



## PROCUREMENT MANUAL

# Alexandria City Public Schools

Second Revision

### INTRODUCTION

The *Procurement Manual* is published under the authority of the Alexandria City School Board dba Alexandria City Public Schools, Chapter 43 of the Code of Virginia, the Virginia Public Procurement Act (VPPA), and establishes the policies and procedures to be followed by Alexandria City Public Schools, all Central Office departments and all school locations in fulfilling procurement and related logistical responsibilities within their delegated limits. This second revision of the *Procurement Manual* applies to procurements initiated on or after January 1, 2020. It supersedes all previous editions and changes thereto.

Publication of this July 1, 2015 – First Revision was approved by Stacey B. Johnson, Chief Financial Officer.

Publication of this November 7, 2019 – Second Revision was approved by Dominic Turner, Chief Financial Officer.

Regulatory issues have been distinguished from policies and procedures. For the purposes of this Manual, the basic distinction between “regulatory” requirements and “policies and procedures” is that the regulatory requirements have their basis in the *Code of Virginia*. Policies and procedures are administrative implementation intended to inject consistency and clarity in understanding and applying the regulatory requirements. In addition, they represent what is widely viewed in the Procurement profession as the application of sound, generally accepted best Procurement practices. Violations of policies and procedures contained in this Manual will be handled in an administrative manner, up to and including termination.

Every effort has been made to identify regulatory requirements. Users will note in the text of each chapter, references are made to appropriate sections of the *Code of Virginia*. This will assist in identifying and distinguishing regulatory requirements from administrative requirements, i.e., policies and procedures. **Text references may represent synopses or abbreviated portions of the applicable code. Precise language should be obtained by referring to the applicable portion of the *Code of Virginia*.**

Throughout this Manual, every effort has been made to reduce the mandatory requirements, which are usually indicated by the words “shall”, “must”, “will”, etc., to permit user option and flexibility by use of words such as “may”, “should” and “recommended”. Care has been taken to carefully draw the appropriate distinctions.

The principal references are found in this Manual are The Code of Virginia, especially the Virginia Public Procurement Act (VPPA), the Alexandria School Board Policies, The Federal Acquisition Regulations (FAR) and other sections within the Procurement Manual. References are usually presented in the following format:

Code of Virginia or State Code refers to *{Code of Virginia, 1950, as amended}*

VPPA refers to Virginia Public Procurement Act – Code of Virginia §2.2-4300 et seq.

Procurement Manual or Manual refers to this Procurement Manual for Alexandria City Public Schools

Appendix A contains flowcharts of the procurement process. These flowcharts have links to the State Code.

Appendix B contains exhibits. These exhibits consist of forms, formats and other types of suggested guidance for users.

The Financial Services Department - Procurement Office will periodically issue revisions to this Manual which will be effective upon issuance. Appendix C has been reserved for recording such revisions.

Your assistance is sought wherever clarification or corrections may be in order. Please contact the Financial Services Department – Procurement Office at 703-619-8343 to request clarification, suggest edits, or ask questions.

#### *END OF INTRODUCTION*

Established: May 5, 2016  
Revised: December 5, 2019

Legal Refs: Code of Virginia, 1950, as amended, §§2.2-4300 et seq.; 22.1-68, 22.1-70, 22.1-78.

Cross Refs.: DA Management of Funds  
DGC School Activity Funds  
DGD Funds for Instructional Materials and Office Supplies  
DJ Small Purchasing  
DJA Purchasing Authority  
DJA Purchasing Authority  
DJB Petty Cash Funds  
DJF Purchasing Procedures  
DJFB Contract Execution  
FEG Planning, Design and Construction  
FEGA ACPS Capital Improvement Program

# 1 PROCUREMENT AUTHORITY AND RESPONSIBILITY

## 1.0 General.

The School Board for Alexandria City Public Schools (ACPS), by the use of the *VPPA*, provide for increased public confidence in the procedures followed in the procurement process; to ensure the fair and equitable treatment of all persons who operate within the procurement system of ACPS; to provide increased economic benefit to ACPS' procurement activities and to maximize to the fullest extent practicable the Procurement value of public funds of ACPS; to foster broad based competition within the free enterprise system; to provide safeguards for the maintenance of a procurement system of quality and integrity; and to promote uniformity of procurement policies and procedures among the schools and departments of the organization. {Procurement Manual Appendix A}

The *Virginia Public Procurement Act (VPPA)* applies to all purchases, including Student Activity Funds (SAF), except for those instances where alternative policies and procedures have been adopted and set out in accordance with School Board policies, federal and state laws and regulations.

## 1.1 Types of Purchases Subject to VPPA.

Under [§2.2-4300](#), the VPPA applies to the following four types of purchases:

- a. Purchase or lease of goods.
- b. Purchase of services.
- c. Purchase of insurance.
- d. Purchase of construction.

The VPPA does not cover purchases from other governmental sources or agencies, or the purchase or lease of real property.

## 1.2 Methods of Procurement

Under [§2.2-4303](#), the VPPA applies to the following methods of procurement:

- a. Competitive Sealed Bidding (Invitation to Bid (ITB)).
- b. Competitive Negotiation (Request for Proposal (RFP)).
- c. Sole Source and Only One Practicable Source
- d. Emergency Procurements
- e. Alternative Delivery Methods (Design Build and Construction Manager at Risk)

## 1.3 Competitive Sealed Bidding.

- a. Invitation to Bid (ITB).

Competitive sealed bidding is defined in [§2.2-4302.1](#), VPPA, and is used for the procurement of most goods and nearly all construction. Competitive sealed bidding is initiated using an Invitation to Bid (ITB), containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Public notice of an ITB shall be made at least ten (10) days prior to the date set for receipt of the bids, and shall be posted on ACPS' Vendor Self Service (VSS) website, the Commonwealth of Virginia's e-Procurement website (eVA), and, to the greatest extent possible, the ACPS Procurement website.

The VPPA requires that the bid is awarded to the lowest responsive and responsible bidder. These terms are defined in [§2.2-4302.2 \(5\)](#), VPPA.

1. **Responsive Bidder**. A “responsive” bidder is one whose bid conforms, in all material respects, to the ITB. Although “material” is not defined, [§2.2-4319\(B\)](#) of the VPPA allows localities to waive “informalities” in bids. “Informality” is defined in [§2.2-4302.1](#) of the VPPA as a minor defect or variation of a bid from the exact requirements of the ITB which does not affect the price, quality, quantity or delivery schedule for the goods, services, or construction being procured.
2. **Responsible Bidder**. The low bidder must also be “responsible.” Section [2.2-4301](#) of the VPPA defines a “responsible” bidder as a “person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.”

#### **1.4 Competitive Negotiation.**

Competitive negotiation is defined in [§2.2-4302.2](#) of the VPPA and is normally used for service contracts where price is not the most important consideration. Professional services (which include accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy and professional engineering) can only be procured by competitive negotiation. If a determination is made in advance and set forth in writing that competitive sealed bidding is either not practicable or fiscally advantageous to the public, goods, services, and insurance may be procured by competitive negotiation.

#### **1.5 Exceptions to the VPPA.**

The VPPA provides certain exemptions from its provisions, including:

- a. Purchases pursuant to a small purchase procedure. Currently, ACPS is authorized to establish such procedures for single or term procurements not expected to exceed \$100,000 or in the case of professional services not expected to exceed \$80,000;
- b. Sole source procurements;
- c. Emergency procurements;

- d. Virginia Department of Education (VDOE);
- e. School Board purchases for textbooks and online learning providers; and
- f. Certain other miscellaneous exceptions.

#### **1.6 Financial Services Department/Procurement Office Authority and Responsibility.**

Financial Services Department (FSD)/Procurement Office is the centralized Procurement area for materials, supplies, equipment, printing, and services required by schools and departments. All such purchases made for any department or school shall be made in accordance with School Board Policies and Procedures, the FAR for purchases using grant funds, and the Code of Virginia as are set out in this Manual.

FSD/Procurement Office is responsible for:

- a. Making recommendations to the Superintendent of Schools and the Chief Financial Officer for adopting, amending or repealing regulations set out in this Manual;
- b. Standardizing materials, equipment, and supplies purchased by or for any school/department through the use of term contracts;
- c. Assisting schools/departments in developing specifications, obtaining bids and proposals, evaluating responses, recommending awards of appropriate bids and proposals;
- d. Issuing solicitation documents required by law and this Manual;
- e. Issuing advertisements required by law and this Manual;
- f. Processing/approving all requisitions and purchase orders for necessary equipment, materials, supplies and/or services as set out in this Manual;
- g. Maintaining procurement files required by law and this Manual; and
- h. Maintaining a central repository for all executed contract documents.

#### **1.7 School/Department Procurement Authority and Responsibilities.**

**Schools Principals, Department Heads, have the ultimate responsibility to ensure that procurements do not violate or circumvent the law, appropriations, regulations, or the provisions of this Manual.** Principals/Department heads must identify the individual responsible for the day to day entry of transactions in the Procurement system and those having delegated authority to approve Procurement transactions, and provide proper oversight to ensure compliance.

- a. **Validity of Requirements.** It is the responsibility of the individual schools or departments to provide a clear description and/or specifications of the goods or services being requisitioned or purchased. School/departments shall also verify that goods and services are authorized and are applicable to the mission and needs of ACPS and have been properly funded PRIOR to submitting the request to the Procurement Office. This includes any approvals required by law, regulation or policy.

**b. Authority to Approve Procurement Documents.**

1. **Designations.** Departments shall designate in writing to the FSD those persons authorized to approve procurement documents in ACPS' financial system (MUNIS). By default, any administrator holding the position of School Principal, Director, Executive Director and Chief Officer may have this authority.
2. **Designated authority is required for the following Procurement documents:** purchase requisitions.

**1.8 Computer Equipment and/or Software.**

Any purchase of computer equipment, desktop printers, and/or web based software programs, receives approval through MUNIS workflow by the IT Department. Written approval is not required for purchase of supplies such as electronic media, labels, paper, etc.

*END OF CHAPTER*

## 2 SOURCES OF SUPPLY

### 2.0 General.

This chapter discusses mandatory and non-mandatory sources of supply. All schools/departments are required to use the mandatory sources under the conditions outlined in each subsection of paragraph 2.1. The non-mandatory sources identified in Section 2.2 are recommended for the products/services indicated and schools/departments are encouraged to use them. The remaining sections of this chapter offer guidance on use of supplier source lists, catalogs and seeking assistance from vendors.

### 2.1 Mandatory Sources.

- a. **Term Contracts/Master Agreements.** To obtain more favorable prices through volume Procurement and to reduce lead-time and administrative cost and effort, FSD/Procurement Office may establish mandatory use term contracts or master agreements for goods or services. Written notices of contract awards are issued notifying participants (departments or schools) of the existence of such contracts or agreements. All Contracts are uploaded in Vendor Central in the MUNIS system. In accordance with the terms and conditions, requisitions/purchase orders may be issued in any amount for any goods or services on a term contract or master agreement available to that participant. If an item is available on such a contract/agreement, participants may not purchase from another source unless the purchase is exempt by contract terms, such as not meeting the contract's minimum order requirement.

Term contracts/master agreements are for the benefit of ACPS and departments. Employees or other individuals are not permitted to order from contracts directly or by using ACPS purchase orders for personal use with the intent to be reimbursed.

- b. **INFORMATION TECHNOLOGY.** For the purchase of telecommunications services and equipment (computers, monitors, desktop printers etc.), schools/departments must submit a request to IT for written approval to initiate the purchase process. This also applies to web based software programs, network required, or non-network solutions due to terms and conditions that in some cases prohibit use for students under the age of 13, without parental consent.

### 2.2 Non-mandatory Sources.

- a. **Optional Use Term Contracts/Master Agreements.** Optional use term contracts/master agreements may be established by FSD/Procurement Office. This type of contract/agreement may be appropriate because of the unique nature of the commodity or service being procured and when the demand base encompasses all schools/departments. An example would be office supplies that generally are ordered in low dollar increments by users at the lowest organizational level and when local storage and distribution costs exceed any bulk purchase savings.

Optional use contracts/agreements may also be appropriate when erratic or rapidly dropping prices are encountered such as in the personal computer and related peripheral equipment industries. Market conditions in these limited applications create an incentive for the contractors to retain business by publishing revised price lists against which fixed discount rates can be applied throughout the contract's/agreement's term.

- b. **Surplus Property.** FSD/Procurement Office has responsibility for administering the surplus property policy for ACPS owned personal property. Schools/Departments shall submit to the Director of Procurement a request to have the property moved to surplus. The request shall include the name of the item or equipment, the approximate age of the equipment, the estimated value of the item or equipment new, and the current value of the item or equipment. Any item request to be surplus property shall be signed by the Director of Procurement and the Superintendent of Schools before disposal.

### **2.3 Source Lists.**

Care should be taken to solicit sources capable of providing, as a regular part of their business, the goods or services needed. The maintenance and use of appropriate and current source lists are essential to competitive procurement. Personnel at all levels should make a concerted effort to identify responsible vendors as sources of supply for goods and services. Special emphasis should be placed on including local vendors, small, minority, women-owned, and service disabled veteran – owned businesses on all solicitation mailing lists. Schools and departments may be required to furnish vendor lists to FSD/Procurement.

### **2.4 Suppliers' Catalogs.**

Suppliers' catalogs are an excellent source of descriptive information and current technology. Caution must be exercised when using suppliers' catalogs to be sure that information is current and a valid contract exists to authorize purchases from the Supplier.

### **2.5 Contact with Vendors.**

Suppliers' and manufacturers' representatives are valuable sources of information and may be contacted when developing purchase requirements. Vendors' visits should be arranged in a manner that will assure a full, courteous, and mutually beneficial exchange of information. Such assistance must be considered normal sales effort and does not entitle a vendor to any preference. Department heads should caution personnel that commitments cannot be made which would lead a supplier to believe they will subsequently receive an order. **If department personnel receive vendor assistance in preparing a specification, a written notification must accompany the requisition to the FSD/Procurement Office describing the assistance and noting whether any compensation was involved.** Under no circumstances shall a bidder or offeror be permitted to evaluate or assist in evaluating competitors' bids or offers.

## **2.6 Other Sources of Supply.**

Sources of supply can be identified through a variety of methods. Some methods include FSD/Procurement Office vendor support, trade journals, trade shows and exhibitions, Yellow Pages, and Thomas Register. State agencies and organizations such as the Department of Economic Development, Department of Minority Business Enterprise (DMBE, 800-223-0671), and local Chambers of Commerce are also possible vendor information sources. The Internet provides a good source of possible vendor and product information. Search on “business” or particular industries or products. Sites such as [www.virginiabusiness.com](http://www.virginiabusiness.com) may offer information on sources of supply. National Procurement organizations such as the National Institute of Governmental Procurement (NIGP) at [www.nigp.org](http://www.nigp.org) or the Institute for Supply Management (ISM) at [www.ism.ws](http://www.ism.ws) also provide resource information.

*END OF CHAPTER*

### 3 ETHICS IN PUBLIC CONTRACTING

#### 3.0 General.

The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the trust and responsibility exercised by public officials conducting procurement transactions, and because of the expectation by the public that this trust and responsibility be exercised properly. Procurement officials and vendors must be cognizant of these laws which include the *VPPA*, the *State and Local Government Conflict of Interests Act*, and the *Governmental Frauds Act*. All School employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

Article 6, Ethics in Public Contracting, VPPA {§2.2-4367, et seq.}, and the School's policy on discretionary expenditures are set out in this chapter.

#### 3.1 Purpose. {§2.2-4367}

The provisions of Article 6, Ethics in Public Contracting, supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act {§2.2-3100, et seq.}, the Virginia Governmental Frauds Act {§18.2-498.1, et seq.}, and Articles 2 {§18.2-438, et seq.} and 3 {§18.2-446, et seq.} of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

#### 3.2 Definitions. {§ 2.2-4368}

As used in Article 6, Ethics in Public Contracting, VPPA:

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act {§ [2.2-3100](#), et seq.}.

"Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and

solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" means any person employed by a public body, including elected officials or appointed members of governing bodies. All ACPS employees are considered public employees as defined in this manual.

### **3.3 Proscribed participation by public employees in procurement.... {§ 2.2-4369}**

Except as may be specifically allowed by Subdivision A. 2, 3, and 4. of § [2.2-3112](#), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

- a. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- b. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
- c. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- d. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

### **3.4 Disclosure of subsequent employment. {§ 2.2-4370}**

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor. Executive and Director level staff shall notify the Department of Human Resources if such an offer and acceptance is made with a current ACPS employee.

### **3.5 Prohibition on solicitation or acceptance of gifts. {§ 2.2-4371}**

- a. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

- b. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

**3.6 Kickbacks. {§2.2-4372}**

- a. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- b. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- c. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- d. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**3.7 Participation in bid preparation. {§2.2-4373}**

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

**3.8 Purchase of building materials, etc. from architect or engineer prohibited. {§2.2-4374}**

- a. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any

partnership, association or corporation in which such architect or engineer has a personal interest as defined in [§2.2-3101](#).

- b. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in [§ 2.2-3101](#).
- c. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

**3.9 Certification of compliance required; penalty for false statements. {[§ 2.2-4375](#)}**

- a. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.
- b. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in [§ 2.2-4377](#).

**3.10 Misrepresentation prohibited. {[§ 2.2-4376](#)}**

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

**3.11 Penalty for violation. {[§ 2.2-4377](#)}**

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

**3.12 Discretionary Expenditures.**

It is the policy of ACPS that procurements be consistent with the values expressed in the School's Vision Statement. Public funds are to be expended for public purposes, and not primarily for the sole benefit of individual employees or offices. By way of example, ACPS funds **should not** be used for certain types of expenditures, including:

- a. Holiday greeting cards or holiday gifts for internal School use and/or ACPS employees.

- b. Individual retirement parties or gifts (unless a part of the School/department regular program for recognizing School service, e.g., plaques, badges)
- c. Coffee, soft drinks or refreshments for casual office use for ACPS employees.

Department heads authorized to approve expenditures should carefully consider the use of School funds when approving purchases or expenditures that may be perceived as beneficial to employees without a corresponding benefit to students, citizens or the organization. The following are immediately set in place:

#### Meeting and Conferences

Meals/snacks can be provided and paid for with public funds if the meeting is four (4) hours or more and separate breaks would be disruptive to the meeting objectives. Meals and snacks are normally a personal expense. Any meal or snack served must be a reasonable price (less than or equal to the per diem rate) and an integral part of the session in order to use public funds.

#### Coffee and Beverages

Coffee and other beverages are normally a personal expense. A voluntary collection can be made from those who desire to have coffee and other beverages in the school/department. Except for meetings and conferences (Item A), and School Board meetings (Item F), coffee and beverages shall not be purchased with public funds.

#### Employee Break Room Supplies

Public funds should not be used to stock supplies such as plastic ware and paper products in employee break rooms. A voluntary collection can be made from those who desire to have such supplies. Medicine for staff and employees is considered a personal expense and shall not be purchased with public funds. Cleaning and sanitary supplies are allowed to be purchased with operating funds.

#### Individual Receptions

Receptions for individual employees should never be paid for from public funds. This includes holiday celebrations, retirement dinners, staff meals, welcome aboard receptions, and similar gatherings where food and refreshments may be served. Voluntary collections can be taken from those attending such gatherings, or if specifically authorized by the person managing a grant in accordance with grant guidelines or regulations. Any authorized exception allowing for the use of public funds for this action must have prior approval from the Superintendent.

#### Acceptable Occasions

The School Board and/or Superintendent may determine that the serving of food or refreshments is appropriate for selected occasions. However, even at these events, which are normally held after business hours, any alcohol served must be a personal expense.

#### School Board Meetings

The School Board meets at times that are intended to be convenient for the general public. Meetings routinely span the normal dinner hour. Serving meals of reasonable value to Board members and staff required to attend Board meetings is considered to be an appropriate expense.

#### Student Programs/Incentives

Food bought for students from public funds as part of an initiative, a program, or an incentive (e.g., SOL rewards, honor roll) shall be preapproved and authorized by the school principal.

#### Employee Gifts

Expenditures of public funds for gifts to staff and employees are not authorized. This includes gifts purchased for staff birthdays or other personal occasions, with the exception of sympathy or congratulations as determined by the School Board or the Superintendent to be in the best interest of the Office.

Executive, Cabinet Members, and Principals authorized to approve expenditures should carefully consider the use of public funds when approving purchases or expenditures that may be perceived as beneficial to employees without a corresponding benefit to students, citizens or ACPS.

When approving these or similar expenditures, a determination should be made that the expenditure supports the schools/department's mission and the School's Vision Statement. All expenditures should be undertaken in such a manner that they can withstand future public scrutiny, and shall be fully explained and documented. Additionally, all School activities should be administered within the spirit of the School's values.

*END OF CHAPTER*

## 4 SMALL PURCHASES

### 4.0 General.

The VPPA permits a public body to establish small purchase procedures, if adopted in writing, not requiring the use of competitive sealed bidding or competitive negotiation for single or term contracts for professional services if the aggregate or sum of all phases is not expected to exceed \$80,000 and for goods and services other than professional services if the aggregate or sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable {[§2.2-4303\(G\)](#) }. The following small purchase procedures have been established by the School Board for use by schools/departments when acquiring professional services not over \$80,000 or goods and services for other than professional services not over \$100,000. Procurements made pursuant to these procedures may not require public openings of bids/proposals.

### 4.1A Obtaining Quotes (for Professional Services \$80,000 or less).

Up to \$80,000 for Professional Services – The requestor shall obtain a written scope of work from a vendor fully qualified to do the work on their company letterhead. Such minimum qualifications required to do the work must be sent to the vendor for their return response, giving clear examples of their qualifications and references.

While not required, it is the responsibility of all ACPS employees to ensure the best value is being obtained for the services required. Therefore, the Procurement Department strongly recommends, as a best practice, to obtain multiple quotes to the greatest extent possible. In some instances, the Procurement Department may require additional proposals to ensure market pricing is being obtained.

