



**PROCUREMENT AND CONTRACT
MANAGEMENT REGULATIONS**

EFFECTIVE DATE:
07/01/2023

POLICY TITLE:

**PROCUREMENT AND
CONTRACT MANAGEMENT
REGULATIONS**

STARTING SECTION:
71105

OWNER:
*DIRECTOR OF
MANAGEMENT & BUDGET*

Table of Contents

CHAPTER 1 GENERAL 1

CHAPTER 2 METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS 17

CHAPTER 3 CONTRACTS 25


CHAPTER 4 COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION 35

CHAPTER 5 CONSTRUCTION..... 53

CHAPTER 6 SURPLUS SALES AND ASSET DISPOSAL 64

CHAPTER 7 STANDARDS OF CONDUCT 68

**CHAPTER 8 GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION
FACILITIES AND INFRASTRUCTURE ACT OF 2022..... 72**

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Division VII Chapter 1

Chapter 1 GENERAL

Article 1 Purpose, Application, and General Policies.


Sections.

- 71105. Purpose.
- 71110. Application to Authority Purchases.
- 71115. Definitions.
- 71120. Acronyms.
- 71125. Powers and Duties of the Contracting Officer.
- 71130. Issuance of Warrant Authority.
- 71135. Unauthorized Purchases and Dispositions.
- 71140. Conflicts of Interest.
- 71145. Equal Opportunity.
- 71150. Small, Women, Minority and Service-Disabled Veteran Owned Business Program.
- 71155. Public Access to Purchasing Information.
- 71160. Specifications of Equal Brand or Acceptable Substitute.
- 71165. Comments Concerning Specifications.
- 71170. Tie Bids.
- 71175. Severability.
- 71180. Competitive Preference for Virginia Firms.
- 71185. Background Checks.
- 71190. Administrative Changes.

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 APPROVED BY BOARD OF DIRECTORS

§71105. Purpose.

- A. These Regulations are adopted pursuant to Va. Code Ann. §2.2-4300 et seq., the Virginia Public Procurement Act (“VPPA”) and Va. Code Ann. §59.1-479 et seq., the Uniform Electronic Transactions Act and Va. Code Ann. §56-575.1 et seq., the Public-Private Education Facilities and Infrastructure Act of 2002, to govern the Procurement of and related Contract Management for 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 These regulations may be amended, altered or repealed as the Service Authority’s Board of Directors shall deem appropriate. The Board of Directors authorizes the General Manager to approve changes to these regulations to comply with the Code of Virginia and non-substantive changes as needed.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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 procurement 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 Bidder or Offeror be arbitrarily or capriciously excluded.
5. Competition be sought to the degree practicable and in the best interest of the Service Authority.
6. Small, women and minority-owned vendors (SWaM) and disabled veteran-owned vendors be sought out and included by the Service Authority in its procurement of supplies, services, and construction.
7. 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 Procurement and Contract Management 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.


§71110. 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.


§71115. Definitions.

In all sections comprising the Authority's Procurement and Contract Management 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.

- **Acquisition Plan** – A formal or informal plan detailing the requirements, justifications, risks, contract type, contract terms, and procurement methods for specified project(s) or procurements.


	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

- **Administrative Contracting Officer (ACO)** – The Service Authority employee holding a valid Warrant and designated to manage and document the Contractor’s performance and compliance with all of the terms and conditions of the Contract. The ACO manages contract change orders, modifications and amendments, approving, or recommending approval of the same, if required. The ACO assigns contract management functions to the Contracting Officer Representative (COR), subject to established threshold limitations, for each designated contract.
- **Affected Jurisdiction** – As applicable in Chapter 8 of these regulations, 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).
- **Authorized Employee** – an employee who has been trained by the Procurement or Contracts Management Department and received a Warrant of Authority to perform the specific procurement and contract management duties as outlined in the Warrant of Authority.
- **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, and any draining, dredging, excavation, grading or similar work upon 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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET


authorized, in writing.

- **Contracting Officer** – a Service Authority employee authorized to plan for, solicit, negotiate, award (unless additional approvals are required by these regulations) and execute Contracts. The Contracting Officer, or designated ACO/COR also monitors and documents contract performance and compliance, manages Contract Change Orders and modifications, resolves Contract disputes and conflicts, manages Contract renewals, and recommends Contract terminations to the General Manager. The Contracting Officer exercises authority on matters that have a substantial bearing on the Contract. The Contracting Officer administers proper Contract close-out and maintains the complete Contract file. The Contracting Officer is the General Manager’s designee, under the direction of the Deputy General Manager/Chief Administrative Officer and the supervision of the Director of Management and Budget, or as otherwise directed by the General Manager, for the faithful execution and performance of such functions. The Contracts Administration Manager and the Procurement Manager are Contracting Officers.
- **Contracting Officer Representative (COR)** – the representative of the ACO responsible for the inspection and approval or disapproval of all deliverables and payment of invoices under Service Authority Contracts. Designation as a COR does not convey authority to execute Contracts or Change Orders.
- **Contractor** – an individual, group of individuals or an organization having or proposing a Contract with the Authority.
- **Contracts Management Department** – The Service Authority department is responsible for the management of all Contracts the Director of Management and Budget may assign the department to manage.
- **Debarment:** – a sanction excluding a person or business from participation in contracting opportunities or conducting business with a public body for a period of up to three (3) years in order to protect the interest of the public body. Debarment actions are discretionary actions but are normally imposed for serious offenses.
- **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 Purchase** – 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 Purchase 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


	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

same household.

- **Informality** – a minor defect or variation in a Bid or Proposal from the exact requirements of the IFB or RFP, 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 or Offerors.
- **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 75107.
- **Major Information Technology (IT) Contracts** – Contracts for Information Technology projects that meet the criteria for inclusion in the Service Authority’s Capital Improvements Program (CIP).
- **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 an agreement on the terms of a Contract and a fair and reasonable price.
- **Notice of Award** – a written notice by the Service 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.
- **Procurement Department** – The Service Authority department responsible for procuring goods, Services and construction in conformance with the VPPA and the Service Authority Procurement and Contract Management Regulations. The Procurement Department also performs or oversees contract management duties, as required, for Service Authority contracts not assigned to the Contracts Management Department.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET


- **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.
- **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.
- **Quote** – 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.
- **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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

- **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 Requests for Quotation (RFQ), Requests for Proposal (RFP) and Invitations for Bids (IFB). Formal Solicitations refer to competitive sealed bids and proposals considered in a competitive negotiation process 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 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.
- **SWaM vendors** – small, women, minority and service-disabled veteran-owned businesses that are awarded a Contract, are a subcontractor to a Contractor, submit a bid or proposal, respond to vendor outreach efforts, or seek support for SWaM certification efforts.
- **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.
- **Warrant of Authority** – A document issued to a named individual by the Contracting Officer, which establishes delegated authority to such named individual to perform the procurement or contract management duties specified in the Warrant of 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.

