

# 2021 Model Procurement Code and Procurement Best Practices

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# Agenda

- Major Changes
- Benefits
- Considerations and Reminders
- Frequently Asked Questions

# Disclaimer

This presentation is a high-level overview of the 2021 Model School District Procurement Code.

This presentation is *not a substitute* for reading the 2021 Model Code and the applicable state and federal regulations. It will not cover everything you may need to know to make decisions for your school district.

# **2021 Model School District Procurement Code**

- Proposed Code Released **March 19, 2021** by SC State Fiscal Accountability Authority (SFAA) Division of Procurement Services
- Incorporated significant changes made in 2019-20 to SC Consolidated Procurement Code and Regulations
- As approved, supersedes 2011 version.

# Major Changes

- Small Purchase Thresholds
- Public Notices
  - Sole Source
  - Emergency Procurement(s)
- Cooperative Procurement(s)
- Other Considerations

Major Change

# **SMALL PURCHASE THRESHOLDS**

# Small Purchase Thresholds

- Located in *Code Reference 11-35-1550, Regulation 2100 (Model Code)*
- Aligns to federal procurement regulations 2 CFR Part 200.317–327
- Increases flexibility
- Requires documentation
- Requires *bona fide* quote or advertisement

# Small Purchase Threshold: Up to \$10,000

- No competition
- One quote deemed as “Fair and Reasonable”
- Must be distributed among qualified suppliers (no change)
- When practical, use different vendors
- Consider total potential value



## **Small Purchase Threshold: \$10,000.01 to \$25,000.00**

- Three “written quotations” from “qualified sources of supply” (*bona fide* offers)
- Advertise in SCBO if you cannot obtain *bona fide* offers
- No more “No Bids”
- Aligns with federal regulation (informal procurement methods)

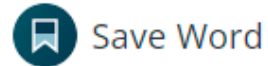
# Small Purchase Thresholds: COTS / Construction

- Commercially available off-the-shelf (COTS) products considered small purchase \$10,000-\$100,000
- Small Construction considered purchase \$10,000-\$100,000
  - Allows written quotes, bids, or proposals (*bona fide* offers)
  - Advertise in SCBO if you cannot obtain *bona fide* offers
  - *Responsive, and responsible offers*

# What is *bona fide*?

- Merriam-Webster definition

## bona fide adjective



bo-na fide | \ 'bō-nə-, fīd , 'bä-; ,bō-nə-'fī-dē, -'fī-də  \

### Essential Meaning of *bona fide*

1 : real or genuine

// She has established her position as a *bona fide* celebrity.

// His latest record was a *bona fide* hit.

2 *law* : made or done in an honest and sincere way

// a *bona fide* offer

// They have a *bona fide* claim for the loss.

Major Change

# **PUBLIC NOTICES**

# Public Notice: Sole Source Procurements

- No dollar limit
- Written determination required
- Unique
- Regulations 2105 states “The following are examples of circumstances which could necessitate sole source procurement:
  - (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
  - (2) where a sole supplier’s item is needed for trial use or testing;
  - (5) where the item is one of a kind;”

*Code Reference 11-35-1560*  
*Regulation Reference 19-445.2105*

# Sole Source Procurements

Adequate public notice of the intent to award without competition must be posted in SCBO

- Between \$50,000-\$250,000: Advertise five (5) business days BEFORE entering contract
- Greater than \$250,000: Advertise 10 days BEFORE entering contract

Notice is not required if appropriate chief procurement officer, after consultation with head of purchasing agency, determines in writing that award without such notice is in the interest of the State.

# Public Notice: Emergency Procurement

When a contract entered pursuant to subsection (A) has a total or potential value in excess of fifty thousand dollars, notice of the award must be posted [in SCBO] **as soon as practicable thereafter**.

