

## CONTRACT EXECUTION

### General Contract Execution Policy

#### A. Generally

This policy establishes a uniform procedure for the review, approval, and execution of School Board contracts by officers and employees of the School Board. As used herein, the phrase "School Board contract" means any contract or agreement to which the School Board, school administration or an individual school is a named party, or which any school officer or employee enters into on behalf of the School Board, school administration or an individual school.

#### B. Applicability

This policy shall be applicable to all School Board contracts entered into with any person. For purposes of this policy, "person" shall be deemed to include any individual, or any corporation, partnership, firm, organization, or other group or association of persons acting as a unit. Notwithstanding the above, this policy shall not be applicable to: i) routine contracts of employment budgeted by the School Board and authorized by the Chief Human Resources Officer; ii) agreements executed in accordance with School Board policy KQ for Partners-in-Education Grants, Virginia Preschool Initiative, and Community-Funded Facilities Projects; iii) legal settlements or agreements; iv) the purchase or lease of real estate and school division facilities; or v) contracts entered into by the Superintendent in response to an emergency provided that the contract does not exceed \$500,000, and further provided that the Superintendent or designee documents, in writing, that an emergency exists and that delay in executing the contract will be detrimental to the interests of the school division.

#### C. Contract Review and Approval

##### 1. Content

Every contract shall be reviewed by the individual in charge of the department, office, school or other program (hereinafter "Department") from which the contract originated, or to which it is related, or by such individual's duly authorized designee. Every contract shall be signed by such individual or his or her designee to "approve as to content" prior to its execution by the Procurement Office. When an individual acknowledges the approval of the content the individual is representing that he or she: i) has read the contract; ii) agrees with the terms and conditions contained therein; and iii) is satisfied that the terms and conditions of the contract accurately reflect the agreement that was reached between the parties thereto.

2. Fiscal Note

Every contract shall have a fiscal note attached thereto in a form prescribed by the Procurement Office. The fiscal note, which must be prepared by the school or department responsible for submitting the contract, shall provide an estimate of the costs and revenues generated by the contract over the life of the contract, not to exceed five (5) years. For capital projects, the fiscal note shall provide an estimate of the "total cost to complete" the project, including the contract base cost, and shall compare the "total cost to complete" to the project budget. The completed fiscal note shall be provided to the Procurement Office at the time the request is made to issue a solicitation and prior to executing a contract for the desired goods or services. If the contract does not involve the expenditure of funds, an authorized representative of the school or department submitting the contract shall indicate "N/A" (not applicable) on the fiscal note and shall communicate this information to the Procurement Office in writing.

3. Availability of Funds

Except as provided in Section E of this Policy, every purchase order exceeding \$100,000.00 shall be signed or initialed by both the Director of Budget, or duly authorized designee, and the individual in charge of the department, office, or other program to "approve as to availability of funds". Every purchase order less than \$100,000.00 shall be initialed "approve as to availability of funds" by the individual in charge of the department, office, or other program from which the contract originated. If it is determined by the Director of Budget or the duly authorized designee that there are insufficient funds available to approve the contract, the contract shall be referred back to the submitting department for a determination as to whether or not the department desires to request a transfer of the necessary funds for the contract to be approved and executed. If the entity decides to request such a transfer, the request shall be subject to the applicable budget transfer policy and workflow approvals.

4. Legal Sufficiency

The following non-standard contracts (contracts that materially deviate from ACPS' approved form agreement) shall be forwarded to legal counsel for review once they have: i) been "approved as to content;" ii) had the required fiscal note placed thereon; and iii) been "approved as to availability of funds".

- a. Any capital program funded construction contract involving the expenditure of funds in excess of \$1,000,000;
- b. Any contract for the lease or purchase of buildings or land;
- c. Any other contract that the Superintendent, Chief Financial Officer, or the Director of Procurement specifically requests to be reviewed and approved

by legal counsel. Any other staff member may make a request to the Superintendent that a specific contract be considered for review which shall be subject to the Superintendent's approval. Once legal counsel has reviewed a contract and has determined that it is in a form that meets the requirements of law, he or she shall submit such acknowledgement, in writing, noting that the contract is "legally sufficient."

When legal counsel confirms in writing that a contract is "legally sufficient," he or she is only certifying that the contract complies with all applicable laws, policies, and regulations, contains all necessary contractual provisions, and is legally enforceable. Legal counsel is not indicating his or her approval of the contents of the contract or the purposes for which the contract is being entered into.

**D. Contract Execution**

Once a contract has gone through the above-stated review and approval process, it shall be forwarded to one of the following parties for final execution in accordance with the purchasing authority limits set forth in Policy DJA: Purchasing Authority.

