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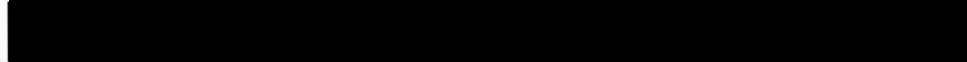
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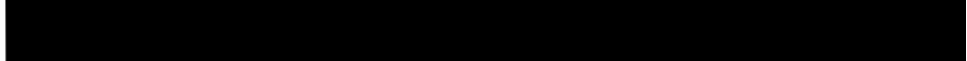
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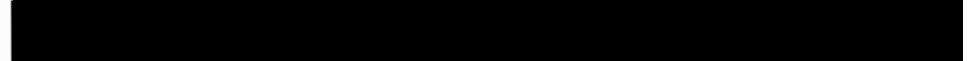

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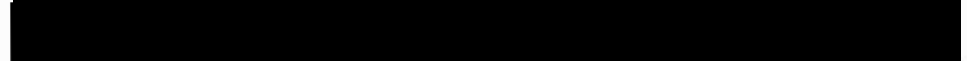

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THE PERCEPTIONS OF VIRGINIA PUBLIC SCHOOL SUPERINTENDENTS
WITH RESPECT TO KEY ELEMENTS OF
THE VIRGINIA PUBLIC PROCUREMENT ACT

A dissertation submitted in partial fulfillment
of the requirements for the degree of Doctor of Philosophy
at
Virginia Commonwealth University

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Dedication

This study is dedicated in loving memory of my sister, Alice Edwards Bowman, who departed this earth on January 1, 1982. She was my sister, my best friend, and my hero, and she continues to be an inspiration to all who knew her, especially me.

This study is also dedicated to my husband, Bobby, and my children, Amy and Scot, whose total support, sacrifices, and love have allowed me the freedom and provided me the encouragement to grow personally and professionally.

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Abstract

THE PERCEPTIONS OF VIRGINIA PUBLIC SCHOOL SUPERINTENDENTS
WITH RESPECT TO KEY ELEMENTS OF
THE VIRGINIA PUBLIC PROCUREMENT ACT

Gwen E. Lilly, Ph.D.

Virginia Commonwealth University, 1988

Major Director: Dr. Charles C. Sharman

The purpose of this study was to: (a) determine the perceptions of Virginia public school division superintendents regarding key elements of the Virginia Public Procurement Act (VPPA); (b) determine the relationship between the perceptions of the superintendents regarding the VPPA and selected demographic variables; (c) determine the superintendents' perceived strengths and weaknesses of the VPPA; and (d) determine changes that the superintendents feel should be made in the VPPA.

Data utilized in the study were derived from a survey instrument (Superintendents' Perception Survey on the Virginia Public Procurement Act). Participants included all 134 division superintendents in Virginia. Data were reported by means, standard deviations, percentages, and correlation coefficients.

Major findings of the study were:

1. Superintendents agreed that the VPPA has increased competitive procedures, increased the time

spent on purchasing, improved cost effectiveness, increased the amount of time needed to write specifications, improved purchasing ethics, and increased the potential for litigation against the school division.

2. Superintendents agreed that school division purchasing procedures were adequate before the VPPA and that purchasing codes and procedures should be left to local school divisions.

3. Superintendents disagreed that the VPPA has improved the quality of goods and services, improved the meeting of delivery deadlines, increased the number of awards to sole-source vendors, and increased the number of awards to local vendors.

4. Superintendents disagreed that adequate training has been provided to comply with the VPPA.

5. Significant relationships were found between superintendents' perceptions of the VPPA and division size, experience as a superintendent, purchasing experience, division classification (rural or urban), and computerized purchasing systems.

6. No significant relationships were found between superintendents' perceptions of the VPPA and age and race.

7. Superintendents identified increased competition as the major strength of the VPPA, being too time consuming as the major weakness, and make no changes in the VPPA as the major recommendation.

I. THE PROBLEM RATIONALE

A. Introduction

During the 1960's and 1970's, public purchasing procedures developed into one of the most controversial topics in all types of public institutions, including school divisions. There began to be an intense demand by the general public for full disclosure and accountability in public purchasing. It was believed that purchasing was public business since the public was paying the bill; therefore, it was vital to encourage cost effectiveness through open competition and to practice full disclosure of all purchasing procedures. Beginning at the federal level and moving down through state and local levels, the demand for accountability in the spending of taxpayers' dollars ultimately reached the schools.

In Virginia, the extensive revamping of public purchasing regulations culminated in July 1982, when the Virginia Public Procurement Act (VPPA) was passed by the Virginia Legislature (Virginia School Laws, Sec. 11.35-.80, 1984). A copy of the VPPA is located in Appendix F. The VPPA established, for the first time, a comprehensive and coherent statute to make cost effectiveness and competition the hallmark of procurement in the public institutions of the Commonwealth. Since

school divisions are public institutions, the regulations set forth in the VPPA apply to purchasing procedures in public schools. However, during the four years since the VPPA has been enacted, there has been only one known study to determine its effects on public school division purchasing procedures, and no known studies have been done to ascertain superintendents' perceptions of the VPPA. The superintendents in the school divisions of Virginia are responsible for the implementation of the VPPA, and their perceptions of the effects and uses of the VPPA will be very beneficial in determining future usages of and changes in the VPPA.

B. Study Background

Demand for Accountability in Public Purchasing

The demand for accountability in public purchasing emerged from several factors. The scope and magnitude of public purchasing were primary factors. The numerous instances of inefficiency, waste, favoritism, and fraud which were disclosed were also major factors.

In 1979, public-sector purchasing of supplies, materials, services, and construction accounted for upwards of 40 percent of the annual budgets of many governmental jurisdictions (Page, 1980). In the United States, public-sector purchasing amounted to approximately \$500 billion per year, which was over 20 percent of the country's gross national product. Of this \$500 billion,

about \$200 billion was spent at the federal level, and \$300 billion was spent at the state and local levels (Page, 1980).

The increased emphasis on accountability in public-sector purchasing has been accelerated by charges of favoritism and patronage as well as the need to conserve taxpayers' money (Candoli, Hack, Ray, & Stollar, 1984). Likewise, H. R. Page (1980) pointed out that the number of improprieties being reported had increased. In his book on public purchasing and materials management, Page (1980) reported many current news items which were typical of problems related to public-sector purchasing, including the awarding of contracts for millions of dollars without competitive bidding, the purchase of goods of poor quality, and accepting large-scale kickbacks, finder's fees, and payoffs. In a Report Of The Special Grand Jury To The Circuit Court Of Halifax, Virginia (1984), it was disclosed that in 1981 the superintendent of Halifax and South Boston Schools had purchased a car for his use on business trips without the use of competitive procedures and that he had titled the car in his name first with the school division being the second name on the title.

Persons charged with public purchasing and materials management have always had to wage a war against waste and fraud. As the reported cases of abuse have indicated, some purchasing officials have not always acted with

integrity. Many of the current statutes on purchasing at all levels of the government, including the VPPA, are intended to minimize past abuses in the use of public funds and protect the public interest and the public treasury.

Goals of Public Purchasing

The National Institute of Governmental Purchasing (NIGP) (1985), a non-profit educational and technical organization of governmental buying agencies, stated that all public purchasing functions share the fundamental goal of obtaining maximum value for the tax dollar. The NIGP established the following policy objectives for public purchasing managers and workers:

1. To maintain continuity of supply as needed.
2. To do so with the minimum investment in materials inventory.
3. To avoid duplication, waste, and obsolescence.
4. To maintain standards of quality in materials, based on suitability for use. Standard specifications will be used wherever practicable.
5. To procure materials at the lowest cost consistent with the quality and service required.
6. To make all purchases on the basis of competitive bidding, unless an emergency situation requires immediate action for the preservation of our organization's property, or the protection and convenience of the public, or if the requirement can be satisfied by only one source.
7. To conduct the entire process of public purchasing in such an absolutely impeccable and crystal-clear manner, and without conflict of interest, as to eliminate any possibility or appearance of improper business relationships. In this regard our policy prohibits the acceptance of gratuities, gifts, or

other favors which might give rise to doubts concerning our impartiality.

8. To maintain a well-informed purchasing staff as an information source to all using agencies, and to have high personal integrity and be capable of protecting public interest at all times.
9. To deal fairly and equitably with our contractors and suppliers and their authorized representatives, and to extend to all responsible organizations and individuals an equal opportunity to share in providing materials and services in accordance with our requirements.
10. To receive promptly all visitors to our organization and to afford them every reasonable courtesy (p. 20-23).

These ten policy statements embody, in general, the broad objectives of public purchasing organizations at the federal, state, and local levels.

The American Bar Association Model Procurement Code

The American Bar Association (ABA) used the work of the National Association of State Purchasing Officials as well as the work of the Commission on Government Procurement in developing a Model Procurement Code for state and local governments to follow in the development of their own purchasing codes (Macaluso, 1982). The ABA decided to develop a "model" rather than a "uniform" procurement code in order to allow for the diverse organizational structures and differences in the procurement needs of the states and localities throughout the nation (American Bar Association, 1980). On February 12, 1979, the ABA approved the final draft of the Model Procurement Code for State and Local Governments

(Zemansky, 1979). A summary of the ABA Model Procurement Code is in Appendix G.

The Virginia Public Procurement Act

The State of Virginia used the Model Procurement Code of the ABA in developing its own code. The VPPA, adopted by the Virginia General Assembly in 1982, did not become effective until January 1, 1983 in order to allow state purchasing authorities and localities time to prepare for the new regulations.

The reasons for the passage of the VPPA parallel those reasons cited for concerns at the federal level. Wirt and Proto (1983) discussed several reasons for the passage of the VPPA. State and local governments were spending substantial and increasing sums of money for purchasing without any form of coherent or comprehensive statutes. The Commonwealth's public procurement laws were a patchwork of inconsistent provisions which were scattered throughout the Virginia Code. Virginians had no assurances that public procurement was being handled efficiently and fairly.

In addition, Wirt and Proto (1983) discussed several instances of ethical violations in the Commonwealth's public purchasing practices. For example, in 1980 and 1981, there were several convictions and a special grand jury investigation of the Division of Purchases and Supplies. The convictions centered around the Virginia Conflict of Interest Statutes, bribery, and grand larceny

as well as various other legal and ethical violations of the law. Furthermore, there were no statutes to cover public school division procurement of goods, construction, insurance, and most services using competitive procedures.

As a result of the above abuses, a major goal of the VPPA was to establish competition in public procurement in Virginia. The VPPA provided comprehensive and consistent guidelines and included policies for acquiring construction, goods, insurance, and services. As a result of the passage of the VPPA, public purchasing procedures are now under the scrutiny of the people, the acquisition of professional services is now subject to more competitive procedures, and many local counties, cities, and towns have incorporated more stringent purchasing regulations and modern purchasing procedures in their local ordinances. Therefore, local school divisions throughout the Commonwealth have had to change their purchasing procedures to comply with the VPPA and, in some school divisions, even more stringent local ordinances.

Public School Division Power

Public school divisions (in some states called districts) receive all their powers of governance in purchasing from their respective state codes. School districts or divisions have no inherent powers; they have only those delegated to them by the State. Since the United States Constitution made no reference to federal government powers in education, the language of the Tenth

Amendment of the United States Constitution is used to reserve power over education to the states (Reutter, 1985). Generally, state legislatures delegate operational control of the school divisions or districts to local school boards (Knezevich, 1984). Section 22.1-2 of the Virginia Code provides that public schools be established and administered by the Board of Education, the Superintendent of Public Instruction, division superintendents, and school boards. Section 22.1-70 provides that a division superintendent shall perform duties as prescribed by law, by the school board, and by the State Board. Therefore, superintendents are directly responsible for complying with the regulations of the VPPA and any purchasing regulations adopted by the local governing body.

Superintendents and the VPPA

The superintendents of the school divisions in Virginia are required to implement procurement procedures which comply with the VPPA (Section 22.1, 1-70 of the Virginia Code). Saunders (1981) summarized the importance of the responsibility of the superintendent for purchasing in the following manner:

Purchasing, as viewed from the superintendent's office, is a critical function to the district. The public is paying the bill. No matter how large the district, the superintendent has the responsibility to ensure that the process is properly

handled--legally and to the benefit of the district.

(p. 13)

The responsibility of Virginia school division superintendents for compliance with the VPPA can be further demonstrated by instances in which Virginia school division superintendents have resigned in light of public disclosure of purchasing violations. In Halifax County Public Schools, the division superintendent resigned after a Report Of The Special Grand Jury To The Circuit Court Of Halifax, Virginia (1984) revealed evidence of bid rigging and antitrust violations in the purchase of school buses. In Pittsylvania County Public Schools, Virginia, the superintendent resigned after being indicted for violating the bidding process in the purchase of television sets and for not using competitive bidding in the purchase of \$43,000 worth of computers (Brandt, 1984). In each of the above cases, it was the superintendent who was held accountable for noncompliance with the VPPA.

Since superintendents are in leadership positions and since they are charged with implementing the policies established in the VPPA, their perceptions of the effects of the VPPA on school division purchasing practices are very important.

In research done by Wiles, Wiles, and Bond (1981), it was determined that acceptance of change is strongly influenced by group leaders. Though the implementation of school division purchasing in Virginia rests with the

superintendents, there have been no reported studies to ascertain superintendents' perceptions with respect to the VPPA. Furthermore, even though many other states have adopted model procurement codes, there were no studies found on superintendents' perceptions of procurement codes in any state.

In reviewing the literature related to the effects of the VPPA, several areas in which superintendents' perceptions would be important emerged. These areas were as follows:

1. Percentage of purchases being made using competitive procedures
2. Overall time being spent on purchasing procedures
3. Average cost of the goods being purchased
4. Overall quality of goods and services
5. Amount of time the staff devotes to writing specifications
6. Meeting of delivery deadlines to the sites where the supplies and services are needed
7. Number of awards made to single- (sole)-source vendors
8. Number of awards made to local vendors
9. Purchasing ethics
10. Potential for litigation against the school division
11. Adequacy of training provided to assist school

division personnel in understanding and complying with the VPPA

12. Adequacy of purchasing procedures before the enactment of the VPPA
13. Amount of discretion which should be left solely to the local school divisions in determining purchasing codes and procedures.

The literature review also disclosed several demographic variables which could possibly be related to superintendents' perceptions of the VPPA, including the following:

1. Size of the school division in pupil population
2. Years of experience as a superintendent
3. Chronological age
4. Years of experience in purchasing
5. Sex
6. Race
7. Predominant division classification (rural or urban)
8. Whether a computerized purchasing system has been initiated.

The information on the areas of perception and the demographic variables was obtained from all the Virginia school division superintendents by using a survey instrument titled Superintendents' Perception Survey on the Virginia Public Procurement Act. A copy of the survey instrument is located in Appendix B.

C. Statement of the Problem

The first purpose of this study was to determine the perceptions of the superintendents of the Virginia public school divisions regarding the effects of key elements of the Virginia Public Procurement Act. A second purpose was to explore the relationships between selected demographic variables and the perceptions of Virginia public school superintendents toward the Virginia Public Procurement Act. A third purpose of the study was to determine the strengths and weaknesses of the Virginia Public Procurement Act as perceived by the Virginia public school superintendents. A fourth purpose of the study was to ascertain the changes that Virginia public school superintendents would recommend in the Virginia Public Procurement Act.

D. Significance of the Problem

This study was significant for the following reasons:

1. Though the VPPA became effective on January 1, 1983, there have been no published studies to ascertain the perceptions of Virginia public school division superintendents toward the VPPA.
2. Superintendents are responsible for implementing purchasing procedures in the school divisions which comply with the VPPA; therefore, their perceptions of the VPPA are important.

3. There has been very limited research on the effects of model procurement codes on school divisions.

4. Since the General Assembly passed the VPPA in 1982, there have been several significant changes in the VPPA during each session of the State Legislature, and legislators at all levels need to know the perceptions of division superintendents in making future decisions.

5. The findings will be of benefit to superintendents, division school boards, and the State Board of Education in making future rules and regulations, developing training programs, and lobbying for changes in the VPPA.

6. The findings will be of benefit to the Virginia School Boards Association, the Virginia Association of School Administrators, and the Virginia Association of School Business Officials in providing information to members, developing training programs, and lobbying for changes in the VPPA.

7. This study will provide other states which have enacted model procurement codes as well as states who are in the process of enacting model procurement codes with information on superintendents' perceptions.

E. Study Questions

Four questions were addressed in this study. They were:

1. What are the perceptions of superintendents of the Virginia public school divisions regarding the Virginia Public Procurement Act as measured by their responses to the Superintendents' Perception Survey on the Virginia Public Procurement Act?

2. What are the relationships between certain demographic variables and the perceptions of Virginia public school division superintendents regarding the Virginia Public Procurement Act?

3. What are the strengths and weaknesses of the Virginia Public Procurement Act as perceived by the Virginia public school division superintendents?

4. What changes in the Virginia Public Procurement Act would Virginia public school division superintendents recommend?

F. Major Assumptions

The researcher assumed the following:

1. Superintendents' perceptions can be measured.
2. The instrument used to measure superintendents' perceptions was valid and reliable.
3. Superintendents are knowledgeable enough of the VPPA to make accurate judgments.

G. Limitations of the Study

1. This study was limited to the 134 school division superintendents in the State of Virginia; therefore,

findings are not generalizable to superintendents outside the Commonwealth of Virginia.

2. This study was limited to the 134 division superintendents in the State of Virginia; therefore, the findings are not generalizable to other populations within the Commonwealth of Virginia.

3. This study was limited by the agreement of confidentiality that was established with the participating superintendents.

4. This study was limited by the fact that there are no known existing instruments to measure superintendents' perceptions on model procurement codes. Therefore, the content validity and reliability of the perception survey instrument were determined by a panel of purchasing experts.

H. Definition of Terms

There were numerous terms used in this study which required clarification. The definitions of these terms are:

1. Bid is defined as an offer, as a price, whether for payment or acceptance. A tender given specifically to a prospective purchaser upon request, usually in competition with other bidders (The Council of State Governments [CSG], 1983).

2. Centralized purchasing is defined as a system of purchasing in which the authority, responsibility, and

control of purchasing activities is concentrated in one administrative unit (CSG, 1983).

3. Competition is defined as the process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service (CSG, 1983).

4. Competitive bidding is defined as the offer of estimates by vendors competing for a contract, privilege, or right to supply specified services or merchandise (Page, 1980).

5. Competitive negotiation is defined as a method of source selection which involves individual discussions between the (city) and the offeror on the basis of responses to the (city's) Request for Proposals (Steel, Proto, Wirt, & Walsh, 1982).

6. Cooperative purchasing is defined as the combining of requirements of two or more political entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits (CSG, 1983).

7. Debarment is defined as a shutting out or exclusion for cause, of a bidder from a list of qualified prospective bidders (CSG, 1983).

8. Delivery time is defined as a time, agreed upon by the vendor, agency, and purchasing activity, that the vendor will supply items called for by the purchase order or contract (Page, 1980).

9. Division superintendent is defined as the chief executive officer of a school division. The division superintendent informs the local school board and is an expert in educational planning and program functions, personnel, finance, school plant, and public relations (Castetter, 1981).

10. Ethics is defined as moral concepts and practices based on the principle that the public interest is paramount, applicable to the personnel of the purchasing department and all other persons involved in the purchasing process, particularly with respect to the expenditure of government funds and relationships between public employees and sellers (Page, 1980).

11. Perception is defined in Longman's Dictionary of Psychology and Psychiatry (1984) as the awareness of objects, relationships, or events with the senses, including such acts as recognizing objects and discriminating. In this study the term refers to the insight, knowledge, or intuitive judgment a superintendent has toward the VPPA as measured by the responses on the questionnaire.

12. Procurement is defined as buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and

award of contract, and all phases of contract administration (Secretary of Administration and Finance, 1980).

13. Public Purchasing is defined as the process of obtaining goods and services for public purposes in accordance with law and procedures intended to provide for the economical expenditure of public funds (Page, 1980).

14. Quality is defined as the composite of all the attributes or characteristics, including performance, of an item or product (CSG, 1983).

15. Sole-source or single-source procurement is defined as an award for a commodity or service to the only known supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions (Page, 1980).

16. Specification is defined as a description of what the purchaser seeks to buy and, consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery. A purchase description (Page, 1980).

17. Vendor or supplier is defined as the commercial enterprise that furnishes the supplies, labor, materials, equipment, commodities, or services (Page, 1980).

18. Virginia Public Procurement Act (VPPA) is defined as the public purchasing act passed by the Virginia General Assembly in 1982 to establish a comprehensive and consistent framework for public procurement at both state and local government levels. The new Procurement Act sets forth policies for acquiring goods, services, insurance, and construction (Wirt & Proto, 1983).

II. LITERATURE REVIEW

A. Literature Review Process

The purpose of this chapter is to review the literature related to the historical development of public purchasing and model procurement codes, and to review the literature related to superintendents' perceptions on the effects of model procurement codes. The literature is reviewed in order to provide background information for this study as well as to provide the base from which to develop items included in the survey instrument. Since the enactment of state model procurement codes is relatively new and since the VPPA was enacted only four years ago, the research is limited. There were no published studies found of superintendents' perceptions toward state model procurement codes. Therefore, much of the literature reviewed is from studies which are indirectly related and from journal articles, state codes, legal cases, and policy manuals.

B. Review and Analysis of Related Research

Historical Background

Early History

Though public purchasing is still in the process of rapid evolution both organizationally and conceptually, it

has made tremendous progress in the United States in the past 70 years, and particularly since World War II (NIGP, 1985). The history of public purchasing begins with documented records of public purchases made as early as 2600 B.C. and continues to the present day extensive regulations which govern federal, state, local, and public school purchasing procedures.

The history of public purchasing almost parallels the beginning of written, documented history. Harold Ward (1963) feels that the art of writing may have developed from the necessity to keep records, contracts, and mathematical data necessary for the transaction of business. There was a purchase order, written on cuneiform red clay, found in the ancient city of El Rash Shamra in Syria which is dated between 2400 and 2800 B.C. (Ward, 1963). Ward (1963) cited the following translation of that tablet:

H.S.T. is to deliver 50 jars of fragrant smooth oil each fifteen days after (a starting date) and during the reign of A.S. In return he will be paid 600 small weight in grain. The blanket purchase order will continue indefinitely until the purchaser or his son removes his consent. (pp. 88-89)

Ward (1963) believed that the purchasing agents of 2800 B.C. were probably quite similar to purchasing agents today, and he described those early purchasing agents as

being courteous, unbiased, perspicacious, responsible, ambitious, equable, humble, and sagacious.

Likewise, records of government purchases have been found in Athens, Greece, as early as 300 B.C. (CSG, 1983). Ancient Athens employed purchasing agents to procure materials for roads, buildings, and monuments. Early records of public purchasing from throughout the vast Roman Empire have also been found. One example, from the Roman Empire found in the Netherlands, describes a purchasing agent named Gargilius Secundus purchasing a cow for 155 sesterces, the equivalent of 29 cents, from Steles, the son of Riperius (Ward, 1964).

Federal History

At the federal level in the United States, public purchasing action began "in 1778 when the Continental Congress approved the appointment of purchasing commissaries, who were paid 2 percent of the value of their disbursements in support of the Continental Army" (Page, 1980, p. 3). However, at the end of the first year, the purchasing officers were paid a salary of \$100 a month plus rations in order to curtail the possibilities of fraud and excessive costs. Page (1980) noted the following landmarks in federal attempts to control public spending from 1792 to 1970:

1792 - the U.S. Congress passed an act authorizing the Department of War and Treasury to make purchases.

1795 - the Purveyor of Public Supplies Act was passed for the procurement of military equipment.

1809 - the Procurement Act of 1809 required the use of formal advertisement in government procurement.

1861 - the Civil Sundry Appropriations Act made formal advertising mandatory except for personal services or to meet public exigencies.

World War I - the War Industries Board was established to oversee procurement and handle problems as they arose.

Great Depression - all procurement, except for the Army Corps of Engineers, was consolidated under the Procurement Division of the Department of the Treasury by executive order.