- Only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations

*Code Reference 11-35-1570*

- A serious threat must be present to:
  - Functioning of District Government
  - Preservation or protection of property
  - Health and safety of any person

*Regulation Reference 2110*

# More on Emergency Procurement

- Emergencies: floods, epidemics, riots, critical equipment failure, fire loss
- Not emergencies: football field, bus repair, honor cords, “backhoe front-end loader for *possible* use” throughout the district
- Must be limited to the extent of the crisis
- Must obtain “as much competition as is practicable under the circumstances.”



# Protests

- Protest Clauses added to Public Notices for Sole Source and Emergency Procurements
- An actual bidder or offeror may file a notice of intent to protest within five (5) business days after notice to award posting (*Code Reference 11-35-4210.C.*)
- If bidder/offeror appropriately files notice of intent to protest, they may perfect protest within fifteen (15) days after posting the notice of intent

Major Change

# **COOPERATIVE PROCUREMENT(S)**

# Cooperative Procurement(s)

- Cooperative purchasing authorized
  - Section 11-35-4810
- “If the District wants to participate in a cooperative procurement conducted by another public procurement unit, the procurement must comply with this code and all its procedures.”
- An intergovernmental contract, however, cannot be used to circumvent the code’s requirements. See § 11-35-4880

# Intergovernmental Relations

- (1) Consistent with Section 40(2), Article 19 of the Code applies, to all political subdivisions, including school districts.
- (2) Section 11-35-4810 provides the authority for Districts to participate in statewide term contracts established by the Division of Procurement Services of the State Fiscal Accountability Authority.
- (3) A District is not authorized to participate in a cooperative purchase unless the acquisition is conducted in accordance with the District's procurement code.

# Other Considerations

Section 410. Public access to procurement information.

(Remember that FOIA, the Freedom of Information Act applies to school districts!)

Section 2050. Void contract terms or conditions

Article 15. Supply Management (Regulations for Sale, disposal of property)

Regulation 2127. Organizational Conflicts of Interest

Why Adopt?

# **BENEFITS OF 2021 MODEL CODE**

# Benefit of New Code

- Consistency for *all* funds (local, state, federal)
- Uniformity across state
- Aligns with federal regulations – 2 CFR Part 200
- Gives clear guidance or “rules”
- Provides basis for transparency
- Potential time saver (no need to “re-create the wheel”)

# Important for Managing Federal Funds

## Uniform Grant Guidance in 2 CFR Part 200.318-327 and Appendix II

§200.317 Procurements by states.

§200.318 General procurement standards.

§200.319 Competition.

§200.320 Methods of procurement to be followed.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

§200.322 Domestic preferences for procurements.

§200.323 Procurement of recovered materials.

§200.324 Contract cost and price.

§200.325 Federal awarding agency or pass-through entity review.

§200.326 Bonding requirements.

§200.327 Contract provisions.



# §200.318 General Procurement Standards

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§200.317 through 200.327.

Think about it

# **CONSIDERATIONS**

# Who is subject to The Model Code?

“Irrespective of the source of funds, any school district whose budget of total expenditures, including debt service, exceeds seventy-five million dollars annually is subject to the provisions of Chapter 35, Title 11...”

**SECTION 11-35-5340.** School district subject to consolidated procurement code and proposed 2020 Model Code Section 10. *Citation*

# Attorney General's Opinion

“...under Act 109, school districts must comply with the Procurement Code or an alternative approved local code during the fiscal year in which it has budgeted expenditures of \$75 million dollars or more. This statute indicates that district must continue to comply with these codes in subsequent years even though its budgeted expenditures may drop below this sum.”

February 25, 1986 letter to State Budget and Control Board

# Considerations

...school district's code “may accommodate the differing context of school districts (e.g. differences between state government and local school district operations, including size, purchasing staff resources, volume and type of procurements, and structure of its governing body and executive hierarchy).”

—Regulation 19-445.3000

## **But...ultimate litmus test**

Section 11-35-5340...dictates... — “the school code must be substantially similar to the Consolidated Procurement Code and regulations.”

