Procurement Review Panel ruled "Therefore, the Panel finds that the District's proposed code is not substantially similar to the CPC (Consolidated Procurement Code). It is so ordered." (Reference Order 1985-5).

Excerpts from the State Procurement Review Panel's order indicate in part, on page 5:

The District submitted its procurement code for review by General Services on or about July 13, 1984. No testimony in the record indicates the actual date but the record contains a detailed response to the District's submission from Tony Ellis, Director of General Services, to Emory Haselden, Deputy Superintendent for Operations dated August 3, 1984. In a four page list, Mr. Ellis details those portions of the District's proposed code which he believes must be modified to obtain his department's certification that the District's procurement code is substantially similar to that of the State. Such certification allows the Charleston School District to operate under its adopted Code rather than the CPC (Act 493, 1985; Act 109, 1985).

On September 26, 1985, the district protested the decision of General Services to deny it certification to operate under its own procurement code because its code included a small purchase limitation of $1,000.00. According to testimony at the hearing all other points raised in Mr. Ellis' letter of August 3, 1984, had been resolved to the satisfaction of both the District and General Services. (Emphasis Added)
On March 27, 1986, the Fifth Judicial Circuit issued a stay of the Procurement Review Panel's order *pendent lite* pending resolution of an appeal filed by the District.

On August 26, 1986, the Division of General Services provided conditional approval of the District's Procurement Code and regulations as follows:

District officials indicated in the State Procurement Review Panel hearing that the proposed changes to the Procurement Code and regulations addressed in Mr. Tony Ellis' letter of August 3, 1984 and Mr. Richard W. Kelly's letters of June 18, 1985 and August 26, 1985 were acceptable. (See attachments). In light of the Procurement Code and regulations and the District's acceptance of the proposed changes except for the small purchase limit, we approve your Procurement Code and regulations except for the small purchase limit, which is the subject of litigation.

On March 5, 1987, the circuit court lifted the stay against the State Procurement Review Panel's Order by ordering that their decision be upheld. At that time the District indicated that this decision would be appealed to the South Carolina Court of Appeals.

On April 27, 1987, the agreed upon changes to the District's Procurement Code and regulations were approved by the Board of Trustees excluding the small purchase limit.

On April 11, 1988, the South Carolina Court of Appeals affirmed the decision of the circuit court.

The District has indicated that the decision of the Court of Appeals will be appealed to the State Supreme Court. The issue of the small purchase limit has yet to be resolved.
District Response

While the agreed upon changes were not officially adopted by the Board until April 27, 1987, they were put into practice as they were agreed upon. Negotiations on various sections of the code were underway and it was felt that all changes would be made and presented to the Board when negotiations were complete.

II. Required Determinations and Reports Not Prepared

A. Sole Source and Emergency Procurements

The District's Procurement Code and regulations allows for procurements to be made as sole sources or emergencies where appropriate. When these procurement methods are used, written determinations are required to justify the action taken. Specifically, Regulation 19.b. (6) states in part, "Any request that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need." Regulation 20.g. states:

The Superintendent, the Deputy Superintendent for Operations, the Director of Support Services, the Director of Building and Grounds, the School Facilities Planning Officer, the Purchasing Agent or a designee of either office shall make a written determination stating the basis for an emergency procurement and for the selection of a particular contractor.

These required written determinations which indicate the basis of each sole source or emergency procurement decision have not been prepared in all cases.

Further, Section VIII, D. 1. and 2. of the District's Procurement Code require that:

1. Contents of Record

   The District shall submit semiannually a record
listing all contracts made under Sole Source Procurement or Emergency Procurement to the Deputy Superintendent for Operations. The record shall contain:

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

The Purchasing Office shall maintain these records for five years.

2. Publication of Record

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

These reports have not been prepared, submitted to the Board or made available for public inspection.

We recommend that the District immediately implement these requirements of their Procurement Code.

