

Frederick County Public Schools



Purchasing

Procedure Manual

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1. PURPOSE AND BACKGROUND SUMMARY:

- IDENTIFYING PURPOSE OF THE PROCEDURES
- INTENT TO PROMOTE FAIR AND IMPARTIAL PROCUREMENT WITH THE MAXIMUM DEGREE OF APPLICABLE COMPETITION
- IDENTIFYING THOSE THAT MUST FOLLOW THE POLICIES AND PROCEDURES

KEY REFERENCES OF THE PURCHASING POLICY 720P, PURCHASING REGULATION 720R, AND THE VPPA: § 2.2-4300

- 1.1. Purpose: The purpose of this manual is to reference regulations and establish procedures that will be used in the procurement of all goods and services for Frederick County Public Schools, herein known as “FCPS”. By establishing clear procedures, FCPS is embracing the fundamental obligation to ensure the general public that all procurement is being done in accordance with applicable laws and specifically, the Virginia Public Procurement Act of the Code of Virginia, herein known as “VPPA.”
- 1.2. Intent: The intent of the Virginia General Assembly is set forth in the VPPA: “To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered”. Since competition is sought to the maximum feasible degree, when conducted fairly and honestly, competitive procurement does not guarantee that a preferred brand or vendor will be selected; instead, that the most favorable prices will be obtained for that quality level which is specified.
- 1.3. Who Must Follow: The VPPA applies to every “public body” in the Commonwealth. Therefore, regardless of the source of funds by which the contract is to be paid, the VPPA, FCPS policy 720P, FCPS regulations 720R A-B, and procedures will apply to the procurement of all goods and services by all departments and schools for FCPS with both appropriated and activity funds. These procedures do not apply to PTA, PTO, Booster Clubs, or any other association or organization when the purchase is made directly by such organization.
- 1.4. Severability Clause: Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Virginia,

such invalidation of such part or portion of this Agreement should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

It is further agreed that if part of the Agreement is determined invalid, either party may open negotiations solely with respect to a substitute for such Section, or portion.

1.5. Federal/State Laws and County Ordinances: Any Federal or Commonwealth Laws that are not referenced or stated in this Manual or the FCPS's General Terms and Conditions shall apply to all contracts/orders.

1.6. Definitions: All definitions are as defined in the VPPA.

2. PROCUREMENT AUTHORITY AND RESPONSIBILITY

SUMMARY:

- **DELEGATION OF PROCUREMENT AUTHORITY**

2.1. Purchasing Agent:

The Frederick County School Board delegates authority to the Superintendent, or designee to approve and enter contract(s) for the purchase or lease of goods or services and insurance or construction, on behalf of FCPS. As used herein, the term "Purchasing Agent" shall include the Superintendent and his/her designee. The Superintendent is authorized to award contracts and issue purchase orders for the procurement of goods and services as provided by policy. The Executive Director of Finance in coordination with the Superintendent will submit recommendations for contract awards that exceed the dollar threshold, provided in policy, to the School Board for approval before execution. All contracts for the procurement of any good or service must be signed by the Superintendent or the designee. Signed copies of contracts will be retained within the Finance Department.

2.2. Account Managers:

The Purchasing Agent is authorized to delegate specific levels of purchasing authority and/or authorize exceptions from its procedures to specific Account Managers for specified goods and/or services. This delegation ensures that proper procurement policies and procedures are followed and the interests of the School Board are protected. A list of Account Managers and those who are authorized to sign is on file in the Department of Finance.

- a. The Purchasing Agent delegates the authority to all Account Managers to sign invoices no higher than \$5,000 for the procurement of goods and services in accordance with the procedures identified herein. This delegated authority shall not apply to signing vendor contracts or

agreements. When exercising this delegated authority, the Account Manager signs and certifies that goods and/or services are budgeted, appropriate, and necessary. Signatures shall be the Account Manager's or designated backup on file with the Finance Department. Failure to comply with procurement policies, regulations, and procedures may result in a reduction or loss of the Account Manager's delegated authority. (Note: Approval through the financial system signifies signature and no physical signature is required.)

- b. Account Managers are authorized to sign the following contracts within their delegated purchasing authority: Interscholastic Athletic Contests, Institutional Membership Applications, and Sports Officials Agreements. Upon request from the Account Manager, the Purchasing Agent may delegate specific authority to sign pre-approved contracts. Account Managers do not have further authority to sign vendor contracts and agreements. Only the Purchasing Agent has the authority to sign vendor contracts and agreements not mentioned in this Section.
- c. The Account Manager has the authority to delegate temporary purchasing authority in circumstances where he/she may be unavailable (professional leave, annual leave, sick leave, etc.). Such delegated authority must be reflected on the Account Manager listing maintained in the Finance Department or received via email prior to the temporary delegation. Any employee receiving temporary purchasing authority shall be responsible for ensuring that all purchases are done in accordance with the policies and procedures stated in this regulation. The Account Manager is responsible for immediately notifying the Purchasing Agent of any misuse of purchasing authority. The Purchasing Agent will determine the consequences of any misuse of purchasing authority. All further references in this document to "Account Manager" shall be in reference to the Account Manager or their designee.
- d. Only account managers of FCPS, or their designees, who are also employees of FCPS, are permitted to make purchases that are billed to FCPS. All purchases must be made in accordance with the regulations outlined herein. No purchase can be made unless sufficient funds are available within the appropriate account. At each school or central office administrative unit, the administrator or designee shall supervise their departments to ensure that approval is given before purchases are made and that allotments are not exceeded. Each school and central office administrative unit shall reconcile purchase activity and appropriation balances with records maintained by the Executive Director of Finance.
- e. The Purchasing Agent reserves the right to limit, take away, and/or restore purchasing authority, including small and large dollar procurements, to any and all Account Managers at any time.

3. EXCEPTIONS TO PROCEDURES AND PRIOR APPROVALS

SUMMARY:

- IDENTIFY THE DOLLAR THRESHOLD FOR PURCHASE ORDERS
- IDENTIFY PURCHASES THAT DO NOT REQUIRE PURCHASE ORDERS
- PURCHASES UNDER \$100,000.00 THAT DO NOT REQUIRE COMPETITION
- SPECIAL EXCEPTIONS
- PURCHASES THAT REQUIRE PRIOR DEPARTMENTAL APPROVAL

3.1. Purchase Orders:

For all purchases over \$1,500.00, Account Managers will enter a requisition to route for approval and conversion into a Purchase Order.

3.2. Purchase Order Exceptions:

The purchase order process affords the school or department the opportunity to encumber funds as the point of order preparation. However, processing a purchase order is normally not practicable or available and is not required for the following purchases:

- a. Contracted food supply re-orders;
- b. Utility Charges
- c. Postage
- d. Water/Sewer services;
- e. Employee reimbursements;
- f. Bank Services or credit card services;
- g. Membership dues;
- h. Preview Orders;
- i. Copier-usage charges;
- j. Telecommunication/Cable Charges;
- k. Tuition payments for students to other educational institutions;
- l. Contracted items where the vendor will accept a procurement card purchase for greater than \$1,500; (This exception is limited to the Transportation and Facilities Departments);
- m. Travel when paying by procurement card.
- n. Other pre-approved situations (Pre -approval of other situations requires written documentation to be forwarded to the purchasing supervisor by the account manager for review and approval by the Executive Director of Finance, stating the reasons why completing a purchase order is not practicable.)

3.3. Exceptions to Competition:

Competition normally is not practicable or available and is not required for the following purchases if under \$100,000.00:

- a. Books, preprinted materials, reprints and subscriptions, pre-recorded audio and video cassettes, compacts, slide projections, etc. when only available from the publisher/producer;
- b. Academic/research consulting services;
- c. Honoraria, entertainment (speakers, lecturers, musicians, performing artists);
- d. Training that is specialized, proprietary, not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee;
- e. Royalties and film rentals when only available from the producer or protected distributors;
- f. Professional organizational membership dues;
- g. Writers;
- h. Artists (does not include graphic artists) and original works of art;
- i. Advertisements in newspapers, magazines, journals, etc.;
- j. Conference facilities (to include conference support and related lodging and meals) only when the use of a specific facility is directed by an outside donor, sponsor, or organization (for the purchase of conference facilities under other conditions);
- k. Accreditation fees, testing and evaluation services;
- l. Used equipment and materials;
- m. Surplus property;
- n. Utility charges;
- o. Fund Raisers.

3.4. Other Exceptions:

The following exception procedures are specifically intended to aid in the efficient operation of the school division. Purchases of new equipment and renovated/new assets are expected to be planned, organized, and carried out using the normal procurement methods outlined in this manual.

- a. Facilities, Transportation and Information Technology Departments may purchase parts and supplies used in conjunction with maintenance and repair of existing equipment and costing up to \$30,000 may be procured with a single quotation. Additional competition is encouraged and should be sought whenever there is reason to believe that a quotation does not reflect a fair and reasonable price. A written justification, explaining why competition was not sought, should be prepared by the account manager and forwarded to the Executive Director of Finance, or designee prior to the actual purchase being made. This justification should explain why competition was not sought, i.e. time constraints, etc. This justification will be reviewed by the Executive Director of Finance, or designee for acceptability. If necessary, the Executive Director of Finance will request additional documentation.

- b. Contracted services obtained in conjunction with the repair of existing equipment and buildings and costing up to \$30,000 may be procured with a single quotation. Additional competition is encouraged and should be sought whenever there is a reason to believe that a quotation does not reflect a fair and reasonable price. A written justification, explaining why competition was not sought, should be prepared by the account manager and forwarded to the Executive Director of Finance, or designee prior to the actual purchase being made. This justification should explain why competition was not sought, i.e. time constraints, etc. This justification will be reviewed by the Executive Director of Finance, or designee for acceptability. If necessary, the Executive Director of Finance will request additional documentation.

- c. When the process of advertising or seeking additional competition would adversely affect the financial interests or the bargaining position of FCPS, contracted services may be procured with a single quotation. The cost of these services shall not exceed \$15,000 in the aggregate or the sum of all phases. A written justification, explaining why competition was not sought, should be prepared by the account manager and forwarded to the Executive Director of Finance, or designee prior to the actual purchase being made. This justification should explain how the process of advertising or seeking additional competition would adversely affect the financial interests or bargaining position of FCPS. This justification will be reviewed by the Executive Director of Finance, or designee for acceptability. If necessary, the Executive Director of Finance will request additional documentation.

These exception procedures should not be used for hardships created by neglect, poor planning, lack of organization or the potential loss of year end funds.

3.5. Purchases requiring prior approval:

The following types of purchases require the prior approval of their related department before they can be processed via a requisition:

- a. **Computer-related Equipment and Software and Services:** The purchase of all computer equipment and software and services requires the prior approval of the Information Technology (I.T.) Department to ensure that the procurement is in conformance with the FCPS Information Technology Plan the equipment and/or software and will perform with the existing network and hardware.

- b. **Audiovisual Equipment:** Requisitions for audiovisual equipment will be made by the Media Services Coordinator.

- c. **Maintenance:** Purchases made by schools or central office administrative units for maintenance work must be authorized in advance by the Director of Facility Services.
- d. **Flags:** The purchase of flags of the United States and the Commonwealth for the use by FCPS shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States.
- e. **Lease/Purchase Agreements:** This option includes the purchase of goods where multiple payments are made totaling the cost of the purchase price. These purchases will be handled in accordance with the appropriate method of purchase. The purchase order will be issued in the full amount with an encumbrance only in the amount to be paid in the current fiscal year. These purchase transactions will include a non-appropriation of funds clause. The purchase of goods under the lease/purchase agreement method must be approved by the Executive Director of Finance prior to submission of requisition to purchasing staff.
- f. **Used Equipment:** The purchase of used equipment (that which has been previously owned and used) may be negotiated by the Finance Department, after receipt of a written statement from a person who is technically knowledgeable of the type of equipment to be purchased. In such determination, the account manager shall verify the condition of the equipment, its future usefulness, that there is only one source practicably available from which the used equipment can be procured, and justification as to why the purchase would be in the best interest of FCPS. If the estimated cost exceeds \$50,000, the Finance Department shall post a notice of intent to award a non-competitive procurement for used equipment for ten (10) calendar days prior to the date of award.
- g. **Employee Vs. Contractor:** There is a recognized need for the procurement of individual services when such services cannot be provided by FCPS or other governmental personnel resources, e.g. guest lecturer, seminar leader, consultant, piano tuner, interpreter, etc. In each case, a distinction must be made between temporary employees” and “independent contractors” due to regulations imposed by the Internal Revenue Service, Social Security Administration, Virginia Employment Commission, and Virginia Industrial Commission. Generally, the difference between the “independent contractor” and the “temporary employee” lies in his/her relationship to the school district. When the need arises, the Purchasing Supervisor in coordination with the Executive Director of Finance will be responsible for determining whether the individual is classified as either an independent contractor or employee.

4. PLANNING AND PREPARATION

SUMMARY:

- IMPORTANCE OF PROPER PLANNING
- SPECIFICATIONS
- WARRANTIES, MAINTENANCE AND REPAIRS
- ORDER SPLITTING
- DELIVERY DATES

4.1. Planning:

Proper planning is an essential element of good procurement. The primary mission of the purchasing function is to provide goods and/or services for the end-user in the proper quantity, of the proper quality, at the right time and placed needed, and at the lowest possible cost. It is therefore imperative that customers thoroughly plan for their needs. Determining in advance what is needed, how much, where, and when, will assist Purchasing staff in effectively and efficiently satisfying the end-user's needs and allow them to obtain quantity discounts and possibly better service and/or pricing. It will also help the end-user to understand what to include in their specifications when the ordering process begins.