World War II - an executive order granted the War Production Board extraordinary powers over governmental purchasing.

1949 - the Federal Property and Administrative Services Act was established to control procurement of property or services by other executive agencies such as the General Services Administration.

1974 - the Armed Services Procurement Act was enacted to control procurement, except land, in the army, navy, air force, and similar agencies.

By the early 1970's, public purchasing was becoming a national concern. Between the years of 1950 and 1970, federal government purchases had risen from \$9 billion to

\$60 billion a year (Page, 1980). In 1971, President Richard Nixon swore in the Federal Commission on Government Procurement to study and investigate present statutes affecting government procurement. The primary recommendation of this committee was to form an integrated and effective system for the management, control, and operation of the federal procurement process. As a result of the commission's recommendations, the Office of Federal Procurement Policy (OFPP) was established to provide leadership in the determination of government procurement policies.

In 1978, the OFPP was very active:

The OFPP was in the forefront of implementing congressional and presidential initiatives in minority business enterprise; urban policy; the Federal Government's use of consultants; using federal purchasing to help relieve inflation; protecting private-sector professional workers from 'wage-busting' under federal contracts; reviewing the Government's policies and procedures for contracting-out; and in many other areas including small business, major systems acquisition, organizational conflicts of interest, purchasing of commercial products, consolidating contract administration services between agencies, and establishing a National Supply System. (Fettig & Williamson, 1978, p. 1)

Also, in 1978, the OFPP began the Federal Acquisition Reform Act (FAR) project which replaced the Armed Services Procurement Act and the Federal Property and Administrative Services Act (Fettig & Williamson, 1978).

State History

At the state level, the history of public purchasing began with the formation of the colonies. Their purchases were largely for printing and military needs. Beginning in the late 1800's, public welfare and penal institution purchases were handled by boards or bureaus who had been appointed by state legislatures. In 1892, the Texas Legislature created an organization to supervise purchasing for penal and charitable organizations (Jennings, 1969). The State Board of Affairs, authorized to purchase centrally for all state departments and agencies, was created in Oklahoma in 1910 (Jennings, 1969). By 1920 centralized state purchasing had been established in Vermont, New Hampshire, Alabama, West Virginia, California, and New Jersey (Jennings, 1969). In 1924, the Virginia Legislature passed a law requiring most state agencies to requisition their needs through the purchasing agent (Jennings, 1969). The need for increased state regulation of public purchasing was quite effectively summarized by Austin MacDonald (1934):

Goods of standard quality were obtained by different departments at prices that varied as much as three or four hundred percent. Favoritism was rife, and material for the state service was commonly bought from

those who possessed the strongest political influence. Even the few state officials who refused to respect the open alliance of business and politics, and insisted upon trying to obtain maximum value with the public's money, seldom knew how to achieve their desire. Frequently they purchased at needlessly high prices through sheer ignorance. Departments competed against one another. The advantages of large scale purchase were lost. (pp. 343-344)

Since the 1930's, almost every state has had a central purchasing authority; however, the regulations vary from one state to another. In 1947, the National Association of State Purchasing Officials was founded to improve state purchasing. In the 1950's centralized state purchasing continued to progress. In a survey done by the Council of State Governments in 1956, it was reported that 38 states had centralized purchasing (Jennings, 1969). In 1967, the Council of State Governments reported that Mississippi was the only state without centralized purchasing procedures. The Virginia Public Procurement Act (VPPA) became effective on January 1, 1983 (Appendix F). The VPPA provided a model procurement code to guide public purchases in the Commonwealth of Virginia.

Local and School History

All local and school district authority to purchase must be derived from the State. The United States Constitution made no reference to education; therefore, the

states have implied power over education. Candoli et al. (1984) summarized the status of school district purchasing by stating:

Purchasing power is not inherent but must be delegated to the local district through statutory laws passed by the legislature or by rules and regulations of the state department of education. Thus, the state frequently mandates purchasing responsibility and authority, purchasing limits, procedures, forms, and so forth. (p.204)

In the past, purchasing in school districts usually was not given much importance. School systems may have had a clerk or two to handle the buying of instructional supplies; however, frequently principals of individual schools did much of the purchasing for their respective schools, following few guidelines.

According to Knapp (1985), Purchasing Manager for Baltimore County Schools, school enrollment began to boom 25 years ago and the importance of purchasing began to increase with the enrollment. Superintendents became aware that purchasing for schools required technical expertise and knowledge to buy the right supplies and equipment of the right quality, at the right price, from the right source, and at the right time. The result for most school districts has been the establishment of purchasing departments with trained professionals. Even though enrollments are currently remaining steady or declining in most school

districts, increased purchasing regulations and tighter school budgets have made purchasing even more important in public school divisions. In Virginia public school divisions, the enactment of the VPPA, which became effective on January 1, 1983, has placed even greater importance on having well trained and knowledgeable purchasing officials. Purchasing officials must know the statutory law governing purchasing in the public sector as well as state department of education rules and regulations.

Differences in Public and Private Purchasing

Though many of the techniques and principles of purchasing used in the public and private sectors are basically the same, such as procuring the right goods or services, at the right time, and at the right price, there are some important differences. Public purchasing needs to be done without secrecy--everything is a matter of public record (Jennings, 1969, & Page, 1980). The funds being expended are public funds and may be expended only by prescribed law (Page, 1980). Vendors must be treated fairly (Jennings, 1969). The materials or services being purchased are for several bureaus or departments and are generally not resold or used in manufacturing (Page, 1980). There are purchasing statutes to protect the public interest. Reciprocity, intercompany agreements, and purchasing from high cost vendors are prohibited (Jennings, 1969). Public purchasing personnel function on a merit system and are not motivated to show a profit (Page, 1980). Public purchasing

officials are subject to more censure by the public and press (Page, 1980). The government can act in a sovereign capacity (Page, 1980). Finally, Candoli et al. (1984) pointed out that good purchasing is basically the same for private and government institutions except that nonprofit institutions lack the cost-control efficiencies of competitive, private industries. However, in governmental purchasing, accountability is the key issue. Gordon and Zemansky (1961) summarized the accountability issue in this manner:

...the question of accountability also is important. The public is paying for goods and service and has every right to expect to receive it. It is public purchasing's direct responsibility to provide that excellent service and in so doing secure "more value for the tax dollar." (p. 36)

Since public schools are subject to the rules and regulations of public sector purchasing, their principles of good procurement also vary from the private sector. Schools require a much broader spectrum of materials and services than do most industrial firms (Candoli et al., 1984). Specifications are more numerous and important, ethics are more critical, and attempts at collusion are often harder to control in schools than in the private sector (Candoli et al., 1984).

Professional Organizations

There are numerous organizations which have been formed to advance professionalism in purchasing:

1. The National Association of Purchasing Management (NAPM) founded in 1915 is open to private and public sectors and is designed to serve the professional interests and meet the learning needs of purchasing managers (Page, 1980).

2. The National Institute of Governmental Purchasing (NIGP) was founded in 1944 to raise the standards of public purchasing through the exchange of professional and technical information and through training (Zemansky & Gordon, 1981).

3. The National Association of State Purchasing Officials (NASPO) was formed in 1947 to encourage cooperation in more efficient conduct of state purchasing (Page, 1980).

4. The American Purchasing Society (APS) was founded in 1969 and provides a purchasing news-release service and conducts a professional certification program.

5. The Virginia Association of Governmental Purchasing was founded to promote competitive policies and professional purchasing systems and provide training (Wirt & Proto, 1983).

6. The National Purchasing Institute was founded in 1968 to study purchasing, simplify specifications, exchange ideas, collect and distribute information, promote uniform purchasing laws, and assist members (Page, 1980).

The Need for Public Procurement Codes

A review of some of the abuses in public purchasing reveals the need for public procurement codes. Dr. Charles Beard summarized the situation in this manner:

From the very beginning of our political history, the letting of contracts for materials has been one of the bulwarks of the spoilsman. Some of the greatest scandals unearthed in American politics...have grown out of the corrupt use of money in buying goods and letting contracts. (cited in Zemansky & Gordon, 1981, p. 92)

At the federal level, Page (1980) reported the following recent news items and reports on inefficiency, waste, and fraud:

A report that the United Nations and its affiliates award contracts for hundreds-of-millions-of-dollars worth of supplies and services without competitive bidding.

A report of a U.S. Navy guided-missile frigate procurement program for which the cost to the government had nearly tripled to \$194 million per frigate.

A report of a contractor's claims for reimbursement referred to as based on "vague estimates, phoney assertions and inflated figures."

A report of the public purchase of metal storage cabinets that were of such poor quality that they were immediately declared surplus and disposed of.

A report that an estimated 700,000 gallons of gasoline had disappeared from a federal government public works center in Norfolk, Virginia; employees had sold the gasoline to private business.

A report of a high-ranking GSA official in charge of thirty supply outlets being found guilty of accepting large-scale kickbacks, favors, and gifts. He was one

of sixty-two persons charged with similar crimes.
(p. 361)

There were abuses at the state level also. In Virginia, particularly in the Division of Purchases and Supplies, reports were being made of ethical violations. Wirt and Proto (1983) summarized the situation in this manner:

In fact, in 1980 and 1981 several convictions resulted from a special grand jury investigation of the Division of Purchases and Supplies. One buyer was convicted of violating the Virginia Conflict of Interest statute; a second was convicted of bribery and received a fifteen year-sentence. A third buyer was found by the grand jury to have taken bribes, but that buyer died before any indictment. One vendor was convicted of bribery and received a five-year suspended sentence. Another was convicted on several counts of grand larceny and received an eight-year sentence. Other vendors, after being charged with various ethical violations paid money to the state in settlement damages. (p. 36)

Likewise, there were abuses being reported in schools. Basic school supplies were disappearing as school employees outfitted their own children for school. School inventories were reduced as employees took supplies such as pens, paper, and desk sets to give as Christmas gifts. And principals and other persons responsible for purchasing often accepted valuable personal gifts from vendors.

In a Report Of The Special Grand Jury To The Circuit Court Of Halifax, Virginia (1984), it was disclosed that the superintendent of Halifax and South Boston Schools had buried surplus supplies, purchased school buses at a higher price than the state bid list without using competitive procedures, purchased a business car without the use of competitive procedures, and titled the business car in his

name first with the school division being the second name on the title.

The scope and magnitude of public purchasing has increased tremendously. From 1922 to 1964, the population of the United States increased only 75 percent, while public expenditures increased over thirty times or over 3,000 percent (Jennings, 1969). Page (1980) reported that public purchasing accounts for over 20 percent of the country's gross national product. In 1986, the mean number of purchases made in Region I of Virginia school divisions was 3,942 with a range of 500 to 10,000 (Sharman, Bull, Delbridge, Fauntleroy, & Lilly, 1986).

With the increasing reports of the abuse of public funds in procurement and the large amount of taxpayers' dollars being spent on procurement, the need for changing regulations and the need for model procurement codes became evident. Competitive procedures and accountability were required to curtail charges of patronage and favoritism and to conserve taxpayers' money.

Model Procurement Codes.

Throughout history, public purchasing procedures have varied from state to state and among the localities within a given state.

Little statutory uniformity seems to exist among the various states in the procurement field. In view of the amount of contracting activity and the desirability of simplification, consideration of the development of

a Uniform or Model Procurement Code for eventual adoption by the states is recommended. (Mitchell, 1971, p. 116)

The American Bar Association (ABA) developed a Model Procurement Code which has served as a foundation for many state and local procurement codes. A summary of the ABA Model Procurement Code is located in Appendix G. The ABA developed a "model" rather than a "uniform" procurement code due to the diverse organizational structures used by the states and local governmental bodies. The process of writing the Model Procurement Code took three years, and the final draft was approved in February of 1979. There was a very broad base of participation by over 600 individuals and organizations in the preparation of the code, including the International City Management Association and the National Association of Educational Buyers (Macaluso, 1982). During the developmental process, there were pilot jurisdiction programs in operation in Kentucky, Tennessee, New Mexico, Louisiana, and several cities (Macaluso, 1982).

Kentucky adopted a version of the Model Code in 1978 known as the Kentucky Model Procurement Code and made adoption by the localities optional (Baur & Del Duca, 1978). The Kentucky Jefferson County Board of Education then adopted its own procedures which did not conflict with the Kentucky State Code.

The Model Procurement Code developed by the ABA provides the statutory guidelines for procurement of

supplies, services, and construction by state and local governments as well as judicial and administrative remedies for the resolution of controversies related to public contracts. The Model Code contains twelve articles which provide the statutory framework. Results of the Model Procurement Code include:

1. More responsible use of public funds for procurement at state and local levels
2. An increase in public confidence
3. Greater uniformity in the laws relative to purchasing
4. Modernization, simplification, and clarification of the law.

The Virginia Public Procurement Act

The Virginia Public Procurement Act (VPPA) was adopted by the Virginia Legislature in 1982 and became effective on January 1, 1983. The VPPA was modeled extensively after the Model Procurement Code of the American Bar Association, and it established for the first time public procurement procedures in Virginia which were consistent and comprehensive for the State as well as for the localities. For a copy of the VPPA, see Appendix F.

Early Virginia Purchasing Statutes

Before the adoption of the VPPA in 1982, the Commonwealth's public procurement regulations were very inconsistent and often controversial. The lack of consistency in the Commonwealth's procurement policies

caused a great deal of conflicting interpretations. The Virginia Code had the procurement statutes scattered throughout, and policies were hard to find and interpret. There were no uniform policies for state or local procurement. The Attorney General, for example, "held that localities were not required to use competitive bidding on construction projects, while other opinions reached the opposite conclusion" (Wirt & Proto, 1983, p. 35). Even if purchasing agents wanted to follow state guidelines, they were often unsure how to interpret them. There were no procurement laws which covered the purchase of goods or construction by school divisions, and there were no provisions to cover procurement of insurance and most other services (Virginia Law Study Advisory Committee, 1980). School divisions could apparently award most service and construction contracts without competitive bidding.

Need for Procurement Codes

In the early 1970's, a national movement began to hold public officials accountable for the spending of taxpayers' dollars. Increasing amounts of taxpayers' dollars were being spent, and the public had no assurances that the funds were being spent efficiently or fairly. In 1981, almost 40 percent of the typical governmental jurisdiction's operating budget went to the purchase of materials, supplies, services, and construction (Zemansky & Gordon, 1981). There were numerous disclosures of possible ethical violations in

public purchasing in Virginia. Wirt and Proto (1983) cited several examples:

1. A conviction for violation of the Conflict of Interest Statute
2. Convictions and sentencing for bribery
3. Convictions and sentencing for grand larceny
4. Vendors paying money to the State in settlement for damages.

Development of the VPPA

As a result of the disclosures of improprieties and the lack of uniformity in the existing procurement statutes, the Secretary of Administration and Finance and the General Assembly established the Virginia Procurement Law Study Advisory Committee in 1979. The purpose of this committee was to evaluate the State's procurement statutes and proposed legislation, study uniform purchasing legislation for state and local governments, and compare Virginia's laws to the ABA Model Procurement Code. A summary of the ABA Model Procurement Code is located in Appendix G.

The Virginia Procurement Law Study Advisory Committee worked for nearly three years and was comprised of 22 people from state and local governments as well as the private sector. However, there were no public school officials on the Virginia Procurement Law Study Advisory Committee. There were numerous public hearings held to gather information from all interested persons. When the General Assembly passed the VPPA in 1982, many of the Virginia

Procurement Law Study Advisory Committee's recommendations were incorporated.

Effects of the VPPA

Even though the newly enacted VPPA contained some of the same statutes as previous regulations, for the most part, the VPPA was a total revision, and its statutes were quite different from previously existing regulations. According to Wirt and Proto (1983), the purpose of the VPPA was to: (1) establish "competition" as the hallmark of public procurement in Virginia; (2) establish "a comprehensive and consistent framework for public procurement at both state and local government levels" (p. 35); and (3) set forth "policies for acquiring goods, services, insurance, and construction (it does not cover the purchase or sale of real estate)" (p. 35).

The VPPA was amended on July 1, 1983, in two important ways which had direct impact on schools:

1. ...allows any local school board to adopt alternative procedures as long as the school board is not covered by a centralized purchasing ordinance that has been adopted by its locality.

2. ...require all counties and cities and those towns with populations of 3,500 or more, as well as all local school divisions, to comply fully with the Procurement Act when obtaining professional services. (Wirt & Proto, 1983, p. 36)

A 1986 amendment to the VPPA also had direct impact on public schools. The 1986 amendment added Subsection G to Section 11.41, Methods of Procurement:

Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks, and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter, competitive sealed bidding not necessarily being required for such contracts. (Supplement to Virginia School Laws, 1986, p. 69)

The above amendment allows school divisions to procure caps and gowns, photographs, class rings, yearbooks, and graduation announcements through competitive negotiation instead of competitive sealed bidding.

The changes which have occurred as a result of the enactment of the VPPA are hard to ascertain because of a lack of research on the effects of the VPPA. Wirt and Proto (1983) summarized the response of state and local governments in this manner:

According to state government officials, the biggest change in state purchasing practices that has resulted from the passage of the Procurement Act is in acquiring professional services. As an example, the state no longer pays for architectural and engineering services on the basis of a set fee that depends on the size of the project. Instead, fees now are negotiated with the firm selected to provide the services.

In other areas of state purchasing practices, state officials indicate that the act's passage is resulting in few substantive changes. A reader might wonder why, if the former state procurement laws were in such disarray, more substantive changes have not taken place (and this is true for local governments as well, as the following discussion will show).

Simply put, many governing bodies and purchasing agents throughout the Commonwealth have sought conscientiously in the past to incorporate modern competitive procurement practices into their purchasing system, regardless of the deficiencies in state law or local ordinances. The Virginia Association of Governmental Purchasing also has been active in promoting competitive policies and professional purchasing systems at the state and local levels of governments. For the past six years that association, in conjunction with the National Institute of Governmental Purchasing, has been conducting extensive educational workshops for the benefit of public purchasing officials throughout the Commonwealth. (p. 39)

In January 1983, the Virginia Municipal League surveyed approximately fifty localities in Virginia to determine the response of local governments to the VPPA. The results of that survey showed that:

1. All but one of the localities surveyed with populations of less than 3,500 had adopted procurement ordinances even though this is not required under the VPPA.

2. A few towns with populations of less than 3,500 had adopted procurement ordinances even though this is not required under the VPPA.

3. Several localities had adopted ordinances which are stricter than those in the VPPA.

4. Many of the ordinances adopted by the localities contained references to specific sections of the VPPA which will foster more continuity in local purchasing procedures.

5. A few of the localities had included debarment policies in their ordinances to debar contractors with unsatisfactory performance.

6. Smaller localities with populations between 3,500 and 20,000 had to do more revision in their local ordinances to comply with the VPPA than did larger localities with populations exceeding 20,000.

Though the effects of the VPPA on public procurement procedures in Virginia are far from conclusive, it seems evident that some changes have resulted. First, there now is a consistent, comprehensive code to guide localities in determining purchasing procedures. Second, competition now plays a more significant role in public purchasing. And third, public purchasing policies and procedures are more clearly visible to the public.

Public Purchasing Research

There have been very few studies done on public procurement, especially in Virginia and as public procurement relates to schools; therefore, the research base for this study is very limited. Much of the research discussed below is only indirectly related to the VPPA and superintendents' perceptions.

In 1975, The Council of State Governments published a report which included purchasing statutes and regulations of all the states, major counties, and cities. There was a great deal of research data collected on essential statutory and regulatory elements of public procurement policies on

each of the governmental units surveyed. The data for the most part were not synthesized, making it very difficult to draw conclusions. As a result of the survey, however, the Council of State Governments (1975) compiled a list of essential elements which should be included in public procurement statutes and regulations.

In 1979, Zenz studied the attitudes of Florida State purchasing officials to determine their morale and develop a training program to improve morale. Zenz found "statistically significant correlations between purchasing employees' demographic characteristics and their feelings regarding too much administrative/clerical work and competition for resources" (p. 180). The demographic variables of age, sex, and experience were related to morale. Therefore, there may be a relationship between the demographic variables of age, sex, and experience and superintendents' perceptions of the VPPA.

In 1983, the Council of State Governments published four surveys of the current structure and practices of state and local governments as they relate to purchasing:

1. Survey of Selected Procurement Practices of State Governments (CSG, 1983, pp. 118-184)
2. Survey of Additional Purchasing Practices of State Governments (CSG, 1983, pp. 185-244)
3. Survey of Selected Procurement Practices of Local Governments (CSG, 1983, pp. 245-249)

4. Survey of Additional Purchasing Practices of Local Governments (CSG, 1983, pp. 250-260).

The first two surveys were conducted on all members of the National Association of State Purchasing Officials, and the results were shown as individual responses by the individual states. The last two surveys were conducted by the National Institute of Governmental Purchasing, Inc. on a cross-section of local governments such as cities, counties, and combined city/county units. The results of these two surveys were given in percentages. All four studies contain a great deal of data which needs to be further analyzed and interpreted; however, the general conclusions from the study were used in writing State and Local Governments Purchasing (1983). Much of the information from that book is included in this literature review.

In 1978, Bryant published a dissertation on the extent of the use of cooperative purchasing in Mississippi public schools. Bryant found the following:

1. The average expenditure per student ranged from \$972 in large districts to \$1,032 in small districts.
2. The average expenditure per student for supplies and equipment was \$65.74.
3. Only 5.4 percent of the school divisions had ever entered into cooperative purchasing.

The results of this study are of benefit in determining basic data on public purchasing.

In 1982, Notestone-Lemley published a dissertation on cooperative purchasing in the public school districts of the United States. The sample consisted of 446 randomly solicited superintendents in the United States. Notestone found that 59.1 percent of the respondents were involved in cooperative purchasing and that State Departments of Education play a small role in cooperative purchasing. If State Departments play a small role in cooperative purchasing, they may also play a small role in the training of school division purchasing employees.

In 1982, Touche Ross and Company did a study of the Montgomery County, Maryland, Public Schools' process of procuring supplies and equipment. As a result of the study, it was recommended that Montgomery County Public Schools increase the procurement staff in number and skill levels and improve the manual for procurement, especially in the area of structuring procurement practices and process controls. Since the VPPA extensively changed the purchasing statutes in Virginia, it is possible that school division purchasing personnel need to be increased in number and receive additional training.

In 1986, several graduate students and a faculty member at Virginia Commonwealth University surveyed public purchasing officials to investigate selected purchasing practices and certain impacts of the VPPA on small- and medium-sized Region I school divisions in Virginia (Sharman, Bull, Delbridge, Fauntleroy, & Lilly, 1987). In

Region I schools, 76% of the responding purchasing officials felt that the VPPA had had a great or very great impact on purchasing operations. A summary of the findings includes:

1. A significant increase in the time and work required
2. Quality remained about the same
3. Slight improvement in cost effectiveness
4. Some delays in deliveries to the purchase site
5. Increase in competitive procedures
6. Inadequate training.

The above data would indicate that, according to purchasing officials, the VPPA had had a definite impact on moderate- and small-sized school divisions in Region I of Virginia. Therefore, the VPPA has probably affected the perceptions of superintendents throughout the Commonwealth.

Superintendents' Perceptions.

The researcher decided to survey the perceptions of superintendents on the VPPA because superintendents are ultimately accountable for purchasing in school divisions; therefore, superintendents are responsible for the implementation of the VPPA. The superintendents have a leadership role in seeing that the requirements of the VPPA are being met. One superintendent summarized the leadership role of superintendents in purchasing in this manner:

The superintendent, in most states, is the executive officer of the board of school trustees and, as such, is charged with the responsibility of full compliance

not only with the law but also to maintain public confidence.

Purchasing, as viewed from the superintendent's office, is a critical function to the district. The public is paying the bill. No matter how large the district, the superintendent has the responsibility to ensure that the process is properly handled--legally and to the benefit of the district. (Saunders, 1981, p. 13)

In Virginia, division superintendents are held accountable for compliance with purchasing procedures. Two Virginia public school division superintendents have resigned within the past three years after being indicted for purchasing violations.