- **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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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

§71120. Acronyms.

ACO	Administrative Contracting Officer
COR	Contracting Officer Representative
eVA	Virginia's Statewide E-procurement Application
FDIC	Federal Deposit Insurance Corporation
GMP	Guaranteed Maximum Price
IFB	Invitation for Bids
IT	Information Technology
MPUA's	Master Plan Utility Adjustments
OPA	Open Purchase Agreements
PO	Purchase Order
PPEA	Public-Private Education Facilities and Infrastructure Act of 2002
PWCSA	Prince William County Service Authority
RFP	Request for Proposal
RFQ	Request for Quotation
SOP	Standard Operating Procedure
SWaM	Small, women, minority, and service-disabled veteran-owned businesses
VFOIA	Virginia Freedom of Information Act
VPPA	Virginia Public Procurement Act
VSLGCIA	Virginia State and Local Government Conflict of Interest Act

§71125. Powers and Duties of the Contracting Officer(s).

- A. Under the direction of the Deputy General Manager/Chief Administrative Officer and supervision of the Director of Management and Budget, the Contracting Officer(s) shall perform, manage and oversee the procurement and contract management functions of the Authority.
- B. Consistent with these regulations, and with such approvals as the General Manager may require, the Contracting Officer(s) may adopt operational procedures governing the internal functions of the Procurement and the Contracts Management Departments, and the implementation of these regulations, in the performance of their respective duties.
- C. Except as otherwise specifically provided in these regulations, the Contracting Officer shall, in accordance with the regulations:
 1. Procure or supervise the procurement of all Supplies, Services and Construction needed by the Authority;


	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

2. Work with other Divisions within the Service Authority to identify the best sources of Supplies and Services;
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 Authorized Employee.

- D. The Contracting Officer is authorized to adopt standard procedures which, consistent with these regulations, govern the procurement and contract management of any and all Supplies, Services and Construction procured by the Authority.
- E. All purchases \$20,000 or greater require execution of the Purchase Order and Contract by the Contracting Officer or such other employee as may be designated by the General Manager.
- 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 Contracting Officer(s) 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.

§71130. Issuance of Warrant Authority.

- A. Final authority for all purchases and Contracts belongs to the Board of Directors. Except as specified in these regulations, the Board of Directors delegates such authority to the General Manager. Unless such authority is reserved to the General Manager, the Deputy General Manager/Chief Administrative Officer or Director of Management and Budget, the Contracting Officer(s) may, subject to these regulations, delegate authority to other employees through the issuance of Warrants of Authority after providing training to such employees in all duties and responsibilities covered by such Warrant. Such delegations shall be in writing and the Contracting Officer(s) shall maintain a record of all Warrants issued and the Authorized Employees. Such designation shall not be deemed to relieve the Contracting Officer(s) of the responsibility for supervision and control of any procurement or contract management function.
- B. The Warrant of Authority 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 any Contracting Officer(s) decisions requiring the Contracting Officer's approval. Warrants of Authority may specifically include or exclude certain commodities or Services or Construction.
- C. Employee in the Procurement Department who have delegated authority can issue Purchase Orders from approved requisitions up to the amount specified in their Warrant.
- D. Warrants of Authority shall remain in effect unless modified or terminated by the Contracting Officer(s) in

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

writing.

- E. The Contracting Officer(s) shall establish and conduct a training and development program covering procurement or contract management duties for those employees to whom the Contracting Officer(s) may delegate authority. As determined by the Contracting Officer(s), more extensive training shall be required for higher values of Warrants of Authority and more complex and sensitive duties.
- F. The Contracting Officer(s) shall maintain complete records pertaining to the performance of the procurement and contract management functions.

§71135. Unauthorized Purchases and Dispositions.

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

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


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 Unauthorized Purchase or commitment. If deemed to be personally responsible, the individual will reimburse the Authority for the Unauthorized 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 Contracting Officer, to include proposed disciplinary action taken, if appropriate, and the corrective action(s) taken to prevent recurrence. The Contracting Officer 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/Chief Administrative Officer with any additional comments.

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

§71140. 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.


	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

§71145. Equal Opportunity.

- A. The Service Authority shall not discriminate against any person on the basis of race, color, creed, religion, sexual orientation, gender identity, national origin, sex, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment.
- B. The Service Authority shall ensure its contracts contain the non-discrimination prohibitions of the VPPA, wherever applicable.

§71150. Small, Women, Minority and Service-Disabled Veteran Owned Business Program.

- A. It is the policy of the Service Authority to promote opportunity for small, women, minority and service-disabled veteran-owned businesses (SWaM vendors), as defined in the VPPA. The Service Authority encourages Authorized Employees to include SWaM vendors in all Solicitations where applicable, particularly through the use of eVA, and to purchase goods and Services requiring a single quote from SWaM vendors where practicable.
- B. 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 SWaM vendor (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.
- C. The Contracting Officer responsible for procurement of goods, Services, and Construction shall establish, in writing, programs to facilitate the participation of SWaM vendors and employment services organizations in procurement transactions, including SWaM vendor outreach, support for SWaM certification efforts by potential bidders/offerors, and acquisition planning that creates opportunities for SWaM vendors. The Service Authority's expectations that its workforce, suppliers, and partners to reflect our vision and values, particularly Respect and Inclusion, shall be communicated in every solicitation.
- D. The Contracting Officer shall encourage Service Authority staff to use good faith efforts to seek out and facilitate the participation of SWaM vendors in formal and informal purchases.
- E. The Contracting Officer shall issue annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service-disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity.
- F. In soliciting a Contract of two hundred thousand dollars (\$200,000) or more, the Service Authority shall require all bidders/offerors to submit a SWaM Subcontracting Plan, which requires the Contractor to state whether the Contractor intends to subcontract work as part of its performance under the Contract, and, if so, to include in their bid or proposal a subcontracting plan. All bidders and offerors are encouraged to use good faith efforts to seek out and facilitate the participation of SWaM vendors as subcontractors.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET


§71155. Public Access to Procurement and Contracting 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. Bid records shall be open to public inspection only after the award of the Contract. However, 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 the award of the Contract. Such inspection may take place following the opening of Bids or upon completion of evaluation and Negotiation of Proposals at the determination of the Contracting Officer. The opportunity to inspect such records shall not be applicable if the Authority decides not to accept any of the 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.
- E. Trade secrets or proprietary information submitted by a Bidder, Offeror, or Contractor in connection with a purchasing transaction, including prequalification, 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 clearly mark the data or materials as trade secrets or proprietary, stating the reasons why protection is necessary. A bidder, offeror, or Contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal or prequalification application; any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (b) line item prices or total bid, proposal, or prequalification application prices.
- 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.

§71160. 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

§71165. 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 Contracting Officer. The Contracting Officer shall determine all decisions concerning specifications.

§71170. 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 the tie Bid does not involve a 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, the Procurement Department shall make a written determination and award the procurement 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.