4.2. Specifications:

Once an end-user determines there is a need to purchase an item or service, the first step is to prepare a specification. A specification is set of requirements to be satisfied by a good/service that indicates the procedure that will be used to determine whether the requirements have been satisfied.

Specifications for goods and services can either enhance or inhibit competition. So, it is important that the end-user take the time to evaluate the characteristics and/or performance that are absolutely required in order to fully maximize the level of available competition. Specifications should be written in clear, simple language, free of vague terms or those that could easily be misinterpreted.

Since it is legally mandated that competition be sought to the maximum feasible degree, Purchasing will review end-users' specifications, for all procurements that are requested to ensure that the description of the goods/services are done in a manner that will not only meet the end-user's needs, but also encourage competition.

The types of preferred specifications are:

- Performance specification – describes what and how the end product/service must function to meet a desired outcome. This is the preferred specification.

- Design specification – details the physical characteristics (appearance, size, weight, etc.)
- Qualified Products List (QPL) and Samples – Products/Services are evaluated in advance through lab testing, inspections, and trials with the intent to ensure compliance with specifications or standards.
- Combination specification – A combination of any of the aforementioned specifications.
- Brand Name or Approved Equal - A brand name may be used to convey the general style, type, character, and quality of the goods desired. Any good determined to be the equal of that specified by the requester, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted. A brand name cannot be considered restrictive to exclude other manufacturer's products from consideration.

Brand name or approved equal specifications may be used when the purchasing agent determines in writing that:

- a. no other design or performance specification or qualified products list is available;
- b. time does not permit the preparation of another form of purchase description, not including a brand name specification;
- c. the nature of the product or the nature of FCPS's requirements makes use of a brand name or equal specification suitable for the procurement; or
- d. use of a brand name or equal specification is in the FCPS's best interests.

A proprietary specification can be used, but is not recommended and should only be used when absolutely necessary. A proprietary specification restricts the acceptable product(s) to those of one manufacturer; eliminating acceptance of "approved equals". It is therefore only appropriate to use a proprietary specification when the desired product(s) must be compatible with or is an integral component of existing equipment or products, or where pre-qualification of products is necessary. The determination for the use of a proprietary specification should be made in advance in writing and submitted to Purchasing for review. In situations where a proprietary specification is justifiable, Purchasing or the Account Manager within delegated authority shall seek competition among distributors that carry the manufacturer's product to the fullest degree feasible.

4.3. Specification Assistance/Review:

The Account Manager may find it beneficial to receive advice and/or assistance in defining requirements for specific purchase commodities. Assistance may be needed for standards which typically relate to safety and building code requirements, compatibility with existing equipment, and availability of support. For example, building renovations usually require building permits in accordance with state and local codes in order to ensure compliance with electrical and building standards. Failure to comply with

such standards may result in removal of structural changes and restoration to original condition at FCPS’s expense. The following offices are available to provide input and assistance:

| <u>PURCHASE TYPE</u> | <u>APPROPRIATE OFFICE</u> |
|---|---------------------------|
| Building Modifications | Facility Services |
| Computer Hardware & Software & Networking Components | Technology Services |
| Furniture | Facility Services |
| Copiers | Purchasing |

All technology equipment, software, and maintenance contracts should be reviewed and approved by the IT Department and Purchasing before the end user submits a requisition.

- 4.4. Specification Assistance from Vendor:
When the Account Manager receives advice or assistance from a vendor in preparing specifications for a purchase, the name of the sales representative and the name of the vendor providing assistance must be submitted to Purchasing. This will assist Purchasing in identifying restrictive and proprietary features which could be challenged by other vendors, resulting in either delays or cancellations of the procurement process. Vendor assistance in evaluating available products and preparing specifications shall not imply or infer that such vendor will receive a Purchase Order or contract award. The Account Manager may be personally responsible for any misrepresentations of this nature.

- 4.5. Maintenance Services:
Warranties often come with new equipment. Therefore, prior to contracting for maintenance or repair service, the Account Manager should ensure that full advantage is taken of the new equipment warranty provisions. In addition, prior to contracting for maintenance or repair service, the Account Manager is responsible for determining whether the services are currently available from departmental sources within FCPS.

- 4.6. Order Splitting:
The intentional splitting of a known purchase requirement into smaller lots with the intention of spreading the purchases over time or job subcomponents in order to circumvent bidding requirements is illegal and strictly prohibited. If the Purchasing Agent finds orders being intentionally split, these separate orders will be canceled and consolidated, causing further delays in the procurement process. Furthermore, delegated purchasing authority may be terminated and the Account Manager held responsible if splitting of orders is detected.

4.7. Delivery Dates:

The intentional recording of incorrect delivery dates with the intention of receiving and paying for goods/services in a different fiscal year than when the goods/services were actually received is illegal and strictly prohibited.

5. **PROCUREMENT METHODS – SMALL DOLLAR PURCHASES**

SUMMARY:

• IDENTIFYING THRESHOLDS, AUTHORITY AND PROCEDURES

5.1. Staffing and Responsibility of Purchasing:

Purchasing consists of a Purchasing Supervisor and a Purchasing Specialist, both of whom have been provided with specific levels of authority by the Purchasing Agent. They have been assigned the responsibility of assisting all FCPS employees in the procurement of goods and services and ensure that all procurement is done in accordance with all applicable procurement policies and procedures. Procurement of goods/services can be done through many different methods. A description of each method and when it is to be used is seen in this section.

5.2. Small-Dollar Purchases:

Purchases where the estimated total cost of the goods and/or nonprofessional services is less than \$100,000 shall be handled by Purchasing or an Account Manager as stated below:

• **\$0-\$5,000.**

Purchase of Goods: Purchases where the total cost is estimated to be \$5,000 or less can be made upon determination of one fair and reasonable price. Vendor catalogs, literature, and web sites may be used as a source for this pricing. Account Managers who exercise this authority are responsible for performing the receiving function by checking over the delivery and logging the date when it was received, and approving payment of the invoice by signing it and processing it through the financial software, Accounts Payable module in a timely manner with the packing slip, receipt, or any other applicable paperwork.

• **\$5000.01-\$30,000.00.**

Purchase of Goods: Purchases where the estimated total cost of the goods is greater than \$5,000 but less than or equal to \$30,000 can be made by the Account Manager through unsealed competitive bidding.

These purchases require quotes be solicited from three (3) qualified sources. Quotes may be solicited telephonically, by mail, facsimile, or electronically. The Account Manager or designee must document the request for quotes process either via memo or email. This

documentation can also indicate that sources did not respond to the request or responded with a “No Bid”. Documentation of the quotes received or not received shall be attached to the requisition in the financial software.

- **\$30,000.01-\$100,000.00.**

Purchase of Goods: Purchases where the estimated total cost of the goods is greater than \$30,000 but less than \$100,000 can be made by the Account Manager or Purchasing through unsealed competitive bidding.

These purchases require quotes or proposals to be solicited from four (4) qualified sources. Quotes may be solicited telephonically, by mail, facsimile, or electronically. The Account Manager or designee must document the request for quotes process either via memo or email. This documentation can also indicate that sources did not respond to the request or responded with a “No Bid”. Documentation of the quotes received or not received shall be attached to the requisition in the financial software.

6. PROCUREMENT METHODS – LARGE DOLLAR PURCHASES FOR GOODS AND NON-PROFESSIONAL SERVICES

SUMMARY:

- IDENTIFYING THRESHOLDS FOR IFB AND RFP REQUIREMENTS AUTHORITY AND PROCEDURES
- PROCEDURES FOR CREATING, ADVERTISING, EVALUATING, AND AWARDING AN IFB OR RFP

6.1. Competitive Sealed Bidding Using an Invitation for Bids (IFB):

When there is a need to procure a good or non-professional service that is expected to cost more than \$100,000 for the duration of the need of the good or service and the item/service can be clearly defined in a set of specifications, the procurement will be made by Purchasing using an Invitation for Bids, herein referred to as “IFB.”

6.2. Competitive Negotiations Using a Request for Proposals (RFP):

When there is a need to procure a good or non-professional service that is expected to cost more than \$100,000 for the duration of the need of the good or service and the item/service cannot be clearly defined in a set of specifications, the procurement will be made by Purchasing using a Request for Proposals, herein referred to as “RFP.” An RFP is also recommended when FCPS wants vendors to offer suggestions/pricing for a product/service that will perform to meet an end-result.

Creating an IFB/RFP

6.3. Notifying Executive:
When an Account Manager recognizes a need for an item or service that is expected to exceed \$100,000, the end-user will be required to discuss the need with Purchasing.

6.4. Prepare Specifications:
If the Account Manager and their respective supervisor deem that there is a need and there is money budgeted for an item or service, the Account Manager will attempt to prepare specifications that clearly define the good or service that is needed and when it is needed. If the specifications cannot be easily defined, specifications that indicate a required end-result will be prepared.

The Account Manager shall include criteria that will be used in determining how the award of the bid will be made (i.e. pricing, experience, life-cycle cost, delivery schedule, workmanship, references). The request for proposals shall state the relative importance of price and other evaluation factors. The Account Manager should also include any permitting/licensing requirements for the goods/services and a list of vendors that may be interested in bidding, if known. Purchasing may assist the Account Manager in preparing the specifications, if needed.

6.5. Cost Estimates of Projects:
Generally, FCPS does not publish or release cost estimates associated with an IFB/RFP. A copy of FCPS's capital improvement budget can be downloaded from the FCPS website.

6.6. Pre-Bid/Proposal Conferences:
When an Account Manager feels that a meeting of vendors is needed to discuss specific areas of an IFB or RFP or to allow vendors to view a job-site in order to accurately prepare their responses, the Account Manager may request that pre-bid/proposal conference be scheduled and advertised with the IFB/RFP. The conference may be mandatory or non-mandatory at the discretion of the Account Manager and Purchasing.

The Account Manager or other FCPS representative may answer questions from vendors during the conference. However, FCPS reserves the right to request that vendors submit questions pertaining to the documents or the proposed work in writing at the pre-bid conference. If so, answers to the questions will be distributed in an addendum no later than one calendar week after the conference.

Purchasing shall assist the Account Manager with the conference.

6.7. Drafting IFB/RFP:
Once Purchasing receives the specifications, it will work on preparing an IFB/RFP and will establish dates with the end-user for advertising, pre-bid conferences (if applicable), due date, awarding of the bid, any other relevant

dates for milestones, and the entire completion of the procurement. The Account Manager should suggest sources where the good/services can be procured.

All IFB and RFP solicitations will include FCPS's General Terms and Conditions, which can be seen in the Appendix.

6.8. Cost or Pricing Data:

A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals or by sole source procurement authority. Cost or pricing data is not required when:

- the contract price is based on established catalogue prices or market prices;
- the contract price is set by law or regulation; or
- it is determined in writing by the Purchasing Agent that the cost or pricing data is not required and the determination states the reasons for such waiver.

6.9. Bid, Payment, & Performance Bonds:

See 720P for guidance on Bonds.

6.10. Approval of Draft:

Once completing a draft of the IFB/ RFP, the Account Manager and/or end-user will be responsible for reviewing the draft to ensure that the time schedule, description of the item or service, and the evaluation criteria are acceptable.

6.11. Multi-step Sealed Bidding (Pre-qualifications):

When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of un-priced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

Advertising an IFB/RFP

6.12. Public Notice:

The public notice shall state the place, date, and time of the bid/proposal opening. All times will be local prevailing time.

6.13. Advertising Time and Location:

Upon the final review and acceptance of the IFB/RFP, Purchasing will solicit bids and proposals in accordance of §2.2-4301 of the VPPA, which states that bids will be solicited:

All solicitations will be published on the FCPS website under the Purchasing page, in FCPS's Vendor Self Service Portal, as well as on the Commonwealth's Department of General Services' procurement website (eva.virginia.gov).

In addition to soliciting the IFB/RFP in a public area Purchasing or end using departments may search the Internet, phone books, and any other available and applicable sources in an effort to solicit vendors directly.

Note that the FCPS Web site is considered a designated public area.

6.14. Vendors List:

Purchasing will maintain a vendors list via the Vendor Self Service Portal linked on the FCPS website under Purchasing. This vendor list is populated and maintained by the vendor community. FCPS may utilize this list to notify companies of upcoming or current solicitations. However, FCPS is under no obligation to notify vendors of solicitations and vendors shall have no recourse for not being notified. Vendors may also be notified via the Commonwealth procurement system known as eVA. (eva.virginia.gov)

Addenda

6.15. Issuance of Addenda:

Addenda will be published on the FCPS website under the Purchasing page, in FCPS's Vendor Self Service Portal, as well as on the Commonwealth's Department of General Services' procurement website "eVA" (eva.virginia.gov).

No Addenda will be issued later than one day prior to the date of receipt for Bids except an Addendum withdrawing the Invitation for Bids or one that includes postponement of the date of receipt for Bids.