In February 1984, The Report Of The Special Grand Jury To The Circuit Court Of Halifax, Virginia, the Honorable Charles L. McCormick, presiding, reported the following purchasing violations by the superintendent of the Halifax and South Boston Public Schools:

1. Constructing bids so as to eliminate potential responsible bidders
2. Considering the award of the bid or contract to late bids or altered bids
3. Improper purchase, registration, and licensing of the superintendent's public use vehicle
4. Improper disposal of surplus school buses, school bus parts, and textbooks

5. Purchasing school buses without seeking bids.

In 1984, the superintendent of Pittsylvania County, Virginia, Public Schools resigned after being convicted on a charge of malfeasance in connection with a 1983 violation of the VPPA (Brandt, 1984). The superintendent was convicted for failing to get sealed bids in purchasing computers costing \$43,000. In addition, in the purchase of educational television sets costing \$15,000, the superintendent refused to accept the lowest bid on the television sets and negotiated with a higher bidder and altered the original bid price.

In both Halifax County and Pittsylvania County, it was the division superintendent who was held accountable for violations of purchasing statutes; therefore, the perceptions of superintendents in regards to the VPPA are very important.

Competitive Procedures

One of the major reasons for the passage of the VPPA was to increase competition in public purchasing. The VPPA has required school divisions to use more competitive procedures, such as competitive bidding or competitive negotiation, than were required before the VPPA became effective. The VPPA requires the use of competitive bids for most purchases of materials or construction exceeding \$10,000. In a 1986 study, 46 percent of the purchases in Region I school divisions of Virginia were done through competitive bidding (Sharman et al., 1986). Virginia state

government officials feel that the biggest change in state purchasing practices that has resulted from the passage of the VPPA is in acquiring professional services (Wirt & Proto, 1983). Competitive negotiation is now required for acquiring professional services. In a Survey of Selected Procurement Practices of State Governments, it was reported that all but five states had purchasing laws requiring sealed bids, publicly opened--96 percent of the respondents reported that there is a requirement for sealed bidding, publicly opened (CSG, 1983). Competitive sealed bidding was required by law for 54 percent of the respondents and was required by administrative policy for 16 percent of the respondents.

School business administrators often argue for flexibility in dealing with fiscal management of school districts (Wood, 1985); however, the VPPA has given superintendents less flexibility in purchasing. Superintendents' perceptions toward competition under the VPPA could be influenced by their perceptions of decreased flexibility and increased emphasis on competition.

Overall Time Spent on Purchasing

In a survey on the effects of the VPPA on public schools in Region I of Virginia done in 1986, it was found that 82% of the responding purchasing officials reported that the VPPA had increased the overall time spent on procurement (Sharman et al., 1987). Likewise, it was reported in the Government Purchasing Manual that past

studies reveal that for 50 percent of all government procurement, the administrative costs either equaled or exceeded the purchase price (cited in Scellato, 1976/1981). The increased cost is a result of increased time in processing paperwork. Superintendents could perceive the VPPA as increasing the amount of time being spent in their school divisions on procurement.

Cost Effectiveness

Sharman et al. (1987) found in their survey of Region I school divisions done in 1986 that 50 percent of the purchasing officials reported increased overall cost effectiveness under the VPPA, 27 percent reported decreased cost effectiveness, and 27 percent reported no change in cost effectiveness. With the emphasis in the VPPA placed on competitive procedures such as competitive bidding and competitive negotiations, it is possible that superintendents perceive the VPPA as resulting in average lower costs.

Quality of Goods and Services

According to Carroll Pell (1985), Director of Support Services for West Virginia's Mercer County Public Schools, quality is the most important criteria in purchasing because quality will ensure longer life expectancy and serviceability. In their 1986 study on the effects of the VPPA, Sharman et al. (1987) reported that 69 percent of the respondents felt that there had been no change in quality since the enactment of the VPPA, 16 percent felt that

quality had decreased, and 13 percent felt that quality had increased. With the increased emphasis on competitive pricing procedures under the VPPA, it is possible that superintendents view the VPPA as decreasing the quality of the goods purchased.

Writing of Specifications

The preparation of fair, clear, reasonable, and complete specifications is a must in purchasing under the VPPA. Vague specifications leave the purchaser at the mercy of the vendors to supply acceptable or unacceptable materials. Writing good specifications is a very difficult, technical, and time-consuming task.

In the Survey of Additional Purchasing Practices of State Governments, it was reported by 61 percent of the respondents that the use of performance or functional specifications had increased over the last five years--only 2 percent stated that they had decreased, and 37 percent said that they had stayed the same (CSG, 1983).

In a study of the effect of the VPPA on purchasing in Virginia schools in Region I, the writing of specifications was a major concern of the responding purchasing officials (Sharman et al., 1986). Problems in the writing of specifications included: lack of expertise, difficulty in choosing appropriate language, consumes too much time, and lack of professional assistance. Since the VPPA should have increased competitiveness, it has probably increased the number and quality of specifications needed.

Meeting Delivery Deadlines

There is no research available on the meeting of delivery deadlines except for the study done by Sharman et al. (1987). In that study, 73 percent of the respondents reported that the VPPA had had no effect on meeting delivery deadlines of purchases to the sites where they were needed; however, 27 percent reported that the VPPA was causing delays in meeting delivery deadlines. Some superintendents may perceive the VPPA as causing delays in meeting delivery deadlines to the sites where the goods and services are needed.

Single- (Sole)-Source Vendors

Under certain circumstances, school divisions are exempt from the competitive requirements of the model procurement code. These exemptions are necessary because "some materials and services are not susceptible to objective comparison or are not readily obtained from reliable, competing sources" (Valente, 1980, p. 422). In the Survey of Additional Purchasing Practices of Local Governments, 82 percent of the responding states and localities reported having written procedures for handling sole-source purchases (CSG, 1983).

The VPPA in Subsection D of Section 11.41 provides for sole-source purchases without competitive procedures when there is only one source practicably available (Supplement to Virginia School Laws, 1986). Examples of sole-source vendors might include certain expert professional services

and/or products with special interchangeability with existing inventory. In the study done by Sharman et al. (1986), 50 percent of the respondents reported that less than five percent of their total purchases were made from sole-source vendors. The VPPA limited the specific circumstances under which sole-source vendor purchases could be made, and it is possible that some superintendents may perceive the VPPA as having decreased the use of sole-source vendors.

Local Vendors

Before the enactment of the VPPA, competitive requirements were not as stringent, and many purchases were made from local vendors. Some school divisions believe that preference should be given to local vendors since they are taxpayers. Candoli et al. (1984) feel that this should be discouraged unless local vendors can meet competitive prices. Uerling (1984) cited several advantages to using local vendors including developing a close relationship with local vendors and "state and local tax revenues will be increased, new jobs will be created for those who contribute to the support of the school district, and other businesses will be encouraged to locate within the defined boundaries" (p. 65). Uerling (1984) said that the disadvantages of having local vendor preference were that competitive bidding protects against favoritism and fraud and that fostering competition generally allows purchases to be made at a lower price.

In the Council of State Governments's study (1983), 62 percent of the state and local respondents reported that preference for local bidders or local products is not legally required and not practiced, and 28 percent reported preference is practiced but not legally required. After the VPPA became effective, the school divisions in Region I of Virginia reported that 80 percent of the vendors were nonlocal (Sharman et al., 1986). Superintendents may perceive the VPPA as having reduced the amount of purchases made through local vendors.

Purchasing Ethics

In light of the number of abuses in public purchasing reported in the last two decades, such as kickbacks to supervisors and missing school supplies (Page, 1980), one purpose of the VPPA was to ensure ethical practices in all public purchasing. Joyce Ferguson (1985), Supervisor of Purchasing in Colorado's Aurora Public Schools, summarized the importance of purchasing ethics by stating: "The complete professionalism of the purchasing administrator is critical" (p. 20). Likewise, the National Institute of Governmental Purchasing (1985) stated the ethical challenge to professionals in purchasing in this manner:

A special responsibility is imposed on all people who are entrusted with the disposition of these funds. As purchasing personnel, we are required to perform with the highest of integrity, while we are constantly being asked to manage more effectively, to secure

better economic results, to speed up the process, and to be innovative in accomplishing our mission. (p. 26)

In a Survey of Additional Purchasing Practices of Local Governments, 53 percent of the respondents reported that they had a conflict of interest statute or regulation that applied specifically to the purchasing process, and 48 percent reported having a rule prohibiting the purchasing department from making purchases on behalf of the jurisdiction's employees (CSG, 1983). In a 1986 study on the effects of the VPPA on school divisions in Region I of Virginia, 75 percent of the divisions reported that formal policies now exist which prohibit purchasing personnel from accepting favors from vendors (Sharman et al., 1986). Superintendents are likely to perceive the VPPA as having improved purchasing ethics.

Potential for Litigation

Legal issues in purchasing evolve from rules, procedures, and methods prescribed by law at the national, state, local, and school district levels. Valente (1980), the author of Law in the Schools, summarized the legal authority of school board expenditures as follows:

The main substantive checks on school spending rest on the rule that school district funds are held in trust to be used only for purposes that are authorized by law. While school boards may act upon implied powers and purposes to justify expenditures, courts

will not imply powers that contradict the expressed aims and obligations of statutes or common law.
(p. 416)

Del Duca, Falvey, and Adler (1986), experts in procurement law, report that the number of court cases involving the ABA Model Procurement Code is limited, and they suggest that this may be due in part to the time involved for litigation to work its way through the appellate court levels. They also feel that model codes may be providing guidelines and standards which have improved the certainty and predictability in the procurement process, thereby reducing controversies and litigation.

In a Survey of Additional Purchasing Practices of Local Governments, 61 percent of the respondents reported that central purchasing had written protest and appeals procedures, and in a Survey of Additional Practices of State Governments, 60 percent of the respondents reported that there was an established format for reporting noncompetitive bidding or practices to legal authority (CSG, 1983).

With the many changes and new regulations prescribed by the VPPA, it is possible that superintendents may perceive the VPPA as having increased the potential for litigation against the local school division.

Training

The National Institute of Governmental Purchasing (1985) reported that purchasing officials need to know more about federal, state, and local laws and regulations,

especially in contract negotiation and administration. When the VPPA became effective in 1983, purchasing regulations changed drastically in many school divisions, and the numerous changes in the VPPA in recent years would indicate a need for purchasing officials to receive continuous training.

Zenz (1979), in a study of the morale of purchasing officials and training requirements in Florida, found that respondents were "generally neutral to the job orientation procedures and the need for additional training" (p. 178). This, however, appears to be an exception.

Over the last six years, the Virginia Association of Governmental Purchasing and the National Institute of Governmental Purchasing have been providing educational workshops for public purchasing officials throughout the Commonwealth (Wirt & Proto, 1983). The enrollment in these classes has been large, indicating that a need for additional training may exist.

In a study on the effects of the VPPA on school divisions in Region I of Virginia, 85 percent of the responding purchasing officials stated that they had not received adequate training, 92 percent reported that they had received training on the job, and 25 percent reported that they had received training from the National Institute of Governmental Purchasing (Sharman et al., 1986). The Touche Ross and Company (1982) found that purchasing

officials in Montgomery County, Maryland, Public Schools lacked technical expertise and needed additional training.

In a Survey of Additional Purchasing Practices of Local Governments, local purchasing respondents reported expanded duties and the need for more support from higher management as a result of revisions of statutes or rules and regulations (CSG, 1983). Increased personnel and better staff training were seen as a need by 10 percent of the respondents.

Since the VPPA has changed required purchasing procedures, it is possible that superintendents' perceptions toward the VPPA could be affected by their perceived need for additional training.

Adequacy of Purchasing Procedures before the VPPA

Before the enactment of the VPPA, there had been many reported cases of purchasing abuses in Virginia. Wirt and Proto (1983) reported abuses centering around violations of the Virginia Conflict of Interest Statute, bribery, grand larceny, and other ethical violations. Wirt and Proto (1983) also stated that prior to the enactment of the VPPA, Virginia's public procurement regulations were very inconsistent, controversial, and caused a great deal of conflicting interpretations. With the number of purchasing abuses being revealed and the inconsistencies of purchasing procedures and regulations, it is possible that superintendents could view the purchasing procedures before the VPPA as being inadequate.

Local Purchasing Control

School business administrators often argue for more flexibility in fiscal management of school districts (Wood, 1985) as do individuals who feel that purchases should be made from local vendors since they are taxpayers in the community. The VPPA has placed additional regulations on the local districts which have given them less flexibility. Manske (1939) reported that group opinion and the effect of prestige were related to attitudes in a study of pupils' perceptions of teachers' attitudes. Manske found that attitudes were influenced by the opportunity to gain prominence in a group and by the opinion of a significant group. In a 1986 dissertation study, Stainback found that superintendents' perceptions of community support for the integration of severely and profoundly handicapped students were significantly related to the attitudes of superintendents toward integration. However, Sheeran, in a 1987 dissertation study, found no statistically significant correlation between the perceived attitudes of superintendents on community support toward athletes and their attitudes toward academic standards for extracurricular activities.

Based on the above findings, superintendents' perceptions of community support for local control over purchasing procedures may influence their perceptions of the VPPA.

Demographic Variables

The perceptions of superintendents on the effects of the VPPA may be related to certain demographic variables. There have been numerous studies done on superintendents' perceptions as they relate to certain demographic variables. In 1986, Stainback did a dissertation study to ascertain the attitudes of division superintendents in Virginia public schools toward the integration of students with severe and profound handicaps into educational programs in regular schools and to identify the relationship between certain demographic variables and the attitudes of superintendents toward integration. Stainback found that the demographic variable of community support was related to the attitudes of superintendents toward the integration of the severely profoundly handicapped. There was no relationship with the demographic variables of district size, age, and experience.

In 1987, Sheeran completed a dissertation which surveyed Virginia school division superintendents' attitudes with respect to selected academic standards for extracurricular activities and the relationship between certain demographic variables and the attitudes of superintendents. Sheeran found that the attitudes of superintendents with respect to selected academic standards for extracurricular activities may be related to the demographic variables of district size, years of experience in education, age, and sex. There were no significant

relationships found between years of experience in coaching and race.

In 1928, Thrustone found that "individuals possess a wide variety of beliefs pertinent to any particular attitude object. These beliefs may be logically incompatible with one another; they may be a distortion of reality; they may even be affectionately incompatible with one another" (Ostrom, Greenwald, & Brock, 1968, p. 7). Zenz (1979) found that there was a statistically significant correlation between certain demographic variables (age, years of experience, and sex) and the feelings of Florida State purchasing employees about public procurement.

Based on the above research, it is highly probable that relationships between some of the demographic variables surveyed in this study and superintendents' perceptions toward the VPPA do exist. The demographic variables in this study were:

1. School division size
2. Years of experience as a superintendent
3. Chronological age
4. Years of experience in purchasing
5. Sex
6. Race
7. Predominant division classification (rural or urban)
8. Computerized purchasing procedures.

School Division Size

Candoli et al. (1984) summarized the differences in purchasing in large and small school systems. Large systems are characterized by having purchasing departments with buyers for different areas, computerized systems, and regimented procedures. Small systems, on the other hand, often use a business administrator who has many other duties as the purchasing agent, are less regimented, and are not as likely to be computerized. "A small township cannot develop specifications, design invitations for bids, evaluate proposals, conduct inspections and tests, and perform many other purchasing responsibilities on a scale comparable to that of a large city or state government" (Holding, 1976, p. 21). Fredenburg found in a 1980 study of an average-sized, semirural school district in New York that the use of a full- or part-time purchasing agent could save \$20,000 annually. However, many small- and average-sized school districts do not have purchasing agents.

School district size was found to influence the attitude of school board members toward critical issues in public education in a dissertation study done by Antrim (1979). Board members from the largest districts were more critical of finance than board members from the smallest districts. Likewise, in a dissertation study of the relationship between perceptions of superintendents and board of education chairmen in assessing the role of the superintendent of the schools in Iowa, Smith (1975) found

that a comparison of board chairmen and superintendents' attitudes by school district size greatly reduced the number of significant differences in their scores. In a study done by the Virginia Municipal League (1983), it was found that smaller localities had to do more revision in their local ordinances than did larger localities in order to meet the requirements of the VPPA. Sheeran, in a 1987 dissertation study, found that superintendents of larger school districts in Virginia favored more stringent rules for participation in extracurricular activities than did superintendents from smaller districts.

Based on these studies, it is possible that a relationship does exist between school division size and superintendents' perceptions toward the VPPA.

Years of Experience

Though there is no research to date on the relationship between the perceptions of superintendents on model procurement codes and experience, there has been a great deal of research on the influence of years of experience on attitudes. Lewin found in 1935 that attitudes were not automatic but rather existed "in a personal and situational context" (Ostrom et al., 1968, pp. 6-14). In 1935, Allport found that attitudes become more differentiated with experience. In a dissertation study done in 1975, Smith found a relationship between the years of experience as a superintendent and the degree of attitude congruence between superintendents and their communities. In 1984, Crews

reported that teacher attitudes toward merit pay were significantly related to years of experience. In a 1987 dissertation, Sheeran reported that there was a significant relationship between the attitudes of Virginia superintendents toward selected academic requirements for extracurricular activities and years of experience in education. Finally, in a 1979 study of the Florida procurement processes, Zenz found that "state employees and respondents with previous purchasing experience sensed less group integration in their offices" (p. 178).

As indicated by the above research, it is possible that there may be a relationship between years of experience as a superintendent or years of experience as a purchasing official and superintendents' perceptions of the VPPA.

Chronological Age

A review of the research indicates that some correlation may exist between age and perceptions. Beam found that younger people were more acceptable of new ideas than older people (Manske, 1936, p. 4). In a survey on life situations, Robinson and Shover (1969) found a significant difference in the answers of older and younger people. In a dissertation study, Antrim (1979) reported that state school board members who were 40 to 49 years of age were more critical of teaching methods and techniques than were any other age groups. Zenz (1979) found that public purchasing officials in Florida "between the ages of 26 and 5 [sic] exhibited the greatest desire for additional training"

(p. 179). In a study of the attitudes of Virginia superintendents with respect to selected academic standards for extracurricular activities, Sheeran (1987) reported that age did influence their attitudes.

Since age was related to attitudes in the studies above, it is possible that there is a relationship between age and superintendents' perceptions of the VPPA.

Sex

In a 1976 study of the factor of sex in schools, Gross and Track reported that sex was a significant factor in decisions made by principals. In a dissertation study, Crews (1984) found that there was a significant relationship between sex and teachers' attitudes toward merit pay. In 1979, Zenz reported that female public purchasing employees in Florida felt stronger about job orientation and training than did males. In a 1987 dissertation, Sheeran found that the sex of Virginia superintendents was significantly related to their attitudes toward academic standards for extracurricular activities.

Based on the above findings, there may be a relationship between the sex of superintendents and their perceptions of the VPPA.

Race

There have been several studies which indicate that people of different races and minority groups differ in certain fundamental respects. Verma and Bagley (1979) reported that minorities have been believed by some to share

beliefs based on culture. In a study on prejudice, Allport (1979) found that minorities and ethnic groups shared presuppositions and traditions and that concepts and generalizations of minorities were believed to be founded on experience and background. However, Sheeran, in a 1987 dissertation, reported that there were no significant correlations between race and superintendents' attitudes toward academic standards for extracurricular activities.

Based on the above research, it is possible that race may be related to superintendents' perceptions of the effects of the VPPA.

Division Classification (Rural or Urban)

There is no research available on differences in the perceptions of rural and urban superintendents with regards to public school purchasing; however, there are several studies on the difference in the perceptions of rural and urban people.

In 1980, Isagedeghi did a dissertation study to discover the differences between black and white students in rural and urban desegregated high schools. He found some differences in rural and urban students' perceptions. Black and white students at the rural school had a greater desire for interpersonal distancing based on race and less positive perceptions of school climates for achievement than those from the urban school. Black and white students in the rural school also showed greater satisfaction with counseling services than did their urban counterparts, while

black and white students in the urban school showed greater satisfaction with the kind of education and overall educational services they were receiving than their rural counterparts.

Bewersdorf (1980) investigated the perceptions of superintendents and school board members in rural and urbanized school settings with respect to policy-making and policy-administering. He found that superintendents and school board members from rural and urban school settings differ in their perceptions of whether specific decision-making situations call for policy-making or policy-administering, particularly when these situations involve school plant, instruction and curriculum development, and school finance and business management.

Based on the above findings, it is possible that there is a relationship between predominant division classification (rural or urban) and superintendents' perceptions of the VPPA.

Computerized Purchasing Procedures

Many school purchasing officials have written on the benefits of computerized purchasing systems. The benefits include: more accurate data, easy-to-use reports, and supplementary reports (Jones, 1981); writing specifications and following the bid process (Temkin & Shapiro, 1982); automated inventory management control (Bauers, 1982); and writing purchase orders, doing invoices, making payments, and providing data for quality control and vendor rating

(Candoli et al., 1984). DeZorzi (1980) reported that the use of a minicomputer in automated tendering and purchasing reduced the time required for tendering, evaluating, awarding, and ordering by 80 percent in one school division. Likewise, Mazurek (1980) points out that the use of computers in purchasing maximizes efficiency and minimizes costs.

In a Survey of Additional Purchasing Practices of Local Governments, 20 percent of the respondents expressed a need for increased data processing capability, and in a Survey of Additional Purchasing Practices of State Governments, only 40 percent of the respondents had computerized purchasing systems (CSG, 1983). In the study done by Sharman et al. (1987), it was reported that only 18 percent of the school divisions in Region I of Virginia had computerized purchasing systems, and all of those systems had been installed since 1980.

Based on the above findings, superintendents' perceptions of the VPPA may be related to whether a computerized purchasing system is in place.

C. Summary

Since the VPPA (Virginia Public Procurement Act) became effective on January 1, 1983, Virginia school division superintendents have been responsible for implementing the standards and regulations in their respective school divisions. Likewise, superintendents have been held

accountable for violations of the VPPA. From listening to superintendents, it would appear that their perceptions of the effects of the VPPA are intense and frequently very different. However, there have been no studies to ascertain the perceptions of Virginia school division superintendents on the VPPA.

One purpose of this chapter was to provide an historical background of public purchasing. The historical overview included a review of the literature and research on the federal, state, and local levels, as well as on professional organizations, the need for procurement codes, the VPPA, other related research, superintendents' perceptions, and demographic variables.

The history of public purchasing begins before the birth of Christ and continues to the current move to provide consistent purchasing codes throughout the states, localities, and school districts of the United States. The reason for most of the changes in purchasing legislation, particularly in the last two decades, has been to ensure accountability and ethical standards in the spending of public funds.

The VPPA is very reflective of the Model Procurement Code adopted by the American Bar Association. The VPPA has brought about changes in the purchasing procedures of many Virginia school divisions.

The literature and research on purchasing in public schools is very limited; therefore, most of the literature

reviewed in this chapter is indirectly related to the VPPA. However, one study is directly related to the VPPA. In the spring of 1986, the students in a graduate level class in Public School Business Administration at Virginia Commonwealth University did a survey of purchasing officials in small- and medium-sized Region I school divisions in Virginia to determine the effects of the VPPA (Sharman et al., 1987). The survey provided a broad data base; however, there were only percentages of responses reported. There were no correlations done on any of the variables.

This study was designed to ascertain superintendents' perceptions of the VPPA, to determine if there are any relationships between certain demographic variables and Virginia superintendents' perceptions of the VPPA, to determine perceived strengths and weaknesses of the VPPA, and to determine recommended changes in the VPPA.

III. METHODOLOGY AND PROCEDURES

The purpose of this chapter is to present the methodology and procedures which were used in ascertaining the perceptions of Virginia public school superintendents toward the Virginia Public Procurement Act (VPPA). This chapter is organized into five sections:

The research questions are stated in Section A.

The population which was surveyed is described in Section B.

The research instrument is discussed in Section C.

The procedure for data collection is presented in Section D.

The data analysis methods are explained in Section E.

A. Research Questions

Since the purpose of this study was to determine the perceptions of Virginia public school superintendents toward the VPPA, research questions were stated rather than null hypotheses. The descriptive survey method was used in conducting this investigation.

