

Office of the Inspector General

Brian D. Lamkin



Allegation of a Conflict of Interest Regarding a Sole Source Contract Award by the South Carolina Public Charter School District

Case #2017-2602-I

April 2018

I. Executive Summary

The South Carolina Office of the Inspector General (SIG) initiated this investigation based on a credible allegation of a potential conflict of interest in the South Carolina Public Charter School District's (SCPCSD) sole source contract award to the National Association of Charter School Authorizers (NACSA) in 2016. Specifically, it was alleged a SCPCSD employee influenced the SCPCSD's award of a sole source contract to NACSA while employed as an independent contractor to the NACSA's Leaders Program in 2015 and 2016. It was further alleged, the SCPCSD violated provisions of the South Carolina Consolidated Procurement Code (CPC) through the awarding of the sole source contract to NACSA.

The scope of the SIG investigation was to: (1) determine if the SCPCSD employee engaged in outside employment with NACSA; (2) determine the level of the SCPCSD employee's involvement in the sole source contract award, if any; and, (3) review the CPC and SCPCSD's policies and documentation for outside employment, and sole source contract procurement.

The NACSA is a national organization formed to provide professional development to charter school administrators and staff, as well as provide consulting services to charters schools and districts in the administration of the charter school educational concept. The South Carolina Department of Education (SCDE) and the SCPCSD maintained an ongoing relationship with NACSA on many charter school initiatives. This ongoing relationship between the SCPCSD and NACSA preexisted the hiring of the employee by the SCPCSD in 2011.

One such professional development program offered by NACSA is its Leaders Program, which utilizes executives and leaders among charter school authorizers to provide guidance and mentoring to new and upcoming charter school authorizers. NACSA "coaches" are paid \$4,000 for each person mentored under the Leaders Program. In 2015 and 2016, the SCPCSD employee entered into an independent consulting contract with NACSA for this purpose.

The SIG's review of available agency records indicated the employee received a total of \$8,000 in 2015 and 2016 for services provided to two program participants in Missouri and the District of Columbia. The employee's outside employment as a NACSA independent contractor was confirmed through interviews with the employee and other SCPCSD staff and leadership. This outside employment arrangement was permitted under the SCPCSD's policy for dual and outside employment. The SIG determined the individuals coached by the SCPCSD employee were not subject to SCPCSD oversight, nor part of the employee's SCPCSD job duties and responsibilities. (*See Appendix C*)

The SCPCSD policy on dual and outside employment had three specific provisions articulated as guidance for the employee and the SCPCSD when considering outside employment:

- Notify the supervisor prior to accepting outside employment;
- Ensure the secondary employment does not impact negatively on the SCPCSD; and
- Ensure the secondary employment does not result in a conflict of interest.

Other than the employee's statement, the SIG determined there was no documentation the employee provided prior notification to the supervisor before entering into an independent contractor relationship with NACSA in 2015. Furthermore, no documentation was provided by the SCPCSD regarding the employee's use of annual leave or other form of leave or alternate work schedule for the time missed from SCPCSD duties when providing the independent contractor services to NACSA for 2015 or 2016.

In April 2016, the SCPCSD awarded a sole source contract to NACSA for the development of a new charter school application for an initial 90-day period (4/1/2016 – 6/30/2016) at a cost of \$5,950. The contract was extended through 12/31/2016, for an additional cost of \$5,500, to develop an addendum to the SCDE's official application template in lieu of the SCPCSD's application template. This sole source contract award was the result of an SCPCSD Board of Trustees (Board) initiative with NACSA to revamp the SCPCSD's application evaluation process. This SCPCSD Board initiative began in early 2015 as a joint effort between the SCDE, SCPCSD, SC Charter School Alliance, and NACSA. The principal point of contact between NACSA and the SCPCSD Board subcommittee was the SCPCSD employee, a member of the subcommittee. Throughout this SCPCSD Board initiative, the employee was an independent contractor to the NACSA Leaders Program (4/2015-10/2015 and 3/2016-10/2016).

The CPC and the SCPCSD's procurement policy provide specific instruction on a sole source procurement. Specifically, SCPCSD Procurement Policy, Article 2, Part A, Section 2-105 (*See Appendix L*) and the CPC (§11-35-1560) required the SCPCSD to provide written justification and document that services could not be competitively matched when awarding a sole source contract. This required the SCPCSD procurement officer and superintendent to review the sole source contract documentation, as well as conduct a review of the sole source contract by an SCPCSD leadership team, or "committee," and the SCPCSD Board, where appropriate. A SIG review of the contract file did not identify any documentation or written justification for the SCPCSD's award of a sole source contract as required by its procurement policy or the CPC.

