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CONTRACT EXECUTION

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) agreements executed in accordance with School Board policy KQ for Partners-in-Education Grants, Virginia Preschool Initiative, and Community-Funded Facilities Projects; iii) legal settlements or agreements; iv) the purchase or lease of real estate and school division facilities; or v) contracts entered into by the Superintendent in response to an emergency provided that the contract does not exceed \$500,000, 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.

C. Contract Review and Approval

1. Content

Every contract shall be reviewed by the individual in charge of the department, office, school or other program (hereinafter "Department") from which the contract originated, or to which it is related, or by such individual's duly authorized designee. Every contract shall be signed by such individual or his or her designee to "approve as to content" prior to its execution by the Procurement Office. When an individual acknowledges the approval of the 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.

37 2. Fiscal Note

38 Every contract shall have a fiscal note attached thereto in a form prescribed by the
39 Procurement Office. The fiscal note, which must be prepared by the school or
40 department responsible for submitting the contract, shall provide an estimate of the
41 costs and revenues generated by the contract over the life of the contract, not to
42 exceed five (5) years. For capital projects, the fiscal note shall provide an estimate of
43 the "total cost to complete" the project, including the contract base cost, and shall
44 compare the "total cost to complete" to the project budget. The completed fiscal note
45 shall be provided to the Procurement Office at the time the request is made to issue a
46 solicitation and prior to executing a contract for the desired goods or services. If the
47 contract does not involve the expenditure of funds, an authorized representative of the
48 school or department submitting the contract shall indicate "N/A" (not applicable) on
49 the fiscal note and shall communicate this information to the Procurement Office in
50 writing.

51 3. Availability of Funds

52 Except as provided in Section E of this Policy, every purchase order exceeding
53 \$100,000.00 shall be signed or initialed by both the Director of Budget, or duly
54 authorized designee, and the individual in charge of the department, office, or other
55 program to "approve as to availability of funds". Every purchase order less than
56 \$100,000.00 shall be initialed "approve as to availability of funds" by the individual
57 in charge of the department, office, or other program from which the contract
58 originated. If it is determined by the Director of Budget or the duly authorized
59 designee that there are insufficient funds available to approve the contract, the
60 contract shall be referred back to the submitting department for a determination as to
61 whether or not the department desires to request a transfer of the necessary funds for
62 the contract to be approved and executed. If the entity decides to request such a
63 transfer, the request shall be subject to the applicable budget transfer policy and
64 workflow approvals.

65 4. Legal Sufficiency

66 The following non-standard contracts (contracts that materially deviate from ACPS'
67 approved form agreement) shall be forwarded to legal counsel for review once they
68 have: i) been "approved as to content;" ii) had the required fiscal note placed thereon;
69 and iii) been "approved as to availability of funds".

- 70 a. Any capital program funded construction contract involving the
71 expenditure of funds in excess of \$1,000,000;
- 72 b. Any contract for the lease or purchase of buildings or land;
- 73 c. Any other contract that the Superintendent, Chief Financial Officer, or the
74 Director of Procurement specifically requests to be reviewed and approved

75 by legal counsel. Any other staff member may make a request to the
76 Superintendent that a specific contract be considered for review which
77 shall be subject to the Superintendent's approval. Once legal counsel has
78 reviewed a contract and has determined that it is in a form that meets the
79 requirements of law, he or she shall submit such acknowledgement, in
80 writing, noting that the contract is "legally sufficient."

81 When legal counsel confirms in writing that a contract is "legally sufficient," he or
82 she is only certifying that the contract complies with all applicable laws, policies, and
83 regulations, contains all necessary contractual provisions, and is legally enforceable.
84 Legal counsel is not indicating his or her approval of the contents of the contract or
85 the purposes for which the contract is being entered into.

86 **D. Contract Execution**

87 Once a contract has gone through the above-stated review and approval process, it shall
88 be forwarded to one of the following parties for final execution in accordance with the
89 purchasing authority limits set forth in Policy DJA: Purchasing Authority.

90 1. Director of Procurement/ Purchasing Agent(s)

91 Except as provided in Section E of this Policy, the Director of
92 Procurement/Purchasing Agent(s) or their duly authorized designees shall have the
93 authority to execute all contracts involving the procurement of goods and services;
94 however, the following contracts shall be executed by the Superintendent or his/her
95 designee:

- 96 a. Any contract involving the expenditure of funds in excess of \$500,000;
- 97 b. Any contract which extends beyond the current fiscal year, if the
98 cumulative contract dollar amount exceeds \$500,000;
- 99 c. Any contract for the lease or purchase of buildings or land;
- 100 d. Any contract that the Superintendent has been specifically directed and/or
101 authorized by the School Board to execute on its behalf; and
- 102 e. Any other contract that the Superintendent specifically requests to be
103 forwarded to him or her for execution.

