

**GENERAL SERVICES**

**Purchasing and Supply**

**Procurement of Goods and Services by Individual Schools Using Nonpublic Funds**

**This regulation supersedes Regulation 7413.2.**

**I. PURPOSE**

To outline procedures and restrictions governing an individual school's use of nonpublic (nonappropriated) funds to purchase certain goods and services.

**II. DEFINITIONS**

As used in this regulation, the following definitions:

A. Nonpublic funds

Nonpublic funds shall mean those funds raised directly by the school through its various activities such as fund-raising and certain vocational education programs.

B. Competitive Bidding

Competitive bidding shall mean the method of contractor selection that results in the award to the lowest responsible and responsive bidder.

C. Competitive Negotiation

Competitive negotiation shall mean the form of contractor selection that includes bases for award other than lowest price (such factors, however, should include price). These bases for award must be defined in a written request for proposal issued by the school.

D. Responsible Bidder or Offerer

Responsible bidder or offerer shall mean an individual, company, firm, corporation, partnership, or other organization that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance and that has been prequalified, if required.

E. Responsive Bidder or Offerer

Responsive bidder or offerer shall mean an individual, company, firm, corporation, partnership, or other organization that has submitted a bid that conforms in all material respects to the invitation to bid or request for proposal.

### III. SCOPE OF REGULATION

#### A. Applicability

This regulation shall apply to procurement of goods and services (except construction services) that are not provided centrally through the Department of General Services but are to be purchased on an individual school basis using nonpublic funds (e.g., yearbooks, pictures, athletic equipment, and other school-specific items).

1. Competitive bidding shall be used in procurement whenever feasible.
2. Principals, however, shall have the authority to procure goods or services by competitive negotiation whenever they have determined that competitive bidding is neither practical nor fiscally advantageous.
3. Competitive negotiation is expressly authorized for the acquisition of class rings, yearbooks, pictures, and graduation-related materials.
4. Schools obtaining the services of individuals using nonpublic funds are expected to follow this regulation with respect to determining from whom to obtain these services. Having made this decision, no further review or approval is required. However, in order to meet Internal Revenue Service reporting requirements, payments to noncorporate businesses and individuals must be made through the Office of Finance and Accounting Services, Accounts Payable Section, in accordance with Regulation 5330.1.

Payments to Fairfax County Public Schools employees must be made through the Office of Payroll Services in accordance with Regulation 5640.4.

#### B. Other Laws

School personnel who procure goods or services pursuant to this regulation shall be accountable for ensuring that all requirements cited in section IV. are met and that all necessary records of such transactions are maintained.

1. In addition to these procurement rules, school personnel who engage in purchasing are also subject to the laws of Virginia governing ethics in public contracting and conflicts of interest. Among other restrictions, those laws prohibit a school employee from purchasing goods or services on the school's behalf if the employee would derive a financial benefit from the transaction. A school employee may not solicit or accept gifts in exchange for awarding a contract to a particular bidder, offerer, or contractor. Willful violation of those laws may result in a fine, imprisonment, and loss of employment. In addition, school employees are subject to School Board Policy 4430.1 regarding conflicts of interest.
2. All documents required to be created and maintained under this regulation shall be subject to public inspection and disclosure in accordance with the Virginia Freedom of Information Act, except as otherwise provided by law.

## IV. METHODS OF PROCUREMENT

This section defines the methods of procurement for all purchases including competitive bidding or competitive negotiation.

### A. Small Purchases

Schools may issue purchase orders to vendors without competition if the estimated value of the entire order is less than \$5,000. Schools shall endeavor to be equitable in making small purchase decisions and to give opportunities for business to as many vendors as possible. However, nothing in this provision shall require that purchase orders be given to a vendor who charges higher prices than comparable vendors merely to maintain equitable distribution of business.

### B. Competitive Bids

Except as otherwise provided in this regulation, all individual school procurement actions shall follow the steps outlined in this section. Schools may not split orders to reduce the dollar value of the purchase for the purpose of avoiding these guidelines.

#### 1. Purchases Between \$5,000 and \$10,000

If the estimated value of the entire order is greater than \$5,000 but less than \$10,000, schools may follow the procurement instructions contained in section IV.B.2. of this regulation for purchases exceeding \$10,000. In the alternative, schools may solicit telephone quotations rather than written bids. In either event, bids must be solicited from at least three different vendors prior to awarding a bid and issuing a purchase order. Bids shall be awarded to the lowest responsive and responsible bidder.

Records of telephone bids must be maintained. At a minimum, the schools' records must be kept on file for at least three years from the bid date. The records should include the following information: date, person making the call, company name, telephone number, person contacted, product information, and price quote(s).

Schools are encouraged to request vendors that provide telephone bids to follow up with written proposals as a means of documenting that bids were obtained.

#### 2. Purchases Exceeding \$10,000

If the estimated value of the entire order is \$10,000 or greater, the following procedure shall be used.

##### a. Notice

At least ten (10) working days prior to the date set for receipt of bids, the school shall:

(1) Post a notice in the school that a bid solicitation has been issued. The notice should describe the goods or services being solicited, the closing date and time, and the school contact person. This notice must be posted in a location designated for this purpose at the school.