# Who is exempt from The Model Code?

“...if a district has its own procurement code which is, in the written opinion of the Division of Procurement Services of the State Fiscal Accountability Authority, 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 must be performed every three years by an audit firm approved by the Division of Procurement Services.”

**SECTION 11-35-5340.** School district subject to consolidated procurement code; exemptions

# We're Ready! What's next?

- Submit draft district document by email to Crawford Milling – Audit and Certification.
- Submit request letter. See accompanying [forms](#).
- Submit your document in Microsoft Word (Word) format. (If your school district does not have Word, please contact the Materials Management Office (MMO) before working on your document.)
- Show all changes. See [options](#).



Other Reminders in

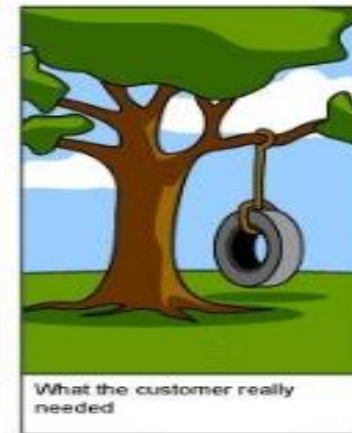
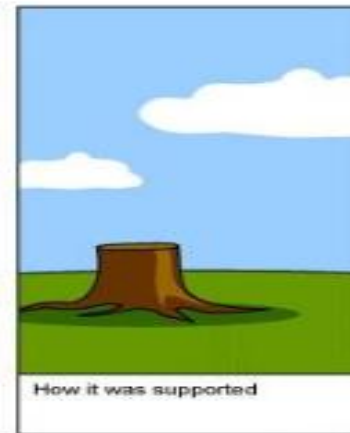
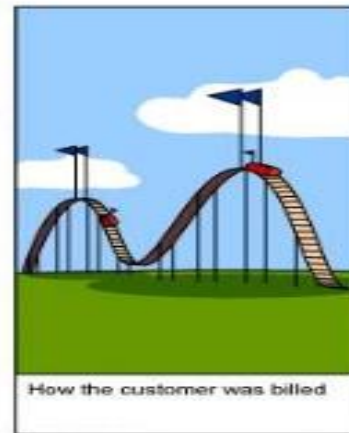
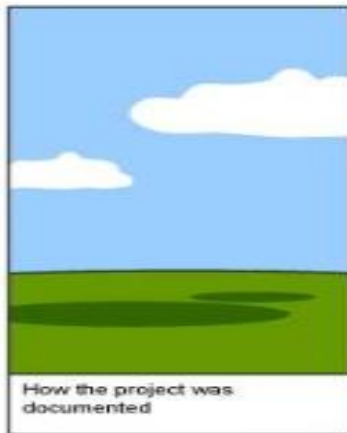
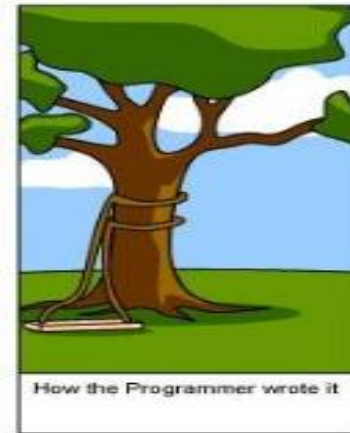
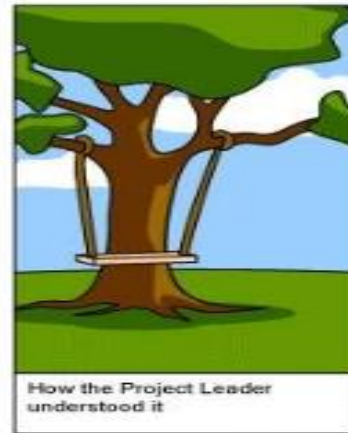
# **PROCUREMENT**

