

## PURCHASING PROCEDURES

- A. ALL PROCUREMENTS MADE BY ANY DEPARTMENT, OFFICE, OR SCHOOL WITHIN THE DIVISION WILL BE IN ACCORDANCE WITH SCHOOL BOARD POLICY, THESE REGULATIONS, AND THE VIRGINIA PUBLIC PROCUREMENT ACT.
- B. UNLESS OTHERWISE AUTHORIZED BY LAW OR OTHERWISE PROVIDED IN THESE REGULATIONS, ALL PUBLIC CONTRACTS WITH NON-GOVERNMENTAL CONTRACTORS FOR THE PURCHASE OR LEASE OF GOODS OR FOR THE PURCHASE OF SERVICES, INSURANCE OR CONSTRUCTION WILL BE AWARDED AFTER COMPETITIVE SEALED BIDDING OR COMPETITIVE NEGOTIATION AS PROVIDED BELOW.
1. PROFESSIONAL SERVICES SHALL BE PROCURED BY COMPETITIVE NEGOTIATION.
  2. UPON A DETERMINATION MADE IN ADVANCE BY THE SCHOOL BOARD AND SET FORTH IN WRITING THAT COMPETITIVE SEALED BIDDING IS EITHER NOT PRACTICABLE OR NOT FISCALLY ADVANTAGEOUS TO THE PUBLIC FOR A SPECIFIC PROCUREMENT OF GOODS, SERVICES, INSURANCE, OR CONSTRUCTION, THEN THAT SPECIFIC PROCUREMENT MAY BE MADE BY COMPETITIVE NEGOTIATION. THE WRITING SHALL DOCUMENT THE BASIS FOR THIS DETERMINATION.
  3. UPON A DETERMINATION IN WRITING THAT THERE IS ONLY ONE SOURCE PRACTICABLE 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.
  4. A CONTRACT FOR THE PURCHASE OR LEASE OF GOODS OR FOR THE PURCHASE OF SERVICES, INSURANCE, OR CONSTRUCTION WHICH IS NOT EXPECTED TO EXCEED \$50,000.00 IS NOT REQUIRED TO BE LET IN ACCORDANCE WITH COMPETITIVE SEALED BIDS OR COMPETITIVE NEGOTIATION, BUT WILL BE LET IN ACCORDANCE WITH THESE REGULATIONS.
- C. THE FOLLOWING CONTRACTS MAY BE LET WITHOUT COMPETITION:
1. PURCHASE OF GOODS OR SERVICES WHICH ARE PERFORMED OR PRODUCED BY PERSONS, OR IN SCHOOLS OR WORKSHOPS, UNDER THE SUPERVISION OF THE VIRGINIA DEPARTMENT FOR THE VISUALLY HANDICAPPED; OR WHICH ARE PERFORMED OR PRODUCED BY NON-PROFIT SHELTERED WORKSHOPS SERVING THE DISABLED.
  2. CONTRACTS FOR LEGAL SERVICES, EXPERT WITNESSES, AND OTHER SERVICES ASSOCIATED WITH LITIGATION OR REGULATORY PROCEEDINGS WITHOUT COMPETITIVE SEALED BIDDING OR COMPETITIVE NEGOTIATION, PROVIDED THAT THE PERTINENT PROVISIONS OF STATE LAW REMAIN APPLICABLE.
  3. EXTENSION OF 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.