(2) Mail copies of the specific bid solicitations to at least three (3) vendors. In addition, any vendor that requests a copy of the solicitation must be provided one. Standard solicitation forms must be used by the schools.

(3) Schools must adhere strictly to the closing date and time established for any solicitation, All bids received from vendors shall be marked with the date and time received. Any bids received after the date and time established for receipt shall be marked "late," marked with the date and time received, and returned to the vendor.

**b. Evaluation of Bids**

(1) Schools shall prepare written tabulations of all bids received from vendors. These tabulations must document the basis for the award of the contract.

(2) Bidding documents shall be available for public inspection only after bids have been evaluated but may be inspected prior to the award of the bid, unless the school decides not to accept any of the proposals and to reopen the contract.

(3) Copies of the tabulation documents shall be kept in the school files for at least three years.

(4) The order or contract shall be awarded to the lowest responsive and responsible bidder or offerer, although the school may reserve the right to reject all bids and to reopen or cancel the solicitation.

**c. Issuance of Purchase Order**

(1) The purchase order shall be approved and signed by the principal or his or her designee.

(2) If the purchase order is issued to a vendor other than the low bidder, the basis for this decision must be documented in writing and approved by the principal.

(3) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible or responsive bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision by invoking the administrative appeals procedure provided by this regulation.

**C. Competitive Negotiation**

Upon written determination by a principal that procurement of specific goods or services shall be made by competitive negotiation, the steps outlined in this section shall be followed.

1 A written request for proposal (RFP) shall be issued specifying the items to be procured and the factors that will be used in evaluating proposals, including price.

2 Notice of the RFP shall be posted in a designated location in the school at least ten (10) working days in advance of the date set for receipt of proposals.

3 Copies of the RFP shall be mailed to at least three (3) potential offerers.

4 A selection advisory committee shall be named by the principal to review proposals and to make recommendations for contract award. This committee shall maintain minutes of meetings and document proposal evaluations and rankings.

5 Selection shall be made of two or more offerers determined by the principal to be fully qualified and best suited to provide the requested goods or services based on the factors cited in the RFP. Negotiations shall then be conducted with the top- rated offerer and a contract awarded if one can be agreed upon. If a contract cannot be agreed upon, then negotiations with the highest rated offerer shall be terminated and negotiations may likewise be conducted with the next highest rated offerer, or the contract may be reopened and a new RFP issued.

**D. Sole Source Procurement**

Upon a written determination by the principal that there is only one source practicably available for goods or services to be procured, a contract may be negotiated and a purchase order issued to that source without following the competitive provisions of this regulation. The written determination shall clearly identify the item to be procured, the vendor selected, the date of contract award, and the basis for the sole source determination. This document shall be kept in a school file for at least three years.

**E. Emergency Procurement**

For purposes of procurement, an emergency is justified if action is necessary to avoid the diminution of public services. Under such circumstances, a principal may award a contract and issue a purchase order without following the competitive provisions of this regulation. However, such procurement should be made with such competition as is reasonably available. A written determination of the basis for the emergency and for the selection of the particular vendor shall be included in the file. The written document shall clearly identify the item to be procured, the vendor selected, the date of contract award, and the basis for the emergency, If more than one vendor is contacted for bids, this information also shall be included. The written finding shall be kept in the school file for at least three years.

**V. ADMINISTRATIVE APPEALS PROCEDURE**

A party aggrieved by a decision to award a bid or contract pursuant to this regulation must file a written appeal with the Office of the Division Superintendent, Fairfax County Public Schools, 10700 Page Avenue, Fairfax, Virginia 22030 within ten (10) days of the date of the

award or the announcement of the decision to award, whichever occurs first. The written appeal shall state fully the reasons that justify reversing the award. A bidder, offerer, or contractor must exhaust the procedures described in this provision prior to instituting legal action concerning the same procurement transaction unless the School Board agrees otherwise.

Following the opportunity for a hearing, the appeal of the award shall be decided by the Division Superintendent or his or her designee who shall issue a written decision containing findings of fact.

This decision shall be final unless appealed within thirty (30) days to a court of competent jurisdiction. The decision of the Division Superintendent or his or her designee shall be sustained unless it is found to be arbitrary or capricious.

An award of a bid or contract, or the performance of an awarded contract, need not be delayed during the expiration of the appeals period (including any judicial proceedings) if there is a written determination by the principal, approved by the area superintendent, that proceeding without delay is necessary to protect the public interest.

Nothing in this regulation shall be deemed to expand or enlarge the remedies that would be available to bidders, offerers, or contractors under Article 3 of the Virginia Public Procurement Act, Virginia Code Annotated, SS 11-63 to 11-71 (1989 Replacement Volume), if this regulation had not been adopted. Under no circumstances shall a bidder, offerer, or contractor be entitled to monetary damages when a contract is declared void, except that a contractor who has already begun performance shall be compensated for the cost of performance up to the time of such declaration.

See also: Regulation 5330.1, IRS Reporting--Nonpayroll Payments  
Regulation 5640.4, Payment for Summer School, Curriculum Development, and Other  
Miscellaneous Assignments Policy 4430.1, Conflict of Interest--Employees