

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

A. Generally1. Purpose

The purpose of this policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the school board, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

2. Application

This policy applies to contracts for the purchase or lease of goods, services, insurance and construction entered into by the school board.

3. Purchasing and Awarding of Contracts

Having followed the specifics of the Virginia Public Procurement Act and the remaining school board policies and regulations on the matter, the superintendent or his designee may approve purchase or award contracts on items included in the regular operating budget, except in those cases in which the board has requested to review and approve bids/proposals and in cases in which the superintendent deems it appropriate to review the bids/proposals with the board.

On all contracts requiring award by the school board, the board shall make a decision after careful examination of the appropriate legal criteria and the superintendent's recommendation.

4. Effective Date

This policy shall become effective upon adoption. The provisions of this policy shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the procurement policies and regulations of the school board in effect at the time those contracts were executed.

5. Severability

If any provision of this policy or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this policy which can be given effect without the invalid provision or application, and to this end the provisions of this policy are declared to be severable.

B. Ethics in Public Contracting

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Editor's Note: See school board policy # 4-2 and implementing administrative regulations.

C. Definitions

1. Brand name specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.
2. Brand name or equal specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet school board requirements and which provides for the submission of equivalent products.
3. Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
4. Change order (unilateral). A written order signed and unilaterally issued by the school board purchasing authority directing the contractor to make changes which the "changes" clause in the contract authorizes the purchasing authority to order without the consent of the contractor.
5. Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the school board and is not a matter of public knowledge or available to the public on request.
6. Construction. Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.
7. Construction Management Contract. A contract in which a party is retained by the owner to coordinate and administer contracts for the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
8. Contract. All types of school board agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.
9. Contract Modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties of the contract.
10. Cost Analysis. The evaluation of cost data for the purpose of arriving at costs

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actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

11. Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
12. Goods. All material, equipment, supplies, printing and automated data processing hardware and software.
13. Informality. A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured.
14. Insurance. A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.
15. Invitation for Bids. All documents whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.
16. Nominal Value. So small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name.
17. Nonprofessional Services. Any services not specifically identified as professional services in the following definition.
18. Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry or professional engineering.
19. Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
20. Qualified Products List. An approved list of goods, services, or construction items described by model or catalogue number, which prior to competitive solicitation, the purchasing authority has determined will meet the applicable specification requirements.
21. Request for Proposals. All documents, whether attached or incorporated by

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reference, utilized for soliciting proposals.

22. Responsible Bidder or Offeror. A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.
23. Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the invitation to bid.
24. Services. Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
25. Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.
26. Specification. Any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

D. Purchasing Authority

The purchasing authority shall be vested in the division superintendent. Nothing contained in this policy shall prevent the superintendent from designating a responsible person to perform such duties subject to his direction.

E. Delegation

The superintendent or his designee may delegate authority to purchase certain supplies, services, or construction items to school board employees, if such delegation is deemed necessary for the effective procurement of those items and is implemented in accordance with board policy and state statute.

F. Emergency/Small/Sole Source Purchases

Editor's Note: See School Board Policy # 4-29.

G. Competitive Sealed Bidding/Awards

Editor's Note: See School Board Policy # 4-32.

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Editor's Note: See School Board Policy # 4-35.

I. Unauthorized Purchases

Except as provided in school board policies and/or division regulations, no employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this policy other than by and through the purchasing authority and any purchase order or contract made contrary to the provisions hereof is not approved and the school board shall not be bound thereby.

Legal Reference:

Code of Va., § 11-35. Title; purpose; applicability.--" A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement which may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of §§ [11-41.1](#), [11-49](#), [11-51](#), [11-54](#), [11-56](#) through [11-61](#) and [11-72](#) through [11-80](#), to any town with a population of less than 3,500 as determined by the last official United States census.

D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of this section, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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Except to the extent adopted by such school board, the provisions of this chapter shall not apply, except as stipulated in subsection E, to any school division whose school board adopts by policy or regulation alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ [11-41](#) C, [11-41.1](#), [11-46](#) B, [11-49](#), [11-51](#), [11-54](#), [11-56](#) through [11-61](#) and [11-72](#) through [11-80](#) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of § [11-37](#) in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § [22.1-212.2:2](#) shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ [11-51](#) and [11-72](#) through [11-80](#); however, a school board that makes purchases through its public school foundation established pursuant § [22.1-212.2:2](#) shall not be exempt from the provisions of this chapter.

F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the laws in effect at the time those contracts were executed.

G. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia Retirement System related to the management, purchase or sale of

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authorized investments, including but not limited to actuarial services, shall be governed by the standard set forth in § [51.1-124.30](#) and shall not be subject to the provisions of this chapter.

I. The provisions of this chapter shall apply to procurement of any construction or planning and design services for construction by a Virginia not-for-profit corporation or organization not otherwise specifically exempted when the planning, design or construction is funded by state appropriations greater than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to procurement procedures which are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of this chapter.

J. The provisions of this chapter shall not apply to items purchased by public institutions of higher education for resale at retail bookstores and similar retail outlets operated by such institution. However, such purchase procedures shall provide for competition where practicable.

K. The provisions of this chapter shall not apply to the Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ [62.1-128](#) et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

L. Notwithstanding the foregoing provisions of this section, the selection of services by the Board of the Virginia Higher Education Tuition Trust Fund related to the operation and administration of the Fund, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record-keeping, or consulting services, shall be governed by the standard set forth in § [23-38.80](#) and shall not be subject to the provisions of this chapter.

M. Notwithstanding the provisions of this section, the selection of services by the University of Virginia related to the management and investment of its endowment funds shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#) and shall not be subject to the provisions of this chapter.

N. Notwithstanding the provisions of this section, the selection of investment management services by the State Treasurer related to the external management of funds shall be governed by the standard set forth in § [2.1-328.14](#), and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services; and not be subject to the provisions of this chapter."

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Adopted by School Board: June 5, 1973
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