# Documentation and Written Determinations

- Procurement Manual Checklist
  - <https://www.procurement.sc.gov/audit>
- **Can it “stand alone?”**
  - Will you be here to explain it?
- Audit requirements
  - Determinations and Findings (D&F)
  - **Be prepared**



# Specifications Matter



# Solicitation Considerations

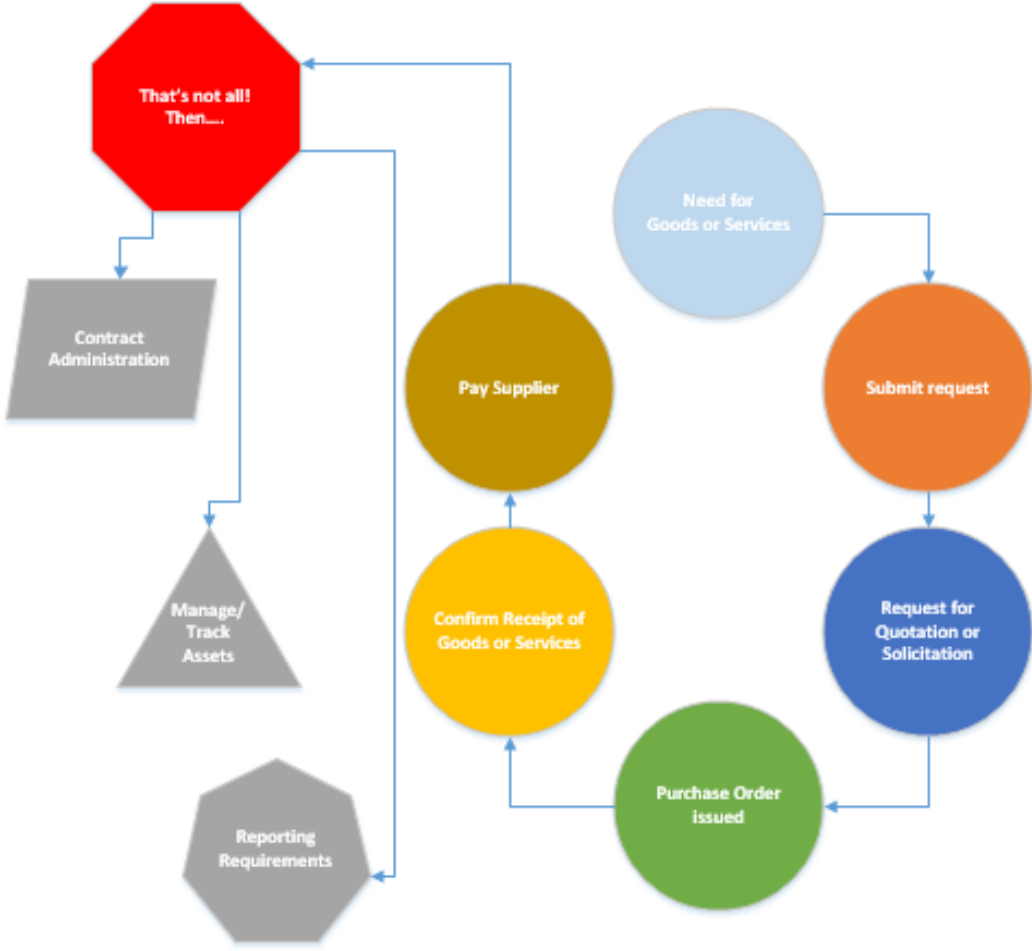
- Open Competition
  - Do not create situations that restrict competition
- Terms and Conditions
  - [Standard Clauses and Provisions](#)
  - Risk Analysis
  - Security
  - Family Educational Rights and Privacy Act (FERPA)
  - Federal Regulations
    - Uniform Grant Guidance (UGG) contract provisions