The first purpose of this study was to determine the perceptions of Virginia public school division superintendents regarding the VPPA. The second purpose

was to determine the relationship between the perceptions of Virginia public school superintendents regarding the VPPA and selected demographic variables. The third purpose was to determine Virginia public school superintendents' perceived strengths and weaknesses of the VPPA. And the fourth purpose was to determine changes that the Virginia public school superintendents feel should be made in the VPPA.

The following research questions were addressed:

1. What are the perceptions of the superintendents of the Virginia public school divisions regarding key elements of the Virginia Public Procurement Act as measured by their scores on the Superintendents' Perception Survey on the Virginia Public Procurement Act?
2. What are the relationships between certain demographic variables and the perceptions of Virginia public school superintendents regarding the VPPA?
3. What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents?
4. What changes in the VPPA would Virginia public school division superintendents recommend?

The demographic variables were:

1. School division size
2. Years of experience as a superintendent
3. Chronological age

4. Years of purchasing experience
5. Sex
6. Race
7. Predominant division classification (rural or urban)
8. Use of computerized purchasing procedures.

B. Population

The population surveyed in this investigation included all the division superintendents of the public schools in the State of Virginia during January of 1988. At the time of this study, there were 134 division superintendents in the Commonwealth. There were 130 male superintendents and four female superintendents.

C. Research Instrument

A survey was used to gather data from the division superintendents on their perceptions of the VPPA. The survey instrument which was used to collect the data was developed by the researcher. The survey instrument used in this investigation is referred to as the Superintendents' Perception Survey on the Virginia Public Procurement Act (Appendix B). Two recent survey instruments on the attitudes of Virginia public school superintendents were used as models for the format and demographic variables of this survey instrument. The first was the Superintendents' Attitude Survey on

Integration, developed by George H. Stainback in 1986.

The second was the Superintendents' Attitude Survey on Extracurricular Activities, developed by Jane M. Sheeran in 1987. The content validity and reliability of both of these instruments were established. The content of this survey instrument was developed from the literature review in Chapter II.

Part I of the Superintendents' Perception Survey on the Virginia Public Procurement Act included eight demographic items designed to gather background information (e.g. school division size and years of purchasing experience) on the superintendents in Virginia public school divisions.

Part II of the survey instrument contained 13 questions designed to assess superintendents' perceptions of certain effects of the VPPA (i.e. quality of goods received and training requirements). For each question in Part II, the respondents were provided forced choices on a Likert-type scale. The Likert scale was chosen because it provides fairly accurate assessments of graduated beliefs and opinions (McMillan & Schumacher, 1984). The choices were strongly disagree (SD), disagree (D), uncertain (U), agree (A), and strongly agree (SA). For each question, each response was given a score of from one to five, with one representing strongly disagree, two representing disagree, three representing uncertain, four representing agree, and five representing strongly agree with the

statement on the VPPA. There was a score derived for each perception item on the questionnaire.

Part III of the survey instrument contained two open-ended questions designed to gather superintendents' perceptions of the strengths and weaknesses of the VPPA and one open-ended question to determine the changes that superintendents would recommend in the VPPA. The superintendents' responses were coded and classified into categories. Descriptive statistics were provided.

There was a panel of five public purchasing professionals who reviewed, analyzed, modified, and evaluated the questions on the survey instrument. The content, construct, and face validity of the survey instrument to measure the perceptions of division superintendents on the VPPA was determined by the panel of five public purchasing officials using an instrument validation form. The instrument validation form, a cover letter, and a copy of the survey instrument (Superintendents' Perception Survey on the Virginia Public Procurement Act) were mailed to the members of the panel of experts on December 14, 1987. A copy of the cover letter is in Appendix D, and a copy of the Instrument Validation Form is in Appendix E.

The reliability of the instrument was analyzed in two ways. First, the Cronbach Alpha reliability analysis was used since the survey instrument was a questionnaire with a range of possible answers for each item (McMillan &

Schumacher, 1984). Second, the Spearman-Brown split-half analysis was used to determine the correlation between the first and second half of the instrument in order to determine a reliability coefficient for the instrument (Kerlinger, 1964).

D. Procedures for Data Collection

A cover letter and survey questionnaire were mailed to all the Virginia public school division superintendents on January 12, 1988. The survey questionnaires were coded to identify the divisions. The reason for the coding was to determine which questionnaires had not been returned so a second questionnaire could be mailed and to determine which superintendents had requested a copy of the survey results. A copy of the initial cover letter is in Appendix A, and a copy of the survey questionnaire is in Appendix B. In addition to the cover letter and the survey questionnaire, each packet mailed to the superintendents included a self-addressed envelope and postage to improve the return rate on the questionnaires. For those failing to respond to the first mailing, a follow-up request letter and another questionnaire were mailed on January 26, 1988, two weeks after the first mailing. A copy of the follow-up letter is in Appendix C.

E. Data Analysis

Since the entire population of Virginia superintendents was surveyed and no generalizations were made, descriptive statistics were used. "The main purpose of descriptive statistical methods is to reduce the whole collection of data to simpler and more understandable terms without distorting or losing much of the available information" (Agresti and Finlay, 1986). Descriptive statistics allowed graphical and numerical summaries of single variables.

To answer the first research question (What are the perceptions of the superintendents in Virginia public school divisions regarding key elements of the Virginia Public Procurement Act?), the percentage of superintendents whose scores fell within each perception range, i.e. strongly disagree, disagree, uncertain, agree, strongly agree, was presented for each of the perception questions. Measures of central tendency (mean, median, and mode) and dispersion (range and standard deviation) of the scores for each of the perception items on the questionnaire were reported.

For the second research question (What is the relationship between certain demographic variables and the perceptions of Virginia public school superintendents regarding the Virginia Public Procurement Act?), the demographic variables were analyzed using correlational techniques. Each of the eight demographic variables was

analyzed to ascertain if there was a relationship between the demographic variable and each of the 13 superintendents' perception items.

The Pearson Product Moment Correlation Coefficient was used to determine the relationships between each of the first four demographic variables (school division size, years of experience as a superintendent, chronological age, and years of experience in purchasing) and each of the superintendents' perception items. The Pearson Product Moment Correlation Coefficient was chosen because the first four demographic variables and the superintendents' perception items are both interval variables (Leedy, 1981). The Pearson Product Moment Correlation is useful in describing the strength and direction of the association between two interval variables (Agresti & Finlay, 1986).

Point Biserial Correlation, a modified form of the Pearson Product Moment Correlation Coefficient, was used to analyze the relationships between the demographic variables of sex, race, predominant division classification, and computerized system and each of the superintendents' perception items. Point Biserial Correlation was used because these four demographic variables are dichotomous and the superintendents' perception items are interval variables. Point Biserial Correlation is used when one variable is dichotomous and one is interval (Leedy, 1981).

For the third research question (What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents?), the superintendents' responses were coded and classified into categories, and the percentage of responses in each category was presented.

For the fourth research question (What changes in the VPPA would the Virginia public school division superintendents recommend?), the superintendents' responses were coded and classified into categories, and the percentage of responses in each category was presented.

IV. PRESENTATION AND ANALYSIS OF THE DATA

The following format was used to organize the presentation and analysis of the data:

The general information regarding the research design and study questions is presented in Section A.

A brief overview of the validity, reliability, and return rate of the survey questionnaire is provided in Section B.

Descriptive statistics for the superintendents' responses to the demographic variables on Part I of the questionnaire are presented in Section C.

Descriptive statistics for the responses of the superintendents to the perception items on Part II of the questionnaire are given in Section D.

Descriptive statistics for the correlations between selected demographic variables and the perceptions of the superintendents are provided in Section E.

Descriptive statistics for the three open-ended questions on Part III of the survey instrument are presented in Section F.

A summary of the chapter is provided in Section G.

A. Research Design and Study Questions

Research Design

The descriptive survey method was used in conducting this investigation. The data were gathered by the use of a survey questionnaire (Superintendents' Perception Survey on the Virginia Public Procurement Act) which was completed by the division superintendents in the Commonwealth of Virginia. The initial survey instrument was mailed to the entire population of superintendents on January 12, 1988, and a follow-up mailing was done on January 26, 1988, to those superintendents who had not responded to the initial mailing.

Study Questions

The four research questions addressed by this study were:

1. What are the perceptions of the superintendents of Virginia public school divisions regarding key elements of the Virginia Public Procurement Act (VPPA) as measured by their scores on the Superintendents' Perception Survey on the Virginia Public Procurement Act?
2. What are the relationships between certain demographic variables and the perceptions of Virginia public school superintendents regarding the VPPA?
3. What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents?

4. What changes in the VPPA would Virginia public school division superintendents recommend?

B. Validity, Reliability, and Return Rate of the Survey
Questionnaire

The validity of the perception items on the survey instrument was established by a panel of five public school purchasing professionals using an instrument validation form based on a Likert-type scale. A copy of the Instrument Validation Form is in Appendix E. There was unanimous agreement that the survey instrument has content, construct, and face validity.

In order to establish the reliability of the instrument, the negative superintendents' perception items on the survey questionnaire were reverse coded. The key for the reverse coding of the superintendents' perception items is in Appendix E. The reliability of the instrument was established using both the Cronbach Alpha reliability analysis and the Spearman-Brown split-half analysis. The reliability coefficient calculated by the Cronbach Alpha test was .626. With respect to the Spearman-Brown split-half test, the reliability coefficient was .712.

In January 1988, the survey questionnaire (Appendix B) was mailed to the entire population of 134 public school division superintendents in Virginia. Responses were received from 112 of the superintendents. Three of

these responses were judged to be unusable due to incorrectly completed forms. Therefore, 109 of the returned survey questionnaires were used in the analysis of the data, yielding a usable return rate of 81.3 percent. Of these 109 returns, several questionnaires had one or more unanswered items, and the number (N) of respondents for those questions is provided in the data analysis and interpretation.

C. Descriptive Statistics for Superintendents' Responses to the Demographic Variables

Part I of the survey questionnaire contained eight questions designed to obtain data on selected demographic variables. The first four demographic variables were interval, and the last four were dichotomous.

Measurements of central tendency and dispersion were computed for the first four interval demographic variables (number of students in the school division, years of experience as a superintendent, chronological age of the superintendents, and years of experience in purchasing). The data for the interval demographic variables are summarized in Table 1. The mean score for the number of students in the school division was 5563.5 with a standard deviation of 6438.6, a median of 3150, a range of 38614, and a mode of 4000. The mean years of experience as a superintendent was 9.1 with a standard deviation of 6.9, a median of 8, a range of 30, and a mode of 3. The mean

Table 1

Measures of Central Tendency and Dispersion for the
Interval Demographic Variables

Variable	(N)	Mean	SD	Median	Range	Mode
1. Number of students in the division	109	5563.5	6438.6	3150	38614	4000
2. Years of experience as a superintendent	98	9.1	6.9	8	30	3
3. Chronological age	105	49.9	6.3	49	28	52
4. Years of experience in purchasing	100	16.8	8.5	16	36	15

score for the chronological age of the superintendents was 49.9 with a standard deviation of 6.3, a median of 49, a range of 28, and a mode of 52. The mean score for the number of years of experience in purchasing was 16.8 with a standard deviation of 8.5, a median of 16, a range of 36, and a mode of 15.

A summary of the descriptive data for all eight of the demographic variables is provided in Table 2. The percentage of the responses for each of the levels of each of the eight demographic variables is presented. The data on the four interval demographic variables (number of

students in the division, years of experience as a superintendent, chronological age, and years of experience

Table 2

Summary of the Descriptive Data on the Demographic Variables

Variable	Level	(N)	Percentage Of Total %
1. Number of students in the division	9750 or less	95	87.2
	9751-29250	12	11.0
	29251 or more	2	1.8
2. Years of experience as a superintendent	7.5 or less	51	47.7
	7.6-22.5	53	49.5
	22.6 or more	3	2.8
3. Chronological age of superintendents	44 or younger	23	21.9
	45-58	70	66.7
	59 or older	12	11.4
4. Years of experience in purchasing	9 or less	17	16.2
	10-27	75	71.4
	28 or more	13	12.4
5. Sex	Male	103	96.3
	Female	4	3.7
6. Race	White	101	96.2
	Non-white	4	3.8
7. Predominant division classification	Rural	75	68.8
	Urban	34	31.2
8. Computerized purchasing system	Yes	31	29.0
	No	76	71.0

in purchasing) were categorized on the basis of the interquartile range.

As presented in Table 2, 87.2 percent of the responding superintendents served in divisions with 9,750 or less students, 11.0 percent served in divisions of 9,751-29,250 students, and 1.8 percent served in divisions with 29,251 or more students. The data showed that 47.7 percent had 7.5 or less years of experience as a superintendent, 49.5 percent had 7.6-22.5 years of experience as a superintendent, and 2.8 percent had 22.6 or more years of experience as a superintendent. As shown in Table 2, 21.9 percent of the superintendents were in the chronological age group of 44 or younger, 66.7 percent were in the group of 45-58, and 11.4 percent were in the group of 59 or older. The superintendents' years of experience in purchasing were as follows: 16.2 percent with 9 or less years, 71.4 percent with 10-27 years, and 12.4 percent with 28 or more years. The overwhelming majority, 96.3 percent, of the responding superintendents were male, and 3.7 percent were female. Likewise, as shown in Table 2, the vast majority of the superintendents (96.2 percent) were white, and 3.8 percent were non-white. When grouped by predominant division classification, 68.8 percent of the divisions were predominantly rural, and 31.2 percent were predominantly urban. Computerized purchasing systems had been initiated in 29.0 percent of the superintendents' divisions and had not been initiated in 71.0 percent of the divisions.

D. Descriptive Statistics for the Responses of the Superintendents to the Perception Items

The first research question in this investigation was: What are the perceptions of the superintendents of Virginia public school divisions regarding key elements of the VPPA as measured by their scores on the Superintendents' Perception Survey on the Virginia Public Procurement Act? In order to answer this question, there were 13 items in Part II on the survey instrument designed to measure the superintendents' perceptions regarding the VPPA. To each of these 13 perception items, the superintendents chose the degree to which they agreed or disagreed with the statement (SD represented strongly disagree, D represented disagree, U represented uncertain, A represented agree, and SA represented strongly agree).

Statements with Which the Superintendents Agreed

There were eight of the perception statements on the survey instrument with which the superintendents agreed or strongly agreed, as measured by a mean score of more than 3.0 on the item. A summary of the descriptive data on these items is presented in Table 3. Measures of central tendency and dispersion were computed for each of the perception items with which the superintendents agreed or

Table 3

Summary of the Descriptive Data on the Perception
Statements with Which the Superintendents Agreed

(Percentages)

Survey Item	(N)	% SD (1)	% D (2)	% U (3)	% A (4)	% SA (5)
9. Increased use of competitive procedures	109	6.4	19.3	6.4	37.6	30.3
10. Increased overall time spent on purchasing	109	1.8	5.5	2.8	32.1	57.8
11. Resulted in lower costs	108	4.6	25.0	24.1	39.8	6.5
13. Increased time spent in writing specifications	109	0.9	4.6	0.9	41.3	52.3
17. Improved purchasing ethics	108	2.8	13.0	24.1	50.0	10.2
18. Increased potential for litigation	108	1.9	26.9	13.0	42.6	15.7
20. Procedures adequate before VPPA	108	1.9	21.3	11.1	53.7	12.0
21. Procedures should be left to locality	109	3.7	40.4	13.8	31.2	11.0

SD (1) - Strongly Disagree

D (2) - Disagree

U (3) - Uncertain

A (4) - Agree

SA (5) - Strongly Agree

strongly agreed. A summary of this data is presented in Table 4. The maximum range for each perception item was

Table 4

Measures of Central Tendency and Dispersion for the
Perception Statements with Which the Superintendents
Agreed

Survey Item	(N)	Mean	SD	Median	Range	Mode
9. Increased use of competitive procedures	109	3.661	1.271	4	4	4
10. Increased overall time spent on purchasing	109	4.385	0.922	5	4	5
11. Resulted in lower costs	108	3.185	1.034	3	4	4
13. Increased time spent writing specifications	109	4.395	0.805	5	4	5
17. Improved purchasing ethics	108	3.519	0.942	4	4	4
18. Increased potential for litigation	108	3.435	1.105	4	4	4
20. Procedures adequate before VPPA	108	3.528	1.018	4	4	4
21. Procedures should be left to locality	109	3.055	1.145	3	4	2

SD (1) - Strongly Disagree
 D (2) - Disagree
 U (3) - Uncertain

A (4) - Agree
 SA (5) - Strongly Agree

from 1 to 5 with 1 representing strongly disagree (SD), 2 representing disagree (D), 3 representing uncertain (U), 4 representing agree (A), and 5 representing strongly agree (SA).

Competitive Procedures

With respect to item 9, the VPPA has increased the percentage of purchases made in my school division through competitive procedures, 67.9 percent of the superintendents agreed or strongly agreed. The mean response score to item 9 was 3.661 with a standard deviation of 1.271, a median of 4, a range of 4, and a mode of 4. A summary of the data on item 9 is presented in Figure 1.

Overall Time Spent on Purchasing

Superintendents agreed or strongly agreed (89.9 percent) with item 10, the VPPA has increased the overall time spent on purchasing procedures. The mean response score to item 10 was 4.385 with a standard deviation of 0.922, a median of 5, a range of 4, and a mode of 5. A summary of the data on item 10 is presented in Figure 2.

Average Lower Cost

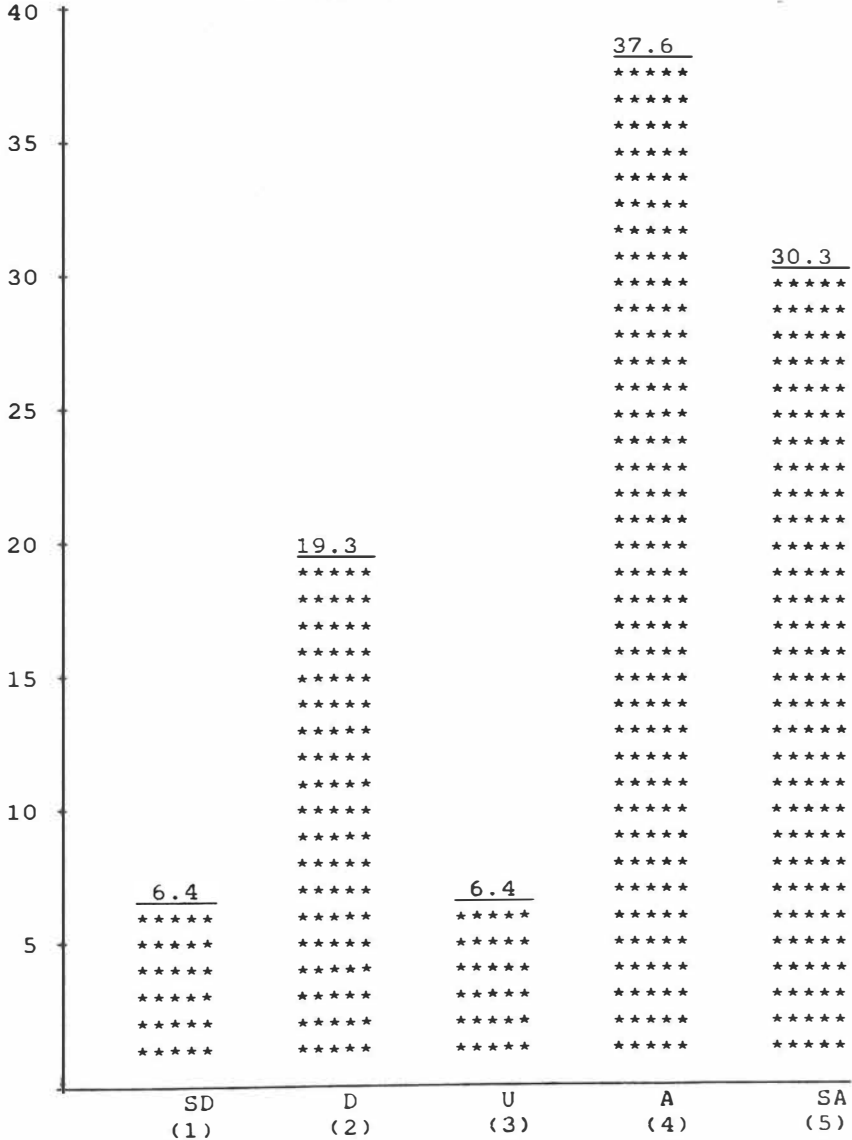
Approximately 46.3 percent of the superintendents agreed or strongly agreed with item 11, the VPPA has resulted in purchasing the same goods and services at an average lower cost. The mean response score to item 11 was 3.185 with a standard deviation of 1.034, a median of

Figure 1

Item 9 - Superintendents' Perceptions on Increased
Competitive Procedures

Percentage Bar Chart

Percentage of Superintendents



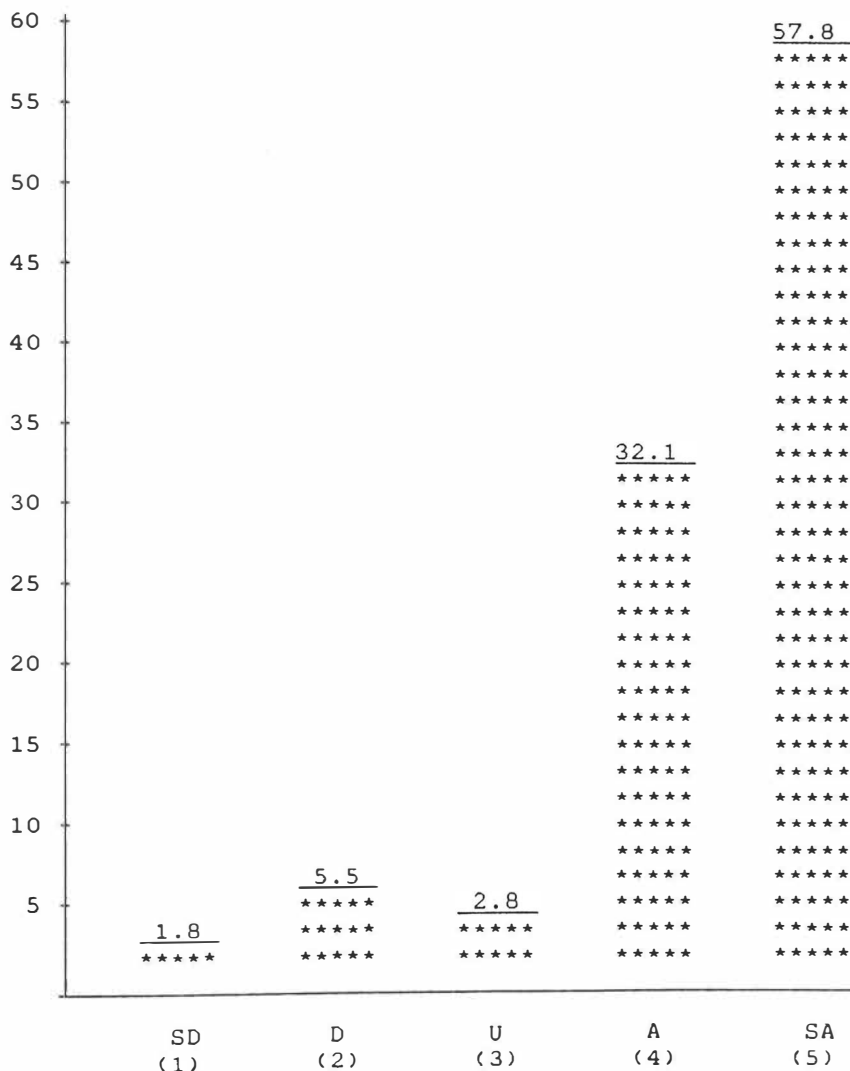
Superintendents' Responses

Figure 2

Item 10 - Superintendents' Perceptions on the Overall
Time Spent on Purchasing Procedures

Percentage Bar Chart

Percentage of Superintendents



Superintendents' Responses

3, a range of 4, and a mode of 4. A summary of the data on item 11 is presented in Figure 3.