\$80,001 or more for Professional Services – The purchase must be formally competitively solicited by the Central Procurement Office.

### 4.1B Obtaining Quotes (for Goods and Non-Professional Services \$99,999 or less).

- Up to \$10,000 for Goods and Non-Professional Services: Departments/Schools are authorized to procure goods without competitive quotes, though it is recommended to email at least one other vendor to make sure you are getting a good price. It's important not to always contact the same vendor when buying goods and services, even at this dollar threshold. Your request must be sent in writing, and the response received in writing.
- \$10,001 to \$30,000 for Goods and Non-Professional Services: Purchase transactions must be initiated by obtaining three (3) written quotes from different vendors, submitted in writing. The requestor must send, via email or fax, the request to the vendors in writing. This will ensure all bidders are getting the same information. If a vendor has a

question, respond in writing, making sure the other vendors have the same information. Treat all vendors with fairness. One should not have more information than another.

- \$30,001 to \$100,000 for Goods and Non-Professional Services: Purchase transactions must be initiated by obtaining four (4) written quotes from different vendors, submitted in writing. The requestor must send, via email or fax, the request to the vendors in writing. This will ensure all bidders are getting the same information.
- Greater than \$100,000 for Goods and Non-Professional Services: Requisitions and any documentation shall be forwarded to Procurement for processing and competitive solicitations.

*It is the responsibility of the School or department to provide a clear description and/or specifications for goods/services being purchased. The school / department shall also verify that goods/services are authorized and are applicable to the mission and needs of ACPS and are currently funded. This includes any approvals required by law, regulation or policy.*

**4.1C Informal RFP (competitive negotiation procurement method where the threshold is equal to or below \$100,000, permitting the Offerors to submit responses via email and the response can be viewed in an unsealed manner, allowing review upon receipt).**

- a. The determination to use this method shall be made on a case by case basis. The determining factors to use this method will include several factors. The department must have a budget appropriated prior to work beginning on the RFP. The total procurement, including all renewal years and fees shall not exceed \$100,000.
- b. The school/department shall provide details and/or qualifications needed for the vendor to perform the service.
- c. This method will not be used for large construction projects, or any project requiring the submittal of drawings, or bonds. Construction shall only be procured using the Invitation for Bid method of procurement.
- d. Shall be advertised on the ACPS Procurement web site, for informal solicitations.
- e. School/Department will send a vendor list to Procurement for email notification of at least four possible sources, when available;
- f. Department will include procurement in the evaluation process and review of responses received for informal solicitations. Ranking of vendors and negotiations of the service and the fees will apply. All documentation shall be forwarded to Procurement, and maintain a copy for department files.
- g. Procurement will prepare and execute the contract, if applicable.

## 4.2 Quote Method. (to be used as the 3 – 4 quote process)

Schools and departments shall follow the steps below to solicit quotes by mail, e-mail, or facsimile using a written description furnished by the department. {See forms Appendix B, Exhibit 1.}

- a. Prepare a written quote package for a quote that includes a cover sheet containing the item description or brief scope of work, the quantity needed, the delivery time needed, the address for delivery and a form in which to list unit price and extended pricing, when applicable. The written request provided to Vendor must have an end time in which to submit a valid response.
- b. Solicit at least three or four sources (depending on the budget estimate, based on the thresholds in 4.1A) by mail, facsimile, or electronically, and the department may request to post a notice of the Request For Quote on the FSD/Procurement Office website.
- c. Quotes may be opened, recorded, and tabulated upon receipt; however, to be considered, bids must be received at the stipulated location by the date and hour specified. However, do not make public or disclose any bidding information until after the date and hour set for receipt of quotes.
- d. Evaluate and award to the lowest responsive and responsible bidder. Any consideration or approval to a vendor, other than the low bidder, shall be approved by the Director of Procurement.

## 4.3 Procurement Cards for Small Purchases

In an effort to streamline Procurement and invoice processing steps and reduce paperwork, the ACPS has established a contract allowing departments to use Procurement cards for the in-person or online purchase of goods, maintenance, repair and operating supplies and services, and travel, when approved. Unlike the typical consumer charge card, this program incorporates the features of corporate Procurement cards. Major program benefits include the elimination of invoices submitted to School/departments, reduction in internal requisitioning and purchase order processing steps, reduced vendor collection costs, and payment to the vendor by the Procurement card company within as little as three business days. As a cost cutting endeavor, departments are strongly encouraged to participate. Information may be obtained by calling the Procurement Office at 703-619-8350. **Departments are advised that the use of the Procurement Card should not be used for placing orders against Term Contract/Master Agreements unless such use is approved by the Director of Procurement.** Use of Procurement cards for any purchases shall be governed by the rules and processes as defined in the “ACPS Procurement Manual” and the “Business Meals and Travel Regulations and Procedures.” These documents may be accessed on Canvas.

In order to procure goods or services through the Internet, the vendor must have a current Secure Socket Layer (SSL). **It is the department’s responsibility to ensure**

**the vendor meets the SSL requirement before placing an order and using the Procurement card as a method of payment.** To ensure the vendor has an SSL, the Address Window must start with https://. The https:// may not be seen until the payment information is requested. For information about the vendor's security certification, check under Help on your browser's tool bar.

#### **4.4 e-Procurement**

Departments may directly procure goods through approved vendors who are registered in MUNIS for catalog purchases. The process by which these purchases may be completed is defined in the buyer's training materials.

*END OF CHAPTER*

## 5 COMPETITIVE SEALED BIDDING

### 5.0 General.

Competitive sealed bidding is the preferred method for acquiring goods, construction and nonprofessional services for public use when the estimated cost is greater than \$100,000. The definition of “competitive sealed bidding” is set out in [§2.2-4301](#). The process is further explained in §2.2-4302.1.

### 5.1 Competitive Sealed Bidding.

The goods or services to be procured when using this method must be capable of being described so that the bids submitted can be evaluated against the description in the Invitation to Bid (ITB) and an award made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the ITB, awards may be made to more than one bidder. Competitive sealed bidding includes the issuance of a written ITB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. The terms and conditions of the solicitation must include how ACPS will publicly post the notice of the award or make the announcement of the decision to award the contract. The requirements set forth in the ITB may include special qualifications required of potential contractors, life-cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. An ITB must describe the requirements accurately and completely. **Unnecessary restrictive specifications or terms and conditions that limit competition shall be avoided.** In addition to the public notice, bids may be solicited directly from potential bidders. In the competitive sealed bid process, bids are publicly opened and read aloud. The bids are evaluated based upon the requirements set forth in the ITB, and an award is made to the lowest responsive and responsible bidder (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders). Solicitations may include criteria, factors and basis for the consideration of award and the process for the consideration of award shall be as stated in the procurement solicitation.

### 5.2 Preparation and Issuance of ITBs.

- a. **Format.** Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary. The due date shall not be less than ten (10) calendar days from the date the ITB is publicly advertised. Procurement holds the most current ITB document and will create the ITB for all departments.
- b. **Scope.** Specify in detail the materials, equipment, and supplies to be furnished or the scope of work to be performed by the contractor, including or incorporating by reference the specifications, drawings and contractual terms and conditions applicable to the procurement.

- c. **Verify.** Verify that all requirements applicable to the procurement have been met and the items are not overly restrictive to bidders or proprietary to one brand name.
- d. **Conferences/Site visits.** All pre-bid conferences and/or site visits shall be mentioned in both the solicitation documents and any advertisement. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the solicitation documents and attend. Mandatory pre-bid conferences shall not be scheduled during a period of suspended ACPS business operations. If suspended by emergency the meeting shall be rescheduled by the Procurement Office to a date and time which will permit proper notification to all potentially interested participants.
- e. **Addenda.** Any changes in the requirements of the solicitation must be made by written addendum. When an addendum is issued that results in a material change to the requirements originally identified in the ITB, the Procurement Office will provide sufficient time for bidders to prepare a solicitation response. All addenda are issued by the Central Procurement office for formal bids.

### 5.3 Sealed Bids - Receipt, Opening, Evaluation, and Award.

- a. **Receipt.** Sealed bids shall be received until the date and time specified in the ITB. Bids must be submitted by both uploading in the Vendor Self Service System and by delivery of the bids to the Procurement Department on a USB. Bids are then publicly opened and read aloud. Late bids shall not be accepted or considered. Faxed or e-mailed bids are not acceptable. The time of receipt shall be determined by the time posted in the Vendor Self Service system, or if it is not working, receipt shall be determined by the time stamp associated with the alternative bid submission method, as identified in the ITB.
- b. **Opening.** After the bid opening, all responses shall be tabulated and posted to the ACPS website within 24 hours of the opening. Each bid is further evaluated to determine whether it is responsive to the ITB. The responsive bids are then evaluated according to the specifications posted and/or evaluation procedure described in the ITB to determine which one is the lowest bid.
- c. **Evaluation.** The lowest responsive bidder is then evaluated to determine if the firm is responsible.
- d. **Award.** The contract is awarded to the lowest responsive and responsible bidder.

### 5.4 Withdrawal of Bids Before Opening.

A bid may be withdrawn by a bidder when a decision is made to no longer submit a bid, or when alterations to the submitted bid are required. Such bid may be altered and resubmitted in the manner required in the ITB, before the opening date and time.

## 5.5 Mistakes in Bids.

- a. **Correction.** Except as herein provided, no plea or claim of mistake shall be available to a bidder for recovery of any deposit or security required to be paid or posted or as a defense in any legal proceeding for the failure, neglect or refusal of the bidder to (1) execute a contract that has been awarded by ACPS, (2) accept a purchase order issued by ACPS to a bidder in response to a bid submitted by such bidder, or (3) perform in accordance with the terms, specifications and conditions of a contract.
- b. **Mistakes Discovered Before Opening.** A bidder may correct mistakes discovered before the time and date set for receipt and opening of bids by withdrawing and replacing or by correcting the bid.
- c. **Mistakes Discovered After Opening But Before Award.**
  - (1) **Informality.** An informality is a minor defect or variation of a bid from the exact requirements of the ITB, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia, § 2.2-4301*). The Director of Procurement may, in his or her sole discretion, waive such informalities or permit the bidder to correct them, whichever procedure is in the best interest of ACPS. Examples include, but are not limited to the failure of a bidder to:
    - (a) Return the number of signed bids required by the solicitation.
    - (b) Sign the face of the bid in the space provided, but only if the unsigned bid is accompanied by other signed documents indicating the bidder's intent to be bound.
    - (c) Acknowledge receipt of an addendum to the solicitation.
  - (2) **Judgment Errors.** Bids may not be withdrawn if the mistakes are attributable to errors in judgment, nor may such mistakes be corrected.
  - (3) **Nonjudgmental Mistakes.**
    - (a) Mistakes Where the Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident to ACPS, in the bid document, the bid may be corrected by ACPS, in its sole discretion, to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident in the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
    - (b) Mistakes Where the Intended Correct Bid is Not Evident. A bidder may be permitted by ACPS, in its sole discretion, to withdraw a low bid if a mistake is clearly evident from the bid documents submitted by the bidder.

- d. **Mistakes Discovered After Award.** Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or purchase order.

## 5.6 **Withdrawal of Bids After Opening.**

Bids that have been appropriately opened cannot be changed, adjusted, corrected or modified by the bidder in any way other than complete withdrawal. ACPS' procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia [§ 2.2-4330](#) allowing withdrawal of a bid due to an error.

**Construction.** A bidder for a public construction contract, other than a contract for construction, may withdraw his or her bid from consideration if the bid price was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually because of an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

**Other Than Construction.** For other than construction, the lowest apparent responsive bid may be withdrawn if the bidder is able to verify to the Procurement Office's satisfaction that the bid is based on, or contains a nonjudgmental error that affects unit price, quantity, quality, or delivery schedule.

**Whether construction or other than construction,** the bidder shall submit to the Procurement Office his or her original work papers, documents, and materials used in the preparation of the bid within two working days after conclusion of the bid opening. The work papers shall be delivered by the bidder in person, by overnight courier, or by registered mail. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of the *Code of Virginia*. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- a. If a bid is withdrawn, the lowest remaining responsive bid shall be deemed to be the apparent low bid.
- b. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- c. If ACPS denies the request for withdrawal of a bid under the provisions of this section, the Procurement Office shall notify the bidder in writing stating the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsive and responsible bidder.

No bid may be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

### **5.7 Negotiation with the Lowest Responsive and Responsible Bidder.**

If the bid from the lowest responsive and responsible bidder exceeds available funds, the Procurement Office, on behalf of the department, may negotiate with the apparent low bidder to obtain a contract price within available funds if the solicitation contains substantially the following language “ACPS reserves the right to negotiate with the apparent lowest responsive and responsible bidder pursuant to § 2.2-4318 of the Code of Virginia, to obtain a contract price within the funds available if such low bid exceeds the available funds.” The conditions and procedures under which such negotiation may be undertaken are listed in DJF-RI *Competitive Sealed Bidding – Procedures for Negotiation with Lowest Responsible Bidder*. The Director of Procurement shall determine that the lowest responsive and responsible bid exceeds available funds and **notify such bidder in writing of ACPS’ desire to negotiate with the apparent low bidder. Thereafter, negotiations may be held to obtain a contract within available funds involving discussions of reduction of quantity, or other cost saving mechanisms**. Any such negotiated contract shall be subject to final approval by the Board, if Capital Project (planning, design, and construction) funds are used in the amount of \$1,000,000 or greater, in the sole discretion of the ACPS [{§ 2.2-4318, VPPA}](#). If such bidder decides to negotiate under those circumstances, the decision must be documented in writing in advance of the negotiations. Otherwise, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted. “Available funds” are generally considered those budgeted by the department for the requirement and designated as such **prior** to the issuance of the ITB. The purpose of this provision is not to force a bidder to take a lower price but rather to negotiate an acceptable change in requirements, including a price agreeable to both parties. Negotiations might include an extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price.

*END OF CHAPTER*

## 6 COMPETITIVE NEGOTIATION

### 6.0 General.

The VPPA requires the use of competitive negotiation for the procurement of all professional services {§§2.2-4303(B)}. Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is either not practicable or not fiscally advantageous to the public to use competitive sealed bidding {§2.2-4303(C)}. The definition of competitive negotiation is set out in §2.2.4301.

### 6.1 Competitive Negotiation for Professional Services.

Competitive negotiation for professional services includes the following steps:

- a. The first step is to determine that the needed services satisfy the definition of professional services. Note: if the estimated cost of the professional service is \$80,000 or less, the small purchase procedures of Chapter 4 may be used to obtain such professional service.
- b. A written RFP is issued to describe in general terms that which is to be procured for Professional Services exceeding \$80,000. The formal solicitation is issued by Central Procurement Office.
  1. The RFP must specify and list any specific items to be addressed by the offerors and the criteria and associated rankings (“weighted criteria”) that will be used in evaluating the proposals and it must contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractors. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body.
  2. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP.
  3. The requesting department shall communicate to Procurement the information on what services are being requested, such as the scope of work and/or technical specifications to be provided by the Offeror, the location, the anticipated time period for which the services must be provided, the background information, any special qualifications that may be required of the Offerors, and whether a pre-proposal conference is required.
  4. Establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal. The minimum time period is ten (10) calendar days from public advertisement date of the RFP. The time period used

may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a pre-proposal conference is required.

- c. Public notice of an RFP shall be made at least ten (10) days prior to the date set for receipt of the bids, and shall be posted on ACPS' Vendor Self Service (VSS) website, Commonwealth of Virginia's e-Procurement website (eVA), and, to the greatest extent possible, the ACPS Procurement website.
- d. The department head, or designee, should recommend an evaluation panel of individuals knowledgeable in the service area and include at least one individual knowledgeable of VPPA. Procurement shall always chair the procurement process, but shall not be a voting member of the panel.
- e. With the oversight of the Procurement Office, the department head, or designee, should provide the evaluation panel specific instructions of what their charge is. This should be done prior to a pre-proposal conference, but must be done prior to opening proposals.
- f. All pre-proposal conferences or site visits shall be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice will be provided in advance of the pre-proposal conference to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend. Pre-proposal conferences scheduled during a period of suspended ACPS business operations will be rescheduled by the Procurement Office to a date and time which will permit proper notification to all potentially interested participants.
- g. The Procurement Office will issue any addenda determined necessary by the department head, or designee, or evaluation panel.
- h. Closing of the RFP will follow the date and time of submission. The proposal submission(s), as well as the review process, shall be closed and confidential until a contract award decision is made.
- i. The evaluation panel is to engage in individual discussions with two or more offerors, if there be that many deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews or other requests for clarification shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include nonbinding estimates of total project costs, including but not limited to, where appropriate, design, construction and life-cycle costs. Nonbinding methods to be utilized in arriving at a price for services may also be discussed. Properly identified proprietary information from offerors shall not be disclosed to the public or to competitors unless required by law or a court.

- j. At the conclusion of discussions, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the evaluation panel shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the evaluation panel and department head or his/her designee.

- k. Once the technical evaluation and rankings have concluded, the public body may then request a cost proposal from the highest ranked Offeror. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that Offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and a request for cost proposal and negotiations shall be conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. At any time during the negotiations, the department head and the Director of Procurement may terminate all negotiations, reject all proposals, and re-advertise the RFP. The reason for such termination should be made a part of the file.
- l. The Director of Procurement or the Director's designee will make the award, which will result in a contract incorporating the requirements, and terms and conditions of the contract as negotiated. Care should be taken by the department to ensure that all points negotiated are properly documented and become part of the contract.
- m. The Procurement Office is responsible for issuing a notice of award or notice of intent to award.

## **6.2 Competitive Negotiation for Goods and Nonprofessional Services.**

Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement. Competitive negotiation is not "horse trading," "haggling," or an auction. Competitive negotiation, properly carried out, requires skill and extensive preparation on the part of the negotiators to achieve specific procurement objectives. Contact Procurement to view the most current RFP document for nonprofessional services or goods.

This method of procurement includes the following steps:

- a. Upon a determination made in advance by the Director of Procurement, or the designee, that the purchase should be procured by the Competitive Negotiation method, the following process is followed.
- b. A written RFP is issued to describe in general terms that which is to be procured.
  1. The RFP must specify and list any specific items to be addressed by the Offerors and the criteria and associated rankings (“weighted criteria”) that will be used in evaluating the proposals and it must contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the Offeror or a sample contract. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror. The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award will be made.
  2. Mandatory requirements should be kept to a minimum and refer to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP. Price may be one of the factors considered, but need not be the determining one.
  3. In writing the scope of work and/or technical specifications for an RFP, use the term “contractor” to describe the person/firm that is to perform the requirements of the contract after award. Use the term “Offeror” to describe who is to submit a response to the RFP. The requesting department shall communicate to Procurement the information on what services or goods are being requested, such as the scope of work and/or technical specifications to be provided, the location, the anticipated time period for which the services must be provided, the background information, any special qualifications that may be required of the Offerors, and will there be a pre-proposal meeting.
  4. Public notice of the RFP shall be made at least ten (10) days prior to the date set for receipt of the bids, and shall be posted on ACPS’ Vendor Self Service (VSS) website, ACPS’ Procurement website, and Commonwealth of Virginia’s e-Procurement website (eVA). The time period used may be greater than the required ten (10) calendar days based on the complexity of the requirement and whether a pre-proposal conference is required.
- c. Closing of the RFP will follow the date and time of submission. The proposal submission(s), as well as the review process, shall be closed and confidential until a contract award decision is made.

- d. All pre-proposal conferences or site visits must be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice will be provided in advance of the pre-proposal conference to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend. Pre-proposal conferences scheduled during a period of suspended ACPS business operations will be rescheduled by the Procurement Office to a date and time which will permit proper notification to all potentially interested participants.
- e. The proposals are evaluated by an evaluation panel. As an option, evaluators may request presentations or discussions with Offerors, as necessary, to clarify material in the Offerors proposals, to help determine those fully qualified and best suited. Proposals are then evaluated on the basis of the criteria set forth in the RFP. All RFP responses, that are deemed responsive by the procurement office, are to be evaluated. Offerors who fail to submit required documentation or meet mandatory requirements may be eliminated from further consideration as non-responsive. Two or more Offerors determined to be fully qualified and best suited, if there be that many are then selected for negotiation. Price may be considered, but need not be the sole determining factor.

During the evaluation phase it may be determined that only one Offeror is fully qualified, or that one Offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one Offeror and negotiating with that Offeror. The determination shall be signed by the department head or his/her designee.

- f. Negotiations are then conducted with each of the Offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each Offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected Offerors, ACPS selects the Offeror which, in its opinion, has made the best proposal, and the contract is awarded to that Offeror. In all cases, written confirmation shall be obtained from the Offeror on any modifications of the original proposal. Once an intent to award or an award notice is posted, no further negotiations shall be conducted.

Departments are not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award in accordance with the VPPA.

Departments may cancel an RFP or reject proposals at any time prior to making an award [§ 2.2-4319](#).

END OF CHAPTER

## 7 EXCEPTIONS TO COMPETITIVE PROCUREMENT

### 7.0 General.

The VPPA provides for exceptions to competitive procurement. Three types of exceptions are covered in this chapter: sole source, emergency, and other.

### 7.1 Sole Source.

#### Defined

Section [2.2-4303](#)(E) of the VPPA provides that:

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the ACPS web site on the day the public body awards or announces its decision to award the work, whichever occurs first.

Competition is not practicably available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is usually not appropriate since availability alone is usually not a valid basis for determining sole source procurement.

#### Department Head Approval Required

A written determination approved in advance by the Executive Team, and the department lead, documenting that there is only one source practicably available for that which is to be procured, must be included in the Procurement request for approval and the final documentation in the file.

A written quotation must then be obtained from the vendor. Such sole source procurements must be approved in advance by the Requestor, the Executive Leadership of the requesting department/school and the Director of Procurement using the Sole Source Procurement Approval/Award form. Sole source procurements that originally included a contract renewal provision, for which approval for multiple years (multi-term) was obtained, do not need to be forwarded for approval until 90 calendar days prior to expiration of the current contract term for which approval was obtained.