Each Bidder shall ascertain before submitting a Bid how many Addenda, if any, were issued. Each Bidder shall certify on the Bid Response Form the number of additional Addenda received.

Receiving/Recording an IFB/RFP

6.16. Recording Bids/Proposals Received:

Purchasing will receive all bids/proposals up to the due date stated in the respective IFB/RFP. Quote responses may be received via fax or email providing the requesting department authorizes this in the Request for Quote.

6.17. Withdrawing a Bid/Proposal Before the IFB/RFP Due Date:

Correction or withdrawal of inadvertently erroneous bids before a bid/proposal opening, or cancellation of awards or contracts based on such mistakes, may be permitted where appropriate. Mistakes discovered before the opening may be

modified or withdrawn by written or telegraphic notice received in the office designated in the IFB/RFP prior to the time set for the opening.

6.18. Official Time of Bid/Proposal Receipt:

The Date/Time stamp clock in Finance will be used to log the time each bid/proposal is received. If a bid/proposal is received after the due date time, that bid/proposal will not be accepted.

6.19. Bid/Proposal Opening:

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. Relevant information, as the purchasing agent deems appropriate, with the name of each bidder shall be recorded. After reading and recording the information, the public opening will be considered complete and finished. Proposals related to an RFP are not opened publicly and any information related to the proposals received will be released by request in accordance with paragraph 6.33.

6.20. Withdrawing a Bid/Proposal After the IFB/RFP Due Date:

After bid/proposal opening, corrections shall be permitted only to the extent that the vendor can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the price actually intended. After the opening, no changes in prices or other provisions of bids/proposals prejudicial to the interest of FCPS or fair competition shall be permitted. In lieu of bid correction, a low bidder/offeror alleging a material mistake of fact may be permitted to withdraw its bid/proposal if:

- a. the mistake is clearly evident on the face of the bid/proposal document but the intended correct bid/proposal is not similarly evident; or
- b. the vendor submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.

For public construction contracts, the bidder shall give notice in writing of his claim of right to withdraw a bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

6.21. Tabulation Sheet:

A bid tabulation sheet containing information that was publicly read and recorded at the opening may be released to the public and the media before an award is made; however, the public and the media will not be allowed access to the actual bids/proposals until an award has been made. Questions pertaining to information contained in the bids/proposals will not be answered until after the award has been made. (Note: Bid tabulations are only provided for IFBs)

Evaluating an IFB/RFP

6.22. Informalities:

FCPS may waive informalities in bids. Informality means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured. The Purchasing Agent has the authority to make informality determinations. Purchasing will then forward all pertinent information to the end user.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, FCPS will follow the procedures stated in Section 14 of this Manual.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsive, FCPS will eliminate the respective bidder or offeror from the evaluation process. When a vendor is declared non-responsive, FCPS will attempt to notify the vendor of the decision to eliminate them from consideration and the reasoning behind the decision.

6.23. IFB Evaluation Criteria:

Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in an evaluation process that is not set forth in the IFB. Purchasing may assist the end-user in the evaluation process, if needed.

6.24. RFP Evaluation Criteria:

Proposals shall be evaluated based on the requirements set for the RFP. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the negotiations of competing offerors or of any information derived from proposals submitted by competing offerors. Purchasing shall assist with conducting discussions and/or negotiations. Purchasing shall not be an evaluator in the evaluation process, but will be available to offer guidance to the evaluation team, if needed.

6.25. Failure to meet insurance requirements:

In the event that a selected vendor does not have the minimum insurance requirements, the Executive Director of Finance reserves the right to reduce the insurance requirements if he/she deems that it is in the best interest of FCPS.

6.26. Preference for Virginia Products with Recycled Content and for Virginia Firms:

- Tie bids. In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.
- Reciprocal preference. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
- Recycled content. Notwithstanding the provisions of subsections 1 and 2, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

6.27. Cancellation of Invitations for Bids or Requests for Proposals

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of FCPS. The justification shall be made part of the contract file. Each solicitation issued by FCPS shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of FCPS. Notice of cancellation shall be sent to all businesses solicited and posted electronically on the FCPS website, Vendor Self Service Portal, and eVA. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

Awarding an IFB/RFP

6.28. Memorandum of Negotiation:

During negotiations (if held), Purchasing will record any material items that need to be included in the final contract and document these in the Memorandum of Negotiation for signature by the Account Manager and responding vendor.

6.29. Recommendation for Award:

After a vendor has been chosen, Purchasing will prepare a Recommendation for Award. The Account Manager, the Executive Director of Finance and, depending on the dollar value, the Superintendent, shall sign the Recommendation for Award. Per FCPS Policy 720P all awards over \$250,000.00 must be presented to the School Board.

6.30. Contract Documents:

Purchasing will prepare the contract documents after receiving the fully executed Recommendation for Award and if necessary School Board Award Approval. These documents consist of:

- a. Acceptance Agreement – This document identifies all the parts of the contract, the Date of Award that identifies when the contract begins, and is signed by the Executive Director of Finance. This is an official contract document.
- b. Notice of Award – This document provides end users and the public general information about the contract to include: how it was awarded, pricing, awarded vendor, and term. This is not an official contract document.

Copies of these documents will be sent to the Account Manager to let them know they have approval to proceed to do business with the offeror(s) in accordance with the contract.

6.31. Purchase Order:

The Account Manager or designee shall enter a requisition into financial software using the appropriate contract number as awarded. This requisition will process through the approval workflow and be converted by Purchasing into a Purchase Order. The Account Manager shall send a copy of the Purchase Order to the vendor. The forwarding of the Purchase Order will mark the official start of the contract unless the start of the contract is otherwise stated in previous contract documents.

6.32. Notifying Vendors:

An attempt to notify vendors not chosen for the bid/proposal will be made either by posting a notice of award on-line or by notifying the vendors directly. Any applicable bid security will be returned to vendors that were not awarded the bid/proposal.

6.33. Freedom of Information Act:

As stated in § 2.2-4342 of the VPPA, “except as provided in this section, all proceedings, records, contracts and other public records relating to

procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq.).

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

For competitive negotiations proposal records shall be open to public inspection only after award of the contract or notice of intent to award the contract has been made, except in the event that the public body decides not to accept any of the proposals and to reopen the solicitation.

Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 of the VPPA shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (a) invoke the protections of this section prior to or upon submission of the data or other materials, (b) identify the data or other materials to be protected, and (c) state the reasons why protection is necessary.

6.34. Reporting of Anticompetitive Practices:

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and FCPS Attorney.

6.35. Administrative Lead Time:

End-users and Account Managers should plan on an administrative lead time of 30-60 days for procurement requiring an IFB or 90-120 days requiring an RFP.

7. PROCUREMENT METHODS – PROCURING PROFESSIONAL SERVICES

SUMMARY:

- DEFINE PROFESSIONAL SERVICES
- PROCEDURES FOR PROCURING PROFESSIONAL SERVICES
- IDENTIFY KEY DIFFERENCES BETWEEN PROCUREMENT OF PROFESSIONAL AND NON-PROFESSIONAL SERVICES

- 7.1. Professional services:
Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, law, dentistry, medicine, optometry, pharmacy or professional engineering as defined by §11-37 of the Code of Virginia.
- 7.2. Legal Services:
No contract for the services of legal counsel may be awarded without the approval of the School Superintendent.

SCHOOL SYSTEM

As stated in § 22.1-82 of the Code of Virginia, “Notwithstanding any other provision of law, the attorney for the Commonwealth or other counsel may be employed by a school board to advise it concerning any legal matter or to represent it, any member thereof or any school official in any legal proceeding to which the school board, member or official may be a party, when such proceeding is instituted by or against it or against the member or official by virtue of his actions in connection with his duties as such member or official. All costs and expenses of such advice and all costs, expenses and liabilities of such proceedings shall be paid out of funds appropriated to the school board.”

“A school board shall, prior to instituting any legal action or proceeding against any other governmental agency in Virginia or expending any funds therefore, first secure the authorization of the governing body of FCPS, city or town constituting the school division or the governing bodies of the counties or cities in the school division if the division is composed of more than one county or city except as to legal actions or proceedings arising between the school board and the governing body or bodies.”

- 7.3. Dollar Thresholds:
If the aggregate or the sum of all phases of a proposed professional service is expected to be \$60,000 or less, the procurement may be made by using a Request for Quotes. However, before procuring the services, the professional competency of the selected vendor must be checked through a request for qualifications and/or a reference check. The Purchasing Agent reserves the right to request an RFP be used for professional services estimated to cost \$60,000 or less, if he/she feels that it would be in the best interest of FCPS.
- 7.4. Professional Services using an RFP:
If an Account Manager feels that there is a need to procure a professional service in which an RFP is required, the procedures established in Section Five of this manual will apply, with the following exceptions:
- a. The RFP shall only request vendors to submit their qualifications, performance, experience, background, and staff expertise pertinent to the proposed project. § 2.2- 4301 of the VPPA states that “The Request for

Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services.

- b. In accordance with § 2.2-4301 of the VPPA, FCPS “shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.”
- c. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.”
- d. At the conclusion of discussion, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the public body shall complete a score sheet or evaluation matrix to select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

8. PROCUREMENT METHODS – CONSTRUCTION AND CONSTRUCTION MANAGEMENT

SUMMARY:

- DEFINE CONSTRUCTION AND CONSTRUCTION MANAGEMENT
- PROCEDURES FOR PROCURING CONSTRUCTION SERVICES
- IDENTIFYING CASES WHERE COMPETITIVE NEGOTIATION CAN BE USED

8.1. Procurement of Construction Services:

In accordance with § 2.2-4303 of the VPPA, construction may be procured only by competitive sealed bidding (IFB), except that competitive negotiation,

through a request for proposals, may be used in the following instances upon a determination made in advance by FCPS and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

- For the construction, alteration, repair, renovation or demolition of buildings or structures (a) when the contract is not expected to cost more than \$1 million and (b) local governing body selects a fixed price design-build basis or construction management basis under § 2.2-4378 through 2.2-4383 of the VPPA when the contract is not expected to cost more than \$1 million.
- By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

8.2. Dollar Thresholds:

The Purchasing Agent shall have discretion to use competitive negotiation methods, such as a Request for Quotes or a Request for Qualifications, when procuring construction services estimated to cost \$25,000 or less.

8.3. Construction Management:

The Purchasing Agent shall have discretion to select the appropriate method of construction management contract for a particular project. In determining which method to use, the Purchasing Agent shall consider FCPS's requirements, its resources, and the potential contractor's capabilities. The Purchasing Agent shall execute, and include in the contract file a written statement setting forth the facts that led to the selection of a particular method of construction management for each project. Construction contracting management methods include, but are not limited to:

- A single prime contractor, including turnkey arrangements, or
- Multiple prime contractors managed by a designated general contractor, a contracted construction manager, and/or an authorized representative or employee of FCPS.

8.4. Job Order Contracting for Architecture and/or Engineering:

In accordance with §2.2-4303.2, A contract for architectural or professional engineering services relating to construction projects may be negotiated by FCPS, for multiple projects provided (a) the projects require similar experience and expertise, (b) the nature of the projects is clearly identified in the Request for Proposal, and (c) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first.

Such contracts may be renewable for two additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million. Individual job orders shall not exceed \$500,000.

8.5. Retainage on Construction Contracts:

In accordance with § 2.2-4333 of the VPPA, in any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

8.6. Award:

The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Purchasing Agent, the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

8.7. Insurance:

In accordance with § 2.2-4332 of the VPPA, no contractor shall perform any work on a construction project for FCPS unless the contractor (a) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (b) provides prior to the award of contract, on a form furnished by FCPS, evidence of such coverage. The contractor must also provide evidence that he/she meets all the insurance requirements stated in the General Terms and Conditions of the IFB or RFP.

8.8. Prequalification:

If FCPS decides that a prequalification of vendors is needed for a construction project, FCPS will follow the procedures established in Section 14 of this Manual.

**9. PROCUREMENT METHODS – DESIGN-BUILD CONTRACTS/
CONSTRUCTION MANAGEMENT AT RISK CONTRACTS**

SUMMARY:

- REQUIREMENTS AND EXCEPTIONS
 - PARTICIPATION IN THE DESIGN OF THE RFP
 - JUSTIFICATION REQUIREMENTS
- 9.1. Authority and Approval to use Design-Build Procurement:
Although the competitive sealed bid process is the preferred method of construction procurement, FCPS may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided FCPS complies with the requirements of §2.2-4378 through 2.2-4383 of the VPPA.
- 9.2. Written Determination:
A written determination is made in advance by FCPS that competitive sealed bidding is not practicable or fiscally advantageous, and shall document the basis for the determination to use construction management or design-build. This documentation will be included in the Request for Qualifications and maintained in the contract file. At a minimum the determination shall consider cost, schedule, complexity, and building use.
- 9.3. Licensed Architect or Engineer Requirement:
Prior to making a determination as to the use of design-build or construction management for a specific construction project, FCPS shall have in its employment or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise FCPS regarding the use of design-build or construction management for the project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.
- 9.4. Request for Proposal Posting:
The Request for Proposal for qualifications must be posted on the eVA website for at least 30 days prior to the date set to receive the qualification proposals.
- 9.5. Design-Build:
- Shall follow the same procedures as covered in section 7 of this manual.
 - Price is a critical basis for award of the contract.
- 9.6. Construction Management Contracts:
- May be utilized for projects where the project cost is expected to be more than \$10 million.
 - At a minimum shall be entered into no later than the completion of the schematic phase of design unless prohibited by authorization of the funding restrictions.
 - Shall follow the same procedures as covered in section 6 of this manual.

