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### **Chapter 1 GENERAL.**


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 APPROVED BY BOARD OF DIRECTORS

#### **§71005. Purpose.**

- A. These Regulations are adopted pursuant to Va. Code Ann. §2.2-4300et seq., the Virginia Public

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Procurement Act (“VPPA”) and Va. Code Ann. §59.1-479 et seq., and Public-Private Education Facilities and Infrastructure Act of 2002, Sections 56-575.1 et seq., to govern the Purchase and disposition of Supplies, Services and Construction for the Prince William County Service Authority (“the Service Authority” or “Authority”). These regulations may be amended, altered or repealed as the Authority’s Board of Directors (“the Board”) shall deem appropriate.

- B. It is the intent of these regulations that:
1. All purchases must be made in accordance with the Authority’s approved budget guidelines.
  2. The Authority obtains high-quality goods and Services at reasonable cost in a timely manner.
  3. All purchasing be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety.
  4. All qualified Vendors have access to appropriate business and no Offeror be arbitrarily or capriciously excluded.
  5. Competition be sought to the degree practicable and in the best interest of the Service Authority.
  6. Specifications reflect needs rather than being drawn to favor a particular Vendor.
- C. These regulations require all parties involved in the Negotiation, performance or administration of Authority Contracts to act in good faith.
- D. Written determinations required by these Purchasing Regulations shall be retained in the appropriate official Contract file of the Authority.
- E. Dollar limits and procedures contained in these regulations shall be binding on all employees and Vendors providing goods or Services to the Authority. However, nothing in these regulations shall be construed to prevent the General Manager from imposing more restrictive dollar limits and procedures than contained herein when deemed necessary.

**§71010. Application to Authority Purchases.**


These regulations shall apply to all expenditures of funds and the disposition of all materials, except as otherwise provided by law or these regulations. Nothing contained in these regulations shall prevent compliance with the terms and conditions of any grant, gift, bequest or cooperative agreement. When purchasing supplies, Services or Construction involving the expenditure of federal assistance or contract funds, the Authority shall comply with such federal law and authorized regulations.

**§71015. Definitions.**


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In all sections comprising the Authority’s Purchasing Regulations (Sections 71000 – 79999 of the Administrative Code), the following terms have the meanings ascribed to them herein, except where the context clearly requires another meaning.


- **Affected Local Jurisdiction** – any county, city or town in which all, or a portion of a project is located.
- **Approved Budget Guidelines** – all purchases must be made within the constraints of the budget approved by the Board of Directors. In order to maintain flexibility and adaptability to respond to changing requirements during the fiscal year, budgeted funds may be transferred in accordance with the Authority’s approved Budget Transfer Procedure (Section 64105 of the Administrative Code).
- **Best Value** – the overall combination of quality, price and various elements of required Services that in total are optimal relative to the Authority’s need as predetermined in the Solicitation.
- **Bid** – the Offer of a Bidder to provide specific supplies, Services, insurance or Construction at specified prices in compliance with conditions specified in the Invitation for Bids (IFB) and submitted in accordance with the bidding documents.
- **Bidder** – one who submits a competitively priced Offer in response to an IFB.
- **Blanket Purchase Order** – a procurement instrument awarded by the Procurement Department to establish Contracts, which can be used by departments for recurring procurement of similar supplies or Services during a fiscal year.
- **Change Order** (see Modification) – A written order to the Contractor executed by the Service Authority, issued after execution of a Contract or PO, authorizing and directing an addition, deletion or revision of any nature in the Work or an adjustment in the price, schedule, quality or quantity of the Work. Any positive or negative change in the Contract constitutes a Change Order.
- **Construction** – to build, alter, repair, improve or demolish any structure, building, or other improvement of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing buildings, structures, or real property, including utility lines, or storm sewers.
- **Contract** – a mutually binding legal relationship obligating a vendor to furnish supplies, Services, insurance or Construction in exchange for payment from the Authority. It includes all types of commitments that obligate the Authority to an expenditure of funds and that are, except as otherwise authorized, in writing.
- **Contract Administrator** – the representative of the General Manager, Director or officer responsible for the inspection and approval or disapproval of all deliverables and payment of invoices under Authority Contracts. Designation as a Contract Administrator does not convey authority to execute Contracts or Change Orders.

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- **Contracting Officer** – the designated person with authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
- **Contractor** – an individual, group of individuals or an organization having or proposing a Contract with the Authority.
- **Delegated Employee** – an employee who has been trained by the Procurement Department and authorized (in writing) by the appropriate Division Director to perform the specific purchasing duties as outlined in the authorization memorandum.
- **Division** – all departments, offices, and employees within the organizational structure of such Division within the Authority. The Division Director is the individual responsible for all matters within the Division.
- **Emergency** – a Purchase made without following normal purchasing procedures in order to obtain goods, Services or Construction to meet an urgent and unexpected requirement. An Emergency may also include work under, or in anticipation of, a court order.
- **Field Order** – a written order issued by the Service Authority’s designated Engineer or Contract Administrator which requires minor changes in the Work but which does not result in a change in the Contract price, Contract time, quality or performance of the work product.
- **Gift** – any payments, loan, subscription, advance, deposit of money, Services (either professional or personal) or anything of nominal or minimal value, present or promised to a Service Authority employee or their Immediate Family by a present or potential Contractor, Vendor or Offeror, or their Immediate Family.
- **Immediate Family** – a spouse, child by blood or marriage, parent by blood, marriage or adoption, brother by blood, marriage or adoption, sister by blood, marriage or adoption or any other person living in the same household.
- **Informality** – a minor defect or variation in a Bid or Proposal from the exact requirements of the invitation or request, which does not affect the price, quality, quantity or delivery schedule of the goods, Services or Construction, and which can be waived without being prejudicial to other Bidders.
- **Invitation for Bids (IFB)** – all documents or portions of documents whether referred to by name or not, utilized for soliciting competitive bids.
- **“Job order contracting”** – a method of procuring construction by establishing a book of unit prices and then obtaining a Contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The Contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the Construction services. A minimum amount of Work may be specified in the Contract. The contract term and the project amount shall not exceed the limitations specified in Section 75007.


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- **Modification (see Change Order)** – any formal written alteration to the Contract, including but not limited to increases and decreases in schedule, specifications, delivery point, rate of delivery, period of performance, price, quality, quantity or other provisions of any Contract resulting from and accomplished by mutual action of the parties to the Contract. A contract modification may result from a Change Order.
- **Negotiation** – formal discussions that permit the Authority and the Bidder or Offeror to reach agreement on the terms of a Contract and a fair and reasonable price.
- **Notice of Award** – a written notice by the Authority to the apparent successful Bidder or Offeror stating that, upon compliance with the conditions enumerated in the Notice of Award, the Bidder or Offeror will be accepted as the Contractor.
- **Offer** – a response to a Solicitation (RFP or IFB) that, if accepted would bind the Offeror or Bidder to perform the resultant Contract.
- **Offeror** – a person or firm who makes an Offer in response to a Request for Proposal (RFP).
- **Option** – a unilateral right in a Contract under which, for a specified time period, the Authority may elect to purchase additional supplies, Services, insurance, or Construction called for by the Contract, or may elect to extend the term of the Contract.
- **Professional Service** – as enumerated in Va. Code Ann. §2.2-4301, work performed by an independent Contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.
- **Proposal** – a response from an Offeror to a Request for Proposal (RFP) that, if accepted, would bind the Offeror to perform the resultant Contract.
- **Purchase** – to buy, purchase, rent, lease, or otherwise acquire any supplies, Services, or Construction. It includes all functions pertaining to acquiring any supply, Service, or Construction. It includes description of requirements, selection and solicitation of sources, preparation and award of Contract and contract administration. It further includes distribution and disposition of any supply.
- **Purchase Order (PO)** – a document, approved by a duly authorized employee, which identifies the goods or Services to be purchased and guarantees that funds are available to pay for the goods or Services when received.
- **Purchasing Manager** – the highest ranking procurement officer of the Authority. The Purchasing Manager, or the General Manager’s designee, shall be under the supervision of the Director of Management and Budget, or as directed by the General Manager, for the faithful execution and performance of such function.

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- **Quotation** – a statement of price, terms of sale, and description of goods or Services offered by a Vendor to a prospective purchaser for purchases below the amount requiring formal Solicitation. The response to a Request for Quotation is a quote.
- **Responsible Bidder or Offeror** – a person or firm with the capability, in all respects, to perform fully the Contract requirements and with the moral and business integrity and reliability to assure good faith performance.
- **Responsive Bidder or Offeror** – a person or firm having submitted a Bid which conforms in all material respects to the Solicitation.
- **Request For Proposal (RFP)** – all documents whether attached or incorporated by reference, utilized for soliciting Proposals, describing in general terms that which is to be procured and specifying criteria other than price alone, to be considered in selection of the Contractor.
- **Requesting Division or Department** – The Division or Department of the Service Authority that initiates the procurement process.
- **Requisition** – that document which constitutes a request by Authority personnel to the Procurement Department to furnish supplies, Services, or Construction. All requisitions require the certification of availability of funds by the Director of Management and Budget or designee prior to purchase.
- **Selection or Evaluation Committee** – any team, committee or other group that evaluates Bids or Proposals.
- **Service(s)** – any activities performed by a Contractor wherein the Service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*Code of Virginia, §2.2-4301*).
- **Sheltered Workshop** – a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related Services for assisting handicapped or institutionalized persons to progress toward normal living and a productive educational and vocational status.
- **Sole Source** – a product or Service which is practicably available only from one source.
- **Solicitation** – the process of notifying Vendors that the Authority wishes to receive Bids or Proposals on a set of requirements to provide supplies, Services, insurance or Construction. Solicitation documents include Request for Quotation (RFQ), Request for Proposal (RFP) and Invitation for Bids (IFB). Formal solicitations refer to competitive sealed bids and proposals as described in and subject to the requirements in the VPPA. All other written solicitations are informal solicitations.
- **Specification** – the description of the physical, functional characteristics, or any other requirement relating to a supply, Service, or Construction. It may include a description of any requirement for



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inspecting, testing, or preparing a supply, Service, or Construction item for delivery.

- **Supplies** – all articles or items used by the Authority. The term is also defined as “goods” as referenced in [Section 8.2-105](#) (the Uniform Commercial Code) of the Code of Virginia (1950), as amended. It includes printing, automated data processing hardware and software. It does not include any interest in real property.
- **Unauthorized Purchase** – the Purchase or commitment of funds by Authority personnel lacking the authority to do so, or a Purchase or commitment of funds by authorized Authority personnel but not in accordance with all applicable law and regulations.
- **Vendor** – an individual, committee or other organization or group of individuals or any corporation, partnership, sole proprietorship, joint stock company, joint venture or other private legal entity registered to do business and selling a good or Service as requested by the Authority.
- **Written or In Writing** – the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved and reproduced, including information that is electronically transmitted and stored.
- **Work** – the entire completed Construction, “goods” or Services or the various separately identifiable parts thereof required to be provided under a Contract or PO. Work includes and is the result of performing or providing all labor, Services, and documentation necessary to complete the Work, all as required by a Contract or PO.

For purposes of routine Procurement business, the following terms have the meanings ascribed to them herein.

- **Addendum** – a written instrument, issued by the Purchasing Manager, or designee, prior to the opening of Bids or receipt of Proposals, to modify or interpret the IFB or RFP and attachments, by additions, deletions, clarification or corrections.
- **Alternate Bid** – an additional Bid submitted where the Bidder knows that it differs materially from the specifications.
- **Competitive Solicitation** – a process whereby two or more qualified sources are solicited where the process enhances access, competition and assures that reasonable and representative numbers of suppliers are given an opportunity to bid or respond.
- **Construction Management Contract** – a Contract in which a party is retained to coordinate and administer Contracts for Construction Services, and may also include, if provided in the Contract, the furnishing of Construction Services.
- **Kickback** – any payment, loan, subscription, advance, deposit of money, Services or anything present or promised, unless consideration of substantially equal or greater value is exchanged, paid by a



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Contractor, subcontractor or Vendor for the purpose of improperly obtaining a rewarding favorable treatment in connection with a procurement.


- **Nonprofessional Service** – any Service not specifically identified as a Professional Service as that term is defined herein.

**§71017. Acronyms.**

eVA	Virginia’s statewide e-procurement application
FDIC	Federal Deposit Insurance Corporation
GMP	Guaranteed Maximum Price
IFB	Invitation for Bids
MPUA’s	Master Plan Utility Adjustments
OPA	Open Purchase Agreements
PO	Purchase Order
PPEA	Public-Private Education Facilities and Infrastructure Act of 2002
RFP	Request for Proposal
RFQ	Request for Quotation
SOP	Standard Operating Procedure
VFOIA	Virginia Freedom of Information Act
VPPA	Virginia Public Procurement Act
VSLGCIA	Virginia State and Local Government Conflict of Interest Act

**§71020. Authority and Duties of the Purchasing Manager.**


- A. Under the supervision and direction of the Director of Management and Budget, the Purchasing Manager shall serve as the central procurement officer for the Authority.
- B. Consistent with these regulations, the Purchasing Manager may adopt operational procedures governing the internal functions of the Procurement Department.
- C. Except as otherwise specifically provided in these regulations, the Purchasing Manager shall, in accordance with the regulations:
  1. Procure or supervise the procurement of all supplies, Services and Construction needed by the Authority;
  2. Work with other Divisions within the Service Authority to identify the best sources of supplies and Services;

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- 3. Establish and maintain programs for the inspection, testing and acceptance of supplies, Services, and Construction; and
  - 4. Ensure compliance with these regulations and implementing policies and procedures by reviewing and monitoring procurements conducted by any designee that is delegated authority under Section 71025.
- D. The Purchasing Manager is authorized to adopt standard procedures which, consistent with these regulations, govern the procurement, management, control, of any and all supplies, Services and Construction procured by the Authority.
- E. Except as otherwise provided herein, the Procurement Department shall not make any purchases for any Division unless and until the Division provides a properly completed and approved requisition.
- F. The Purchasing Manager shall interpret the meaning and application of these regulations.
- G. The Director of Management and Budget shall exercise general supervision and control over all inventories of supplies belonging to the Authority and have charge of the warehouse of the Authority, as well as providing for the receipt and issuance of all Supplies delivered to the warehouse.

**§71025. Delegation of Authority.**

- A. Final authority for all purchases and Contracts belongs to the Board of Directors. Except as specified in these regulations, the Board delegates such authority to the General Manager. Certain methods of Procurement, including but not limited, to design/build, sole source, etc. and which are over \$100,000 shall be approved by the General Manager. Unless such authority is reserved to the General Manager or Director of Management and Budget, the Purchasing Manager may, subject to these regulations, delegate authority to other employees. Such delegations must be in writing. However, such designation shall not be deemed to relieve the Purchasing Manager of the responsibility for supervision and control of the purchasing function.
- B. This delegation shall specify the terms of the delegation, including the dollar level of the purchases being delegated, whether the delegation includes authority to conduct limited or non-competitive purchases, authority to modify or amend Contracts, and procurement officer decisions requiring the Purchasing Manager's approval. Delegation may specifically include or exclude certain commodities or Services.
- C. Buyers can issue Purchase Orders from approved requisitions under \$100,000.
- D. This delegation shall be in writing to specific named individuals. The delegation shall remain in effect unless modified or until revoked in writing.
- E. Provisional or partial delegation may be made to employees who have limited training or experience.

