

3 ETHICS IN PUBLIC CONTRACTING

3.0 General.

The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the trust and responsibility exercised by public officials conducting procurement transactions, and because of the expectation by the public that this trust and responsibility be exercised properly. Procurement officials and vendors must be cognizant of these laws which include the *VPPA*, the *State and Local Government Conflict of Interests Act*, and the *Governmental Frauds Act*. All School employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

Article 6, Ethics in Public Contracting, VPPA {§2.2-4367, et seq.}, and the School's policy on discretionary expenditures are set out in this chapter.

3.1 Purpose. {§2.2-4367}

The provisions of Article 6, Ethics in Public Contracting, supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act {§2.2-3100, et seq.}, the Virginia Governmental Frauds Act {§18.2-498.1, et seq.}, and Articles 2 {§18.2-438, et seq.} and 3 {§18.2-446, et seq.} of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

3.2 Definitions. {§ 2.2-4368}

As used in Article 6, Ethics in Public Contracting, VPPA:

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act {§ 2.2-3100, et seq.}.

"Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" means any person employed by a public body, including elected officials or appointed members of governing bodies. All ACPS employees are considered public employees as defined in this manual.

3.3 Proscribed participation by public employees in procurement.... {§ 2.2-4369}

Except as may be specifically allowed by Subdivision A 2, 3, and 4. of § [2.2-3112](#), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

- a. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- b. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
- c. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- 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.

3.4 Disclosure of subsequent employment. {§ 2.2-4370}

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor. Executive and Director level staff shall notify the Department of Human Resources if such an offeror and acceptance is made with a current ACPS employee.

3.5 Prohibition on solicitation or acceptance of gifts.... {§ 2.2-4371}

- a. No public employee having official responsibility for a procurement transaction 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. The public body may recover the value of anything conveyed in violation of this subsection.
- b. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

3.6 Kickbacks. {§ 2.2-4372}

- a. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- b. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- c. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- d. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

3.7 Participation in bid preparation.... {§ 2.2-4373}

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

3.8 Purchase of materials from architect or engineer prohibited. {§ 2.2-4374}

- a. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in §2.2-3112.
- b. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3112.
- c. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

3.9 Certification of compliance required; penalty for false statements. {§ 2.2-4375}

- a. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.
- b. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

3.10 Misrepresentation prohibited. {§ 2.2-4376}

No public employee having official responsibility for a procurement transaction 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.

3.11 Penalty for violation. {§ 2.2-4377}

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

3.12 Discretionary Expenditures.

It is the policy of ACPS that procurements be consistent with the values expressed in the School's Vision Statement. Public funds are to be expended for public purposes, and not primarily for the sole benefit of individual employees or offices. By way of example, ACPS funds **should not** be used for certain types of expenditures, including:

- a. Holiday greeting cards for internal School use.
- b. Individual retirement parties or gifts (unless a part of the School/department regular program for recognizing School service, e.g., plaques, badges)
- c. Coffee, soft drinks or refreshments for casual office use for ACPS employees.

Department heads authorized to approve expenditures should carefully consider the use of School funds when approving purchases or expenditures that may be perceived as beneficial to employees without a corresponding benefit to students, citizens or the organization. The following are immediately set in place:

Meeting and Conferences

Meals/snacks can be provided and paid for with public funds if the meeting is four (4) hours or more and separate breaks would be disruptive to the meeting objectives. Meals and snacks are normally a personal expense. Any meal or snack served must be a reasonable price (less than or equal to the per diem rate) and an integral part of the session in order to use public funds.

Coffee and Beverages

Coffee and other beverages are normally a personal expense. A voluntary collection can be made from those who desire to have coffee and other beverages in the school/department. Except for meetings and conferences (Item A), and School Board meetings (Item F), coffee and beverages shall not be purchased with public funds.

Employee Break Room Supplies

Public funds should not be used to stock supplies such as plastic ware and paper products in employee break rooms. A voluntary collection can be made from those who desire to have such supplies. Medicine for staff and employees is considered a personal expense and shall not be purchased with public funds. Cleaning and sanitary supplies are allowed to be purchased with operating funds.

Individual Receptions

Receptions for individual employees should never be paid for from public funds. This includes retirement dinners, staff meals, welcome aboard receptions, and

similar gatherings where food and refreshments may be served. Voluntary collections can be taken from those attending such gatherings, of if specifically authorized by the person managing a grant in accordance with grant guidelines or regulations.

Acceptable Occasions

or The School Board and/or Superintendent may determine that the serving of food refreshments is appropriate for selected occasions. However, even at these events, which are normally held after business hours, any alcohol served must be a personal expense.

School Board Meetings

The School Board meets at times that are intended to be convenient for the general public. Meetings routinely span the normal dinner hour. Serving meals of reasonable value to Board members and staff required to attend Board meetings is considered to be an appropriate expense.

Student Programs/Incentives

Food bought for students from public funds as part of an initiative, a program, or an incentive (e.g., SOL rewards, honor roll) shall be preapproved and authorized by the school principal.

Employee Gifts

Expenditures of public funds for gifts to staff and employees are not authorized. This includes gifts purchased for staff birthdays or other personal occasions, with the exception of sympathy or congratulations as determined by the School Board or the Superintendent to be in the best interest of the Office.

Executive, Cabinet Members, and Principals authorized to approve expenditures should carefully consider the use of public funds when approving purchases or expenditures that may be perceived as beneficial to employees without a corresponding benefit to students, citizens or ACPS.

When approving these or similar expenditures, a determination should be made that the expenditure supports the schools/department's mission and the School's Vision Statement. All expenditures should be undertaken in such a manner that they can withstand future public scrutiny, and shall be fully explained and documented. Additionally, all School activities should be administered within the spirit of the School's values:

END OF CHAPTER