- D. ALL PURCHASES OF AND CONTRACTS FOR SUPPLIES, MATERIALS, EQUIPMENT, OR CONTRACTUAL SERVICES, OTHER THAN EMERGENCY SERVICES, ESTIMATED TO EXCEED \$5,000.00 BUT LESS THAN \$30,000.00 SHALL BE MADE IN THE OPEN MARKET AND LEGAL ADVERTISEMENT FOR THESE BIDS ARE NOT REQUIRED. THE PURCHASING AGENT SHALL OBTAIN AT LEAST THREE QUOTATIONS OF PRICE (TELEPHONE QUOTATIONS ARE PERMISSIBLE). THESE QUOTATIONS WILL BE REDUCED TO WRITING. HOWEVER, WHEN THREE OR MORE COMPANIES REGULARLY ENGAGED IN THE PRODUCTION AND SALE OF A PARTICULAR SUPPLY, MATERIAL, OR EQUIPMENT, ARE DILIGENTLY SOLICITED FOR QUOTATIONS, AND ONE OR MORE FOR GOOD AND SOUND REASONS DOES NOT PROVIDE A QUOTATION, THE PURCHASING AGENT IS AUTHORIZED TO NEGOTIATE WITH A FIRM THAT CAN FURNISH THE REQUIRED ITEM.
- E. WHEN SAFETY AND/OR EMERGENCIES ARE PRIME FACTORS OR EQUIPMENT IS REQUIRED TO MATCH OR REPLACE EXISTING EQUIPMENT, THE REQUIREMENT FOR THREE QUOTATIONS OF PURCHASES LESS THAN \$30,000.00 IS WAIVED. THIS APPLIES ONLY TO CASES WHERE BIDDING, EITHER FORMAL OR INFORMAL, IS IMPRACTICABLE DUE TO TIME CONSTRAINTS OR THE NATURE OF THE EQUIPMENT, AT WHICH TIME THE PURCHASING AGENT WOULD BE REQUIRED TO FURNISH A SOLE SOURCE JUSTIFICATION AND ATTACH THE SAME TO THE PURCHASE ORDER.
- F. BEFORE A BID IS CONSIDERED FOR AWARD, THE BIDDER MAY BE REQUESTED BY THE PURCHASING AGENT TO SUBMIT A STATEMENT REGARDING PREVIOUS EXPERIENCE IN PERFORMING COMPARABLE WORK, BUSINESS AND/OR TECHNICAL ORGANIZATION, FINANCIAL RESOURCES, AND PLANT AVAILABLE TO BE USED IN PERFORMING THE WORK OR IN SUPPLYING MATERIALS, SUPPLIES, AND EQUIPMENT.
- G. A CONTRACTOR MAY BE DEBARRED FROM CONTRACTING WITH THE BOARD FOR THE FOLLOWING REASONS:
1. DEFAULT ON QUOTATIONS;
  2. FRAUD;
  3. VIOLATION OF ANTI-TRUST LAWS;
  4. UNSATISFACTORY PERFORMANCE FOR A PUBLIC BID;
  5. FAILURE TO PERFORM;
  6. FAILURE TO PROVIDE REQUESTED TAXPAYER IDENTIFICATION NUMBER;
  7. VIOLATION OF THE VIRGINIA PUBLIC PROCUREMENT ACT; AND
  8. DEBARMENT BY THE COMMONWEALTH OF VIRGINIA OR ANY OF ITS AGENCIES.

THE PURCHASING AGENT SHALL DETERMINE IF A CONTRACTOR IS DEBARRED AND THE LENGTH OF THE DEBARMENT. THE PURCHASING AGENT WILL NOTIFY THE CONTRACTOR IN WRITING OF HIS DETERMINATION. SUCH NOTICE SHALL STATE THE REASONS FOR THE DEBARMENT. THE RIGHT OF A CONTRACTOR WHO IS DEBARRED WILL BE DISQUALIFIED FROM RECEIVING INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS AND FROM RECEIVING AWARDS OF CONTRACTS.

- H. 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.

ALL PUBLIC BODIES SHALL ESTABLISH PROGRAMS CONSISTENT WITH THIS CHAPTER TO FACILITATE THE PARTICIPATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES IN PROCUREMENT TRANSACTIONS. THE PROGRAMS ESTABLISHED SHALL BE IN WRITING AND SHALL INCLUDE COOPERATION WITH THE DEPARTMENT OF MINORITY BUSINESS ENTERPRISE, THE UNITED STATES SMALL BUSINESS ADMINISTRATION, AND OTHER PUBLIC OR PRIVATE AGENCIES. STATE AGENCIES SHALL SUBMIT ANNUAL PROGRESS REPORTS ON MINORITY BUSINESS PROCUREMENT TO THE DEPARTMENT OF MINORITY BUSINESS ENTERPRISE.

WHENEVER THERE EXISTS (I) A RATIONAL BASIS FOR SMALL BUSINESS ENHANCEMENT OR (II) A PERSUASIVE ANALYSIS THAT DOCUMENTS A STATISTICALLY SIGNIFICANT DISPARITY BETWEEN THE AVAILABILITY AND UTILIZATION OF WOMEN- AND MINORITY-OWNED BUSINESS, THE GOVERNOR IS AUTHORIZED AND ENCOURAGED TO REQUIRE STATE AGENCIES TO IMPLEMENT APPROPRIATE ENHANCEMENT OR REMEDIAL MEASURES CONSISTENT WITH PREVAILING LAW. FOR THE PURPOSES OF THIS SUBSECTION, "STATE AGENCY" MEANS ANY AUTHORITY, BOARD, DEPARTMENT, INSTRUMENTALITY, INSTITUTION, AGENCY OR OTHER UNIT OF STATE GOVERNMENT. "STATE AGENCY" SHALL NOT INCLUDE ANY COUNTY, CITY, OR TOWN.