- Price is a critical basis for award of the contract.
- Construction management projects shall include selection procedures and required construction management contract terms consistent with FCPS regulations.
- Shall require that (1) no more than 10 percent of the construction work, as measured by the cost of work, be performed by the construction manager with its own forces and (2) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable.

9.7. Reporting

By November 1st of each calendar year, FCPS shall report all completed capital projects in excess of \$2 million. The report shall include:

- Procurement Method;
- Project Budget;
- Actual Cost;
- Expected Timeline;
- Actual Completion Time; and
- Any post-project issues.

10. OTHER PROCUREMENT METHODS

SUMMARY:

- IDENTIFY PROCEDURES FOR OTHER TYPES OF PROCUREMENT
- IDENTIFY EXCEPTIONS TO PROCUREMENT PROCEDURES
- LACK OF PLANNING NOT AN EXCEPTION

10.1. Sole Source:

When the Account Manager determines that only one source exists for a specific good or service with an estimated dollar value greater than \$5,000, a signed statement to that effect supported by factual data must be submitted to the Purchasing Agent. Upon review of all factual information, the Purchasing Agent will approve or disapprove the purchase as a sole source procurement.

Upon a determination in writing from the Purchasing Agent that there is only one source practicably 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. FCPS shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area

on the day FCPS awards or announces its decision to award the contract, whichever occurs first.

10.2. Orders Requiring Deposit or Prepayment:

There are instances when the procurement of a good or service requires a deposit or a prepayment. For example, a deposit or prepayment may be required to procure a software agreement or magazine subscription for an upcoming school year.

Unless approved in advance by the Executive Director of Finance, all deposits and prepayment amounts will be processed in the estimated Fiscal Year in which the goods/services are to be delivered or completed. All requisitions for these transactions must indicate the period of performance for which payment is in advance.

10.3. Credit Cards:

See 720R-B.

10.4. Purchase of Used Equipment:

The purchase of used furniture, supplies, and/or equipment may be negotiated by Purchasing, after receipt of a written statement from a person who is technically knowledgeable of the type of equipment to be purchased. In such documentation, the Account Manager shall verify the condition of the equipment, its future usefulness, that there is only one (1) source practicably available from which the used equipment can be procured, and justification as to why the purchase would be in the best interest of FCPS. If the estimated total purchase price exceeds \$25,000, Purchasing shall publicly post a notice of intent to award a sole source procurement for used equipment for ten calendar days prior to the date of actual award. The Account Manager may be responsible for obtaining all future maintenance support.

10.5. Lease/Purchase, Installment Purchase:

The procurement process for rental with the option to buy, lease/purchase, or installment purchase of any materials or equipment shall be performed by Purchasing in the same manner as the competitive procurement of goods.

Account Managers are not authorized to sign leases or make installment purchases.

10.6. Lines of Credit:

Lines of credit shall not be established without prior approval from the Executive Director of Finance. Written justification for the need to establish a line of credit should be forwarded to the Executive Director of Finance along with any agreements so that review of all documentation can take place prior to any further action. Any line of credit that is established without prior authorization will be closed upon the discovery of credit line.

10.7. Purchase of Surplus:

Property no longer needed by a governmental (public) agency or jurisdiction is considered surplus. Purchasing and Account Managers within delegated authority may purchase state or federal surplus property without competitive bidding. However, efforts, including visual and physical inspection, shall be completed to ensure that the surplus is needed and is being purchased at a fair and reasonable price. The Account Manager may be responsible for obtaining all future maintenance support.

10.8. Emergency Purchase:

An emergency may arise in order to protect personal safety, life or property, i.e., an occurrence of a serious, urgent, and threatening nature that demands immediate action to avoid termination of essential services or a dangerous situation. As § 2.2-4303 of the VPPA states, “In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. FCPS shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying what is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.” Note: the FCPS Web site is considered a designated public area.

The Account Manager shall attempt to inform Purchasing of the emergency before creating an obligation or contract. When possible, the Account Manager shall issue a written determination and justification establishing the basis for the emergency and the selection of the particular contractor/vendor to the Purchasing Agent prior to creating an obligation or contract. The Purchasing Agent will approve or disapprove the purchase as an emergency procurement.

The potential loss of budgeted funds at the end of a fiscal year and/or poor planning are not considered adequate justification for an emergency purchase and will not be approved as such.

10.9. Requirement Contracts:

Purchasing in conjunction with Account Managers, will cooperatively define and standardize requirements in satisfaction of FCPS needs for recurring items (e.g.; supplies, equipment, services, etc.) As a result of competition, a requirements contract will be awarded to one or more vendor sources, on a term basis, which completely satisfy the established quality and service requirements. Benefits FCPS will receive from consolidating and standardizing similar quality requirements include more favorable prices through volume purchasing; a reduction in procurement lead time and administrative effort; and receipt of consistent quality and service levels. If an item is available from one of these mandatory vendor sources, FCPS should

not purchase the item elsewhere except in cases of an emergency. The Purchasing Agent may approve exceptions to these mandatory sources on a case-by-case basis when customer requirements differ and/or cannot be satisfied through an existing contract. Account Managers may obtain copies of any and all contracts by contacting Purchasing. All Purchase Requisitions must be reviewed by the Account Manager to determine whether any desired item(s) is available from one of the following mandatory sources of supply:

- FCPS Requirements Contracts. Contracts established by FCPS as a result of identifying and standardizing repetitive requirements.
- Commonwealth of Virginia Requirements Contracts. Contracts established by agencies of the State as a result of identifying and standardizing repetitive purchase requirements.

10.10. Licensing Agreements:

In circumstances where a licensing agreement needs to be upgraded and/or renewed, FCPS reserves the right to renew or upgrade the licensing agreement with the current vendor if the total price of the licensing agreement is below \$100,000 and FCPS IT Department determines that continuing the agreement is in the best interest of FCPS.

10.11. Vendor Territorial Boundaries/Rights:

In the event that a specific vendor holds a territorial boundary/right to be the only vendor that is permitted to sell or service a particular brand in our region/area, FCPS reserves the right to procure goods or services from the specific vendor without getting additional quotes if the total expenditure is not over \$100,000. However, FCPS shall attempt to purchase items that can be replaced, upgraded, and/or serviced by a range of vendors, not one specific vendor, when possible.

10.12. Procuring Charter Bus Services:

When there is a need to hire a vendor to provide charter bus services that are expected to cost \$30,000 or less, the employee shall solicit three vendors for availability/timing schedules and pricing options. The employee shall notify his/her account manager of the pricing options and the Account Manager shall determine which option provides the best value for FCPS. The Account Manager shall prepare a requisition to ensure that funds are available and that the trip is needed and appropriate. The requisition will then route through financial software for appropriate approvals. Purchasing will ensure that a Certificate of Insurance is on file and that a Company Certification Form is completed before the Account Manager can forward the Purchase Order to the selected vendor.

In rare situations where a charter bus is needed and there is not enough time to receive written quotes (example: a sports team qualifying for a Regional or State Tournament game), FCPS reserves the right to ask for quotes or use a

vendor that has been used during the current school year. However, the employee scheduling the bus trip in this situation shall be responsible for ensuring that a Certificate of Insurance and a Company Certification Form is completed before the bus is reserved.

10.13. Purchasing Textbook:

In accordance with § 22.1-241 of the Code of Virginia, FCPS shall either enter into written term contracts or issue purchase orders on an as-needed basis with publishers of textbooks approved by the Board of Education for use in the public schools. Such written contracts or purchase orders for textbooks approved by the Board of Education shall be exempt from the Virginia Public Procurement Act.

The contract price shall not exceed the lowest wholesale price at which the book or books involved in the contract are currently bid under contract anywhere in the United States.

10.14. Purchasing Class Rings, Cap and Gowns, Yearbooks, Etc.:

In accordance with § 2.2-4346 of the VPPA, FCPS may enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of a competitive negotiation, such as a Request for Quotes or Proposals; competitive sealed bidding is not necessarily required for such contracts.

10.15. Pilot Programs:

Due to the fact that FCPS encourages and is required to seek competition, pilot programs can potentially limit competition if not handled correctly.

Therefore, the following steps must be taken before for any pilot program and subsequent contract.

- a. The pilot program shall not last longer than 1 year.
- b. Vendors shall be notified that participation in the pilot program does not guarantee award of a future contract.
- c. Account Manager shall ensure that any products or work products generated as part of the pilot shall be the property of FCPS.
- d. Generic specifications for future procurements shall be collected during the pilot program.
- e. After the pilot program has ended, should the Account Manager want to continue the program then the appropriate procurement methods must be used in accordance with the estimated dollar value of the term contract.

By following this procedure, FCPS will be assured of not investing additional funds and time into an item/service that can be procured from another source at a more competitive price.

FCPS will not be obligated to purchase an item/service or continue using an item/service once the trial period time or vendor grant has expired.

10.16. Individual Services:

Individual Services are services that are provided to benefit individuals (generally children) with specific needs including: counseling, psychological therapy, speech therapy, special education, interpreting services, sign-language services, and other similar services, as approved.

Every effort shall be made to ensure that best value is received for such services. However, it is recognized that continuity of service, timeliness of service, staff qualifications, and other intangibles may create a preference for a firm, even if that firm cannot be shown empirically to be best value. Therefore, such services may be contracted without quotes, bids, or proposals if:

- a. They receive the standard requisition approvals.
- b. The contracts for such services conform to FCPS standard terms and conditions.
- c. The Account Manager shows reasonable effort to locate best value.

10.17. Computer Software Upgrades/Renewals:

When there is a need to renew or upgrade an existing computer software package or system, FCPS reserves the right to purchase the renewal or upgrade from the current vendor being used if FCPS deems the price is fair and reasonable and it is in the best interest of FCPS to continue using that specific type of software. FCPS also reserves the right to solicit quotes or bids for alternate software packages when the time for renewal or upgrade arrives

11. COOPERATIVE PROCUREMENT

SUMMARY:

- AUTHORIZATION FOR USE OF COOPERATIVE PURCHASING AGREEMENTS
- EVALUATING COOPERATIVE ORGANIZATIONS/CONTRACTS FOR USE

11.1. Definitions used in this Section:

- *Cooperative Purchasing* means procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.
- *External Procurement Activity* means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement

Activity.

- Local Public Procurement Unit means any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.
- Public Procurement Unit means either a Local Public Procurement Unit or a State Public Procurement Unit.
- State Public Procurement Unit means the Office of the Chief Procurement Officer and any other Purchasing Agency of this State.

11.2. Cooperative Procurement:

The purchasing agent is authorized to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units or External Procurement Activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts that are made available to Local Public Procurement Units. The purchasing agent is authorized to participate in National Public Procurement Units, such as U.S. Communities.

11.3. Authority Provided by the VPPA:

FCPS is granted cooperative procurement authority under §2.2-4304 of the VPPA, which states “any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies.”

11.4. Authority to Purchase from Sources other than State Contract Vendor:

In instances where a particular good or non-professional service can be procured through State Contract, the Purchasing Agent reserves the right to solicit other sources to determine if better pricing and service options are

available. The Purchasing Agent reserves the right to purchase an item/service from a source other than the State Contract Vendor, without getting additional quotes, if the item/service is less expensive and deemed to be in the best interest of FCPS.

11.5. Authority to Purchase from a U.S. GSA contract:

FCPS may purchase goods and non-professional services from a U.S. GSA contract if the contract is established under GSA Schedule 70 or 84 and has been amended or modified to allow for cooperative purchasing.

- a. Schedule 70: General Purpose Commercial Information Technology Equipment, Software and Services
- b. Schedule 84: Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response.

Purchasing is available to assist end users in finding GSA contracts and determining if they can be used for the purchases sought. Pricing should always be negotiated either by the end user or Purchasing on all requisitions related to GSA contracts.

11.6. Evaluating Cooperative Contracts for use:

Account Managers are encouraged evaluate each agreement prior to requesting its use by FCPS. At a minimum the items to look for in a contract to determine if it can be used are as follows:

- a. Was the contract established by a public entity through competitive solicitation?
- b. Does the contract have language in it allowing for its use by other public entities?
- c. Does the scope of the contract contain the goods/services you are looking to procure?
- d. When does the contract expire?
- e. How is the pricing established in the contract?
- f. Where was the contract originated (State?), and will FCPS need additional terms and conditions to bring it into compliance with Virginia Law?

12. CONTRACT ADMINISTRATION

SUMMARY:

- CONTRACT CLAUSES
- TYPES OF CONTRACTS PERMITTED
- CLAUSES TO REMOVE FROM ALL AGREEMENTS/CONTRACTS
- CREATING A CHANGE ORDER
- LIMITS ON INCREASING CONTRACTS
- RENEWING CONTRACTS
- CANCELLING CONTRACTS

12.1. Contract Clauses and Their Administration:

All FCPS contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing agent, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

- the unilateral right of FCPS to order in writing changes in the work within the scope of the contract;
- the unilateral right of FCPS to order in writing temporary stopping of the work within the scope of the contract;
- variations occurring between estimated quantities of work in contract and actual quantities;
- defective pricing;
- liquidated damages;
- specified excuses for delay or nonperformance;
- termination of the contract for default;
- termination of the contract in whole or in part for the convenience of FCPS;
- suspension of work on a construction project ordered by FCPS; and
- site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract (a) when the contract is negotiated, (b) when the contractor provides the site or design, (c) or when the parties have otherwise agreed with respect to the risk of differing site conditions.