Writing of Specifications

Approximately 93.6 percent of the superintendents agreed or strongly agreed with item 13, the VPPA has increased the amount of time devoted to the writing of specifications. The mean response score to item 13 was 4.395 with a standard deviation of 0.805, a median of 5, a range of 4, and a mode of 5. A summary of the data related to item 13 is presented in Figure 4.

Purchasing Ethics

Superintendents (60.2 percent) agreed or strongly agreed with item 17, the VPPA has improved purchasing ethics. The mean response score to item 17 was 3.519 with a standard deviation of 0.942, a median of 4, a range of 4, and a mode of 4. A summary of the data related to item 17 is presented in Figure 5.

Potential for Litigation

Most superintendents (58.3 percent) agreed or strongly agreed with item 18, the VPPA has increased the potential for litigation against the school division. The mean response score to item 18 was 3.435 with a standard deviation of 1.105, a median of 4, a range of 4, and a mode of 4. A summary of the data related to item 18 is presented in Figure 6.

Figure 3

Item 11 - Superintendents' Perceptions on Purchasing
Goods and Services at Lower Costs

Percentage Bar Chart

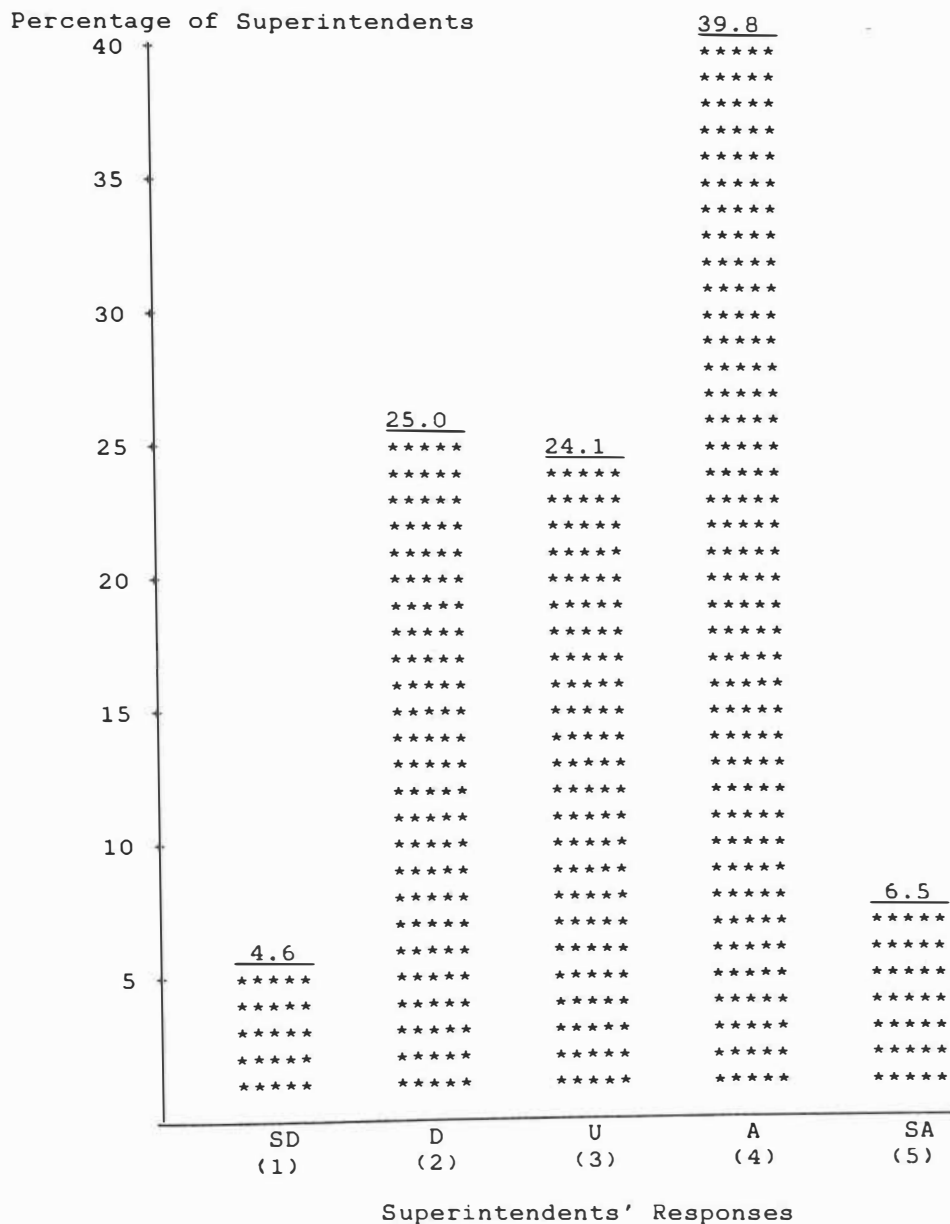
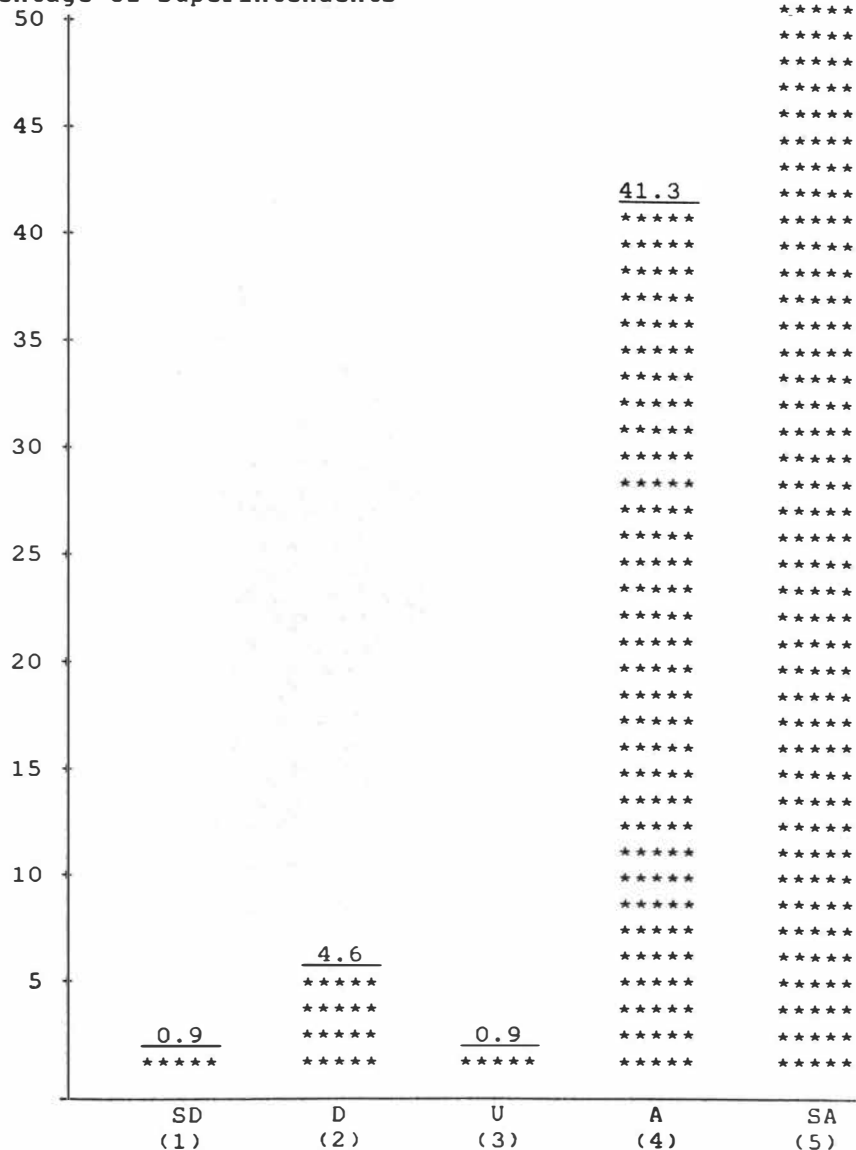


Figure 4

Item 13 - Superintendents' Perceptions of the Time
Devoted to Writing Specifications

Percentage Bar Chart

Percentage of Superintendents



Superintendents' Responses

Figure 5

Item 17 - Superintendents' Perceptions on Improved
Purchasing Ethics

Percentage Bar Chart

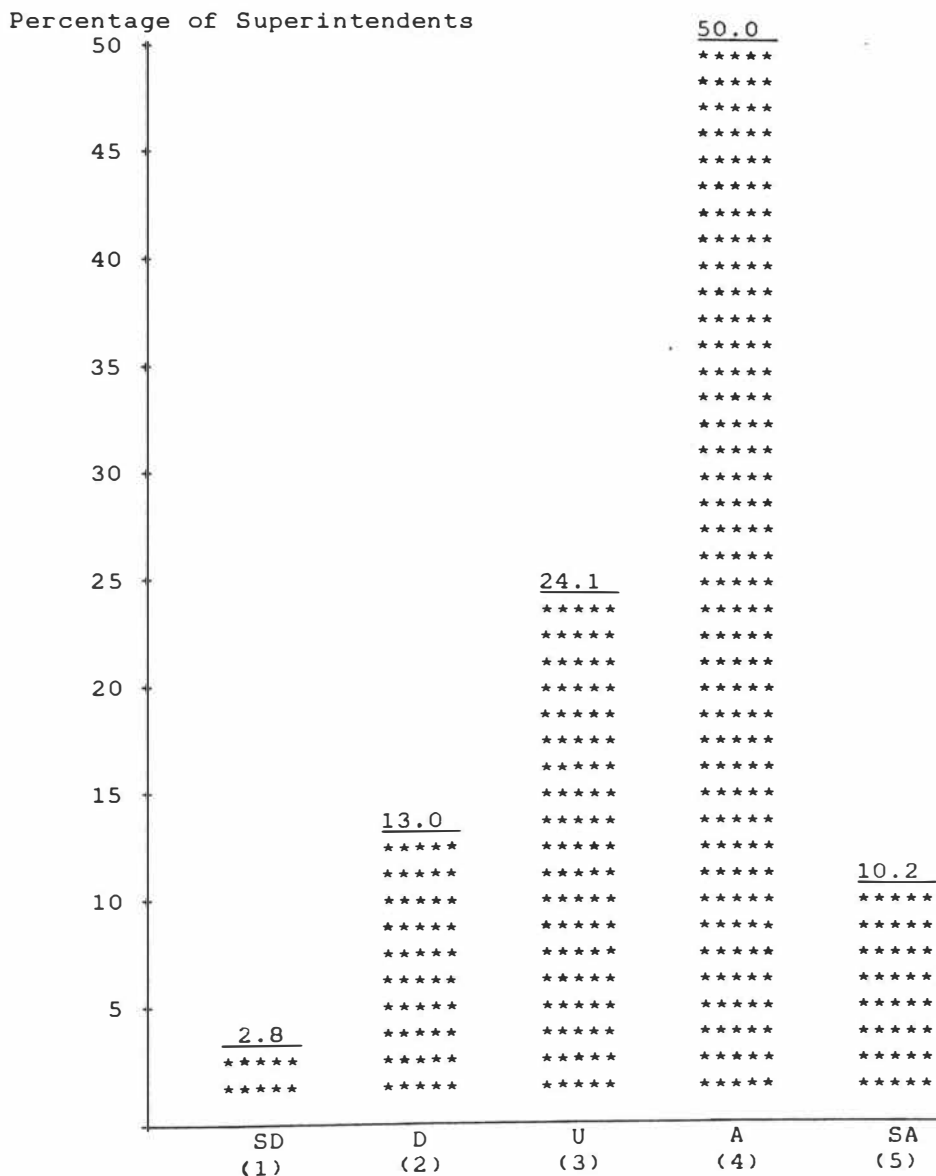
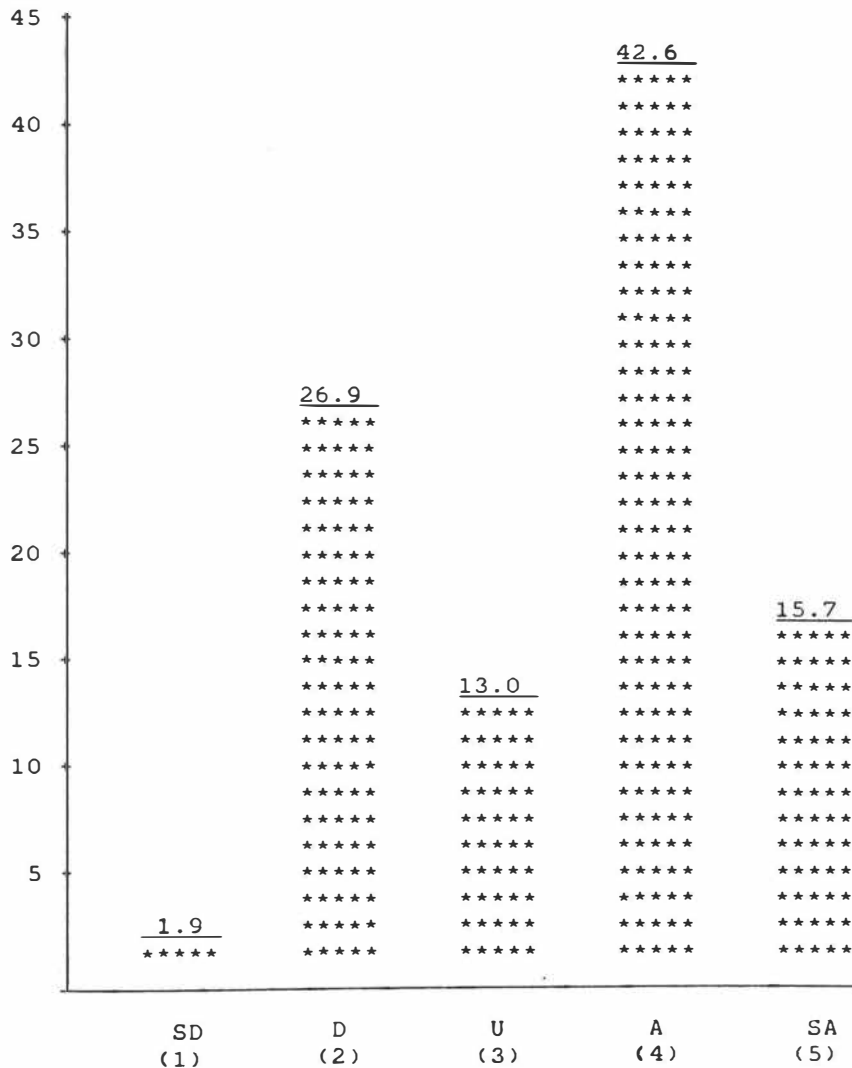


Figure 6

Item 18 - Superintendents' Perceptions on the Increased Potential for Litigation

Percentage Bar Chart

Percentage of Superintendents



Superintendents' Responses

Adequacy of Purchasing Procedures before the VPPA

Approximately 65.7 percent of the superintendents agreed or strongly agreed with item 20, school division purchasing procedures were adequate before the VPPA became effective. The mean response score to item 20 was 3.528 with a standard deviation of 1.018, a median of 4, a range of 4, and a mode of 4. A summary of the data related to item 20 is presented in Figure 7.

Local Purchasing Control

Superintendents (42.2 percent) agreed or strongly agreed with item 21, purchasing codes and procedures should be left solely to the local school division. The mean response score to item 21 was 3.055 with a standard deviation of 1.145, a median of 3, a range of 4, and a mode of 2. Since the mean score (3.055) exceeded the mean of the Likert scale (3.0) by only .055, the degree to which the superintendents agreed with item 21 was very slight. A greater percentage (44.1 percent) of the superintendents disagreed or strongly disagreed; however, since the mean score (3.055) was .055 above the mean of the Likert Scale (3.0), the strength of the disagreement was not as strong as the strength of agreement. A summary of the data related to item 21 is presented in Figure 8.

Statements with Which the Superintendents Disagreed

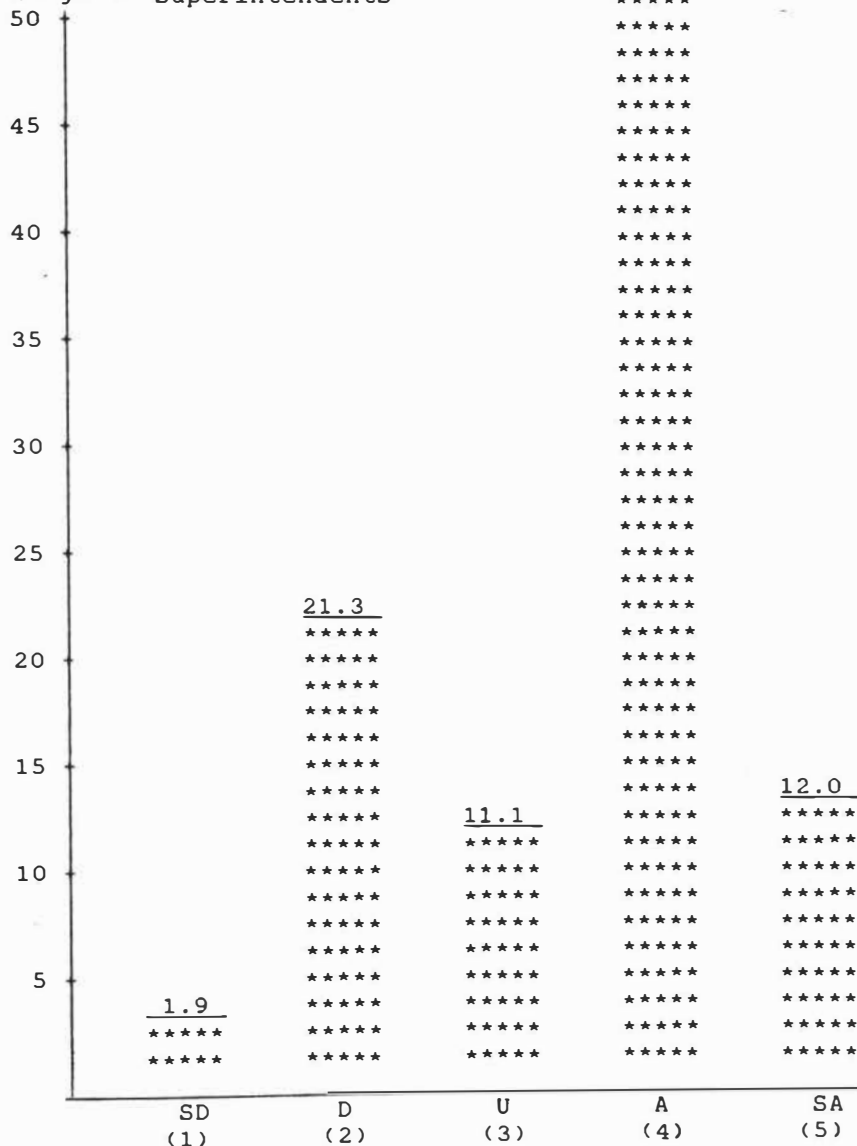
There were five perception statements on the survey instrument with which the superintendents disagreed or strongly disagreed, as measured by a mean score of less

Figure 7

Item 20 - Superintendents' Perceptions on the Adequacy of
Purchasing Procedures Prior to the VPPA

Percentage Bar Chart

Percentage of Superintendents

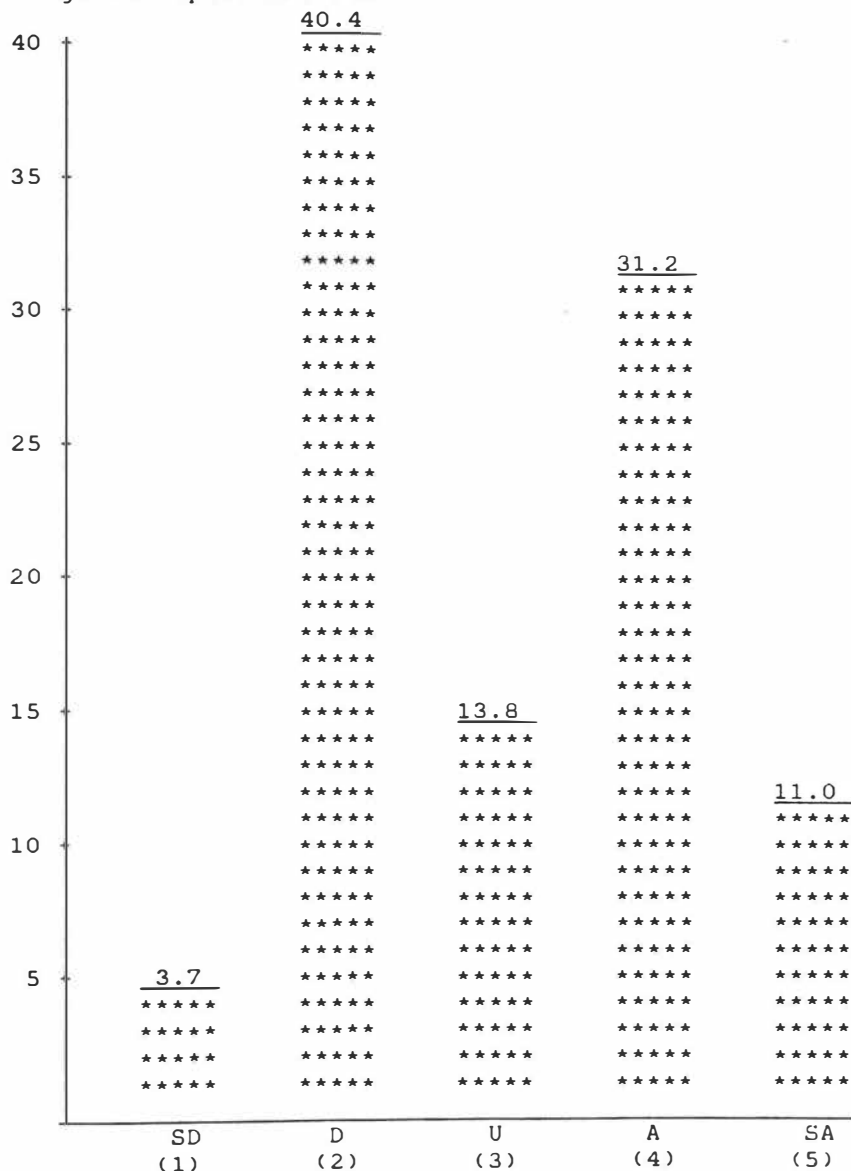


Superintendents' Responses

Figure 8

Item 21 - Superintendents' Perceptions on Purchasing
Codes and Procedures Being Left to Local School Divisions

Percentage Bar Chart
 Percentage of Superintendents



Superintendents' Responses

than 3.0 on the item. A summary of the descriptive data for the perception items with which the superintendents disagreed or strongly disagreed is presented in Table 5. Measures of central tendency and dispersion were computed

Table 5

Summary of the Descriptive Data on the Perception
Statements with Which the Superintendents Disagreed

(Percentages)

Survey Item	% (N)	% SD (1)	% D (2)	% U (3)	% A (4)	% SA (5)
12. Improved quality of goods and services	109	11.9	40.4	33.0	11.9	2.8
14. Improved meeting of delivery deadlines	109	12.8	51.4	23.9	9.2	2.8
15. Increased awards to single-source vendors	108	7.4	43.5	27.8	17.6	3.7
16. Increased awards to local vendors	109	15.6	65.1	14.7	4.6	0.0
19. Adequate training provided	109	11.9	40.4	14.7	31.2	1.8

SD (1) - Strongly Disagree			A (4) - Agree			
D (2) - Disagree			SA (5) - Strongly Agree			
U (3) - Uncertain						

for each of the perception items with which the superintendents disagreed or strongly disagreed. A summary of the measures of central tendency and dispersion

for the items with which the superintendents disagreed or strongly disagreed is presented in Table 6.