IN THE SOLICITATION OR AWARDING OF CONTRACTS, NO STATE AGENCY, DEPARTMENT OF INSTITUTION SHALL DISCRIMINATE AGAINST A BIDDER OR OFFEROR BECAUSE THE BIDDER OR OFFEROR EMPLOYS EX-OFFENDERS UNLESS THE STATE AGENCY, DEPARTMENT OR INSTITUTION HAS MADE A WRITTEN DETERMINATION THAT EMPLOYING EX-OFFENDERS ON THE SPECIFIC CONTRACT IS NOT IN ITS BEST INTEREST. (2.2-4310)

- I. SHOULD A BIDDER DESIRE TO SUBMIT A COMPLAINT OR REQUEST, AN EXPLANATION WITH REGARD TO THE MEANING OR INTERPRETATION OF THE INVITATION FOR BIDS OR REQUEST FOR PROPOSAL, THE COMPLAINT OR THE REQUEST FOR EXPLANATION SHALL BE SUBMITTED IN WRITING TO THE PURCHASING AGENT IN SUFFICIENT TIME TO ALLOW A REPLY TO REACH THE BIDDER PRIOR TO THE DATE FOR SUBMISSION OF BIDS. EXPLANATIONS WILL BE IN THE FORM OF AN AMENDMENT TO THE INVITATION FOR BIDS OR REQUEST FOR PROPOSAL AND WILL BE FURNISHED TO ALL PROSPECTIVE BIDDERS. BIDDERS MUST ACKNOWLEDGE RECEIPT OF ALL AMENDMENTS WITH THEIR BIDS.

J. UNLESS CANCELED OR REJECTED, A RESPONSIVE SEALED BID FROM THE LOWEST RESPONSIBLE BIDDER SHALL BE ACCEPTED AS SUBMITTED, EXCEPT THAT IF THE BID FROM THE LOWEST RESPONSIBLE BIDDER EXCEEDS AVAILABLE FUNDS, THE SCHOOL BOARD MAY, AT ITS DISCRETION, SELECT SUCH ITEMS OR ITEM AS IT DEEMS APPROPRIATE TO OBTAIN A CONTRACT PRICE WITHIN AVAILABLE FUNDS. ITEMS TO BE CONSIDERED FOR NEGOTIATING PURPOSES ARE: TIME, METHODS, CHANGE IN QUALITY AND TYPE WITHOUT COMPROMISING THE INTENDED END PRODUCT, ALL IN THE BEST INTEREST OF THE SCHOOL BOARD. THE PROCEDURES AND CONDITIONS FOR SUCH NEGOTIATIONS SHALL BE SUMMARIZED IN THE INVITATION TO BID AS FOLLOWS:

1. THE PURCHASING AGENT WILL NOTIFY THE LOWEST RESPONSIBLE BIDDER THAT HIS BID EXCEED THE FUNDS AVAILABLE AND REQUEST A CONFERENCE TO NEGOTIATE THE PRICE DOWNWARD.
2. THE LOW BIDDER CONFIRMS THE NEGOTIATED PRICE TO THE PURCHASING AGENT.
3. IF WITHIN THE FUNDS ALLOCATED AND THE END PRODUCT IS NOT COMPROMISED, A PURCHASE ORDER IS ISSUED BASED ON NEGOTIATIONS.
4. IF NEGOTIATIONS DO NOT COME WITHIN FUNDS AVAILABLE, THE BIDDER SHALL BE NOTIFIED AND ADDITIONAL FUNDS SHALL BE SOLICITED.
5. SHOULD ADDITIONAL FUNDS NOT BE AVAILABLE, SPECIFICATIONS MAY BE CHANGED TO REFLECT LOWER COSTS AND RE-ADVERTISING FOR BIDS INITIATED.