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- F. The Purchasing Manager shall establish and conduct a procurement training and development program for those employees to whom the Purchasing Manager may delegate authority. As determined by the Purchasing Manager, more extensive training will be required for higher values of delegation.
- G. The Purchasing Manager shall maintain complete records pertaining to the performance of the purchasing function and have charge of the central storeroom and warehouse of the Authority, as well as providing for the inspection receipt of all supplies delivered to the central location.

**§71030. Unauthorized Purchases and Dispositions.**

No person shall have the authority to bind the Authority or any using Department to any Contract, except as provided in these regulations.

Any Work or Purchase authorized by an Authority employee or Department without a complete and properly authorized Contract and/or Purchase Order shall be considered unauthorized.


Unauthorized purchases are subject to the following:

- A. Payment for any unauthorized Purchase may be deemed to be the personal responsibility of the individual who made the Purchase or commitment. If deemed to be personally responsible, individual will reimburse the Authority for the purchase.
- B. The individual may be subject to disciplinary action up to and including termination.
- C. The Division Director having responsibility over the unauthorized Purchase shall provide a complete written explanation for the unauthorized Purchase to the Purchasing Manager, to include disciplinary action taken, if appropriate, and the corrective action(s) taken to prevent recurrence. The Purchasing Manager shall attach a recommendation to the written explanation regarding follow-up action and forward it to the Director of Management and Budget. The Director of Management and Budget shall review the documents and, when recommending disciplinary action, forward them to the Deputy General Manager with any additional comments.

The Procurement Department shall be responsible for establishing and maintaining internal controls for the prevention and detection of unauthorized purchases.

**§71035. Conflicts of Interest.**

Conflicts of interest shall be governed by the Virginia State and Local Government Conflict of Interests Act §2.2-3100 et seq., as amended and the Service Authority’s Code of Ethics (see Administrative Code Division III). The provisions on ethics in public contracting contained in the Virginia Public Procurement Act (§ 2.2-4367 to 2.2-4377) supplement but do not supersede the State and Local Government Conflict of Interests Act.

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**§71040. Equal Opportunity.**


- A. Prince William County Service Authority shall not discriminate against any person on the basis of race, color, creed, religion, national origin, sex, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
- B. In the solicitation or awarding of Contracts, the Service Authority shall not discriminate against a Bidder or Offeror because the Bidder or Offeror employs ex-offenders unless the General Manager has made a written determination that employing ex-offenders on the specific Contract is not in the Authority's best interest.
- C. The Service Authority shall ensure its contracts contain the non-discrimination prohibitions of the VPPA, wherever applicable.

**§71045. Small, Women, Minority and Service Disabled Veteran Owned Business Program.**

It is the policy of the Service Authority to promote opportunity for small, women, minority and service disabled veteran-owned business, as defined in the VPPA. When making solicitations, the Procurement Department shall include businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity of all companies and organizations it has certified as a small, women-owned, or minority-owned business (as such entities are defined in the Virginia Public Procurement Act); and companies or organizations the Service Authority has identified as a service disabled veteran-owned business.

**§71050. Public Access to Purchasing Information.**

- A. Except as provided herein, all proceedings, records, Contracts and other public records pertaining to purchasing transactions shall be open to inspection by any citizen or any interested person, firm, or corporation in accordance with the Virginia Freedom of Information Act (VFOIA) or the VPPA.
- B. Unless made public by the Authority, detailed cost estimates relating to a proposed transaction prepared by or for the Authority shall not be open to public inspection.
- C. A Bidder or Offeror, upon request, shall be afforded the opportunity to inspect Bid and/or Proposal records within a reasonable time and prior to award of Contract. This may take place following the opening of Bids or upon completion of evaluation and Negotiation of Proposals. This would not be applicable in the event that the Authority decides not to accept any of the Bids or Proposals and to solicit new Bids or Proposals.
- D. An inspection of purchasing transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

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- E. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a purchasing transaction are not subject to public disclosure under the VFOIA. However, the Bidder, Offeror or Contractor must invoke the protection of this section prior to, or upon submission of, the data or materials and must identify the data or materials to be protected stating the reasons why protection is necessary.
- F. Unless made public by the Authority, plans and information, the disclosure of which would jeopardize the safety of any person or the security of any governmental facility, building or structure may be exempt from public inspection subject to the requirements of VFOIA.

**§71055. Specifications of Equal Brand or Acceptable Substitute.**


Specifications for all supplies or Services shall comply with the following provisions:

- A. Unless otherwise provided, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named. It conveys the general style, type, character, and quality of the article desired and shall be regarded merely as a standard. Any other product determined by the Authority to be an equal or acceptable substitute for that specified, considering quality, workmanship, and economy of operation and suitability for the purpose intended shall be considered responsive to the specification.
- B. The Authority shall be the sole judge as to the acceptability of any such equal or substitute. It is the responsibility of the Requesting Division in consultation with their end users to determine the acceptability of a substitute product. The reasons for rejection of any substitute shall be documented and become a part of the purchasing record.

**§71060. Comments Concerning Specifications.**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the needs of the Authority, and shall not be unduly restrictive.

All comments concerning specifications originating from within the Authority or from potential Vendors shall be directed to the Purchasing Manager. The Purchasing Manager shall determine all decisions concerning specifications.

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**§71065. Tie Bids.**

In the case of a tie Bid, preference shall be given to goods, Services and Construction produced in Prince William County or provided by Prince William County persons, firms or corporations if such choice is available. In the event there is no Prince William County Bidder, a preference shall be given to a Virginia Bidder. In the event there is no Prince William County or Virginia Bidder, or this does not resolve the tie, preference shall be given to the Bidder whose goods contain the greatest amount of recycled content. In the event no permissible method will be effective in resolving the tie, a written determination shall be made and award may be made by drawing lots.

A record shall be made of all Invitations for Bids on which tie Bids are received showing at least the identification number of the IFB; the supply, Service or Construction being requested, and a listing of all the Bidders and prices submitted. A copy of each record shall be sent to the Authority's attorney for review and guidance.


**§71070. Severability.**

If a provision of these regulations is or becomes illegal, invalid or unenforceable in any jurisdiction, it shall not affect:

1. The validity or enforceability in that jurisdiction of any other provision of these regulations; or
2. The validity or enforceability in other jurisdictions of that or any other provision of these regulations.

**§71075. Competitive Preference for Virginia Firms.**

Whenever the lowest responsive and responsible Bidder is a resident of any other state and such state under its laws allows a resident Contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible Bidder who is a resident of Virginia and is the next lowest Bidder (Code of Virginia, §2.2-4324B). If the lowest responsive and responsible Bidder is a resident of any other state and such state under its laws allows a resident Contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible Bidders who are residents of Virginia. If the lowest Bidder is a resident Contractor of a state with an absolute preference, the Bid shall not be considered. The Authority may rely upon the list posted and maintained on the website of the Virginia Department of General Services to determine those states with an absolute preference for their resident Contractors and those states that allow their resident Contractors a percentage preference, including the respective percentage amounts. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

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**Division VII Chapter 2**

**Chapter 2 METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS.**

Sections.

- 72005. General.
- 72010. Purchases of Less Than \$10,000.
- 72015. Purchases of \$10,000 or More.
- 72020. Cooperative Purchasing.
- 72025. Blanket Purchase Orders.
- 72030. Open Purchase Agreements.
- 72035. Sole-Source and Sole-Product Purchases.
- 72040. Emergency Purchases.
- 72045. Public Auction Sales.
- 72050. Unsolicited Proposals.
- 72055. Exempt Items.
- 72060. Special Procurements.


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 APPROVED BY BOARD OF DIRECTORS

**§72005. General.**

- A. All purchasing of Supplies, Services and Construction shall be made in accordance with the provisions of the Code of Virginia and by these regulations. No employee, department or Division shall evade or circumvent the dollar limits or requirements contained herein.
- B. Except as provided herein, no Purchases shall be transacted by the Procurement Department or by Delegated Employees in other Divisions without a properly executed and approved Purchase Order.
- C. Requirements shall not be artificially divided (splitting) to avoid competitive bidding requirements. The placement of multiple orders below a particular bidding threshold during a shorter than reasonable time period or with multiple vendors for the same, similar or related goods or services in order to avoid using the appropriate procurement method constitutes an improper splitting of orders.

PO's improperly created by splitting may be cancelled at the direction of the Purchasing Manager, Purchases already made by splitting orders shall be treated as unauthorized Purchases and documented



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and forwarded using the same procedures as Section 71030 paragraph C. Employees splitting purchases are subject to disciplinary action up to and including termination.

- D. To assist the Procurement Department in its efforts to allow competition to the degree practicable and in the best interest of the Service Authority and to formulate valid Specifications and make legitimate evaluations, the Requesting Division shall provide information to the Procurement Department as needed.

**§72010. Purchases of Less Than \$10,000.**

- A. Except for stocked items, restricted items or items designated to be purchased under a Contract, purchases of less than \$10,000 may be made directly by the Delegated Employee in the originating Division without documented competition. Professional judgment, market conditions, price and experience with Vendor performance shall be assessed in awarding the Purchase. The Best Value for the Authority shall be sought in all Purchases. Orders utilizing existing Contracts and standard terms and conditions shall be employed whenever practicable. Every Purchase under \$10,000 shall be properly documented and records retained. Purchases of similar items through this process shall not exceed \$50,000 per year without prior approval from the Purchasing Manager. The Procurement Department shall regularly review such Purchases in order to ensure compliance with Service Authority regulations.


**§72015. Purchases of \$10,000 or More.**

- A. Purchases of \$10,000 or more and less than \$30,000:

For Purchases of Supplies or Services by the Procurement Department between \$10,000 and \$30,000, three (3) or more quotes or Proposals shall be solicited, if practicable. Subject to their training, experience and qualifications, the Procurement Department may authorize the originating Division to solicit and evaluate the quotes and Proposals. The Procurement Department shall document each PO issued using a quote summary sheet. This sheet shall be electronically attached to the order. The quote summary sheet shall provide: Contact information of Vendors from whom quotes were solicited; whether or not the Vendors responded; justification for not obtaining quotes (if applicable); and, pricing information provided by Vendors. Final approval and purchasing authority will remain in the Procurement Department.

- B. Competitive Purchases of \$30,000 or more and less than \$100,000:

For Purchases of Supplies or Services between \$30,000 and \$100,000, four (4) or more quotes or Proposals shall be solicited by means of written informal Solicitation. The Procurement Department shall document each awarded Contract using a quote summary. The quote summary shall be electronically attached to the order. The quote summary sheet shall provide: Contact information of Vendors from whom quotes were solicited; whether or not the Vendors responded; justification for not obtaining quotes (if applicable); and, pricing information provided by Vendors. Public notice shall be given as required by §2.2-4303 of the VPPA. Informal Solicitations shall be posted to the Service Authority's website. Final approval and purchasing authority will remain in the Procurement Department.

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C. Purchases of \$100,000 or more:

All Purchases of Supplies or Services estimated to be \$100,000 or more shall be made on the basis of competitive sealed bids or competitive negotiations, except as may be otherwise provided in these regulations. Competitive sealed bids and proposals are regulated by Chapter 4 of these regulations.

The Purchasing Manager shall establish procedures for maintaining a public record of all quotes or Proposals solicited and received and shall indicate in the record which Proposal was accepted.

D. Regardless of any existing Contracts for Professional Services, the purchase of professional design services shall be by separate formal solicitation whenever the cost of such services for a particular project is estimated to be greater than \$1,000,000.

E. For any Purchase over \$50,000 awarded to a Vendor that has not provided any Service to the Authority within the preceding 5 years, the Procurement Department shall document the new Vendor registration process. This process will include:

- a. Verification of the existence of the company (through State and/or local business license and registration)
- b. Formal inquiry by Procurement on the Vendor's credit standing
- c. Review of the Federal and State debarred list
- d. Reference checks
- e. Written justification if any of the above are not performed


**§72020. Cooperative and Joint Purchasing.**

A. Subject to the provisions of the Code of Virginia, the Authority may participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more other public bodies to increase efficiency or reduce administrative expenses.

B. Except where prohibited by the Code of Virginia and determined by the Purchasing Manager to be in the best interest of the Authority, the Authority may purchase Supplies or Services at the same price and under the same conditions obtained by other local public bodies, provided the general provisions of these regulations have been followed by the other public body and the product, conditions and price offered to the other public body are extended identically to the Authority. Nothing in these Purchasing Regulations shall preclude the Service Authority from seeking competition and establishing its own contracts for the goods and services required by the Authority, even when such goods and services are available through the contracts of other public bodies.

C. Except where prohibited by the Code of Virginia, it is the intent of the Authority that when appropriate, all Solicitations or Contracts be cooperative procurements as provided for in the VPPA.

D. Subject to the provisions of the Code of Virginia, the Authority may participate in, sponsor, conduct, or administer a joint 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

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territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

**§72025. Blanket Purchase Orders.**

- A. A Blanket Purchase Order is a Purchase Order for the recurring purchase of Supplies or Services from a particular Contractor and is a specific form of delegation of purchasing authority. The Procurement Department shall establish a limit for the fiscal year for each Blanket Purchase Order, which may not be exceeded without the approval of the Purchasing Manager.
- B. Persons authorized by the Purchasing Manager in writing, may release Purchase Orders against Blanket Purchase Orders subject to budgetary constraints and Division Director approval.
- C. No Blanket Purchase Order shall be construed to constitute a Contract with a Contractor for the full estimated amount of the Purchase Order. A contractual obligation shall exist with any Contractor only to the extent that Supplies or Services shall have been ordered in accordance with this section and have actually been delivered or performed within the specified time at the specified quantity, quality and price as noted on the Purchase Order. The Delegated Employee shall be responsible for ensuring compliance (See Section 73145).

**§72030. Open Purchase Agreements.**

- A. Open Purchase Agreements (OPA) are Contracts for individual Purchases that do not exceed \$500.00. Items purchased based on an Open Purchase Agreement will be those which are needed immediately and the time required to process a Requisition will deter or interfere with the Work for which the supply or Service is required. Personnel shall not purchase items to be stocked or to replenish stock by use of an Open Purchase Agreement.
- B. Open Purchase Agreements will be established, approved and administered by the Procurement Department.
- C. Each Division Director will provide a list to the Director of Management and Budget of persons who have authority to purchase from Open Purchase Agreement accounts. Each receipt ticket shall be signed by an authorized individual and the Division Director and coded to the proper account code.
- D. It shall be the responsibility of the individual end user to not make Unauthorized Purchases.
- E. Each Division Director and/or Designee shall review and approve in writing all purchases made by their employees to ensure compliance with these requirements. Procurement shall audit OPA purchases by selecting a sample of accounts payable batches paying for OPA activity and reviewing the backup document in detail to determine that the items purchased and employees making the purchase conform to Service Authority procedures for OPA's.

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**§72035. Sole-Source and Sole-Product Purchases.**

- A. Where Services or Supplies are only practicably available from a single source, either because of legal requirements, specific patents or copyrights, peculiar qualifications and skills, technical Specifications (see Section 71060 for guidelines on developing Specifications) or other reasons, such Services or Supplies may be negotiated and awarded to the sole source without competition.
- B. A written notice from the Division Director will be provided to the Procurement Department stating the reason only one source was determined to be practicably available, and identifying the supply, Service or Construction to be purchased, the Contractor selected and the date on which the Contract was or will be awarded. This notice shall be maintained in the records of the Procurement Department. The Purchasing Manager shall make the final determination on use of Sole Source. Sole Source procurements above \$100,000 shall be approved by the General Manager and by the Purchasing Manager for Purchases under \$100,000.
- C. The Purchasing Manager or his designee is authorized to enter into direct Negotiations with the Sole Source supplier to obtain terms and conditions determined to be in the best interest of the Authority. A record of Negotiations with the Sole Source supplier will be maintained.
- D. The Notice of Award shall be posted on the Procurement Department bulletin board, the Service Authority website, the Department of General Services' central electronic procurement website or other appropriate websites on the day of award or the day on which such an award is to be announced, whichever occurs first. The notice shall remain posted for one week.