The SCPCSD utilized its own procurement policy in lieu of the CPC. The State Fiscal Accountability Authority (SFAA) Procurement Services Division advised the SIG the procurement code applied to procurements made by a "government body" [§11-35-40(2)]. The CPC further defines "government body" under §11-35-310(18), but does not include the terms "public body and local education agency" (LEA) in the definition. In an October 2017 email exchange to the SCPCSD chief financial officer, the SFAA opined the SCPCSD was defined as a public body and an LEA under the Charter Schools Act, and therefore was not subject to the CPC. (*See Appendix A*)

However, the CPC provides an exemption under §11-35-70 to any school district with total expenditures in excess of \$75 million annually if its procurement policy is "substantially similar" to the provisions of the CPC in the written opinion of the SFAA. The SCPCSD's total expenditures for FY 2016-2017 were \$188,629,840. For FY 2016-2017, the SCPCSD was the LEA for 35 charter schools and 26,657 students statewide.

The SIG determined through interviews and document review the SCPCSD did not obtain a written opinion from SFAA that the SCPCSD procurement policy was "substantially similar" to the CPC. Regardless of

whether the October 2017 email from the SFAA was sufficient as a written opinion/exemption from SFAA as stipulated in §11-35-70, the October 2017 opinion was provided well after the closure of the contract period with NACSA (12/31/2016).

Electronic communications provided by the SCPCSD and the employee from 2015 and 2016 indicated NACSA officials communicated with the SCPCSD employee about the NACSA sole source contracts up until the contracts were forwarded to the SCPCSD finance department. These communications were in furtherance of the existing SCPCSD Board subcommittee's efforts and purpose to revamp the application evaluation process and the development of a model template consistent with the SCDE's revision of the principles and standards for charter schools. A review of the sole source contract file did not identify any actions undertaken by the employee that indicated he/she exercised any authority or influence over the awarding of the sole source contract to NACSA.

Summary

The establishment of the SCPCSD's policy on dual and outside employment was consistent with the State Human Resources (SHR) regulations on outside employment (CR 19-701.07). Under this policy, the employee entered into an independent contractor relationship with NACSA on two occasions in 2015 and 2016.

Superimposed with the employee's outside employment arrangement was the SCPCSD's longstanding relationship with NACSA. Specifically, at the point in time the employee first entered into this contractual relationship (April 2015), the employee was under the official direction of the SCPCSD Board as a subcommittee member to engage NACSA in the revamping of the agency's evaluation process as a charter school authorizer. Innocuous as this may seem, the appearance of a potential conflict of interest was interjected into the equation as the SCPCSD Board subcommittee moved forward in its joint endeavor with the SCDE, SC Charter School Alliance, and NACSA.

The SCPCSD policy on dual and outside employment required the employee and the SCPCSD to ensure the secondary employment did not negatively impact the SCPCSD, or result in a conflict of interest for either the employee or the agency. While it may be difficult to project if any outside employment will result in a conflict of interest for the employee or have a negative impact on the agency, it was incumbent upon the employee and the SCPCSD to exercise additional oversight of the employee's outside employment and the SCPCSD's contract with NACSA.

One solution to ensuring a potential conflict of interest is disclosed is to utilize the SFAA Procurement Services Division's Procurement Integrity Representation and Restrictions ("Conflict of Interest") form, a standard practice in state procurement matters. The use of this form requires all individuals associated with any aspect of a procurement matter to affirmatively disclose any relationship with a contractor, subcontractor, individual, etc., who seek to conduct business with the state agency.

The SCPCSD's Code of Conduct policy is found in the "ethics" subsection of its employee handbook. Specifically, it states the employee must adhere to the State Ethics Act. A second solution to addressing a potential conflict of interest issue is to consider adopting provisions within the South Carolina State Employee Code of Conduct issued pursuant to Executive Order 2014-23. Specifically, Rule 2 of the State Employee Code of Conduct pertaining to conflicts of interest stipulates, "*You may not have outside employment which creates a real or perceived conflict of interest or is incompatible with the duties and expectations of state employees.*" Additionally, the creation of a "dedicated agency ethics officer" role within the SCPCSD to facilitate ethics training, and provide ethics training and counsel to SCPCSD staff on such issues as conflicts of interest and the State Ethics Act provisions should be considered.

The SIG found no evidence, documentary or testimonial, which supported an allegation of a conflict of interest whereby the employee utilized his/her official position for financial gain or attempted to utilize his/her official position to influence SCPCSD's decision in the award of a sole source contract to NACSA. The SIG discussed its findings with the State Ethics Commission, which concurred with the SIG's assessment.