The purchasing agent may establish standard contract clauses for use in FCPS contracts. If the purchasing agent establishes any standard clauses addressing the subjects set forth in this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

12.2. Types of Contracts:

General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of FCPS may be used, provided that the use of a cost-plus-a-

percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to FCPS than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

Multi-Term Contracts. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of FCPS, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

Multiple Source Contracting: A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order FCPS's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1).

A multiple source award may be made when an award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source awards shall be made in accordance with the policies and procedures stated in this Manual. Multiple source awards shall not be made when a single award will meet FCPS's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the manual of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

- FCPS shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
- FCPS shall reserve the right to take bids separately if the purchasing

agent approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of FCPS.

If a multiple source award is anticipated prior to issuing a solicitation, FCPS shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation. The purchasing agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

12.3. Types of Contract Clauses that FCPS shall attempt to remove from Vendor Contracts:

Some, but not all, examples of clauses that may delay or stop a contract from being signed are shown below:

- a. FCPS shall attempt to remove late fee clauses.
- b. FCPS shall attempt to remove one-time fee clauses, such as administrative, restocking, and documentation fees.
- c. FCPS shall attempt to remove clauses involving the adjustment of payments due on a fixed-price contract (without prior FCPS approval).
- d. FCPS shall attempt to remove clauses that provide the vendor with an automatic renewal of a contract unless FCPS notification is provided within a particular time frame.
- e. FCPS shall attempt to remove clauses where FCPS is asked to reimburse a vendor for its expenses to refurbish equipment or materials that have been leased by FCPS to ensure that the vendor can resell or release the item.
- f. FCPS shall attempt to remove clauses where FCPS is asked to provide a security deposit.
- g. FCPS shall attempt to remove any clauses that disclaim warranties.
- h. FCPS shall attempt to remove any clauses that put time constraints on FCPS's right to file legal action.
- i. FCPS shall attempt to remove indemnity clauses from all contracts. If the complete removal of an indemnity clause can not be agreed upon, FCPS shall ensure that the maximum amount of liability is satisfactory. FCPS also may attempt to include its own indemnity clause in which FCPS's maximum amount of liability is clearly stated.
- j. All Court proceedings shall be held in the Commonwealth of Virginia.

When a specific contract clause cannot be agreed upon, FCPS reserves the right to end negotiations with the respective vendor and begin negotiations with another vendor.

12.4. Company Certification:

Before any vendor conducts work on School Property, the vendor must complete a Company Certification Form that certifies that:

- a. any employee of the company who will have direct contact with students on school property during regular school hours or during school-sponsored activities while providing services called for in the contract have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

A copy of the Company Certification Form can be found in the Appendix.

- b. the contractor does not, and shall not during the performance of the contract for goods and services, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

12.5. Change Orders:

A change order is a document used to make additions, deletions or cancellations to Purchase Orders.

Change Orders are required, regardless of cost, to decrease or increase encumbered funds, or to notify the company and/or warehouse of additional or canceled items.

Account Managers are responsible for preparation and distribution of Change Orders on Purchase Orders. The Account Manager shall prepare a change order that clearly describes the change, the reason for the change, and the cost of the change. After preparing the change order in Financial software, the change order will route through workflow and be added to the Purchase Order file in Tyler Content Manager by Purchasing. Then, the Account Manager will forward the completed change order to vendor.

Note that unit price changes are not allowed if the item(s) purchased are on contract or were obtained as a result of telephonic or written competitive bids, unless the Purchasing Agent approves of the change and documents the reason for approving such change. A fixed-price contract may not be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without appropriate approval.

12.6. Required Submissions Relating to Change Orders or Contract Modifications:

A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in

connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$100,000. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

- unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
- it is determined in writing by the purchasing agent that the cost or pricing data is not required, above, may be waived, and the determination states the reasons for such waiver.

A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to FCPS, including profit or fee, shall be adjusted to exclude any significant sums by which FCPS finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between FCPS and the contractor.

Requests for price adjustments shall at a minimum contain (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U), change in manufacturer's price, etc.).

12.7. Contract Monitoring:

The Account Manager of the department/school receiving the good or service shall be responsible for ensuring that the good or service is delivered or performed in accordance with the terms and conditions of the contract. The Account Manager shall also be responsible for ensuring that all invoices are correct and in accordance with the terms and conditions of the contract before approving any invoice to be paid.

12.8. Right to Inspect Plant:

FCPS may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by FCPS.

12.9. Right to Audit Records:

FCPS may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 5.7 of this Manual to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for 3 years from the date of final payment under the contract.

FCPS shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

13. FEDERAL PROVISIONS

SUMMARY:

- **CONTRACT CLAUSES REQUIRED IN FEDERALLY FUNDED CONTRACTS**

13.1. Contractor Records:

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- a. requiring the contractor and subcontractors at any tier to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- b. requiring the contractor and subcontractor at any tier to provide to FCPS, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

13.2. Patents:

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- a. giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to any discovery or invention arising out of the contract; and
- b. requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

13.3. Copyrights and Rights in Data:

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

13.4. Notice of Federal Public Policy Requirements:

If the contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

- a. equal employment opportunity;
- b. the Davis-Bacon Act;
- c. fair labor standards;
- d. energy conservation;
- e. drug-free work places;
- f. environmental protection; or
- g. other similar socioeconomic programs,

then the purchasing agent shall include contract provisions giving the contractor notice of these requirements, and where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

13.5. Buy-American Clause:

If a contract is being funded in whole or in part by assistance from a federal agency, then FCPS shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance.

13.6. Energy Conservation:

If a contract is being funded in whole or in part by assistance from a federal agency, then FCPS's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163).

13.7. Small, Women-Owned, and Minority Business Enterprises:

If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent shall take affirmative steps to assure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.

Some Examples of Affirmative Steps:

- a. including qualified small, women-owned, and minority businesses on solicitation lists;
- b. assuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
- c. when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned, and minority business participation;
- d. where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority businesses; and using the services and assistance of the Small Business Administration, or the Office of Minority Business Enterprise of the Department of Commerce, as required.

14. PREQUALIFICATION

SUMMARY:

- **PROCEDURES FOR PREQUALIFYING PROSPECTIVE CONTRACTORS**

14.1. Prequalification:

In accordance with § 2.2-4317 of the VPPA, FCPS reserves the right to request prospective contractors prequalify for particular types of supplies, services, insurance or construction. FCPS may require that consideration of bids or proposals be limited to prequalified contractors.

14.2. Application Form:

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of the VPPA.

14.3. Advance Notice of Deadline:

In all instances in which FCPS requires prequalification of potential contractors for construction projects, advance notice shall be given of the

deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

14.4. Notice of Prequalification Determination:

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, FCPS shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

FCPS may deny prequalification to any contractor only if FCPS finds one of the following:

- a. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by FCPS shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
- b. The contractor does not have appropriate experience to perform the construction project in question;
- c. The contractor or any officer, director or owner thereof has had judgments entered against him/her within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
- d. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If FCPS has not contracted with a contractor in any prior construction contracts, FCPS may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. FCPS may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
- e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted

within the past ten years of a crime related to governmental or nongovernmental construction or contracting.

- f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government;
- g. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions a through f of this subsection.

15. APPEALS AND REMEDIES

SUMMARY:

- PROCEDURES FOR PROTESTS
- PROCEDURES FOR SUSPENDING, DEBARRING AND/OR DECLARING A VENDOR INELIGIBLE

15.1. Ineligibility:

In accordance with §2.2-4357 of the VPPA, any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, FCPS shall (a) notify the bidder in writing of the results of the evaluation, (b) disclose the factual support for the determination, and (c) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice. Within ten business days after receipt of the notice, the vendor may submit rebuttal information challenging the evaluation. FCPS shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, FCPS shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, FCPS shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten calendar days after receipt of the notice by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in the VPPA.

15.2. Appeal of denial of withdrawal of bid:

In accordance with §2.2-4358 of the VPPA, a decision denying withdrawal of bid shall be final and conclusive unless the bidder appeals the decision within ten calendar days after receipt of the decision by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in the VPPA.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of the VPPA, prior to appealing, shall deliver to FCPS a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (a) an honest exercise of discretion, but rather was arbitrary or capricious or (b) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

15.3. Determination of non-responsibility:

In accordance with § 2.2-4359 of the VPPA, following public opening and announcement of bids received on an Invitation to Bid, FCPS shall evaluate the bids based upon the requirements set forth in the invitation. At the same time, FCPS shall determine whether the apparent low bidder is responsible. If FCPS so determines, then, it may proceed with an award to the lowest responsive and responsible bidder. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

- Prior to the issuance of a written determination of non-responsibility, FCPS shall (a) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
- Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. FCPS shall issue its written determination of responsibility based on all information in the possession of FCPS, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, FCPS shall notify, with return receipt requested, the bidder in writing of its determination.
- Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten calendar days after receipt of the notice by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in the VPPA.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file.

Nothing contained in this section shall be construed to require FCPS, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

15.4. Protest of award or decision to award:

Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest, in writing, to the Executive Director of Finance, no later than ten (10) calendar days after the award announcement or decision to award, whichever occurs first.

Protestors are urged to seek manual of their complaints by initially informing the purchasing agent in writing of the protest. The purchasing agent is authorized to settle any protest regarding the solicitation or award of an FCPS contract, or any claim arising out of the performance of an FCPS contract, prior to an appeal to the School Board, as the case may be, or the commencement of an action in a court of competent jurisdiction.

Public notice of the award or the announcement of the decision to award shall be given by FCPS in the manner prescribed in the terms or conditions of the IFB or RFP. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten calendar days after posting or publication of the notice of such contract. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection, then the time within which the protest shall be submitted shall expire ten calendar days after those records are available for inspection by such bidder or offeror or at such later time as provided in this section.

No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. FCPS or designated official shall issue a decision in writing within ten calendar days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten calendar days of receipt of the written decision by invoking administrative

procedures meeting the standards of the VPPA or by instituting legal action as provided in VPPA. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. FCPS shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, FCPS may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

Where FCPS, an official designated by FCPS, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or other unethical act, FCPS, designated official or appeals board may enjoin the award of the contract to a particular bidder.

In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

15.5. Stay of award during protest:

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or the filing of a timely legal action as provided in the VPPA, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

15.6. Contract Claims:

All claims by a contractor against FCPS relating to a contract, except bid protests, shall be submitted in writing to the purchasing agent for a decision. The contractor may request a conference with the purchasing agent on the claim. Claims include, without limitation, disputes arising under a contract,

and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

The decision of the purchasing agent shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.

The purchasing agent's decision shall be final and conclusive unless, within 10 calendar days from the date of the receipt of the decision, the contractor mails or otherwise delivers a written appeal to FCPS or commences an action in a court of competent jurisdiction.

If the purchasing agent does not issue a written decision regarding any contract controversy within 10 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

15.7. Suits on Payment Bonds-Right to Institute:

Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount due that person. However, any person having a contract with any subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for FCPS or district in which the construction contract was to be performed.

Any person may request and obtain from FCPS a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

15.8. Debarment:

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be

for a period of not more than three years. The purchasing agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment or suspension include:

- a. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- b. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as an FCPS contractor;
- c. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- d. violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action:
 1. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 2. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- e. any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as an FCPS contractor, including debarment by another governmental entity for any cause listed in this Manual; and
- f. for violation of the ethical standards set forth in Section 16 of this Manual;
- g. For violation of the Federal Immigration Reform and Control Act of 1986.
- h. For having any employee on School Property that has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of any person.

The purchasing agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

A decision under to debar or suspend shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the School Board as the case may be, or commences a timely action in court in accordance with applicable law.

15.9. After Award: Violation of Applicable Law:

If, after an award, the purchasing agent, determines that a solicitation or award of a contract was in violation of applicable law, then:

- a. if the person awarded the contract has not acted fraudulently or in bad faith:
 1. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of FCPS; or
 2. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
- b. if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of FCPS.

16. RECEIVING

SUMMARY:

- PROCEDURES FOR ACCEPTING DELIVERY
- PROCEDURES FOR INSPECTING A DELIVERY
- COMPLAINTS RELATED TO A VENDOR/PRODUCT

16.1. Accepting Delivery:

Most goods and packages are delivered to specific Schools or Departments in order to reduce the amount of moving of a large or delicate item and/or to meet space or time requirements. Regardless of where the good or package is delivered, it is the responsibility of the person accepting the delivery to:

- Visually inspect the goods/packages and inform the deliverer of any defects or problems.
- Log the following information: date the item was delivered, how many cartons were delivered, and the name of the delivery

carrier.

16.2. Inspection:

The Account Manager will be responsible for ensuring that the order is evaluated to determine if it is complete and whether the goods are in acceptable condition. Information regarding the completeness and quality of the order will be documented on the packing slip or appropriate purchasing form.