A key part of the Sole Source Procurement Approval/Award form found in the Appendix Forms section is an explanation of each of the following four points:

- a. Explain why this is the only product or service that can meet the needs of the requesting department.
- b. Explain why this vendor is the only practicably available source from which to obtain this product or service.
- c. Explain why the price is considered reasonable.
- d. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the School.

#### Purchase Order/Contract Document

When a quote has been obtained from the vendor and no further negotiations are needed, a requisition is deemed acceptable when it includes the final price, the SOW, and any additional terms and conditions. When complicated negotiations are involved, it is highly recommended that the department/school include a procurement staff member in the process. Departments shall contact the Procurement Office for assistance with contract development.

#### Posting Requirements

Sole source procurements shall be posted on the FSD/Procurement Office website.

## **7.2 Emergency Procurement.**

#### Definition

Section 2.2.4303(F) of the VPPA provides that:

In case of emergency, a procurement may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file, and submitted to the Director of Procurement regardless of the dollar amount. The public body shall issue a public notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the procurement web site announcing its decision to award as soon thereafter as is practicable.

In general, an emergency is a situation that threatens to shut down a critical system or process or a situation that threatens personal safety or property. An emergency has a serious and urgent nature that demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. Subsequent requirements shall be obtained using normal Procurement procedures. **The potential loss of funds at the end of a fiscal year is not considered an emergency.**

#### Timing of Emergency Procurement

The timing of the emergency will determine what pre-award action may be taken:

- a. For an emergency during normal business hours, the person determining that an emergency exists should contact the Director of Procurement to get approval and/or to notify the Procurement Office of the emergency issue.
- b. For an emergency outside normal business hours, the department head or designee should proceed with the emergency procurement and inform the Director of Procurement via email notification and with paperwork documentation on the next business day. The fact that a department head may make the procurement without contacting the Director of Procurement does not affect the need to maintain communication through the leadership structure concerning the emergency.

#### Award of Emergency Procurements

For emergencies, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances {§2.2-4303(F)}. This does not relieve the department from negotiating a fair and reasonable price and subsequently documenting the procurement action. Vendor's qualifications may be checked. Insurance coverage, if applicable, should be checked along with information on warranty offered and any other data pertinent to the procurement. A department may procure materials, equipment or supplies above its delegated authority, but in any such case, the department head or designee should notify the Director of Procurement as soon as possible, but no later than the next business day. All emergency procurement matters require notification to the Superintendent.

The department must prepare a requisition as soon as practical. Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.

#### Documentation

The Requestor must prepare a written determination for signature by the Executive Team, department head or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file. Send the documentation to the Procurement Office no later than the next business day following the emergency. The Director of Procurement is required to sign each Notice of Emergency Award to indicate that procurement documentation is complete. The emergency award shall be signed by the Superintendent and notification to the School Board shall be at the discretion of the Superintendent.

#### Emergency Planning

In many cases, procurement planning can reduce the need for using emergency procedures. Each department should prepare and keep current a list of local sources of goods and services that might be needed in an emergency. Information on rates and charges should be established and agreed upon in advance. In addition, "as needed" annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

### 7.3 Other Exceptions to Competitive Procurement.

Section [2.2-4344](#), VPPA, permits localities to enter into contracts without competition for the purchase of goods or services that are produced or performed by persons supervised by the Virginia Department for the Blind and Vision Impaired (DBVI), and nonprofit sheltered workshops, and for certain types of legal services (in accordance with §2.2-500).

Section [2.2-4345](#), VPPA, also has limited exceptions as does §2.2-4346. These sections should be reviewed for specific exceptions.

Virginia Department of Education (VDOE).

School Board approved textbooks.

Grants - If the Grant Agreement designates certain vendors to be used, the department/school shall award to that vendor. Where the Grant Agreement list more than one vendor, the vendors designated in the Agreement shall be notified and requested to submit competitive quotes.

Section [2.2-4343](#)(B) of the VPPA, provides with respect to procurements with federal funds:

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

*END OF CHAPTER*

## 8 PROCUREMENT REQUIREMENTS AND POLICIES

### 8.0 General.

This chapter sets out some of the specific requirements of the VPPA, and related policies to implement the VPPA that have not already been addressed in this document.

### 8.1 Bid Requests, Requests for Proposals and Responses.

- a. **Adequate Competition.** A sufficient number of sources must be solicited for the procurement of goods or services consistent with the method of procurement used.
- b. **Addressing Bids/Proposals.** Instructions for identifying and addressing bids or proposals shall be included with each solicitation. Minimum identifying information, including the ITB/RFP number, title, the opening date and time shall be in the written request. ACPS will not be held responsible for the opening of a sealed solicitation that is not appropriately marked as specified in the Bid or RFP.
- c. **Amending a Solicitation.** If it is necessary to amend a solicitation, the FSD/Procurement Office will prepare, and post an addendum for all potential bidders or offerors. Signed acknowledgment of addenda must be returned to the Procurement Office prior to or with the bid or proposal. Failure to acknowledge the addenda may be grounds for declaring the bid non-responsive. When an addenda is issued that extends the time for the vendor to prepare a solicitation response, the opening date should be extended to a date as approved by the Procurement Office.
- d. **Canceling a Solicitation.** An Invitation to Bid, a Request for Proposal or any other solicitation may be canceled or rejected after written notification to the Procurement Office. Departments/schools may only cancel a solicitation after a written request is made to the procurement office even if the request is within the department's procurement threshold. When canceling a written solicitation, all vendors who have been issued a solicitation must be sent a copy of the cancellation notice, and the notice must be publicly posted on the Procurement web site. The reason for cancellation shall be made a part of the procurement file. A department shall not cancel or reject an Invitation to Bid, a Request for Proposal, or any other solicitation solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror {§ 2.2-4319 of the VPPA} . If a solicitation is canceled after receipt and opening of bids or proposals, the original will remain a part of the procurement transaction file and shall not be open to public inspection. Bidders or offerors shall be notified in writing that the solicitation has been canceled. Unless the return of proposals is requested, duplicate proposals, if provided, will be destroyed.
- e. **Late Bids or Proposals.** Bids or proposals received after the date and time specified for receipt in the solicitation, may not be considered. Late bids or proposals may not be accepted and may be marked "late" and filed in the bid folder or returned unopened to the bidder or offeror, depending on the cost estimated for return shipping.

- f. **Acceptable Bid/Proposal Signatures.** The bid or proposal and all addenda returned by the Bidder or Offeror must be signed. The person signing the bid or proposal must be a person duly authorized by the Bidder or Offeror to sign bids or proposals, which thereby binding the organization to the scope and price of the offer submitted. Typewritten or stamped signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or her authority to bind the company to the contract. Failure to sign the bid/proposal in the space provided may result in rejection of the bid/proposal unless the unsigned bid/proposal is accompanied by other signed documents indicating the Bidder's/Offeror's intent to be bound.
- g. **Alternate Bids.** An alternate bid is a bid submitted in knowing variance from the specifications and must be clearly distinguished as an alternate by the Bidder. Frequently, alternate bids incorporate the latest in technology and can result in substantial savings, not only in monetary terms, but also in system-wide operational efficiencies. The Procurement Office may not accept alternate bids; however, they may reject all bids and rebid the item with a revised specification that may incorporate features of the alternate. The acceptance or rejection of bid alternates shall be at the sole discretion of ACPS, and shall be written as such in the solicitation.
- h. **Single Response to a Solicitation.** There are occasions when only one bid or proposal is received for a solicitation, even though multiple sources are solicited. When considered to have a significant budgetary impact and competitive sources are known to exist, the Procurement Office should investigate to determine why other bidders or offerors did not respond and make a determination whether to award or to reject the bid or proposal and re-solicit. If it is determined to make the award based on a single response, the requesting department must make a written determination that the price is fair and reasonable.

## 8.2 Bonds.

For legal requirements for construction projects, see PROCUREMENT MANUAL 8.6 Construction Contracts.

Section [2.2-4338](#) (A and B), VPPA, provides for alternatives to required bonds:

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
- B. If approved by ACPS, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to ACPS' equivalent to a corporate surety's bond.

Section [2.2-4339](#), VPPA, provides:

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bid or Request for Proposal.

The requesting department should make a determination, in other than construction contracts, whether any such bonds should be used in the procurement.

### **8.3 Brand Names.**

Section [2.2-4315](#), VPPA, provides that:

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general, style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

### **8.4 Cancellation, rejecting of bids; waiver of informalities.**

Section [2.2-4319](#), VPPA, provides:

- A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.
- B. A public body may waive informalities in bids. "Informality" is defined in [§2.2-4301](#), VPPA, as follows:

"Informality" means 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.

### **8.5 Comments Concerning Specifications.**

Section [23.2-4316](#), VPPA, provides:

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

The way ACPS has implemented this section of the VPPA is to require that each solicitation contain instructions on who to contact with comments or questions concerning specifications or other provisions in each Invitation to Bid or Request for Proposal. For all solicitations the contact shall be the procurement officer handling the request on behalf of ACPS.

## **8.6 Construction Contracts.**

Several sections of the VPPA apply specifically to construction contracts:

Sec. [2.2-4330](#). Withdrawal of bid due to error. Requires localities to choose one of the two alternative procedures for withdrawing a bid, and to identify, in the ITB, the procedure selected.

Sec. [2.2-4332](#). Workers' compensation requirements for construction contractors and subcontractors.

Sec. [2.2-4333](#). Retainage on construction contracts.

Sec. [2.2-4334](#). Deposit of certain retained funds on certain contract with local governments; penalty for failure to timely complete.

Sec. [2.2-4335](#). Public construction contract provisions barring damages for unreasonable delays declared void.

Sec. [2.2-4336](#). Bid Bonds. Requires bid bonds for construction contracts in excess of \$300,000; authorizes such bonds for smaller projects (\$100,000 - \$300,000, which may be waived if the Contractor possesses a Class A Contractor's License).

Sec. [2.2-4337](#). Performance and Payment Bonds. Requires performance and payment bonds for construction contracts in excess of \$500,000; authorizes such bonds for smaller projects.

## **8.7 Contract Modifications / Amendments / Change Orders.**

Sec. [2.2-4309](#), VPPA, provides:

- A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

- B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

#### School Board Policy FEG:

The School Board shall require from a person employed by and directly responsible to the school division, cooperating with the appropriate engineering and construction personnel, a review of the consultants'/contractors' activities in his/her supervision of building construction.

#### Financial Management of Construction Funds

The Superintendent shall establish financial management procedures for capital improvement program funds that adequately ensure the security and efficient and effective use of these funds. These procedures shall address or incorporate, at a minimum the following:

- A. Board approval required for all Capital Improvement Program contracts above \$1,000,000;
- B. Board approval required in advance for the transfer of any amount of funds equal to or greater than \$50,000 from one Capital Improvement Program category and/or site/location to others;
- C. Board approval required to expend any amount over 10% or \$100,000, whichever is greater, on any Capital Improvement Program contract, even if the Board previously approved a project budget that exceeds 10% of the contract.

For all other contracts and purchase orders: A contract may include provisions for modification for the contract during performance, but no fixed-price contract may be increased by more than twenty-five (25%) percent of the amount of the contract or \$50,000, whichever is greater. In no event may the amount of any contract, without adequate consideration be increased for any purpose, including, but not limited to, relief of an offeror from the consequence of an error in its bid or offeror.

For Capital Projects, per Board Policy, School Board approval shall also be required for each change order in excess of the cumulative ten percent (10%) or \$100,000 identified above if the individual change is in excess of five percent (5%) of the original contract value

ACPS may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract [§2.2-4309](#) (B), VPPA.

The limits apply to the aggregate of the changes in a contract. This is also a requirement of [§2.2-4309\(A\)](#), VPPA.

Contract amendments and change orders extending the time of performance of contract may be authorized without prior Board approval, which may be obtained in the case of significant changes in the time of performance of major contracts.

Contract amendments and change orders must be executed in the same fashion as the document which they modify, and the same requirements also apply.

## 8.8 Contract Pricing Arrangements.

Section [2.2-4331](#), VPPA, provides:

- A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.
- B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.
- C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

## 8.9 Contractor License Requirements.

- a. **Contractor Licensing and Registration.** State statutes and regulatory agencies require that some contractors be properly registered and licensed, or hold a permit, prior to performing specific types of services. These services include but are not limited to the following:

<u>Service</u>	<u>Regulatory Agency</u>
Construction	Dept. of Professional & Occupational Regulation
Pesticide Application	Dept. of Agriculture & Consumer Services
Asbestos Service	Dept. of Professional & Occupational Regulation
Security Alarm System Installation, Fire Alarm System Installation, Private Security Services	Dept. of Criminal Justice Services
Treatment, Storage, Handling, Transportation or Disposal of Hazardous Waste or Hazardous Radioactive Material	Dept. of Environmental Quality

It is the contractor's responsibility to comply with the rules and regulations issued by state regulatory agencies. The following statement should appear on solicitations for services regulated by the various departments of ACPS:

By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified and that any subcontractor used on the job will also be properly licensed.

License # \_\_\_\_\_ Type \_\_\_\_\_

- b. **Construction, Removal, Repair or Improvement.** If a procurement of \$1,000 or more involves construction, removal, repair or improvement of any building or structure permanently annexed to real property or any other improvement to such real property, the contractor must possess one of the following licenses issued by the State Board for Contractors for the type of work involved {*Code of Virginia*, §§ 54.1-1100, 54.1-1103 and 54.1-1115}:

**Contractor License A** - If the contract is \$120,000 or more or if the contractor does \$750,000 or more in business within any 12-month period.

**Contractor License B** - If the contract is \$7,500 or more, but less than \$120,000 (\$1,000 for electrical, plumbing, and HVAC work) or if the contractor does between \$150,000 or more, but less than \$750,000 in business within any 12-month period.

**Contractor License C** - If the contract is over \$1,000 but less than \$7,500 or if the contractor does less than \$150,000 in business in any 12-month period. **Note:** Electrical, plumbing, heating, ventilation and air conditioning (HVAC) contractors shall require a master tradesman license as a condition of licensure. Call and check with the Board of Contractors for all other trades to see if a license is required.

**Up to \$10,000** - The buyer shall ascertain that the contractor is licensed when required, as stated above. The contractor's license number, on fax back or emailed quotes up to \$10,000, should be maintained as a part of the Procurement documentation or on file in the Procurement office.

**Over \$10,000** - The written Request for Quote by fax back, email, unsealed, or sealed solicitations must state that the appropriate contractor license number shall be furnished with the bid or proposal. If a contractor who is already licensed fails to submit the license number with the bid/proposal, the bid/proposal may still be considered if the number is promptly submitted upon the request of the Procurement office. The procurement documentation must include the contractor's license number.

An unlicensed vendor submitting a bid or proposal where such license is required is non-responsive and is in violation of state law. Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in

violation of state law {*Code of Virginia*, § 54.1-1115}. Contractors must be licensed in the proper classification and specialty to perform the work required by the solicitation. If there is any question as to whether a licensed contractor is required for a specific procurement, call the procurement office for further instruction. The procurement office may contact the State Board for Contractors for policy interpretation.

### **8.10 Cooperative Procurement.**

As provided in [§2.2-4304](#), VPPA, ACPS may participate in, sponsor, conduct, or administer a cooperative procurement agreement with other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. ACPS shall comply with the alternative policies and procedures adopted by the governing body of such City, County, School, or town agency when entering into a cooperative procurement agreement with a Virginia county, School, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § [2.2-4343](#). Otherwise, such purchases shall be made in accordance with this Manual.

### **8.11 Contract Requirements**

- (1) Are the parties clearly identified with correct legal name of each party?
- (2) Does the contract comply with the intent of Board, the Superintendent of Schools, and all interested parties as expressed by Board Reports, or other documents?
- (3) Is the contract amount to be paid clearly set out?
- (4) Are the services and/or items to be provided clearly set out?
- (5) Has the proper ACPS representative reviewed the document as to form?
- (6) Have funds been certified as being available by the Budget Analyst?
- (7) Is there any unreasonable exposure to liability for the School, and, if so, how is this being dealt with?
- (8) Is insurance coverage or a bond necessary, and, if so, is the insurance or bond adequate?
- (9) On contracts involving the expenditure of federal or state grant money, has the other departments reviewed the contract?
- (10) Is the contract free from ambiguities and loopholes?
- (11) Is there a clearly defined method for ACPS to terminate the contract?

When approving a contract “as to execution,” the procurement office looks for the following:

- (1) Are all signatures present?
- (2) Did the parties executing the contract have apparent authority?

- (3) If furnished by the contractor - is the accompanying bond in order and properly executed?

Prior to any contract, agreement or other obligation involving the expenditure of School funds being approved as to form, FSD must certify the appropriation and availability of funds for formal solicitations.

Evidence that an account number, the budget amount for the goods or services, or a requisition has been approved in the financial system will be accepted as certification by the Financial Services Department.

### **8.12 Drug-free Workplace Requirements.**

Section [2.2-4312](#), VPPA, provides:

All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

### **8.13 Multiple Awards.**

When the terms and conditions of multiple awards are so provided in the Request for Quote, Invitation to Bid or Request for Proposal for services, awards may be made to more than one bidder or offeror. Unless otherwise specified in the solicitation, Procurement may award a multi-line item procurement in whole or in part or on an individual line item basis. In determining whether to make separate line item awards on a multi-line item solicitation, consideration should be given to the administrative costs to the department of processing individual purchase documents, and separate invoices and checks.

### **8.14. Nondiscrimination.**

Section [2.2-4310\(A\)](#), VPPA, provides:

In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

Please consult Section 2.2-4310 for the remaining requirements of that section regarding nondiscrimination.

Section [2.2-4311](#), VPPA, provides:

All public bodies shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide 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 nondiscrimination clause.
  - b. 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.
  - c. 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.
2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Section [2.2-4343.1](#) (C and D), VPPA, provides:

C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

### **8.15 Prequalification.**

Section [2.2-4317](#)(A and B), VPPA, provide:

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.

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.

### **8.16 Public access to procurement records.**

Section [2.2-4342](#), VPPA, provides:

- A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act {§ [2.2-3700](#) et seq.}.
- B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
- D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
- E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § [2.2-4317](#) shall not be

subject to the Virginia Freedom of Information Act {[§ 2.2-3700](#) et seq.}; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

### **8.17 Publicly Posted Notices.**

All Notices (bid tabulations and solicitation awards) for procurement that are 1) over \$100,000 or 2) conducted by the Procurement Department on behalf of the requesting department must be posted for 10 calendar days immediately following the actual time of award. If used, the Notice of Intent to Award must be posted 10 calendar days prior to the actual time of award. {[§ 2.2-4360](#), VPPA}.

**NOTE:** The procurement records must be available for review by any bidder or offeror at the time an Award Notice is posted.

Documentation to support the posting/advertising requirements must be contained in or attached electronically to the procurement record. It is not necessary to date/time stamp routine award notices or to file them when they are removed from posting; however, the Procurement Office must ensure that the posting requirement is met and be able to withstand protest/challenge pertaining to compliance with the posting requirement. If a protest is anticipated, the Notice of Intent to Award should be date/time stamped when it is posted and removed, and it should be made part of the procurement file.

### **8.18 Responsible Bidder or Offeror.**

In determining a responsible bidder or offeror, a number of factors, including but not limited to the following, are considered. The bidder or offeror should:

- a. Usually be a dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;
- b. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- c. Have a satisfactory record of performance;
- d. Have a satisfactory record of integrity; and
- e. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

Assistance in making this determination is available from the Procurement Office at 703-619-8043.

### **8.19 Responsive Bidder.**

To be considered for an award, a bid must comply in all material respects with the Invitation to Bid. Responsiveness relates to compliance with the provisions of the

solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the Invitation to Bid may result in a bid being declared non-responsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation to Bid, failure to offer a product or service that meets the requirements of the Invitation to Bid, etc. A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract, where required, may be considered non-responsive. This is true whether the price was left blank or the bidder entered a figure of \$0. To avoid inconsistent treatment of bidders the following statement should be included in the pricing schedule of such solicitations, "Any bidder who enters \$0 on a pricing blank or leaves it blank may be considered non-responsive." Bidders who provide multiple prices for performing a service where a single price was solicited may also be considered non-responsive. If a bid is found to be non-responsive, a notation as to why it is non-responsive shall be made and signed by the Director of Procurement and be included in the contract file.

## **8.20 Sales Tax.**

ACPS is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Departments may receive requests for a Tax Exemption Certificate or exemption number. A properly signed certificate can be obtained from the Accounting Office or the Procurement Office. When it is evident on the face of the bid that taxes were improperly included, the bidder may be given the opportunity to delete them.

Virginia's Sales and Use tax does not apply to sales of tangible personal property to ACPS, for its use or consumption, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds. No exemption is provided for local government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not. The following examples are offered to show that taxes apply to lodging and conference facilities under a variety of circumstances:

Sales and Use Taxes apply:

Example 1: A School employee takes an overnight trip. All state taxes apply to lodging and meals in this transient situation.

Example 2: A School employee registers for a conference and decides to pay for lodging and nonconference meals that were charged with a personal credit card and later get reimbursement from the department. All state taxes apply to the expenses incurred.

Example 3: A School employee registers for a conference, seminar, Procurement Forum, etc., making reservations with the facility by submitting a PO for payment.

All state taxes for lodging and meals charged against the PO would apply. If an employee pays out of the pocket for meals, the tax would apply.

Example 4: The department is sponsoring a conference or seminar, sets a master account, and provides the facility with a PO. All state taxes would apply to lodging, facilities, meals, AV, and other taxable services charged to the master account.

Persons who contract with ACPS to perform a service and in conjunction therewith furnish some tangible personal property are deemed to be the consumers of all such property and are not entitled to exemption on the grounds that a governmental entity is a party to the contract. This is true even though title to the property provided may pass to the government and/or the contractor may be fully and directly reimbursed by the government. The same principle applies to persons who enter into contracts with ACPS to perform real property construction or repair.