As set forth in this report, the SIG found numerous instances of poor documentation practices and processes by the SCPCSD of its personnel and procurement policies, as well as non-compliance with specific provisions of its policies, the CPC and SHR regulations. These non-compliance findings are set forth as follows:

- Failure to maintain written justification in support of a sole source contract award as required by the CPC and SCPCSD procurement policy;
- Failure to maintain annual leave records as set forth in CR 19-709.06; and
- Failure to obtain a written approval from SFAA for the use of an agency procurement policy in lieu of the CPC as required in SC Code of Laws 11-35-70.

It is incumbent upon the SCPCSD to demonstrate its leadership role to the charter schools it sponsors by maintaining proper documentation in its files, and adherence to its policies, procedures, and the Code of Laws and Regulations. To do otherwise unnecessarily distracts from the SCPCSD's oversight role, and calls into question its effectiveness and leadership to the charter schools program and community.

The SIG is grateful for the cooperation and professionalism extended by the SCPCSD during this review.

Table of Contents

	Page
I. Executive Summary.....	1
II. Background.....	6
A. Predicate.....	6
B. Scope and Objectives.....	6
C. South Carolina Public Charter School District (SCPCSD).....	6
D. National Association of Charter School Authorizers (NACSA).....	7
E. South Carolina Consolidated Procurement Code.....	7
III. Investigative Summary.....	8
A. SCPCSD Employee’s Outside Employment with NACSA.....	8
1. SCPCSD Policy on Dual and Outside Employment.....	8
2. Interviews of SCPCSD Staff.....	9
3. Summary Analysis.....	10
B. Allegation of a Conflict of Interest in a 2016 SCPCSD Sole Source Procurement.....	11
1. SCPCSD Board Subcommittee Communication with NACSA.....	11
2. Analysis of SCPCSD’s 2016 Sole Source Contract Award to NACSA.....	11
3. Analysis of SCPCSD Employee’s Actions in the Sole Source Contract Award.....	12
IV. Way Forward.....	13
V. Findings and Recommendations.....	15
List of Appendices.....	17
(Appendices located at Internet Link: Appendices A - P)	

Administrative Note: SCPCSD Superintendent Response and Comments located at Internet link: [SCPCSD Response](#)

II. Background

A. Predicate

The South Carolina Office of the Inspector General (SIG) initiated this investigation based on a credible allegation of a potential conflict of interest in the South Carolina Public Charter School District's (SCPCSD) sole source contract award to the National Association of Charter School Authorizers (NACSA) in 2016. Specifically, it was alleged a SCPCSD employee influenced SCPCSD's award of a sole source contract in April 2016 to NACSA while employed as an independent contractor as a cohort advisor to the NACSA's Leaders Program in April 2015 and March 2016. It was further alleged, the SCPCSD violated provisions of the South Carolina Consolidated Procurement Code through the awarding of the sole source contract to NACSA.

B. Scope and Objectives

The scope and objectives of the investigation were to:

- Determine the SCPCSD employee's contractual relationship with NACSA and approvals or disclosures to SCPCSD leadership, if any;
- Review SCPCSD policies and documentation for outside employment of SCPCSD employees;
- Determine the SCPCSD employee's level of involvement and actions undertaken in conjunction with SCPCSD's award of sole source contract to NACSA, if any; and
- Review applicable SC Code of Laws, Code of Regulations, the SCPCSD procurement policy, the Consolidated Procurement Code, and all SCPCSD documentation associated with the issuance of a sole source contract to NACSA.

Reviews and investigations by the SIG are conducted in accordance with professional standards set forth by the Association of Inspectors General, often referred to as the "Green Book."

C. South Carolina Public Charter School District

The South Carolina Public Charter School District ("SCPCSD") was created in 2006 pursuant to the South Carolina Charter Schools Act of 1996 (Charter Schools Act) as a "public body" and sponsor of public charter schools, whose geographical boundaries are the state of South Carolina. Under the Charter Schools Act, a charter school is sponsored through the SCPCSD, a local school district, or an institution of higher learning (public or independent). As such, the sponsor of a charter school is the "local education agency" (LEA) for the schools it sponsors.¹

In addition to the minimum standards set by the South Carolina Department of Education (SCDE), the SCPCSD, as a charter school authorizer, administers the application process for charter school applicants; grants charter school status to qualifying applicants; and enters into 10-year contracts with specific requirements

¹The terms "charter school sponsor" and "charter school authorizer" are used interchangeably.

on school performance and financial management for the charter schools it authorizes. SCPCSD employees are state government employees and subject to the provisions of the State Ethics Act.

D. National Association of Charter School Authorizers

The National Association of Charter School Authorizers (NACSA), a nonprofit organization, was formed in 2000 with the goal of increasing and improving quality educational opportunities for children by strengthening charter school authorizers. It is comprised of 30 employees and 175 member organizations, and funded through foundations, state and federal government grants, and membership fees. The SCPCSD is a NACSA member.