**§72040. Emergency Purchases.**

Emergency Purchases shall be made with as much competition as is practicable under the circumstances:

- A. If an Emergency occurs during office hours, the staff, with the approval of Division Director or Designee, where possible, shall notify the Purchasing Manager and he/she shall purchase Supplies or Services directly.
- B. If an Emergency occurs after office hours, staff shall, with the approval of the Division Director or designee, purchase the necessary Supplies or Services. The Division Director shall notify the Purchasing Manager, as soon as possible after the Emergency situation.
- C. The Division Director shall forward a written determination of the basis for the Emergency, the selection of the particular Contractor and a copy of the delivery record to the Purchasing Manager to include in the Contract file. The notice shall state the Contract has been or is being awarded on an emergency basis, identifying the Purchase, the identification number of the Contract file, the Contractor selected and the date on which the Contract was or will be awarded. This notice shall be posted on the Procurement Department bulletin board, the Service Authority website, the Department of General Services' central electronic procurement website or other appropriate websites the day of the Contract award or the decision to award is announced, whichever occurs first, or as soon thereafter as is practicable.

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D. If, upon subsequent review, the Purchasing Manager determines that no Emergency existed, the Purchasing Manager shall forward such determination to the Director of Management and Budget. If upon determination by the Director of Management and Budget that no Emergency existed, the Purchase will be handled as an Unauthorized Purchase and forwarded to the General Manager for possible disciplinary action. Emergency procurements of \$100,000 or more require the approval of the General Manager.

**§72045. Public Auction Sales.**


Upon a determination made in advance and set forth in writing by the Purchasing Manager that the Purchase of goods, products or commodities from a public auction sale is in the best interest of the public; such items may be purchased at the auction. The written statement shall document the basis for the determination.

**§72050. Unsolicited Proposals.**

Except as provided for in the Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA") Va. Code § 56-575.1 et. seq., as amended and Section 78020 of these Purchasing Regulations, the Service Authority is not authorized to accept unsolicited proposals. Any unsolicited proposal, other than those authorized under the PPEA, shall be treated as informational only and shall not be considered a bona fide offer. Staff shall not evaluate such a proposal as that could be considered prejudicial to that person's judgment in evaluating proposals pursuant to a subsequent RFP.

**§72055. Exempt Items.**

- A. Notwithstanding any other provision of these regulations, the items listed in this section are exempt from the requirements of competitive bidding. The Purchasing Manager, as deems appropriate, may purchase them.
- B. The exempt items and categories of items are as follows:
1. Advertising, excluding Contracts with advertising agencies to prepare ad layouts, pamphlets, etc.;
  2. Books, manuscripts and pamphlets;
  3. Legal Services and costs of litigation;
  4. Mediation, arbitration and facilitation services;
  5. Catering services;
  6. Dues, subscriptions and publications;
  7. Educational films;
  8. Freight charges;

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9. Governmental fees and charges (including permits);
10. Inter-agency Purchases;
11. Investment of Public Funds (see Va. Code §2.2-4400 through §2.2-4518);
12. Insurance claims;
13. Master Plan Utility Adjustments (MPUA's);
14. Postage;
15. Purchase and rental of real property;
16. Telephone and telegraph service (standard not custom);
17. Training, educational services and conferences;
18. Travel, room and board;
19. Tuition;
20. Utility services (unless competitive utility services or equipment are available);
21. Purchase of artwork, displays, and exhibits (including services related to such Purchase);
22. Perishable food items;
23. Maintenance agreements on software or equipment purchased pursuant to these regulations.

C. Negotiation of the terms of any financing agreements for a lease-purchase of Supplies or equipment, whether or not they themselves have been competitively acquired, shall be exempt from any requirement of competitive bidding. All conditions for renewal and costs for termination shall be set forth in the lease-purchase agreement. The Director of Finance shall ensure that a cost-benefit analysis is conducted to establish that a lease-purchase agreement is in the best financial interest of the Authority before approving lease-purchase-financing agreements.

Lease-purchase agreements shall not be used to circumvent normal purchasing procedures.

D. Services rendered in the performance of Work that is original and creative in character in a recognized field of artistic endeavor or educational exhibitions shall be exempt from competitive bidding.

E. Upgrades or enhancements to Supplies or equipment owned or leased by the Authority if one supplier can only supply such upgrades or enhancements shall be exempt from the requirement of competitive bidding. Acquisition of wholly new or additional Supplies or Services shall be subject to these regulations.

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F. Competition is not required when acquiring Supplies and Services;


1. Which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department of the Blind and Visually Impaired,
2. Which are performed or produced by nonprofit employment services organizations that offer transitional or supported employment services serving individuals with disabilities, or
3. Which are performed or produced by agencies of the Commonwealth of Virginia.

Notwithstanding the exemption of the above items, competitive bidding may be employed in the procurement of any exempt Supplies or Services.

**§72060. Special Procurements.**

Notwithstanding any other provisions of these regulations, the Purchasing Manager in consultation with the General Manager may with prior public notice initiate a procurement above \$100,000 where the Purchasing Manager determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this regulation shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular Contractor shall be included by the Purchasing Manager in the Contract file, and a report shall be made to the General Manager at least annually describing all such determinations made subsequent to the prior reports.



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**Division VII Chapter 3**

**Chapter 3 CONTRACTS.**

Article.	Sec.
1. General.	73105.
2. Contract Provisions.	73205.

**Article 1 General.**

Sections.


- 73105. Approval of Annual Budget Deemed Approval to Enter into Contracts.
- 73110. Approval of Contracts under \$10,000.
- 73115. Approval of Contracts at Least \$10,000 but Less than \$100,000.
- 73120. Approval of Contracts Exceeding \$100,000.
- 73125. Approval of Construction or Professional Services Contracts Exceeding \$200,000.
- 73130. All Contracts to be in the Name of the Service Authority.
- 73135. Legal Review of Certain Contracts.
- 73140. Contracts to be in Writing.
- 73145. Contract Administration.
- 73150. Changes and Modifications to Contracts.

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 APPROVED BY BOARD OF DIRECTORS

**§73105. Approval of Annual Budget Deemed Approval to Enter Into Contracts.**

Approval of the annual operating budget by the Board of Directors is deemed as Board approval to enter into Contracts for execution by the General Manager or designee, and other Purchases not otherwise specifically reserved to the Board by this section.

All Solicitation and Contract documents, terms and conditions must follow the drafting formats and guidelines established by the Purchasing Manager. Only personnel authorized and delegated in writing shall approve contracts on behalf of the Authority. No person shall approve a Contract which does not conform to these regulations.

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**§73110. Approval of Contracts under \$10,000.**

Contracts and other Purchases less than \$10,000 may be approved and executed by the Division Director in the originating Division unless review by the Procurement Department is requested. The Division Director is responsible for all terms and conditions of the executed Contract, which must still meet the basic requirements of Contracts as outlined herein.

**§73115. Approval of Contracts at Least \$10,000 but Less than \$100,000.**


Competitive and non-competitive Contracts and other procurements with an aggregate value greater than \$10,000 and less than \$100,000 or task orders issued under a Board approved Contract, must be approved and executed by the Purchasing Manager, or by those employees delegated in writing by the Purchasing Manager, unless the Board of Directors authorizes another person to do so.

**§73120. Approval of Contracts Exceeding \$100,000.**

All competitive and non-competitive Contracts for \$100,000 or more to which the Authority is a party shall be in writing, recommended by the Purchasing Manager, and approved by the General Manager or his designee. The Authority's Purchase Order may be used as a bona fide Contract for Supplies and Services.

**§73125. Approval of Construction or Professional Services Contracts Exceeding \$200,000.**

- A. Construction and Professional Services Contracts or their associated Task Orders for \$200,000 or more, or which are anticipated to exceed \$200,000 require Board of Directors approval.
- B. Board approved contingency shall not exceed: (i) 10% for Contracts of \$1,500,000 or less; and ii) 5% for amounts greater than \$1,500,000, unless waived by the Board.
- C. Request for a Contract approval by the Board must be recommended by the Division Director, the Purchasing Manager, the Director of Management and Budget and the General Manager before submission to the Board of Directors.
- D. All Contracts that require Board of Directors approval must be in a form approved by the Authority's attorney or his/her designee.
- E. Contracts shall be executed by whomever the Board shall direct. In the event the Board shall fail to authorize a specific individual to execute a Contract on its behalf, the Chairman of the Board or the General Manager or his designee may make execution.
- F. Any Change Order or Modification to a Construction Contract, Professional Services Contract, Task Order, not previously approved by the Board of Directors, which increases the total Contract value above \$200,000 requires the General Manager's approval.
- G. Changes to any Contract or Task Order in excess of 25% of the original Contract amount or \$50,000, whichever is greater, requires Board of Directors approval per section 73150.
- H. Any Change Order or Modification of \$100,000 or more, which does not require the approval of the Board of Directors, shall require approval of the General Manager. Except as provided for in section 73150, a Change Order or Modification less than \$100,000 may be approved by the Division Director.
- I. Adjustments to Contract rates or unit prices are considered Change Orders and are subject to the same approval thresholds as other Change Orders unless otherwise provided for in the Contract.

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**§73130. All Contracts to be in the Name of the Service Authority.**

All Contracts shall be in the name of the Prince William County Service Authority.

**§73135. Legal Review of Certain Contracts.**

All Contracts resulting from competitive sealed bids or competitive sealed negotiations, on non-standard forms, shall be in the form approved by the Authority's attorney prior to execution, except where the Contract is a lawful renewal of an existing Contract to which there has been no material change. The Purchasing Manager shall determine the need for Authority's attorney's office to review all other Contracts in excess of \$10,000. Division Directors shall determine the need for Authority's attorney's office to review Contracts less than \$10,000.


**§73140. Contracts to be in Writing.**

Unless the Purchasing Manager establishes a classification of Contracts to which this section shall not apply, all Contracts to which the Authority is a party shall be in writing.

**§73145. Contract Administration.**


A. Unless otherwise specified by the General Manager, the Purchasing Manager is the Contracting Officer for all Contracts entered in the Authority's name. However, each Division Director or his/her designated representative (as provided in writing to the Purchasing Manager), shall be responsible for administration of those Contracts relating to its operation unless otherwise directed by the General Manager. The Contract Administrator shall receive appropriate Contract Administration training through the Procurement Department and participate in the creation of the Contract Administration Plan. The Contract Administrator shall acknowledge the receipt of any Contract and certify in writing that no conflict of interest exists regarding the administration of the Contract. The Contract Administration Plan and the certification shall become a part of the Contract file. The Contract Administrator shall perform at a minimum, the following administrative functions:

1. Initiates and holds a project kick-off meeting with the supplier;
2. Receives a project schedule approved by the Service Authority or designee prior to kick off meeting;
3. Submits Requisitions into purchasing software and receives approval prior to authorizing work under the Contract;
4. Serves as a primary point of contact with Vendor to coordinate technical issues and answer Vendor questions;
5. Monitors expenditures (including work in progress) to ensure that it is in accordance with

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authorized contractual and budgetary constraints;

6. Checks the amount remaining on the Purchase Order to ensure available funds, approves invoices, and ensures that delivery dates, prices, packaging, serial numbers and item numbers correspond with Contract;
  7. Reviews and approves status reports as required by Contract. Contract Administrator shall require the following information on a minimum bi-monthly basis: budget of hours and dollars; cost and hours incurred to date; estimated cost and hours to complete; budget and schedule analysis; projected completion date;
  8. Approves or disapproves all deliveries of Supplies, Services and Construction and the performance thereof in accordance with the Contract;
  9. Maintains documentation regarding any Change Orders including full pricing estimate breakdowns. These breakdowns will include: estimated number of hours; estimated quantity and type of material; rates used in determining prices; hourly breakdown by labor class; details of materials take-off; disclosure of any mark-ups or time or schedule changes;
  10. Monitors and ensures Contractors comply with Contract Specifications, schedules and dollar limits during the performance of the Contract through the receipt of regular status reports;
  11. Approves invoices for payment less any disputed amounts;
  12. Serves as primary point of contact for the Procurement and Accounting Departments;
  13. Provides an assessment of Contractor performance prior to Contract renewal or substantial completion;
  14. Follows Contract closeout procedures to include, at a minimum, use of a checklist to ensure all required items are completed and all Work is in compliance with contract requirement;
  15. Notifies Purchasing Manager in writing of Contract closeout, and furnishes, for inclusion in the Contract file, (1) a notice of satisfactory or unsatisfactory completion of performance or delivery; (2) usage of any contingency budget; and, (3) documentation of receipt of all deliverables.
- B. The Contract Administrators will inspect all goods and Services delivered, refusing any non-compliant items. The Contract Administrator shall immediately bring any discrepancies in deliveries or in the performance of the Contract to the attention of the Procurement Department in writing. Failure to satisfactorily resolve the identified deficiency shall be brought to the attention of the Purchasing Manager, who shall institute a formal complaint with the Contractor/Vendor. If satisfaction is not forthcoming, the Purchasing Manager is authorized to take additional action to terminate the contract.
- C. In order to maintain the integrity of the Contract and the role of the Contracting Administrator, the


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designated Contract Administrator shall not:

1. Make commitments or promises to any Contractor relating to a Contract;
  2. Write Contract requirements around the product or capacity of one source;
  3. Solicit Proposals except as may be authorized under these regulations;
  4. Modify any of the stated terms of the Contract;
  5. Approve or sign supplemental agreements, Modifications and Change Orders without written delegated authority;
  6. Take action with respect to termination, except to notify the Purchasing Manager that termination is desired and to assist with the termination process as requested;
  7. Give guidance to a Contractor, either orally or in writing which may be interpreted as a change in scope or terms of the Contract;
  8. Discuss procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement;
  9. Release proprietary information to another firm; nor,
  10. Direct a Contractor to begin Work prior to Contract award date and receipt of an approved Purchase Order.
- D. Notwithstanding any other provision of these regulations, the General Manager may specifically provide for Contract Administration by persons other than Service Authority employees.

**§73150. Changes and Modifications to Contracts.**

- A. If additional appropriations are not required and the cost of the cumulative total of changes does not exceed twenty-five percent (25%) of the initial Contract price or \$50,000, whichever is greater, and funding is certified to be available, then Change Orders and Modifications of the Contract may be made in accordance with the delegations granted in these Purchasing Regulations.
- B. Changes not provided for herein shall be made only by express authority of the person or body having authority to execute the Contract. Changes whether future or current to price, time and schedule shall be incorporated.
- C. Any Change Order or Modification to a Contract, Purchase Order or Task Order, not previously approved by the General Manager, which increases the total Contract value above \$100,000, requires the approval of the General Manager.

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- D. When deemed in the best interest of the Service Authority, only the General Manager may issue a Change Order without the agreement of the Contractor. In such event, the Contractor shall continue work on the Contract until completion. Compensation for such a Change Order shall be based on the change in the Contractor’s documented costs plus an allowance for a reasonable profit on any additional work.
- E. No Contract shall be deemed changed by the Contract Administrator or the Contractor without a properly executed Change Order. Any change by the Contractor in the Work, or action that would cause future Work to differ from the Contract, prior to the receipt of a properly executed Change Order shall be “at risk.” All Change Orders shall be prepared and approved at the time it becomes apparent that a Change is necessary. Contractors and Contract Administrators may not withhold proposed Change Orders until the end of the Work.