§71175. 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.

§71180. 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

§71185. Background Checks.

- A. For any Purchase over \$100,000 awarded to a Vendor that has not provided any Service to the Authority within the preceding five (5) years, or prior to the award of any contract exceeding \$500,000, the Procurement Department shall document the 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. Civil and criminal litigation histories;
 - d. Review of the Federal and State debarred list;
 - e. Reference checks; and,
 - f. Written justification if any of the above are not performed.
- B. The Contracting Officer responsible for the procurement shall maintain and update the background check records as needed during the term of the Contract.

§71190. Administrative Changes.

Policy revisions to the Service Authority’s Procurement and Contract Management Regulations must be approved by the Board of Directors. Consistent with Board resolution 17-06-34, the General Manager is authorized to approve administrative changes and other changes as required by the Code of Virginia.


Article 2 Acquisition Planning.

Sections.

- 71205. Planning Required for All Purchases Over \$20,000.
- 71210. Combined Planning for Multiple Projects or Purchases Encouraged.
- 71215. Roles and Responsibilities for Acquisition Planning.
- 71220. Preliminary Acquisition Plan.
- 71225. Final Acquisition Plan.

§71205. Planning Required for All Purchases Over \$20,000.

Except for Emergency Purchases, all Purchases over \$20,000 require advance planning with the Contracts Management Department and/or the Procurement Department. The Requesting Division shall commence planning immediately after identifying a need that is expected to cost over \$20,000. The purpose of advance acquisition planning is to justify and document the need for expenditures, perform market research, form a procurement and contracting strategy, identify and mitigate risks, and develop a scope of work that meets the Service Authority’s needs. The depth and complexity of the Acquisition Plan shall be in accordance with the size and complexity of planned procurement.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

§71210. Combined Planning for Multiple Projects or Purchases Encouraged.

To maximize efficiency in procurement and contract management, the Service Authority encourages Requesting Divisions combine or “bundle” similar projects or purchases into a single Acquisition Plan. The Acquisition Plan may include single or multiple Contracts and Procurements. Combining or bundling multiple projects or purchases permits more thorough advance planning and reduces the administrative burden of planning as compared to planning for projects or purchases individually. Such bundling should include subcontracting plans to encourage the participation of SWaM vendors.

§71215. Roles and Responsibilities for Acquisition Planning.

- A. An ACO with warrant authority is responsible to initiate and oversee the Acquisition Planning process. The ACO shall initiate and Acquisition Planning Team to include a representative designated by the applicable CO(s). The ACO may designate a COR (holding a valid Warrant) to assist her or him in the acquisition planning process.
- B. The Contracting Officer in the Contracts Management Department and/or Procurement Department are responsible for supporting the Requesting Division by assisting with market research and sourcing, consulting with the ACO regarding Contract types, scope of work and terms and the procurement method. The Contracting Officer(s) shall approve the type of Contract and Procurement Method for all Contracts over \$20,000.

§71220. Preliminary Acquisition Plan.


The Acquisition Planning team shall prepare a preliminary Acquisition Plan prior to the approval of the annual Operating and Capital Budget, Capital Improvements Program and annual Business Goals. The preliminary Acquisition Plan shall consist of:

- A. Need Identification – This consists of documentation and justification for the project or procurement, initial cost estimates and cost benefit analysis and an outline of the contracting or procurement needs associated with the work.
- B. Market Research and Sourcing – This includes a preliminary determination of the procurement strategy and method, a preliminary list or internal and external resources needed, bundling analysis, and consideration of how the Service Authority will seek, promote, and sustain competition throughout the procurement.
- C. Preliminary Risk Analysis – a preliminary analysis of the strategic, financial, operational performance, regulatory and legal risks associated with the project or deferring the project.


The preliminary Acquisition Plan is intended to provide enough information to prioritize the project and maximize the productivity of Service Authority resources during each planning period by outlining the benefits and costs of the project(s) or procurement(s) so they can be weighed against other alternatives.

§71225. Final Acquisition Plan.

The final Acquisition Plan adds the following elements to the preliminary Acquisition Plan:

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GENERAL	<i>STARTING SECTION:</i> 71105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

- A. Scope of Work – This expands on the identification of need to include a more detailed description of the Work to be performed, roles and responsibilities of the parties to the anticipated Contract, deliverables and acceptance criteria, cost and schedule.
- B. Procurement Schedule – The agreed upon schedule for the for the Solicitation, selection, award and execution of the proposed Contract(s) associated with the project or procurement.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Division VII Chapter 2

Chapter 2 METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS


Sections.

- 72005. General.
- 72010. Purchases of Less Than \$20,000.
- 72015. Purchases of \$20,000 or More and less than \$200,000.
- 72020. Cooperative and Joint 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.
- 72053. Membership in Risk-Sharing Pools Authorized.
- 72055. Exempt Items.
- 72060. Other Formal Methods of Procurement.

ADOPTED: AUGUST 10, 1989, BOD Res. Num. 89-8-29
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 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
 REVISED APRIL 14, 2022 BOD Res. Num. 22-04-10
 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 Authorized 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- D. PO's improperly created by splitting may be canceled at the direction of the Contracting Officer, Purchases already made by splitting orders shall be treated as Unauthorized Purchases and documented and forwarded using the same procedures as Section 71135 paragraph C. Employees splitting purchases are subject to disciplinary action up to and including termination.
- E. 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 \$20,000.

- A. Except for stocked items, restricted items or items designated to be purchased under a Contract, purchases of less than \$20,000 may be made directly by the Authorized Employee in the originating Division using a single quote. The Best Value for the Authority shall be sought in all Purchases. Where practicable, Authorized Employees shall seek to award purchases to SWaM Vendors. Professional judgment, market conditions, price and experience with Vendor performance shall be assessed in awarding the Purchase. Orders utilizing existing Contracts and standard terms and conditions shall be employed whenever practicable. Every Purchase under \$20,000 shall be properly documented and records retained. Purchases of similar items through this process shall not exceed \$100,000 per year without prior approval from the Contracting Officer. The Procurement Department shall regularly review such Purchases in order to ensure compliance with Service Authority regulations.


§72015. Purchases of \$20,000 or more and less than \$200,000.

- A. Purchases of \$20,000 or more and less than \$100,000:

For Purchases of Supplies or Services by the Procurement Department between \$20,000 and \$100,000, three (3) or more vendors shall be solicited, if practicable. Subject to their warrant authority, 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 PO. The quote summary sheet shall provide: Contact information of Vendors from whom quotes were solicited; whether 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 \$100,000 or more and less than \$200,000:

For Purchases of Supplies or Services between \$100,000 and \$200,000, four (4) or more vendors 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; SWaM Vendors solicited with their designations (if available); whether the Vendors responded; justification for not obtaining quotes (if applicable); and,

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

pricing information provided by Vendors. Public notice shall be given as required by §2.2-4303 of the VPPA. The Procurement Department may post informal Solicitations on the Service Authority's website and/or eVA. Final approval and purchasing authority will remain in the Procurement Department.