Among the many services NACSA provides to its membership are professional development opportunities for employees of charter school authorizers. As with many professional organizations, individual membership fees are a requirement for participation in NACSA's national conferences and professional development programs, such as its "Leaders" program and "Virtual Authorizer Boot Camp."

The NACSA Leaders Program is a professional development opportunity for current and upcoming leaders in charter school authorizing offices. Leadership sessions or "cohort" begin in April of each year and are limited to a maximum of twelve participants. Each participant or "leader" is paired with a cohort advisor ("coach"), and is required to attend one virtual kick-off call session and five in-person sessions. Program coaches are from the charter school authorizing sector, many of whom previously participated in past cohort programs. The conclusion to the program coincides with NACSA's Annual Leadership Conference in October of each year.

A Leaders Program coach is compensated \$4,000, to include reimbursement for travel, lodging and incidental expenses, for each program participant he/she mentors. This is a separate contractual relationship between the coach and NACSA and is not associated with the individual's employment at his/her charter school authorizing agency. Program participants do not receive compensation, except for their transportation and lodging expenses to attend program sessions. Upon completion of the program, many leaders and coaches participate in speaking engagements at future Leaders Program sessions, NACSA Leadership Conferences, as well as serve as NACSA Community Co-Chairs.

E. South Carolina Consolidated Procurement Code

The South Carolina Consolidated Procurement Code (CPC) is found in SC Code of Laws §11-35-10 et seq., and is intended to *"provide increased economy of state procurement activities...while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act."*

The State Fiscal Accountability Authority (SFAA) Procurement Services Division, which oversees the CPC, advised the SIG the CPC applied to procurements made by a "government body" [§11-35-40(2)]. The CPC further defines "government body" under §11-35-310(18), but does not include the terms "public body and local education agency" in the definition. In an October 2017 email exchange to the SCPCSD chief financial officer,

the SFAA opined the SCPCSD was defined as a public body and an LEA under the Charter Schools Act, and therefore was not subject to the CPC. (See Appendix A)

The CPC provides an exemption under §11-35-70 to any school district with annual expenditures in excess of \$75 million if its procurement policy is “substantially similar” to the provisions of the CPC in the written opinion of the SFAA. The SCPCSD’s total expenditures for FY 2016-2017 were \$188,629,840. For FY 2016-2017, the SCPCSD was the LEA for 35 charter schools and 26,657 students statewide.

III. Investigative Summary

A. SCPCSD Employee’s Outside Employment with NACSA

The SIG reviewed available SCPCSD documents, contracts and communications; and, conducted interviews of the SCPCSD employee, the former and current SCPCSD superintendents, the former finance director and the current SCPCSD chief financial officer in conjunction with this investigation.

The SIG determined the SCPCSD employee was hired by the SCPCSD in 2011. The relationship between NACSA and the SCPCSD was established prior to the hiring of the employee at the SCPCSD. On two separate occasions in 2011 and 2013, NACSA conducted an evaluation of SCPCSD operations and its implementation of various policies and programs as a charter school authorizer. Throughout this period, NACSA was associated with the SCPCSD through its evaluations of SCPCSD operations and professional development opportunities for SCPCSD staff and Board of Trustees (“Board”) members. (See Appendix B)

The SIG further determined through document review that in 2015 and 2016, the employee entered into separate independent personal services contracts as a consultant with NACSA as a coach to new charter school leaders enrolled in the NACSA Leaders Program. The SCPCSD employee traveled twice in 2015 and again in 2016 to provide coaching to program participants and was paid \$2,000 for each session, for a total of \$8,000 over the two contract periods, as well as travel expenses. The SIG determined the individuals coached by the SCPCSD employee were not subject to SCPCSD oversight, nor part of the employee’s SCPCSD job duties and responsibilities. (See Appendix C)

1. SCPCSD Policy on Dual and Outside Employment

The SCPCSD’s policy regarding dual and outside employment states, in part:

“Second jobs for SC Public Charter School District employees are not encouraged. However, personal circumstances may cause you to choose additional employment. In that event, it is your responsibility to notify your supervisor of such employment prior to accepting outside employment and to ensure that the secondary employment does not impact negatively on the SC Public Charter School District or result in a conflict of interest. Questions concerning this section should be directed to your supervisor.” (See Appendix D)

2. Interviews of SCPCSD Staff

SCPCSD Employee

The SIG interviewed the employee regarding his/her contractual relationship with NACSA at which time it was confirmed the employee served as a coach in the NACSA Leaders Program under two separate contracts in 2015 and 2016 as independent contractor. The employee acknowledged this was a secondary form of employment outside of the employee's normal duties at the SCPCSD.