16.3. Vendor/Product Complaints:

When a vendor delivers goods or performs services that are unsuitable or inferior to the needs and expectations of the end-user, Purchasing should be promptly notified so that appropriate action can be taken to rectify/cure the situation. Purchasing will work with the end-user to resolve the issue and will document all results.

17. PAYMENT AND FILING

SUMMARY:

- **ACCOUNTS PAYABLE DEADLINES**

17.1. Accounts Payable Procedures:

All Accounts Payable procedures shall be in accordance with FCPS Policy and the Manual of Accounting.

17.2. Finance Department - Accounts Payable:

Accounts Payable processes payments twice a month. Please check with the Accounts Payable Specialist to determine the deadlines for your respective department/school.

Account Managers with credit cards are responsible for ensuring that their credit card statements are processed via financial software in a timely manner to ensure that payment is made before the due date.

17.3. Late Fees:

FCPS does not pay late fees. FCPS shall attempt to negotiate with vendors to have all late fee clauses removed from all contracts.

17.4. Tax-Exempt:

FCPS is a tax-exempt organization. Therefore, FCPS should not pay sales tax on any goods or services. Tax-exempt forms can be obtained on the FCPS intranet.

17.5. Contract File:

All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for FCPS in a contract file by the purchasing agent.

17.6. Retention of Procurement Records:

All procurement records shall be retained and disposed of by FCPS in accordance with records retention guidelines and schedules promulgated by the Library of the Commonwealth of Virginia.

18. SURPLUS REMOVAL AND SURPLUS AUCTION

SUMMARY: (717P)

- PROCEDURES FOR REMOVING, SELLING AND DISPOSING OF SURPLUS
- WHO MAY PARTICIPATE IN SURPLUS AUCTION
- PROFIT FROM SURPLUS

18.1. Notifying Account Manager:

When an employee recognizes that an item no longer functions properly or is no longer needed, he/she will notify their Account Manager.

18.2. Account Manager Evaluates Item:

The Account Manager will evaluate the item to determine its condition and usefulness. All CTE equipment will be marked with a separate brightly colored "CTE" sticker, and the CTE Account Manager will be responsible for the evaluation of this equipment.

18.3. Notification by Account Manager For Pick-Up:

If the Account Manager feels that the item may be able to be repaired or used by another department/school, he/she will contact the Facilities Department. If the Account Manager feels that the item is beyond repair, he/she will contact the Facilities Department and then fill out a Surplus Disposal Form to forward to Purchasing to determine if the item is listed in the fixed asset inventory system. The Facilities Department will then prepare a work order and will have someone pick up the item, unless other storage arraignments are made with the end using department/school.

18.4. Facilities Services Evaluates Storage Capacity:

Facilities will determine the amount of storage space required for the item(s) and will make the appropriate steps to ensure that space is available and reserved for the item. Facilities reserve the right to dispose of an item, instead of storing it, if the item is deemed to have nominal worth or value.

18.5. Surplus Transfer Process:

Before an item can be advertised or sold at a public auction, the item shall be offered to other FCPS end users. Items may also be offered to Frederick County Government Departments only after it has been offered to FCPS end users first.

18.6. Surplus Auction:

Items that are not requested as part of the Surplus Transfer Process will be eligible to be sold in a public auction no less than 30 days after being declared surplus.

A list of items to be auctioned will be forwarded to the Auctioneer and those items will be advertised to the public via an online auction system or via consignment. Only items appearing in the advertisement will be eligible to be sold at the auction.

All items will be sold as-is and FCPS will provide no guarantee or warranty for the condition of any surplus item. Employees may purchase surplus items only after they have been placed on the online auction site or are available through consignment.

18.7. Proceeds from Auction/Consignment:

Any and all profit from a surplus auction or consignment will be deposited to the appropriate revenue account depending on the items sold. Items marked with the "CTE" sticker will be tracked as separate sales in this process.

18.8. Items Not Sold at Auction:

Any items not sold at auction shall be disposed of by Facilities either through recycling or direct disposal.

19. ETHICS IN PROCUREMENT

SUMMARY:

- **POLICIES PROHIBITING UNETHICAL BEHAVIOR AND CONSEQUENCES**

19.1. Ethical Violations:

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth below. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this Manual shall not be impaired.

19.2. Vendor Relations:

All transactions relating to the expenditure of appropriated and activity funds require the highest degree of public trust. To eliminate conflicts of interest or inappropriate standards of conduct, FCPS personnel are not authorized to accept a discount or gift from a vendor based on their employment status with

FCPS, unless the discount or gift is offered and made known to all FCPS personnel.

Account Managers should exercise caution when dealing with vendors to ensure that proper procurement procedures and policies are followed.

19.3. Employee Conflict of Interest:

It shall be unethical for any FCPS employee to participate directly or indirectly in a procurement contract when FCPS employee knows that:

- a. FCPS employee or any member of FCPS employee's immediate family has a financial interest pertaining to the procurement contract; or
- b. any other person, business, or organization with whom FCPS employee or any member of an FCPS employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

An FCPS employee or any member of an FCPS employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

19.4. Gratuities:

It shall be unethical for any person to offer, give, or agree to give any FCPS employee or former FCPS employee, or for any FCPS employee or former FCPS employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal.

19.5. Kickbacks:

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. This prohibition against kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation.

19.6. Prohibition Against Contingent Fees:

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure an FCPS contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of

bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

19.7. Contemporaneous Employment Prohibited:

It shall be unethical for any FCPS employee who is participating directly or indirectly in the procurement process to become or to be, while such a FCPS employee, the employee of any person contracting with the governmental body by whom the employee is employed unless it be disclosed as stated in 18.7.

19.8. Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest:

FCPS may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- a. the contemporaneous employment or financial interest of FCPS employee has been publicly disclosed;
- b. FCPS employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- c. the award will be in the best interests of FCPS.

19.9. Use of Confidential Information:

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

19.10. Sanctions:

FCPS may impose any one or more of the following sanctions on an FCPS employee for violations of the ethical standards in this Section:

- a. oral or written warnings or reprimands;
- b. suspension with or without pay for specified periods of time; or
- c. termination of employment.

The School Board may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- a. written warnings or reprimands;
- b. termination of contracts; or
- c. debarment or suspension as provided in "Authority to Debar or Suspend"

19.11. Recovery of Value Transferred or Received in Breach of Ethical Standards:

The value of anything transferred or received in breach of the ethical standards of this Manual by an FCPS employee or a nonemployee may be recovered from both FCPS employee and nonemployee.

Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by

FCPS and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

19.12. Discrimination:

In the solicitation or awarding of contracts, FCPS shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment.

Legal Reference:

Code of Virginia, Virginia Public Procurement Act, Title 2.2, Chapter 43.

APPENDIX

Included in this appendix are procurement forms and documents that shall be used by all FCPS employees. This appendix is a part of this manual.

1. General Terms and Conditions.

These terms and conditions are a part of this manual and all vendors must adhere to them. They are included in each solicitation as well as other contracts established by FCPS unless otherwise modified by negotiations.

2. Purchase Order Terms and Conditions.

These are the terms and conditions print on the back of each Purchase Order sent to vendors.

3. Contractor Certification.

Frederick County Public Schools General Terms and Conditions

These general terms, conditions and instructions apply to all purchases and are a part of each solicitation and every contract awarded by FCPS, unless otherwise specified in such solicitation or contract. The Purchasing function of the Finance Department is responsible for the purchasing activity of Frederick County Public Schools and its governing body, the Frederick County Public School Board, or both. Bidder/Offeree or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeree's own risk.

These general terms, conditions and instructions are subject to all applicable Federal, State and local statutes, policies, resolutions, and regulations (collectively "laws"), and are to be interpreted so as to be consistent with such laws. In the case of irreducible conflict, these general terms and conditions are preempted by applicable laws.

1. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, including but not limited to the Code of Virginia, Section 2.2, Chapter 43, Virginia Public Procurement Act, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
2. **AUTHORITY:** The Executive Director of Finance, or designee has the sole responsibility and authority for issuance of invitations to bid, request for proposals, negotiations, placing and modifying invitations, requests, purchase orders and awards issued by and for the County School Board of Frederick County. In the discharge of these responsibilities, the Executive Director of Finance may be assisted by delegating to Purchasing Supervisor and other Finance staff. No other School Board officers or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the School Board for any indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void, and the School Board shall not be bound thereby.
3. **DEBARMENT:** By submitting a bid/proposal, the bidder/offeree is certifying that he/she is not currently debarred by the Commonwealth of Virginia or FCPS from submitting bids/proposals. On contracts for the type of goods and/or services covered by this solicitation, nor is the Bidder/Offeree an agent of any person or entity that is currently so debarred.
4. **DISCRIMINATION:** FCPS does not discriminate against faith-based organizations in accordance with the Code of Virginia, section 2.2-4343.1 or against an offeree because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
5. **INVOICES:** Invoices for items/services ordered, delivered and accepted shall be submitted in duplicate by the Contractor directly to the payment address shown on the purchase order/contract. **All invoices shall reference said purchase order/contract number shall be in the same legal name of the Contractor as indicated on the Contract.**
6. **SMALL AND MINORITY BUSINESS ENTERPRISES:** It is the policy of FCPS to undertake every effort to increase opportunity for utilization of small and minority businesses in all aspects of procurement to the maximum extent feasible. In connection with performance of this contract, the Contractor agrees to use best effort to carry out this policy and insure that Small and Minority Businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract. Contractors may rely on oral or written representation by subcontractors regarding their status as small and/or minority business enterprises in lieu of an independent investigation.
7. **VIRGINIA FREEDOM OF INFORMATION ACT:** Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or coloration, in accordance with the Virginia Freedom of Information Act.
 1. Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
 2. Any Bidder/Offeree, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the opening/receipt of all proposals, but prior to award, except in the event that FCPS decides not to accept any of the proposals and to re-solicit. Otherwise proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 3. Trade secrets or proprietary information submitted by an Bidder/Offeree or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Bidder/Offeree or Contractor must invoke the protection of this section in writing prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected, and stating the reasons why protection is necessary.
 4. Nothing contained in this section shall be construed to require FCPS to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to FCPS.

General Terms and Conditions

CONTRACT PROVISIONS

8. **ANTI-DISCRIMINATION:** By submitting their bid/proposal, the Bidder/Offeree certifies to FCPS that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that in every contract over \$10,000 the provisions below apply:

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualifications reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
 4. The Contractor will include the provisions above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
9. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FCPS all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FCPS under said contract.
10. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by FCPS, whichever is sooner. FCPS, its authorized agents, and/or auditors reserve the right to perform or have performed an audit of the records of the Contractor and therefore shall have full access to and the right to examine any of said materials within a reasonable period of time during said period.
11. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any one of the following ways:

1. FCPS may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as the method of packing or shipment, place of delivery, installation or performance of work, etc. The Contractor shall comply with the notice upon receipt. The Contract shall be compensated for any additional costs incurred as the result of such order and shall give FCPS a credit for any resulting savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FCPS's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FCPS with all vouchers and records of the Contractor as it deems necessary to determine costs of savings. Any claim for an adjustment in price under this provision must be asserted by written notice to FCPS within thirty (30) days from the date of receipt of the written order from FCPS. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FCPS or with the performance of the contract generally.

The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

12. **COMPLIANCE WITH PROCEDURES:** The Contractor shall comply with all procedural instructions that may be issued from time to time by FCPS. However, the terms and conditions of the contract will not change.
13. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of fact including claims for money or other relief as a result of a contract with FCPS which is not disposed of by agreement shall be declared by the Executive Director of Finance, or designee, who shall reduce a decision to writing and mail or otherwise forward a copy thereof to the Contractor within ten (10) days. The decision of the Executive Director of Finance, or designee shall be final and conclusive unless the Contractor appeals within ten (10) days of receipt of the written decision by formal protest. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment, however, written notice of the Contractor's intention to file such a claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

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14. **CONTRACT DOCUMENTS/PURCHASE ORDERS:** The Contract entered into by the parties shall consist of the Invitation For Bid/Request for Proposal, the signed bid/proposal submitted by the Contractor, the Notice of Award or Purchase Order/Contract, these General Terms and Conditions and any Special Terms and Conditions, and the listed specifications and drawings, if any, including all modifications thereof, all of which shall be referred to collectively as the Contract Documents. All time limits stated in the Contract Documents are of the essence of the Contract unless stated otherwise. Orders against contracts will be placed with the Contractor on a Purchase Order.
15. **COOPERATIVE PURCHASING:** FCPS may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods or services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or Invitation for Bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.
16. **CONTRACTOR CERTIFICATION:** To protect the safety of students and school employees, Contractor certifies to the School Board that none of Contractor's employees, whether new or current, full-time or part-time, permanent or temporary, who will be present on the Site or other school property and may have any contact with students or school employees, (i) have been convicted of a felony, any offense involving sexual molestation, physical or sexual abuse or rape of a child, or a felony involving lying, cheating or stealing; or (ii) have been the subject of a founded case of child abuse or neglect.

