

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

**Competitive Sealed Bidding/Awards P 4-32**A. Generally

1. All school board contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in policy # 4-35, unless otherwise authorized by law.

No contract for the construction of any school division building or for an addition to or improvement of an existing building for which State funds of \$100,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding. No person or firm shall be eligible to bid on any such contract nor to have the same awarded to him or it who has been engaged as architect or engineer for the same project.

2. Public Access to Procurement Information

Except as provided in this policy, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizens, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the school board shall not be open to public inspection. Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal records within a reasonable time after the opening of all bids but prior to award, except in the event that the school board decides not to accept any of the bids and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this policy shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act.

3. Employment Discrimination by Contractor Prohibited

Every contract of over \$10,000 shall include the provisions in a and b below:

- a. During the performance of this contract, the contractor agrees as follows:
  - (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex, or national origin is a bona fide

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occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- (2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- b. The contractor will include the provisions of the foregoing paragraphs in every sub-contract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-contractor or vendor.
- c. The contractor will also abide by the school board's stated minority business enterprise plan (policy 4-34 (C)).

4. Prequalification of Bidders

The school division is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance, or construction, in accordance with the requirements set forth in the Code of Virginia §2.2-4317, and shall require prospective bidders to submit such information as the purchasing authority shall deem appropriate, including samples, financial reports and references.

5. Notice of Invitation to Bid

Public notice of the invitation to bid must be given at least ten (10) days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors.

6. Use of Brand Names

Unless otherwise provided in the invitation to bid, the name of a certain brand name, make or manufacturer does not restrict bidders to the specific brands, make or manufacturer names; quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and

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suitability for the purpose intended, shall be accepted.

7. Comments on Specifications

For complex equipment, supplies or repair, prebid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids will be called by designated employees, and if necessary, the school board's legal counsel.

8. Bid/Payment/Performance Bonds

The school board shall require bid, payment or performance bonds for contracts for goods or services if so provided in the invitation to bid or request for proposal.

9. Submission/Opening/Tabulation of Bids

Bids shall be submitted sealed to the school board and shall be identified as bids on the envelope.

Bids shall be opened in public at the time and place stated in the public notices.

A tabulation of all bids received shall be available for public inspection.

10. Rejection of Bids

An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected by the school board. The reasons for cancellation or rejection shall be made part of the contract file. The school board may waive informalities in bids.

11. Withdrawal of Bid Due to Error

Bids due to error may be withdrawn.

B. Bid Awards1. Generally

In the solicitation or awarding of contracts, the school board shall not discriminate because of race, religion, color, sex or national origin of the bidder or offeror.

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Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.

Unless canceled, or rejected, a responsible bid from the lowest responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds, the purchasing authority may negotiate with the apparent low bidder to obtain a contract price within available funds.

2. Tie Bids

- a. In the case of a tie bid, preferences shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.
- b. Whenever any bidder is a resident of any other state and such state under its law allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
- c. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

3. Protest of Award or Decision to Award

Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the superintendent no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first.

Legal Reference:

Code of Va., § 2.2-4317. Prequalification generally; prequalification for construction.  
“A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

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B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § [2.2-4342](#).

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § [2.2-4357](#).

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
2. The contractor does not have appropriate experience to perform the construction project in question;
3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or

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nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § [33.1-12](#). “

(1982, c. 647, § 11-46; 1994, c. 918; 1995, c. 527; 2001, c. 844; 2007, c. 154.)

Adopted by School Board: June 5, 1973  
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