

COMMENTS TO POLICY REVISION SUGGESTED BY DR. DAWN MARIE BRITTINGHAM
Policy Section 4-6.1

Current Policy

Section 4-6.1. Statement of Policy; contractual authority of school superintendent; contracts not requiring sealed bids or competitive negotiation. — A. The School Board is of the opinion that Suffolk Public Schools should seek to obtain a high quality of goods and services and that goods and services should be obtained at a reasonable cost. Furthermore, the School Board is of the opinion that the procurement of goods and services should be conducted in a fair and impartial manner with avoidance of any impropriety or the appearance of impropriety, and that all qualified vendors should have access to public business and that no offeror should be arbitrarily or capriciously excluded.

B. The school superintendent or his/her duly authorized designees shall execute all contracts, including cooperative procurement agreements, on behalf of the School Board subject to the federal and state codes and school board policies. All public contracts entered into by the school superintendent with non-governmental contractors, for the purchase or lease of any such good and/or service, shall be in accordance with the Virginia Public Procurement Act (hereinafter “Act”). In addition, prior to awarding a contract for the provision of services that require the contractor or its employees to be in the presence of students during regular school hours or during school-sponsored activities, the school superintendent will require the contractor and, when relevant, any employee who will have direct contact with students, to provide certification:

(1) that they have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and

(2) that they have not been convicted of a crime of moral turpitude.

C. Pursuant to written procedures not requiring competitive sealed bids or competitive negotiation, the school superintendent may enter into single or term contracts for goods and services other than professional services and non-transportation related construction if the aggregate or sum of all phases is not expected to exceed \$100,000, and transportation-related construction if the aggregate amount is not expected to exceed \$25,000; however, such small purchase procedures shall provide for competition wherever practicable. Such small purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$80,000. Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code. (Adopted September 14, 2000; Ordinance #00/01-02; Revised: February 14, 2008; Ordinance Number 07/08-6; Effective Date: February 14, 2008; Revised: May 12, 2016; Ordinance Number 15/16- 32; Effective July 1, 2016; Revised: October 11, 2018, Ordinance Number 18/19-26, Effective Date: October 11, 2018; Ordinance 20/21-1, Effective Date: October 8, 2020).

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Suggested Policy Revision

Section 4-6.1. Statement of Policy; contractual authority of school superintendent; contracts not requiring sealed bids or competitive negotiation. — A. The school board ~~is of the opinion~~ affirms that Suffolk Public Schools ~~should seek to~~ shall obtain a high quality of goods and services ~~and that goods and services should be obtained~~ at a reasonable cost. Furthermore, the school board ~~is of the opinion that the~~ Procurement of all goods and services ~~should~~ shall be conducted in a fair and impartial manner with strict avoidance of ~~any~~ impropriety or the appearance of impropriety. ~~and that~~ All qualified vendors ~~should~~ have access to public business opportunities, and that no offeror ~~should~~ shall be arbitrarily or capriciously excluded. It is the intent of the school board that ~~competition be sought to the maximum feasible degree,~~ that public procurement procedures ~~involve~~ shall promote openness and administrative efficiency, ~~that individual~~ while allowing public bodies ~~enjoy broad flexibility in fashioning structuring the details of such competition,~~ the competitive process. ~~that~~ The rules governing contract awards ~~be made clear in advance of~~ must be clearly stated before the competition begins. That Specifications shall reflect the legitimate needs ~~procurement needs~~ of the purchasing body and shall not be written ~~to rather than being drawn to~~ favor a particular vendor. The procurement process shall allow for the open exchange of information between the public body and vendors regarding what is sought and what is offered. ~~and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.~~ Public bodies may apply a ~~consider~~ best value concepts approach when procuring goods and nonprofessional services, however, best value shall not be used for ~~but not~~ construction or professional services. When best value is used, the solicitation must clearly state the evaluation criteria, factors, and ~~basis for consideration of best value and the process for the consideration of by which best value will be determined.~~ ~~shall be as stated in the procurement solicitation~~

B. The authority of the superintendent to sign approved contracts is limited to carrying out decisions already made by the school board. It does not include:

1. Selecting vendors for high-risk services that expose the school division to significant legal, financial, operational, or reputational risk such as, but not limited to, forensic audits, investigative services, services involving student data systems or cybersecurity, services that could trigger litigation exposure, large-dollar or multi-year financial commitments, crisis communications firms.
2. Selecting vendors for sensitive services that are contracts that directly affects governance, public trust, board authority, or politically charged issues such as, but not limited to, investigations involving board members or the superintendent, contracts related to personnel discipline at senior levels, services involving redistricting, policy development, or legal strategy, consultants advising on controversial community issues, contracts tied to public controversy or board conflict.
3. Initiating contracts that materially affect governance authority, board oversight, or public trust, ~~regardless of dollar amount.~~ Examples of contracts that affect oversight and trust include, but are not limited to, a modestly priced governance consultant reshaping board procedures, a policy rewrite contract, a communications retainer that shapes public messaging about board actions, a compliance monitor who reports only to administration.
4. Binding the school board to any terms, obligations, or policy positions beyond those expressly authorized by Board action. This includes, but is not limited to, expanding the scope of work beyond what was approved, agreeing to policy positions not voted on by the board, making representations to vendors that bind the board, altering terms that materially change governance intent.

C. All contracts entered into under the superintendent's delegated authority shall be reported to the School Board on a regular basis and included in the public record.

D. Contract authority and compliance. The school superintendent or his/her a duly authorized designees shall ~~execute~~ sign all contracts on behalf of the school board, including ~~all contracts,~~ including cooperative procurement agreements, ~~on behalf of the school board subject to the in~~ accordance with applicable federal and state ~~codes law and school board policies~~ policy. All public contracts entered into by the school superintendent with non- governmental contractors, for the purchase or lease of any such goods and/or services, shall ~~be in accordance~~ comply

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with the Virginia Public Procurement Act (hereinafter “Act”). ~~In addition, prior to~~ Before awarding a any contract for the provision of services that require the contractor or its employees to be ~~in the presence of~~ present with students during regular school hours or ~~during school-sponsored activities, the school superintendent will shall~~ require the contractor and, ~~when relevant, any employee who will have with~~ direct student contact ~~with students~~, to provide certification that they have NOT:

(1) ~~that they have not~~ been convicted of a felony or any offense involving the sexual abuse, molestation or ~~physical or sexual abuse or rape of a child; and~~

(2) ~~that they have not~~ been convicted of a crime of moral turpitude.

E. Small purchase authority. ~~Pursuant to~~ In accordance with written procedures ~~not requiring~~ that do not require competitive sealed bids bidding or competitive negotiation, the school superintendent may enter into single or term contracts as follows:

1. ~~or Goods and services other than~~ nonprofessional services and (excluding non-transportation related construction): if the aggregate or sum of all phases is not expected to exceed up to \$100,000, in the aggregate or total of all phases.

2. ~~and Transportation-related construction: if the aggregate amount is not expected to exceed up to \$25,000 in the aggregate ; however,~~

3. Professional services: Up to \$80,000 in the aggregate or total of all phases, without competitive negotiation.

a. ~~such~~ Small purchase procedures shall provide for competition wherever practicable.

b. ~~Such small purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation. provided the aggregate or the sum of all phases is not expected to exceed \$80,000.~~

~~Where~~ When small purchase procedures are adopted for apply to construction, compliance with the procedures shall not waive compliance with the Uniform State Building Code shall not be waived.

Rationale for Revision

The revisions to procurement policies significantly narrow and clarify the superintendent's contracting authority. High-risk, sensitive, or governance-impacting contracts—regardless of dollar amount—are reserved for School Board approval. This ensures that decisions affecting public trust, legal exposure, or governance structure remain within the Board's purview.

Attorney Comments

The suggested revision significantly limits the superintendent's authority to enter into contracts. The superintendent's authority will be limited to contracts approved by the school board. The superintendent is only granted the authority to enter into contracts for small purchases for goods and nonprofessional services up to \$100,000 that do not require sealed bidding or competitive negotiations, or professional services up to \$80,000. When small purchases apply to construction the Uniform State Building Code cannot be waived. The current policy requires that any contractor or its employees that will be in the presence of students must certify that that they have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The suggested policy revision only applies to contractors and its employee who will have “direct student contact.”