- C. The Contracting Officer 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.

§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 Contracting Officer 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. Architectural, professional engineering Services and Construction may not be purchased from the Contracts of other public bodies. Nothing in these Procurement and Contract Management 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. Supplies and Services for which the Service Authority has unique requirements, where multiple cooperative purchase agreements are not readily available, or where the continuous availability of the Supplies or Services are critical to the operations of the Service Authority, shall not be procured through a cooperative purchase agreement, unless such procurement is approved in advance by the Contracting Officer responsible for determining the procurement method.
- D. 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.
- E. 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 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 Contracting Officer.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>


- B. Persons authorized by the Contracting Officer 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 Authorized 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 \$750.00. 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.

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

- A. Where Construction, 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 71165 for guidelines on developing Specifications) or other reasons, such Construction, 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 Contracting Officer shall make the final determination on use of Sole Source. The Contracting Officer in the Procurement Department for Purchases shall approve Sole

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Source procurements under \$200,000, and the General Manager shall approve Sole Source procurements of \$200,000 and above.

- C. The Contracting Officer 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 Procurement Department shall post the Notice of Award for all sole source procurements over \$100,000 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 may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement 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 Contracting Officer and he/she shall purchase Construction, 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 Construction, Supplies or Services. The Division Director shall notify the Contracting Officer 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 Contracting Officer 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.
- D. If, upon subsequent review, the Contracting Officer determines that no Emergency existed, the Contracting Officer 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 \$200,000 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 Contracting Officer 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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 Procurement and Contract Management 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.

§72053. Membership in Risk-Sharing Pools Authorized.

In accordance with Sections 15.2,2700-2709 of the Code of Virginia, authorizes political subdivisions to join with other political subdivisions to create pools to jointly and cooperatively self-insure and to pool the separate risks and liabilities of the individual members, Membership in the Virginia Risk Sharing Association and VAcorp are authorized. Membership in these risk-sharing pools is not considered a procurement under Virginia Public Procurement Act (VPPA) §2.2-4300, et.seq.

§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 Contracting Officer, 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. Memberships, dues, subscriptions and publications;
 - 7. Professional/business/regulatory licenses and certifications;
 - 8. Educational films;
 - 9. Freight charges;
 - 10. Governmental fees and charges (including permits);
 - 11. Inter-agency Purchases;
 - 12. Investment of Public Funds (see Va. Code §2.2-4400 through §2.2-4518);
 - 13. Insurance claims;
 - 14. Master Plan Utility Adjustments (MPUA's);

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

15. Postage;
16. Purchase and rental of real property;
17. Telephone Service;
18. Training, educational Services and conferences;
19. Travel, room and board;
20. Tuition;
21. Utility Services (unless competitive utility Services or equipment are available);
22. Purchase of artwork, displays, and exhibits (including Services related to such Purchase);
23. Perishable food items; and,
24. 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.

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 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> METHODS OF PURCHASING OTHER THAN SEALED BIDS OR PROPOSALS	<i>STARTING SECTION:</i> 72005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§72060. Other Formal Methods of Procurement.

Policies governing the following methods of procurement are specified as follows:

Procurement Method	Sections
Competitive Sealed Bids	74100 through 74199
Competitive Negotiations	74200 through 74299
Sealed Bids for Construction	74100 through 74199; and, 75100 through 75199
Alternative Methods of Construction	75200 through 75499
PPEA	78000 through 78099

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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 \$20,000. |
| 73115. | Approval of Contracts at Least \$20,000 but Less than \$200,000. |
| 73120. | Approval of Contracts at Least \$200,000 but Less than \$500,000. |
| 73125. | Approval of Contracts Exceeding \$500,000. |
| 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 Management. |
| 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 approval to enter into Contracts for execution by the General Manager or designee, and other Purchases not otherwise specifically reserved to the Board of Directors by this section.

All Solicitation and Contract documents, terms and conditions must follow the drafting formats and guidelines established by the Contracting Officer(s). Only personnel authorized and delegated in writing by the Contracting Officer(s) shall approve Contracts on behalf of the Authority. No person shall approve a Contract that does not conform to these regulations.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

§73110. Approval of Contracts under \$20,000.

Contracts and other Purchases less than \$20,000 may be approved and executed by the Administrative Contracting Officer (ACO) in the originating Division unless review by the Procurement Department is requested. The ACO is responsible for all terms and conditions of the executed Contract, which must still meet the basic requirements of Contracts outlined herein.

§73115. Approval of Contracts at Least \$20,000 but Less than \$200,000.

Competitive and non-competitive Contracts and other procurements with an aggregate value greater than \$20,000 and less than \$200,000 or task orders issued under a Board of Directors approved Contract, must be approved and executed by the Contracting Officer(s), or by those employees delegated in writing by the General Manager, unless the Board of Directors authorizes another person to do so.

§73120. Approval of Contracts at Least \$200,000 but Less than \$500,000.

All competitive and non-competitive Contracts for at least \$200,000 but less than \$500,000 to which the Authority is a party shall be in writing, recommended by the Contracting Officer, 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 Contracts Exceeding \$500,000.

- A. Except as provided for herein, Contracts, Task Orders, or other work authorizations for \$500,000 or more, or which are anticipated to exceed \$500,000 require Board of Directors approval.
- B. Board of Directors approved contingency shall not exceed: (i) 10% for Contracts of \$1,500,000 or less; and ii) the greater of \$150,000 or 5% for amounts greater than \$1,500,000, unless waived by the Board of Directors.
- C. Request for a Contract approval by the Board of Directors must be recommended by the Administrative Contracting Officer, the Contracting Officer(s), the Director of Management and Budget, the Deputy General Manager/Chief Administrative Officer 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 of Directors shall designate. In the event the Board of Directors does not specify an individual to execute a Contract on its behalf, the General Manager or his designee may execute the Contract.
- F. Any Change Order or Modification to a Construction Contract, Professional Services Contract, or Task Order, not previously approved by the Board of Directors, which increases the total Contract value above \$500,000 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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> <p style="text-align: center;">CONTRACTS</p>	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

is greater, requires Board of Directors approval per Section 73150.

- H. Any Change Order or Modification of \$200,000 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 \$200,000 may be approved by the Administrative Contracting Officer.
- I. Adjustments to Contract rates or unit prices via Modification are subject to the same approval thresholds as other Change Orders unless otherwise provided for in the Contract.
- J. Notwithstanding such Purchase may exceed \$500,000, the Purchase of wholesale water, wastewater treatment Service pursuant to existing agreements, utilities, operating supplies and chemicals are deemed authorized upon approval of the annual operating budget (see Section 73105).

§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, or 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 Contracting Officer(s) shall determine the need for the Service Authority's attorney's office to review all other Contracts in excess of \$20,000. The Administrative Contracting Officer shall determine the need for Authority's attorney's office to review Contracts less than \$20,000.