**Article 2 Contract Provisions.**

Sections.

- 73205. Terms and Conditions Applied to All Contracts.
- 73210. Termination for Default.
- 73215. Termination for Non-Funding.
- 73220. Termination for Convenience of the Authority.
- 73225. Termination by Mutual Consent.
- 73230. Examination of Records.
- 73235. Employment Discrimination by Contractors Prohibited.
- 73240. Non-Discrimination Against Faith-Based Organizations.
- 73245. Verification of Legal Presence for Employment.
- 73250. Drug-free Workplace to be Maintained by Contractor.
- 73255. Payment Clauses to be Included in Contracts.
- 73260. Foreign and Domestic Businesses Authorized to Transact Business in State.


**§73205. Terms and Conditions Applied to All Contracts.**

Every written Contract to which the Authority is a party shall contain the following provisions, where applicable, in addition to such other terms and conditions as may be agreed to by the parties. Each Contractor shall include these provisions in any subcontract with limits as required by the Virginia Public Procurement Act. The Contractor shall include the provisions of Sections 73245 through 73255 in all subcontracts regardless of value.

The Service Authority may revise termination clauses in accordance with provisions of applicable law.

**§73210. Termination for Default.**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the

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Contract, the Authority shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models and reports prepared by the Contractor under the Contract shall, at the option of the Authority, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

**§73215. Termination for Non-Funding.**

A clause shall be included in all Service Authority Contracts:

If funds are not appropriated for any succeeding fiscal year subsequent to the one in which the Contract is entered into, for the purposes of the Contract, then the Service Authority may terminate the Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the Service Authority shall be liable only for payments due through the date of termination.

**§73220. Termination for Convenience of the Authority.**

Permit Work or delivery under the Contract may be terminated, in whole, or from time to time in part, whenever the General Manager shall determine that such termination is in the best interest of the Authority. The Service Authority may revise termination clauses in accordance with provisions of applicable law.

The Authority shall provide fair and reasonable compensation to any Contractor who is so terminated. Such compensation together with payments previously made shall not exceed the amount of the original Contract including any approved price Change Orders.

**§73225. Termination by Mutual Consent.**

During performance of the Contract, if the Authority and the Contractor mutually agree that it would be in the best interest of both parties to agree to terminate the Contract, then fair and reasonable compensation shall be negotiated and the Contract deemed completed.

**§73230 Examination of Records.**


The Contractor shall agree that the Purchasing Manager or a duly-authorized agent shall, until the expiration of three (3) years following the final payment on the Contract, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Contractor involving transactions related to the Contract in question.

If there is litigation or arbitration involving the Contract, the above-described rights of access, examination and copying shall continue until any litigation, appeals, claims or arbitration shall have been finalized.

**§73235. Employment Discrimination by Contractors Prohibited.**

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



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- A. The Contractor will not discriminate against any employee or applicant for employment because of, race, religion, color sex, national origin, age, disability, status as a disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification 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.
- B. 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.
- C. Notices, advertisements and solicitations placed in accordance with federal laws, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor shall 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.


**§73240. Non-Discrimination Against Faith-Based Organizations.**

The Authority shall not discriminate against faith based organizations on the basis of the organization’s religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except that public funds may not be spent for religious worship, instruction or proselytizing, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

A faith-based organization (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to an approved 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 (ii) shall be subject to the same rules as other organizations that contract with the Service Authority 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 the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

**§73245. Verification of Legal Presence for Employment.**

In order to be eligible for qualification and performance under any Contract greater than \$50,000 issued by the Service Authority, the Contractor must register and participate in a Federal Electronic Work Verification Program or similar electronic verification of work authorization program. Contractors and subcontractors are required to verify the employment status of employees and independent Contractors and are prohibited from employing or contracting with an individual who is not determined to be legally eligible for employment in the United States as determined through the verification of the individual’s status. Every written contract shall provide that the contractor does not, and shall not during the performance of the contract for goods, services or Construction for the Authority, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

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**§73250. Drug-free Workplace to be Maintained by Contractor.**


During the performance of a 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; and (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 the Contract awarded to the 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.

**§73255. Payment Clauses to be Included in Contracts.**

Any Contract awarded by any state agency, or any Contract awarded by any agency of local government in accordance with §2.2-4352, shall include:

1. A payment clause that obligates the Contractor to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the Service Authority for work performed by the subcontractor under that Contract:
  - a. Pay the subcontractor for the proportionate share of the total payment received from the Authority attributable to the work performed by the subcontractor under that Contract; or
  - b. Notify the Authority and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor’s payment with the reason for nonpayment.
2. A payment clause that requires (i) individual Contractors to provide their social security numbers and (ii) proprietorships, partnerships and corporations to provide their federal employer identification numbers.
3. An interest clause that obligates the Contractor to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Service Authority for Work performed by the subcontractor under that Contract, except for amounts withheld as allowed in paragraph 73255.
4. An interest rate clause stating “Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month.”


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Any such Contract awarded shall further require the Contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Service Authority. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

**§73260. Foreign and Domestic Businesses Authorized to Transact Business in State.**

Any Contractor desiring to do business with the Service Authority must be authorized to transact business in Virginia as a domestic or foreign business entity as required by the State Corporation Commission. Such status must be maintained during the term of any Contract between the Contractor and the Service Authority.

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**Division VII Chapter 4**

Chapter 4 COMPETITIVE BIDS AND PROPOSALS.

Article.	Sec.
1. General.	74105.
2. Competitive Sealed Bids.	74205.
3. Competitive Sealed Proposals.	74305.

ADOPTED: AUGUST 10, 1989, BOD Res. Num. 89-8-29  
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 REVISED: JUNE 11, 2009, BOD Res. Num. 09-6-18  
 REVISED: MARCH 8, 2012, BOD Res. Num. 12-03-08  
 REVISED JUNE 8, 2017 BOD Res. Num. 17-06-34  
 APPROVED BY BOARD OF DIRECTORS


**Article 1 General.**

- Sections.
- 74105. Formal Solicitations.
  - 74110. Prequalification of Bidders.
  - 74115. Prequalification of Offers.
  - 74120. Bid Security.
  - 74125. Performance and Payment Bonds.
  - 74130. Award and Rejection.
  - 74135. Non-Responsibility.
  - 74140. Bid Correction or Withdrawal.
  - 74145. Protests.
  - 74150. Remedies.
  - 74155. Proceeding for Suit.
  - 74160. Authority to Debar or Suspend.

**§74105. Formal Solicitations.**

Unless otherwise permitted, all purchases of \$100,000 (\$60,000 for Professional Services) or more shall be made by formal Solicitations requesting Competitive Sealed Bids or Competitive Sealed Proposals.


Competitive Bids or Proposals, where required, shall be solicited by the Procurement Department. The Purchasing Manager shall recommend competitive Solicitation methods for approval by the General Manager. Such Solicitations shall be conducted in accordance with Article 2 or Article 3 of this chapter, as applicable. Solicitations shall be designed to obtain the amount of competition determined to be in the best interest of the Service Authority and shall be in compliance with all provisions of these regulations.

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Use of the term “Bidder” in these regulations shall be interpreted to include those responding to Invitation for Bid, Requests for Proposal, Requests for Qualifications, Requests for Information, and Request for Quotations.

**§74110. Prequalification of Bidders.**

- A. The General Manager may, in his discretion, when he believes it to be in the best interest of the Authority, direct the Purchasing Manager to require prequalification of prospective contractors to bid on a specific project for the Authority. The purpose of such prequalification shall be to limit prospective bidders for such project to contractors who show themselves to be qualified to perform the specified project. When the prequalification policy is used for a project, only contractors who have complied with the prequalification policy and have been determined qualified will be eligible to submit bids for the project.
- B. With the approval of the General Manager, the Authority shall develop the appropriate documentation for potential contractors to apply for prequalification, which may prescribe in such documentation specific mandatory requirements contractors must meet in order to prequalify for specific projects.
- C. In conducting prequalification of potential contractors, the Authority shall follow this prequalification policy and the requirements of Code of Virginia §2.2-4317.
- D. The documentation used in the process of prequalification shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The documentation shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The documentation shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor as part of its prequalification application shall be considered a trade secret or proprietary information subject to the provisions of subsection F of Code of Virginia §2.2-4342.
- E. In all instances in which the Authority requires prequalification of potential contractors for projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submissions shall be sufficiently in advance of the date set for the submission of bids or proposals for such project to allow the prequalification process to be accomplished.
- F. At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement for which the prequalification applies, the Authority 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.
- G. A decision by the General Manager under this prequalification policy shall be final and conclusive unless the contractor appeals the decision as provided in Code of Virginia §2.2-4357.

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- H. The Authority may deny prequalification to any contractor only if the Authority finds one of the following:
1. 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 the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
  2. The contractor does not have appropriate experience to perform the project in question;
  3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten (10) years for the breach of contracts for governmental or nongovernmental projects, including, but not limited to, design-build or construction management;
  4. The contractor has been in substantial noncompliance with the terms and conditions of prior contracts with a public body without good cause. If the Authority has not contracted with a particular contractor in any prior contracts, the Authority may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable contracts with another public body without good cause. The Authority may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
  5. 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 contracting, including but not limited to, a violation of (i) Article 6 of the Virginia Public Procurement Act (§ 2.2-4367, et seq.), (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 or (iv) any substantially similar law of the United States or another state;
  6. 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;
  7. The contractor failed to provide to the Authority in a timely manner any information requested by the Authority relevant to 1 through 7 of this subsection.
- I. In determining if a contractor has the “appropriate experience” under Subsection H. 2. to be prequalified, the Authority may consider and use specific minimum experience requirements established by the General

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Manager for the specific project. The Authority may also consider the contractor's past performance on the projects that provide its past experience to determine if the projects provide the appropriate experience required.

- J. The provisions of this policy and its implementation are intended to be severable, and if any provision is deemed invalid, this shall not be deemed to affect the validity of other provisions.
- K. This prequalification policy does not apply to any procurement done under the Public-Private Education Facilities & Infrastructure Act of 2002 ("the PPEA"), Code of Virginia §56-575.1 et seq., and is in no way intended to limit the Authority's discretion in the way it selects contractors under the PPEA.
- L. A determination that a contractor is prequalified does not necessarily preclude the Authority from determining that such contractor is not responsible following bid opening. Among other things, a change in circumstances or change in information, as well as different criteria allowed to be considered for prequalification versus responsibility, may lead to a different result. For example, a prequalified contractor that becomes debarred between prequalification and bid opening, or a contractor who is subsequently discovered not to have been totally candid in answering its prequalification questionnaire, might be deemed non-responsible.
- M. Prequalification of a contractor to bid on one project does not prequalify that contractor to bid on a different project or mean that the contractor will necessarily be deemed to be a responsible bidder for a different project.
- N. Neither this prequalification policy nor its implementation by the Authority shall be deemed to create any contract right in any prospective contractor or to give any prospective contractor any right beyond that conferred by Code of Virginia §2.2-4317. All prospective contractors shall be responsible for their own expenses in applying for prequalification, and the Authority shall have no liability for any such expense.
- O. Failure of a Bidder to prequalify with respect to a particular purchase shall not bar the Bidder from seeking qualification as to future purchases or from bidding on purchases which do not require prequalification.


**§74115. Prequalification of Offers.**

When it is impractical to prepare a purchase description to support an award based on price, an invitation may be issued requesting the submission of Offers without prices, to be followed by an invitation requesting the submission of prices limited to those Bidders whose Offers have been prequalified under the criteria set forth in the first Solicitation.

**§74120. Bid Security.**

Except as for certain Construction Contracts (see Section 75010), the Purchasing Manager is authorized at his/her discretion to require each Bidder for Supplies, Services or Construction Contracts to submit with a Bid a



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certified check payable to the Service Authority for a sum not to exceed five percent (5%) of the Bid total, as a guarantee that the Bidder will enter into a contract if awarded. In lieu of a certified check, it shall be sufficient that the Bidder provide a corporate surety bond, in form and credit substance to be approved by legal counsel to the Authority, issued by a surety company legally authorized to do business in Virginia with a Best's Key Rating of at least A-:VII equal to the amount of any certified check, which would otherwise have been required, or cash escrow in the face amount required for the bond with a lending institution insured by the FDIC. The lesser of (i) the difference between the bid for which the security is written and the next low bid or (ii) the face amount of the bid bond shall be forfeited if the Bidder or Offeror is awarded the Contract and fails to enter into such Contract. Noncompliance with this section shall require the rejection of the Bid. Annual bid bonds may be accepted in lieu of bonds for individual Bids.

**§74125. Performance and Payment Bonds.**


- A. The Purchasing Manager may require any successful Bidder or Offeror for a Contract to execute a performance bond in an amount equal to one hundred percent (100%) of the contract price, solely for the protection of the Authority, conditioned upon the faithful performance of the Work in strict conformity with the Contract.
- B. The Purchasing Manager may require any Contractor to execute a payment bond in an amount equal to one hundred percent (100%) of the contract price for the protection of all entities who have and fulfill Contracts directly with the Contractor for performing labor or furnishing materials (including public utilities and reasonable rental equipment, but only for periods when used for the Work) in the prosecution of the Work provided for in the Contract and shall be conditioned upon the prompt and faithful payment for all material furnished or labor supplied in furtherance of the Work.
- C. Any performance or payment bond required hereunder shall be in the form of a certified check, a bond executed by a surety company legally authorized to do business as a surety in Virginia with a Best's Key Rating of at least A-:VII, or cash escrow in the face amount required for the bond by an institution insured by the FDIC, all in form and credit substance to be approved by legal counsel to the Authority.

**§74130. Award and Rejection.**

- A. Upon receipt, each Bid, Proposal or amendment thereto shall be time-stamped. Bids and amendments thereto shall be stored in a secure place until the date and time set for opening.
- B. Bids and amendments shall be opened publicly in the presence of one or more witnesses, at the time, date and place designated in the Solicitation. The amount of each Bid together with the name of each Bidder shall be recorded; the record, and each Bid, shall be open for public inspections subject to the provisions of Section 71050 of these regulations.
- C. Bids, Proposals or amendments thereto which are received after the time specified for the opening of Bids will neither be opened nor considered.
- D. The Purchasing Manager may waive any minor irregularity or Informality in any timely Bid.

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- E. The Purchasing Manager may reject any or all Bids and Proposals in whole or in part when such action is in the best interest of the Authority. The reasons for rejection shall be made a part of the contract file. Reasons for rejection include but are not limited to suppliers being non-responsible, Bids or Proposals being non-responsive, or the proposed price being clearly unreasonable. Unsuccessful Bidders or Offerors shall be advised of the reasons for rejection.
- F. Award shall be made to the lowest responsive and responsible Bidder or the most Qualified Offeror based upon the requirements set forth in the Solicitation, which may include special qualifications of potential Contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. When the terms and conditions of multiple bid awards are provided in the Solicitation, awards may be made to more than one Bidder. Award shall be made by the Purchasing Manager, except where authority to award or reject is given to some other person or reserved to the Board of Directors.
- G. The Contract shall be awarded with reasonable promptness by written notice to the successful Bidder. Nothing herein shall prevent the Purchasing Manager from giving notice of intention to award to the apparently successful Bidder, but such notice shall not constitute award. Bid/Proposals shall be valid for 90 days, unless otherwise specified in the specification, and maybe extended if mutually agreed.
- H. In the event only one responsive and responsible Bid is received for Supplies or Services, it must comply with all mandatory criteria set out in the Solicitation and represent fair value for the Authority in order to be considered competitive. Notwithstanding, the Authority reserves the right to cancel the Solicitation and solicit new Bids. Alternatively, the Bid may be accepted if the Purchasing Manager determines that the price Bid is reasonable and in the best interest of the Authority. Determination shall be made on the basis of price comparison, value analysis, prior price history, an engineering estimate, or other method that establishes the reasonableness of the price Bid. When the Purchasing Manager determines that the above methods of establishing price reasonableness are not feasible, Negotiations for a fair price may be authorized. Such Negotiations shall consist of detailed discussions with regard to the cost of labor, materials, overhead and profit. The Purchasing Manager shall establish a detailed cost/price objective that he determines to be in the best interest of the Authority, prior to the initiation of any Negotiations. Any Bidder who is party to such Negotiations shall be required to certify the price Proposal as complete, current, and accurate prior to the initiation of such Negotiations. A record of Negotiations shall be prepared upon the completion thereof, which shall detail the most significant considerations that resulted in the agreed upon contract price. No Negotiations may be conducted which would materially change the Specification, terms or conditions of the Work.
- I. All Bidders may be required to certify in writing at the time of Bid that the price being offered to the Authority in connection with the particular Solicitation is the price offered to the Bidder's most favored customer.