B. Minority Business Enterprise Utilization Plan

Act 493 of 1984, which brought Charleston County School District under the South Carolina Consolidated Procurement Code was effective July 1, 1984. Section 11-35-5240 of the State Procurement Code requires the preparation of a Minority Business Enterprise Utilization Plan to include but not be limited to:

(1) A policy statement expressing commitment to use MBE's in all aspects of procurement;

(2) The name of the coordinator responsible for monitoring the MBE Utilization Plan;
(3) Goals that include a reasonable percentage of total procurements directed toward minority vendors;

(4) Procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation, and;

(5) Procedures to be used when subcontracts are made with another governmental body.

In concert with this requirement of the State Procurement Code, Section XV.E, of the District's Procurement Code requires development of the same type plan. Further, Section XV.G. of the District's Code requires that annual reports of minority participation be made to the Board.

As of the time this audit was performed, the District had not submitted reports of minority participation to the Board. Further, a Minority Business Enterprise Utilization Plan has not been approved by the Board of Trustees.

District Response

A. We concur. Corrective action is being taken to insure compliance.

B. A Small and Minority Business Utilization Plan was developed and presented to the Board of Trustees on July 20, 1987. The Board tabled the plan. We concur that required reports have not been made to the Board and corrective action is being taken to insure compliance.

III. Procurements of Architect and Engineering Services

The State Procurement Code requires that procurements of architect-engineer, construction management and land surveying services be made only after formal invitations to firms for
submission of information have been developed and advertised. The only exception to this process is for small projects where fees to be paid these construction professionals are not anticipated to exceed $12,000 and the firm selected has not been paid more than $36,000 in the previous two years.

The Division of General Services notified the District on June 18, 1985 that this requirement would have to be incorporated into the District's Procurement Code. On August 2, 1985, the District notified the Division that, "Your recommendation to advertise in the local newspaper for architect, engineer and land surveying services in addition to mailed invitations is a good one, and we will do this." Thus, Section 30.b.(3) of the District Procurement Code requires:

When an architect is to be selected, requests will be sent to all architects on file and advertised in a local general circulation newspaper giving them a general description of the project.

None of the District's procurements of architect engineer, construction management and land surveying services for fiscal years 1985/86 and 1986/87 were advertised as required. All of these procurements are in noncompliance with this requirement.

All future procurements of architect-engineer, construction management and land surveying services must be formally advertised before they are made. The requirement for advertising was incorporated into the manual on April 27, 1987.

**District Response**

We concur. The practice has been to solicit from those firms on which we have an Architect's Qualification Statement (AIA form
B431) and those listed in the yellow pages of the telephone directory. We will publicly advertise for these services in the future.

IV. General Violations of the District's Procurement Code

We reviewed two hundred-forty procurements of more than $1,000.00 each and twenty-four sealed bid procurements and found the following violations or exceptions to the District's Code and regulations.

A. Procurements Made Without Competition or Supported By Sole Source or Emergency Determinations

Eight procurements in our test sample were awarded without soliciting competition.

<table>
<thead>
<tr>
<th>Purchase Order Number</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>74433</td>
<td>$1,300.00</td>
</tr>
<tr>
<td>76999</td>
<td>1,460.97</td>
</tr>
<tr>
<td>74239</td>
<td>1,125.14</td>
</tr>
<tr>
<td>49691</td>
<td>6,692.00</td>
</tr>
<tr>
<td>59445</td>
<td>6,795.00</td>
</tr>
<tr>
<td>59444</td>
<td>3,000.00</td>
</tr>
<tr>
<td>51187</td>
<td>6,000.00</td>
</tr>
</tbody>
</table>

Voucher Number

11900 2,392.47

Section 18.b. of the District's Procurement regulations requires the following solicitations of competition for purchases from $1,000.00 to $2,500.00:

<table>
<thead>
<tr>
<th>Dollar Range</th>
<th>Competition Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,000.00 - $1,500.00</td>
<td>Solicitation of verbal or written quotes from a minimum of two qualified sources</td>
</tr>
<tr>
<td>$1,500.00 - $2,500.00</td>
<td>Solicitation of written quotations from three qualified sources</td>
</tr>
</tbody>
</table>
Section 6.a. of the District's Procurement regulations requires the following solicitations of competition for purchases from $2,500.00 to $9,999.99:

<table>
<thead>
<tr>
<th>Dollar Range</th>
<th>Competition Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,500.00 - $4,999.99</td>
<td>Solicitation of formal sealed bids from a minimum of three qualified sources</td>
</tr>
<tr>
<td>$5,000.00 - $9,999.99</td>
<td>Solicitation of formal sealed bids from a minimum of five qualified sources</td>
</tr>
</tbody>
</table>

The District should adhere to its requirements for competitive procurements.

B. Improper Procurement Methodology

The following procurements were made pursuant to solicitations of either telephone quotes or informal written quotations.

<table>
<thead>
<tr>
<th>P.O. #</th>
<th>Amount</th>
<th># of Telephone or Written Quotes</th>
<th># of Sealed Bids Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>75317</td>
<td>$60,480.50</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>67962</td>
<td>9,400.00</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>70422</td>
<td>2,956.00</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>69629</td>
<td>2,800.00</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

Section V.B.2. of the District's Procurement Code states:

Contracts amounting to two thousand, five hundred dollars or more shall be awarded by competitive sealed bidding...

The issue here is both of improper procurement methods being used and insufficient competition being solicited.
The District should follow its requirements for competitive sealed bidding in the future.

C. Sealed Bid Procedures Violated

The following procurements were made based upon formal invitations for bids but bids were not solicited from the minimum number of vendors as required in Section 6.a.(4) of the District’s Procurement regulations:

<table>
<thead>
<tr>
<th>Bid Number</th>
<th>Amount of Award</th>
<th>Bids Solicited</th>
<th>Bids Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>97(85-86)</td>
<td>$8,480.06</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>47(85-86)</td>
<td>18,882.22</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>95(86-87)</td>
<td>6,363.00</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>49(86-87)</td>
<td>14,228.01</td>
<td>4</td>
<td>7</td>
</tr>
</tbody>
</table>

The regulations indicate that bids must be solicited from the minimum number of vendors. If the number required cannot be solicited, the purchasing agent or buyer must certify in writing that all known sources were solicited.

We recommend that the District comply with this requirement of its procurement regulations.

D. Written Determinations Not Prepared For Proposals

Our sample included the following two procurements which were made pursuant to request for proposal solicitations. However, the required written determinations justifying the use of this source selection method were not prepared.
Section V.B.3.a, of the District's Procurement Code requires that a written determination be prepared when competitive sealed proposals are to be used instead of competitive sealed bids.

We recommend that the District prepare written determinations supporting the use of requests for proposals whenever this source selection method is used.

E. Maintenance Contracts Extended Without Competition

The below listed procurement has been extended year after year without preparation of sole source determinations, multi-year determinations, or seeking competition. This agreement was entered into prior to the District coming under the Code.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>YEARLY AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>boiler maintenance &amp; cleaning</td>
<td>19,470.00</td>
</tr>
</tbody>
</table>

The District must evaluate each continuing maintenance procurement and handle as appropriate:

a) seek competition through sealed bid method.

b) seek competition through request for proposal process.

c) determine that the procurement is a sole source and prepare the sole source determination.

The District may make multi-year awards up to a maximum of five years if the services meet the criteria as stated in the regulations.
District Response

A. (1) PO #M74433 dated July 7, 1986 in the amount of $1300.00 was issued to Garvin Sewer System to pump out the septic tank at Ellington Elementary. The size of the tank was unknown, therefore, no estimate of cost could be made. The Cost was not determined until after the tank had been pumped and the number of loads was known. This should have been declared an emergency purchase but, no written determination was made at the time.

(2) PO #M76999 dated November 5, 1986 in the amount of $1,460.97 was issued to Manufactured Housing Services, Inc. for 3 months use of a 12' x 60' mobile classroom. This was an emergency need for classroom space and should have been so declared but, no written determination was made at the time.

