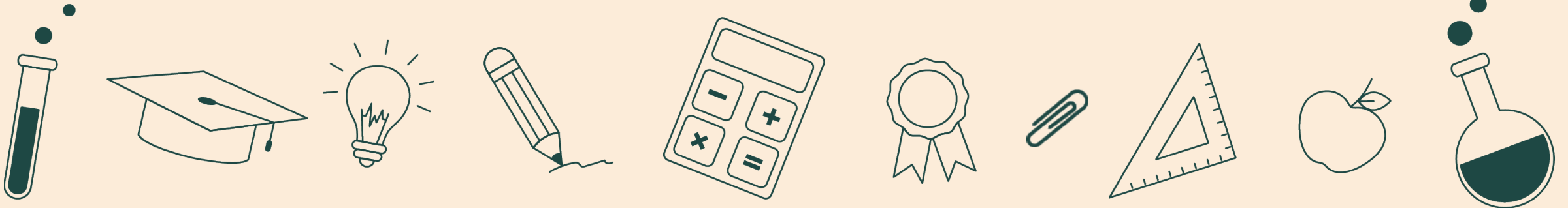




Contracting Best Practices

Erin Wright, Deputy General Counsel



Vision

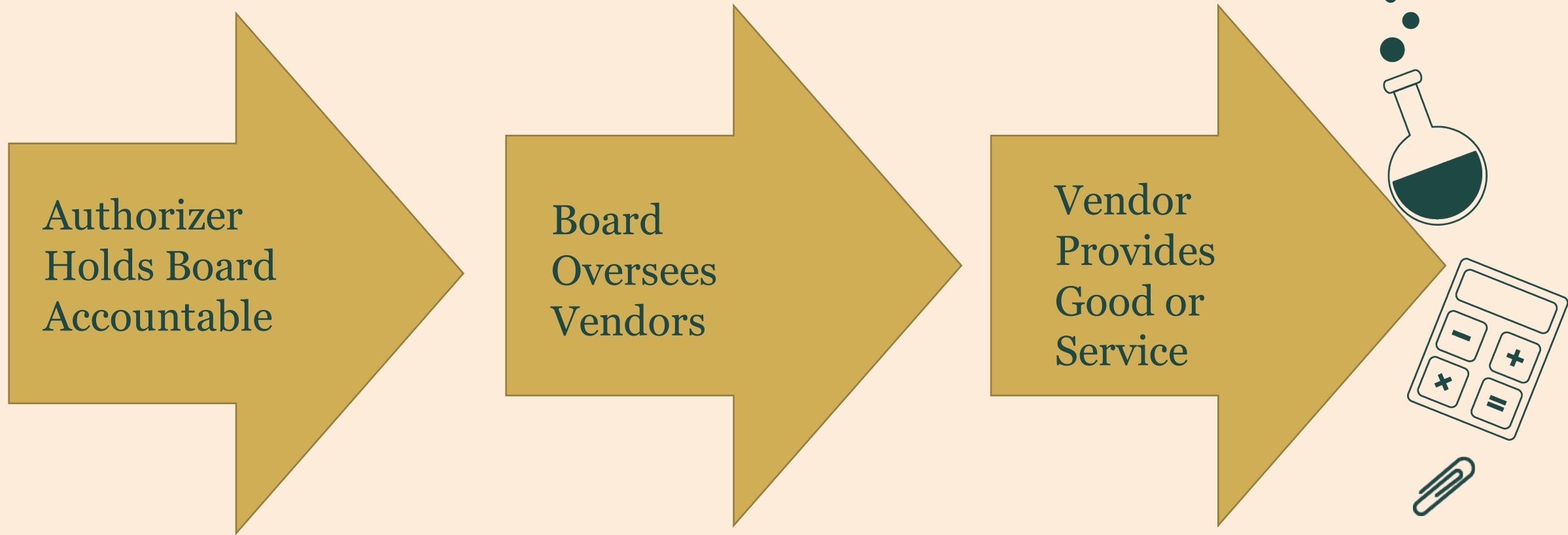
Innovative and superior charter schools advancing education in every community.

Mission

The mission of the State Charter Schools Commission of Georgia is to improve public education by authorizing high-quality charter schools that provide students with better educational opportunities than they would otherwise receive in traditional district schools.



Roles Related to Vendor Services



Contracting Objectives

1. Ensure the procurement process and contract are legally compliant.
2. Minimize RISK.
3. Get the best value to benefit your school!



Every Contract - Think: Is it compliant with...