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**§74135. Non-Responsibility.**

- A. Following public opening and announcement of bids received on an IFB, the Purchasing Manager shall follow 74210 and shall determine whether the apparent low Bidder is responsible or non-responsible.
- B. Should the Purchasing Manager determine that the apparent low bidder is non-responsible, the Purchasing Manager shall follow the procedures set forth in section 2.2-4359. of the VPPA.

**§74140. Bid Correction or Withdrawal.**

- A. Any Bidder for Supplies, Services or Construction, may withdraw the Bid from consideration if the price bid was substantially lower than the other Bids due solely to a mistake therein, provided the Bid was submitted in good faith and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn. The Purchasing Manager shall require, and so state in the invitation, the following procedure for withdrawal of a Bid:
  - 1. The Bidder must give notice in writing of his claim of right to withdraw the Bid within two business days after the conclusion of the bid opening procedure.
  - 2. No Bid may be withdrawn under this section when the result would be to award the Contract on another Bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent (5%).
  - 3. No Bidder who is permitted to withdraw a Bid shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Bid was submitted.
- B. The Purchasing Manager may contest withdrawal of any Bid by any means provided by law. If withdrawal of the Bid is denied, the Purchasing Manager shall notify the Bidder in writing stating the reasons for the decision.

If the mistake and the intended correct Bid are clearly evident on the face of the Bid document, the Bid shall be corrected to the intended correct Bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the Bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.


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**§74145. Protests.**

- A. Any Bidder or Offeror desiring to protest the award of, or the decision to award, a Contract to any other Bidder or Offeror, shall submit a written protest to the Purchasing Manager, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Service Authority in the manner prescribed in the terms or conditions of the IFB or request for proposal. 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 days after posting or publication of the notice of such contract as provided herein and the VPPA. 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 days after those records are available for inspection by such bidder or Offeror.
- B. No protest shall be allowed for any claim for reason that the selected Bidder or Offeror is not a responsible party.
- C. Any protest shall state in detail the basis therefore, and the specific relief requested.
- D. The Director of Management and Budget shall personally decide all protests within ten (10) days of receipt thereof, and shall issue written findings as provided in this Article. This decision shall be final unless the Bidder or Offeror institutes legal action in accordance with §2.2-4364 of the Code of Virginia.

**§74150. Remedies.**

- A. In the event the Director of Management and Budget determines a decision to award a Contract is illegal, arbitrary or capricious prior to the contract award, or determines a protest to be well founded prior to award of a Contract, the Purchasing Manager shall be directed to cancel the proposed award or revise it to comply with said finding(s).
- B. If the Director of Management and Budget makes the determination required in subsection A of this section after a Contract has been awarded, the sole remedy shall be to declare the Contract void upon a finding that this action is in the best interests of the Authority. Where a Contract is declared void, the Contractor shall be compensated for the cost of any performance up to the time of such declaration. In no event shall the Contractor be entitled to lost profits. In no case may the protestor be awarded anticipated profits or the costs or expenses of protest or appeal of any decision to the courts.
- C. The validity of any Contract awarded in good faith in accordance with this section shall not be affected by any protest or appeal. Award of a Contract need not be delayed for the period during which a Bidder or Offeror may protest provided that, in the event of a timely protest, no award shall be made unless the Purchasing Manager determines it is necessary to proceed to award without delay to protect the public interest or unless the Bid or Offer would otherwise expire. §74155. Proceeding for Suit.


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**§74155. Proceeding for Suit.**

No suit at law or equity may be filed against the Board of Directors by any person unless the provisions of the Code of Virginia shall have been complied with.

**§74160. Authority to Debar or Suspend.**

- A. After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the Purchasing Manager shall have authority to debar an entity for good cause from consideration for award of Contracts. The debarment shall be for a period of time determined by the Purchasing Manager.
- B. The Purchasing Manager shall have authority to suspend an entity from consideration for award of Contracts if there is good cause. The suspension shall be for a period determined by the Purchasing Manager.
- C. The causes for debarment or suspension include but are not limited to the following:
  - 1. Conviction 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;
  - 2. Conviction indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a Contractor with the Authority;
  - 3. Conviction arising out of the submission of Bids or Proposals;
  - 4. Violation of contract provisions of a character which is regarded by the Purchasing Manager to be so serious as to justify debarment action including:
    - a. deliberate failure without good cause to perform in accordance with the Specification or within the time limit provided in the contract; or
    - b. 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;
  - 5. Any other cause the Purchasing Manager determines to be so serious and compelling as to affect responsibility as a Contractor, including debarment by another governmental entity.
- D. The Purchasing Manager shall issue a written decision to debar or suspend which shall:
  - 1. state the reasons for the action taken; and

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2. inform the debarred or suspended entity of its rights to review as provided in this section.

- E. A copy of the decision under subsection D of this section shall be mailed or otherwise furnished immediately to the debarred or suspended entity.
- F. A decision under subsection D of this section may be appealed to the Purchasing Manager within ten (10) calendar days of notice of debarment or suspension. The decision of the Purchasing Manager may be appealed within ten (10) calendar days thereof to the General Manager. The decision of the General Manager shall be final.

Article 2 Competitive Sealed Bids

Sections.

- 74205. General.
- 74210. Form of Submittal and Bid Opening.
- 74215. Cancellation.


**§74205. General.**

- A. Competitive sealed bids, where required, shall be solicited by the Procurement Department. IFB's shall be comprised generally of an invitation, instructions to Bidders, plans and Specifications for the Supplies, Services or Construction desired, and proposed contract conditions. They may include such other information, as the Purchasing Manager deems appropriate and necessary. No IFB for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor (a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to Virginia Code §38.2-1913.D).
- B. Public notice of the IFBs must be given at least ten (10) days prior to the date set for receipt of Bids. Bids shall be solicited from prospective Contractors by mailing IFB's, and/or by publication of notice of IFB's in a newspaper of general circulation, and by posting a copy of the IFB's on a bulletin board in a public place in the Authority's headquarters, by electronic means, and by other methods deemed appropriate by the Purchasing Manager. All notices shall be designed and intended to obtain as many Bidders who are reasonably able to meet the Specifications as possible, but no purchase shall be subject to challenge solely on the basis that a particular qualified Bidder was not solicited.
- C. Notwithstanding other provisions of this article, the Authority will follow the provisions of Sections 74105 through 74160 for all competitive sealed bids.

**§74210. Form of Submittal and Bid Opening.**

- A. Bids must be submitted to and received by the Purchasing Manager or designee. Bids shall be completed in the form and manner specified in the invitation. Each Bid must be in a sealed container which is clearly identified with the project or purchase name, the name of the Bidder, the due date, the time of bid opening, and a statement that the container is not to be opened prior to bid opening. Should



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any Bid be received which is not so identified, the Bidder assumes the risk that the submission will be opened prior to bid opening.

B. In accordance with the procedures outlined in section 2.2-4302.1 of the VPPA, the Purchasing Manager or other designee shall:

1. Conduct a public opening and provide an announcement of all bids received;
2. Conduct an evaluation of Bids based upon the requirements set forth in the IFB, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and,
3. Award the contract to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder.

**§74215. Cancellation.**


IFB's or other Solicitations may be cancelled at the discretion of the Purchasing Manager. The reasons shall be made a part of the record.

**Article 3 Competitive Sealed Proposals**

Sections.

- 74305. General.
- 74310. Selection or Evaluation Committee.
- 74315. Requests for Proposals.
- 74320. Public Notice.
- 74325. Evaluation Criteria.
- 74330. Receipt and Handling.
- 74335. Selection and Award Process (Goods and Non-Professional Services).
- 74340. Records.
- 74345. Procurement of Professional Services.
- 74350. Selection Process - Professional Services.
- 74355. Negotiations - Professional Services.
- 74360. Other Considerations.
- 74365. Cancellation.
- 74370. Architectural and Professional Engineering Term Contracting.



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**§74305. General.**

- A. This Article applies to all purchases of goods, Services and Construction expected to be or exceed \$100,000 which may not be purchased based on price alone as defined herein.
- B. Construction may be purchased only by competitive sealed bidding, except a Request for Proposal may be used in the following instances:
  - 1. The alteration, repair, renovation, or demolition of buildings, structures or improvements when the Contract is not expected to be or exceed \$100,000; or
  - 2. The Construction of highways and any draining, dredging, excavation, grading or similar work upon real property.
  - 3. Contracts for the design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery methods except in cases of small purchases, sole-source procurements, emergency procurements or special procurements.


**§74310. Selection or Evaluation Committee.**

Unless otherwise directed by the General Manager, the Purchasing Manager, in consultation with the requesting Division Director and the Deputy General Manager, shall appoint a Selection Committee to evaluate all Proposals received. Members of the committee shall represent at least three (3) of the Authority's Divisions and no Division shall represent more than 50% of the committee. Members of the Selection Committee need not be employees of the Authority. As designated by the Purchasing Manager, the committee shall be chaired by a procurement officer from the Procurement Department who shall not rank Proposals but guide and support the work of the committee members; however, members selected should not be limited to those involved in the administration of the contract. Individuals selected will be knowledgeable and competent to make a selection through the ranking process and must certify in writing that no conflict of interest exists.

To the extent possible, Selection Committee members should participate directly in the development of the evaluation criteria and their respective weightings.

**§74315. Requests for Proposals.**

- A. Written Requests for Proposals (RFP) shall indicate in general terms the service, supply or Work which is sought to be purchased. The RFP will specify the criteria the Authority will use to evaluate Proposals (see 74325, whether a numerical scoring system will be used, any applicable contractual terms and conditions, and any Specifications, unique capabilities or any qualifications that will be required of the prospective Contractor, which shall also be included or incorporated by reference.
- B. In the event the Authority intends to use a numerical scoring system in the evaluation of Proposals, the Authority will include the point values assigned to each of the evaluation criteria in the RFP or post the

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point values at the location designated for public posting of procurement notices prior to the due date and time for receiving Proposals.

- C. No RFP for construction authorized by this section shall condition a successful Offeror's eligibility on having a specified experience modification factor.

**§74320. Public Notice.**

The Purchasing Manager shall give public notice of the RFP at least ten (10) days prior to the date set for receipt of Proposals. Such public notice shall include publication in a newspaper or newspapers of general circulation in the area in which the Contract is to be performed. The Authority may also use other appropriate means to obtain the highest practical number of responses, including posting notice on the Purchasing bulletin board, direct Solicitation from potential Contractors, publications in trade journals or by electronic means such as publication on the Virginia Department of General Service's eVA website.

**§74325. Evaluation Criteria.**

The criteria to be used in evaluation of Proposals shall be developed by the Selection Committee, or originating Division with guidance and review provided by the Procurement Department. Criteria shall be set forth in detail in the Request for Proposal.

Evaluation may be conducted on the basis of written Proposals, or a combination of written Proposals and subsequent interviews.


The relative importance of price and other factors or sub-factors will be clearly indicated and shall be strictly adhered to in the selection process. If appropriate, there may be a combination of mandatory and rated criteria detailed in the Request for Proposal. In addition, there may be mandatory minimum levels that must be achieved for specific factors or sub-factors. Evaluation criteria shall provide a sound and reasonable basis for identifying that Proposal which represents Best Value for the Authority without being unduly restrictive.

**§74330. Receipt and Handling.**

Offerors are responsible to ensure the Proposal is received by the Purchasing Manager prior to the designated date and time. Proposals shall not be publicly opened nor disclosed to any person who is not a member of the Selection Committee except the Purchasing Manager or his designees. Nothing contained in any Offer shall be open for public inspection until such time as an award has been made, except as may be otherwise required by the Virginia Freedom of Information Act. Proprietary information of Offerors shall not be disclosed to the public or to competitors at any time; however, the Offeror must invoke the protection of this section prior to, or upon submission of, the data or other materials and must identify the data or other materials to be protected and state the reasons why protection is necessary.

**§74335. Selection and Award Process (Goods and Non-Professional Services).**

- A. Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among

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those submitting Proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After Negotiations have been conducted with each Offeror so selected, the public body shall select the Offeror which, in its opinion, has made the best Proposal, and shall award the contract to that Offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one Offeror. Should the public body determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.


- B. If a satisfactory and advantageous Contract can be agreed upon with the best-qualified Offeror at a price considered fair and reasonable pursuant to Negotiations provided for herein, the Contract may be awarded to that Offeror. Award of a Contract shall be made as provided in Chapter 3, Section 73120.
- C. The Purchasing Manager is authorized to provide debriefings that furnish the basis for the source selection decision and contract award. A post-award debriefing may be orally or in writing. A post-award debriefing may include:
  1. the Selection Committee's evaluation of significant weaknesses or deficiencies in the Proposal;
  2. the overall evaluated cost or price and technical rating of the successful Offeror and the debriefed Offeror;
  3. reasonable responses to relevant questions about whether source selection procedures contained in the Request for Proposal and applicable law were followed. Post award debriefing shall not include point-by-point comparisons of the debriefed Proposal with those of other Offerors, including the successful Offeror; and,
  4. any debriefing shall adhere to disclosure laws of Virginia. A summary of any debriefing shall be included in the contract file.

**§74340. Records.**

The Purchasing Manager shall keep detailed records of any Negotiations entered into in accordance with any requirements of this Article.

**§74345. Procurement of Professional Services.**

- A. Notwithstanding other provisions of this article, the Authority will follow the provisions of Sections 74310 through 74340 for all Professional Services estimated to be or exceed \$60,000.
- B. Professional Services estimated to cost less than \$60,000, may be negotiated without a formal Request for Proposal. The Purchase Order for all Professional Services costing more than \$10,000 shall be issued by the Procurement Department.

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- C. Professional Services estimated to be or exceed \$60,000, but less than \$100,000 must be approved by the General Manager. Professional Services estimated to be or exceed \$100,000 or more must be awarded only with approval of the Board of Directors, notwithstanding that funds may have been budgeted and appropriated, unless the Board of Directors specifically delegates this authority by resolution.
- D. The Procurement Department is authorized to establish written small purchase procedures not requiring competitive Negotiation for single or term contracts for Professional Services if the aggregate or the sum of all phases is not expected to exceed \$60,000; however, such small purchase procedures shall provide for competition wherever practicable.