(3) PO #M74329 dated June 19, 1986 in the amount of $1,125,14 was issued to Future Systems for copier repairs at Moultrie Middle School. This is the only vendor authorized to supply parts for the copier. This should have been declared a sole source purchase but, no written determination was made at the time.

(4) PO #49691 dated June 28, 1985 in the amount of $6,692.00 was issued to James Oldsmobile for rental of driver education cars. This is the only auto dealer interested in providing vehicles for this program. Without this interest there would be no driver education program. This should have been declared a sole source purchase but, no written determination was made at the time. A letter will be sent on future purchases of this nature to determine if any interest can be found among dealers for participation in this program.

(5) PO #59445 dated June 26, 1986 in the amount of $6,795.00 was issued to James Oldsmobile for rental of driver education cars. The same explanation in item 4 applies here.

(6) PO #59444 dated June 26, 1986 in the amount of $3,000.00 was issued to James Oldsmobile for repairs and cleanup of driver education cars. The same explanation in item 4 above applies here.

(7) PO #51187 dated September 24, 1985 in the amount of $6,000.00 was issued to NCR Corporation for installation of computer equipment. The District's maintenance agreement with NCR requires that NCR must certify and install any equipment on the District's NCR computer for
it to be included in the maintenance agreement. This should have been declared a sole source purchase but, no written determination was made at the time.

(8) Voucher #11900 - $2,392.47; January 9, 1986. This is invoice #119 for psychological evaluation services performed by Jeanette Casat in November and December 1985. Article IV(6)(F) and V(B) of the District's Procurement Code permits the contracting of Certain Professional Services where that service is customarily done on a fee basis rather than by competitive bidding. The District uses an established fee schedule for psychological evaluations. That fee schedule was used in this instance.

B. (1) PO #75317 dated August 15, 1986 in the amount of $60,480.50 was issued to Carolina Mobile Homes for the purchase and delivery of three mobile classrooms. Per the bid award recommendation this purchase was publicly advertised plus bids were requested from Carolina Mobile, Best Steel and Coker. Bids were received from Carolina Mobile and Best Steel. The bids were publicly opened and read at 2 PM on June 19, 1986. No recommendation was made to award because none of the bidders were approved by the State. In July 1986 the State approved Carolina Mobile Homes to construct a unit for review. The unit was subsequently approved and the District purchase three units.

(2) PO #M67692 dated June 21, 1985 in the amount of $9,400.00 was issued to Georgia Pacific, Inc. for 2709 sheets 3/4" x 4' x 8' Oak Veneer Plywood. Georgia Pacific is the only wholesale lumber dealer in the area and consistently has the lowest prices on bulk purchases of this nature. However, we concur that the market should be tested to insure competition.

(3) PO #M70422 dated November 6, 1985 in the amount of $2,956.00 was issued to Johnson Building Corporation, Bromac Corporation and Sires Construction Company. This should have been declared an emergency purchase to protect the building from vandalism, however, a written determination was not made.

(4) PO #B69629 dated September 26, 1985 in the amount of $2,800.00 was issued to Garvin Sewer and Septic to pump and transport sewage from Laing Middle School. Written quotes were received from Fain Septic Tank Service, Garvin Sewer & Septic Tank Service, Inc. and West Ashley Septic Tank. This was an emergency situation but, was not so determined in writing.
V. Review of the District's Procurement Code

The Division of General Services gave conditional approval of the Procurement Code and regulations of the District as being substantially similar to the South Carolina Consolidated Procurement Code on August 26, 1986. Since that time, however, changes have been made to the South Carolina Consolidated Procurement Code, some of which directly affect this approval. Additionally, further review of the South Carolina School Facilities Planning and Construction Guide, which the District follows for construction services procurements, revealed that one section therein is not substantially similar to the corresponding provisions of the Consolidated Procurement Code. Thus, in order for the District's Procurement Code to remain substantially similar, we recommend that the following changes be made:

A. Section 6a(3) of the District's regulations states that seven qualified sources must be solicited for a procurement of $10,000 or more. To be similar to the Consolidated Procurement
Code, ten bids must be solicited from qualified sources. This section of the District's regulations was inadvertently approved but this change must be made.