104 2. Notwithstanding any provision herein to the contrary, the Superintendent,
105 Director of Procurement, or other duly authorized designees shall not execute any
106 contract which contains a clause, paragraph, or provision ("Provision") designed
107 to "indemnify" or "hold harmless" the provider of goods or services for liability
108 due to negligence or an intentional act of the provider in the performance of the
109 contract. If a contract contains such a Provision and the service provider will not
110 agree to remove the Provision from the contract, the Superintendent, Director of

111 Procurement, or other duly authorized designees shall forward the contract to
112 legal counsel for final resolution.

113 3. All contracts must have prior signoff by the Financial Services, Procurement
114 Office before being forwarded to the Superintendent for signature. Financial
115 Services is the central repository for all fully executed contracts. The
116 Superintendent will sign the contract and forward the signed document to the
117 Procurement Office.

118 **E. Small Purchase Procedures for Procurement of Goods and Services**

119 1. Notwithstanding the provisions of Sections C and D of this Policy, the individual
120 in charge of a school or department shall have the authority to negotiate contracts
121 for the purchase of goods or services for use by his or her school or department if
122 the value of the contract does not exceed \$100,000.00 for goods or non-
123 professional services, or \$80,000 for professional services in accordance with
124 Policy DJ: Small Purchasing. However, the individual shall not have the authority
125 to fully execute any such contract, which remains subject to the approval
126 requirements outlined in this policy.

127 2. Each school or department shall maintain a log of each contract submitted to the
128 Director of Procurement for execution pursuant to this Section E. This log shall
129 include the following information:

- 130 a. A brief description of the type of goods or services which are the subject
131 of the contract;
- 132 b. The name of the service provider;
- 133 c. The length of the term of the contract;
- 134 d. The date the contract was executed and returned; and
- 135 e. The value of the goods or services that will be provided or received.

136 A copy of the log shall be maintained by the school or department for record-
137 keeping purposes. It shall be the responsibility of each school or department,
138 when negotiating a contract, to ensure compliance with the ACPS procurement
139 process, the Virginia Public Procurement Act and applicable School Board
140 policies and regulations.

141 3. Notwithstanding any provision herein to the contrary, no employee is authorized
142 to agree, verbally or in writing, to any contract which contains a clause,
143 paragraph, or provision ("Provision") designed to "indemnify" or "hold harmless"
144 the provider of goods or services from liability due to negligence or an intentional
145 act of the provider in the performance of the contract. If a contract contains such a
146 Provision, and the service provider will not agree to remove the Provision from

147 the contract, the school or department shall forward the contract to the Director of
148 Procurement.

149 **F. Records Retention Requirements**

150 Under the Code of Virginia, § 42.1-85, the Library of Virginia (LVA) has the authority to
151 issue regulations governing the retention and disposition of state and local public records.
152 In accordance with this statute, copies of all contracts executed on behalf of the School
153 Board shall be maintained in the Procurement Office for a period of five (5) years
154 following the date of contract execution, or for the period as defined in the current
155 retention schedule issued by the LVA.

156 **G. Compliance with School Board Policies and Regulations**

157 The provisions of this policy are intended to supplement, not supersede, other applicable
158 School Board policies and procedures or those of the ACPS Procurement Manual.
159 Therefore, any contract that is negotiated, awarded, and executed pursuant to this policy
160 shall comply with any other applicable policies and procedures.

161 **H. Failure to Follow Contract Execution Policy**

162 Any individual purporting to execute a contract on behalf of the School Board without
163 the requisite School Board authority in accordance with this policy may be held
164 personally liable for any or all of the obligations imposed on the School Board by such
165 contract.

166 Adopted: April 21, 2016
167 Amended: December 5, 2019

168
169 Legal Refs.: Virginia Constitution Article VIII, § 7. School Boards
170
171 Code of Virginia, as amended, §§ 2.2-4300 *et seq.*, 22.1-28, 22.1-70,
172 22.1-71, 22.1-79, 22.1-89, 22.1-91.

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174 Cross Refs.: DA Management of Funds
175 DJA Purchasing Authority
176 DJA-R ACPS Procurement Manual
177 DJFB Contract Execution
178 FEG Planning, Design and Construction
179 FEGA ACPS Capital Improvement Program
180 KQ Commercial, Promotional and Corporate Sponsorships and
181 Community Partnerships