

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

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) contracts for the design, construction, or renovation of capital improvements budgeted by the School Board and authorized by the Chief Operations Officer; or iii) contracts entered into by the Superintendent, with the approval of the School Board Chairman, in response to an emergency provided that the contract does not exceed \$300,000, and further provided that the Superintendent 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 agency (hereinafter "Agency") from which the contract originated, or to which it is related, or by such individual's duly authorized designee. Every contract shall also be signed (or initialed) "approved as to content" by such individual or his or her designee. When an individual signs (or initials) a contract "approved as to 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 Office of Business Services. The fiscal note, which must be prepared by the Agency 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. A copy of the fiscal note shall be provided to the Office of Business Services at the time the contract is prepared. If the contract does not involve the expenditure of funds, an authorized representative of the entity submitting the contract shall indicate "N/A" (not applicable) on the fiscal note and shall place his or her signature or initials adjacent thereto.

3. Non-appropriation Clause

Any contract with a term that extends beyond one fiscal year must contain a non-appropriation clause.

4. Availability of Funds

Except as provided in Section E of this Policy, every contract exceeding \$105,000.00 shall be signed or initialed "approved as to availability of funds" by the Director of the Office of Business Services or duly authorized designee. Every contract less than \$105,000.00 shall be initialed "approved as to availability of funds" by the individual in charge of the department, office, or other entity from which the contract originated.

If it is determined by the Office of Business Services that there are insufficient funds available to approve the contract, the contract shall be referred back to the submitting school/department for a determination as to whether or not the school/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 forwarded to the Office of Budget Development for appropriate action.

5. Legal Sufficiency

The following contracts 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 contract involving the expenditure of School funds in excess of \$100,000;

- b. Any contract that the Superintendent has been specifically directed and/or authorized by the School Board to execute on behalf of the School Board; and
- c. Any other contract that the Superintendent specifically requests to be reviewed and approved by legal counsel. Any staff member may make request to the Superintendent that a specific contract be considered for review. The Director of Purchasing or Director of Business Services may request that a specific contract be reviewed. 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 sign (or initial) the contract as "legally sufficient."
- d. When legal counsel signs (or initials) a contract as being "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:

1. Superintendent of Schools

The Superintendent or his/her duly authorized designees shall execute all contracts on behalf of the School Board. In that regard, the Superintendent may delegate the authority to execute contracts on a "contract-by-contract" basis, or may establish a list of the types of contracts that specific designees shall have the authority to execute on an ongoing basis until such time as the delegation is amended or revoked.

2. Director of Purchasing/Director of Business Services

Except as provided in Section E of this Policy, the Director of Purchasing or Director of Business Services or their duly authorized designees shall have the authority to execute all contracts involving the procurement of goods and services; provided, however, that the following contracts (except Purchase Orders) shall be executed by the Superintendent or his designee:

- a. Any contract involving the annual obligation of funds in excess of \$100,000;

- b. Any contract that the Superintendent has been specifically directed and/or authorized by the School Board to execute on its behalf; and
 - c. Any other contract that the Superintendent specifically requests to be forwarded to him/her for execution.
- 3. Notwithstanding any provision herein to the contrary, the Superintendent, his designee, the Director of Purchasing, and the Director of Business Services are not authorized to 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, his/her designee, the Director of Purchasing, or the Director of Business Services shall forward the contract to legal counsel for resolution. If legal counsel cannot resolve the issue with the service provider then a risk-benefit analysis will be performed by the Office of Risk Management to determine if it is acceptable to enter into such a contract. If the Office of Risk Management determines that it is acceptable to enter into such a contract, then that determination will be put in writing and the contract may be executed without approval for legal sufficiency.

E. Contracting Authority for Schools and Departments

- 1. Notwithstanding the provisions of Sections C and D of this Policy, the principal of each individual school and department heads shall have the authority to negotiate and execute any contract 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 \$510,000.00; provided, however, that principals shall not have the authority to negotiate or execute the following contracts:
 - a. Multiple contracts for purchase of the same goods or services, or with the same service provider, which exceed \$510,000.00 in value in the aggregate during a single school year. Value refers to both expenditures and receipts, e.g., pictures, yearbooks, and vending machines. For example, if snacks for vending machines are purchased for \$53,000 and is expected to result in receipts to the school in the amount of \$116,000, the contract has a value of \$116,000 and does not qualify for small purchase procedures for site-based procurement set forth in this subsection;

- b. Any contract for goods and/or services that are covered by a term pricing agreement established by the Office of Purchasing. If a division term pricing agreement exists for a good(s) or service(s) the school/department must use the established agreement;
- c. Contracts which require or extend performance by either party beyond more than two fiscal years; or
- d. Contracts with persons or organizations for the use of school buildings or grounds.

F. Each principal or department shall maintain a copy of each contract he or she executes pursuant to this Section E in a central repository.

1. Copies of all contracts executed by each principal/department head shall be maintained for a period of five (5) years following the date of contract execution.
2. It shall be the responsibility of each principal, when negotiating or executing a contract, to ensure that the procurement process which is followed prior to the award of a contract fully complies with the requirements of the Virginia Public Procurement Act and applicable School Board policies and regulations.
3. It shall also be the responsibility of each principal/department head, when negotiating or executing a contract, to ensure that there are sufficient funds available for the contract. Before signing any contract, the principal/department head shall verify that there are or will be funds available to meet the contract obligation. The principal/department head shall attach a written fiscal note on the contract to that effect on a form provided by the Office of Business Services.
4. If a "standard" contract for the purchase of particular goods or services has been developed by the Office of Business Services, a principal shall use the "standard" contract whenever purchasing such goods or services.
5. Notwithstanding any provision herein to the contrary, principals are not authorized to execute 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 principal/department head shall forward the contract to the Director of Business Services for final resolution.

G. Compliance with School Board Policies and Regulations

The provisions of this Policy supplement, but do not supersede, other applicable School Board policies and procedures. 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 contracts, who executes 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.

Legal Reference

Virginia Constitution Article VIII, § 7. School Boards.

Code of Virginia § 2.2-4300, et seq., as amended. Virginia Public Procurement Act.

Code of Virginia § 22.1-28, as amended. Supervision of schools in each division vested in school board.

Code of Virginia § 22.1-70, as amended. Powers and duties of superintendent generally.

Code of Virginia § 22.1-71, as amended. School board constitutes body corporate; corporate powers.

Code of Virginia § 22.1-79, as amended. Powers and duties.

Code of Virginia § 22.1-89, as amended. Management of funds.

Code of Virginia § 22.1-91, as amended. Limitation on expenditures; penalty.

Adopted by School Board: July 1, 1997

Amended by School Board: June 17, 2008

Scrivener's Amendments: September 6, 2013

Amended by School Board: May 22, 2018

Amended by School Board: September 25, 2018

Amended by School Board: 2020

APPROVED AS TO
LEGAL SUFFICIENCY