B. Changes resulting from the enactment of Act 510 of 1986, effective June 11, 1986:

1) Section 11-35-1560, Sole Source Procurement, was changed by adding:

Any violation of these regulations by a purchasing agency shall, upon recommendation of the Division of General Services with approval of the majority of the Budget and Control Board, result in the temporary suspension not to exceed one year of the violating agency's ability to procure supplies, services, or construction items under this section.

2) Section 11-35-1530, Competitive Sealed Proposals, Items (6), (7) and (8) were changed to read:

(6) Negotiation with Responsible Offerers and Revision to Proposals. As provided in the request for proposals, negotiations may be conducted with any offerers submitting a proposal, which appears to be eligible for contract award pursuant to the selection criteria set forth in the request for proposals. All apparently eligible offerers must be accorded the opportunity to submit best and final proposals if negotiations with alteration to the RFP and such alteration has a cost consequence that may alter the order of offerers price quotations contained in the initial proposals. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerers.

(7) Award. Award must be made to the responsive offerer whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in evaluation and there must be adherence to any weightings specified for each factor in the request for proposals. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures for the notification of intent to award the contract and the award of the
contract must be the same as those required in Section 11-35-1520 (11).

(8) Other. When the proposal considered most advantageous to the State exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer, the head of a purchasing agency, or the designee of either officer above the level of procurement officer, that time or circumstance do not permit the delay required to re-solicit competitive sealed proposals, a contract may be awarded pursuant to this section.

The offerer whose proposal is determined most advantageous to the State, taking into consideration price and the evaluation factors set forth in the RFP, must be requested to accept the contract for the available funds without any change in the scope of work. If the offerer agrees, the contract must be awarded. If the offerer declines, the next offerer whose proposal is determined to be the second most advantageous to the State must be requested to accept the contract under the terms noted above. This procedure must be followed with each successive offerer until all offerers whose proposals are considered responsive to the requirement of the contract have been exhausted. If the contract has not been awarded after a request has been made to each acceptable offerer, the scope of the request for proposals may be changed to reduce the cost and all offerers must be allowed to submit their best and final offer.

3) Section 11-35-1520, Competitive Sealed Bidding, Item (10), was changed to read:

(10) The contract must be awarded with reasonable promptness by written notice. When a contract has a total or potential value in excess of fifty thousand dollars, notice must be given to all bidders responding to the solicitation as to the agency's determination that a certain bidder is the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation of bids unless there is a compelling reason to reject one or more bids as prescribed by regulations of the Board. Notice may be given by first-class mail of this intent to contract to the name and address on the bid documents. Sixteen days after notice of intent to award a contract to the lowest responsive bidder, the agency may enter into a contract with this bidder in accordance with the bid solicited. A determination of
responsibility must be made before award in accordance with Section 11-35-810.

This section requires the issuance of an intent to award statement before actual award is made for all contracts in excess of $50,000.00.

C. Changes resulting from reevaluation of the South Carolina School Facilities Planning and Construction Guide of the State Department of Education, hereinafter referred to as the Guide, are as follows:

All public school districts are required to follow the Guide; Regulation 43-191. In the past, the Division of General Services accepted the procurement procedures of the Guide as being substantially similar to the South Carolina Consolidated Procurement Code for procurement of construction services.

However, due to recent requests for further evaluation of this issue, we have reopened the topic. Based on further review, we believe that the Guide may not offer the protection afforded vendors in the Procurement Code sections covering construction procurement, specifically dealing with the listing of subcontractors.