## **8.21 Preference for VA products with recycle content and for VA Firms.**

Section [2.2-4324](#), VPPA, provides:

- A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by a coin toss.
- B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.
- 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.

Section 2.2.4328, VPPA, provides:

- A. The governing body of a county, School or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by a coin toss, unless § [2.2-4324](#) applies.

- B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

*END OF CHAPTER*

## 9 CONTRACT ADMINISTRATION

### 9.0 General.

Contract administration begins after award of the contract. Its purpose is to assure that the contractor's and department's/school's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the Procurement process demands that goods or services be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by ACPS relative to a specific contract after the award is made. For assistance with contract administration, contact the Procurement Office at 703-619-8043.

After issuance of a contract award document, the School/department is responsible for contract administration to assure that the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract administration. All vendor noncompliance shall be reported to the Procurement Office for documentation to the file, and, when warranted, contact should be made with the Procurement Office for assistance.

### 9.1 Planning and Checklist.

Contract administration planning should occur during the development of the solicitation and award documents. All purchases should encompass some post-award administrative efforts--with the degree determined by evaluating purchase complexity, value, delivery or performance schedule, commodity or service type, and risks to the department. The end user and the buyer should work to establish administrative requirements or tasks while developing the solicitation.

### 9.2 Contract Administrator.

The contract administrator should be the end user of the contract or one who has a vested interest in the procurement who will be responsible for the proper adherence to all contract specifications by the contractor. Contract administration shall be determined by the department requesting the solicitation designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the administrator's authority and that which must remain a function of the Procurement office. The department using the contract shall read the contract terms and understand the work, to include acceptance of goods or services, approval of invoices, scheduling and monitoring of project progress, coordination of the provision of ACPS resources, when part of the contract, and favorable or critical feedback to the contractor and buyer, as needed.

### 9.3 Procurement Records.

Complete records must be maintained for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction. Records are open to the public in accordance with the *Virginia Freedom of*

*Information Act* and should be made available for review after the award has been made, subject to exceptions provided by law.

**Bid File.** The file must contain at a minimum, as applicable, the description of requirements, sources solicited, cancellation notices, and the method of evaluation and award.

**Contract Files.** The Procurement contract files are organized alphabetically within categories as active or inactive. The files should contain a completed copy of the contract, contractor performance reports submitted by the contract administrator, amendments, vendor complaint forms, cure letters, and any other documents relating to the work or performance of the contractor.

**Purchase Order File.** The purchase order files are organized within each fiscal year and contain detailed support for the request.

#### **9.4 Delivery of Goods.**

The basic policy of ACPS is to request bids for goods F.O.B. Destination, which means the quoted price includes shipping costs. Receiving departments/schools should have a copy of the purchase order or award document in order to be aware of the type or method of delivery the contractor is required to perform and what is to be delivered. The contractor may be required by the contract to deliver in a specific manner such as one of the following: tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, or deliver at only certain specified hours. Delivery instructions should be made clear in the award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. Delivery must be made by the date or period specified in the contract or the contractor will be considered to be in default, except for excusable delays approved by ACPS.

#### **9.5 Inspection.**

Departments/schools are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to determine conformance with applicable contract requirements or specifications. It includes the determination that:

- a. Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.
- b. Goods or services of the quality, quantity, grade, or standard specified in the purchase order or contract have been delivered.
- c. The design, construction, ingredients, size, kind, type, make, color, style, etc., of the commodities conform to the requirements of the purchase order or contract and where applicable, to the manufacturer's published specifications.

- d. The packaging and labeling, marking, or other means of identification meet specifications. The commodities comply with specification requirements in all essential respects, are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or contract.

#### **9.6 Acceptance.**

Proper notification of the acceptance of goods or services is necessary for timely and proper payment of invoices. The department/school is responsible for keying a receiver transaction into the financial system. If an invoice is sent to the department/school, it must be forwarded to Finance immediately.

#### **9.7 Rejection.**

Rejection of goods or services is the responsibility of the receiving department whenever the goods or services do not meet contract requirements. In the event of a partial or total rejection, the department should take immediate action to notify the contractor as to the reasons for rejection and to request prompt replacement.

#### **9.8 Restocking Charges.**

A restocking charge may be assessed by a contractor for those deliveries rejected by a department due to no fault of the contractor. The value of these charges should be identified prior to making the decision to return. Contact Procurement at 703-619-8043 before making a return that will result in a purchase order cancellation or change.

#### **9.9 Over shipments/Overruns.**

A department should not accept goods in excess of those specified in the purchase order or contract unless authorized by the department head.

#### **9.10 Lost or Damaged Shipments.**

It is the department's responsibility to inspect deliveries promptly for shipping damage at the receiving location. Concealed damage or latent defects should be reported to the carrier and contractor within seven business days of receipt and prior to removal from the point of delivery if possible. It is difficult to determine responsibility for deliveries once the department has moved goods to another location or when the inspection has not been made in a timely manner. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses incurred by ACPS.

#### **9.11 Payment and Invoice Processing.**

Invoice processing is to be performed in accordance with the rules and regulations set forth by FSD and/or the contract document. To maintain good vendor relationships and a competitive environment, it is imperative that invoices be processed promptly and in accordance with the contract terms. Section [2.2-4352](#), VPPA requires departments/schools to pay for the completely delivered goods or services by the required payment date. If no payment date has been established by contract, then

payment is due 45 days after receipt of a proper invoice by the department and after the receipt of the goods or services, whichever is later {§ 2.2-4347, VPPA}.

### 9.12 Amendments (Modifications) to Contracts.

A contract includes provisions for amendments (modifications) during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Superintendent of Schools. For the Capital Improvement Projects (CIP) no contract may be increased by more than 10% of the original amount of the contract or \$100,000, whichever is greater, without School Board approval. This limitation applies to the cumulative change orders in a contract. The modification of a purchase order or contract can only be authorized by the appropriate Procurement official. To change a purchase order, the department must contact the Procurement Office to process a contract amendment prior to a change order being initiated to the purchase order. All change requests should be evaluated by the Buyer for contract validity and price reasonableness (For the change order process for CIP, see Section 8.7). A contractor shall not be notified that a change has been approved until that change has been authorized by the appropriate Procurement official, and an amendment to the existing active contract is fully executed. Contractors who deviate from the requirements of a purchase order/contract prior to receipt of an authorized change order do so at their own risk {§ 2.2-4309, VPPA}.

### 9.13 Contract Renewal and Extension.

- a. **Renewal.** A contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract, or through an amendment to the original contract. Often indices such as the applicable Consumer Price Index (CPI) or Producer Price Index (PPI) are used as a benchmark in pricing renewal options and assist in determining price reasonableness. Price increases should not be given automatically at renewal. It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index or percentage referenced in the contract. The Procurement Office, together with the owner to the budget line item, may then negotiate the amount of the increase up to the amount the budget allows. All communication regarding cost increase matters are handled by the Procurement Office.
- b. **Extension.** ACPS may extend the term of an existing contract for services (or goods) to allow completion of any work undertaken but not completed during the original term of the contract. No additional consideration exceeding the contracted price may be paid to the contractor. This action must be taken in writing prior to the expiration of the current contract. {§ 2.2-4309 (B and C), VPPA}

#### **9.14 Termination for the Convenience.**

Occasions may arise when a purchase order or contract may need to be terminated for the convenience, provided such purchase order or contract allows for such termination. The termination date and the extent of termination must be specified in writing to the contractor. Any department/school considering termination for convenience of the School shall contact the Director of Procurement before contacting the Contractor.

#### **9.15 Cancellation of Purchase Order/Termination of Contract.**

Any request for termination must be made in writing and shall include an explanation of the basis of the request. Termination of contracts may only be made in writing by the Procurement Office. A contractor may request cancellation, and ACPS may grant relief, if the contractor is prevented from specific performance including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the contractor's fault or negligence.

#### **9.16 Default.**

A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications). The following factors should be considered prior to taking any action:

- a. The specific reasons for such failure.
- b. The period of time needed to obtain the goods or services from other sources compared to the time delivery or performance could be accomplished by the delinquent contractor.

If it is determined that a contractor is in default, a memo of complaint should be promptly sent to Procurement. The Director of Procurement will forward such to the Contractor and request a response. If an unacceptable contractor response is received, or the matter is not resolved, Procurement may issue a "Notice to Cure," at Procurement's discretion. A cure letter may also be issued at the same time as the Complaint is issued. Resolution of performance issues should progressively start with the filing of the memo with the Procurement.

#### **9.17 Vendor Performance Complaints.**

Complaints and/or discrepancies on vendor performance should be reported promptly by the department/school as they occur. Vendors are required to respond to Procurement and send a copy to the department/school. Failure to respond within ten days may result in initiation of termination of contract. These complaint reports are necessary in order for the Procurement Office to develop vendor history, evaluate vendor performance, and, if required, take appropriate and timely action.

### **9.18 Notice to Cure.**

A cure letter is sent by Procurement when a contractor has failed to perform or deliver as substantiated by a complaint. It provides the contractor a period of time to correct or “cure” the deficiency and places the contractor on notice as to the consequences for failure to take the required corrective action. The notice should be given in writing advising the contractor that non-delivery or non-conformance is a breach of a contract and, if the deficiency is not corrected within a stated number of days, the School will terminate the contract for default and hold the contractor liable for any damages and costs. Procurement will consult with the Legal Counsel when drafting a cure letter.

### **9.19 Termination for Default and Re-procurement Costs.**

Upon the expiration of the time period stated in the “Notice to Cure,” if a satisfactory resolution has not been reached, Procurement may send the contractor an appropriate termination letter and take re-purchase action and consider the process of ineligibility to respond to future request for a designated period. This letter states that the contract is being terminated and when ACPS re-purchases the goods or services any additional cost to ACPS will be billed to the contractor. Normally re-purchase should be by competitive means in order to secure a fair and reasonable price. If the re-purchase results in increased costs to ACPS, a letter shall be sent to the defaulted contractor demanding payment of the excess costs. If repayment has not been made by the end of the specified period of time, subsequent collection action shall be taken by ACPS, if warranted.

In some instances a contractor will notify Procurement that they refuse to or cannot deliver or complete performance on a contract. In those situations, it is not necessary to follow the procedure of using a cure notification and Procurement may proceed to the termination procedures. However, a memo should be filed with Procurement to provide a historical file for future determinations of responsibility, etc.

### **9.20 Debarment and Reinstatement.**

In addition to the above default procedures, action to have the defaulted contractor debarred may be initiated by the department sending a letter to the Director of Procurement recommending debarment and providing all the pertinent facts to support that recommendation. Debarment means action taken by ACPS to exclude individuals or firms from contracting with ACPS for goods or services for a specified period of time. Debarment does not relieve the contractor of responsibility for existing obligations. The purpose of debarment is to protect ACPS from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect ACPS’ interests and the integrity of the procurement process by preventing individuals or firms who have displayed improper conduct from participating in School requirements for a specific period of time.

### **9.21 Multi-User Contract Administration.**

Multi-User Contracts are considered to be any ACPS contract used by more than one School or department regardless of which department initiated the procurement

resulting in the original contract. Other departments/schools may use such contracts depending on the terms of contract and the available funds, and not to exceed amounts of the contract.

Procedures for Multi-User Contract administration include:

- a. School departments wanting to use an existing contract shall research the availability of the contract by viewing the document in MUNIS under Vendor Central where all ACPS contract documents are stored. Questions or concerns regarding availability of such contracts shall be directed to the Procurement Office. However, Procurement shall be contacted prior to any use of contracts retrieved from the database.
- b. Additional department users shall advise Procurement of any use of the contract, to include the scope, terms, and dollar value of such use.
- c. Changes to Multi-Use contracts shall be initiated by Procurement. Procurement shall provide a copy of all contract changes to authorized users.
- d. Users having a problem or complaint with a contractor or vendor shall follow all procedures in accordance of 9.17.

## **9.22 Contract types and pricing arrangements.**

The type of contract and pricing arrangement will prescribe the type and extent of required contract administration. The following contract types describe special administrative considerations:

- a. **Requirements-Type Contracts.** Effective administration of open-ended agreements requires that all departments maintain a record of the degree of activity against these contracts verifying the activity is within the scope of the contract and is paid in accordance with the contracted price. Contractor performance and contract expenditure activity should always be examined by departments and Procurement prior to the exercise of any renewal provision or re-solicitation.
- b. **Time and Materials Contracts.** It is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment because there is usually no incentive for contractors to contain costs when using this type of contract. Departments have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. When a time and materials agreement is used, departments must request a detailed job estimate and evaluate the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, negotiations or the solicitation of additional estimates should be considered. Invoices should specify the amount and type of labor that is contained in the contract with the associated rates and the material costs so that verification of contract terms and pricing can be accomplished. The material costs should be

supported with documentation as required in the contract (i.e., price list or invoiced cost).

- c. **Consultant/Contractor Services.** When the services of a consultant/contractor are utilized, especially when analysis and research are involved and the contractor's performance is to culminate in a written report or other document (i.e., the deliverable), it is imperative that departments periodically check the contractor's performance and assure that it is progressing to the degree anticipated. Crucial milestone or progress reports may be required to be submitted by the contractor in the solicitation which would assist in post-award administration of the contract. If performance is found not to be up to expectations, the contractor may be given a complaint notice from the Procurement Office with specific guidance on what must be done to adequately meet performance expectations.

*END OF CHAPTER*

## 10 GENERAL PROCUREMENT GUIDELINES & PLANNING

### 10.0 General.

This chapter contains general guidelines and suggestions when procuring goods, services, and construction. In some cases, these guidelines expand upon requirements that have their basis in the Virginia Public Procurement Act (VPPA). Their intent is to assist purchasers in conforming to acceptable procurement principles, yet provide maximum interpretive latitude in their application.

### 10.1 Lead-Time.

- a. **Administrative Lead-Time.** Administrative lead-time is that period of time from when Procurement is provided sufficient information to start the solicitation process for the goods or services requested by the user to the issuance of an award. For routine procurements where informal written solicitations are used, the minimum time required for preparing, soliciting, evaluating, and making an award may take from three (3) days or up to thirty (30) days, depending on the complexity and the information provided. When competitive sealed bidding or competitive negotiation is used, the time required by the Procurement Office may be longer. It is important that Procurement staff continue to emphasize to the requesting departments that this time period should be included in their planning.
- b. **Order/Ship Time (OST).** Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point. These times vary widely by industry. Consideration should be given to market conditions which will affect delivery. Except for the most routine of expendable supplies, e.g., off-the-shelf items, a range of 30-90 days should be estimated in determining the OST. Custom made and complex items of equipment normally take longer to obtain.

### 10.2 Selection of Procurement Method.

It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency or a sole source. The anticipated value of the contract includes the dollar value for the initial period of the contract, and includes all possible renewal periods. Competitive sealed bidding must be used unless a determination is made in advance by the Director of Procurement and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

### 10.3 Preparing the Written Solicitation.

- a. **General.** Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. Section [2.2-4343](#)(1) (D), VPPA, requires public bodies

to prominently display a nondiscrimination statement concerning faith-based organizations in all Invitation to Bid (ITB), Request for Proposals (RFP), contracts, and purchase orders. The following statement must be prominently displayed on the cover page of every ITB or RFP:

**This public body does not discriminate against faith-based organizations.**

- b. **Terms and Conditions.** Terms and conditions must be in writing and be concise. Generally, if there is an ambiguity in a written contract that results in a dispute, its resolution will be against the party who wrote the contract. The solicitation shall include a statement of any requisite qualifications. Such qualifications must be verifiable and must be used in determining responsiveness of bids and in evaluating proposals.
- c. **Contract Period.** Term contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a multi-year contract, or one that includes an option to renew the contract for an additional period, may be advantageous and should be considered; however, in determining the value of the contract and procurement method, all possible renewal periods must be included. Multi-year programs are usually subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause unless it is fully funded. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Departments should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory. Multi-year contracts, including options to renew, normally should not exceed five (5) years.
- d. **Types of Contracts.** Listed below are some various types of contracts.
  - (1) **Fixed Price Contracts.**
    - (a) **Firm Fixed Price.** Fixed pricing agreement where firm unit or total prices are established at the issuance of a purchase order or contract award for the goods or services. A fixed price contract may result from bidding or negotiation processes where specifications are clear and costs are predictable. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.
    - (b) **Fixed Price with Escalation/De-escalation.** This fixed price agreement provides for price adjustments, up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to address fluctuations in vendor's prices due to unstable markets. The use of fixed price contracts with escalation/de-escalation reduces the

need for contractors to inflate cost of goods to offset unstable markets or economic conditions; however in most cases the contractor should notify ACPS of any change in price.

- (2) **Requirements-Type Contracts.** Requirements-type contracts are agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount; rather, they are unit price based. They establish a framework under which goods/services are provided, but it is the degree of purchase order activity against the contract that will ultimately determine its total value. Effective administration of these open-ended agreements requires that the department maintain some record of the degree of activity against these contracts. Each user department must, either manually or through an automated system, have some means to capture, analyze, and report usage information to Procurement semi-annually. Purchase order activity must be periodically reviewed by the user department for compliance with the terms of the agreement. Contract expenditure activity should always be examined by the user department prior to the exercise of any renewal provision or re-solicitation. These contracts are generally used when conducting multi use contracts and the need for close administration becomes even greater. It is usually best to have a not to exceed amount in this type contract.
  
- (3) **Time and Materials Contracts (T&M).** The agreement for supplies or services is on the basis of billable hours, which include overhead, profit, and materials at cost. Details of the work are known but the scope of the work is not known. T&M contracts are suitable for maintenance, design, engineering, emergencies, etc. Competition is sought on the basis of labor-hour rate. Whenever a department uses a cost-reimbursement agreement such as T&M to acquire needed goods/services, it is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment. Because there is usually no incentive for contractors to contain costs, departments have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. It is usually best to have a not to exceed amount in this type contract.

When a time and materials agreement is used, departments must request a detailed job estimate which should include the amount and type of contract labor with associated rates and itemized material costs to allow evaluation of the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, Procurement should be contacted on how to proceed.

- (4) **Construction-Type Contracts.** Procurement and administration of construction services requires the planning and use of special procedures. Therefore, Procurement should be contacted if this type of contract is needed.

- (5) **Blanket Purchase Agreements (BPA)/Master Agreements (MA).** Blanket purchase agreements/master agreements are contractual relationships which may be entered into with vendors to obtain small dollar value, operating supplies or services (less than the single quote limit).
- (6) **Cost Plus a Percentage of Cost.** Except in the case of an emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost {§2.2-4331, VPPA}. This contract permits a contractor to be paid for all costs plus a percentage of the cost. There is no incentive for the contractor to be cost conscious because the greater the cost, the greater the profit. If this type of contract is used in an emergency situation, a not to exceed amount should be used.
- (7) **Cost-Plus-Fixed-Fee.** A cost-plus-fixed-fee contract is a cost-reimbursement type contract that provides for the payment of allowable costs plus a firm fixed fee to the contractor which is negotiated prior to contract award. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes which may be negotiated in the scope of work or services to be performed under the contract. The scope of work is generally vague or specifications are indefinite. It is usually best to have a not to exceed amount in this type contract.
- (8) **Incentive.** A fixed price is agreed upon with a target cost/profit, a maximum price, and a profit formula. Below target, the contractor and School share savings. Above maximum price, the contractor and/or School may assume additional costs. This is used for competitively negotiated contracts for high cost, long lead-time projects. The contractor's incentive is greater profit by improving performance to control costs.
- (9) **The Public-Private Education Facilities and Infrastructure Act of 2002. (PPEA) (See Virginia Code Sections 56-575.1 et seq.** If a department is interested in this type of contract, the department needs to contact the Procurement Office.
- (10) **Term Contracts.** Term contracts (annual or multi-year) shall be considered where the anticipated cumulative annual costs for a service exceed \$10,000 and a fixed price type contract or a unit priced requirements type contract can be awarded. Exceptions to this policy on a case by case basis require a decision in writing approved by the department head or his or her designee and the Director of Procurement. In some instances, even though the annual amount is less than \$10,000, it may be advantageous to enter into a term contract and this should also be considered.

- e. **Pre-bid or Pre-proposal Conferences.** Conference or site visits early in the solicitation cycle provide an opportunity to emphasize and clarify critical aspects of solicitations, eliminate ambiguities or misunderstandings, and permit vendor input. Conferences/site visits should be conducted with potential bidders or offerors when issuing solicitations involving complex procurements, or when it would be helpful. Attendance at conferences or site visits may be either optional or mandatory. When mandatory attendance is stipulated in the solicitation, an attendance roster is signed by the attendees and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. Departments should carefully consider whether it is absolutely necessary that bidders or offerors attend in order to understand the solicitation and submit a response to it. Such mandatory conferences and site visits can reduce competition because of vendor scheduling conflicts. In addition, no such conference or site visit should be scheduled less than ten calendar days from the date the solicitation is publicly posted and/or advertised as required. Pre-bid or pre-proposal conferences should not be scheduled during a period of suspended School operations. If a modification to the solicitation is required as a result of the conference or site visit, an addendum must be issued.
- f. **Response Time.** When establishing an opening date and time, buyers should allow for holiday mail disruptions and delayed mail deliveries as well as vendor's time required to respond to complex procurements. The sealed bid or proposal opening date should be no less than ten (10) days after the scheduled pre-bid or pre-proposal conference. If the tenth calendar day falls on a weekend or holiday, the bid or proposal due date should be no sooner than the first regular business day thereafter. The fact that the School is open on an official federal or state holiday does not affect these rules.
- g. **Acceptance Period.** Bids are usually valid for a minimum of ninety (90) days unless a longer period of time is specified in the solicitation or in the bid response.
- h. **Public Posting of Solicitations and Awards.** ACPS' Procurement website is designated as the specific place available to the public used for the purpose of publicly posting solicitations and awards.