The SIG determined the SCPCSD employee's contract work with NACSA spanned the tenures of two SCPCSD superintendents. The SCPCSD employee stated he/she spoke with the former SCPCSD superintendent and the former SCPCSD finance director in 2015 about participation as a NACSA coach, but did not receive written approval to do so. Other than the employee's statement, no documentation was provided to the SIG, which supported the employee's claim of having received prior approval from the former superintendent to engage in this outside employment.

The employee further advised he/she discussed participation as a NACSA coach with the current SCPCSD superintendent in 2016. The employee provided a copy of an e-mail exchange with the current superintendent seeking consideration for the program and support in this effort. (*See Appendix E*) The employee further provided the SCPCSD Board was aware of the employee's participation as a NACSA coach. The SCPCSD did not provide any documentation, to include meeting minutes or audio recordings of SCPCSD Board meetings, which verified the employee's statement of the SCPCSD Board's knowledge of his/her participation as a NACSA coach.

When asked if annual leave was utilized to provide coaching duties under the NACSA Leaders program, the employee stated he/she had plenty of accumulated leave as a state employee and was "always in contact" with superiors and personnel at the SCPCSD while coaching and considered it "work." The employee could not recall if he/she submitted leave requests to participate as a NACSA coach; and, was unsure how a leave request was recorded since the SCPCSD used a paper system for leave requests. No additional documentation was provided to the SIG as evidence of the employee's approved absences for his/her NACSA coaching duties, to include annual leave records.

Current and Former SCPCSD Staff

The former SCPCSD superintendent acknowledged recommending the employee for the NACSA Leaders Program in 2011 and 2012 as a program participant, and considered such participation as "professional development." However, the former SCPCSD superintendent did not recall the employee's participation in the 2015 NACSA Leaders Program as a compensated coach and that the employee did not make any request, verbally or otherwise, to engage in contract work with NACSA as a coach/mentor. Similarly, the former SCPCSD finance director did not recall the employee advising the finance director of his/her participation as a NACSA independent contractor even though it was announced at a SCPCSD Board meeting of the employee's selection as a NACSA coach, and was common knowledge among SCPCSD staff.

The former SCPCSD superintendent stated the employee's independent personal services contract with NACSA was considered "outside employment" under SCPCSD policy and the employee was required to take annual leave for this work, if approved. Although the former SCPCSD superintendent stated he required employees to submit all requests for outside employment in writing for his review the SIG found no documentation to support this statement. The current SCPCSD superintendent advised the SIG he had some recollection of the employee participating in the NACSA Leaders Program as a coach.

3. Summary Analysis

The SCPCSD policy on dual and outside employment (*See Appendix D*) does not prohibit secondary jobs or outside employment for its employees. This is consistent with the SC Code of Regulations (CR) 19-701.07 which allows state agencies to "adopt policies and procedures for the approval and regulation of jobs held by employees outside of State government." (*See Appendix F*) The SCPCSD's policy only required prior notification by the employee to the supervisor before accepting outside employment. Furthermore, there is no policy requirement regarding the method of notification or the retention of documentation by the SCPCSD for employees engaged in outside employment.

While the SCPCSD employee confirmed his/her outside employment with NACSA as an independent contractor there was no documentation or testimony provided to the SIG that verified the employee provided any notification to his/her supervisor before entering into the 2015 contract with NACSA as an independent consultant. For the 2016 contract as a NACSA consultant, notification to the superintendent was documented in an email between the employee and the superintendent.

Work conducted on behalf of the SCPCSD does not require the use of the employee's accumulated annual leave. In contrast, work conducted under an outside employment arrangement during a normal workday schedule required the use of annual leave, leave without pay (LWOP), or some form of alternate work schedule to account for the hours missed in pursuit of the outside employment arrangement. The SCPCSD employee acknowledged the independent contract with NACSA constituted outside employment.

A SIG review of the employee's 2015 and 2016 contracts specifically identified the employment arrangement as an independent contractor relationship, and that no employer-employee relationship existed with NACSA. Additionally, the entire contract articulated the duties performed were specific to NACSA and no other entity. As such, the employee was required to utilize his/her annual leave for the consulting work conducted during SCPCSD work hours.

The employee could not recall if he/she used annual leave as an independent consultant to NACSA. The SCPCSD, nor the employee provided annual leave records or other documentation as verification the employee used annual leave, LWOP or an alternate work schedule to provide independent consulting services to NACSA during his/her normal SCPCSD work schedule. The SIG review determined the SCPCSD failed to maintain records of annual leave utilized in performance of work missed to engage in this outside employment arrangement as required by CR 19-709.06. (*See Appendix F*)

B. Allegation of a Conflict of Interest in a 2016 SCPCSD Sole Source Procurement

The conflict of interest allegation centers on numerous email exchanges between NACSA and the SCPCSD employee, which appear to facilitate the communication between the two entities while the employee was engaged in an independent consulting contract with NACSA. As such, the appearance of a potential conflict of interest was created with the employee was the primary point of contact between NACSA and the SCPCSD prior to the award of the sole source contract. (*See Appendix G*)

