

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Contract Execution Policy For Capital Improvement Program (CIP) Projects

A. Generally

This Policy establishes a uniform procedure for the review, approval and execution of School Board contracts and contract change orders for Capital Improvement Program (CIP) Projects 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 or School Division is a named party, or to which any authorized school officer or employee enters into on behalf of the School Board or School Division. For execution of contracts which do not involve CIP projects refer to School Board Policy 3-89 "General Contract Execution Policy."

B. Applicability

This Policy shall be applicable only to School Board construction or architectural/engineering (A/E) contracts for CIP projects 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.

1. Notwithstanding the above, this Policy shall not be applicable to:
 - a. 1 routine contracts of employment budgeted by the School Board and authorized by the Chief Human Resources Officer;
 - b. 2 contracts entered into by the Superintendent or designee, with the approval of the School Board Chair

~~manor designee~~, in response to an emergency provided that the contract does not exceed \$300,000, 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; or c. 3) contracts covered by School Board Policy 3-89, General Contract Execution Policy.

C. Contract Review and Approval

1. Content

Every contract shall be reviewed by the Executive Director of Facilities Services (FS) or designee. Every contract shall also be signed (or initialed) "approved as to content" by such individual or designee. When an individual signs (or initials) a contract "approved as to content," the individual is representing that he or she: a) has read the contract; b) agrees with the terms and conditions contained therein; and c) 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 Office of Facilities Services, shall provide an estimate of ~~the "total cost to complete" the project, including~~ the contract amount, including the breakdown of funding sources needed to complete the project. ~~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, the Executive Director of Facilities Services or designee, shall indicate "N/A" (not applicable) on the fiscal note and sign or initial adjacent thereto.

3. Availability of Funds

- a. Every contract exceeding \$30,000 shall be signed or initialed "approved as to availability of funds" by the Director of the Office of Business Services or designee.
- b. Every contract of \$30,000 or less shall be initialed "approved as to availability of funds" by the individual in charge of the department, office or other agency from which the contract originated.
- c. 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 Office of Facilities Services for a determination as to whether Facilities Services desires to request a transfer of the necessary funds for the contract to be approved and executed.
- d. If the office decides to request such a transfer, the request shall be forwarded to the Office of Budget Development for appropriate action.

4. Legal Sufficiency

- a. A/E contracts exceeding \$30,000 and construction contracts exceeding \$50,000 shall be forwarded to legal counsel for review as to legal sufficiency once they have: a) been "approved as to content;"; b) had the required fiscal note placed thereon; and c) been "approved as to availability of funds."

b. When legal counsel signs (or initials) a contract as being "legally sufficient," legal counsel 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 approval of the contents of the contract or the purposes for which the contract is being entered into.

5. School Board Approval

Prior to contract execution, all A/E proposals exceeding \$50,000 and construction bids, cooperative agreements, and energy performance contracts exceeding \$100,000 shall be submitted to the School Board for approval. The following information shall be included with the School Board Agenda item:

a. A/E Proposals

The name of the A/E firm selected, the name of the project, the proposed contract amount and the design budget.

b. Construction Bids

The name of the lowest responsive and responsible bidder, the name of the project along with a description, the proposed contract amount, the construction budget and a summary of the bid results.

c. Cooperative Agreements

The name of the contractor, the name of the cooperative agreement holder, the

proposed contract amount, and the construction budget.

d. Energy Performance Contracts

The name of the contractor, the proposed contract amount, and the construction budget.

D. Contract Execution

Once a contract has gone through the above-stated review and approval process, it shall be forwarded to the Superintendent for final execution:

1. The Superintendent or designee shall execute all contracts on behalf of the School Board. In that regard, the Superintendent may delegate in writing the authority to execute contracts on a "contract-by-contract" basis or may establish a written 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. Indemnity or hold harmless clauses. Notwithstanding any provision herein to the contrary, the Superintendent or designee is 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, designee or the purchasing agent shall forward the contract to legal counsel for final resolution.