Contractor shall conduct an investigation of the criminal history, sex offender status and agency determinations of child abuse of each employee who will be present on the Site or other school property and may have contact with students or school employees. Contractor shall conduct all such investigations with the written consent of affected employees and in compliance with all applicable laws. Contractor certifies that it has conducted such an investigation for all current employees who will be involved in the work to be performed pursuant to this Agreement, and will conduct such an investigation for any future employees who will be involved in the work to be performed pursuant to this Agreement. Contractor shall keep records of all investigations and shall make such records available to the School Board upon request.

If any employee of Contractor who will be present on the Site or other school property and may have contact with students or school employees is arrested for, charged with, or convicted of any such offense, or becomes the subject of a child abuse investigation, Contractor shall notify the Superintendent of the arrest, charge, conviction or investigation within forty-eight (48) hours after Contractor is made aware of the arrest, charge, conviction or investigation. The School Board reserves the right to exclude such employee from positions that may involve contact between such employee and students or school employees, or to exclude such individual from school property entirely.

Contractor shall include the provisions of Section 11 in all contracts with its subcontractors who will provide goods or services for the Project, if any, so that such provisions are binding on all such subcontractors of Contractor.

Failure by Contractor or one of its subcontractors to conduct investigations or to make the certifications required by this provision may constitute a breach of this Agreement and grounds for termination or rescission of the Agreement (Code of Virginia § 22.1-296.1).

17. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

18. **FEES/COSTS:** Negotiated costs shall be firm and fixed throughout the contract period.
19. **GUARANTEES AND WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to FCPS before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
20. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bid/proposal, Bidders/Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
21. **INDEMNIFICATION:** Contractor shall indemnify, save and hold harmless the School Board of FCPS, its officers, agents, employees and volunteers against and from any and all injuries, death, loss, damage, claims, patent claims, suits, liabilities,

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judgments, costs of investigation, attorney fees, cost of appeals arising out of any such claims or suits, and other expenses which may or otherwise accrue against FCPS in consequence of the granting of a contract or which may or otherwise result in connection with work therefrom, if it shall be determined that the act was caused through negligence, omission or commission of the Contractor, including its agents, subcontractors, employees, and volunteers. The Contractor expressly understands and agrees that any performance bond or insurance shall in no way limit the responsibility to indemnify, keep and save harmless and defend the School Board as herein provided. Furthermore, it is understood and agreed that the Contractor is at all times herein acting as an independent contractor.

22. **INSURANCE:** Contractor shall maintain such personal injury and property damage liability insurance as necessary to protect itself from claims arising out of the performance of any resulting contract. By signing and submitting a proposal under this solicitation, the Bidder/Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the work commences. Additionally, it will maintain these during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. During the period of the contract FCPS reserves the right to require the Contractor to furnish certificates of insurance for the coverage required by FCPS and the Commonwealth as indicated below:

Insurance Coverage and Limits Required:

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. General Liability - \$500,000 combined single limit with FCPS named as additional insured with respect to the services being procured. This coverage is to include Premises/Operations Liability, Products, and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
4. Automobile Liability - \$500,000.

If different or additional insurance coverage is required it will be so stated in Special Terms and Conditions.

23. **MODIFICATION OF CONTRACT:** FCPS may, upon mutual agreement with the Contractor, issue written modifications to the scope of work/specifications of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than \$50,000 or 25%, whichever is greater, without the advance written approval of the Executive Director of Finance, or designee. In making any modification, the resulting increase or decrease in cost for the modification shall be determined by one of the following methods as selected by Executive Director of Finance, or designee:

1. The written modification shall stipulate the mutually-agreed price for the specific addition to or deletion from the scope of work/specifications which shall be added to or deducted from the contract amount.
2. The written modification shall stipulate the number of unit quantities added to or deleted from the contract and multiplied by the unit price which shall be added to or deducted from the contract amount.
3. The written modification shall direct the Contractor to proceed with the work and to keep, and present in such form as FCPS may direct, a correct account of the cost of the change together with all vouchers therefore. The cost shall include an allowance for overhead and profit to be mutually agreed upon by FCPS and the Contractor.

24. **NON-DISCRIMINATION OF CONTRACTORS:** Any potential Bidder/Offeror or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations are also protected from discrimination on the basis of religious character as provided below:

1. Faith-based organizations may enter into contracts with FCPS on the same basis as any other nongovernmental source may do so without impairing the religious character of such organization and without diminishing the religious freedom of the beneficiaries of assistance provided under such contracts.
2. FCPS shall not impose conditions on contracts that restrict the religious character of the faith-based organization, except that money paid to the faith-based organization by or on behalf of FCPS will not be spent for religious worship, instruction, or proselytizing.
3. Any faith-based organization awarded a contract by FCPS shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by FCPS.
4. Faith-based organizations retain the right to employ persons of a particular religion to perform work connected with the carrying on by such organization of its activities.
5. If an award of contract is made to a faith-based organization, and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization

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from which the individual receives or would receive the goods, services, or disbursements, FCPS shall offer the individual, within a reasonable period of time after the date of objection, access to equivalent goods, services, or disbursements from an alternative provider.

6. Any faith-based organization that is awarded a contract to provide goods, services, or disbursements to individuals shall also provide to such individuals a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider.

25. **PAYMENT TERMS:** Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. However, this shall not affect offers of discounts for payment in less than 45 days.

26. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated to:

1. Pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from FCPS for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

2. Notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason for such.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from FCPS except for amounts withheld as stated above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of FCPS.

27. **PRICE REDUCTION:** If at any time after the date of the bid/proposal the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reductions in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally or (2) in the contractor's price schedule for the class of customers, i.e. wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise would not be considered a "general price reduction" under this provision. Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify FCPS of such reduction by letter. Failure to do so may result in termination of the contract for cause. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by FCPS.

28. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that they may utilize, using their best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees to be fully responsible for the acts and omissions of their subcontractors and of persons employed by them as they are for the acts and omissions of their own employees.

29. **RESPONSIBILITY FOR SUPPLIES TENDERED:** Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, FCPS may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

30. **STUDENT INFORMATION CONFIDENTIALITY:** Under no circumstances may a firm release, disclose, sell, or otherwise use student names and addresses. Firms may only use this information for purposes required by this contract. Failure to comply with this requirement will result in immediate cancellation of the contract.

31. **TERMINATION FOR CAUSE/DEFAULT:** In case of failure to deliver goods or provide services in accordance with the contract terms and conditions, FCPS, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which FCPS may have. Specifically,

1. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner their obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the School Board shall thereupon have the right to terminate, specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and

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reports prepared by the Contractor under the contract shall at the option of the School Board become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

2. Notwithstanding the above, the Contractor shall be relieved of liability to the School Board for damages sustained by the School Board by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the School Board from the Contractor is determined.

32. **TERMINATION FOR CONVENIENCE:** FCPS reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, whenever the Executive Director of Finance, or designee determines that such a termination is in the best interest of FCPS. Any such termination shall be effected by delivery to the Contractor, at least thirty (30) working days prior to the termination date, a Notice of Termination specifying the extent to which performance shall be terminated and date upon which such termination becomes effective. After receipt of a notice of termination, the Contractor must stop all work or deliveries under the purchase order/contract on the date and to the extent specified; however, any contract termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of termination. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
33. **TERMS OF PAYMENT:** Payment will be made to the vendor within thirty (30) days upon receipt of all invoices.

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34. **ACCEPTANCE OF BIDS/OFFERS BINDING 90 DAYS:** Unless otherwise specified in the IFB or RFP, all formal bids/offers submitted shall be binding for ninety (90) calendar days following bid/proposal opening date, unless shortened/extended by mutual consent of all parties.
35. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, FCPS will publicly post such notice on the Purchasing portion of the FCPS website, www.frederick.k12.va.us for a minimum of 10 calendar days except in emergencies.
36. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of FCPS.
37. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that FCPS shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract. Furthermore, if funds are not appropriated for any succeeding fiscal year subsequent to the one in which this contract is entered into, for the purpose of this contract, then FCPS may reduce or terminate this contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, FCPS shall be liable only for payments due through June 30 of the calendar year.
38. **AWARD OR REJECTION OF BIDS/OFFERS:** Purchasing staff shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of FCPS to accept it. Awards made in response to an RFP will be made to the highest qualified offeror whose proposal is determined in writing to be the most advantageous to FCPS taking into consideration the evaluation factors set forth in the RFP. FCPS reserves the right to award a contract by individual items, in the aggregate, or any combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of FCPS. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of FCPS. FCPS also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the goods or services to the particular use required;
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - i. The number and scope of the conditions attached to the bid;
 - j. Whether the bidder is in arrears to FCPS on debt or contract or is a defaulter on surety to FCPS or whether the bidder's Frederick County taxes or assessments are delinquent; and
 - k. Such other information as may be secured by FCPS having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the FCPS Purchasing Supervisor shall so notify that bidder and shall have recorded the reasons in the contract file.
39. **BRAND NAMES:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named; but conveys the general style, type, character, and quality of the article desired. Any article which FCPS in its sole discretion determines to be the equal of that specified, considering

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quality, workmanship, economy of operation, and suitability for the proposes intended, shall be accepted. The Bidder/Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FCPS to determine if the product offered meets the requirements of the solicitation. **ONLY THE INFORMATION FURNISHED WITH THE BID/PROPOSAL WILL BE CONSIDERED IN THE EVALUATION. FAILURE TO FURNISH ADEQUATE DATA FOR EVALUATION PURPOSES MAY RESULT IN DECLARING A BID/PROPOSAL NON-RESPONSIVE.** Unless the Bidder/Offeror clearly indicates in its bid/proposal that the product offered is an "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation. (Reference Chapter 43, Paragraph 2.2-4315, Code of Virginia.)

To judge acceptability, bidders submitting alternates shall attach specifications, drawings, pictures, etc., which shall be used in determining suitability. It shall be understood that the burden of proof for a substitute or an "or equal" material shall be on the bidder.

40. **CASH DISCOUNTS:** Cash discounts will be considered in determining the award. All discounts shall be included in the unit prices.
41. **CLARIFICATION OF TERMS:** If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact the Purchasing Supervisor, in writing, whose name appears on the face of the solicitation no later than five (5) business (working) days before the due date. Any revisions to the solicitation will be made only by written addendum issued by the Purchasing Supervisor.
42. **COMMENTS CONCERNING SPECIFICATIONS:** Any vendor wishing to make comments concerning specifications or other provisions of School Board Invitations to Bid or Request for Proposals may do so by submitting such comments in writing to the Purchasing Supervisor no later than five (5) working days prior to the specific date of opening.
43. **COPYRIGHTS OR PATENT RIGHTS:** Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered as a result of this bid, and seller agrees to hold the purchaser harmless from any and all liability, loss, or expense occasioned by such violation.
44. **DELIVERY:** Time will be of the essence for any orders placed as a result of this bid. Purchaser reserves the right to cancel such orders, or any part thereof, without obligation if delivery is not made at the time(s) specified on proposal form.

Failure of a contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by FCPS, or failure to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by FCPS, shall constitute grounds for FCPS to "Cover" by purchasing in the open market articles or services of comparable grade or quality to replace the services or articles not delivered. On all such purchases, the contractor shall reimburse FCPS, within a reasonable time specified by FCPS, for any expense incurred in excess of contract prices, or, in FCPS's sole discretion, FCPS shall deduct the cost of Cover from any amounts due to Contractor. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, FCPS reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in prices to be determined by FCPS.

45. **DELIVERY POINT:** All items shall be delivered F.O.B. destination, and delivery costs and charges included in the bid price. Failure to do so may be cause for rejection of bid.
46. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bid/proposal, Bidders/Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
47. **EXHAUSTION OF ADMINISTRATIVE REMEDIES:** No potential bidder/offeror or contractor shall institute any legal action until all administrative remedies available under this solicitation and resulting contract have been exhausted and until all statutory requirements have been met.
48. **EXTRA CHARGES NOT ALLOWED:** The proposed costs/fees shall be for providing complete services; e.g., travel, hourly rates, supplies, printing, misc. support services, etc. Extra charges will not be allowed.
49. **HAZARDOUS MATERIALS:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by Section 1261 of Title 15 of the United States Code (U.S.C), then the Bidder/Offeror, by submitting his/her bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder/Offeror does not violate any of the prohibitions of Title 14 of the U.S.C. or Section 1263.
50. **INCLEMENT WEATHER:** Due to inclement weather conditions, FCPS may elect to close schools and administration offices. If the administration office is closed the day of the pre-bid/proposal meeting then meetings will then be held the next business day. The same condition applies to bid/proposal openings
51. **LATE BIDS/PROPOSALS:** To be considered for selection, bids/proposals must be received by the FCPS finance department by the designated date and hour. The official time used in the receipt of bids/ proposals is that time on the automatic time stamp machine in the purchasing office. Bids/Proposals received in the finance department after the date and

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hour designated are automatically disqualified and will not be considered. FCPS is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra-school mail system, or any other method of delivery. It is the sole responsibility of the Bidders/Offerors to ensure that its bid/proposal reaches the purchasing office by the designated date and hour.