**§74350. Selection Process - Professional Services.**

The Selection Committee 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. Such 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. The RFP shall not, however, request that Offerors furnish estimates of man-hours or cost for Services. At the discussion stage, the Authority may consider nonbinding estimates of total project costs including, but not limited to, life-cycle costing and, where appropriate, nonbinding estimates of price for Services. Proprietary information from competing Offerors shall not be disclosed to the public or to competitors. 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 Evaluation Committee shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed Services are deemed most meritorious.

**§74355. Negotiations-Professional Services.**

The Purchasing Manager and/or the Evaluation Committee or a specific person designated by the Purchasing Manager shall conduct Negotiations with the Offeror ranked first. Price shall be a consideration but need not be the sole determining factor.

- A. If a Contract cannot be agreed upon with the best-qualified Offeror, Negotiations with the Offeror shall be formally terminated. A written record stating the reasons shall be placed in the file and the Purchasing Manager shall advise the Offeror of the termination of Negotiations.
- B. Upon failure of Negotiations to produce an acceptable contract, the Purchasing Manager may enter into Negotiations with the next most qualified Offeror as determined by the Selection Committee's recommendation. If Negotiations with such Offeror again fail, the Purchasing Manager shall terminate the Negotiations and commence Negotiations with the next qualified Offeror.
- C. If all Negotiations fail to produce a Contract with any qualified Offerors, new Proposals may be solicited.

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- D. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the RFP, Contracts may be awarded to more than one Offeror.
- E. Multiphase Professional Services Contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the Service Authority shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the Contract.

**§74360. Other Considerations.**

During selection and Negotiations for provision of Professional Services:


- A. No information may be conveyed to any Offeror which was submitted by any other Offeror in the conduct of such discussions and interviews.
- B. Should the Authority determine in writing and at its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror.
- C. Proposals may be modified or withdrawn at any time prior to the conclusion of the Negotiations.

**§74365. Cancellation.**


Requests for Proposals or other Solicitations may be cancelled at the discretion of the Purchasing Manager. The reasons shall be made a part of the record.

**§74370. Architectural and Professional Engineering Term Contracting.**

- A. Contract for architectural or professional engineering services relating to multiple Construction projects may be awarded, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the RFP, and (iii) the Contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.
- B. Such Contracts may be renewable for four additional one-year terms at the option of the Service Authority. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.
- C. The sum of all projects performed in a one-year Contract term shall not exceed \$6 million.

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- D. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one Offeror, provided (i) the RFP so states and (ii) the selected Contractors shall not be required to compete for individual projects based on price.
- E. The fee for any single project shall not exceed \$1 million.

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**Division VII Chapter 5**

**Chapter 5 CONSTRUCTION.**

Article.		Section
1.	General Policies.	75005.
2.	Construction Management and Design Build Contracts.	75205.
3.	Construction Management Guidelines.	75305.
4.	Design Build Guidelines.	75405.

ADOPTED: AUGUST 10, 1989, BOD Res. Num. 89-8-29  
 REVISED: NOVEMBER 13, 1997, BOD Res. Num. 97-11-51  
 REVISED: SEPTEMBER 14, 2000, BOD Res. Num. 00-9-42  
 REVISED: FEBRUARY 9, 2006, BOD Res. Num. 06-2-10  
 REVISED: JUNE 11, 2009, BOD Res. Num. 09-6-18  
 REVISED: MARCH 8, 2012, BOD Res. Num. 12-03-08  
 REVISED: JUNE 8, 2017 BOD Res. Num. 17-06-34  
 APPROVED BY BOARD OF DIRECTORS

**Article 1 General Policies.**


- Sections.
- 75005. General.
  - 75007. Job Order Contracting
  - 75010. Bid Security and Insurance.
  - 75015. Award or Rejection.
  - 75020. Retainage.
  - 75025. Deposit of Retained Funds.
  - 75030. Performance and Payment Bonds.
  - 75035. State Law.

**§75005. General.**

- A. Contracts for Construction shall be governed, generally, by these regulations and by the provisions contained in this Chapter. Where a regulation is set forth in this Chapter which is in conflict with any other provision of these regulations, the provisions of this Chapter shall govern.

Except as provided by Resolution: 06-01-08 involving Public-Private Education Facilities, Construction may be purchased only by competitive sealed bidding, with the exception being that competitive negotiation may be used for Construction projects in accordance with Section 74305 (D) after a determination is made in advance by the Authority in writing that competitive sealed bidding is not practicable or fiscally advantageous for Construction of buildings when the Contract is not expected to cost more than \$1.5 million or for the Construction of highways, draining, dredging, excavation, grading or similar work upon real property. Advance determination must be made in writing by the General



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Manager that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. The written statement shall further document the basis for such determination.


- B. Bids for Construction shall be solicited by the Purchasing Manager by means of formal Invitations for Bid. The invitations shall include Bid instructions, plans and Specifications for the project, and proposed Contracts for the Work. The Contracts shall be prepared in consultation with appropriate persons including architects, engineers and other consultants who may be employed by the Authority for the purposes of any project or projects. Invitations for Bid may be initiated by any such party employed by the Authority. Prior to distribution, all invitations for Construction Bids must be reviewed by the Purchasing Manager or designee and the appropriate Division Director.
- C. A person or firm that has been engaged as an architect or engineer for a Construction project under a separate Contract shall not be eligible to bid or submit a Proposal for the Construction Contract for the same project.

**§75007. Job Order Contracting.**

- A. A job order contract may be awarded by the Service Authority for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.
- B. Such contracts may be renewable for two additional one-year terms at the option of the Service Authority. 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.
- C. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.
- D. The Service Authority may not issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

**§75010. Bid Security and Insurance.**

- A. Except in cases of Emergency, all Bids or Proposals for Construction Contracts of \$100,000 or more shall be accompanied by Bid security meeting the requirements of Section 74120 of these regulations. Nothing in this section shall preclude the Purchasing Manager from requiring Bid security for construction Contracts anticipated to be less than \$100,000.

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- B. No forfeiture under a Bid security for a Construction Contract shall exceed the lesser of:
1. the difference between the Bid for which the bond was written and the next low Bid; or
  2. the face amount of the Bid security.
- C. Construction bids shall require the successful Contractor to carry all appropriate insurance as determined by the Director of Management and Budget.

**§75015. Award or Rejection.**


- A. Except as provided herein, all Contracts for Construction of \$200,000 or more shall be awarded by the Board of Directors in accordance with the regulations governing the award of Bids generally. The Board may reject any or all Bids without giving reason for doing so.
- B. Except as provided herein, Construction Contracts for more than \$100,000 but less than \$200,000 must be approved by the General Manager. Construction Contracts for less than \$100,000 must be approved by the Purchasing Manager in accordance with Chapter 3 and the regulations governing the award or rejection of Bids generally.
- C. The Board of Directors may direct that the authority provided in this section be exercised by any other person than herein specified.

**§75020. Retainage.**

In the event a Contract for Construction (other than Contracts awarded pursuant to a solicitation under the PPEA) provides for progressive installment payments based upon an estimated percentage of completion, the Contractor shall be paid at least 95% of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the Contract. All amounts withheld may be included in the final payment. All subcontracts are subject to this limitation.

**§75025. Deposit of Retained Funds.**

- A. If the Service Authority anticipates awarding a Contract of \$200,000 or more for Construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the Contract price are to be retained, it shall include in the Bid an option for the Contractor to use an escrow account procedure for utilization of the Authority's retainage funds by so indicating in the space provided in the Proposal documents. In the event the Contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid and Contract the Contractor shall execute and submit the form to the Authority within 15 calendar days after notification. If the "Escrow Agreement" form is not submitted within the 15-day period, the Contractor shall forfeit the right to the use of the escrow account procedure.

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- B. In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent, and the surety shall execute an “Escrow Agreement” form. The Contractor’s escrow agent shall be a trust company, bank or savings institution having its principal office in the Commonwealth pursuant to Va. Code Ann. §2.2-4334 et seq. The “Escrow Agreement” and all regulations promulgated by the Authority shall substantially be the same as that used by the Commonwealth of Virginia Department of Transportation.
- C. This section shall not apply to Contracts for Construction for dams, foundations, installation or maintenance of power systems for the generation of primary and secondary distribution of electric current ahead of the customer’s meter, the installation or maintenance of telephone, telegraph or signal systems and the Construction or maintenance of solid waste or recycling facilities and treatment plants.
- D. Any such Contract which includes payment of interest on retained funds may require a provision whereby the Contractor, exclusive of reasonable circumstances beyond the control of the Contractor stated in the Contract, shall pay a specified penalty for each day exceeding the completion date stated in the Contract.
- E. Any subcontract for such project which provides for similar progressive payments shall be subject to the provisions of this section.

**§75030. Performance and Payment Bonds.**

- A. The Purchasing Manager shall require any successful Bidder or Offeror for a Construction Contract of \$100,000 or more, to execute performance and payment bonds in accordance with the provisions of Section 74125 of these Regulations. The Purchasing Manager may, but is not obligated to, require any successful Bidder or Offeror to execute performance and payment bonds for a Construction Contract of less than \$100,000.


**§75035. State Law.**

Contracts for Construction of any buildings or for an addition to or improvement of an existing building for which state funds of \$50,000 or more, either by appropriation, grant-in-aid or loan, are used or to be used for all or part of the cost of Construction shall be purchased pursuant to §2.2-4305 “Competitive Procurement by Localities, on State-Aid Projects”, of the Code of Virginia. Other Contracts for Construction which are subject to the provisions of state and federal law shall be governed by these regulations where they do not conflict with such law.

**Article 2 Construction Management and Design Build Contracts.**

Sections.

- 75205. Employment of a Licensed Professional Engineer.
- 75210. Written Determination.
- 75215. Criteria for Use of Construction Management Contracts.

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75220 Criteria for Use of Design Build Contracts.

**§75205. Employment of a Licensed Professional Engineer.**

- A. Prior to making a determination as to the use of construction management or design-build for a specific construction project, the Authority's licensed engineer shall:
1. advise the Service Authority regarding the use of construction management or design-build or the project under consideration; and,
  2. assist the Authority with the preparation of the Request for Proposal and the evaluation of such proposals.

**§75210. Written Determination.**


The Service Authority shall make a written determination in advance that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build for the project(s) under consideration. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

**§75215. Criteria for Use of Construction Management Contracts.**

- A. Construction management contracts may be used for projects where the project cost is expected to be more than \$10 million. Construction management may also be utilized on projects where the project cost is expected to be less than \$10 million, provided that
1. the project is a complex project; and
  2. the project procurement method is approved by the Board. The Board's written approval shall be maintained in the procurement file.

**§75220. Criteria for Use of Design Build Contracts.**

Design Build contracts are intended to minimize the project risk for the Service Authority and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

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**Article 3 Construction Management Guidelines.**

**Replaces 79200 through 79225.**

Sections.


75305. Selection Process.

75310. Construction Management Contract.

75315. Required Construction Management Contract Terms.

**§75305. Selection Process.**


- A. On projects approved for construction management, procurement of the contract shall be a two-step process unless a one step process is approved pursuant to the procedures below. The following procedures shall be used in selecting a construction manager and awarding a contract:
1. The Purchasing Manager will appoint an Evaluation Committee (“Committee”) which shall consist of at least three employees, including a licensed professional engineer or architect provided by the Division of Engineering (employee or contractor consultant). The Purchasing Manager will also determine whether a representative of the Service Authority’s attorney should be involved.
  2. The basis of the award of the contract shall be in accordance with §2.2-4301(3)(b) and the criteria for the award shall be submitted to the Director of Engineering and Planning, in advance, for approval. Cost is a critical component of the selection process.
  3. Selection of Qualified Offerors (STEP I). The Purchasing Manager will conduct a prequalification process as follows to determine which Offerors are qualified to receive request for proposals (RFPs).
    - a) The Purchasing Manager will prepare a request for qualifications (RFQ) containing the Service Authority’s requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All Offerors shall have a licensed Class “A” contractor registered in the Commonwealth of Virginia as part of the project team.
    - b) Public notice of the request for qualifications must be posted on the Virginia Department of General Service’s central electronic procurement website (known as eVA) at least 30 days prior to the date set for receipt of qualification proposals;
    - c) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code.

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- d) Prior design-build experience or previous experience shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the experience of each contractor on comparable projects is a valid consideration;
- e) The Committee shall evaluate each RFQ response and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
- f) The RFQ evaluation process shall result in a short list of two to five Offerors to receive the RFP. An Offeror may be denied prequalification only as specified under the Code of Virginia §2.2-4317, but the short list shall also be based upon the RFQ criteria.
- g) At least 30 days prior to the date established for the submission of proposals, the Purchasing Manager shall advise in writing each Offeror which sought prequalification whether that Offeror has been prequalified. Prequalified Offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an Offeror is denied prequalification, the written notification to such Offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

4. Selection of a Construction Manager (STEP II):

- a) The Purchasing Manager shall send an RFP to the offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.
- b) Proposals as described in the RFP shall be submitted to the Committee.
- c) The Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Committee shall:
  - i) Conduct negotiations with two or more Offerors submitting the highest ranked proposals; or,
  - ii) Should the General Manager determine, in writing and at his sole discretion, that only one Offeror is fully qualified or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- d) The Committee shall make its recommendation on the selection of a construction manager to the Purchasing Manager based on its evaluations and negotiations. The contract shall be awarded to the Offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.

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- e) The General Manager shall notify the Board of the selection of the construction manager and shall request the Board approve the contract award.
- f) The Purchasing Manager will notify all Offerors who submitted proposals which Offeror was selected for the project. In the alternative, the Purchasing Manager may notify all Offerors who submitted proposals of the Service Authority's intent to award the contract to a particular Offeror at any time after the Board has selected the Construction Manager. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror.
- g) The Service Authority shall make the documentation of the process used for the final selection available to the unsuccessful proposers upon request.

B. The General Manager may request approval to perform a one-step solicitation for the project. If adequate justification is provided, the Board of Directors may approve the request.


**§75310. Construction Management Contract.**

- A. The construction management contract must be entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.
- B. The Guaranteed Maximum Price (GMP) shall be established at the completion of the working drawings unless the General Manager grants a waiver.

**§75315. Required Construction Management Contract Terms.**

- A. Construction management contracts shall require that:
  - 1. no more than 10 percent of the construction work, as measured by the cost of the 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.



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**Article 4 Design Build Guidelines.**

**Replaces 79305 through 79325.**


Sections.  
75405. Selection Process.

**§75405. Selection Process.**

- A. On projects approved for design build, procurement of the contract shall be a two-step process. The following procedures shall be used in selecting a design builder and awarding a contract:
1. The Purchasing Manager will appoint an Evaluation Committee (“Committee”) which shall consist of at least three employees, including a licensed professional engineer or architect provided by the Division of Engineering (employee or contractor consultant). The Purchasing Manager will also determine whether a representative of the Service Authority’s attorney should be involved.
  2. The basis of the award of the contract shall be in accordance with §2.2-4301(3)(b) and the criteria for the award shall be submitted to the Director of Engineering and Planning, in advance, for approval. Cost is a critical component of the selection process.
  3. Selection of Qualified Offerors (STEP I). The Purchasing Manager will conduct a prequalification process as follows to determine which Offerors are qualified to receive request for proposals (RFPs).
    - a) The Purchasing Manager will prepare a request for qualifications (RFQ) containing the Service Authority’s requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All Offerors shall have a licensed Class “A” contractor registered in the Commonwealth of Virginia as part of the project team.
    - b) Public notice of the request for qualifications must be posted on the Virginia Department of General Service’s central electronic procurement website (known as eVA) at least 30 days prior to the date set for receipt of qualification proposals.
    - c) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code.
    - d) Prior construction management or design-build experience or previous experience shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the experience of each contractor on comparable projects is a valid consideration.