1. SCPCSD Board Subcommittee Communication with NACSA

In January 2015, the SCPCSD Board chair approached NACSA about additional professional development opportunities for charter schools and SCPCSD staff (*See Appendix H*). Between January and March 2015, the SCPCSD Board established a subcommittee to revamp its charter school application review process. This subcommittee was comprised of three Board members and the SCPCSD employee. A review of the SCPCSD Board's March 2015 meeting minutes denoted a discussion of the subcommittee's work on the application evaluation process, and a change to the application template. (*See Appendix I*) At that time, the subcommittee had already entered into discussions with NACSA, SCDE, and the SC Charter School Alliance about its efforts.

Contemporaneous to the SCPCSD Board initiative, the SCDE was in communication with NACSA for the revision of its principles and standards for charter schools. As result, the SCPCSD Board subcommittee initiated work on a new model charter school application to comply with the SCDE's improved principles and standards. South Carolina Code of Laws §59-40-60 required the SCPCSD to utilize a general charter school application "template" and guidelines as promulgated by the SCDE.

A review of SCPCSD emails and interview results determined a joint effort began in the summer of 2015 for the development of a new charter school application between the SCDE, SCPCSD Board subcommittee, SC Charter School Alliance, and NACSA. Although NACSA provided a cost estimate of \$5,500 for the "agreed upon" work, the joint endeavor ceased in the fall of 2015. This resulted in the SCPCSD pursuing the development of its own model charter school application.

2. Analysis of SCPCSD's 2016 Sole Source Contract Award to NACSA

In April 2016, the SCPCSD awarded a sole source contract to NACSA for the development of a new model charter school application. The contract, executed by the former NACSA Vice-President (VP) for Authorizer Development on 4/18/2016 and by the SCPCSD superintendent on 5/2/2016, was for an initial 90-day period in the amount of \$5,940 to develop a more detailed charter school application than required by the SCDE application template. (*See Appendix J*)

At the conclusion of the initial 90-day period, the SCPCSD extended the contract through 12/31/2016 for the development of an addendum to the application template at an additional cost of \$5,500. The SCPCSD's unilateral development of its own model charter school application was not approved for use by the SCDE. Pursuant to §59-40-60(F), a charter school application must be "based on an application template with compliance guidelines developed by the State Department of Education." As a result, the SCPCSD received

SCDE permission to utilize an addendum to the SCDE application template in order to elicit a limited amount of additional information for use in the SCPCSD's application evaluation process. *(See Appendix K)*

The revised sole source contract, which covered the period of 4/1/2016 – 12/31/2016, was signed by the SCPCSD superintendent on 2/7/2017, and signed/undated by the former NACSA VP of Authorizer Development. Contract deliverables were received from NACSA in the form of a model application for the initial contract work, and in the form of an application addendum for the contract extension work. No SCPCSD Board minutes (audio recordings) or other documentation for the full contract period of 4/1/2016 – 12/31/2016, were provided to the SIG which explained why the contract was executed after the expiration of the contract on 12/31/2016.

The SIG determined the SCPCSD Procurement Policy, Article 2, Part A, Section 2-105 *(See Appendix L)* and the CPC (§11-35-1560) required the SCPCSD to justify and document that services could not be competitively matched when awarding a sole source contract. This required the SCPCSD procurement officer and superintendent to review the sole source contract documentation, as well as conduct a review by a SCPCSD leadership team, or "committee," and the SCPCSD Board, where appropriate. A SIG review of the contract file did not identify any documentation or written justification for the SCPCSD's award of a sole source contract as required by the SCPCSD's own procurement policy or the CPC. Additionally, the SIG did not identify any documentation evident of a SCPCSD committee review of the sole source contract prior to its award. Except for the employee's transmittal emails of the contract to the SCPCSD from NACSA as the SCPCSD Board subcommittee representative, there was no other documentation associated with the employee and the contract. *(See Appendix M)*

The SCPCSD Procurement Officer produced e-mails dated 10/4/2017 and 10/10/2017 *(See Appendix A)*, which contained a response from the SFAA Assistant Executive Director regarding SCPCSD procurement authority. The SFAA opined the SCPCSD was not subject to the State's CPC since it was defined as a "public body" and LEA in the Charter Schools Act.

The SFAA further provided the CPC provided for qualified "school districts" whose budgeted expenditures exceed \$75 million annually were statutorily required to adopt a procurement policy that is substantially similar to the CPC. However, the SIG determined through interviews with SFAA and SCPCSD personnel the SCPCSD did not obtain a written opinion from the SFAA for the use of its own procurement policy, as required by SC Code of Laws §11-35-70 and CR 19-440.3000.