#### 10.4 Specifications.

It is ACPS' policy that competition be sought to the maximum feasible degree. This can be accomplished by describing goods or services in a manner which meets the department/school needs and encourages competition. Unless otherwise expressly stated in the solicitation, all supplies and equipment furnished must be new and in first class condition. Demonstration, previously rented or reconditioned items are not considered new. The following specification (descriptive) categories are listed in the preferred order of use:

- a. **Generic (Performance and Design).** Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic

specification basis. Under appropriate circumstances, performance specifications (setting forth the performance requirements), design specifications (setting forth the essential characteristics of the items solicited), or a qualified products list (QPL) may be used.

- b. **Brand Name or Equal.** When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the ITB the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. Any article which ACPS, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted {[§2.2-4315](#), VPPA}.
- c. **Proprietary.** A proprietary specification restricts the acceptable products to those of one or more specified manufacturers. It is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or where prequalification of products is necessary to support specific needs of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. **The determination for the use of a proprietary specification shall be made in advance, in writing, and be included in the procurement file.**
- d. **Vendor Assistance in Specification Preparation.** Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the department; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, a public body (Superintendent of Schools) may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body {[§2.2-4373](#). VPPA}. This does not prohibit departments and vendors from freely exchanging information concerning what is sought to be procured and what is offered. **The name of the vendor(s) providing assistance must be submitted to the Procurement Office with the specifications to the Procurement Office.** Such information is helpful to the buyer when identifying restrictive or proprietary features which could be challenged by other bidders or offerors causing delays and/or cancellations.

## **10.5 Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL).**

It is sometimes necessary to pre-qualify products or suppliers and only solicit those who have been pre-qualified. In such cases, a list is maintained of specific products (QPL) or contractors (QCL) which have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable levels of quality or performance {[§2.2-4317](#), VPPA}. This qualification is performed in advance of any particular purchase program. By having a prequalification procedure, the time in the purchase cycle can be reduced. The qualification requirements must be established and potential contractors advised by letter and/or public posting sufficiently in advance of the anticipated procurement to allow for evaluation and qualification of potential contractors and/or products. A contractor whose product or service has been determined not qualified will be advised in writing. Solicitations are only sent to those contractors determined to be qualified. Information on pre-qualified products or contractors shall be obtained by calling the Procurement Office at 703-619-8043.

## **10.6 Prompt Payment Discounts.**

Prompt payment discounts should normally not be considered in determining the lowest responsive bidder. If a bidder does offer a discount for prompt payment, this will not be considered in evaluation, but should be included on the purchase order, and the discount taken if invoices are processed and payment made within the stipulated time frame. If a department knows that it can regularly process payments within a prescribed time frame, such as 10 or 20 days, and wishes to consider cash discounts in its evaluation, then it may do so by including a statement such as "discounts for prompt payment within \_\_\_\_ (state number of days, e.g., 10, 20, etc.) days will be considered in determining net low bid."

## **10.7 Advance Payments.**

Advance payments may become necessary for certain purchases. Prior to establishing contract advance payment conditions, departments must first consult the Procurement Office, the Director of Accounting for guidance and restrictions.

## **10.8 Price Reasonableness Determination.**

When competition is restricted or lacking and/or the prices offered appear excessive, the requesting department is responsible for further analysis to determine in writing if the prices are fair and reasonable. This applies for any sole source purchase, single response purchase, contract change and contract renewal. The written documentation may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or School estimates) or through the analysis of price-to-unit variations, value analysis (make-or-buy study), or cost analysis. Advice and assistance should be obtained from the Procurement Office. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If a determination is made that the prices

offered are not fair and reasonable, then a decision has to be made whether to rebid seeking broader competition, revise specifications and rebid the requirement, or to negotiate a better price as may be identified through the price analysis process. A combination of these methods may be necessary. If it is a negotiated procurement, then the price should be negotiated to one that is fair and reasonable by the Procurement office.

### **10.9 Order Splitting.**

The placement of multiple orders within a short time period to one or more vendors for the same, like, or related goods or services to avoid using the appropriate method of procurement or to remain within delegated Procurement authority is prohibited. Requirements should be combined when practical to obtain quantity discounts and other administrative efficiencies.

### **10.10 Award Documents.**

The Procurement Office requires the department/school to enter a requisition document to be issued through MUNIS before an order is placed for all purchases. No order should be given to a vendor without a valid purchase order. The requisition should include the Bid or RFP number or the Request for Quote information to expedite approval.

### **10.11 Freight.**

- a. **F.O.B. Destination.** It is the basic policy of ACPS to solicit bids for goods F.O.B. (freight on board) Destination, which means that freight charges are paid by the seller who owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods may be included in the quoted price or by the bidder or offeror as a separate line item.
- b. **F.O.B. Origin. This method of shipment is not recommended.** Under F.O.B. Origin, the vendor will be required to select the most economical method of shipment consistent with the required delivery date, prepay the freight charge and add it to the invoice. Regardless of the F.O.B. point, ACPS accepts title only when goods are received.
  - (1) Under F.O.B. Origin, the total cost for freight to destination, shipping and handling charges etc., shall be included in determining the lowest responsive and responsible bidder. In such cases, the buyer is required to obtain the actual or estimated cost of shipment and show the freight, shipping, and/or handling cost as a line item on the purchase document. Both the F.O.B. point and shipping cost must be clearly shown on the PO document.
  - (2) Before approving an invoice for payment the department shall review it and compare it to the award document to determine if the shipping costs are accurate.

## 10.12 Insurance.

Whenever work is to be performed on ACPS owned or leased property or facilities, the contractor will be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage. ACPS must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If a contractor does not have any of the above insurance coverage's Risk Management and Procurement must be contacted to determine if such coverage is required. If any subcontractors are involved, subcontractors may also be required to have Workers' Compensation Insurance in accordance with §§ [2.2-4332](#) and [65.2-800](#) et seq., such insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the department that they possess the appropriate insurance coverage and documentation concerning the contractor's insurance shall be included in the procurement file. Certification of insurance shall be in writing when written quotes are required. The user department should require a certificate of insurance to be furnished **prior to commencement of work** and at any time during contract performance.

## 10.13 Used Equipment.

- a. Used equipment which has been previously owned and used, offered for sale "as is," including demonstration or factory rebuilt items marketed through distribution outlets shall not be purchased without prior written approval by the Director of procurement.
- b. Purchase of used equipment is subject to procurement policies. Complete information describing the item must be provided to Procurement along with the price being offered by the seller in writing, what the cost of the equipment is new, and why the price is fair and reasonable, at a minimum, will be required.

## 10.14 Rental/Lease, Installment Purchases.

- a. **Rental or Lease.** The procurement process for the rental or lease of any equipment will be handled in the same manner as the procurement of goods. Note, however, that hiring a contractor to provide equipment and personnel (operators) to perform a task is a contractual service subject to the guidance in 10.17 and 10.18. The following examples are offered to clarify the difference:
  - (1) Renting a bulldozer to be operated by School employees to perform grading work is an acquisition of goods. Hiring a contractor to use his bulldozer and operator to perform the same grading work is a contractual service.

- (2) Renting 1,000 folding chairs to be picked up by School employees in School vehicles at the contractor's place of business, used and returned is an acquisition of goods. Hiring a contractor to deliver, setup, remove, and haul away the same 1,000 folding chairs is a labor intensive contractual service.

The solicitation should, at a minimum, in addition to other terms and conditions, specify:

- (1) Length of time;
- (2) Number and types of equipment;
- (3) Who will provide maintenance and repair service and insurance coverage; and
- (4) Inspection at time of delivery and return.

- b. **Installment Purchase.** The procurement process for the installment purchase of any materials, equipment or supplies must be handled by the Procurement Office.

#### **10.15 Maintenance/Repair of Equipment.**

- a. **General.** Equipment is generally covered by warranty provisions for various periods of time. Care should be taken to assure that full advantage is taken of warranty provisions prior to contracting for maintenance or repair service. Where equipment may be covered by insurance, i.e., boiler or machinery, the department should contact the Facilities Department prior to contracting for repair.

- b. **Contracting for Equipment Maintenance.**

- (1) Contracting for equipment maintenance falls into two basic methods:

- (a) **Full service maintenance.** This normally requires the contractor to provide scheduled service, preventive maintenance, necessary repair parts and additional service calls as required under an annual contract at a firm fixed price. In bidding on full service maintenance, contractors should include in their bids the cost of all contingencies that might occur during the contract period.
- (b) **Maintenance/Repair.** This service is procured on an as needed basis, and is normally provided on a time and materials cost basis. Cost plus percentage of cost (markup) is prohibited {[§2.2-4331](#), VPPA}. Time and materials contracts require the receiving department to monitor actual hours expended, to promptly identify and solve problems, and to oversee contractors' performance.

- (2) Solicitations for maintenance of equipment should identify the make, model, style, and the quantity of each type of equipment. Provisions may be made to add and/or delete equipment during the contract period on a prorated basis;

also, for the loan of like equipment during extended periods of downtime. When maintenance is to be performed under contract on School-owned, leased, or rented property, the contractor shall be required to provide necessary insurance coverage.

c. **Contracting for Repair and Overhaul.**

- (1) **Major Scheduled Repair/Overhaul:** In situations where major equipment items are scheduled to be repaired or overhauled, it is usually impossible to determine the amount of labor and parts required without complete disassembly of the item to inspect all of its internal parts. Contracting for major repair or overhaul work on a fixed price basis without such an inspection is impractical because it forces the bidders to base their prices on an assumed worst case basis. These situations are best handled in an Invitation to Bid requiring the work to be done in two phases. Bids are solicited for a lump sum fixed price for complete disassembly, inspection and preparation of an estimate of the costs to complete the job as the first phase. The second phase is for repair and reassembly with contractor furnished replacement parts and components, startup and operational test, all to be done on a time and materials basis. The bidders are required to bid on the basis of a labor hour rate, with an overall total (not to exceed) labor cost and parts.
- (2) **Unscheduled Repair:** Major equipment items which cannot be scheduled for repair should be handled using the appropriate existing emergency procedures. To control costs, it is important for a department to establish a fixed hourly rate and an estimated number of hours prior to allowing the contractor to proceed with the repair/overhaul.

**10.16 Printing.**

- a. **Ownership of Artwork, Negatives, Etc.** All artwork, negatives, dies, overlays or similar material used to print a job shall be the property of ACPS and must be delivered to the requisitioning department upon completion of the job. The contract terms for this type of work shall include the necessary language to accomplish this objective.
- b. **Copyright.** No vendor may copyright any work produced for ACPS without the written consent of the School. **The copyright assignment shall be determined on a per project basis. The Director of Procurement shall be contacted regarding any copyright issues.**
- c. **Official ACPS Stationery, Letterheads, Business Cards and Envelopes.** Letterheads and Envelopes must be printed under a term contract administered by the Procurement Office.

## 10.17 Non-Professional Services.

- a. **General.** This section covers contracting for nonprofessional services from nongovernmental sources. The term “nonprofessional” services, as used in this section, means all services not within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering {[§2.2-4301](#),VPPA}.
- b. **Approvals Required.** Approval for certain services is required by law, regulation, directive or appropriation. Services requiring other School departments’ approval or concurrence are as follows:
  - (1) Insurance - Risk Management.
  - (2) Telecommunications or Software Development - IT
  - (3) Capital Project/Construction– Facilities Dept.
  - (4) Cash Management, Payments, Special Check, Travel- Accounting.
- c. **Individual Services.** Contracting for the services of individuals as contractors should be treated the same as any other procurement transaction. Departments contracting with individuals should be aware that problems have arisen with the Federal Internal Revenue Service concerning withholding and Social Security taxes in situations where the individual contractor performs under the supervision and control of the department. An employer - employee relationship has been determined to exist in such cases, thereby subjecting the School to liability for such taxes plus those employment obligations established by School law or policy. When in doubt, consult the Financial Services Department and the Procurement Office before entering into such a contract.
- d. **Consultant Services.** By definition, consultants usually provide information, assistance, and guidance, usually in the form of a report or other deliverable, setting forth courses of action and recommendations based on the expertise possessed by the outside individual, firm or organization. Such information or assistance does not relieve department management of responsibility for its final decision.

## 10.18 Professional Services.

- a. **Responsibility.** The Procurement Office is responsible for monitoring the procurement of professional services. The procurement of professional services from nongovernmental sources shall be in accordance with the applicable provisions of the VPPA. All required justifications and approvals shall be obtained and made a part of the procurement file. Other department concurrence and/or approval for selected services may be required by reasons of law, regulations, directive, or appropriation.

- b. **General.** Professional Services as defined in [§ 2.2-4301](#) of the VPPA means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, and professional engineering. In procurements involving both professional and nonprofessional services, the procedure used shall be determined by which service predominates in the solicitation. When the estimated cost of materials, equipment, or supplies amounts to fifty percent (50%) or more of the total expenditure, it is not considered a professional service and shall be obtained using the procedures for the procurement of goods. If there are questions as to which procedure applies, contact the Procurement Office at 703-619-8043.
- c. **Competitive Negotiation.** Competitive negotiation shall be used for the procurement of professional services over \$100,000. Note that solicitations for professional services **shall not** request that offerors furnish estimates of man-hours or cost for services with the proposal response. However, that information may be requested at the interview stage [{§2.2-4301\(3\)\(a\), VPPA}](#).
- d. **Small Purchases.** Small purchase procedures for the procurement of Architectural, Landscape Architectural, Land Surveying, and Professional Engineering services are contained in Chapter 5 **{PROCUREMENT MANUAL 5.1}**. ACPS as a “Public Body” has the authority and responsibility under [§2.2-4303\(G\)](#), VPPA, for developing its own small purchase procedures for the other professional services identified in [§2.2-4301](#), VPPA.
- e. **Contractor Performance.** During the period of the contract, the contractor’s performance is to be monitored in accordance with the standards set forth in the contract.
- f. **Administration.** The administration of contracts is covered in Chapter 9 of this Manual.

### 10.19 Construction.

The procurement of “construction for capital projects” is the responsibility of the Facilities Department. Support services shall be requested of the Procurement Office.

- a. **Construction** shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. [{§2.2-4301, VPPA}](#)

Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to

the public, which writing shall document the basis for this determination [§2.2-4303\(D\)](#), VPPA}:

- b. Non-professional services needed for construction or facilities maintenance, such as cost estimating, Critical Path Method scheduling, construction inspections, roofing evaluations, and nondestructive testing, should be procured in accordance with 10.17 of this chapter.
- c. Equipment and/or furnishings, whether built-in or free standing, not acquired as part of a general construction contract and not requiring plans and specifications prepared by an architect or engineer, will be purchased in accordance with the provisions for goods in this Manual. Systems necessary to make a new building functional, such as heating, ventilation, air conditioning, electrical, elevators, or like systems will be purchased in accordance with procedures for construction.
- d. Except in an emergency, all bids for construction services in excess of \$100,000 must be accompanied by a Bid Bond from a surety, selected by the bidder, which is legally authorized to do business in Virginia. The amount of the Bid Bond shall not exceed 5% of the amount bid [§2.2-4336](#), VPPA}.
- e. Upon award of a construction contract exceeding \$500,000, the contractor shall furnish a Performance Bond and a Labor and Material Payment Bond, each in the sum of the contract. Each such bond shall be executed by one or more surety companies which are legally authorized to do business in Virginia. Such bonds may be requested for contracts less than \$500,000.
- f. Insurance will be required based on the type of construction service being performed. Insurance requirements can be found on the Risk Management website, or contact the Office of Risk Management for advice on the specific situation.
- g. Solicitations for construction contracts with an estimated cost of \$1,000 or more must contain the following:

If a contract for construction, removal, repair or improvement of a building or other real property is for \$120,000 or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is \$750,000 or more, the bidder/offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for \$7,500 or more but less than \$120,000 (one thousand dollars [\$1,000] for electrical, plumbing and HVAC work) the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for \$1,000 or more but less than \$7,500 and is not for electrical, plumbing and HVAC work, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The

bidder/offeror shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. \_\_\_\_\_  
Specialty \_\_\_\_\_

Licensed Class B Virginia Contractor No. \_\_\_\_\_  
Specialty \_\_\_\_\_

Licensed Class C Virginia Contractor No. \_\_\_\_\_  
Specialty \_\_\_\_\_

If the bidder/offeror shall fail to provide this information on his bid/proposal and shall fail to promptly provide said contractor license number to ACPS in writing when requested to do so before or after the opening of bids/proposals, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid/proposal will not be considered.

If a bidder/offeror shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

#### **10.20 Use of Contractor's Standard Contract Form.**

A contractor's standard contract form should not be used. If it is not possible to award a contract without using the contractor's contract form, the contract must be reviewed and approved by the Director of Procurement. All contracts over \$1,000,000 secure legal counsel and School Board approval if funds are spent from the CIP budget.

#### **10.21 Samples.**

There are situations when samples will be needed to verify quality levels or to test materials or equipment to determine conformance with the specifications stipulated in the solicitation. An Invitation to Bid where samples are required, upon request, must be clearly indicated in the ITB. Samples should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing may be returned at the bidder's expense. If, after sixty (60) days, the samples have not been picked up and bidders fail to provide disposition instructions, samples may be offered to operating departments for use. If the items have significant reusable utility value, they should be disposed of using established surplus property disposal procedures. The file must be documented as to disposition of samples.

#### **10.22 Vendor Advertising Prohibition.**

Advertising or promotional literature stating that a School or department of ACPS has purchased or used a vendor's products or services is prohibited. Exceptions may only be granted by the Superintendent of Schools after consultation with the Director of Procurement and legal counsel.

### 10.23 Unsolicited Proposals.

This policy applies to goods and non-professional services, and not to construction or professional services. The submission of a unique offer for new and innovative goods or services through unsolicited proposals is encouraged. However, all solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk and expense of the offeror, and no obligation on the part of the ACPS and no restriction on the ACPS use of such ideas, proposals or the information contained therein shall arise in connection with such submission. The foregoing shall not preclude express, written commitments made by departments in formal solicitation documents within the limitations imposed by the [§2.2-4342\(F\)](#), VPPA, and the Virginia Freedom of Information Act. The foregoing shall also not diminish or waive any copyright, patent rights or trademark rights, which the offeror may have.

If acceptance of offers to “loan” or provide goods or services at no cost or minor cost would tend to create a need for subsequent additional acquisitions, the requirement for such goods or services and the additional needs shall be offered for competition in accordance with *the* Virginia Public Procurement Act (VPPA) and the Procurement Manual. Potential bidders or offerors shall be afforded an opportunity to participate in the resulting procurement activity.

If the offeror believes that it is the only source practicably available for goods or services required by the department and available through the unsolicited proposal, to assist the School in evaluating the unsolicited proposal, the proposal shall include a justification by the offeror as to why the company is the only source practicably available for the goods or services in question.

- a. Definition: “Unsolicited Proposal” means a proposal received that is not in response to any ACPS initiated solicitation or program. Such request may be considered under the Public Private Infrastructure Act (PPEA), as defined by the *Code of Virginia*. This manual follows the guidelines for PPEA as described therein as the process to be used by ACPS.
- b. Receipt: Unsolicited proposals shall be submitted in writing directly to Procurement.
- c. Evaluation:
  - (1) A favorable comprehensive evaluation of an unsolicited proposal by a department does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to the offeror that initially offered the unsolicited proposal.
  - (2) If it is determined by the evaluation that goods or services required by the department and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract

following the sole source procedures. The buyer shall post a notice of intent to award for ten (10) calendar days before awarding the contract.

*END OF CHAPTER*

## 11 DEBARMENT

### 11.0 General.

The term “debarment” as used in this Manual means action taken by the Director of Procurement to exclude individuals or firms from contracting with the ACPS for particular types of goods or services for specified periods of time. Debarment does not relieve the vendor of responsibility for existing obligations.

### 11.1 Purpose.

The purpose of debarment is to protect ACPS from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect School interests and the integrity of the School’s procurement process.

### 11.2 Reasons for Debarment.

An individual or firm may be debarred for any of the following reasons:

- A. Breach of contract with ACPS. Breach of contract may consist of abandonment of the contract or the commission of acts or conduct which demonstrates an intent wholly inconsistent with the intention to perform their contract.
- B. Stating an unwillingness or inability to honor a binding bid submitted to the School. A request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
- C. Failing to complete an ACPS contract without cause within the prescribed time limit. Prescribed time limit means original contract time period plus ACPS authorized time extensions.
- D. Falsifying or misrepresenting manufacturer’s specifications in order to appear responsive to a solicitation.
- E. Taking any action constituting a violation of the State and Local Government Conflict of Interests Act, by virtue of any officer, director, owner, or partner of the vendor also being an officer or employee of ACPS and having a “personal interest” in contract or purchase order awarded by the School.
- F. Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery {§18.2-447, Code of Virginia}; knowingly making a false statement in regard to collusion on an Request to Bid {§18.2-498.4, Code of Virginia}; and offenses listed in Article 6 of the VPPA, Title 2.2, Code of Virginia. Conviction for any of the above offenses of any officer, director, owner, partner, agent, or related business entity of a vendor shall constitute grounds for the debarment of the vendor.
- G. Court judgment finding a violation of either federal or state anti-trust laws.

H. Conviction of any offense indicating a lack of moral or business integrity.

It is not necessary that there be a judicial determination of violations contained in subparagraphs A through E for debarment to occur.

### **11.3 Term of Debarment, Suspending Debarment.**

Debarment shall be for a period of no less than one and not more than three years, as determined by the discretion of the Superintendent. Notwithstanding the prescribed duration of the debarment, at the discretion of the Superintendent, a debarment may be lifted or suspended at any time if it is deemed to be in the best interest of the ACPS. A debarred individual or firm can apply for reinstatement at any time in writing to the Superintendent citing actions taken to remedy the reason for debarment or prevent recurrence of the situation that caused the debarment action to be taken and otherwise indicating the lifting or suspending of the debarment would be in the best interest of ACPS. Examples of actions that the Superintendent may take into consideration include, but are not limited to:

- A. Repayment by a debarred vendor of damages and additional cost resulting from a default action for which the vendor had previously failed to reimburse the ACPS and was debarred.
- B. Disassociation with the individuals or firms responsible for the debarment.