- The school's internal financial policies
- Federal regulations
- State law
- State regulations
- Charter contract
- SCSC Communications Policy



Procurement Process

1. Vendor Selection
2. Negotiating Scope and Deliverables and other Contract Terms
3. Monitoring Vendor Performance



Method of Procurement

- Again, follow your policy.
- Internal policies should be in line with the LUA Manual, best practices and legal requirements
 - purchasing thresholds
 - signatory authority
 - requirements for competitive bidding (including construction contracts)
 - Federal regulations

Vendor Reliability

- Research vendor's performance
 - Publicly available data
 - Reach out to other clients
 - How long and often have they done this type of work?
- Do key individuals at the company have a clean and clear professional history?
- Ongoing or recent litigation?
- Administrative proceedings or bankruptcy history that could adversely affect performance?
- Legally required (or preferable) certifications and licenses

Obligations in selecting a vendor

- Conflict of Interest
 - Internal policies
 - O.C.G.A. 20-2-2084(e)
 - Federal regulations (if receiving federal funding) – 2 CFR 200 et seq.
 - Georgia's Nonprofit Corporation code – O.C.G.A. 14-3-860 et seq.
- Preference to businesses identified in O.C.G.A. 20-2-2084(d)(2)
- Additional requirements for federal funds.
 - Take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
 - Domestic preference



Key priorities for a charter school's contracts

- Ensure vendor's services will comply with civil rights laws – disabilities, LEP, no discrimination
- Vendor contracts must appropriately reserve decision-making authority for the governing board.
- Vendors should not be able to carry out school functions contrary to governing board directives.
- Vendors should not be able to restrict a governing board's oversight of school operations.

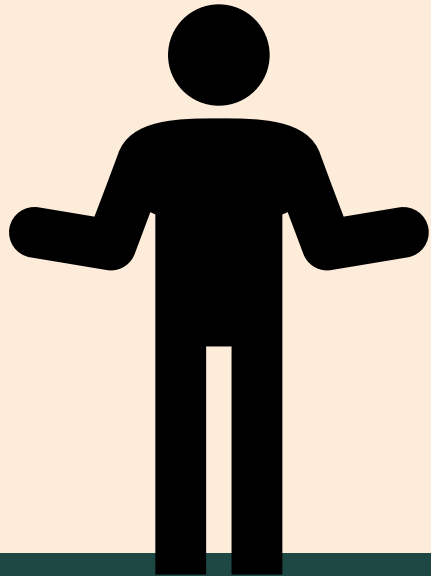


Charter Contract Supremacy

- The school's charter contract is its authorization to operate.
- THINK:
 - Does the charter contract (or SCSC rules) require SCSC's approval of the contract prior to execution?
 - ESP agreements and amendments
 - Lease
 - Does any aspect of the agreement contradict the charter contract?
 - Is the proposed relationship consistent with the school's mission, vision and innovative features outlined in the charter contract?
 - Will the relationship negatively impact CPF performance?



Clearly Defined Services and Deliverables



- Ambiguity in contract scope leads to:
 - Nothing getting done
 - Disagreement as to how/what things get done
 - Higher costs
 - Poor performance
- *Either way, and even if the school's interpretation is correct, you waste valuable time.*

Clearly Defined Services and Deliverables

- Ensure a clear and detailed description of the services is included.
- Ensure milestones/deliverables are included. USE DEADLINES.
- What other specific measurements can you include to evaluate vendor performance?
 - School performance
 - Audit opinions
- Do not overlook “small” jobs
- REMEMBER: The charter contract holds the *school board* accountable for the school’s performance as well as LEA functions, regardless whether a vendor is at fault.

Common Sense Fiscal Controls

- Clear and transparent method of determining payment.
- Should be transparent with amount commensurate with goods or services provided.
- Method of payment keeps finances under control of the board.
- Detailed delineation of goods or services provided for the fee as well as a distinct schedule or structure for additional services.
- Financial arrangements, such as loans or advances, are supported by legally enforceable notes or contracts.



Additional legal obligations

- Georgia Open Records Act
- Records maintained by vendor must be available for “immediate access” by the school, SBOE, GaDOE, SCSC and state auditor.
- Contract provisions cannot inhibit SCSC oversight
- FERPA
- Multi-Year Contracts Beyond Charter Term prohibited (excludes lease/purchase of facilities, vehicles or capital equipment). 691-2-.07



Best Practices

- Termination Provisions with Severe Penalties. Should be balanced for both parties.
- Should be for a definite term and, if applicable, renewals should require overt action by both parties.
- If an agreement results from a competitive process, the vendor should not be allowed to disclaim warranties.



Best Practices Continued

- Disposition of property in the event of default, contract termination, and/or school closure.
- Use of subcontractors.
- Consider whether to require the vendor have certain insurance.
- Cooperation in transitioning to a new vendor following expiration or termination.



Monitoring Vendor Performance

Engagement is critical!

Receive performance reports BEFORE the board meeting.

ACTIVELY review performance reports.

Engage leaders/vendors in performance evaluations.

Take action when necessary.