K. A BIDDER MAY WITHDRAW A BID FROM CONSIDERATION IF THEY PRICE BID WAS SUBSTANTIALLY LOWER THAN 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 DUE TO AN UNINTENTIONAL ARITHMETICAL ERROR OR AN UNINTENTIONAL OMISSION WHICH CAN BE CLEARLY SHOWN BY OBJECTIVE EVIDENCE DRAWN FROM INSPECTION OF THE ORIGINAL WORK PAPERS, DOCUMENTS, AND MATERIALS USED IN THE PREPARATION OF THE BID SOUGHT TO BE WITHDRAWN. THIS BIDDER SHALL GIVE NOTICE IN WRITING OF THE CLAIM OF RIGHT TO WITHDRAW THE BID WITHIN TWO BUSINESS DAYS AFTER THE CONCLUSION OF THE BID OPENING PROCEDURE.

1. NO BID MAY BE WITHDRAWN UNDER THIS PARAGRAPH 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%).
2. IF A BID IS WITHDRAWN UNDER THE AUTHORITY OF THIS PARAGRAPH, THE LOWEST REMAINING BID SHALL BE DEEMED TO BE THE LOW BID.
3. 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.

4. IF THE BIDDER IS NOT ALLOWED TO WITHDRAW THE BID UNDER THIS PARAGRAPH, THE PURCHASING AGENT SHALL NOTIFY THE BIDDER OF THE DECISION IN WRITING AND SUCH NOTICE SHALL STATE THE REASONS FOR THE DECISION.
  
- L. UPON AWARD OF ANY CONSTRUCTION CONTRACT EXCEEDING \$100,000 AWARDED TO ANY PRIME CONTRACTOR, A PERFORMANCE BOND AND A PAYMENT BOND EACH IN THE SUM OF THE CONTRACT AMOUNT SHALL BE FURNISHED BY THE CONTRACTOR.  
CONTRACTUAL CLAIMS, WHETHER FOR MONEY OR OTHER RELIEF, SHALL BE SUBMITTED IN WRITING TO THE PURCHASING AGENT WITHIN SIXTY (60) DAYS AFTER FINAL PAYMENT; HOWEVER, WRITTEN NOTICE OF THE CONTRACTOR'S INTENT TO FILE SUCH CLAIM MUST BE SUBMITTED TO THE PURCHASING AGENT AT THE TIME OF OCCURRENCE. THE PURCHASING AGENT SHALL RENDER A DECISION IN WRITING TO THE CONTRACTOR WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THE CLAIM.
  
- N. FOR THE PURPOSES OF THE BOARD'S PURCHASING POLICIES, THE FOLLOWING DEFINITIONS APPLY:
  1. "RESPONSIBLE BIDDER" OR "OFFEROR" SHALL MEAN A PERSON WHO HAS THE CAPABILITY, IN ALL RESPECTS, TO PERFORM FULLY THE CONTRACT REQUIREMENTS AND THE MORAL AND BUSINESS INTEGRITY AND RELIABILITY WHICH WILL ASSURE GOOD FAITH PERFORMANCE, AND WHO HAS BEEN PREQUALIFIED, IF REQUIRED.
  2. "RESPONSIVE BIDDER" SHALL MEAN A PERSON WHO HAS SUBMITTED A BID WHICH CONFORMS IN ALL MATERIALS RESPECTS TO THE INVITATION TO BID.
  
- O. EACH SCHOOL WITHIN THE DIVISION MAY ENTER INTO CONTRACTS PROVIDING CAPS AND GOWNS, PHOTOGRAPHS, CLASS RINGS, YEARBOOKS, GRADUATION ANNOUNCEMENTS, AND VENDING PRODUCTS, WHICH WILL BE AVAILABLE FOR PURCHASE OR RENTAL BY STUDENTS, PARENTS, FACULTY, OR OTHER PERSONS USING NON-PUBLIC MONEY THROUGH THE USE OF COMPETITIVE NEGOTIATION AS PROVIDED IN THESE REGULATIONS. PRIOR TO THE FINAL ACCEPTANCE OR SIGNING OF A CONTRACT, THE SCHOOL PRINCIPAL MUST HAVE THE CONTRACT REVIEWED BY THE SUPERINTENDENT OR HIS DESIGNEE.

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Legal Refs.: Small Business Act, Section 8a, as amended, 15 U.S.C. 637a  
Code of Virginia, 1950, as amended, Sec. 2.1-117, et. seq.: Secs. 11-37  
through 11-61