3. Analysis of SCPCSD Employee's Actions in the Sole Source Contract Award

The SIG's review and analysis of SCPCSD e-mail communications in 2015 and 2016 indicated the former NACSA officials were communicating with the SCPCSD employee about the NACSA sole source contracts up until the contracts were forwarded to the SCPCSD finance department. The employee advised he/she was essentially a liaison and representative of the Board subcommittee in the joint effort to create a new model application for the SCPCSD, and to improve principles and standards for the SCDE's template application with guidance from the SC Charter School Alliance and NACSA. The employee acknowledged receiving the

NACSA contract proposals and electronically forwarded these to the SCPCSD superintendent. This was consistent with the existing SCPCSD Board subcommittee's efforts and purpose to revamp the application evaluation process and the development of a model template consistent with the SCDE's revision of the principles and standards for charter schools. A review of the sole source contract file did not identify any actions undertaken by the employee that indicated he/she exercised any authority or influence over the awarding of the sole source contract to NACSA. (*See Appendix M*)

In summary, there was a lack of documentation supporting the justification and award of a sole source contract as required by SCPCSD procurement policy and the CPC. Consequently, the SCPCSD did not comply with its own procurement policy and the CPC when it failed to maintain the required documentation in the award of a sole source contract to NACSA.

IV. Way Forward

The establishment of the SCPCSD's policy on outside employment was consistent with the State Human Resources (SHR) regulations on outside employment (CR 19-701.07). Under this policy, the employee entered into an independent contractor relationship with NACSA on two occasions in 2015 and 2016. This SCPCSD policy had three specific provisions articulated as guidance for the employee and the SCPCSD when considering outside employment:

- Notify the supervisor prior to accepting outside employment;
- Ensure the secondary employment does not impact negatively on the SCPCSD; and
- Ensure the secondary employment does not result in a conflict of interest.

Superimposed with the employee's outside employment arrangement was the SCPCSD's longstanding relationship with NACSA. Specifically, at the point in time the employee first entered into this contractual relationship (April 2015), the employee was under the official direction of the SCPCSD Board as a subcommittee member to engage NACSA in the revamping of the agency's evaluation process as a charter school authorizer. Innocuous as this may seem, a potential conflict of interest was interjected into the equation as the subcommittee moved forward in its joint endeavor with the SCDE, SC Charter School Alliance, and NACSA.

One solution to ensuring a potential conflict of interest is disclosed is to utilize the SFAA Procurement Services Division's Procurement Integrity Representation and Restrictions ("Conflict of Interest") form, a standard practice in state procurement matters. The use of this form requires all individuals associated with any aspect of a procurement matter to affirmatively disclose any relationship with a contractor, subcontractor, individual, etc., who seek to conduct business with the state agency. (*See Appendix P*)

The SCPCSD's Code of Conduct policy is found in the "ethics" subsection of its employee handbook. Specifically, it states the employee must adhere to the State Ethics Act. (*See Appendix N*) A second solution to

addressing a potential conflict of interest issue is to consider adopting provisions within the South Carolina State Employee Code of Conduct issued pursuant to Executive Order 2014-23. Specifically, Rule 2 of the State Employee Code of Conduct pertaining to conflicts of interest stipulates, “*You may not have outside employment which creates a real or perceived conflict of interest or is incompatible with the duties and expectations of state employees.*” (See Appendix O)

The SIG found no evidence, documentary or testimonial, which supported an allegation of a conflict of interest whereby the employee utilized his/her official position for financial gain or attempted to utilize his/her official position to influence SCPCSD’s decision in the award of a sole source contract to NACSA. The SIG discussed its findings with the State Ethics Commission, which concurred with the SIG’s assessment.

As set forth in this report, the SIG found numerous instances of poor documentation practices and processes by the SCPCSD of its personnel and procurement policies, as well as non-compliance with specific provisions of its policies, the CPC and SHR regulations. These non-compliance findings are set forth as follows:

- Failure to maintain written justification in support of a sole source contract award as required by the CPC and SCPCSD procurement policy;
- Failure to maintain annual leave records as set forth in CR 19-709.06; and
- Failure to obtain a written approval from SFAA for the use of an agency procurement policy in lieu of the CPC as required in SC Code of Laws 11-35-70.

It is incumbent upon the SCPCSD to demonstrate its leadership role to the charter schools it sponsors by maintaining proper documentation in its files, and adherence to its policies, procedures, and the Code of Laws and Regulations. To do otherwise unnecessarily distracts from the SCPCSD’s oversight role, and calls into question its effectiveness and leadership to the charter schools program and community.