### **11.4 Notification.**

An individual or firm being considered for debarment from contracting with ACPS will be notified in writing by certified mail, return receipt requested. The notice shall state the reasons for the action taken, the duration of the period of debarment and the effective date. This decision shall be final, unless the bidder, offeror, or contractor appeals within thirty (30) calendar days of receipt of the notice by written request to the Superintendent or, in the alternative, by instituting legal action as provided in [§2.2-4364](#) of the VPPA of the Code of Virginia.

*END OF CHAPTER*

## 12 SURPLUS PROPERTY DISPOSAL

### 12.0 General.

When a department/school has an item that is no longer useful to the department, it is ACPS' policy to handle such surplus property as set forth in the policy adopted by the School Board.

### 12.1 Surplus Property Declaration Form.

When a department has an item that is no longer useful for its original purpose, they must notify Procurement using the **Surplus Property Declaration Form (See Appendix B, Exhibit 7)**. This form should list the quantity, description, make/model and serial number (if any), condition and Finance Asset tag number (if any). Procurement, upon receipt of this form, will report the item to Facilities for removal from the school or department. If the property can be used by another department, it will be transferred to that department. If the item is found to be surplus it will be handled in accordance with School Board Policy.

*END OF CHAPTER*

## 13 REMEDIES

### 13.0 General.

Article 5. Remedies of the Virginia Public Procurement Act are set out in this chapter.

### 13.1 Ineligibility. {§ 2.2-4357}

- A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

- B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

(1982, c. 647, § 11-63; 1998, c. 753; 2001, c. 844.)

### **13.2 Appeal of denial of withdrawal of bid. {§ 2.2-4358}**

- A. A decision denying withdrawal of bid under the provisions of § [2.2-4330](#) shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).
- B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § [2.2-4330](#), prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Request to Bid, the sole relief shall be withdrawal of the bid.

(1982, c. 647, § 11-64; 1985, c. 164; 1999, c. 1008; 2001, c. 844.)

### **13.3 Determination of non-responsibility. {§ 2.2-4359}**

- A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § [2.2-4301](#). At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § [2.2-4301](#). If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:
  - 1. Prior to the issuance of a written determination of non-responsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
  - 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body

shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

- B. If, upon appeal pursuant to § [2.2-4364](#) or § [2.2-4365](#), it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § [2.2-4364](#) or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § [2.2-4360](#).

- C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § [2.2-4360](#).
- D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

(1982, c. 647, § 11-65; 1997, c. 864; 1998, c. 753; 1999, c. 1008; 2001, c. 844.)

**13.4 Protest of award or decision to award. {§ 2.2-4360}**

- A. Any bidder or offeror who desires to protest the award or decision to award a contract shall submit the protest in writing to the Director of Procurement, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § [2.2-4303](#). However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § [2.2-4342](#), then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § [2.2-4342](#), or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Director of Procurement or designee shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by instituting legal action as provided in § [2.2-4364](#). Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Request to Bid or Invitation for Proposal.
- B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. ACPS shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be voided. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where

a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

- C. Where the Superintendent of Schools or designee determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 {§ [2.2-4367](#) et seq.) of this chapter, Superintendent of Schools or designee may enjoin the award of the contract to a particular bidder.

(1982, c. 647, § 11-66; 1985, c. 164; 1997, c. 864; 2000, c. 641; 2001, c. 844.)

### **13.5 Effect of appeal upon contract. {§ [2.2-4361](#)}**

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

(1982, c. 647, § 11-67; 2001, c. 844.)

### **13.6 Stay of award during protest. {§ [2.2-4362](#)}**

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § [2.2-4360](#), or the filing of a timely legal action as provided in § [2.2-4364](#), no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

(1982, c. 647, § 11-68; 1997, c. 864; 2001, c. 844.)

### **13.7 Contractual disputes. {§ [2.2-4363](#)}**

- A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or

may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of § [2.2-4365](#), such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

- C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:
1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.
  2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Superintendent of Schools or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.
- D. A contractor may not invoke administrative procedures meeting the standards of § [2.2-4365](#), if available, or institute legal action as provided in § [2.2-4364](#), prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.
- E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § [2.2-4365](#), if available, or in the alternative by instituting legal action as provided in § [2.2-4364](#).

(1982, c. 647, § 11-69; 2001, cc. 106, 844; 2005, c. 815.)

### **13.8 Legal actions. {§ [2.2-4364](#)}**

- A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract,

may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § [2.2-4317](#). In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § [2.2-4301](#), is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

- B. A bidder denied withdrawal of a bid under § [2.2-4358](#) may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.
- C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § [2.2-4303](#), whose protest of an award or decision to award under § [2.2-4360](#) is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Request to Bid or Request for Proposal.
- D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.
- E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.1-387, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

- F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § [2.2-4365](#), if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.
- G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

(1982, c. 647, § 11-70; 1985, c. 164; 1994, c. 918; 1995, c. 527; 1997, c. 864; 1998, cc. 205, 753; 1999, c. 1008; 2001, c. 844.)

### **13.9 Administrative appeals procedure. {§ [2.2-4365](#)}**

- A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of non-responsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § [2.2-4317](#). No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.
- B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

(1982, c. 647, § 11-71; 1994, cc. 660, 918; 2001, c. 844.)

### **13.10 Alternative dispute resolution. {§ [2.2-4366](#)}**

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, Office,

commission, board or bureau thereof, shall be nonbinding and subject to § [2.2-514](#), as applicable. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

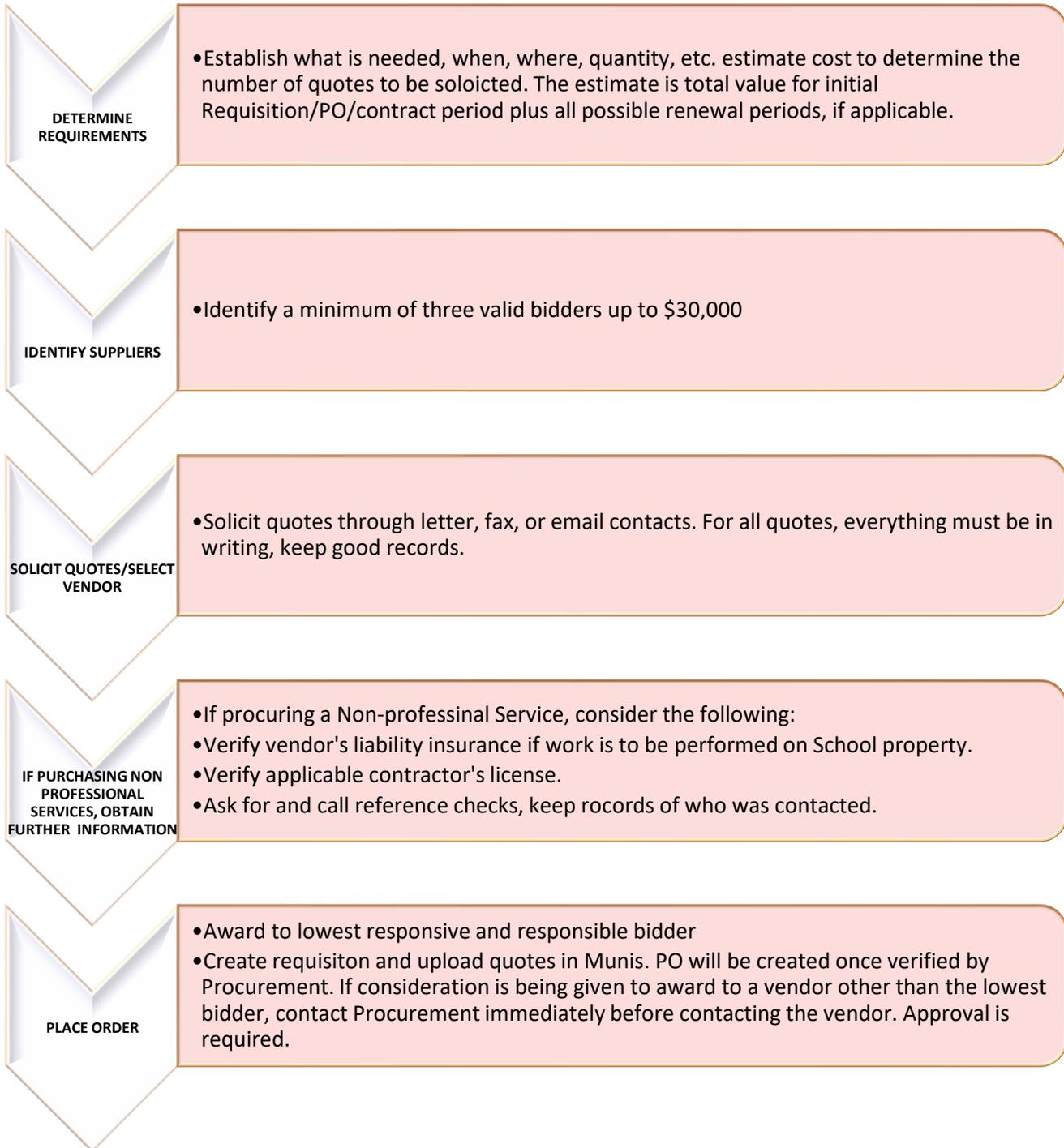
(1995, c. 760, § 11-71.1; 2001, c. 844.)

END OF CHAPTER

## APPENDIX A- Flow Charts

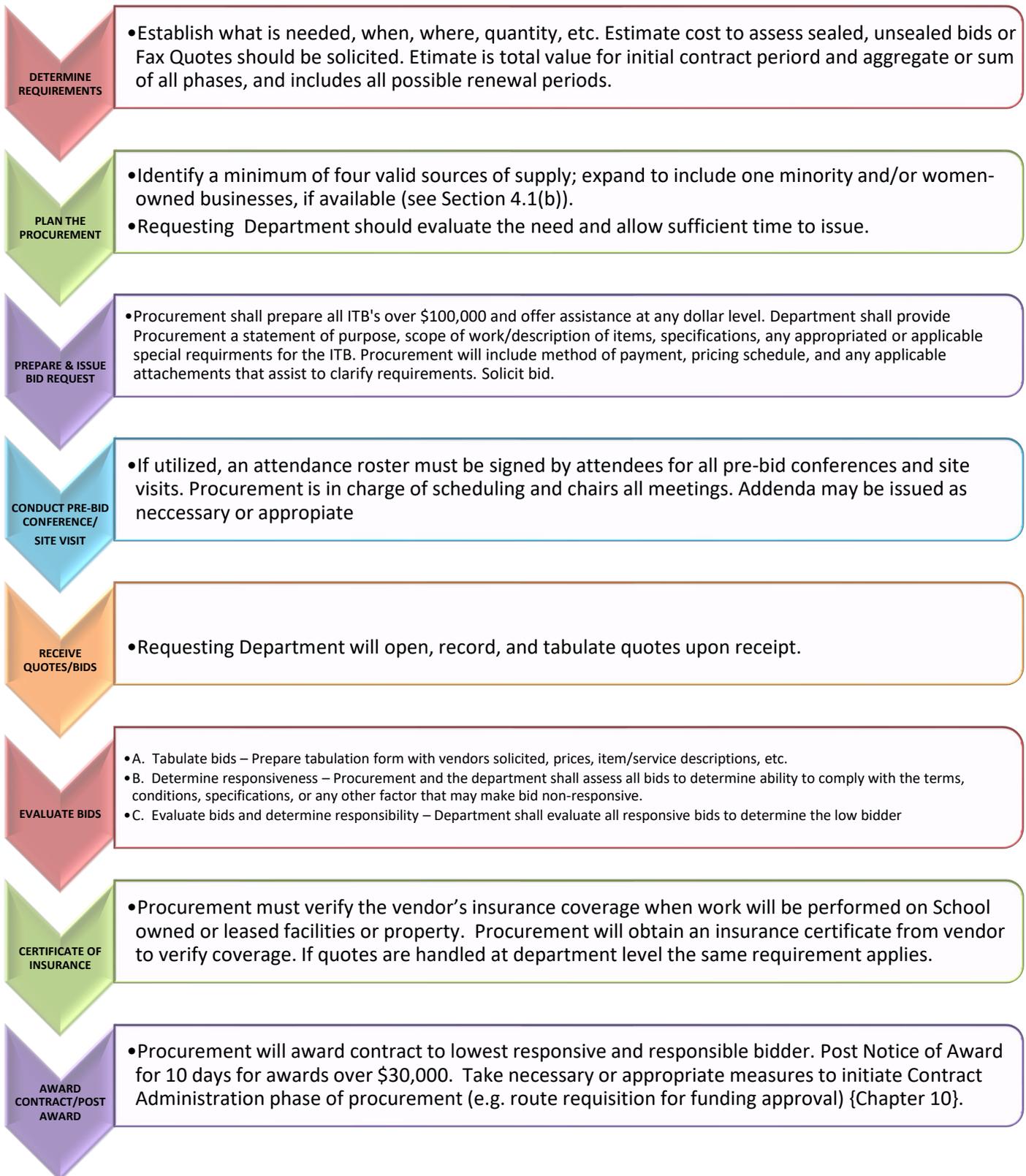
### Flowchart 1 - SMALL PURCHASES

#### Goods and Non-Professional Services (\$10,001 to \$30,000)



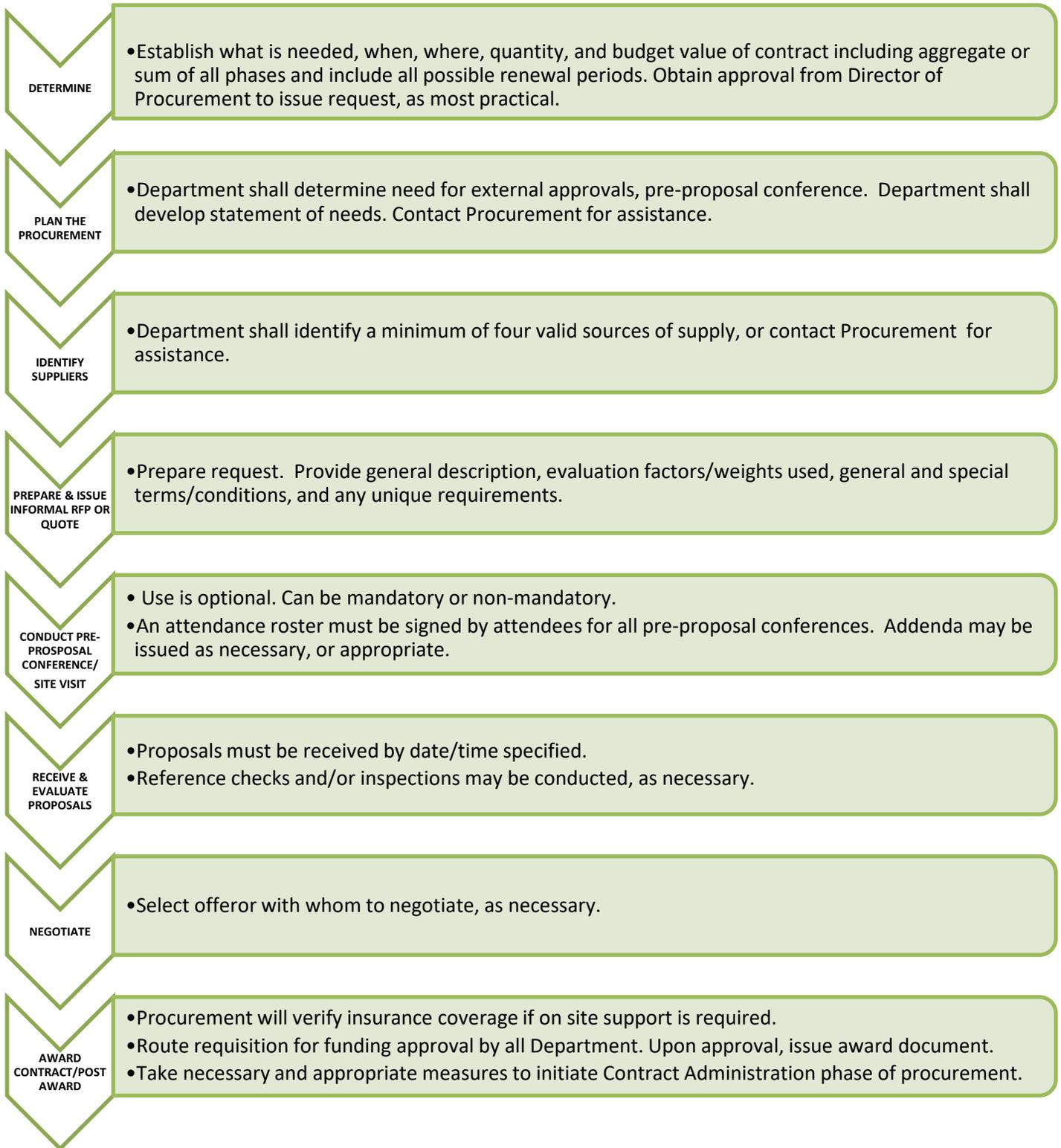
## Flowchart 2 - UNSEALED BIDDING PROCESS / QUOTE PROCESS

### Goods and Non-professional Services (\$30,001 to \$100,000)



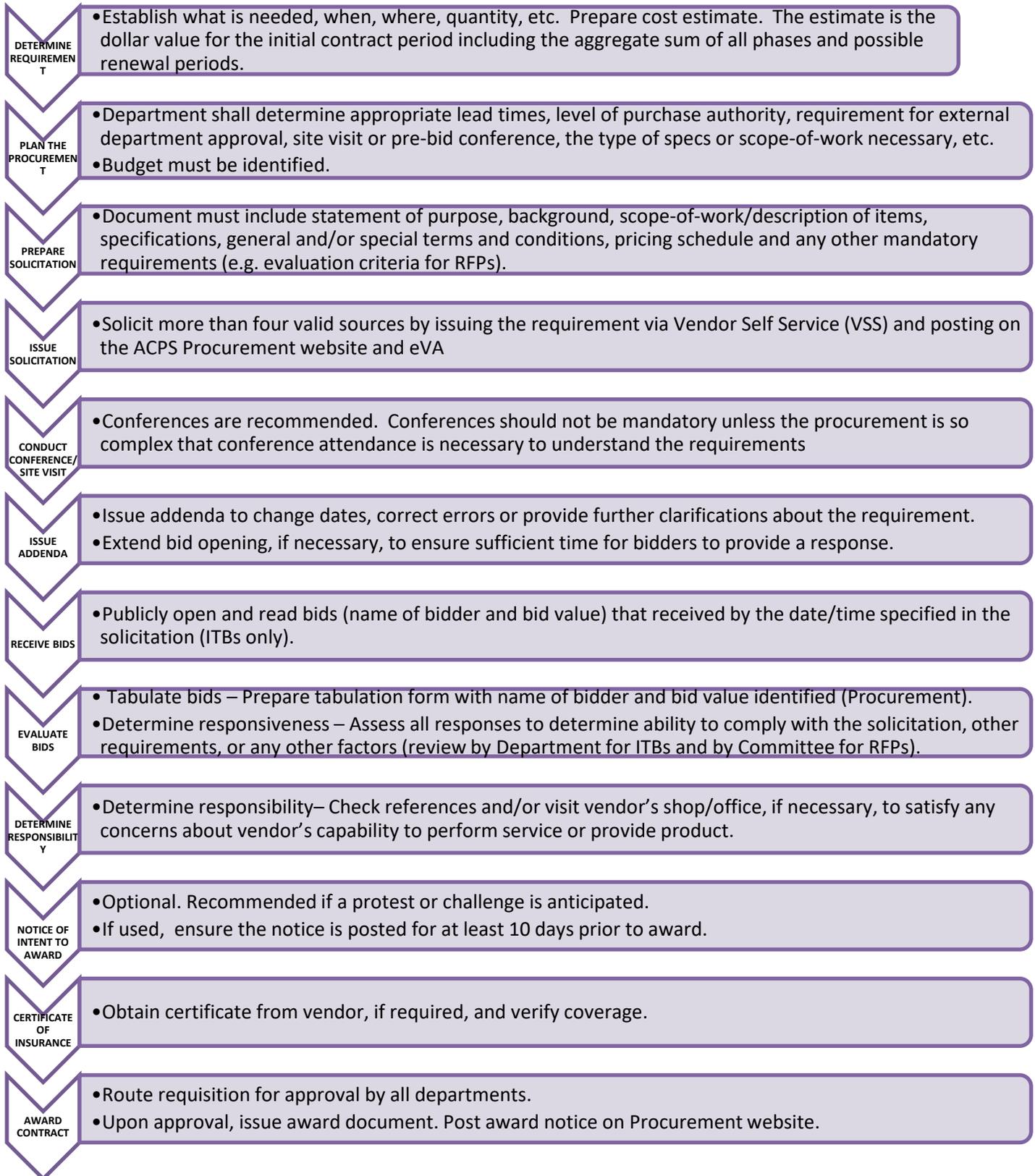
### Flowchart 3 - UNSEALED PROPOSAL PROCESS / SMALL QUOTE PROCESS