Table 6

Measures of Central Tendency and Dispersion for the
Perception Statements with Which the Superintendents
Disagreed

Survey Item	(N)	Mean	SD	Median	Range	Mode
12. Improved quality of goods and services	109	2.532	0.948	2	4	2
14. Improved meeting of delivery deadlines	109	2.376	0.921	2	4	2
15. Increased awards to single-source vendors	108	2.667	0.976	2	4	2
16. Increased awards to local vendors	109	2.083	0.696	2	3	2
19. Adequate training provided	109	2.706	1.091	2	4	2

SD (1) - Strongly Disagree			A (4) - Agree			
D (2) - Disagree			SA (5) - Strongly Agree			
U (3) - Uncertain						

Quality of Goods and Services

With respect to item 12, the VPPA has improved the overall quality of the goods and services purchased, 52.3 percent of the superintendents disagreed or strongly disagreed. The mean response score to item 12 was 2.532

with a standard deviation of 0.948, a median of 2, a range of 4, and a mode of 2. A summary of the data related to item 12 is presented in Figure 9.

Meeting of Delivery Deadlines

Approximately 64.2 percent of the superintendents disagreed or strongly disagreed with item 14, the VPPA has improved the meeting of delivery deadlines to the sites where supplies and services are needed. The mean response score to item 14 was 2.376 with a standard deviation of 0.921, a median of 2, a range of 4, and a mode of 2. A summary of the data related to item 14 is presented in Figure 10.

Single- (Sole)-Source Vendors

Superintendents (50.9 percent) disagreed or strongly disagreed with item 15, the VPPA has increased the number of awards made to single- (sole)-source vendors. The mean response score to item 15 was 2.667 with a standard deviation of 0.976, a median of 2, a range of 4, and a mode of 2. A summary of the data related to item 15 is presented in Figure 11.

Local Vendors

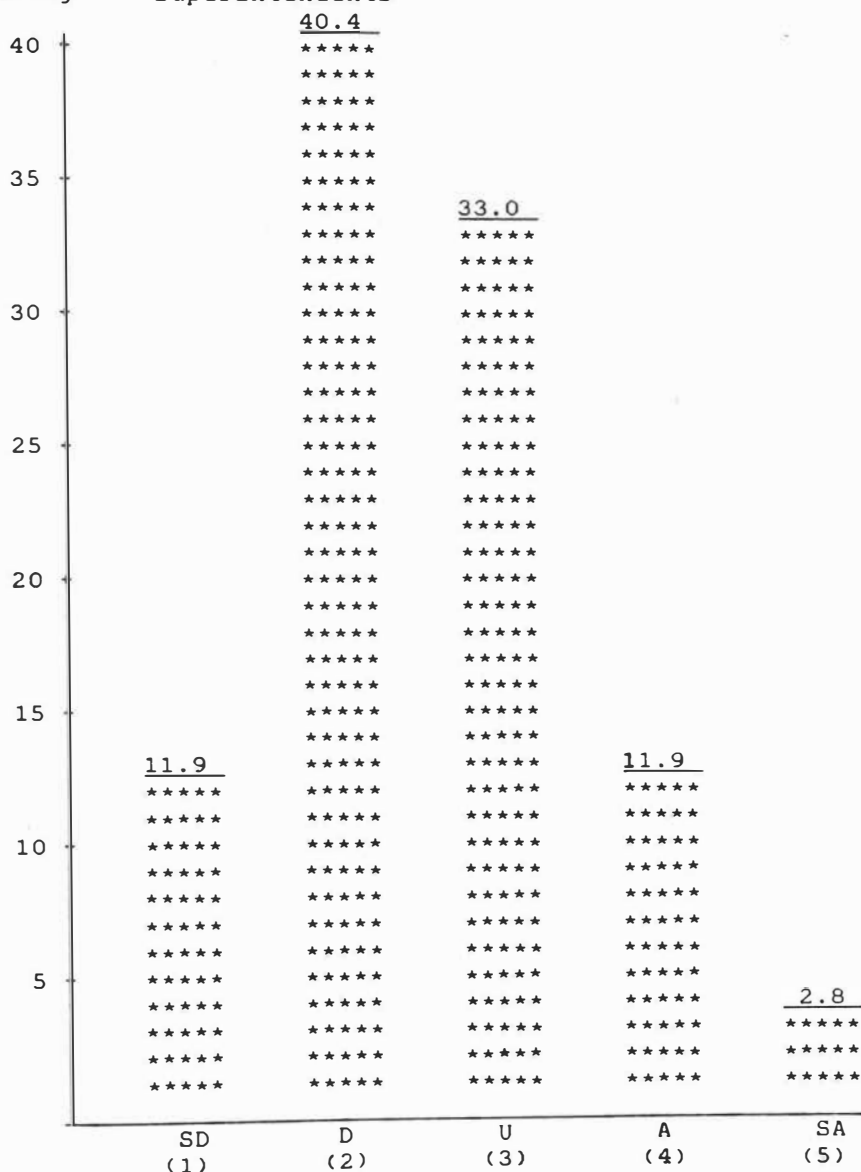
Superintendents disagreed or strongly disagreed (80.7 percent) with item 16, the VPPA has increased the number of awards made to local vendors. The mean response score to item 16 was 2.083 with a standard deviation of 0.696, a median of 2, a range of 3, and a mode of 2. A summary of the data related to item 16 is presented in Figure 12.

Figure 9

Item 12 - Superintendents' Perceptions on the Improved
Overall Quality of Goods and Services Purchased

Percentage Bar Chart

Percentage of Superintendents



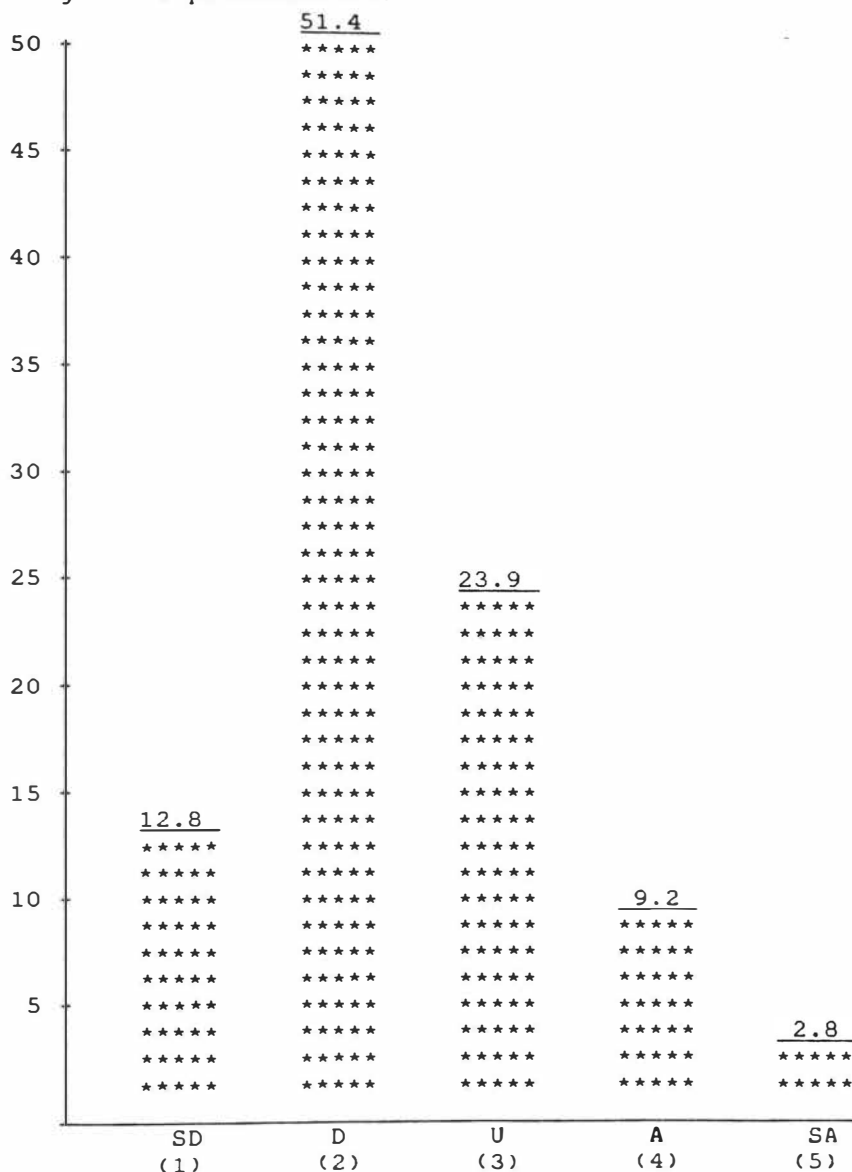
Superintendents' Responses

Figure 10

Item 14 - Superintendents' Perceptions on the Improved
Meeting of Delivery Deadlines to the Site

Percentage Bar Chart

Percentage of Superintendents



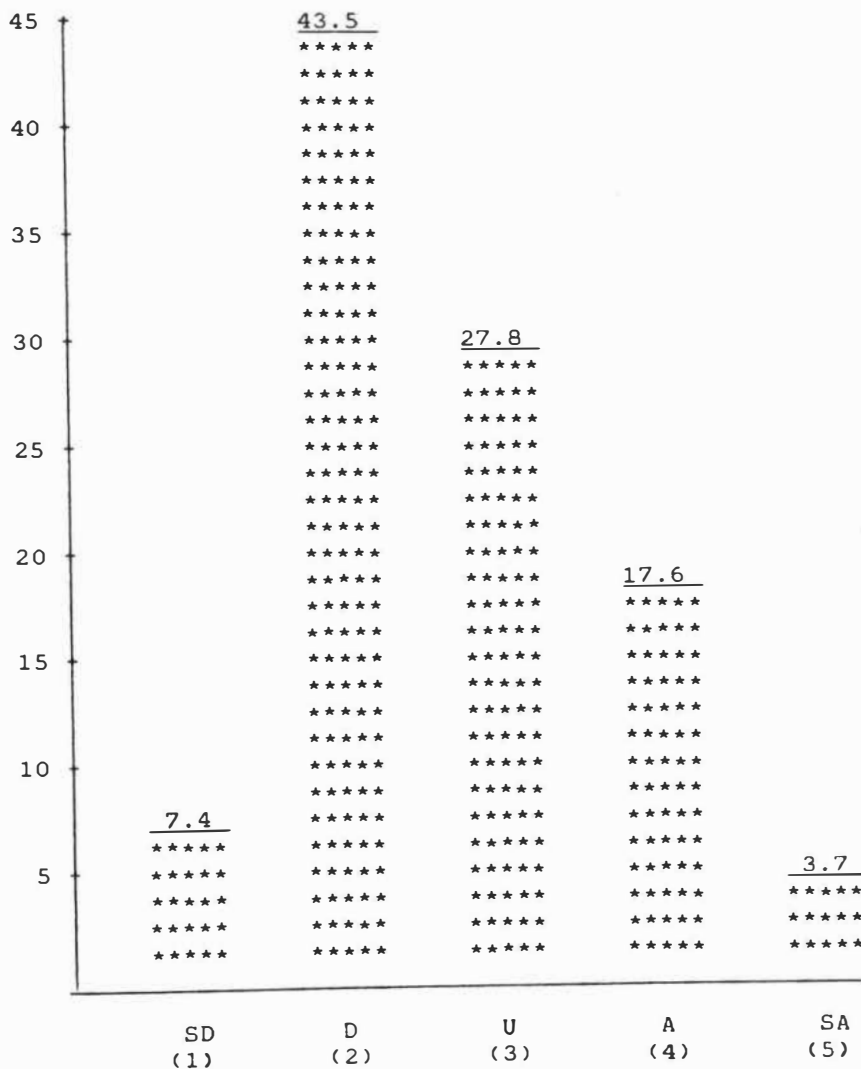
Superintendents' Responses

Figure 11

Item 15 - Superintendents' Perceptions on the Increased
Number of Awards Made to Single-Source Vendors

Percentage Bar Chart

Percentage of Superintendents



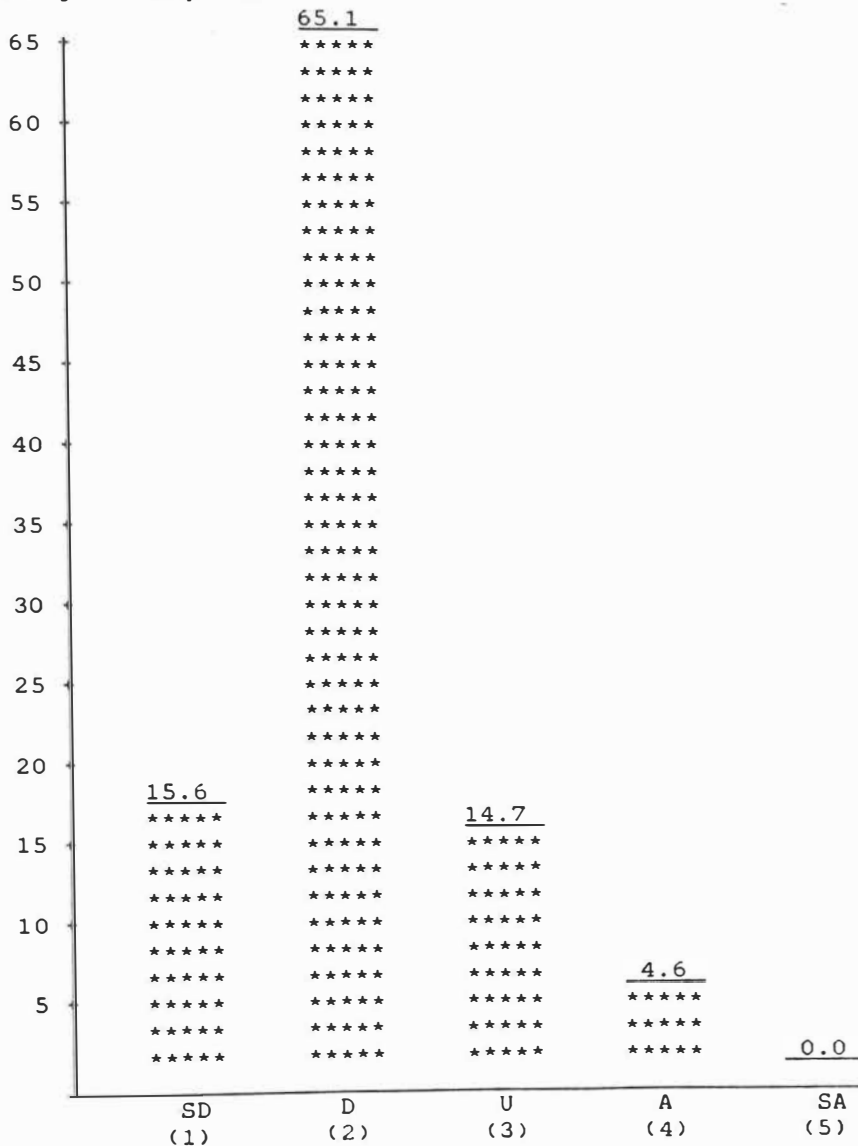
Superintendents' Responses

Figure 12

Item 16 - Superintendents' Perceptions on the Increased
Number of Awards Made to Local Vendors

Percentage Bar Chart

Percentage of Superintendents



Superintendents' Responses

Adequacy of Training

The majority of the superintendents (52.3 percent) disagreed or strongly disagreed with item 19, there has been adequate training provided to assist school division personnel in understanding and complying with the requirements of the VPPA. The mean response score to item 19 was 2.706 with a standard deviation of 1.091, a median of 2, a range of 4, and a mode of 2. A summary of the data related to item 19 is presented in Figure 13.

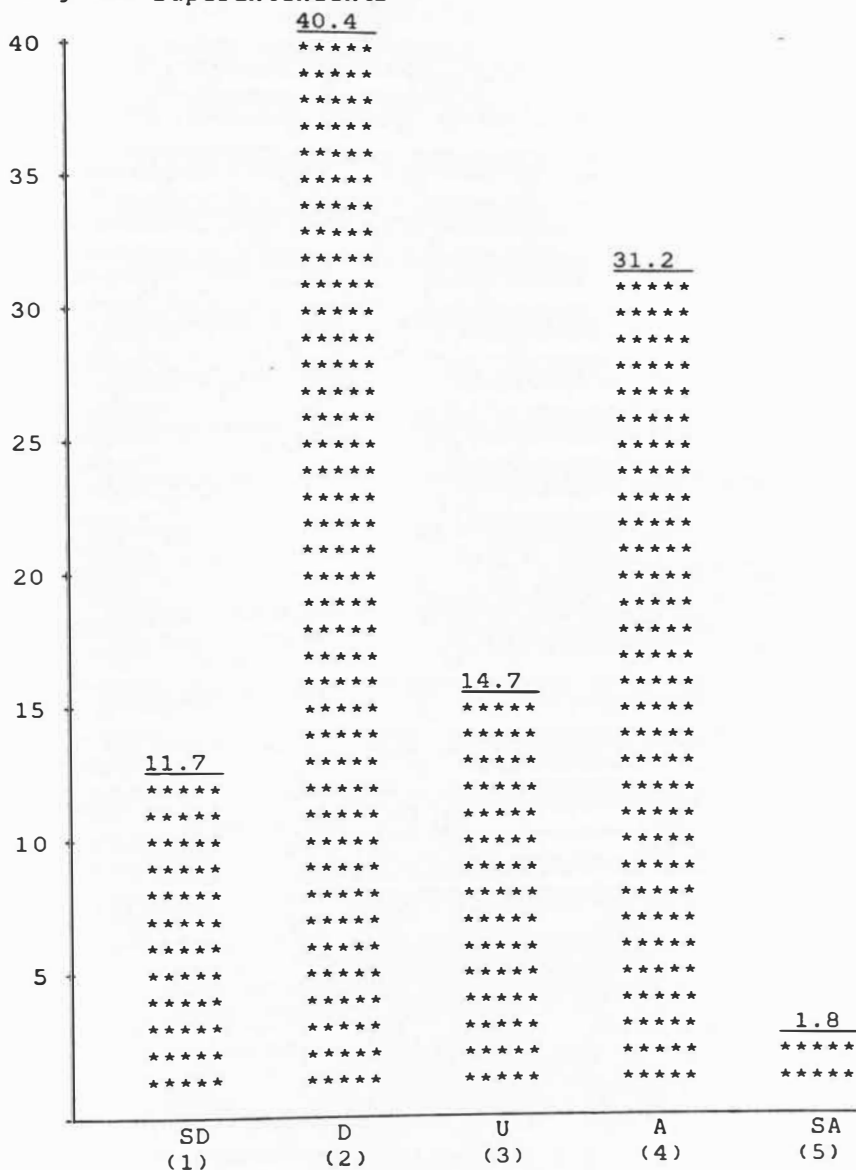
E. Descriptive Statistics for the Correlations Between Selected Demographic Variables and the Perceptions of the Superintendents

In order to answer the second research question (What are the relationships between certain demographic variables and the perceptions of Virginia public school superintendents regarding the Virginia Public Procurement Act?), correlation coefficients were computed for each of the demographic variables and each of the perception items. Since the first four demographic variables were interval as were each of the perception items, Pearson Product Moment Correlation Coefficients were computed to determine whether any significant relationships existed between the first four demographic variables and the perceptions of the superintendents regarding the VPPA. Point Biserial Correlation, a modified form of the Pearson Product Moment Correlation, was used for the last four

Figure 13

Item 19 - Superintendents' Perceptions on the Adequacy of
Training to Implement the VPPA

Percentage Bar Chart
 Percentage of Superintendents



Superintendents' Responses

demographic variables since those variables were dichotomous and each of the superintendents' perception items was interval. The level of probability was set at the .05 level to determine the probability that a relationship was significant between two variables rather than occurring by chance alone.

Number of Students Served in the School Division

Using the Pearson Product Moment Correlation, one of the superintendents' perception items was found to be significantly related to the first demographic variable, the number of students served in the school division. Correlation coefficients and the probability levels for the number of students served in the school division and each of the perception scores are presented in Table 7.

Table 7

Correlation Coefficients Between the Number of Students Served and the Superintendents' Perception Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	109	.047	.626
10. The VPPA increased the overall time spent on purchasing	109	-.171	.076
11. The VPPA resulted in average lower costs	108	-.011	.908

Table 7 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
12. The VPPA improved the overall quality of goods and services	109	.080	.409
13. The VPPA increased the time spent on writing specifications	109	-.108	.263
14. The VPPA improved the meeting of delivery deadlines to the site	109	.055	.568
15. The VPPA increased the number of awards made to sole-source vendors	108	.108	.265
16. The VPPA increased the number of awards made to local vendors	109	.196	.041*
17. The VPPA improved purchasing ethics	108	-.042	.665
18. The VPPA increased the potential for litigation	108	-.016	.870
19. Adequate training was provided to assist in complying with the VPPA	109	.158	.101
20. Purchasing procedures were adequate before the VPPA became effective	108	-.105	.281
21. Purchasing procedures should be left to the local school division	109	-.103	.285

* $p < .05$, two-tailed

A slight but significant relationship of .196 was found between the number of students in the division and

item 16, the VPPA has increased the number of awards made to local vendors. Superintendents in larger school divisions were more likely to agree that the VPPA had increased the number of awards made to local vendors than were superintendents in smaller school divisions.

Years of Experience as a Superintendent

Using the Pearson Product Moment Correlation, two of the superintendents' perception items were found to be significantly related to the second demographic variable, the years of experience as a superintendent. Correlation coefficients and the probability levels for the years of experience as a superintendent and each of the perception scores are presented in Table 8.

Table 8

Correlation Coefficients Between the Years of Experience as a Superintendent and the Superintendents' Perception Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	107	-.076	.438
10. The VPPA increased the overall time spent on purchasing	107	-.026	.790

Table 8 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
11. The VPPA resulted in average lower costs	106	-.135	.169
12. The VPPA improved the overall quality of goods and services	107	-.112	.249
13. The VPPA increased the time spent on writing specifications	107	.093	.340
14. The VPPA improved the meeting of delivery deadlines to the site	107	-.122	.212
15. The VPPA increased the number of awards made to sole-source vendors	106	-.240	.013*
16. The VPPA increased the number of awards made to local vendors	107	-.181	.062
17. The VPPA improved purchasing ethics	106	-.095	.332
18. The VPPA increased the potential for litigation	106	.110	.260
19. Adequate training was provided to assist in complying with the VPPA	107	-.062	.527
20. Purchasing procedures were adequate before the VPPA became effective	106	.255	.008*
21. Purchasing procedures should be left to the local school division	107	.120	.220

* $p < .05$, two-tailed

A slight but significant negative relationship of $-.240$ was found between the years of experience as a superintendent and item 15, the VPPA has increased the number of awards made to local vendors. Superintendents with less experience were more likely to perceive the VPPA as having increased the number of awards made to single- (sole)-source vendors than were superintendents with more years of experience.

There was also a slight but significant relationship of $.255$ discovered between years of experience as a superintendent and item 20, my school division purchasing procedures were adequate before the VPPA became effective. Superintendents with more years of experience as a superintendent were more likely to agree that school division purchasing procedures were adequate before the VPPA became effective. Conversely, superintendents with fewer years of experience as a superintendent were more likely to disagree that school division purchasing procedures were adequate before the VPPA became effective.

The probability that a relationship existed between the years of experience as a superintendent and item 16, the VPPA has increased the number of awards made to local vendors, approached significance ($-.181$).

Chronological Age of the Superintendents

Using the Pearson Product Moment Correlation, none of the superintendents' perception items were found to be

significantly related to the third demographic variable, the chronological age of the superintendents. Correlation coefficients and the probability levels for the chronological age of the superintendents and each of the perception scores are presented in Table 9.