Section 11-35-3020, Construction Procurement Procedures, Item (2) (b) of the South Carolina Consolidated Procurement Code reads as follows:

(b) Bid Acceptance. In lieu of Section 11-35-1520 (7) the following provisions shall apply. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The using agency's invitation for bids shall set forth all the requirements of the bid including but not limited to the following:
(i) Any bidder or offerer in response to an invitation for bids shall set forth in his bid or offer the name and the location of the place of business of each subcontractor who will perform work or render service to the prime contractor to or about the construction, and who will specifically fabricate and install a portion of the work in an amount that exceeds the following percentages:

- Prime contractor's total bid up to three million dollars .................. 2 1/2%
- Prime contractor's total bid is between three and five million dollars ........................................ 2%
- Prime contractor's total bid is over five million dollars............. 1 1/2%

(ii) Failure to list subcontractors in accordance with this section and any regulation which may be promulgated by the board shall render the prime contractor's bid unresponsive.

(iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid except with the consent of the awarding authority, for good cause.

(iv) The using agency shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

Either this section of the Code will have to be adopted or a substantially similar alternative will have to be developed. District construction officials are asked to consider the alternatives. The Office of Audit and Certification plans to work with all districts required to develop substantially similar procurement codes in this endeavor.

Finally, each one of these recommended changes to the District's Procurement Code may also require changes to the regulations. These should be reviewed carefully to determine what those changes might be.
District Response

A. We routinely seek as many solicitations as possible regardless of the dollar value. In many situations there are not ten qualified sources from whom we can solicit. We will make the change plus a statement will be added in each bid file that all known sources were solicited when the minimum number of sources cannot be met.

B. On August 26, 1986 the Division of General Services granted the Charleston County School District an exemption from the Consolidated State Procurement Code under Act 493 with the exception of an item under litigation. The District is not operating under the Consolidated Procurement Code and we do not concur that all changes made to the Consolidated Procurement Code since our exemption should be added to the District's Procurement Code. The District should be allowed to voluntarily adopt those changes or additions which are to its own best interest and advantage.

C. It is our opinion that the requirements outlined in Section 11-35-3020 of the Consolidated Procurement Code are extremely difficult to enforce. To do this we would have to receive a schedule of values with each bid to determine the percentage amounts to verify the subcontractor’s listing. Our preference is for the general contractor to list all subcontractors and place appropriate license numbers by those who require licensing. We would then check the license numbers as we currently do. This, in effect, will exceed the recommended changes.

VI. Effectiveness and Efficiency

During our audit, we observed several areas where possible improvement may be made. These items are listed as constructive recommendations only.

1a. Many of the procurements that were made without competition were made in the maintenance area. Maintenance personnel would solicit bids and send requisitions to purchasing for a purchase order to be issued. Records of bids are maintained in the maintenance area with only a copy of the purchase order being maintained in central purchasing.
We recommend that bids or quotations obtained by maintenance be forwarded to purchasing for review along with the requisition to confirm that competition was solicited.

1b. Further, due to the volume of small dollar procurements in the maintenance area, we recommend the appropriate use of blanket purchase agreements as authorized in District Procurement Regulation 18.c-g. With proper management and strict supervision by central purchasing, blanket purchase agreements could allow for simplified procurement procedures with adequate control.

1c. Finally, due to the volume of purchasing activity in the maintenance area, the District should consider establishing a position for a maintenance buyer that would be physically located in the maintenance area but under the direction of central purchasing.

2. Construction project files are maintained by the facilities planning department. During our audit we encountered many problems locating the required documents including but not limited to the following:

Advertisements for bids
Payment and performance bonds
Bids
Bid tabulations
Contracts
Board approvals

We recommend that all records and documents for each project be maintained in a separate file in facilities planning.

3. Purchasing approval at Charleston County School District appears to be very low. The purchasing agent is limited to $2,000 and the Deputy Superintendent of Operation is limited to $5,000.00.
We believe that paper flow would be greatly enhanced if the Deputy Superintendent of Operations were given $20,000 in authority. The Superintendent of Education might review only those potential awards requiring approval by the Board.

4. Of 273 sealed bids handled by Charleston County School District during fiscal year 1986/1987, 79 awards were made for less than $2,500 each.

Procurements less than $2,500 may be accomplished easier and quicker using the small purchase procurement methods.

District Response

1a. This recommendation has already been implemented.