§73140. Contracts to be in Writing.

Unless the Contracting Officer 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 Management.

- A. Unless otherwise specified by the General Manager, the Contracting Officer is responsible for all Contracts entered in the Authority's name. Each Administrative Contracting Officer (ACO) or his/her designated representative (as provided in writing to the appropriate Contracting Officer), shall be responsible for acquisition planning and contract administration of those Contracts relating to its operation unless otherwise directed by the General Manager. The Administrative Contracting Officer shall receive appropriate Contract Management training through the Procurement Department and/or Contracts Management Department and participate in the creation of the Acquisition Plan and the Contract Administration Plan. The Administrative Contracting Officer shall acknowledge the receipt of any Contract and certify in writing that no conflict of interest exists in administering the Contract. The Contract Administration Plan and the certification shall become a part of the Contract file. The Administrative Contracting Officer or the authorized and designated Contracting Officer's Representative (COR) shall perform, at a minimum, the following administrative functions:

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

1. Approves the use of Contracts, consistent with its scope and terms, by other Service Authority personnel;
2. Initiates and holds a project kick-off meeting with the supplier;
3. Receives a project schedule approved by the Service Authority or designee prior to kick off meeting;
4. Submits Requisitions into purchasing software and receives approval prior to authorizing work under the Contract;
5. Serves as a primary point of contact with Vendor to coordinate technical issues and answer Vendor questions;
6. Monitors expenditures (including work in progress) to ensure that it is in accordance with authorized contractual and budgetary constraints;
7. 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;
8. Reviews and approves status reports as required by Contract. To the extent applicable to the Contract, the ACO or COR shall require the following information at least bi-monthly: budget of hours and dollars; cost and hours incurred to date; estimated cost and hours to complete; budget and schedule analysis; projected completion date;
9. Approves or disapproves all deliveries of Supplies, Services and Construction and the performance thereof in accordance with the Contract;
10. Maintains documentation regarding any Change Orders including full pricing estimate breakdowns. To the extent applicable to the Contract, 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;
11. 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;
12. Approves invoices for payment less any disputed amounts;
13. Serves as primary point of contact for the Contracts Management, Procurement and Accounting Departments;
14. Provides an assessment of Contractor performance, including diversity and inclusion results as applicable, prior to Contract renewal or substantial completion;
15. Follows Contract closeout procedures to include, at a minimum, use of a checklist to ensure all required items are completed and all Work complies with Contract requirements; and,

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

16. Notifies the Contracting Officer 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 ACO or COR will inspect all goods and Services delivered, refusing any non-compliant items. The ACO or COR shall immediately bring any discrepancies in deliveries or in the performance of the Contract to the attention of the Contracting Officer in writing. Failure to satisfactorily resolve the identified deficiency shall be brought to the attention of the Contracting Officer, who shall institute a formal complaint with the Contractor/Vendor. If satisfaction is not forthcoming, the Contracting Officer is authorized to take additional action to terminate the Contract, in whole or in part.
- C. In order to maintain the integrity of the Contract and the role of the Administrative Contracting Officer or Contracting Officer's Representative, the designated Administrative Contracting Officer or Contracting Officer's Representative 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 Contracting Officer 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 the Contract price, Contract times, project scope, schedule of values 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§73150. Changes and Modifications to Contracts.

- A. **For fixed price contracts**, 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 Procurement and Contract Management Regulations. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- 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 at the time they are known and shall not be unnecessarily deferred in order to be combined or netted against other changes.
- 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 \$200,000, requires the approval of the General Manager.
- D. When deemed in the best interest of the Service Authority, only the General Manager or his designee 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 Administrative Contracting Officer, Contracting Officer's Representative 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 Administrative Contracting Officer or Contracting Officer's Representatives may not withhold proposed Change Orders until the end of the Work.
- F. The provisions of this section shall not limit the amount a party to a public Contract may claim or recover against a public body pursuant to §2.2-4363 or any other applicable statute or regulation. Any Modifications made by the Service Authority that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in §2.2-4363.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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 Contract, the Authority shall thereupon have the right to terminate, in whole or in part, 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-Allocation of Funds.

A clause shall be included in all Service Authority Contracts:

If the Service Authority does not allocate funds for any succeeding fiscal year subsequent to the one in which the Contract is entered into, then the Service Authority may terminate, in whole or in part, 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§73220. Termination for Convenience of the Authority.

Work or delivery under the Contract may be terminated, from time to time either in whole or in part, whenever the General Manager or his/her designee 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, in whole or in part, the Contract, then fair and reasonable compensation shall be negotiated, and the Contract deemed completed with respect to the portion terminated.

§73230 Examination of Records.


The Contractor shall agree that the Contracting Officer 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:

- 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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 religious practice, or on the basis of race, age, color, gender, sexual orientation, gender identity 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.

§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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONTRACTS	<i>STARTING SECTION:</i> 73105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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."

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. The Service Authority may void any Contract if the Contractor fails to remain in compliance with the provisions of this section.

§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 Virginia State Corporation Commission. Such status must be maintained, and cannot be revoked or cancelled, during the term of any Contract between the Contractor and the Service Authority.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Division VII Chapter 4

Chapter 4 COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION

Article. Sec.

- | | |
|-----------------------------|--------|
| 1. General. | 74105. |
| 2. Competitive Sealed Bids. | 74205. |
| 3. Competitive Negotiation. | 74305. |

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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
 REVISED APRIL 14, 2022 BOD Res. Num. 22-04-10
 APPROVED BY THE 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. | Suspension or Debarment. |

§74105. Formal Solicitations.

Unless otherwise permitted, all purchases of \$200,000 (\$80,000 for Professional Services) or more shall be made by formal Solicitations using either Competitive Sealed Bids or Competitive Negotiation procurement methods.

Competitive Bids or Competitive Negotiation, where required, shall be solicited by the Procurement Department. The Contracting Officer 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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 Contracting Officer to require prequalification of prospective Contractors to bid or propose on a specific project for the Authority. The purpose of such prequalification shall be to limit prospective Bidders or Offerors 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 or Proposals 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 D 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- 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; or,
 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 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- 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 or Proposal 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 or offer on one project does not prequalify that Contractor to bid or offer 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 offering on purchases which do not require prequalification.
- P. The Authority shall deny prequalification to any Contractor who fails to register and participate in the E-Verify Program as required by §2.2-4308.2.

§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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Except as for certain Construction Contracts (see Section 75110), the Contracting Officer is authorized at his/her discretion to require each Bidder or Offeror for Supplies, Services or Construction Contracts to submit with a Bid or Offer a certified check payable to the Service Authority for a sum not to exceed five percent (5%) of the Bid or Offer total, as a guarantee that the Bidder or Offeror 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 or Offer. Annual bid bonds may be accepted in lieu of bonds for individual Bids or Offers.

§74125. Performance and Payment Bonds.