1. Director of Procurement/ Purchasing Agent(s)

Except as provided in Section E of this Policy, the Director of Procurement/Purchasing Agent(s) or their duly authorized designees shall have the authority to execute all contracts involving the procurement of goods and services; however, the following contracts shall be executed by the Superintendent or his/her designee:

- a. Any contract involving the expenditure of funds in excess of \$500,000;
  - b. Any contract which extends beyond the current fiscal year, if the cumulative contract dollar amount exceeds \$500,000;
  - c. Any contract for the lease or purchase of buildings or land;
  - d. Any contract that the Superintendent has been specifically directed and/or authorized by the School Board to execute on its behalf; and
  - e. Any other contract that the Superintendent specifically requests to be forwarded to him or her for execution.
2. Notwithstanding any provision herein to the contrary, the Superintendent, Director of Procurement, or other duly authorized designees shall not execute any contract which contains a clause, paragraph, or provision ("Provision") designed to "indemnify" or "hold harmless" the provider of goods or services for liability due to negligence or an intentional act of the provider in the performance of the contract. If a contract contains such a Provision and the service provider will not agree to remove the Provision from the contract, the Superintendent, Director of

Procurement, or other duly authorized designees shall forward the contract to legal counsel for final resolution.

3. All contracts must have prior signoff by the Financial Services, Procurement Office before being forwarded to the Superintendent for signature. Financial Services is the central repository for all fully executed contracts. The Superintendent will sign the contract and forward the signed document to the Procurement Office.

#### **E. Small Purchase Procedures for Procurement of Goods and Services**

1. Notwithstanding the provisions of Sections C and D of this Policy, the individual in charge of a school or department shall have the authority to negotiate contracts for the purchase of goods or services for use by his or her school or department if the value of the contract does not exceed \$100,000.00 for goods or non-professional services, or \$80,000 for professional services in accordance with Policy DJ: Small Purchasing. However, the individual shall not have the authority to fully execute any such contract, which remains subject to the approval requirements outlined in this policy.
2. Each school or department shall maintain a log of each contract submitted to the Director of Procurement for execution pursuant to this Section E. This log shall include the following information:
  - a. A brief description of the type of goods or services which are the subject of the contract;
  - b. The name of the service provider;
  - c. The length of the term of the contract;
  - d. The date the contract was executed and returned; and
  - e. The value of the goods or services that will be provided or received.

A copy of the log shall be maintained by the school or department for record-keeping purposes. It shall be the responsibility of each school or department, when negotiating a contract, to ensure compliance with the ACPS procurement process, the Virginia Public Procurement Act and applicable School Board policies and regulations.

3. Notwithstanding any provision herein to the contrary, no employee is authorized to agree, verbally or in writing, to any contract which contains a clause, paragraph, or provision ("Provision") designed to "indemnify" or "hold harmless" the provider of goods or services from liability due to negligence or an intentional act of the provider in the performance of the contract. If a contract contains such a Provision, and the service provider will not agree to remove the Provision from

the contract, the school or department shall forward the contract to the Director of Procurement.

**F. Records Retention Requirements**

Under the Code of Virginia, § 42.1-85, the Library of Virginia (LVA) has the authority to issue regulations governing the retention and disposition of state and local public records. In accordance with this statute, copies of all contracts executed on behalf of the School Board shall be maintained in the Procurement Office for a period of five (5) years following the date of contract execution, or for the period as defined in the current retention schedule issued by the LVA.

**G. Compliance with School Board Policies and Regulations**

The provisions of this policy are intended to supplement, not supersede, other applicable School Board policies and procedures or those of the ACPS Procurement Manual. Therefore, any contract that is negotiated, awarded, and executed pursuant to this policy shall comply with any other applicable policies and procedures.

**H. Failure to Follow Contract Execution Policy**

Any individual purporting to execute a contract on behalf of the School Board without the requisite School Board authority in accordance with this policy may be held personally liable for any or all of the obligations imposed on the School Board by such contract.

Adopted: April 21, 2016  
Amended: December 5, 2019

Legal Refs.: Virginia Constitution Article VIII, § 7. School Boards

Code of Virginia, as amended, §§ 2.2-4300 *et seq.*, 22.1-28, 22.1-70, 22.1-71, 22.1-79, 22.1-89, 22.1-91.

Cross Refs.: DA Management of Funds  
DJA Purchasing Authority  
DJA-R ACPS Procurement Manual  
DJFB Contract Execution  
FEG Planning, Design and Construction  
FEGA ACPS Capital Improvement Program  
KQ Commercial, Promotional and Corporate Sponsorships and Community Partnerships