1b. We do not concur with this recommendation. Our experience with blanket purchase orders has proven to be an accounting nightmare. We prefer to retain our present separate purchase order system. Although more paperwork is required, we have a positive audit trail for each purchase and it is difficult for duplicate charges to be made without our recognizing that a problem exists. An alternative to blanket purchase orders is a contract with a stated percentage off of retail pricing. We would still use individual purchase orders under this type arrangement.

1c. This recommendation is taken under advisement.

2. The Facilities Planning Office is currently in the process of redesigning its filing system to improve its documentation retrieval.

3. This recommendation is taken under advisement.

4. This is not necessarily true. Many purchases under $2,500 are for 20-30 items. To get verbal or written quotes on this volume would be extremely time consuming. In situations of this nature it is much easier for the purchasing officer to solicit a bid. Further, many of the purchase orders issued during this period for under $2,500
were the result of large line item bids with multiple awards.

**District General Comments**

There are a number of references in this report that the audit was being conducted "to assure adherence to the Consolidated Procurement Code and State...policy", "in compliance with the South Carolina Consolidated Procurement Code and its ensuing regulations"; "in promoting the underlying purposes of the Consolidated Procurement Code", etc.

The District was granted an exemption from the South Carolina Consolidated Procurement Code by the Division of General Services under Act 493 of 1984 except for an item under litigation. It is our opinion that because of this exemption all references to the State Procurement Code for compliance purposes are not relevant to this audit report and should be deleted. Because the District operates under its own code and regulations, any references relative to compliance, adherence or purpose should be made to the Charleston County School District Procurement Code and Regulations rather than the State Procurement Code.
CONCLUSION

As enumerated in our transmittal letter, corrective action based on the recommendations described in the findings in the body of this report, we believe, will in all materials respects place Charleston County School District in compliance with the Procurement Code and ensuing regulations.

Subject to this corrective action, we recommend that Charleston County School District be allowed to continue procuring all goods and services, construction, information technology and consulting services as outlined in the Procurement Code pursuant to act 493 of 1984.

Marshall B. Williams, Jr.
Supervisor, Audit and Certification

R. Voight Shealy
Manager, Audit and Certification
September 12, 1988

Mr. James J. Forth, Jr.
Assistant Division Director
Division of General Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Dear Jim:

The Office of Audit and Certification has worked with the Charleston County School District toward eliminating the noncompliance discovered during the audit. We believe that substantial progress has been made except for three items.

Two of these exceptions are the central issue with public school districts covered by Section 11-35-70, South Carolina Code of Laws, as amended. That Section indicates that a public school district whose annual budget of expenditures exceeds seventy-five million dollars is subject to the Consolidated Procurement Code unless their procurement code is determined to be substantially similar by the Division of General Services.

1) As noted in report point I., the Division of General Services has been involved in litigation with Charleston County School District over the small purchase threshold of their procurement code since August 1985. This is the dollar amount threshold at which competition is required for procurements.

On April 11, 1988, the South Carolina Court of Appeals upheld the decision of the Division of General Services, the State Procurement Review Panel and the South Carolina Circuit Court that this provision of the District's procurement code was not substantially similar to the Consolidated Procurement Code. This ruling is currently being appealed to the State Supreme Court by the District.
2) The Division of General Services has maintained that school district procurement codes must remain substantially similar to the Consolidated Procurement Code. If the Consolidated Procurement Code changes, the school district codes must change. As noted in item V.B. of the report, we recommended that several changes be made to the District's procurement code based upon changes to the Consolidated Procurement Code resulting from the enactment of Act 510 of 1986, effective June 11, 1986.

The District has refused to make these changes.

The other unresolved exception is that the District does not have a Minority Business Enterprise Utilization Plan. Such a plan was submitted to the Board of Trustees but it was tabled. Reference page 13.

We will continue to work toward the resolution of these issues.

I recommend that the report be submitted to the Budget and Control Board for their information.

Sincerely,

R. Voight Shealy, Manager
Audit and Certification