52. **LICENSE:** Any bidder not licensed as may be required by federal, state, or county law shall be determined a non-responsive bidder.
53. **LICENSES, PERMITS, AND FEES:** All bids/proposals submitted shall include in price the cost of any business and professional licenses, permits, or fees required by the County of Frederick.
54. **MANDATORY USE OF FCPS FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official FCPS form provided for that purpose may be cause for rejection of the bid/proposal. Return of the complete document is required. Modification of or additions to the General Terms and Conditions of this solicitation may be cause for rejection of the bid/proposal; however, the Purchasing Supervisor, or designee reserves the right to decide, on a case by case basis, in his/her sole discretion, whether to reject such a bid/proposal as non-responsive. As a precondition to its acceptance, FCPS may, in its sole discretion, request that the Bidder/Offeror withdraw or modify non responsive portions of a bid/proposal, which do not affect quality, quantity, price or delivery schedule.
55. **MATERIAL SAFETY DATA SHEETS:** Material and Safety Data Sheets shall be provided in English, and if available, Spanish within two (2) business days upon request for each chemical and/or compound offered. Failure on the part of the Contractor to submit such data sheets may be cause for declaring the Contractor in default.
56. **NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER:** Unless all bids are canceled or rejected, FCPS reserves the right granted by Section 2.2 -4318 of the Code of Virginia to negotiate with the lowest responsive and responsible Bidder to obtain a contract price within the funds available to FCPS whenever such low bid exceed FCPS's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by FCPS for this contract prior to the issuance of the written Invitation for Bid. Negotiations with the low Bidder may include both modifications of the bid price and the Scope of the Work/Specifications to be performed. FCPS shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and the FCPS wishes to negotiate a lower contract price. The times, places and manner of negotiating shall be agreed to by FCPS and the lowest responsive, responsible Bidder.
57. **OFFICIAL NOT TO BENEFIT:**
 1. Bidder/Offeror shall certify upon signing a bid/proposal that to the best of their knowledge no FCPS official or employee having official responsibility for the procurement transaction or member of his or her immediate family has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received this fact shall be disclosed with the bid/proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment or recession of the contract made or could affect payment pursuant to the terms of the contract.
 2. Whenever there is reason to believe that benefit of the sort described in the paragraph above has been or will be received in connection with bid, proposal or contract and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, FCPS, as a prerequisite to payment pursuant to the Contractor, or at any time require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
 3. In the event the Bidder/Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract the Bidder/Offeror shall address the disclosure of such facts to: Executive Director of Finance, Frederick County Public Schools, P.O. Box 3508, Winchester, VA 22601. The Request for Proposal Title should be referenced in the disclosure.
58. **OBLIGATION OF BIDDER/OFFEROR:** By submitting a proposal, the Bidder/Offeror covenants and agrees that they are satisfied, from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
59. **OWNERSHIP OF MATERIAL:** Ownership of all data, material and documentation originated and prepared by the Bidder/Offeror and successful Contractor for FCPS pursuant to this solicitation and any resulting contract shall belong exclusively to FCPS and be subject to public inspection in accordance with the Virginia Freedom of Information Act.
60. **PRICES TO BE FIRM:** Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the School Board or bidder.
61. **PRICING:** Prices should be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the unit prices quoted will govern.
62. **BID/PROPOSAL ACCEPTANCE PERIOD:** Bid/ proposal shall be binding upon the Bidder/Offeror for a minimum of 90 calendar days following the bid/proposal receipt and opening date. Any bid/proposal on which the Bidder/Offeror shortens the

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acceptance period may be rejected as determined by the Purchasing Supervisor.

63. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Supervisor, no later than ten (10) days after the Notice of Award or the Notice of Intent to Award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. The Purchasing Supervisor shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken.
1. If prior to award it is determined that the decision to award is arbitrary or capricious then the sole relief shall be a finding to that effect. The Purchasing Supervisor shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by FCPS. Where the award has been made and performance has begun, the Purchasing Supervisor may declare the contract void upon a finding that this action is in the best interest of FCPS. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
 2. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this paragraph shall not be affected by the fact that a protest or appeal has been filed.
 3. An award need not be delayed for the period allowed an Bidder/Offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the offer would expire.
64. **QUALIFICATIONS OF BIDDERS/OFFERORS:** FCPS may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to FCPS all such information and data for this purpose as may be requested. FCPS reserves the right to inspect the Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. FCPS further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Bidder/Offeror fails to satisfy FCPS that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein. The Bidder/Offeror shall complete and enclose with his/her proposal the CONTRACTOR DATA SHEET, attached hereto.
65. **QUALITY:** All materials used for the manufacture or construction of any supplies, materials, or equipment covered by this bid shall be new, unless otherwise specified. The items bid must be new, the latest model, and of the best quality and highest grade workmanship.
66. **REJECTION AND AWARD OF BIDS/PROPOSALS:** The Frederick County School board reserves the right to accept or reject any or all bids/proposals or parts of bids, to waive informalities, and to request rebids. The School Board also reserves the right to award the contract as it deems will best serve its interest. It further reserves the right to award the contract on a split order basis, lump sum, or individual item basis, or such combination as shall best serve the interest of the School Board unless otherwise specified.
67. **SAMPLES:** Samples, when requested, must be furnished free of expense to the School Board and if not used in testing or destroyed, will be returned upon request within thirty (30) days of bid award at the bidder's expense.
68. **SIGNATURE REQUIRED:** All quotations and proposals must be signed with the firm name and by an officer or employee having the authority to bind the company or firm by his signature.
69. **SIGNED BID CONSIDERED AN OFFER:** This signed bid shall be considered an offer on the part of the bidder or contractor whose offer shall be deemed accepted upon approval by the Frederick County School Board, and in case of default on the part of the bidder or contractor after such acceptance, the School Board may take such actions as it deems appropriate, including legal action for damage or specific performance.
70. **SUBMISSION AND RECEIPT OF BIDS/PROPOSALS:**
1. Bids/Proposals, to receive consideration, must be received prior to the specified time of opening as designated in the invitation.
 2. Unless otherwise specified, bidders must use the bid/proposal form furnished by the School Board. Failure to do so may cause bid to be rejected. Removal of any part of the bid proposal may invalidate the bid.
 3. Bids/Proposals having any erasures or corrections must be initialed by bidder in ink. Bids/Proposals shall be signed in ink. All quotations shall be typewritten or filled in with pen and ink.
 4. When specified, each bid/proposal shall be accompanied by a bid bond with surety satisfactory to the School Board or a cashier's check or money order in an amount equal to 5 percent or the total bid price. In the event of default by the bidder, the 5 percent deposit shall represent liquidated damages (not as a penalty) to the School Board, if stated in the bid/proposal specifications.
71. **TAX EXEMPTION:** FCPS is exempt from the payment of federal excise or Virginia Sales and Use Tax. The price bid must be net, exclusive of taxes. When under established trade practice, any federal excise tax is included in the list price;

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Bidder/Offeror may quote the list price and shall show separately the amount of federal excise tax, either as a flat sum or as a percentage of the list price, which shall be deducted by FCPS. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by FCPS at their place of business, they may charge and collect their own local/state sales tax.

72. **TIE BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), the Purchasing Supervisor shall award the contract to the tie bidder providing goods produced in Virginia or goods, services or construction provided by Virginia persons, firms or corporations. If there are more than one such tie bid, then the FCPS Purchasing Supervisor may, in his or her sole discretion, re-advertise the solicitation, divide the contract among the bidders (if the solicitation provided for multiple awards), or award the contract by lot from among the responsive and responsible Virginia bidders. If there are no responsive and responsible Virginia bidders, then the Purchasing Supervisor may, in his or her sole discretion, re-advertise the solicitation, divide the contract among the bidders (if the solicitation provided for multiple awards), or award a contract by lot from among the responsive and responsible bidders. The decision of FCPS to make award to one or more such bidders shall be final.
73. **VARIATIONS TO SPECIFICATIONS:** For purposes of evaluation, bidder must indicate any variances from our specifications and/or conditions, no matter how slight. If variations are not stated in the proposal, it will be assumed that the product or service fully complies with our specifications.
74. **VENDOR REGISTRATION:** All vendors desiring to provide goods and/or service to FCPS are encouraged to download the vendor information form from the Frederick County Public Schools website at www.frederick.k12.va.us. Vendors may also register via the Vendor Self Service Portal linked on the Purchasing page of the FCPS website. The vendor information form can be attached in the Self Service Portal and vendors will be notified of solicitations via that database. Vendors are responsible for contacting FCPS for any changes or updates to the vendor information form, including changes to addresses and other contact information.
75. **VENDOR RESPONSIBILITIES:** Bids/Proposal must be properly identified on the return envelope and properly submitted, as specified on the first page of the Bid/Proposal. Failure to do so may result in rejection of the bid/proposal.
76. **WARRANTIES FOR USAGE AND QUANTITY:** Whenever a bid/proposal is sought seeking a source of supply for a specified time for materials or services, the quantities or usage shown are estimated only. No guarantee or warranty is given or implied by the School Board as to the total amount that may or may not be purchased from any resulting contracts. These quantities are for bidders' information only and will be used for tabulation and presentation of bid.
77. **WITHDRAWAL OF BIDS/PROPOSALS:** A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the request is received in writing before the due date and hour. The request must be signed by a person authorized to represent the vendor or firm that submitted the bid/proposal. Submission of a subsequent bid/proposal unless specifically identified as an additional bid, shall constitute the withdrawal of any prior one submitted by the same bidder or offeror on the same Invitation for Bid/Request for Proposal.

Withdrawal of bids/proposals after opening is governed by the Code of Virginia §2.2-4330. The bidder/ offeror shall give notice in writing of his/her claim of right to withdraw his/her bid/proposal within two business days after conclusion of the bid opening or receipt of proposals procedure, and shall submit original work papers with such notice.

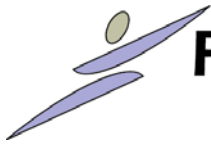
Purchase Order Terms and Conditions

1. **APPLICABLE LAWS:** This order is subject to the laws of the Commonwealth of Virginia and the Frederick County Public Schools' Purchasing Policies (720P, 720R-A, 720R-B).
2. **DELIVERY DATE:** Shipment must be made by date specified. Please advise Contact on Purchase Order if shipment cannot be made as specified.
3. **PACKING LIST / DELIVERY TICKET:** A packing list or delivery ticket must be furnished with each shipment indicating the Purchase Order number, vendor name, item description, quantity ordered, and quantity shipped.
4. **CHANGES IN PURCHASE ORDER:** No changes or substitutions may be made in any of the provisions of this order without prior approval of the Contact on Purchase Order. If approved, a Change Order will then be issued.
5. **PRICES / PROMPT PAYMENT:** This order is acceptable only at prices stated. In the absence of other contractual terms, payment shall be due 45 days after receipt of properly completed invoice, or acceptance of materials or services, whichever is later. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice, or acceptance of materials or services, whichever is later. No charges for shipping shall be included, except as provided in this order.
6. **TAXES:** Frederick County Public Schools is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. Federal Tax I.D. Number is 54-6001292. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling the Finance Department at 540-662-3888.
7. **INVOICES / PAYMENTS:**
 - a. Vendor will render invoices as per specific instructions embodied in this order. Purchase Order number (PO number) issued by the School District must be referenced on all invoices, packages or correspondence.
 - b. Never include on one invoice, goods purchased on more than one Purchase Order. Each Purchase Order must be invoiced separately.
 - c. Address inquiries concerning the payment of invoices to Accounts Payable, 540-662-3888.
8. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of fact as a result of this contract which is not disposed of by agreement shall be decided by the Executive Director of Finance, in accordance with 720R-A.
9. **INDEMNITY:** Contractor shall indemnify, keep and save harmless the School District, its agents, officials, employees and volunteers against any claims, damages, and actions of any kind or nature, whether at law or in equity, which may otherwise accrue against the School District in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the School District in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.
10. **INSURANCE:** Contractor shall maintain such personal injury and property damage liability insurance as necessary to protect itself from claims arising out of the performance of any resulting contract. Additionally, it will maintain these during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. During the period of the contract, FCPS reserves the right to require the Contractor to furnish certificates of insurance for the coverage required by FCPS and the Commonwealth as indicated below:

Insurance Coverage and Limits Required:

 1. Worker's Compensation - Statutory requirements and benefits.
 2. Employers Liability - \$100,000.
 3. General Liability - \$500,000 combined single limit with FCPS named as additional insured with respect to the services being procured. This coverage is to include Premises/Operations Liability, Products, and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
 4. Automobile Liability - \$500,000.
11. **NON-DISCRIMINATION:** Frederick County Public Schools does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or 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 in the performance of its procurement activity.
12. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor certifies that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
13. **DRUG FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; (iv) include the provisions of the foregoing clauses in every subcontract or Purchase Order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.



CERTIFICATION OF CONTRACTOR

Full Name of Contractor: _____
Insert name of company or individual contractor

Description of Contract: _____

As required by Section 22.1-296.1 of the Code of Virginia, the undersigned hereby certifies that none of the persons who will provide services requiring direct contact with students on school property during school hours or during school-sponsored activities has been convicted of a felony or any offense involving the sexual molestation, physical or sexual abuse or rape of a child.

I further understand and acknowledge (1) that if I make a materially false statement regarding any of the above offenses, I will be guilty of a Class 1 misdemeanor and (2) that before any person is permitted to provide such services subsequent to this certification, I must complete a new certification regarding such person.

Signature: _____ **Date:** _____

Printed Name and Title of Person Making Certification

Address: _____

Phone: _____ **Fax:** _____

Email: _____