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- e) The Committee shall evaluate each RFQ response and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
  - f) The RFQ evaluation process shall result in a short list of two to five Offerors to receive the RFP. An Offeror may be denied prequalification only as specified under the Code of Virginia §2.2-4317, but the short list shall also be based upon the RFQ criteria.
  - g) At least 30 days prior to the date established for the submission of proposals, the Purchasing Manager shall advise in writing each Offeror which sought prequalification whether that Offeror has been prequalified. Prequalified Offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an Offeror is denied prequalification, the written notification to such Offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.
4. Selection of a Construction Manager (STEP II):
- a) The Purchasing Manager shall send an RFP to the offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.
  - b) Proposals as described in the RFP shall be submitted to the Committee.
  - c) The Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Committee shall:
    - i) Conduct negotiations with two or more Offerors submitting the highest ranked proposals; or,
    - ii) Should the General Manager determine, in writing and at his sole discretion, that only one Offeror is fully qualified or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
  - d) The Committee shall make its recommendation on the selection of a construction manager to the Purchasing Manager based on its evaluations and negotiations. The contract shall be awarded to the Offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.
  - e) The General Manager shall notify the Board of the selection of the design builder and shall request the Board approve the contract award.
  - f) The Purchasing Manager will notify all Offerors who submitted proposals which Offeror was selected for the project. In the alternative, the Purchasing Manager may notify all Offerors

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who submitted proposals of the Service Authority's intent to award the contract to a particular Offeror at any time after the Board has selected the design builder. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror.

- g) The Service Authority shall make the documentation of the process used for the final selection available to the unsuccessful proposers upon request.

- B. The General Manager may request approval to perform a one-step solicitation for the project. If adequate justification is provided, the Board of Directors may approve the request.

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**Division VII Chapter 6**

**Chapter 6 SURPLUS SALES AND ASSET DISPOSAL.**

Sections.

- 76005. General.
- 76010. Definitions.
- 76015. Disposal of Property and Supplies.
- 76020. Delegation of Authority.

ADOPTED: AUGUST 10, 1989, BOD Res. Num. 89-8-29  
 REVISED: NOVEMBER 13, 1997, BOD Res. Num. 97-11-51  
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 REVISED: OCTOBER 13, 2016, BOD Res. Num. 16-10-41  
 REVISED: JUNE 8, 2017, BOD Res. Num. 17-06-34  
 APPROVED BY BOARD OF DIRECTORS

**§76005. General.**

All employees are responsible for the safekeeping of Service Authority Assets, including proper disposal.

All Assets – including scrap materials, supplies and goods and all other items that are subject to scrap, sale, or disposal are the sole property of the Service Authority and shall not be taken by Service Authority employees nor given to third parties. Refer to the Surplus Sales and Asset Disposal Standard Operating Procedure (SOP) for additional information and guidance regarding the disposition of these materials and Assets.


Employees shall not take or accept any materials that are remnant from contractor-performed work as they are the property of the Service Authority. A contractor gift is prohibited by the Service Authority’s Gift Policy.

Employees who are found in violation of this policy shall be subject to disciplinary action, up to and including termination.

Real Property, Tangible Assets, and Intangible Assets must be approved as Surplus by the appropriate parties to be sold, traded, transferred, or otherwise disposed pursuant to Section 76015.

The Division of Management and Budget is responsible for the disposition of all Surplus Assets. Proceeds from any such sales shall be remitted directly to the Division of Finance for recording and deposit.

The Director of Management and Budget shall maintain a Standard Operating Procedure (SOP) for Surplus Sales and Asset Disposals that explains the process, required documentation and allowable exemptions.

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**§76010. Definitions.**

**Asset** – For the purpose of this policy, an “Asset” is defined as any Real Property, Tangible Assets, or Intangible Assets owned and in possession of the Service Authority.

**Beyond Economical Repair** – A justification for the sale or disposal of an Asset when it is more cost effective to replace the Asset than it is to repair it. A cost benefit analysis may include the estimated cost of repairs, the estimated cost to replace, and/or professional judgement related to immediate need, continued reliability, benefit of a replacement Asset with a greater life, etc.

**Intangible Assets** – An Asset that is not physical in nature which may be possessed, transferred, or disposed by the Service Authority, including but not limited to licenses, patents, copyrights, models, warranties, service/maintenance agreements, and other intellectual property.

**Obsolete** – A justification for the sale or disposal of an Asset that is no longer used by or is useful to the Service Authority, is out of date, antiquated or superseded by a better performing or more efficient asset.

**Real Property** – All land, including structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all “interests” in the property such as remainder, tenancy, oil and gas rights, mineral rights, water rights, reversion rights, use of airspace, or an easement across another's property.

**Surplus** – Assets that are Obsolete, worn, Beyond Economical Repair, no longer meet the needs of the Service Authority or are in excess over operational needs.


**Tangible Assets** – All physical Assets, whether capital or non-capital, other than Real Property, owned by the Service Authority. Types of Tangible Assets include, but are not limited to: vehicles and motorized equipment, IT hardware, furniture and fixtures, supplies/goods, and equipment. Note that Tangible Assets are referred to as “goods” under the VA State Code.

**§76015. Disposal of Property and Supplies.**

**A. Real Property:**

Real Property may be disposed of after being approved as Surplus by the Board of Directors.

Prior to seeking declaration of Surplus by the Board, staff will confirm with the County Executive whether the County has a present or an anticipated future use for the Real Property and present this information to the Board of Directors. If the County determines that it needs the Real Property, the Board of Directors may first offer the Real Property to the County for acquisition upon such terms that the parties find mutually acceptable. If the County does not express a need for the Real Property or the Board of Directors determines not to sell the Real Property to the County, the Director of Management and Budget shall dispose of the Real Property as directed by the General Manager and according to such terms approved by the Board of Directors.

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**B. Tangible Assets:**

All Tangible Assets, except exempt items, regardless of whether or not it has residual value in sale or trade, including working and non-working, usable or unusable, repairable or non-repairable, whole or in parts and all materials whether usable or scrap must be approved as Surplus before disposal.


1) Approvals:

- i. Tangible Assets having an original cost of less than \$100,000 may be disposed of by the Director of Management and Budget after being approved as Surplus by the Director responsible for the Tangible Assets. In approving Tangible Assets as Surplus, the Division Director shall consider all commercially reasonable factors, including the feasibility and cost of repair/salvage and storage.
- ii. Tangible Assets having an original cost of \$100,000 or more shall be disposed of by the Director of Management and Budget after written recommendation by the Director responsible for the Tangible Assets and approval as Surplus by the General Manager.

2) Safekeeping: The Division Director shall be responsible for the storage, maintenance and safekeeping of all Surplus Tangible Assets in its charge. Once the Division of Management and Budget takes possession of the Assets, the responsibility for the safekeeping of such Assets shall convey.

3) Disposal: The Director of Management and Budget will determine the ultimate value of each Asset approved as Surplus and shall dispose as follows:

- i. Disposal of Tangible Assets that the Director of Management and Budget deems to be worth more than \$5,000 shall be by sale, competitive bid, public auction, or other methods. If a fair and reasonable price cannot be obtained for any such assets by competitive bid, the Director of Management and Budget may dispose of such assets by any other commercially reasonable method. The Director of Management and Budget shall determine which method is likely to obtain the highest price in each case.
- ii. Disposal of Tangible Assets deemed by the Director of Management and Budget to be worth less than \$5,000 shall be sold or disposed of by such method deemed appropriate by the Director of Management and Budget.
- iii. The Director of Management and Budget may contract with outside parties to sell any Surplus assets consistent with these regulations.
- iv. Tangible Assets that have been properly reviewed and approved as Surplus may be used for trade in connection with any purchase provided that, if the purchase is required by these regulations to be by competitive bid, the Bidder shall be required to state the value assigned to the Assets to be traded as a part of its bid and to provide prices both with and without trade.

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**C. Intangible Assets:**

All Intangible Assets having an original cost less than \$100,000 may be disposed of by the Director of Management and Budget after being approved as Surplus by the applicable Division Director. All Intangible Assets having an original cost of \$100,000 or more may be disposed of by the Director of Management and Budget after being approved as Surplus by the General Manager, upon recommendation of the applicable Division Director. The Director of Management and Budget shall dispose of the Intangible Assets as directed by the General Manager.

**§76020. Delegation of Authority.**

The Director of Management and Budget and other Division Directors may delegate their responsibilities for approving Tangible and Intangible Assets as Surplus to other employees in their division. This delegation shall be in writing to specific named individuals and shall be provided to the Director of Management and Budget. The delegation shall remain in effect unless modified or until revoked in writing. However, such delegation shall not relieve the Director of Management and Budget or other Directors of their responsibility for supervision and control of the Surplus Sales and Asset Disposal processes.



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**Division VII**

**Chapter 7**

Chapter 7 STANDARDS OF CONDUCT.

Sections.

- 77005. General.
- 77010. Proscribed Participation by Service Authority Employees in Procurement Process.
- 77015. Disclosure of Subsequent Employment.
- 77020. Prohibition on Solicitation or Acceptance of Gifts.
- 77025. Misrepresentations by Service Authority Employees.
- 77030. Prohibition on Disclosing Procurement Information Prior to Award.
- 77035. Prohibition on Purchase of Surplus Property or Supplies.

ADOPTED: AUGUST 10, 1989, BOD Res. Num. 89-8-29  
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 REVISED: FEBRUARY 9, 2006, BOD Res. Num. 06-2-10  
 REVISED: JUNE 11, 2009, BOD Res. Num. 09-6-18  
 REVISED: MARCH 8, 2012, BOD Res. Num. 12-03-08  
 REVISED JUNE 8, 2017 BOD Res. Num. 17-06-34  
 APPROVED BY BOARD OF DIRECTORS


**§77005. General.**

- A. All Service Authority procurements shall be in full compliance with the Conflicts of Interest Act, §2.2-3100. and Article §6 of Title 2.2 (Ethics in Public Contracting) of the Code of Virginia, as amended and the Service Authority’s Code of Ethics (See Division III of the Administrative Code).
- B. Any person convicted of a willful violation of any provision of law in Chapter 7 of these regulations shall be guilty of a Class I misdemeanor. Upon conviction, any employee, in addition to any other fine or penalty provided by law, shall forfeit his or her employment. Persons violating the Authority’s Code of Ethics are subject to disciplinary action up to and including forfeiture of employment and prosecution where applicable.

**§77010. Proscribed Participation by Service Authority Employees and Contractors in Procurement\_Process.**

Except as specifically allowed by the Code of Virginia, no Service Authority employee, or Service Authority employed Contractor, having official responsibility in the procurement process shall participate in that process when the employee knows that:

- A. The employee is contemporaneously employed by a Bidder, Offeror, or Contractor involved in the procurement.

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- B. The employee, the employee’s partner, or any member of the employee’s Immediate Family holds a position with a Bidder, Offer, or Contractor such as an officer, director, trustee, or partner, or is employed in a capacity involving personal and substantial participation in the procurement process, or owns or controls an interest of more than five (5) percent.
- C. The employee, the employee’s partner, or any member of the employee’s Immediate Family has a pecuniary interest arising from the procurement. An Immediate Family member is defined in Section 71015.
- D. The employee, the employee’s partner, or any member of the employee’s Immediate Family is negotiating, or has an arrangement concerning prospective employment with a Bidder, Offeror, or Contractor. (Code of Virginia §2.2-4369). An Immediate Family member is defined in Section 71015.

**§77015. Disclosure of Subsequent Employment.**


No Service Authority employee having administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting there from shall accept employment from any Bidder, Offeror, or Contractor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the Service Authority unless the employee or former employee provides written notification to the Service Authority prior to commencement of employment by that Bidder, Offeror, or Contractor. (Code of Virginia §2.2-4370).

**§77020. Prohibition on Solicitation or Acceptance of Gifts.**

No Service Authority employee, or Service Authority employed Contractor, having administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting there from shall solicit, demand, accept, or agree to accept from a Bidder, Offeror, Contractor, or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value present or promised, unless consideration of substantially equal or greater value is exchanged. (Code of Virginia §2.2-4371).

**§77025. Misrepresentations by Service Authority Employees.**

No Service Authority employee, or Service Authority employed Contractor, having official responsibility for a procurement shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

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**§77030. Prohibition on Disclosing Procurement Information Prior to Award.**


A Service Authority employee, or Service Authority employed Contractor, shall not, other than as provided by law, knowingly disclose information prior to the award of the Prince William County Service Authority Contract to which the information relates without prior approval of the Purchasing Manager.

For all procurement activities pursuant to a formal Solicitation:

- A. Prohibited Communications.** Except as provided in paragraph (C) Exceptions, the following communications regarding a particular Invitation For Bids, Request for Proposals, request for qualifications or other Solicitation are prohibited:
- i. between a potential Vendor, Service provider, Bidder, Offeror, lobbyist or consultant and any Authority Board member, officer or employee;
  - ii. between a potential Vendor, Service provider, Bidder, Offeror, lobbyist or consultant and any member of a selection or evaluation committee;
  - iii. between any Authority Board member and any member of a Selection or Evaluation Committee; and
  - iv. between any Authority Board member and an Authority officer or employee.
- B. Effective Period.**
- i. Imposition. The communications prohibition shall be imposed on the date that the Solicitation is first publicly advertised, or on the date that the Solicitation is issued, whichever occurs first. The Procurement Department shall advise Authority Board members, affected department(s), and the General Manager of the prohibition. The Purchasing Manager shall include in the Solicitation documents a statement disclosing requirements of this policy.
  - ii. Termination. The communications prohibition shall terminate when:
    - 1. the Contract is awarded; or
    - 2. the award recommendation is considered by the Board at a duly noticed public meeting.

In the event that the Board refers the recommendation back to staff for reconsideration, the communications prohibition shall be re-imposed.


- C. Exceptions.** The communications prohibition shall not apply to the following:
- ii. Duly noticed pre-bid or pre-proposal conferences.
  - iii. Duly noticed site inspections.
  - iv. Oral presentations to Selection or Evaluation Committees.
  - v. Contract negotiations.

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- vi. Inquiries by the Procurement Department to determine the responsibility or responsiveness of Bidders/Offerors regarding a particular Solicitation.
- vii. Site visits authorized in writing by the Purchasing Manager to determine the competency of Bidders or Offerors conducted between the opening of Bids/Proposals and recommendation of award.
- viii. Communications between a potential Vendor, Service provider or Bidder and the Procurement Department regarding process, procedure or clarification of the published solicitation, provided that any clarification or amendment of the Solicitation shall be made generally available to the public.
- ix. Communications with legal counsel for the Authority.
- x. Emergency contracts.
- xi. Presentations made to the Board during any duly noticed public meeting.
- xii. Unless otherwise prohibited in the Solicitation documents, any written communications between any parties, provided that the originator shall immediately file a copy of any written communication with Purchasing and copies are made available to any person upon request.
- xiii. Nothing contained herein shall prohibit any person or entity from publicly addressing the Board during any duly noticed public meeting, in accordance with applicable Board regulations, regarding action on a Contract.


**D. Penalties.**

- i. Bidders/Offerors:
  - 1. A violation of this policy by a Bidder or Offeror shall render any subsequent award of the applicable Solicitation to said person voidable by the Authority.
  - 2. A violation of this policy by any potential Vendor, service provider, Bidder, Offeror, lobbyist or consultant shall subject such person or persons to potential suspension or debarment.
- ii. Employees:
  - 1. Any person who violates this regulation shall be prohibited from participation on any Authority Selection/Evaluation Committee on which they are currently serving and at the discretion of the Purchasing Manager prohibited from serving on an Authority selection/evaluation committee in the future.
  - 2. In addition to any other penalty provided by law or regulation, violation or any provision of this regulation shall subject an Authority employee to disciplinary action up to and including dismissal.
- iii. Board of Directors: Any violation of this regulation by a member of the Board of Directors shall be considered a breach of ethical standards.