Table 9

Correlation Coefficients Between the Chronological Age of the Superintendents and the Superintendents' Perception Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	105	-.146	.136
10. The VPPA increased the overall time spent on purchasing	105	-.128	.195
11. The VPPA resulted in average lower costs	104	-.118	.235
12. The VPPA improved the overall quality of goods and services	105	-.032	.745
13. The VPPA increased the time spent on writing specifications	105	-.094	.340
14. The VPPA improved the meeting of delivery deadlines to the site	105	-.011	.913
15. The VPPA increased the number of awards made to sole-source vendors	104	-.066	.507

Table 9 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
16. The VPPA increased the number of awards made to local vendors	105	-.065	.507
17. The VPPA improved purchasing ethics	104	-.095	.335
18. The VPPA increased the potential for litigation	104	-.013	.893
19. Adequate training was provided to assist in complying with the VPPA	105	.095	.334
20. Purchasing procedures were adequate before the VPPA became effective	104	.148	.133
21. Purchasing procedures should be left to the local school division	105	.068	.489

* $p < .05$, two-tailed

Years of Experience in Purchasing

Using the Pearson Product Moment Correlation, one of the superintendents' perception items was found to be significantly related to the fourth demographic variable, the years of experience in purchasing. Correlation coefficients and probability levels for the years of experience in purchasing and each of the perception scores are presented in Table 10.

Table 10

Correlation Coefficients Between the Years of Experience
in Purchasing and the Superintendents' Perception
Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	105	-.071	.470
10. The VPPA increased the overall time spent on purchasing	105	.030	.765
11. The VPPA resulted in average lower costs	104	-.074	.456
12. The VPPA improved the overall quality of goods and services	105	-.178	.069
13. The VPPA increased the time spent on writing specifications	105	.178	.069
14. The VPPA improved the meeting of delivery deadlines to the site	105	-.037	.705
15. The VPPA increased the number of awards made to sole-source vendors	104	-.047	.639
16. The VPPA increased the number of awards made to local vendors	105	-.168	.087
17. The VPPA improved purchasing ethics	104	-.138	.162
18. The VPPA increased the potential for litigation	104	.175	.076

Table 10 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
19. Adequate training was provided to assist in complying with the VPPA	105	-.044	.653
20. Purchasing procedures were adequate before the VPPA became effective	104	.203	.039*
21. Purchasing procedures should be left to the local school division	105	.069	.484

* $p < .05$, two-tailed

A slightly significant relationship of .203 was found between the years of experience in purchasing and item 20, my school division purchasing procedures were adequate before the VPPA became effective. The greater the years of experience in purchasing, the more likely superintendents were to agree that purchasing procedures were adequate before the VPPA, and the fewer the years of experience in purchasing, the more likely the superintendents were to disagree that purchasing procedures were adequate before the VPPA.

The probability that a relationship existed between the years of experience in purchasing and two other perception items approached significance. The correlation coefficient with item 12, the VPPA improved the overall quality of goods and services, was -.178. The

correlation coefficient with item 13, the VPPA has increased the time spent on writing specifications, was .178.

Sex of the Superintendents

Using the Point Biserial Correlation, three of the superintendents' perception items were found to be significantly related to the fifth demographic variable, the sex of the superintendents. However, interpretation of this Point Biserial Correlation is questionable since only four (3.7 percent) of the responding superintendents were females (Winkler & Hays, 1975). With more females represented, these relationships would be more determinant. Correlation coefficients and the probability levels for the sex of the superintendents and each of the perception scores are presented in Table 11.

Table 11

Correlation Coefficients Between the Sex of the Superintendents and the Superintendents' Perception Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	107	.027	.783
10. The VPPA increased the overall time spent on purchasing	107	.082	.403

Table 11 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
11. The VPPA resulted in average lower costs	106	.084	.390
12. The VPPA improved the overall quality of goods and services	107	-.045	.645
13. The VPPA increased the time spent on writing specifications	107	.157	.106
14. The VPPA improved the meeting of delivery deadlines to the site	107	-.080	.411
15. The VPPA increased the number of awards made to sole-source vendors	106	-.016	.869
16. The VPPA increased the number of awards made to local vendors	107	-.263	.006*
17. The VPPA improved purchasing ethics	106	-.099	.313
18. The VPPA increased the potential for litigation	106	-.012	.904
19. Adequate training was provided to assist in complying with the VPPA	107	-.190	.050*
20. Purchasing procedures were adequate before the VPPA became effective	106	.198	.042*
21. Purchasing procedures should be left to the local school division	107	.010	.921

* $p < .05$, two-tailed

A slight negative relationship ($-.263$) was found between the sex of the superintendents and item 16, the VPPA has increased the number of awards made to local vendors. Female superintendents were more likely than were male superintendents to agree that the VPPA had increased the number of awards made to local vendors.

A slight but significant negative relationship ($-.190$) was found between the sex of the superintendents and item 19, there has been adequate training to assist school division personnel in understanding and complying with the requirements of the VPPA. Female superintendents were more likely to agree that adequate training had been provided than were male superintendents.

A slightly significant relationship of $.198$ was discovered between the sex of the superintendents and item 20, my school division purchasing procedures were adequate before the VPPA became effective. Male superintendents were more likely than were female superintendents to agree that purchasing procedures were adequate before the VPPA became effective.

Race of the Superintendents

Using the Point Biserial Correlation, none of the superintendents' perception items was found to be significantly related to the sixth demographic variable, the race of the superintendents. However, interpretation of this Point Biserial Correlation is questionable since only four (3.8 percent) of the responding superintendents

were non-white (Winkler & Hays, 1975). Correlation coefficients and the probability levels for the race of the superintendents and each of the perception scores are presented in Table 12.

Table 12

Correlation Coefficients Between the Race of the Superintendents and the Superintendents' Perception Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	105	.016	.870
10. The VPPA increased the overall time spent on purchasing	105	-.082	.408
11. The VPPA resulted in average lower costs	104	.013	.896
12. The VPPA improved the overall quality of goods and services	105	-.007	.944
13. The VPPA increased the time spent on writing specifications	105	-.096	.331
14. The VPPA improved the meeting of delivery deadlines to the site	105	.081	.411
15. The VPPA increased the number of awards made to sole-source vendors	104	-.035	.723
16. The VPPA increased the number of awards made to local vendors	105	.121	.221

Table 12 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
17. The VPPA improved purchasing ethics	104	.047	.639
18. The VPPA increased the potential for litigation	104	-.125	.208
19. Adequate training was provided to assist in complying with the VPPA	105	.143	.146
20. Purchasing procedures were adequate before the VPPA became effective	104	-.109	.272
21. Purchasing procedures should be left to the local school division	105	-.144	.144

* $p < .05$, two-tailed

Predominant Division Classification (Rural or Urban)

Using the Point Biserial Correlation, two of the superintendents' perception items were found to be significantly related to the seventh demographic variable, the predominant division classification (rural or urban). Correlation coefficients and the probability levels for the predominant division classification and each of the perception scores are presented in Table 13.

Table 13

Correlation Coefficients Between the Predominant Division
Classification and the Superintendents' Perception
Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	109	-.101	.296
10. The VPPA increased the overall time spent on purchasing	109	-.067	.489
11. The VPPA resulted in average lower costs	108	-.258	.007*
12. The VPPA improved the overall quality of goods and services	109	.040	.679
13. The VPPA increased the time spent on writing specifications	109	-.183	.057
14. The VPPA improved the meeting of delivery deadlines to the site	109	-.039	.690
15. The VPPA increased the number of awards made to sole-source vendors	108	-.014	.888
16. The VPPA increased the number of awards made to local vendors	109	.120	.214
17. The VPPA improved purchasing ethics	108	-.056	.566
18. The VPPA increased the potential for litigation	108	-.123	.204

Table 13 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
19. Adequate training was provided to assist in complying with the VPPA	109	-.055	.570
20. Purchasing procedures were adequate before the VPPA became effective	108	-.058	.552
21. Purchasing procedures should be left to the local school division	109	-.189	.049*

* $p < .05$, two-tailed

A slightly significant negative relationship ($-.258$) was found between predominant division classification and item 11, the VPPA has resulted in purchasing the same goods and services at an average lower cost. Superintendents of predominantly rural school divisions were more likely to agree that the VPPA had resulted in average lower costs than were superintendents from predominantly urban school divisions.

A slight but significant negative relationship of $-.189$ was discovered between the predominant division classification and item 21, purchasing codes and procedures should be left solely to the local school division. Superintendents of predominantly rural school divisions were more likely to agree that purchasing codes and procedures should be left to the local school

division than were superintendents from predominantly urban school divisions.

Computerized Purchasing System

Using the Point Biserial Correlation, eight of the superintendent's perception items were found to be significantly related to the eighth demographic variable, whether a computerized purchasing system had been initiated. Correlation coefficients and the probability levels for whether a computerized purchasing system had been initiated and each of the perception scores are presented in Table 14.

Table 14

Correlation Coefficients Between a Computerized Purchasing System and the Superintendents' Perception Statements

Perception Item	(N)	Correlation Coefficient	Probability Level
9. The VPPA increased the use of competitive procedures	107	-.233	.016*
10. The VPPA increased the overall time spent on purchasing	107	.064	.511
11. The VPPA resulted in average lower costs	106	-.236	.015*
12. The VPPA improved the overall quality of goods and services	107	-.384	.000*
13. The VPPA increased the time spent on writing specifications	107	.107	.275

Table 14 (continued)

Perception Item	(N)	Correlation Coefficient	Probability Level
14. The VPPA improved the meeting of delivery deadlines to the site	107	-.204	.035*
15. The VPPA increased the number of awards made to sole-source vendors	106	-.125	.201
16. The VPPA increased the number of awards made to local vendors	107	-.213	.027*
17. The VPPA improved purchasing ethics	106	-.310	.001*
18. The VPPA increased the potential for litigation	106	.054	.581
19. Adequate training was provided to assist in complying with the VPPA	107	-.132	.177
20. Purchasing procedures were adequate before the VPPA became effective	106	.451	.000*
21. Purchasing procedures should be left to the local school division	107	.380	.000*

* $p < .05$, two-tailed

A slightly significant negative relationship (-.233) was found between whether a computerized purchasing system had been initiated and item 9, the VPPA has increased the percentage of purchases made in my school division through the use of competitive procedures such as competitive negotiation and competitive bidding. In

divisions in which computerized purchasing systems had been initiated, superintendents were more likely to agree that the VPPA had increased the use of competitive procedures than were superintendents in divisions without computerized purchasing systems.

A slight but significant negative relationship of $-.236$ was discovered between whether a computerized system of purchasing had been initiated and item 11, the VPPA has resulted in purchasing the same goods and services at an average lower cost. If a computerized purchasing system had been initiated, superintendents were more likely to agree that the VPPA had improved cost effectiveness. Conversely, if a computerized purchasing system had not been initiated, the superintendents were more likely to disagree that the VPPA had improved cost effectiveness.

A moderate negative relationship of $-.384$ was found between whether a computerized system of purchasing had been initiated and item 12, the VPPA has improved the overall quality of goods and services purchased. Superintendents who had computerized purchasing systems in their divisions were more likely to agree that the VPPA had improved the quality of goods and services than were superintendents who did not have computerized purchasing systems.

A slight but significant negative relationship of $-.204$ was discovered between whether a computerized

purchasing system had been initiated and item 14, the VPPA has improved the meeting of delivery deadlines to the sites where supplies are needed. Superintendents with computerized purchasing systems were more likely to perceive the VPPA as improving the meeting of delivery deadlines, while superintendents without computerized purchasing systems were more likely to perceive the VPPA as not improving the meeting of delivery deadlines.

A slight but significant negative relationship of $-.213$ was found between whether a computerized purchasing system had been initiated and item 16, the VPPA has increased the number of awards made to local vendors. If computerized purchasing systems had been initiated, superintendents were more likely to agree that the VPPA had increased the number of awards made to local vendors. Conversely, if computerized purchasing systems had not been initiated, superintendents were more likely to disagree that the VPPA had increased the number of awards made to local vendors.

A moderate negative relationship of $-.310$ was discovered between whether a computerized purchasing system had been initiated and item 17, the VPPA has improved purchasing ethics. Superintendents with a computerized purchasing system were more likely to agree that the VPPA had improved purchasing ethics, while superintendents without a computerized purchasing system

were more likely to disagree that the VPPA had improved purchasing ethics.

A moderate statistically significant relationship of .451 was found between whether a computerized purchasing system had been initiated and item 20, my school division purchasing procedures were adequate before the VPPA became effective. Superintendents in divisions without computerized purchasing systems were more likely to agree that purchasing procedures were adequate before the VPPA became effective, and superintendents in divisions with computerized purchasing systems were more likely to disagree that purchasing procedures were adequate before the VPPA became effective.

Finally, a moderate relationship of .380 was discovered between whether a computerized purchasing system had been initiated and item 21, purchasing codes and procedures should be left solely to the local school divisions. Superintendents in divisions without computerized purchasing systems were more likely to agree that purchasing codes and procedures should be left solely to the local school divisions. Conversely, superintendents in divisions with computerized purchasing systems were more likely to disagree that purchasing procedures should be left solely to the local school divisions.

Summary

A summary of the significant relationships between the demographic variables and each of the superintendents' perception statements regarding the VPPA is presented in Table 15.

Table 15

Summary of the Relationships Between the Demographic Variables and the Superintendents' Perception Statements

Demographic Variable	Items for which Significance Was Found
1. Number of students served in the division	Item 16
2. Years of experience as a superintendent	Items 15,20
3. Chronological age	none
4. Years of experience in purchasing	Item 20
5. Sex	Items 16,19,20
6. Race	none
7. Predominant division classification	Items 11,21
8. Computerized purchasing system initiated	Items 9,11,12,14,16,17,20,21

F. Descriptive Statistics for the Three Open-Ended Questions in Part III of the Survey Instrument

The third research question investigated in this study was: What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents? The fourth research question investigated in this study was: What changes in the VPPA would Virginia public school division superintendents recommend? In order to gather the data to answer these two research questions, the superintendents were asked to respond to three open-ended questions in Part III of the survey instrument:

1. What are the strengths of the VPPA?
2. What are the weaknesses of the VPPA?
3. What changes in the VPPA would you recommend?

The superintendents' responses to each of the three questions on Part III of the survey instrument were coded and classified into categories. Of the 109 superintendents who returned questionnaires, 83 (61.9 percent of the population) responded to the question on the strengths of the VPPA, 81 (60.4 percent of the population) responded to the question on the weaknesses of the VPPA, and 74 (55.2 percent of the population) responded to the question on recommended changes in the VPPA. Many of the superintendents who responded gave multiple responses to each of the open-ended questions, and some of the superintendents gave

just one response to each question. The percentage of responses in each category was calculated based on the number of superintendents who responded to each open-ended question. The singular responses (responses listed by only one superintendent) were grouped into a category called other for each of the three open-ended questions.

Strengths of the VPPA

Table 16 provides a summary of the percentage of responses in each category for the superintendents' answers to the first open-ended question (What are the strengths of the VPPA?). A total of 83 (61.9 percent) of the superintendents responded to this question with a total of 119 responses.

The most frequently cited strength of the VPPA as perceived by 39.8 percent of the superintendents who responded to this question was that the VPPA has increased competition. Improved ethics and equity in purchasing were cited as strengths of the VPPA by 37.3 percent of the superintendents. Approximately 26.5 percent of the superintendents listed uniformity and standardization of purchasing procedures as a strength of the VPPA. Improved cost effectiveness and the lowering of prices was given as a strength of the VPPA by 12.0 percent of the superintendents. Several superintendents (7.2 percent) stated that the VPPA has decreased the potential for litigation against the school division if the procedures

Table 16

Summary of the Descriptive Data on the Superintendents'
Perceived Strengths of the VPPA

Strength	Percentage of Total %
1. Increases competition	39.8
2. Improves ethics and equity	37.3
3. Provides uniformity and standardization of procedures	26.5
4. Lowers prices/Cost effectiveness	12.0
5. Decreases litigation if procedures are followed	7.2
6. Makes purchasing more visible	3.6
7. Improves quality	2.4
8. Increases opportunities for small vendors	2.4
9. Has no strengths	2.4
10. Other (single responses)	9.6

set forth in the act are followed. Another strength of the VPPA which was cited by 3.6 percent of the superintendents was that the VPPA has made public purchasing more visible to the taxpayers and public. Improved quality of goods was listed as a strength of the VPPA by 2.4 percent of the superintendents. A few superintendents (2.4 percent) stated that the VPPA has increased the opportunities for small vendors to receive

more of the school division's purchasing contracts. There were 2.4 percent of the superintendents who responded to this question who stated that the VPPA has no strengths. There were eight strengths listed for this question which were cited by only one superintendent. These responses were grouped into a category called other which accounted for 9.6 percent of the superintendents' responses to the question on the strengths of the VPPA.

Weaknesses of the VPPA

A summary of the percentage of responses in each category for the superintendents' answers to the second open-ended question (What are the weaknesses of the VPPA?) is presented in Table 17. A total of 81 (60.4

Table 17

Summary of the Descriptive Data on the Superintendents' Perceived Weaknesses of the VPPA

Weakness	Percentage of Total %
1. Is too time consuming/Requires additional work to deal with "red tape"	34.6
2. Low bidder often does not provide the same quality of goods and service as a higher bidder	25.9
3. Has added expenses to the locality (time and personnel)	21.0
4. Is cumbersome, bureaucratic, too complex, impractical, and inflexible	16.0

Table 17 (continued)

Weakness	Percentage of Total %
5. Creates problems with specifications	9.9
6. Does not allow reasonable preference for local vendors	6.2
7. Creates conditions to incriminate the purchaser/Creates fear and anxiety	6.2
8. Is difficult to administer in rural, small areas	4.9
9. Increases delivery time	4.9
10. Eliminates small vendors and businesses	3.7
11. Is difficult to deal with service and maintenance on incompatible equipment	3.7
12. Special interest professionals are not subject to the same competitive requirements as other business firms	3.7
13. Increases prices in some ways	3.7
14. Has removed local control	3.7
15. Makes competitive negotiations more difficult	3.7
16. Has no provisions for considering past service	2.5
17. Other (single responses)	12.3

percent) of the superintendents responded to this question with a total of 135 responses.

The most frequently cited weakness of the VPPA as perceived by 34.6 percent of the superintendents who responded to this question was that the VPPA is too time consuming and requires too much additional work on the

part of the local school division to deal with the "red tape" that is prescribed in the act. The second most frequently cited weakness of the VPPA as perceived by 25.9 percent of the superintendents was that often the lowest bidder does not provide the same quality of goods and service as does a higher bidder. Added expense to the school division in additional time and personnel needed to comply with the VPPA was listed by 21.0 percent of the superintendents as a weakness. Approximately 16.0 percent of the superintendents criticized the VPPA for being too cumbersome, bureaucratic, complex, impractical, and inflexible. The writing of adequate specifications was perceived as a major problem with the VPPA by 9.9 percent of the superintendents. The problems in the writing of specifications included the lack of trained personnel to write specifications, having to hire additional personnel to write specifications, the increased time required to write specifications, and receiving poor quality goods and services because of poorly written or misinterpreted specifications. There were 6.2 percent of the superintendents who felt that the VPPA is unfair to local vendors because it often eliminates local vendors, does not allow reasonable preference to local vendors, and out of town businesses are too far away especially when problems arise such as service and maintenance problems. Several of the superintendents (6.2 percent) stated that the complexity of the VPPA creates conditions for breaking

the law and incriminating the purchaser and that the VPPA causes too much fear and anxiety. Approximately 4.9 percent of the superintendents stated that the VPPA is especially difficult to administer in small, rural school divisions primarily due to having a small central office staff with no purchasing officer. The VPPA was perceived by 4.9 percent of the superintendents as slowing down the purchasing process, creating longer delivery times to the site where the goods and services are needed, and requiring more planning and lead time in purchasing. The elimination of some small vendors and businesses was seen as a weakness of the VPPA by 3.7 percent of the superintendents. Several of the superintendents (3.7 percent) stated that the VPPA causes difficulties in dealing with service and maintenance contracts for the multiple brand name, incompatible equipment that often results from purchasing equipment based on the lowest competitive bid. Approximately 3.7 percent of the superintendents viewed the VPPA as unfairly favoring certain special interest professionals such as engineers and architects who are entitled to provide services based on the competitive negotiation process rather than the competitive bid process. These superintendents felt that the professional service firms should be subjected to the same conditions and competitive procedures as other business firms. Several superintendents (3.7 percent) cited increased prices in some cases under the VPPA and

stated that the VPPA does not guarantee the lowest prices as weaknesses of the VPPA. Approximately 3.7 percent of the superintendents listed removal of local control over purchasing as a weakness of the VPPA. The superintendents (3.7 percent) stated that certain aspects of the competitive negotiation process were weaknesses of the VPPA. These superintendents felt that the VPPA has made competitive negotiations more difficult, that the distinction between competitive negotiation and competitive bidding is not clear, that in competitive negotiation the purchaser cannot return to the first proposal if the second proposal is unsatisfactory, and that under the VPPA there are no provisions for requesting prices on the request for proposals. A few superintendents (2.5 percent) felt that a weakness of the VPPA was that it does not have provisions for considering past service in the award of bids to the lowest bidder. There were 10 weaknesses of the VPPA which were cited by only one superintendent. These responses were grouped into a category called other which accounted for 12.3 percent of the superintendents' responses to the question on the weaknesses of the VPPA.

Recommended Changes in the VPPA.

A summary of the percentage of superintendents' responses in each category on the third open-ended question (What changes in the VPPA would you recommend?) is presented in Table 18. A total of 74 (55.2 percent) of

Table 18

Summary of the Descriptive Data on the Superintendents'
Recommendations for Changes in the VPPA

Recommendation	Percentage of Total %
1. No recommended changes	21.6
2. Repeal act on local level/Require a local procurement policy	13.5
3. Raise the limit above \$10,000	10.8
4. Simplify/Reduce paper work	8.1
5. Change competitive negotiation process	5.4
6. Allow more flexibility	5.4
7. Expand state purchasing office to serve all areas of state	5.4
8. Allow rejection of lowest bid based on quality and service	5.4
9. Allow preference for local bidders	4.1
10. Allow exemptions based on economic or administrative expedience	4.1
11. Other (single responses)	23.0

the superintendents responded to this question with a total of 75 responses.

The most frequently cited recommended change in the VPPA as perceived by 21.6 percent of the responding superintendents was that the VPPA has no weaknesses and therefore does not need to be changed. The second most

frequently cited recommended change in the VPPA as perceived by 13.5 percent of the superintendents was that the VPPA should be repealed, especially at the local level, and the localities should be allowed to determine their own procurement procedures. One superintendent summarized his feelings toward the VPPA by stating: "Next to asbestos regulation; this (the Procurement Act) is the worst thing to happen to school districts in twenty years." Approximately 10.8 percent of the superintendents recommended that the limit at which competitive bidding and competitive negotiation are required should be raised higher than \$10,000. A reduction in the amount of paper work, detail, and complexity of the VPPA was recommended by 8.1 percent of the superintendents. In the competitive negotiation process, 5.4 percent of the superintendents recommended that competitive negotiations be allowed for construction and other services the same as it is allowed for architectural and engineering services, that the purchaser be allowed to request prices on the request for proposal, that the purchaser be allowed to return to negotiate with the vendor of the first proposal if the second proposal is unsatisfactory, and that professionals such as engineers, lawyers, and architects be subject to the same competitive procedures as other vendors. More flexibility in the VPPA was recommended by 5.4 percent of the superintendents. Approximately 5.4 percent of the superintendents recommended that the State purchasing

office be expanded to serve all areas of the state. In the competitive bid process, 5.4 percent of the superintendents recommended that the rejection of the lowest bid be allowed in favor of higher bids with better quality of goods and services. Several superintendents (4.1 percent) recommended that the VPPA allow for more participation by local vendors. Approximately 4.1 percent of the superintendents recommended that exemptions be allowed when the locality can demonstrate economic or administrative expedience, i.e., on small, low-cost, or used items. There were 17 recommendations listed for this question which were cited by only one superintendent. These responses were grouped into a category called other which accounted for 23.0 percent of the superintendents' responses to the question on recommended changes in the VPPA.

G. Chapter Summary

The findings of this study are summarized according to the sections in which the material was presented.

Perception Items

1. Superintendents agreed that the VPPA has increased the percentage of purchases made through competitive procedures such as competitive negotiations or competitive bidding.