3. Alternative dispute resolution clauses.

- a. Notwithstanding any provision herein to the contrary, the Superintendent or designee is not authorized to execute any contract which contains a clause, paragraph, or provision ("Provision") agreeing or authorizing either party to submit any dispute arising from the contract or the performance thereof to any alternative dispute resolution procedure, including, but not limited to, arbitration and mediation. If a contract contains such a Provision, and the service provider will not agree to remove the Provision from the contract, the Superintendent, designee or the purchasing agent shall forward the contract to legal counsel for final resolution.
- b. Upon advice and approval of the School Board's legal counsel, the Executive Director Office of Facilities Services may agree to submit any contractual dispute to nonbinding alternative dispute resolution procedures, including, but not limited to arbitration and mediation.

E. Contract Change Order Review and Approval

1. Content

Every contract change order shall be reviewed by the Executive Director Office of Facilities Services or designee. Every change order shall also be signed (or initialed) "approved as to content" by such individual or ~~his/her~~ designee. When an individual signs (or initials) a change order "approved as to content," the individual is representing ~~having that he or she~~: a) ~~has~~ read the change order; b) agreeings with the terms and conditions contained therein; and c) ~~being~~is satisfied

that the terms and conditions of the change order accurately reflect the agreement that was reached between the parties thereto.

2. Total amount of all change orders – limitation.

a. The total amount of all change orders on a given project cannot exceed twenty-five percent of the original contract amount without advance written approval by the School Board.

b. Any individual proposed contract change order on a fixed-price contract cannot exceed twenty-five percent of the original contract amount or \$50,000, whichever is greater, without advanced written approval by the School Board.

c. Contract change orders may not exceed the appropriated funds for the project.

~~3.~~ 3. Fiscal Note

Every contract change order 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 Office of Facilities Services, shall provide the cost of the change order and the revised contract amount and shall compare the revised contract amount to the project budget. A copy of the fiscal note shall be provided to the Office of Business Services at the time the contract change order is prepared.

~~4.~~ 4. Availability of Funds

a. Every contract change order shall be signed or initialed "approved as to availability of funds" by

the Director of the Office of Business Services or designee.

b. If it is determined by the Office of Business Services that there are insufficient funds available to approve the change order, the change order shall be referred back to the Office of Facilities Services for a determination as to whether or not the Office of Facilities Services desires to request a transfer of the necessary funds for the change order to be approved and executed.

c. If the Office of Facilities Services decides to request such a transfer, the request shall be forwarded to the Office of Budget Development for appropriate action.

~~5.~~ 5. Contract Change Order Execution

Contract change order shall be executed, based upon dollar amount by the following positions:

Change Order Amount:	Executed by:
\$500,000 and less	Executive Director of the Office of Facilities Services
\$500,000 to \$1,000,000	Chief Operations Officer
\$1,000,000.00 and Over	Chief Operations Officer and Chief Financial Officer

~~F.~~ 6. Compliance with School Board Policies and Regulations

The provisions of this Policy supplement, but do not supersede, other applicable School Board policies and regulations. Therefore, any contract or contract change order that is negotiated, awarded and executed pursuant to this Policy shall comply with any other applicable law, policies and regulations.

G. 7. Failure to Follow Contract Execution Policy

Any individual purporting to execute contracts who executes a contract or change order 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 or change order.

Editor's Note

~~See School Board Policy 3-39 Competitive Negotiations/Awards: Procurement of Professional Architectural and Engineering Services and School Board Policy 3-89 General Contract Execution Policy.~~

Legal Reference

Virginia Constitution Article VIII § 7. School Boards.

Code of Virginia § 2.2-4303(G), as amended. Methods of procurement.

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.

Related Links

School Board [Policy 3-39](#)

School Board [Policy 3-89](#)

Adopted by School Board: April 21, 1998

Amended by School Board: February 19, 2002

Amended by School Board: September 16, 2014

Amended by School Board: May 16, 2017

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APPROVED AS TO
LEGAL SUFFICIENCY