- A. The Contracting Officer 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 Contracting Officer 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.
- D. The bonds shall be payable to the Service Authority, and each bond shall be filed with the Service 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 71155 of these regulations.
- C. Bids, Proposals or amendments thereto which are received after the time specified for the opening of Bids or receipt of Proposals will neither be opened nor considered.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- D. The Contracting Officer may waive any minor irregularity or Informality in any timely Bid.
- E. The Contracting Officer 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 should be advised of the reasons for rejection.
- F. Award shall be made to the lowest Responsive and Responsible Bidder or the Offeror who has made the best Proposal and provides the Best Value to the Service Authority 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 or Offeror. Award shall be made by the Contracting Officer, 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 or Offeror. Nothing herein shall prevent the Contracting Officer 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 ninety (90) days, unless otherwise specified in the Solicitation, and maybe extended if mutually agreed.
- H. If the Bid from the lowest Responsible Bidder exceeds available funds, the Service Authority may negotiate with the apparent low Bidder to obtain a Contract price within available funds if the solicitation contains a summary of the Service Authority's policy and procedures authorizing such negotiation. If the Contracting Officer authorizes negotiation, the decision must be documented in writing in advance of the Negotiations. "Available funds" are those budgeted by the Service Authority for the requirement and designated as such prior to the issuance of the IFB. The purpose of this provision is to negotiate an acceptable change in requirements, including price, that is agreeable to both parties. Negotiations may include changes to scope, schedule, terms and price which do not materially change the requirements 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.

§74135. Non-Responsibility.

- A. Following public opening and announcement of bids received on an IFB, the Contracting Officer shall follow 74210 and shall determine whether the apparent low Bidder is responsible or non-responsible.
- B. Should the Contracting Officer determine that the apparent low bidder is non-responsible, the Contracting Officer shall follow the procedures set forth in section 2.2-4359. of the VPPA.
- C. Any determination that a low bidder is not responsible that uses such factors listed in the Invitation for Bid as a basis for its decision shall be presumptively considered an honest exercise of discretion.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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 Contracting Officer 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 (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
 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 Contracting Officer may contest withdrawal of any Bid by any means provided by law. If withdrawal of the Bid is denied, the Contracting Officer shall notify the Bidder in writing within five (5) business days of its decision, stating the reasons for the decision and award such contract to the Bidder at the Bid price, provided such Bidder is a Responsible and Responsive Bidder. At the same time that the notice is provided, the Service Authority shall return all work papers and copies thereof that have been submitted by the Bidder.

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.

§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 Contracting Officer, no later than ten (10) 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 (10) 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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

the time within which the protest shall be submitted shall expire ten (10) 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 be in writing and state in detail the basis therefore, and the specific relief requested.
- D. The Director of Management and Budget, or in the event of a conflict, the Deputy General Manager/Chief Administrative Officer, 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.
- E. Nothing in this section shall be construed to permit a Bidder or Offeror to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

§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 Director of Management and Budget shall direct the Contracting Officer 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 Contracting Officer determines it is necessary to proceed to award without delay to protect the public interest or unless the Bid or Offer would otherwise expire.
- D. Nothing herein shall be construed to prevent the Service Authority from instituting legal action against a Contractor.

§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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§74160. Authority to Debar or Suspend.

- A. The purpose of suspension or debarment of a person or business from Service Authority contracting or business opportunities is to protect the Service Authority's interest and to protect the integrity of its procurement process from a Bidder, Offeror, or Contractor who has displayed improper, unethical, or illegal conduct while responding to a solicitation or performing work under a Service Authority Contract, based on sufficient documentation obtained that such conduct has occurred.
- B. Suspension or debarment actions are discretionary actions. Suspension sanctions shall be imposed for less serious offenses, while debarment sanctions shall be imposed for more serious offenses. Prior to a determination to suspend or debar, the Contracting Officer shall provide reasonable notice to the entity involved and reasonable opportunity for that entity to present evidence why the entity should not be suspended or debarred,
- C. In making the determination, the Contracting Officer shall consider the facts and circumstances of the case, the seriousness of the offense, and the best interest of the Service Authority and its customers. The Contracting Officer, in consultation with legal counsel, shall determine the sanction and period of the sanction which shall be imposed against such person or business.
- D. Debarment sanctions shall be in writing and shall describe the reasons for such action and the start date of the debarment. A written notice of pending action must be issued to such person or business, including information about the appeals process. Such notice shall be mailed certified/receipt requested or delivered in person and a receipt of the notice obtained from such person or business.
- E. The person or business that is suspended or debarred may appeal such sanctions to the Director of Management and Budget within fourteen (14) calendar days after receipt of such notice. The Director of Management and Budget's decision may be appealed to the General Manager within fourteen (14) calendar days of the date of the decision. The General Manager's decision to suspend or debar such person or business shall be final.
- F. The causes for debarment or suspension include but are not limited to the following:
- Illegal conduct while responding to a Service Authority solicitation or while under contract with the Service Authority;
 - Demanding any kickback(s) from its suppliers, subcontractors, or competitors;
 - Falsifying Service Authority procurement-related documents;
 - Misrepresentation(s) in a bid or proposal to obtain a contract award;
 - Failing to disclose a conflict of interest by any officer, director, owner, or partner when responding to a solicitation;
 - Bribery or attempted bribery of a Service Authority employee(s) for procurement favors.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- Conferring or offering any gift, gratuity, favor, or advantage, present or future to a Service Authority employee(s) who has official responsibilities for public procurement;
- Refusal to fulfill a binding bid or proposal;
- Violation of Contract provisions of a character that is regarded by the Contracting Officer to be so serious as to justify a suspension or debarment action;
- Service Authority contract termination for default;
- Displaying abusive or threatening behavior toward any Service Authority employee(s), agent(s), volunteer(s), or member(s) of the public, during any procurement process or while performing under a Service Authority Contract; and,
- Any other cause the Contracting Officer determines to be so serious and compelling as to affect responsibility as a Contractor.

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, a statement of requisite qualifications (unless Bidders have been prequalified) and proposed Contract conditions. They may include such other information, as the Contracting Officer deems appropriate and necessary. The Service Authority may include in the Invitation for Bid criteria that may be used in determining whether a bidder is a responsible bidder pursuant to §2.2-4301. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. 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).

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- B. Public notice of the IFB 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 IFBs in a newspaper of general circulation, and by posting a copy of the IFBs on a bulletin board in a public place in the Authority's headquarters. Public notice may be given by electronic means, by posting on the Department of General Services' central electronic procurement website or by other methods deemed appropriate by the Contracting Officer. 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.

Bids must be submitted to and received by the Contracting Officer or designee. Bids shall be completed in the form and manner specified in the IFB. Unless Bids are received electronically through a secured portal specified by the Contracting Officer or designee, 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 the time set in the IFB for bid opening. Should any Bid be received which is not so identified, the Bidder assumes the risk that the submission will be opened prior to the time set in the IFB for bid opening.