#### Goods and Non-professional Services (\$30,001 - \$100,000)



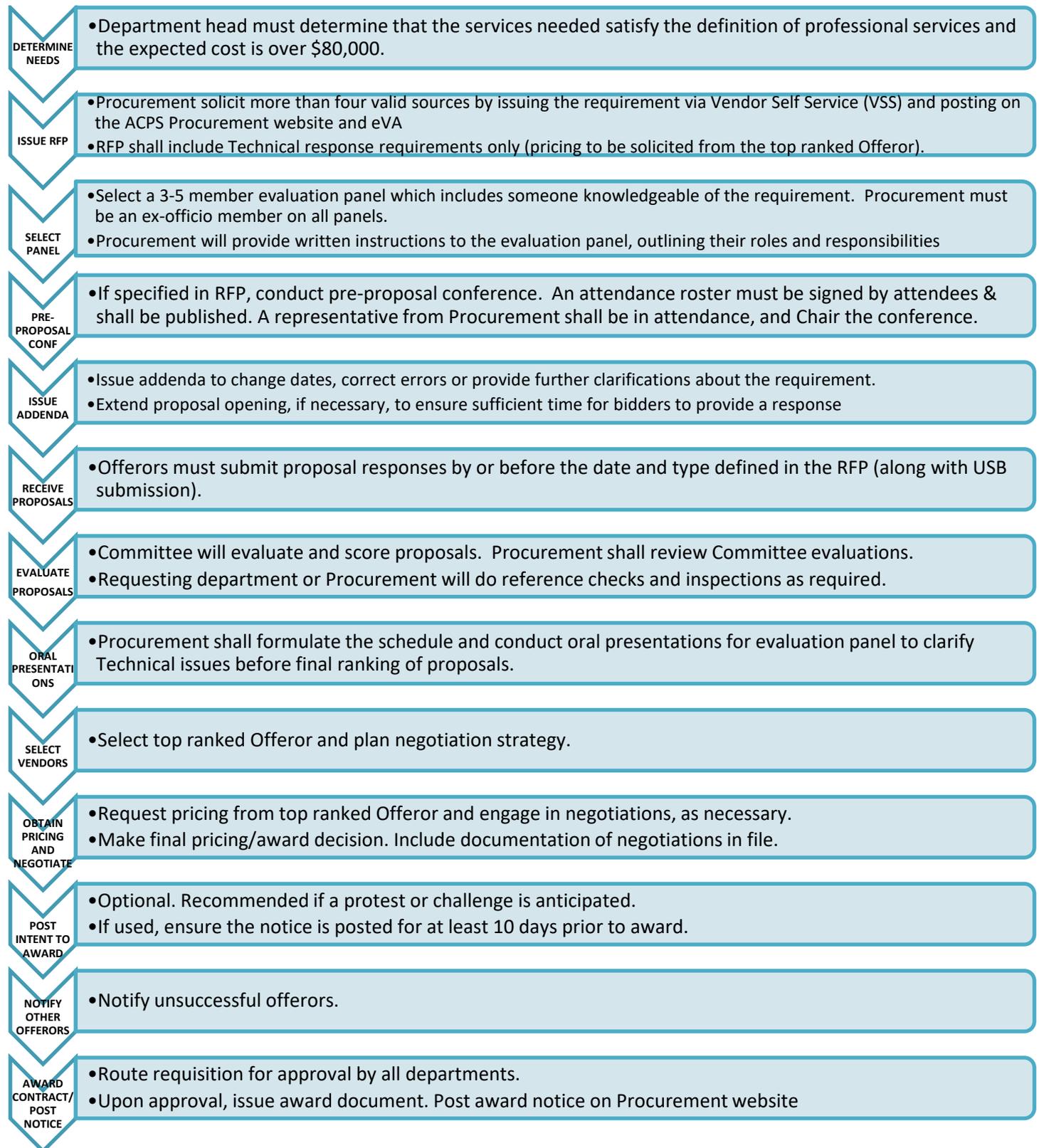
**Flowchart 4 - COMPETITIVE SEALED BID/COMPETITIVE NEGOTATION PROCESS (CODE OF VA §§ 2.2-4301, 2.2-4303A)**

Goods and Non-professional Services (Greater than \$100,000). Issued by Central Procurement Office.



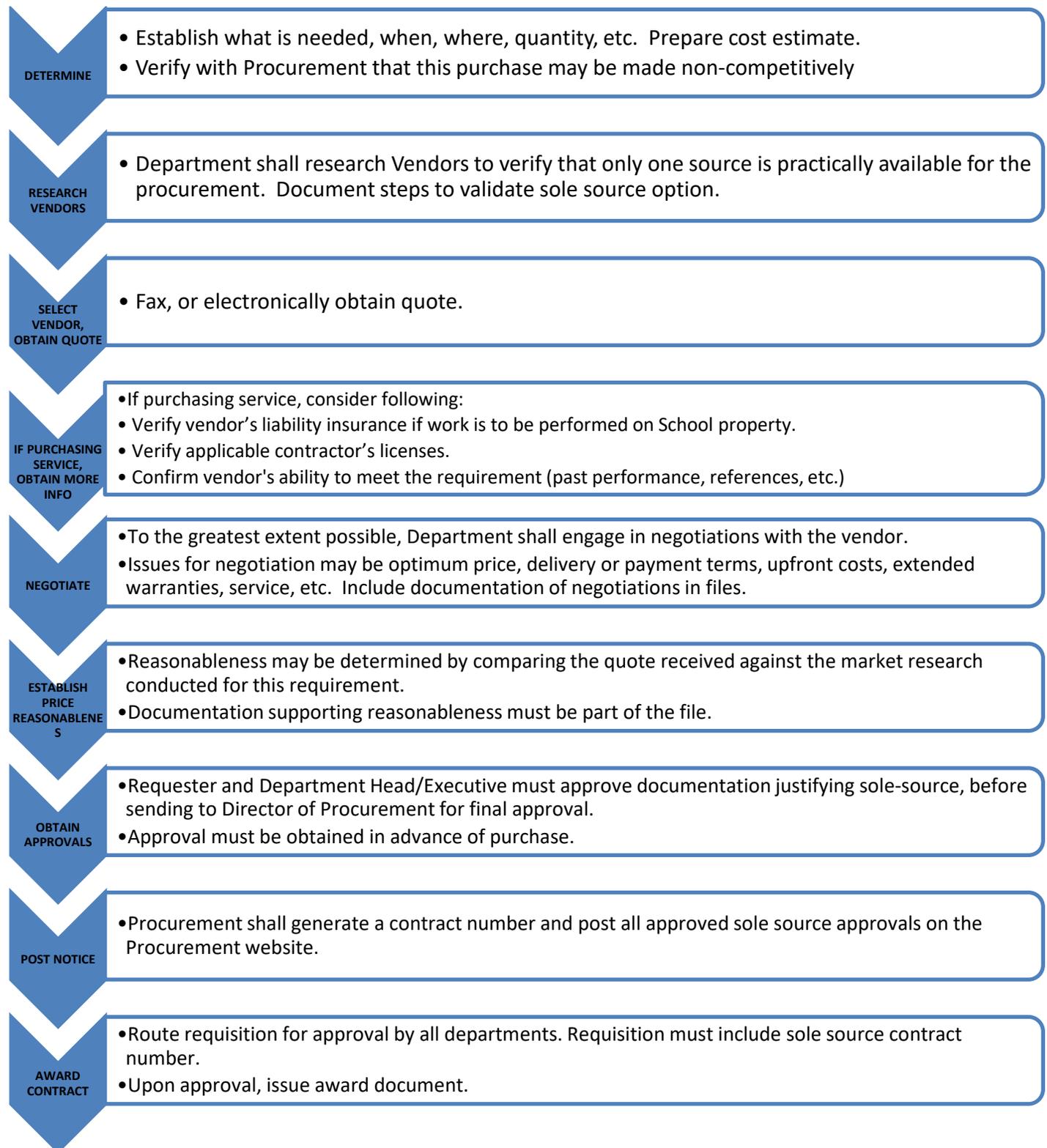
## Flowchart 5 - COMPETITIVE NEGOTIATION – Professional Services (Code of VA §§ [2.2-4301](#), [2.2-4303C](#))

### Professional Services over \$80,000. Issued by Procurement



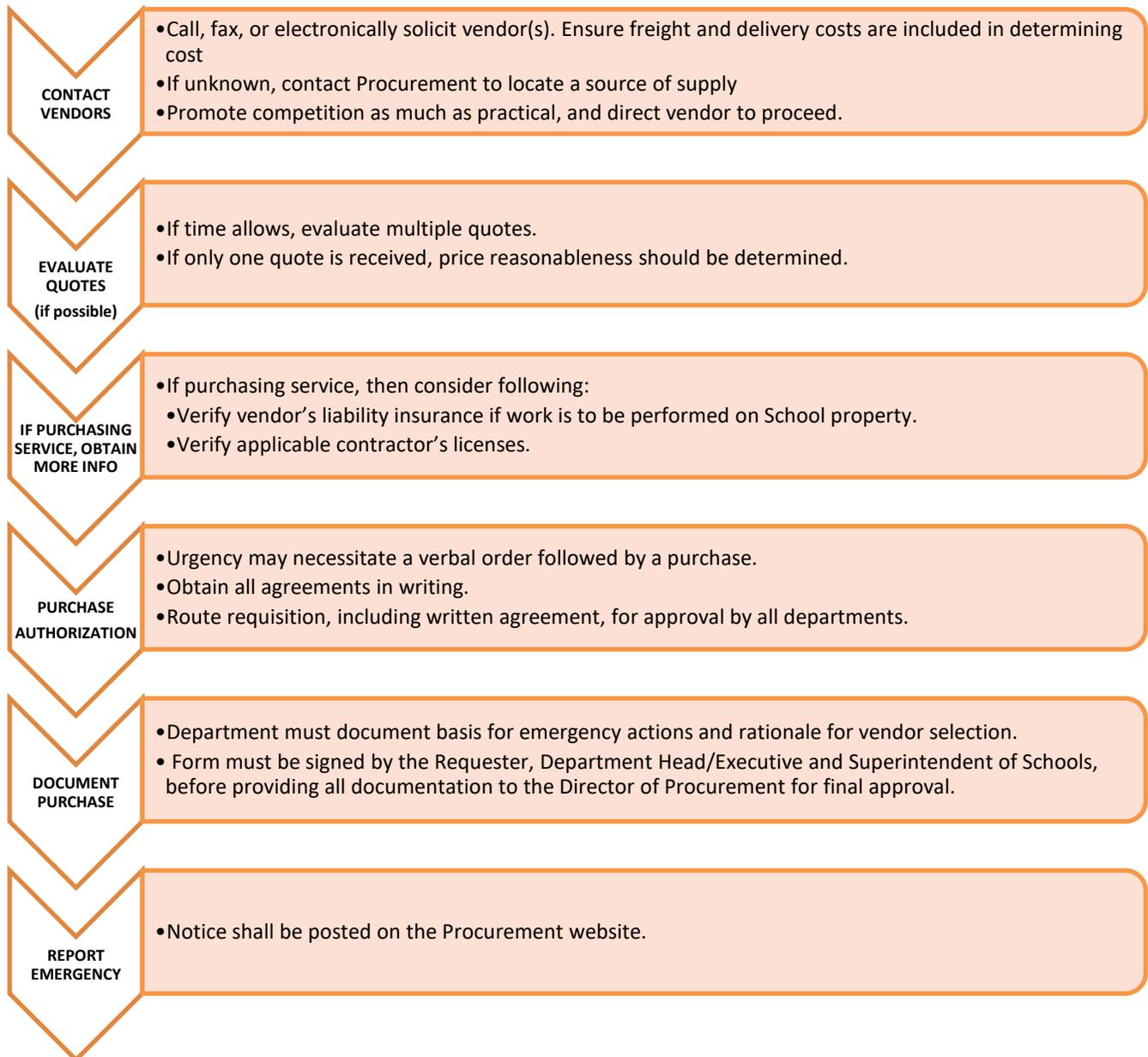
## Flowchart 6 - SOLE SOURCE PROCESS (CODE OF VA §§ [2.2-4303E](#))

For Goods and Non-professional Services when there is only one source practically available.



## Flowchart 7 - EMERGENCY PROCUREMENT PROCESS (CODE OF VA [§ 2.2-4303F](#))

For Goods and Services



## **Appendix B**

Appendix B contains exhibits. These exhibits consist of forms, formats and other types of suggested guidance for users.

### **TABLE OF CONTENTS**

**EXHIBIT 1 – QUOTE FORM (SAMPLE)**

**EXHIBIT 2 – SOLE SOURCE APPROVAL/AWARD FORM (SAMPLE)**

**EXHIBIT 3 – NOTICE OF EMERGENCY AWARD (SAMPLE)**

**EXHIBIT 4 – CONTRACT ADMINISTRATION DESIGNATION LETTER (SAMPLE)**

**EXHIBIT 5 – CONTRACTOR PERFORMANCE EVALUATION LETTER (SAMPLE)**

**EXHIBIT 6 – COMPLAINT TO VENDOR FORM (SAMPLE)**

**EXHIBIT 7 – SURPLUS PROPERTY DECLARATION FORM (SAMPLE)**

Appendix B contains exhibits. These exhibits consist of forms, formats, and other types of suggested guidance for users. These forms are intended only to be used as guides. Users should refer to the Procurement Manual Chapters for full requirements of each procurement method. If a user has any questions about any of the documents referred to in the Procurement Manual, the user should contact the Procurement Office in order to determine the correct current document(s) that should be used for the procurement the user is involved with and the type of information that the user may need to provide Procurement in order to complete the document(s).

**NOTE: The forms included in Appendix B are subject to change as may be needed, so users are cautioned to be sure that they have the most current version of the form.**

**Exhibit 1 (Note: Fillable Form Available on Canvas)**

**REQUEST FOR FAX QUOTE - THIS IS NOT AN ORDER**

*Please complete and return this form with your quotation VIA*

**EMAIL ADDRESS: [angela.queen@acps.k12.va.us](mailto:angela.queen@acps.k12.va.us)**

**Alexandria City Public Schools**

<p><b>DATE: October 8, 2019</b></p> <p><b>RFQ: Filtered Drinking Water Dispensers &amp; Related Goods and Services</b></p>	<p><b>RESPOND BY: 3:00 p.m. on Thursday, October 17, 2019</b> (If your response is not received by <b>3:00 p.m. on October 17, 2019</b> your quotation shall not be considered)</p> <p>Offerors submitting bids shall send response to email address: <b><a href="mailto:angela.queen@acps.k12.va.us">angela.queen@acps.k12.va.us</a></b></p> <p>Note: If you have any questions please submit in writing via email by <b>12:00 p.m. on October 15<sup>th</sup>, 2019</b> with the subject line <b>"RFQ: Water"</b>.</p> <p>No. of pages including coversheet: <b>5</b></p>
<p><b>FROM: <a href="mailto:Angela.Queen@acps.k12.va.us">Angela Queen, VCA</a></b> <b>Buyer</b></p> <p><b>E-MAIL ADDRESS: <a href="mailto:angela.queen@acps.k12.va.us">angela.queen@acps.k12.va.us</a></b> <b>TELEPHONE NUMBER: 703-619-8061</b></p>	<p>DELIVERY IS F.O.B. DESTINATION UNLESS OTHERWISE STATED BELOW.</p> <p><b>Attachment A - <a href="#">Items Requested Details &amp; Pricing</a></b></p> <p><b>Attachment B - <a href="#">Bid Form</a></b></p> <p><b>Attachment C - <a href="#">Purchase Order Terms &amp; Conditions</a></b></p>
<p>If awarded, Bidder(s) shall be a registered vendor with Alexandria City Public Schools. Registration on ACPS Vendor Self Service System (VSS) is required for new vendors. The VSS link can be found on our <a href="#">website</a> or at this link <a href="https://acps.munisselfservice.com/Vendors/default.aspx">https://acps.munisselfservice.com/Vendors/default.aspx</a>.</p>	

**Attachment A**

**RFQ: Filtered Drinking Water Dispensers & Related Goods and Services**

ACPS is seeking quotes for the provision of Filtered Drinking Water Hot/Cold Water Dispensers, Bottled Water & Related Goods & Services.

Vendor Response shall include the chart below, attachment A and Bid Form, attachment B must be received via email no later than **3:00 p.m. on Thursday, October 17, 2019** to be considered.

**NOTE:** The information listed below, is used to convey the quantity of the items desired. The estimated quantity listed is an estimate only and is given for the information of Bidders and for the purpose of bid evaluation. This estimated quantity does not guarantee the actual number of items that may be requested by ACPS. Extended Pricing should include all discounts, shipping and handling costs, assembly and installation to ACPS Central Office at 1340 Braddock Place, Alexandria, VA 22314 and 22 school locations in Alexandria, VA. For school location details, please visit: <https://www.acps.k12.va.us/domain/817>. If vendor(s) would like to propose other goods and services not listed below, please include items and pricing.

**ITEMS REQUESTED**

ITEM #	ANNUAL ESTIMATED QUANTITY	DESCRIPTION	UNIT OF MEASURE	COST	ANNUAL TOTAL
1	1000	5 GALLON CONTAINER OF DRINKING WATER	EACH	\$	\$
2	500	CASES OF 12OZ. BOTTLES OF DRINKING WATER	CASE	\$	\$
3	50	HIGH CAPACITY WATER COOLERS THAT WILL DESPENSER BOTH HOT AND COLD WATER	EACH	\$	\$
4	16	COUNTER TOP HIGH CAPACITY WATER COOLERS THAT WILL DESPENSER BOTH HOT AND COLD WATER	EACH	\$	\$
5	100	PLASTIC CUPS	SLEEVE	\$	\$
7		INSTALLATION OF COOLERS	Each	\$	\$
		MONTHLY DELIVERY	Each location	\$	\$

**TOTAL QUOTE AMOUNT, including shipping and handling \$ \_\_\_\_\_**

**AWARD:** Offerors are asked to fill out all items in the chart provided. However, Offerors may complete only the items that they wish to provide. If ACPS determines that not all items may be provided by or available from a single vendor, ACPS may choose to award by determining lowest price for each item. Therefore, multiple awards may be made. Awarded Vendors may then be asked for an official quotation for the items that will be ordered. ACPS will then issue a Purchase Order, subject to the terms and conditions in Attachment C.

\_\_\_\_\_  
Bidder's Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Authorized Signatory

\_\_\_\_\_  
Bidder's contact email

\_\_\_\_\_  
phone number

**Attachment B**

**RFQ: Filtered Drinking Water Dispensers & Related Goods and Services**

**BID FORM -**

TO:

FULL LEGAL NAME (PRINT) (Company name as it appears with your Federal Taxpayer Number)		FEDERAL TAXPAYER NUMBER (ID#)	DELIVERY DATE	
BUSINESS NAME/DBA NAME/TA NAME (If different than the Full Legal Name)		FEDERAL TAXPAYER NUMBER (If different than ID# above)	PAYMENT TERMS  <b>Net 45</b>	
BILLING NAME (Company name as it appears on your invoice)		FEDERAL TAXPAYER NUMBER (If different than ID# above)		
PURCHASE ORDER ADDRESS		PAYMENT ADDRESS		
CONTACT NAME/TITLE (PRINT)		SIGNATURE (IN INK)		DATE
E-MAIL ADDRESS	PHONE NUMBER	TOLL FREE TELEPHONE NUMBER		FAX NUMBER
*BUSINESS CLASSIFICATION	<input type="checkbox"/> LARGE	<input type="checkbox"/> SMALL	<input type="checkbox"/> MINORITY-OWNED	<input type="checkbox"/> WOMEN-OWNED

The attention of each Bidder/Offeror is directed to Virginia Code Section 2.2-4311.2 (effective July 1, 2010) which requires a bidder or offeror organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law, shall include in its bid or proposal the Identification Number issued to such bidder or offeror by the Virginia State Corporation Commission (SCC). Furthermore, any bidder or offeror that is not required to be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Please complete the following by checking the appropriate line that applies and providing the requested information:

- A. \_\_\_\_\_ Bidder is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such bidder's Identification Number issued to it by the SCC is \_\_\_\_\_.
- B. \_\_\_\_\_ Bidder is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such bidder's Identification Number issued to it by the SCC is \_\_\_\_\_.
- C. \_\_\_\_\_ Bidder does not have an Identification Number issued to it by the SCC and such bidder is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):  
\_\_\_\_\_

Please attach additional sheets of paper if you need more space to explain why such offeror is not required to be authorized to transact business in Virginia.

## Attachment C

### RFQ: **Filtered Drinking Water Dispensers & Related Goods and Services**

#### **PURCHASE ORDER TERMS AND CONDITIONS**

1. **Definitions.**

ACPS – Alexandria City Public Schools, Alexandria Virginia (sometimes also referred to as Buyer).

Items – All materials, goods, components, end products, data (including electronic data), work, and/or services described in and/or called for by the Purchase Order.

Purchase Order or Order or Service Contract – The Purchase Order, Service Contract or other document ( which can include an electronic document) issued by ACPS to obtain the items identified in such document.

Vendor – The person or entity to which the Purchase Order is directed and who will provide the items identified therein (sometimes also referred to as Seller).

2. **Invoicing.**

All invoices shall be sent to: Alexandria City Public Schools, **Accounting Office, 1340 Braddock Place, Alexandria, VA 22314** and to requesting school locations.

3. **Termination for Default and Convenience.**

If Vendor refuses or fails to perform any of the terms of this Purchase Order, including poor services, work, or materials, ACPS may, by written notice to Vendor, terminate this Purchase Order, in whole or in part. In addition to any right to terminate, ACPS may enforce any remedy available at law or in equity in connection with such default, and Vendor shall be liable for all damages to ACPS resulting from Vendor's default. ACPS further reserves the right to obtain immediately such items from other vendors in the event of Vendor's default. Furthermore, ACPS may reject any items that do not comply with the requirements of this Purchase Order and any such items may be returned to Vendor at Vendor's sole cost and risk of loss.

ACPS may also terminate this Purchase Order for convenience by giving written notice to Vendor at least 15 days prior to the effective date of cancellation. Any such termination shall be without liability of any type to ACPS except for payment for completed items delivered or services rendered to and accepted by ACPS.

ACPS may exercise ACPS's right of setoff as to any amounts ACPS may owe the Vendor. ACPS may require Vendor to transfer title and deliver to ACPS any or all items produced or procured by Vendor for performance of the work terminated.

4. **Changes By Vendor.**

No changes, deletions or additions may be made by the Vendor to this Purchase Order, including the terms and conditions, without the express written approval of ACPS.