V. Findings and Recommendations

Finding #1: A SCPCSD dual and outside employment policy articulates three provisions for use in approving an employee's outside employment: (1) provide prior notification to the supervisor before accepting employment; (2) ensure the secondary employment does not negatively impact the SCPCSD; and (3) ensure the secondary employment does not result in a conflict of interest. The SCPCSD employee entered into two separate independent consulting contracts with NACSA in 2015 and 2016 while employed with the SCPCSD. Other than the employee's verbal statement, there was no documentation the SCPCSD employee provided prior notification to his/her supervisor before entering into the 2015 contract as required under the SCPCSD policy on dual and outside employment.

Recommendation #1: The SCPCSD should update its policy on dual and outside employment to require prior written approval for dual and outside employment.

Finding #2: The SCPCSD policy on dual and outside employment does not establish the method of notification for the employee's outside employment, nor does it require the retention of documentation related to an employee's engagement in outside employment. However, the SCPCSD failed to maintain sufficient documentation and provide oversight of the employee's outside employment by not maintaining annual leave records as required under the State Human Resources regulation CR 19-709.06, which verified the employee's use of annual leave in the outside employment arrangement.

Recommendation #2a: The SCPCSD should comply with the CR 19-709.06 provisions on the retention of annual leave records.

Recommendation #2b: The SCPCSD should consider the use of a "conflict of interest" form similar to the SFAA Procurement Services Division form titled "Procurement Integrity Representations" for all SCPCSD employees engaged in secondary employment and involved in SCPCSD procurement matters.

Recommendation #2c: The SCPCSD should consider creating and/or modifying its ethics/code of conduct policy to include requirements to avoid the *appearance* of a conflict of interest, as set forth in the South Carolina State Employee Code of Conduct.

Recommendation #2d: The SCPCSD should consider establishing a "designated agency ethics officer" (DAEO) role within the SCPCSD to facilitate ethics training, and provide ethics training and counsel to SCPCSD staff on such issues as conflicts of interest and the State Ethics Act provisions.

Finding #3: The SCPCSD was within its procurement authority to award a sole source contract to NACSA in 2016, as set forth in its procurement policy and the CPC. However, the SCPCSD failed to maintain written justification in support of a sole source procurement as required by SCPCSD Procurement Policy, Article 2, Part A, Section 2-105 and the CPC (§11-35-1560).

Recommendation #3: The SCPCSD should implement necessary policies, procedures and oversight to ensure future sole source procurements adhere to SCPCSD procurement policy and the Consolidated Procurement Code.

Finding #4: The SCPCSD utilizes its own procurement policy in lieu of the CPC. The SFAA provided an opinion in October 2017 to the SCPCSD that it was not required to follow the CPC since it is a “public body” which is not an entity defined in the CPC. However, the CPC provides for a qualified school district to seek a written opinion and exemption from the SFAA if the policy is deemed “substantially similar” to the CPC. The SIG review determined the SCPCSD has never requested a written opinion and exemption from the SFAA for use of its procurement policy.

Recommendation #4: The SCPCSD should seek a written opinion and exemption from the SFAA for determining if its policy is “substantially similar” to the CPC and can be used by the SCPCSD.

Finding #5: The SIG review identified numerous gaps in SCPCSD records and documentation for the SCPCSD Board of Trustees meetings. Although the SCPCSD fulfilled its statutory obligation of keeping a record of Board of Trustees proceedings (written summaries of minutes), it is noted that audio recordings of Board minutes for the majority of 2016 could not be found/produced by the SCPCSD staff.

Recommendation #5: The SCPCSD should consider developing a policy regarding the backup, storage, and retention of written and audio-recorded SCPCSD Board meetings; and, establish internal controls to ensure a “chain of custody” of the audio recordings is maintained for transparency and trust with agency stakeholders and the public.

List of Appendices

- A. Email correspondence from SFAA regarding SCPCSD exemption from the Consolidated Procurement Code
- B. 2011 & 2013 Evaluations of SCPCSD conducted by NACSA
- C. Independent Consulting Contracts, payments, and email correspondence
- D. SCPCSD Dual & Outside Employment Policy
- E. Email correspondence between SCPCSD Employee and SCPCSD Superintendent
- F. Code of Regulations: 19-701.07; 19-709.06; and 43-601, Part II, Section D
- G. Email correspondence between SCPCSD Employee and NACSA Officials
- H. January 8, 2015 SCPCSD Board Meeting Minutes
- I. March 12, 2015 SCPCSD Board Meeting Minutes
- J. NACSA Sole Source Contract
- K. NACSA Sole Source Contract Addendum
- L. SCPCSD Procurement Policy
- M. SCPCSD Sole Source contract file
- N. SCPCSD Employee Handbook
- O. South Carolina State Employee Code of Conduct
- P. Procurement Integrity Representations and Restrictions Form

(Appendices located at Internet Link: [Appendices A - P](#))