- D. In accordance with the procedures outlined in section 2.2-4302.1 of the VPPA, the Contracting Officer or other designee shall:
- Conduct a public opening and provide an announcement of all bids received;
 - 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,
 - 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 Contracting Officer. The reasons shall be made a part of the record.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Article 3 Competitive Negotiation

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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§74305. General.

- A. This Article applies to all purchases of goods, Services and Construction expected to be or exceed \$200,000 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. On a design-build or construction management basis as provided for in Chapter 5 of this Procurement and Contract Management policy; or
 - 2. The Construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the Service Authority and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

§74310. Selection or Evaluation Committee.

Unless otherwise directed by the General Manager, the Contracting Officer, in consultation with the Requesting Division and the Director of Management and Budget, 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 Contracting Officer, 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 point values at the location designated for public posting of procurement notices prior to the due date and time for receiving Proposals.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- C. No RFP for construction authorized by this section shall condition a successful Offeror's eligibility on having a specified experience modification factor.
- D. Except with regard to Contracts for architectural services or professional engineering, the Service Authority may include as a factor that will be used in evaluating a Proposal the Offeror's employment of persons with disabilities to perform the Specifications of the Contract.

§74320. Public Notice.

The Contracting Officer 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 posting on the Department of General Services' central electronic procurement website, or alternatively, 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 (including from certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity), and, publications in trade journals.

§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 Contracting Officer 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 Contracting Officer or his designees and Service Authority legal counsel. 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 or Section 71155 herein. 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 Section 71155

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

herein 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, Insurance and Non-Professional Services).

- A. Selection shall be made of two (2) or more Offerors deemed to be fully qualified and best suited among 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 provides the Best Value, 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. To the extent practicable, the method or allocation of work among multiple Contractors should be included in the RFP or in the competitive negotiation process. 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 Contracting Officer is authorized to provide debriefings to unsuccessful Offerors that furnish the basis for the source selection decision and Contract award. A post-award debriefing may be provided orally or in writing. A post-award debriefing may include:
 - 1. the Selection Committee's evaluation of significant weaknesses or deficiencies in the unsuccessful Offeror's 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 Contracting Officer shall keep detailed records of any Negotiations entered into in accordance with any requirements of this Article.

§74345. Procurement of Professional Services.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- A. Notwithstanding other provisions of this article, the Authority will follow the provisions of Sections 74310 through 74330 for all Professional Services estimated to be or exceed \$80,000.
- B. Professional Services estimated to cost less than \$80,000, may be negotiated without a formal Request for Proposal. The Purchase Order for all Professional Services costing more than \$20,000 shall be issued by the Procurement Department.
- C. Professional Services estimated to be or exceed \$200,000, but less than \$500,000 must be approved by the General Manager. Professional Services estimated to be or exceed \$500,000 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 \$80,000; 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 (2) 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 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 RFP shall not, however, require that Offerors furnish estimates of man-hours or cost for Services. At this point, the Evaluation Committee shall select, in the order of preference, two (2) or more Offerors whose professional qualifications and proposed Services are deemed most meritorious.

§74355. Negotiations-Professional Services.

The Contracting Officer or designee, the negotiation team or a specific person designated by the Contracting Officer shall conduct Negotiations with the Offeror ranked first. Price shall be a negotiated at this stage of the procurement but need not be the sole factor in the Negotiations.

- A. If a Contract satisfactory and advantageous to the Service Authority cannot be agreed upon with the highest ranked Offeror at a price considered fair and reasonable and pursuant to contractual terms and conditions satisfactory to the Service Authority, Negotiations with the Offeror shall be formally terminated. A written record stating the reasons shall be placed in the file and the Contracting Officer shall advise the Offeror of the termination of Negotiations.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- B. Upon failure of Negotiations to produce an acceptable Contract, the Contracting Officer may enter into Negotiations with the next highest ranked Offeror as determined by the Selection Committee's recommendation. If Negotiations with such Offeror again fail, the Contracting Officer 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.
- 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 Contracting Officer. The reasons shall be made a part of the record.

§74370. Architectural and Professional Engineering Term Contracting.

- A. Contracts 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 the total fees 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> COMPETITIVE BIDS AND COMPETITIVE NEGOTIATION	<i>STARTING SECTION:</i> 74105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- C. The sum of all projects performed in a one-year Contract term shall not exceed \$8 million.

- 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 \$2.5 million.

- F. 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 \$2,500,000.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Division VII Chapter 5

Chapter 5 CONSTRUCTION

Article.	Section
1. General Policies.	75105.
2. Construction Management and Design Build Contracts.	75205.
3. Construction Management Guidelines.	75305.
4. Design Build Guidelines.	75405.

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 REVISED APRIL 14, 2022 BOD Res. Num. 22-04-10
 APPROVED BY BOARD OF DIRECTORS


Article 1 General_Policies.

Sections.	
75105.	General.
75107.	Job Order Contracting.
75110.	Bid Security and Insurance.
75115.	Award or Rejection.
75120.	Retainage.
75125.	Deposit of Retained Funds.
75130.	Performance and Payment Bonds.
75135.	State Law.

§75105. 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, Job Order Contracting as described herein, for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination. and for procurements as set forth in and following the

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

requirements of Articles 2-4 of this Chapter, Construction may be purchased only by competitive sealed bidding.


- B. Except as provided otherwise herein, the Procurement Department shall solicit Bids for Construction 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 Contracting Officer(s), the designated ACO in the Requesting Division, the Director of Management and Budget and the Executive Office.
- 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.

§75107. 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 \$6,000,000. 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.

§75110. Bid Security and Insurance.

- A. Except in cases of Emergency, all Bids or Proposals for Construction Contracts of \$500,000 or more shall be accompanied by Bid security meeting the requirements of Section 74120 of these regulations. Nothing in this section shall preclude the Contracting

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

Officer from requiring Bid security for construction Contracts anticipated to be less than \$500,000. However, where the anticipated value of the Construction Contract is greater than \$200,000 but less than \$500,000, if the Bid security requirement is waived, prospective Contractors must be prequalified for each individual project.

- 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.

§75115. Award or Rejection.

- A. Except as provided herein, all Contracts for Construction of \$500,000 or more shall be awarded by the Board of Directors in accordance with the regulations governing the award of Bids generally. The Service Authority may reject any or all Bids. The Procurement Department shall make the reasons for cancellation or rejection part of the Contract file. The Service Authority shall not cancel or reject an Invitation for Bid, a Request for Proposal, any other Solicitation, Bid or Proposal pursuant to this section solely to avoid awarding a Contract to a particular Responsive and Responsible Bidder or Responsive Offeror.
- B. Except as provided herein, Construction Contracts for more than \$200,000 but less than \$500,000 must be approved by the General Manager or designee. Construction Contracts for less than \$200,000 must be approved by the Contracting Officer 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.

§75120. 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. For design-build Construction Contracts, payments attributable to design-only shall not be subject to retainage.