5. **Payment.**

The price(s) to be paid the Vendor shall be the current price(s) as stated on this Purchase Order. Unless otherwise stated in this Purchase Order, the price(s) shall include charges such as packaging, shipping, duties, customs, tariffs and government imposed surcharges.

6. **Sales Tax Exemption.**

ACPS is exempt from payment of State Sales and Use Tax on all tangible personal property purchased or leased for ACPS's use or consumption. The Virginia Sales and Use Tax Certificate of Exemption number is 217-074292-9.

7. **Free on Board (F.O.B.), Risk of Loss, and Title.**

All prices are to be quoted F.O.B. Destination. The risk of loss from any casualty, regardless of cause, shall be on the Vendor until the items have been delivered to the place specified in the Purchase Order and accepted by ACPS.

8. **Inspection.**

ACPS shall have a reasonable time after receipt of items and before payment to inspect all items for conformity to this Purchase Order.

9. **Insurance.**

Vendor, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the term of this Purchase Order the insurance policies and/or bonds, if any, that may be required by this Purchase Order.

10. **Warranty.**

Vendor hereby warrants that all items and work covered by this Purchase Order shall conform to the specifications, drawings, samples, or other description furnished by ACPS and shall be merchantable, of good material and workmanship, and free from any defects. Vendor also warrants good title to and freedom from any encumbrances for all items and warrants against any infringement. Acceptance by Vendor may not exclude any warranty. If this Purchase Order is for services, Vendor warrants that the services shall be completed in a professional, good and workmanlike manner, with the degree of skill and care that is required by like vendors in Virginia

11. **Nondiscrimination.**

Vendor shall comply with the nondiscrimination provisions of Section 2.2-4311 of the Code of Virginia, which are incorporated herein by reference.

12. **Drug-Free Workplace.**

Vendor shall comply with the drug-free workplace provisions of Section 2.2-4312 of the Code of Virginia, which are incorporated herein by reference.

13. **Faith-Based Organizations.**

Pursuant to the Code of Virginia, Section 2.2-4343.1, be advised that ACPS does not discriminate against faith-based organizations.

14. **Assignment.**

Vendor may not assign or transfer this Purchase Order in whole or in part except with the prior written consent of ACPS, which consent shall not be unreasonably withheld.

15. **Successors and Assigns.**

The terms, conditions, provisions, and undertakings of this Purchase Order shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

16. **Indemnification.**

Vendor agrees to indemnify and hold harmless ACPS and its officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Vendor's or its employees, agents, or subcontractors actions, activities, or omissions, arising in any way out of or resulting from any of the work or items to be provided under this Purchase Order.

17. **Governing Law and Forum Selection.**

By virtue of entering into this Purchase Order, Vendor submits itself to a court of competent jurisdiction in Alexandria, VA and further agrees that this Purchase Order is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.

18. **Acceptance – Entire Agreement - Modification.**

**Acceptance of this Purchase Order shall be limited to the terms and conditions, but such Terms and Conditions may be changed, added to, deleted, or modified as may be agreed to between ACPS and the Contractor contained herein and/or incorporated herein by reference. This Purchase Order shall be deemed accepted upon the commencement of performance by the Vendor. ACPS rejects any additional and/or inconsistent terms and conditions offered by Vendor at any time and irrespective of ACPS's acceptance of or payment for Vendor's items.**

**EXHIBIT 2 (Note: Fillable Form Available on Canvas)**

**INTERNAL MEMORANDUM – SOLE SOURCE APPROVAL REQUEST**

To: Central Office – Director of Procurement

From: \_\_\_\_\_

Date: \_\_\_\_\_

Requesting Department: \_\_\_\_\_

Vendor's Legal Name: \_\_\_\_\_

Amount of purchase: \_\_\_\_\_

Brief Description: \_\_\_\_\_

One Year ONLY

Multiple Years (no more than two years; Contract may be required).

**A. Explanation/Justification:**

Explain why this is the only product or service that can meet the needs of the department.

---

---

---

Explain why this is the only available source from which to obtain this product or service, explaining what steps were taken to ensure this is the only vendor to provide this product or service. Include a letter from the Vendor stating they are the only available source.

---

---

---

Explain why the price is considered fair and reasonable. If any negotiation was done, describe the efforts that were made to conduct a negotiation to get the best possible price for ACPS.

---

---

---

The above facts establish that the vendor is the only source practically available to provide the services/items requested, and it meets the criteria established under Section 2.2-4303 E. of the Virginia Public Procurement Act, the Alexandria City School Board (dba Alexandria City Public Schools, hereinafter "ACPS") has made the determination to declare the above referenced vendor as a sole source for this project. This method will be used in lieu of competitive sealed bidding, competitive negotiation, or small purchase procedures for the purchase amount listed above, all inclusive.

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Program Lead Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Executive Approval (Required) Date: \_\_\_\_\_

---

**For Procurement Office use only, do not write below this line.**

Procurement Comments: \_\_\_\_\_

---

---

---

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Director of Procurement Date: \_\_\_\_\_

**Note:** Code of Virginia 2.2-4303 E. Methods of procurement. Upon a determination in writing that there is only one source practically available for that which is procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practically available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded.

Note: This form shall be filed with the contract/purchase order.

**Exhibit 3** (Note: Fillable Form Available on Canvas)

**INTERNAL MEMORANDUM – EMERGENCY APPROVAL REQUEST**

To: Central Office – Director of Procurement

From: \_\_\_\_\_

Date: \_\_\_\_\_

Requesting Department: \_\_\_\_\_

Vendor’s Legal Name: \_\_\_\_\_

Amount of purchase: \_\_\_\_\_

Brief Description: \_\_\_\_\_

**Explanation/Justification for the emergency:**

Explain how this situation threatens to shut down a critical system or process, or a situation that threatens personal safety or property.

---

---

---

Explain how you obtained this available source from which to obtain this product or service, explaining what steps were taken to ensure this can start work immediately. Include the scope of work from the Vendor as an attachment to this request for approval.

---

---

---

Explain why the price is considered fair and reasonable. If any negotiation was done, describe the efforts that were made to conduct a negotiation to get the best possible price for ACPS. Enter the date the actual emergency work was started.

---

---

---

The above facts establish that the vendor is the only source practically available to provide the services/items requested, and it meets the criteria established under Section 2.2-4303 E. of the Virginia Public Procurement Act, the Alexandria City School Board (dba Alexandria City Public Schools, hereinafter "ACPS") has made the determination to declare the above referenced vendor as a sole source for this project. This method will be used in lieu of competitive sealed bidding, competitive negotiation, or small purchase procedures for the purchase amount listed above, all inclusive.

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
School Principal Date: \_\_\_\_\_  
(Department Head)

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Executive Approval (Required) Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Superintendent Approval (Required) Date: \_\_\_\_\_

---

**For Procurement Office use only, do not write below this line.**

Procurement Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Director of Procurement Date: \_\_\_\_\_

**Note:** Code of Virginia 2.2-4303 E. Methods of procurement. Upon a determination in writing that there is only one source practicably available for that which is procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded.

**Exhibit 4**

**SAMPLE DESIGNATION LETTER**

Designation and Responsibilities of Contract Administration

TO: Contract Administrator, \_\_\_\_\_ Date: \_\_\_\_\_

FROM: Central Office - Director of Procurement

The contract referenced below has been awarded and services or performance may be commenced. You have been assigned as the contract administrator for this contract and are assigned the following responsibilities. A copy of the contract, a performance evaluation report sample, and other related information are attached for your use. Review this information; if you have any questions, please call the Procurement Department.

Contract Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Project: \_\_\_\_\_

Period of Contract: \_\_\_\_\_ to \_\_\_\_\_

Renewals: \_\_\_\_\_ successive \_\_\_\_\_ year options

Contract amount: \$ \_\_\_\_\_

Payment schedule or instructions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You, as contract administrator, are responsible for: (select or modify)

- Day to day coordination of the delivery of this service (or goods);
- Assurance that services (or goods) are delivered in accordance with the contract terms and conditions;
- Obtaining and approving job estimates and verifying labor hours and classifications if required (time and material contracts);
- Certifying receipt of services (or goods) billed were delivered in accordance with the contract terms and conditions;
- Prompt reporting of delivery failures or contractor performance problems to the Director of Procurement;
- Completing and submitting periodic evaluations of contractor performance;
- Initiating Complaint to Vendor form if required;
- **Assurance that the contract amount is not exceeded without proper authorization from Director of Procurement;**
- **Assurance that the contract terms and conditions are not extended, increased, decreased, or modified in any way without action through the Procurement Manager;**
- Coordinating contract "start-up" activities with appropriate department personnel (facilities management, security, etc.)
- Recommending solutions to the Director of Procurement if performance problems or contract issues persist.

**EXHIBIT 5** (Note: Fillable Form Available on Canvas)  
**CONTRACTOR PERFORMANCE EVALUATION**

Contract Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Evaluator/Administrator: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Period of Evaluation From: \_\_\_\_\_ To: \_\_\_\_\_

RATE CONTRACTOR'S PERFORMANCE ON A SCALE OF 1 TO 5 (by circling)

- |    |                           |   |   |   |   |   |              |
|----|---------------------------|---|---|---|---|---|--------------|
| 1. | Overall Evaluation        |   |   |   |   |   |              |
|    | Unsatisfactory            | 1 | 2 | 3 | 4 | 5 | Satisfactory |
| 2. | Delivery Performance      |   |   |   |   |   |              |
|    | Late/Early (if problem)   | 1 | 2 | 3 | 4 | 5 | On Time      |
| 3. | Quality of Goods/Services |   |   |   |   |   |              |
|    | Unacceptable              | 1 | 2 | 3 | 4 | 5 | Acceptable   |
| 4. | Number of Complaints      |   |   |   |   |   |              |
|    | High                      | 1 | 2 | 3 | 4 | 5 | Low          |

Explain any complaints below:

\_\_\_\_\_

\_\_\_\_\_

5. Contractor's Responsiveness to requests to correct deficiencies:
- |                |   |   |   |   |   |                                   |
|----------------|---|---|---|---|---|-----------------------------------|
| Non-responsive | 1 | 2 | 3 | 4 | 5 | Takes prompt<br>corrective action |
|----------------|---|---|---|---|---|-----------------------------------|

6. Renew this contract? YES\_\_\_ NO\_\_\_ If No, Please explain in comments below.

Note: Any score of 3 or less must be described in detail below as to what action was taken to remedy the contractor's poor performance and what steps the contractor took to correct the deficiency cited. (Continue on separate sheet if necessary.)

7. COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# INDEX

INTRODUCTION.....	1
<b>1 PROCUREMENT AUTHORITY AND RESPONSIBILITY .....</b>	
1.0 General.....	3
1.1 Types of Procurement Subject to VPPA.....	3
1.2 Methods of Procurement .....	3
1.3 Competitive Sealed Bidding. [See PROCUREMENT MANUAL Chapter .....	3
1.4 Competitive Negotiation. [See PROCUREMENT MANUAL Chapter 7].....	4
1.5 Exceptions to the VPPA. {See PROCUREMENT MANUAL Chapter 8}.....	4
1.6 FSD/Procurement Office Authority and Responsibility. ....	5
1.7 Department Procurement Authority.....	5
1.8 Computer Equipment and/or Software. ....	6
<b>2 SOURCES OF SUPPLY.....</b>	
2.0 General.....	7
2.1 Mandatory Sources.....	7
2.2 Non-mandatory Sources.....	7
2.3 Source Lists. ....	8
2.4 Suppliers' Catalogs. ....	8
2.5 Contact with Vendors.....	8
2.6 Other Sources of Supply.....	8
<b>3 ETHICS IN PUBLIC CONTRACTING .....</b>	
3.0 General.....	10
3.1 Purpose. {§2.2-4367}.....	10
3.2 Definitions. {§ 2.2-4368} .....	10
3.3 Proscribed participation by public employees in procurement... {§ 2.2-4369}.....	11
3.4 Disclosure of subsequent employment. {§ 2.2-4370}.....	11
3.5 Prohibition on solicitation or acceptance of gifts... {§ 2.2-4371} .....	11
3.6 Kickbacks. {§ 2.2-4372}.....	12
3.7 Participation in bid preparation.... {§ 2.2-4373}.....	12
3.8 Purchase of materials from architect or engineer prohibited. {§ 2.2-4374} .....	12
3.9 Certification of compliance required; penalty for false statements. {§ 2.2-4375} .....	13
3.10 Misrepresentations prohibited. {§ 2.2-4376}.....	13
3.11 Penalty for violation. {§ 2.2-4377}.....	13
3.12 Discretionary Expenditures.....	13
<b>4 SMALL PURCHASES .....</b>	
4.0 General.....	16
4.1A Obtaining Quotes (Professional Services \$80,000 or Less).....	16
4.1B Obtaining Quotes (for Goods & Non-Professional Services \$99,999 or less).....	16
4.1C Informal Letter RFP .....	17
4.2 Unsealed Bidding. (3 or 4 Quote Process).....	17
4.3 Procurement Cards for Small Purchases .....	18
4.4 Electronic Commerce (eProcurement). ....	19
<b>5 COMPETITIVE SEALED BIDDING .....</b>	
5.0 General.....	20
5.1 Competitive Sealed Bidding.....	20
5.2 Preparation and Issuance of ITBs. ....	20
5.3 Sealed Bids - Receipt, Opening, Evaluation, and Award.....	21
5.4 Withdrawal of Bids Before Opening.....	21

5.5	Mistakes in Bids.....	<a href="#">21</a>
5.6	Withdrawal of Bids After Opening.....	<a href="#">23</a>
5.7	Negotiation with the Lowest Responsive and Responsible Bidder.....	<a href="#">24</a>
<b>6</b>	<b>COMPETITIVE NEGOTIATION.....</b>	
6.0	General.....	<a href="#">25</a>
6.1	Competitive Negotiation for Professional Services.....	<a href="#">25</a>
6.2	Competitive Negotiation for Goods and Nonprofessional Services.....	<a href="#">27</a>
<b>7</b>	<b>EXCEPTIONS TO COMPETITIVE PROCUREMENT .....</b>	
7.0	General.....	<a href="#">30</a>
7.1	Sole Source Definition.....	<a href="#">30</a>
7.2	Emergency Procurement.....	<a href="#">31</a>
7.3	Other Exceptions to Competition Procurements.....	<a href="#">32</a>
<b>8</b>	<b>PROCUREMENT REQUIREMENTS AND POLICIES.....</b>	
8.0	General.....	<a href="#">34</a>
8.1	Bid Requests, Requests for Proposals and Responses.....	<a href="#">34</a>
8.2	Bonds.....	<a href="#">35</a>
8.3	Brand Names.....	<a href="#">36</a>
8.4	Cancellation, rejecting of bids; waiver of informalities.....	<a href="#">36</a>
8.5	Comments Concerning Specifications.....	<a href="#">36</a>
8.6	Construction Contracts.....	<a href="#">37</a>
8.7	Contract Modifications / Amendments / Change Orders.....	<a href="#">37</a>
8.8	Contract Pricing Arrangements.....	<a href="#">39</a>
8.9	Contractor License Requirements.....	<a href="#">39</a>
8.10	Cooperative Procurement.....	<a href="#">40</a>
8.11	Contract Requirements – School Charter.....	<a href="#">41</a>
8.12	Drug-free Workplace Requirements.....	<a href="#">41</a>
8.13	Multiple Awards.....	<a href="#">42</a>
8.14	Non-discrimination.....	<a href="#">42</a>
8.15	Prequalification.....	<a href="#">43</a>
8.16	Public access to procurement records.....	<a href="#">44</a>
8.17	Publicly Posted Notices.....	<a href="#">44</a>
8.18	Responsible Bidder or Offeror.....	<a href="#">45</a>
8.19	Responsive Bidder.....	<a href="#">45</a>
8.20	Sales Tax.....	<a href="#">45</a>
8.21	Preference for VA products with recycle content and for VA Firms.....	<a href="#">46</a>
<b>9</b>	<b>CONTRACT ADMINISTRATION .....</b>	
9.0	General.....	<a href="#">48</a>
9.1	Planning and Checklist.....	<a href="#">48</a>
9.2	Contract Administrator.....	<a href="#">48</a>
9.3	Procurement Records.....	<a href="#">48</a>
9.4	Delivery of Goods.....	<a href="#">49</a>
9.5	Inspection.....	<a href="#">49</a>
9.6	Acceptance.....	<a href="#">50</a>
9.7	Rejection.....	<a href="#">50</a>
9.8	Restocking Charges.....	<a href="#">50</a>
9.9	Overshipments/Overruns.....	<a href="#">50</a>
9.10	Lost or Damaged Shipments.....	<a href="#">50</a>
9.11	Payment and Invoice Processing.....	<a href="#">50</a>
9.12	Modifications and Change Orders.....	<a href="#">51</a>
9.13	Contract Renewal and Extension.....	<a href="#">51</a>
9.14	Termination for the Convenience of the School.....	<a href="#">51</a>

9.15	Cancellation of Purchase Order/Termination of Contract.....	<a href="#">52</a>
9.16	Default.....	<a href="#">52</a>
9.17	Vendor Performance Complaints.....	<a href="#">52</a>
9.18	Notice to Cure.....	<a href="#">52</a>
9.19	Termination for Default and Reprocurement Costs.....	<a href="#">53</a>
9.20	Debarment and Reinstatement.....	<a href="#">53</a>
9.21	Multi-User Contract Administration.....	<a href="#">53</a>
9.22	Contract types and pricing arrangements.....	<a href="#">54</a>
<b>10</b>	<b>GENERAL PROCUREMENT GUIDELINES &amp; PLANNING.....</b>	
10.0	General.....	<a href="#">56</a>
10.1	Lead-Time.....	<a href="#">56</a>
10.2	Selection of Procurement Method.....	<a href="#">56</a>
10.3	Preparing the Written Solicitation.....	<a href="#">56</a>
10.4	Specifications.....	<a href="#">60</a>
10.5	Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL).....	<a href="#">62</a>
10.6	Prompt Payment Discounts.....	<a href="#">62</a>
10.7	Advance Payments.....	<a href="#">62</a>
10.8	Price Reasonableness Determination.....	<a href="#">62</a>
10.9	Order Splitting.....	<a href="#">63</a>
10.10	Award Documents.....	<a href="#">63</a>
10.11	Freight.....	<a href="#">63</a>
10.12	Insurance.....	<a href="#">64</a>
10.13	Used Equipment.....	<a href="#">64</a>
10.14	Rental/Lease, Installment Purchases.....	<a href="#">64</a>
10.15	Maintenance/Repair of Equipment.....	<a href="#">65</a>
10.16	Printing.....	<a href="#">66</a>
10.17	Non-Professional Services.....	<a href="#">67</a>
10.18	Professional Services.....	<a href="#">67</a>
10.19	Construction.....	<a href="#">68</a>
10.20	Use of Contractor's Standard Contract Form.....	<a href="#">70</a>
10.21	Samples.....	<a href="#">70</a>
10.22	Vendor Advertising Prohibition.....	<a href="#">70</a>
10.23	Unsolicited Proposals.....	<a href="#">71</a>
<b>11</b>	<b>DEBARMENT.....</b>	
11.0	General.....	<a href="#">73</a>
11.1	Purpose.....	<a href="#">73</a>
11.2	Reasons for Debarment.....	<a href="#">73</a>
11.3	Term of Debarment, Suspending Debarment.....	<a href="#">74</a>
11.4	Notification.....	<a href="#">74</a>
<b>12</b>	<b>SURPLUS PROPERTY DISPOSAL.....</b>	
12.0	General.....	<a href="#">765</a>
12.1	Surplus Property Declaration Form.....	<a href="#">75</a>
<b>13</b>	<b>REMEDIES.....</b>	
13.0	General.....	<a href="#">776</a>
13.1	Ineligibility. {§ 2.2-4357}.....	<a href="#">776</a>
13.2	Appeal of denial of withdrawal of bid. {§ 2.2-4358}.....	<a href="#">778</a>
13.3	Determination of nonresponsibility. {§ 2.2-4359}.....	<a href="#">787</a>
13.4	Protest of award or decision to award. {§ 2.2-4360}.....	<a href="#">79</a>
13.5	Effect of appeal upon contract. {§ 2.2-4361}.....	<a href="#">810</a>
13.6	Stay of award during protest. {§ 2.2-4362}.....	<a href="#">810</a>

14.7	Contractual disputes. {§ 2.2-4363}	810
14.8	Legal actions. {§ 2.2-4364}	821
14.9	Administrative appeals procedure. {§ 2.2-4365}	843
14.10	Alternative dispute resolution. {§ 2.2-4366}	843

**Appendix A FLOW CHARTS** .....

PROCUREMENT METHODS .....		
Flowchart 1	SMALL PURCHASES Goods and Non-Professional Services (\$29,999 or Less)	85
Flowchart 2	SMALL PURCHASES Goods and Non-Professional Services (\$30,000 to \$99,999)	86
Flowchart 3	UNSEALED PROPOSAL PROCESS	87
Flowchart 4	COMPETITIVE SEALED BID PROCESS (CODE OF VA §§ 2.2-4301, 2.2-4303A)	88
Flowchart 5	COMPETITIVE NEGOTIATION Professional Services (Over \$80,000)	89
Flowchart 6	SOLE SOURCE PROCESS (CODE OF VA §§ 2.2-4303E)	90
Flowchart 7	EMERGENCY PROCUREMENT PROCESS (CODE OF VA § 2.2-4303F)	91

**Appendix B EXHIBITS**.....

Exhibit 1	QUOTE FORM	93
Exhibit 2	SOLE SOURCE PROCUREMENT APPROVAL/AWARD FORM	98
Exhibit 3	NOTICE OF EMERGENCY AWARD	100
Exhibit 4	CONTRACT ADMINISTRATION DESIGNATION LETTER	102
Exhibit 5	CONTRACTOR PERFORMANCE EVALUATION LETTER	103