# Contracts

- [www.procurement.sc.gov](http://www.procurement.sc.gov)
  - [State Contracts](#)
    - Goods and Services
    - Information Technology
    - Available to Political Subdivisions, and others
  - SCEIS Contract Search
  - Considerations
    - No Piggy-backing
    - Collaborate in the beginning



# Procurement Life Cycle



# Steps to a Good Procurement

1. Plan your Procurements
2. Review your Documents and Procedures
3. Plan for a Transition
4. Be Fair, Open, and Competitive
5. Provide Clear Evaluation and Award
6. Prioritize Protocols for Receiving Deliveries
7. Check Invoices and Pay Your Bills
8. Avoid Material Changes
9. Administer the Contract

Request for Proposal  
RFP  
company  
service  
primary  
response  
equin  
procurem

# Questions?

Request for Proposal  
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# Frequently Asked Questions

- **We exceed the \$75 million threshold required by Section 11-35-5340. Are we required to adopt the 2021 Model Code or keep our current code?**

A: According to the [memo regarding 2021 Model Code](#) from State Procurement, “A school district may continue to operate under a previously approved code and is not required to adopt the 2021 Model Code. But if a school district wishes to amend a previously approved code, this Division will not approve of a partial amendment that adopts some recent changes in the law while ignoring others. A school district, in other words, must adopt all or none of the recent changes in the law.”

# Frequently Asked Questions

- **We fall below a \$75 million dollar threshold required by Section 11-35-5340. Are we required to adopt the 2021 Model Code or keep our current code?**

A: School Districts are encouraged to consider the 2021 Model Code, however it is not required if you are below the requirements listed in Section 11-35-5340. Regardless, you are bound to Section 11-35-5320 which states Political Subdivisions are required to develop and adopt procurement laws and “principles of appropriately competitive procurement.”

# Frequently Asked Questions

- **With the new procurement code, will this apply to the Purchasing Card also?**

A: The State PCard Policy states that “Political Subdivisions [School Districts] shall determine supply/service purchases and develop their own purchasing limitations consistent with applicable law.” You can set spending limits for less than the Single Transaction Limit (STL). For example, you could allow requests for P-Card purchases up to the no competition threshold of \$10,000 on a case by case bases and retain all cards with a STL of \$2,500.

The best approach may be for STL’s greater than \$2500 up to 10k be approved by the school board. **Read the State P-Card Policy.**

# Frequently Asked Questions

- **Exemptions: Can we add items to the District’s Model Code to address exemptions that are not covered Section 11-35-710?**

A: School Districts should “avoid granting excessive or overly broad exemptions . At some point, exemptions could so undermine the purposes of the law as to be inconsistent with the General Assembly's mandates in Sections 11-35-5320 and 11-35-5340.” [Model Code Comment, Section 710] Federal Regulation 2 CFR 200.320(c) defines specific circumstances in which noncompetitive procurement can be used with Federal Funds.

You are encouraged not to exempt your district out of the principles of competition upon which the procurement code is based. More competition and sunshine reduce the risk of corruption.

# Frequently Asked Questions

- **When do I add terms and conditions?**

**Sole Sources:** Although these services are not competitively solicited, the district should have a contract and T&Cs for services obtained under this procurement type, and for goods, when appropriate.

**Exempt:** The district should include standard Terms and Conditions (T&Cs) clauses to the Purchase Order. This would cover not having enough time to negotiate T&Cs for emergency procurements. Some exempt procurements warrant a contract. If so, the required T&Cs should be added to the contract.

**Emergency:** Although these services are not competitively solicited, the district should have a contract with T&Cs for services regardless of the procurement type, and for goods, when appropriate. The Code calls for “as much competition as is practicable under the circumstances.”

**Amendments:** For contracts that existed prior to ESSER, terms and conditions should be updated, which may require a Contract Amendment or Change Order to the existing contract.

# Questions?