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**§77035. Prohibition on Purchase of Surplus Property or Supplies.**

Service Authority employees, the employee’s partner, or any member of the employee’s Immediate Family may not purchase property or supplies which has been declared surplus to the needs of the Authority and placed for sale.

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**Division VII**

**Chapter 8**

**Chapter 8 GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002**

Sections.

- 78005. Introduction.
- 78010. General Provisions.
- 78015. Solicited Proposals.
- 78020. Unsolicited Proposals.
- 78025. Proposal Preparation and Submission.
- 78030. Proposal Evaluation and Selection Criteria.
- 78035. Interim and Comprehensive Agreements.

ADOPTED: JANUARY 12, 2006, BOD Res. Num. 06-01-08

REVISED: JANUARY 13, 2011, BOD Res. Num. 11-01-07

REVISED JUNE 8, 2017 BOD Res. Num. 17-06-34

APPROVED BY BOARD OF DIRECTORS

**§78005 Introduction.**


The Authority has determined to adopt these guidelines under the authority of the Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA") Va. Code §56-575.1 et. seq., as amended. PPEA grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use, if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The PPEA defines "responsible public entity" to include any public entity that "has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the applicable qualifying project." The Authority is a responsible public entity under the PPEA. Individually negotiated interim and/or comprehensive agreements will define the respective rights and obligations of the Authority and the private operator or developer.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The PPEA contains a broad definition of qualifying projects that includes utility infrastructure and any building or facility which meets a public purpose and is developed or operated by or for a public entity.

The PPEA establishes requirements that the Authority must adhere to when reviewing and approving Proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a Proposal and the contents of the interim or comprehensive agreement detailing the relationship between the Authority and the private entity.

The Authority retains all rights granted to it under PPEA, as amended from time to time.

Capitalized terms used in these Guidelines shall have the meanings given in §56-575.1 of the PPEA.

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**§78010 General Provisions.**

**A. Proposal Submission.**

A Proposal may be either solicited by the Authority or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part Proposal submission process, consisting of an initial conceptual phase and a detailed phase.

The initial phase of the Proposal should contain the information specified in Section 78025, paragraph A; however, the completeness of any initial Proposal will be determined by the Authority in its sole discretion.

The detailed Proposal should contain the specified deliverables set out in Section 78025, paragraph B.

The PPEA allows private entities to include innovative financing methods in their Proposal; this can include the imposition of user fees or service payments, or connection fee credits. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the Authority. Project benefits to be considered are those occurring during the Construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the Authority of the financial feasibility of the proposed project. The Authority may require additional information from the proposer in order to provide clarification to the submission, so long as the same information is required from all proposers.


**B. Affected Local Jurisdictions.**

Any private entity requesting approval from or submitting a conceptual or detailed Proposal to the Authority must provide Prince William County, Virginia and any other Affected Local Jurisdiction with a copy of the private entity's request or Proposal. Affected Local Jurisdictions shall have 60 days from the receipt of the request or Proposal to submit written comments to the Authority and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the Authority, and no negative inference shall be drawn from the absence of comment by an Affected Local Jurisdiction.

**C. Proposal Review Fee.**

The Authority may seek the advice of internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. No fee may be charged by the Authority to process, review or evaluate any solicited Proposal submitted under the PPEA. For unsolicited Proposals, the Authority shall charge a review and evaluation fee equal to one-half of one percent (0.5%) of the estimated cost of implementing the Proposal. The minimum fee shall be \$5,000 and



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the maximum fee shall be \$50,000. "Direct costs" may include (i) the cost of staff time required to process, evaluate, review and respond to the Proposal and (ii) the out-of-pocket costs of attorneys, consultants and financial advisors. The Authority has the discretion to waive its review fees.

**D. Freedom of Information Act.**


Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("FOIA") Va. Code §2.2-3700 et. seq., except that subdivision 11 of §2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the Authority may elect to release some or all of the documents, except to the extent that the documents are (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.), (ii) financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or (iii) other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected.

Subsection 56-575.4 G of the PPEA imposes an obligation on the Authority to protect confidential proprietary information submitted by a private entity or operator. When the private entity requests that the Authority not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the Authority or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the Authority as to the anticipated scope of protection prior to submitting the Proposal. The Authority is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a Proposal from disclosure if the entire Proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a Proposal be protected from disclosure as confidential and proprietary, the Authority shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the proposer. If the determination regarding protection or the scope thereof differs from the proposer's request, then the Authority should accord the proposer a reasonable opportunity to clarify and justify its request. Upon a final determination by the Authority to accord less protection than requested by the proposer, the proposer should be accorded an opportunity to withdraw its Proposal. A Proposal so withdrawn should be treated in the same manner as a Proposal not accepted for publication and conceptual-phase consideration as provided in Section 78020 paragraph A.1 below.

**E. Use of Public Funds.**

Virginia Constitutional and statutory requirements, as they apply to appropriation and expenditure of public funds, apply to any comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

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**F. Applicability of Other Laws.**

Nothing in the PPEA shall affect the duty of the Authority to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act, Va. Code §2.2-4300 through §2.2-4377, as amended, if any, (the “VPPA”) is set forth in the PPEA.

**G. Independent Analysis.**

The Authority shall engage the services of qualified professionals, which may include but not be limited to, an architect, professional engineer, or certified public accountant, not otherwise employed by the Authority, to provide independent analysis regarding the specific advantages, disadvantages and the long and short term costs of any request by a private party for approval of a qualifying project unless the Board determines that such analysis of a request by a private party for approval of a qualifying project shall be performed by employees of the Authority.

**§78015 Solicited Proposals.**


The Authority may issue RFPs, inviting Proposals from private entities to acquire, construct, improve, renovate, expand, maintain or operate qualifying projects or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated. The Authority may use a two-part Proposal process consisting of an initial conceptual phase and a detailed phase. A RFP may invite proposers to submit Proposals on individual projects identified by the Authority. In such a case the Authority should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The RFP should specify, but not necessarily be limited to, information and documents that must accompany each Proposal and the factors that will be used in evaluating the submitted Proposals. The RFP should be posted in such public areas as are normally used for posting of the Authority's notices, including the Authority's website <http://www.pwcsa.org>. Notices should also be published in a newspaper or other publications of general circulation and advertised in Virginia's statewide e-procurement application (“eVA”) located at <http://www.eva.state.va.us>. The RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting Proposals. Pre-proposal conferences may be held as deemed appropriate by the Authority.

**§78020 Unsolicited Proposals.**

The PPEA permits public entities to receive, evaluate and select for negotiations unsolicited Proposals from private entities to acquire, construct, improve, renovate, expand, maintain, or operate a qualifying project or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.

The Authority may publicize its needs and may encourage interested parties to submit Proposals subject to the terms and conditions of the PPEA. When such Proposals are received without issuance of an RFP, the Proposal shall be treated as an unsolicited Proposal.


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**A. Decision to Accept and Consider Unsolicited Proposal.**

1. Upon receipt of any unsolicited Proposal or group of Proposals and payment of any required, unwaived fee by the proposer or proposers, the Authority will promptly determine whether to accept the unsolicited Proposal for publication and conceptual-phase consideration. If the Authority determines not to accept the Proposal for conceptual-phase consideration, it should return the Proposal, together with all fees and accompanying documentation, to the proposer.
2. If the Authority chooses to accept an unsolicited Proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the Authority for posting of public notices not less than 45 days prior to the date of Board review and action thereon. The Authority shall also publish the same notice in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing Proposals not less than 45 days prior to the date of Board review and action thereon. In addition, the notice should also be advertised in Virginia's statewide e-procurement application ("eVA") located at <http://www.eva.state.va.us>. The notice shall state that the Authority (i) has accepted an unsolicited Proposal under the PPEA, (ii) intends to evaluate the Proposal, (iii) may negotiate a comprehensive and/or interim agreement with the proposer based on the Proposal, and (iv) will accept for simultaneous consideration any competing Proposals that comply with the guidelines adopted by the Authority and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited Proposals shall be available upon request, subject to the provisions of FOIA and §56-575.4 G of the PPEA.

**B. Initial Review by the Authority at the Conceptual Stage.**

1. While only Proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation, and which are provided in an appropriate format, should be considered by the Authority for further review at the conceptual stage, the Authority may determine to evaluate any Proposal it chooses. Formatting suggestions for Proposals at the conceptual stage are found at Section 78025 paragraph A. If, after publishing notice of acceptance of an unsolicited Proposal in accordance with Section 78020 paragraph A., other competing Proposals are received, the Authority will require all private entities to submit uniform conceptual Proposals.
2. After reviewing the original Proposal and any competing Proposals submitted during the notice period, the Authority may determine:
  - a. not to proceed further with any Proposal,
  - b. to proceed to the detailed phase of review with the original Proposal,
  - c. to proceed to the detailed phase with a competing Proposal;
  - d. to proceed to the detailed phase with multiple Proposals; or,

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- e. to proceed directly to an interim agreement or comprehensive agreement.

In the event that more than one Proposal will be considered in the detailed phase of review, the Authority will consider whether the unsuccessful proposers should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

**§78025 Proposal Preparation and Submission.**

**A. Format for Submissions at Conceptual Stage.**

The Authority may consider and approve an initial Proposal with whatever information it deems to be informative and consistent with its needs. It may also require that Proposals at the conceptual stage contain information in the following areas: 1) qualifications and experience; 2) project characteristics; 3) project financing; 4) anticipated public support or opposition, or both; 5) project benefit and compatibility; and, 6) any additional information as the Authority may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in Proposals at this stage include:


**1. Qualification and Experience.**

- a. Identify the legal structure of the firm or consortium of firms making the Proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of the firm or consortium of firms making the Proposal and the key principals involved in the proposed project, including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, and include the identity of any firms that will provide design, Construction and completion guarantees and warranties, and a description of such guarantees and warranties.
- c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.

Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Va. Code §2.2-3100 through §2.2-3131, as amended (the "VSLGICIA").

**2. Project Characteristics.**

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.

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- b. Identify and fully describe any work to be performed by the Authority.
- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Propose allocation of risk and liability for work completed beyond any specified completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project, and the existence of any restrictions on the Authority's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

**3. Project Financing.**

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds.
- c. Include a list and discussion of assumptions underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment.

**4. Project Benefit and Compatibility.**

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall community, region, or state.
- b. Identify any anticipated public support or opposition, as well as any anticipated government

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support or opposition, for the project.


- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the Authority, and whether the project is critical to attracting or maintaining competitive industries and businesses to Prince William County, compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget or other government spending plan.

**B. Format for Submissions at Detailed Stage.**

If the Authority decides to proceed to the detailed phase of review with one or more Proposals, the following information should be provided by the private entity, unless waived by the Authority:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the Authority to condemn;
4. A detailed listing of all firms that will provide specific design, Construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses;
6. A detailed discussion of any assumptions about user fees or rates, and usage of the projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;



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9. Explanation of how the proposed project would impact local development plans of each Affected Local Jurisdiction;
10. Identification of any known conflicts of interest or other disabilities that may impact the Authority's consideration of the Proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the VSLGCIA;
11. Description of the types of sureties proposed to insure completion of the project; and
12. Additional material and information as the Authority may reasonably request.

**§78030 Proposal Evaluation and Selection Criteria.**

Once the advertisement required by Section 78020 paragraph A has been made as applicable to an unsolicited Proposal, and if competing Proposals have been received, and once the Authority has required each proposer to provide substantially the same information, selection shall be made of two or more proposers deemed to be fully qualified and best suited to the needs and objectives of the Authority among those submitting Proposals, on the basis of the factors involved in the notice, including price if so stated in the notice. Negotiations shall then be conducted with each of the proposers so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each proposer so selected, the public body shall select the proposer, which, in its opinion, has made the Proposal, which is in the best interests of the Authority and its ratepayers, and shall award the Contract to that proposer. Should the Authority determine in its sole discretion that only one proposer is fully qualified, or that one proposer is clearly more highly qualified than the others under consideration, it must document this in writing and a Contract may be negotiated and awarded to that proposer.


The following items shall be considered in the evaluation and selection of PPEA Proposals.

**A. Qualifications and Experience.**

Factors to be considered in either phase of the Authority's review to determine whether the proposer possesses the requisite qualifications and experience shall include, but will not be limited to:

1. Experience with and performance on similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project managers' experience;
5. Management approach;
6. Financial condition; and



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7. Project ownership.

**B. Project Characteristics.**

Factors to be considered in determining the project characteristics shall include but not be limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology, technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

**C. Project Financing.**


Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project shall include but are not limited to:

1. Cost and cost benefit to the Authority;
2. Financing and the impact on the debt or debt burden of the Authority;
3. Financial plan;
4. Estimated cost; and
5. Life-cycle cost analysis.

**D. Project Benefit and Compatibility.**

Factors to be considered in determining the proposed projects compatibility with the appropriate local or regional comprehensive or development plans shall include but are not limited to:

1. Community benefits;

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2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

**E. Other Factors.**

Other factors that may be considered by a responsible public entity in the evaluation and selection of PPEA Proposals include:


1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review and selection;
5. Local citizen and government comments;
6. Benefits to the public;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local Contractors and residents; and
9. Other criteria that the responsible public entity deems appropriate.

**§78035 Interim and Comprehensive Agreements.**

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected proposer shall enter into a comprehensive agreement with the Authority. Before entering into a comprehensive agreement, an interim agreement may be executed, which permits a private entity to perform compensable activities related to the Project. The Authority may designate a working group to be responsible for negotiating the interim or comprehensive agreement. Each interim or comprehensive agreement shall define the rights and obligations of the Authority and the selected proposer with regard to the project.

**A. Interim Agreement Terms.** The scope of an interim agreement may include but is not limited to:


1. Project Planning and Development;

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2. Design and Engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed qualifying project;
6. Establish a process and timing of the Negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate before execution of a comprehensive agreement.

**B. Comprehensive Agreement Terms.** The terms of a comprehensive agreement shall include but are not limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, Construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by the Authority;
3. The rights of the Authority to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the operator by the Authority to ensure proper maintenance;
6. The terms under which the operator will reimburse the Authority for Services provided;
7. The policy and guidelines that will govern the rights and responsibilities of the Authority and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the Authority and the transfer or purchase of property or other interests of the operator by the Authority;
8. The terms under which the operator will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;

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- a. A copy of any Service Contract shall be filed with the Authority.
  - b. A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.
  - c. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the Authority may contribute resources, if any, for the qualifying project; and,
11. Other requirements of the PPEA.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement by written amendment. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

**C. Review of Interim and Comprehensive Agreements.**

The Service Authority shall hold a public hearing during the Proposal review process, but not later than 30 days prior to entering an interim or comprehensive agreement. Within ten (10) days after negotiation of the Agreement is complete, but before being executed, the interim or comprehensive agreement shall be either posted on the Authority’s website or a notice with a summary of the agreement and where copies are available for public inspection may be published in a newspaper of general circulation in the area. The interim or comprehensive agreement shall not be executed until approved by the Board.

**D. Filing of Interim and Comprehensive Agreements.**

Copies of the agreement and any supporting documents must be electronically filed with the Auditor of Public Accounts of the Commonwealth of Virginia.