	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§75125. 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.
- 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.

§75130. Performance and Payment Bonds.

- A. The Contracting Officer shall require any successful Bidder or Offeror for a Construction Contract of \$500,000 or more, to execute performance and payment bonds in accordance with the provisions of Section 74125 of these Regulations. The Contracting Officer 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 \$500,000.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§75135. 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.

§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 Service Authority shall designate a licensed engineer or architect with professional competence appropriate to the project who 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 the project cost threshold established in the procedures adopted by the Secretary of Administration for utilizing construction management Contracts. Construction management may also be utilized on projects where the project cost is expected to be less than such threshold, provided that:

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

1. the project is a complex project; and,
2. the project procurement method is approved by the Board of Directors. The Procurement Department shall maintain a copy of the authorizing resolution in the procurement file.

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. The following procedures shall be used in selecting a construction manager and awarding a Contract:
 1. The Contracting Officer will appoint an Evaluation Committee (“Committee”) which shall consist of at least three employees, including a licensed professional engineer or architect (employee or Contractor consultant). Exceptions to these procedures may be granted by the General Manager. The Contracting Officer, in consultation with the General 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 Virginia Code §2.2-4382 and these procedures. The Procurement Department shall submit the criteria for the award shall be submitted to the Deputy General Manager for Program and Project Management, in advance, for approval. Cost shall be a critical component of the selection process.
 3. Selection of Qualified Offerors (STEP I). The Contracting Officer will conduct a prequalification process as follows to determine which Offerors are qualified to receive request for proposals (RFPs).
 - a) The Contracting Officer 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- b) The Procurement Department shall post public notice of the RFQ 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. The RFQ shall state if responses may be submitted electronically and/or via paper response.
 - c) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Code of Virginia.
 - d) Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a Contract. However, in the selection of a Contractor, the Service Authority may consider the experience of each Contractor on comparable projects.
 - 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. The RFQ evaluation process shall evaluate an Offeror's experience for a period of ten prior years to determine whether the Offeror has constructed, by any method of project delivery, at least three projects similar in program and size. Per § 2.2-4382.D.4. of the Code of Virginia, prior construction management experience shall not be required as a prerequisite for the award of a contract.
 - f) The RFQ evaluation process shall result in a short list of three to five Offerors to receive the RFP. If available, the short list shall include a minimum of one DSBSD-Certified Small Business that meets the minimum requirements for prequalification. 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 Contracting Officer 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 Contracting Officer 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- b) Proposals as described in the RFP shall be submitted to the Committee. The RFP shall state if responses may be submitted electronically and/or via paper response.
- 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 Contracting Officer based on its evaluations and negotiations. The General Manager shall recommend the selection of the construction manager to the Board of Directors and request the Board of Directors approve the Contract award. 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 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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.
- 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 Contracting Officer 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 Contracting Officer 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 Deputy General Manager, in advance, for approval. Cost is a critical component of the selection process.
 3. Selection of Qualified Offerors (STEP I). The Contracting Officer will conduct a prequalification process as follows to determine which Offerors are qualified to receive request for proposals (RFPs).
 - a) The Contracting Officer 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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>


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 with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a Contractor, the Service Authority may consider the experience of each Contractor on comparable projects.
 - 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. The RFQ evaluation process shall evaluate an Offeror's experience for a period of ten prior years to determine whether the Offeror has constructed, by any method of project delivery, at least three projects similar in program and size. Per § 2.2-4382.D.4. of the Code of Virginia, prior construction management experience shall not be required as a prerequisite for the award of a contract.
 - f) The RFQ evaluation process shall result in a short list of two to five Offerors to receive the RFP. If available, the short list shall include a minimum of one DSBSD-Certified Small Business that meets the minimum requirements for prequalification. 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 Contracting Officer 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 Contracting Officer 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:

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> CONSTRUCTION	<i>STARTING SECTION:</i> 75105
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- 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 Contracting Officer based on its evaluations and negotiations. The General Manager shall recommend the selection of the construction manager to the Board of Directors and request the Board of Directors approve the Contract award. 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 Contracting Officer will notify all Offerors who submitted proposals which Offeror was selected for the project. In the alternative, the Contracting Officer 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 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> SURPLUS SALES AND ASSET DISPOSAL	<i>STARTING SECTION:</i> 76005
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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.

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 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 of 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 or designee shall maintain a Standard Operating Procedure (SOP) for Surplus Sales and Asset Disposals that explains the process, required documentation and allowable exemptions. Employees’ responsibilities under this policy may be delegated with proper training prior to such delegations. All delegations must be to a specific designated employee and must be in writing. Ultimate responsibility remains with the positions named in this policy.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> SURPLUS SALES AND ASSET DISPOSAL	<i>STARTING SECTION:</i> 76005
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

§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 or designee shall dispose of the Real Property as directed by the General Manager and according to such terms approved by the Board of Directors.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> SURPLUS SALES AND ASSET DISPOSAL	<i>STARTING SECTION:</i> 76005
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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 or designee after being approved as Surplus by the Director or designee 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 or designee after written recommendation by the Director or designee responsible for the Tangible Assets and approval as Surplus by the General Manager or designee.

2) Safekeeping: The Division Director or designee 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 or designee 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 or designee 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 or designee may dispose of such assets by any other commercially reasonable method. The Director of Management and Budget or designee 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 or designee 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 or designee.
- iii. The Director of Management and Budget or designee 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> SURPLUS SALES AND ASSET DISPOSAL	<i>STARTING SECTION:</i> 76005
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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

§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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> STANDARDS OF CONDUCT	<i>STARTING SECTION:</i> 77005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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: 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.
- 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> STANDARDS OF CONDUCT	<i>STARTING SECTION:</i> 77005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- 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.

§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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> STANDARDS OF CONDUCT	<i>STARTING SECTION:</i> 77005
		<i>OWNER:</i> DIRECTOR OF MANAGEMENT & BUDGET

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.
- 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> STANDARDS OF CONDUCT	<i>STARTING SECTION:</i> 77005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>


- 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.

§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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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.

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§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.

§78010 General Provisions.

A. Proposal Submission.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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 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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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.

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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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. An 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.

1. Decision to Accept and Consider Unsolicited Proposal.

- a. 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.

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 of Directors review and action thereof and award of a Contract.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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.

G. 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,
 - 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

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>


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.
- d. 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.
- 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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

- 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 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;

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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;
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 VSLGICIA;
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.

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

§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
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;

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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;
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;

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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 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;
2. Design and Engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed qualifying project;
6. Establishing 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;

	PROCUREMENT AND CONTRACT MANAGEMENT REGULATIONS	<i>EFFECTIVE DATE:</i> 07/01/2023
	<i>POLICY TITLE:</i> GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002	<i>STARTING SECTION:</i> 78005
		<i>OWNER:</i> <i>DIRECTOR OF MANAGEMENT & BUDGET</i>

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:
 - 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.