2. Superintendents agreed that the VPPA has increased the overall time spent on purchasing procedures.

3. Superintendents agreed that the VPPA has resulted in purchasing the same goods and services at an average lower cost.

4. Superintendents agreed that VPPA has increased the amount of time devoted to the writing of specifications.

5. Superintendents agreed that the VPPA has increased the potential for litigation against the school division.

6. Superintendents agreed that school division purchasing procedures were adequate before the VPPA became effective.

7. Superintendents agreed that purchasing codes and procedures should be left solely to the local school division.

8. Superintendents agreed that the VPPA has improved purchasing ethics.

9. Superintendents disagreed that the VPPA has improved the overall quality of goods and services purchased.

10. Superintendents disagreed that the VPPA has improved the meeting of delivery deadlines to the sites where supplies and services are needed.

11. Superintendents disagreed that the VPPA has increased the number of awards made to single-(sole)-source vendors.

12. Superintendents disagreed that the VPPA has increased the number of awards made to local vendors.

13. Superintendents disagreed that there has been adequate training provided to assist school division personnel in understanding and complying with the requirements of the VPPA.

Correlations Between the Demographic Variables
and the Perception Items

1. Superintendents in larger school divisions were more likely to agree that the VPPA had increased the number of awards made to local vendors than were superintendents in smaller divisions.

2. Superintendents with less experience as a superintendent were more likely to perceive the VPPA as having increased the number of awards made to single-source vendors than were superintendents with more experience.

3. As the years of experience as a superintendent increase, superintendents were more likely to agree that school division purchasing procedures were adequate before the VPPA became effective.

4. Superintendents with more purchasing experience were more likely to agree that purchasing procedures were adequate before the VPPA became effective.

5. Female superintendents were more likely to agree that the VPPA had increased the number of awards made to local vendors than were male superintendents.

6. Female superintendents were more likely to agree that adequate training had been provided to understand and implement the VPPA than were male superintendents.

7. Male superintendents were more likely than female superintendents to agree that purchasing procedures were adequate before the VPPA became effective.

8. Superintendents of rural school divisions were more likely to agree that the VPPA had improved cost effectiveness than were superintendents from urban divisions.

9. Superintendents in predominantly rural divisions were more likely to agree that purchasing codes and procedures should be left to the local school divisions.

10. If the school division had a computerized purchasing system, superintendents were more likely to agree that the VPPA had increased the use of competitive procedures such as competitive negotiation and competitive bidding.

11. Superintendents in divisions with computerized purchasing systems were more likely to agree that the VPPA had improved cost effectiveness than were superintendents in divisions without computerized purchasing systems.

12. Superintendents who had computerized purchasing systems were more likely to agree that the VPPA had improved the quality of goods and services.

13. Superintendents with computerized purchasing systems were more likely to perceive the VPPA as having

improved the meeting of delivery deadlines than were superintendents without computerized purchasing systems.

14. If computerized purchasing systems had been initiated, superintendents were more likely to agree that the VPPA had increased the number of awards made to local vendors.

15. Superintendents with a computerized purchasing system were more likely to agree that the VPPA had improved purchasing ethics.

16. Superintendents in divisions without computerized purchasing systems were more likely to agree that purchasing procedures were adequate before the VPPA became effective.

17. Superintendents in divisions without computerized purchasing systems were more likely to agree that purchasing codes and procedures should be left solely to the local school division.

18. No significant relationships were found between the chronological age of the superintendents or the race of the superintendents and the superintendents' perception items.

Open-Ended Questions

In response to the first open-ended question (What are the strengths of the VPPA?), the four most frequently cited strengths of the VPPA, listed in priority order, as perceived by the responding superintendents were:

1. Increases competition (39.8 percent)

2. Improves ethics and equity (37.3 percent)
3. Provides uniformity and standardization of procedures (26.5 percent)
4. Lowers prices and improves cost effectiveness (12.0 percent).

To the second open-ended question (What are the weaknesses of the VPPA?), the five most frequently given weaknesses of the VPPA, listed in priority order, as perceived by the responding superintendents were:

1. Is too time consuming and requires additional work to deal with the "red tape" (34.6 percent)
2. Lowest bidder often does not provide the same quality of goods and services as a higher bidder (25.9 percent)
3. Adds expense to the locality in additional time and personnel (21.0 percent)
4. Is too cumbersome, bureaucratic, complex, impractical, and inflexible (16.0 percent)
5. Creates problems in writing specifications (9.9 percent).

The four most frequently cited responses, listed in priority order, to the third open-ended question (What changes in the VPPA would you recommend?) were:

1. Make no changes in the VPPA (21.6 percent)
2. Repeal the VPPA on the local level and allow the localities to control purchasing procedures (13.5 percent)

3. Raise the limit for required competitive procedures above \$10,000 (10.8 percent)
4. Simplify the VPPA and reduce the paperwork (8.1 percent).

V. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

The purpose of this final chapter is to provide a summation of the study, including the following sections:

The purpose, study questions, and significance are presented in Section A.

The methods and procedures used in this study are provided in Section B.

The findings are given in Section C.

The conclusions are presented in Section D.

The recommendations for future research are provided in Section E.

A. Purpose, Study Questions, and Significance

Purpose

The purpose of this study was to: (a) determine the perceptions of the superintendents of the Virginia public school divisions regarding key elements of the Virginia Public Procurement Act (VPPA); (b) explore the relationships between selected demographic variables and the perceptions of Virginia public school superintendents regarding key elements of the VPPA; (c) determine the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents; and (d)

ascertain the changes that Virginia public school superintendents would recommend in the VPPA.

Study Questions

Four study questions were addressed by this investigation:

1. What are the perceptions of the superintendents of the Virginia public school divisions regarding the VPPA as measured by their responses to the Superintendents' Perception Survey on the Virginia Public Procurement Act?

2. What are the relationships between certain demographic variables and the perceptions of Virginia public school division superintendents regarding the VPPA?

3. What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents?

4. What changes in the VPPA would Virginia public school division superintendents recommend?

Significance

This study was significant for the following reasons:

1. It is the only known published study on the perceived effects of the VPPA on all Virginia public school divisions.

2. It is the only known published study on the perceptions of superintendents on the VPPA or any model procurement code.

3. Members of the Virginia General Assembly could use the results in making future changes in the VPPA.

4. Superintendents, division school boards, and the State Board of Education could make use of the results in making future rules and regulations, developing training programs, and lobbying for changes in the VPPA.

5. The Virginia School Boards Association, the Virginia Association of School Administrators, and the Virginia Association of School Business Officials could use the results to provide information to members, develop training programs, and lobby for changes in the VPPA.

6. Other states could use the results in developing model procurement codes or making changes in model procurement codes.

7. It added to the very limited research on the effects of model procurement codes on school divisions.

B. Methods and Procedures

This study used the descriptive survey method to determine the perceptions of Virginia public school superintendents toward key elements of the VPPA. Data were gathered through the use of a survey questionnaire on eight selected demographic variables, thirteen perception statements which covered key elements of the VPPA, and three open-ended questions on the strengths of the VPPA, weaknesses of the VPPA, and changes that the superintendents would recommend in the VPPA. In addition, the data were used to study the relationships

between each of the eight demographic variables and each of the thirteen perception statements.

Population and Time Frame

The entire population of division superintendents in the State of Virginia was surveyed. There were 134 division superintendents in Virginia at the time of this study. Since 109 of the 134 superintendents responded correctly to the survey, the return rate was 81.3 percent.

On January 12, 1988, a cover letter (Appendix A), questionnaire (Appendix B), and return envelope were mailed to each of the 134 superintendents. On January 26, 1988, a follow-up request letter (Appendix C) and questionnaire were mailed to each of the superintendents who had not responded to the first mailing.

Survey Instrument

The data on the superintendents' perceptions of the VPPA were gathered through the use of a survey questionnaire titled Superintendents' Perception Survey on the Virginia Public Procurement Act. This survey questionnaire was developed by the researcher. The content of the survey instrument was based on the literature review. The content, construct, and face validity of the survey instrument was established by a panel of public purchasing experts (Appendices D & E). The reliability was established by the Cronbach Alpha reliability analysis (.626) and by the Spearman-Brown split-half analysis (.712).

The survey questionnaire was divided into three parts.

Part I contained eight questions to gain data on selected demographic variables. The demographic variables were:

1. School division size
2. Years of experience as a superintendent
3. Chronological age of the superintendent
4. Years of experience in purchasing
5. Sex
6. Race
7. Predominant division classification (rural or urban)
8. Whether a computerized purchasing system has been initiated.

Part II of the survey instrument contained eight Likert-style statements designed to determine superintendents' perceptions on key elements of the VPPA. The choices on the Likert scale and the score for each were strongly disagree (1), disagree (2), uncertain (3), agree (4), and strongly agree (5). The perception statements covered the following topics:

1. Use of competitive procedures
2. Overall time spent on purchasing
3. Cost of goods and services
4. Quality of goods and services
5. Time devoted to writing specifications

6. Meeting of delivery deadlines
7. Number of awards made to single- (sole)-source vendors
8. Number of awards made to local vendors
9. Purchasing ethics
10. Potential for litigation against the school division
11. Adequacy of training
12. Adequacy of purchasing procedures before the VPPA
13. Amount of control local school divisions should have over purchasing codes and procedures.

Part III of the survey instrument contained three open-ended questions:

1. What are the strengths of the VPPA?
2. What are the weaknesses of the VPPA?
3. What changes in the VPPA would you recommend?

Data Analysis

For the first research question (What are the perceptions of the superintendents in Virginia public school divisions regarding the VPPA?), the percentage of superintendents whose scores fell within each perception range on the Likert-type scale was presented for each of the perception statements. Measures of central tendency (mean, median, and mode) and dispersion (range and standard deviation) of the scores for each of the perception items were reported.

To answer the second research question (What is the relationship between certain demographic variables and the perceptions of Virginia public school division superintendents regarding the VPPA?), each of the eight demographic variables was analyzed with each of the thirteen superintendents' perception items. Pearson Product Moment Correlation Coefficients were computed to determine the relationship between each of the first four interval demographic variables and the perception items. Point Biserial Correlation Coefficients were computed to determine the relationship between each of the last four dichotomous demographic variables and the perception items.

For the third research question (What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents?), the superintendents' responses were coded and classified into categories, and the percentage of responses in each category was presented.

To answer the fourth research question (What changes in the VPPA would the Virginia public school division superintendents recommend?), the superintendents' responses were coded and classified into categories, and the percentage of responses in each category was presented.

C. Findings

Superintendents' Perceptions

The first research question was: What are the perceptions of the superintendents of the Virginia public school divisions regarding the VPPA as measured by their scores on the Superintendents' Perception Survey on the Virginia Public Procurement Act? The superintendents responded to 13 questions on a Likert-type scale with the choices scored in this manner: strongly disagree (1), disagree (2), uncertain (3), agree (4), and strongly agree (5). There were eight of the thirteen perception statements on the survey questionnaire with which the superintendents agreed or strongly agreed, and there were five of the perception statements with which the superintendents disagreed or strongly disagreed.

Competitive Procedures

In the literature review, it was revealed that the biggest change in State purchasing practices that had resulted from the passage of the VPPA was in acquiring professional services through competitive procedures such as competitive negotiation and competitive bidding (Wirt & Proto, 1983). In a 1986 study, Sharman et al. found that 46 percent of the purchases in Region I school divisions of Virginia were done through competitive bidding. In this study, 67.9 percent of Virginia public school division superintendents agreed or strongly agreed that the VPPA had increased the percentage of purchases made in

their school divisions through competitive negotiation or competitive bidding. The mean response score was 3.661 with a standard deviation of 1.271 and a range of 4.

Overall Time Spent on Purchasing

According to the literature reviewed, 82 percent of the purchasing officials in Region I school divisions in Virginia reported that the VPPA had increased the overall time spent on purchasing (Sharman et al., 1987). This study supported these findings with 89.9 percent of the superintendents agreeing that the VPPA had increased the overall time spent on purchasing. The mean response score was 4.385 with a standard deviation of 0.922 and a range of 4.

Average Lower Cost

In a study of purchasing officials in small- and medium-sized school divisions in Virginia, Sharman et al. (1987) reported that 50 percent of the respondents felt that there had been increased overall cost effectiveness under the VPPA. In this study, the superintendents (46.3 percent) agreed that the VPPA had resulted in purchasing the same goods and services at average lower costs. The mean score was 3.185 with a standard deviation of 1.034 and a range of 4.

Writing of Specifications

The literature review revealed that there had been an increase in the writing of specifications. In a survey of purchasing practices in state governments, it

was reported by 61 percent of the respondents that the use of specifications had increased over the last five years (CSG, 1983). Likewise, in a study by Sharman et al. (1986), purchasing officials in small- and medium-sized school divisions in Virginia felt that the VPPA had caused increased problems in writing specifications, including consuming too much time. In this study, 93.6 percent of the superintendents agreed that the VPPA had increased the amount of time devoted to the writing of specifications. The mean score was 4.395 with a standard deviation of 0.805 and a range of 4.

Purchasing Ethics

There were numerous cases of ethical abuses in public procurement reported in the literature review. Page (1980) cited examples of the awarding of contracts for millions of dollars without competitive bidding, making purchases of poor quality, and accepting large-scale kickbacks, finders's fees, and payoffs. Wirt and Proto (1983) reported ethical violations in Virginia including violations of the Virginia Conflict of Interest Statutes, bribery, and grand larceny. One of the major reasons for the passage of the VPPA was to improve purchasing ethics. In this study, 60.2 percent of the responding superintendents agreed with the statement that the VPPA had improved purchasing ethics. The mean score was 3.519 with a standard deviation of 0.942 and a range of 4.

Potential for Litigation

It was disclosed in the literature review that the number of legal cases involving the American Bar Association Model Procurement Code was limited, and Del Duca, Falvey, and Adler (1986) suggest that this may be due in part to the time it takes for litigation to work its way through the appellate court levels. They also state that model codes may be providing guidelines which tend to render certainty and predictability in the procurement process, thereby reducing controversies and litigation. In this study, 58.3 percent of the responding superintendents agreed with the statement that the VPPA had increased the potential for litigation against the school division. The mean response score was 3.435 with a standard deviation of 1.105 and a range of 4.

Adequacy of Purchasing Procedures before the VPPA

It was revealed in the literature review that there were many reported cases of purchasing abuses in Virginia and that Virginia public procurement regulations were very inconsistent and controversial before the enactment of the VPPA (Wirt & Proto, 1983). However, a majority of the superintendents in this study did not perceive a need for the VPPA at the school division level. Approximately 65.7 percent of the superintendents agreed with the statement that division purchasing procedures were adequate before the VPPA became effective. The mean

response score was 3.528 with a standard deviation of 1.018 and a range of 4.

Local Purchasing Control

The review of the literature disclosed that school business administrators often argue for more flexibility in fiscal management of school districts (Woods, 1985). The superintendents in this study supported this argument; 42.2 percent of the superintendents agreed with the statement that purchasing codes and procedures should be left solely to the local school divisions. Since the mean response score (3.055) was only .055 above the mean of the Likert scale (3.0), the strength of the agreement was very slight. The standard deviation was 1.145, and the range was 4.

Quality of Goods and Services

According to the literature reviewed, 69 percent of the responding purchasing officials in small- and medium-sized school divisions in Region I of Virginia reported that there had been no change in the quality of goods and services since the enactment of the VPPA, 16 percent felt that quality had decreased, and 13 percent felt that quality had increased (Sharman et al., 1987). In this study, 52.3 percent of the superintendents disagreed with the statement that the VPPA had improved the overall quality of goods and services purchased. The mean response score was 2.532 with a standard deviation of 0.948 and a range of 4.

Meeting of Delivery Deadlines

The literature review revealed that in a study done by Sharman, et al. (1987), 27 percent of the responding purchasing officials reported that the VPPA had caused delays in meeting delivery deadlines. In this study, 64.2 percent of the superintendents disagreed with the statement that the VPPA had improved the meeting of delivery deadlines to the site where supplies and services are needed. The mean response score was 2.376 with a standard deviation of 0.921 and a range of 4.

Single- (Sole)-Source Vendors

According to the literature reviewed, 82 percent of the localities surveyed in the United States reported having written procedures for handling sole-source purchases (CSG, 1983), and 50 percent of the purchasing officials in Region I school divisions in Virginia reported that less than five percent of their total purchases were made from sole-source vendors (Sharman et al., 1986). This study revealed that 50.9 percent of the superintendents disagreed with the statement that the VPPA had increased the number of awards made to single- (sole)-source vendors. The mean response score was 2.667 with a standard deviation of 0.976 and a range of 4.

Local Vendors

It was revealed in the literature review that after the VPPA became effective 80 percent of the vendors were nonlocal (Sharman et al., 1986) and that some school

divisions believed that there were advantages to giving preference to local vendors (Uerling, 1984). In this study, 80.7 percent of the superintendents disagreed with the statement that the VPPA had increased the number of awards made to local vendors. The mean response score was 2.083 with a standard deviation of 0.696 and a range of 3. The decreased use of local vendors under the VPPA may be due to the requirements for increased competitive procedures.

Adequacy of Training

A review of the literature revealed several studies related to training in public purchasing. The National Institute of Governmental Purchasing (1985) reported that purchasing officials need to know more about federal, state, and local laws and regulations. Zenz (1979) reported that Florida state purchasing officials were generally neutral to the need for additional training. Sharman et al. (1986) found that 85 percent of the responding purchasing officials in small- and medium-sized school divisions in Virginia reported that they had not received adequate training. Touche Ross and Company (1982) reported that public school purchasing officials in Montgomery County, Maryland, needed additional training. This study supported these findings. The majority of the superintendents (52.3 percent) disagreed with the statement that there had been adequate training provided to assist school division personnel in understanding and

complying with the requirements of the VPPA. The mean response score was 2.706 with a standard deviation of 1.091 and a range of 4.

Correlations between Selected Demographic Variables
and the Perceptions of the Superintendents

The second research question was: What are the relationships between certain demographic variables and the perceptions of Virginia public school division superintendents regarding the Virginia Public Procurement Act? Correlation coefficients were computed for each of the eight demographic variables and each of the thirteen superintendents' perception items. The level of probability was set at .05. Pearson Product Moment Correlation Coefficients were computed for the first four interval demographic variables and each of the perception statements, and Point Biserial Correlation Coefficients were computed for the last four dichotomous demographic variables and each of the superintendents' perception statements.

Number of Students Served in the Division

Studies were reviewed in which there was a relationship between school division size and attitudes or perceptions. In 1979, Antrim found a relationship between school district size and the degree to which board members were critical of finance. In 1975, Smith found a relationship between school district size and a comparison of board chairmen and superintendents'

attitudes. Sheeran (1987) reported that superintendents of larger school districts in Virginia favored more stringent rules for participation in extracurricular activities than did superintendents from smaller districts. The Virginia Municipal League (1983) reported that smaller localities had to do more revisions in their local codes and procedures to meet the requirements of the VPPA than did larger localities. In this study, a slight but significant correlation (.196) was found between school division size and the number of awards made to local vendors. Superintendents in larger school divisions were more likely to agree that the VPPA had increased the number of awards made to local vendors than were superintendents in smaller school divisions.

Years of Experience as a Superintendent

Consistent with studies by Lewin in 1935 (Ostrom et al., 1968, pp. 6-14), Allport (1935), Smith (1975), Crews (1984), Zenz (1979), and Sheeran (1987), significant correlations were found in this study between the years of experience as a superintendent and two of the superintendents' perception statements.

A slight negative relationship (-.240) was found between the years of experience as a superintendent and the number of awards made to single- (sole)-source vendors. Superintendents with less experience were more likely to perceive the VPPA as having increased the number

of awards made to single-source vendors than were superintendents with more years of experience.

A slight but significant relationship of .255 was also discovered between years of experience as a superintendent and the adequacy of purchasing procedures before the VPPA became effective. As the years of experience as a superintendent increase, superintendents were more likely to agree that school division purchasing procedures were adequate before the VPPA became effective.

Chronological Age of the Superintendents

The literature review disclosed several studies in which correlations existed between age and perceptions. Beam reported that younger people are more receptive of new ideas than older people (Manske, 1936, p. 4). Robinson and Shover (1969) found a significant difference in younger and older people. Zenz (1979), Antrim (1979), and Sheeran (1987) reported significant relationships between age and perceptions. However, in this study, none of the superintendents' perception items were found to be significantly related to the chronological age of the superintendents.

Years of Experience in Purchasing

According to the literature reviewed, there have been several studies which have revealed a relationship between years of experience and attitudes. Lewin in 1935 (Ostrom et al., 1968, pp. 6-14), Allport (1935), Smith (1975), Zenz (1979), Crews (1984), and Sheeran (1987)

reported significant relationships between years of experience and attitudes or perceptions. A slight but significant relationship of .203 was found in this study between years of experience in purchasing and the adequacy of school division purchasing procedures before the VPPA became effective. As the years of experience in purchasing increase, superintendents were more likely to agree that purchasing procedures were adequate before the VPPA.

Sex of the Superintendents

Studies were reviewed in which sex was found to be related to attitudes. Gross and Track (1976) reported that sex was a significant factor in decisions made by principals. Crews (1984) found a significant relationship between sex and teachers' attitudes toward merit pay. In 1979, Zenz found that sex was related to purchasing employees' feelings on job orientation and training. Sheeran (1987) reported that the sex of Virginia superintendents was significantly related to their attitudes toward academic standards for extracurricular activities. In this study, significant correlations were found between the sex of the superintendents and three of the perception statements.

A slightly significant negative relationship of $-.263$ was found between the sex of the superintendents and the number of awards made to local vendors. Female superintendents were more likely than were male

superintendents to agree that the VPPA had increased the number of awards made to local vendors.

A slight but significant negative relationship ($-.190$) was found between the sex of the superintendents and the adequacy of training to understand and comply with the VPPA. Female superintendents were more likely to agree that adequate training had been provided than are male superintendents.

A slightly significant relationship of $.198$ was discovered between the sex of the superintendents and the adequacy of purchasing procedures before the VPPA became effective. Male superintendents were more likely than were female superintendents to agree that purchasing procedures were adequate before the VPPA became effective.

Race of the Superintendents

The literature review revealed several studies which indicate that people of different races differ in certain fundamental respects. Verma and Bagley (1979) reported that minorities have been believed by some to share beliefs based on culture. Allport (1979) found that minorities and ethnic groups shared presuppositions and traditions and that concepts and generalizations of minorities were believed to be founded on experience and background. However, Sheeran (1987) reported no significant correlation between race and superintendents' attitudes toward academic standards for extracurricular activities. In this study, no significant correlations

were found between race and superintendents' perceptions toward the VPPA.

Predominant Division Classification (Rural or Urban)

According to the literature reviewed, there have been several studies which found a relationship between rural and urban settings and attitudes. In 1980, Bewersdorf reported that superintendents and school board members from rural and urban school settings differ in their perceptions on policy-making and policy-administering. Isagedeghi (1980) found differences in rural and urban students' perceptions. Significant correlations were found in this study between predominant division classification (rural or urban) and two of the superintendents' perception statements.

A slight but significant negative relationship ($-.258$) was found between predominant division classification and superintendents' perceptions toward cost effectiveness. Superintendents in predominantly rural school divisions were more likely to agree that the VPPA had resulted in average lower costs than were superintendents from predominantly urban school divisions.

A slight negative relationship of $-.189$ was discovered between the predominant division classification and the amount of local school division control over purchasing. Superintendents in predominantly rural school divisions were more likely than superintendents in predominantly urban school divisions to

agree that purchasing codes and procedures should be left solely to the local school division.

Computerized Purchasing System

The literature review revealed several purchasing officials who have written on the benefits of computerized purchasing systems, including Jones (1981), Temkin and Shapiro (1982), Bauers (1982), Candoli et al. (1984), DeZorzi (1980), and Mazurek (1980). In this study, significant relationships were found between whether a computerized purchasing system had been initiated and eight of the superintendents' perception statements. A slight but significant negative relationship ($-.233$) was found between whether a computerized purchasing system had been initiated and the use of competitive procedures. In divisions in which computerized purchasing systems had been initiated, superintendents were more likely to agree that the VPPA had increased the use of competitive procedures.

A slight negative relationship of $-.236$ was discovered between a computerized purchasing system and cost effectiveness. If a computerized purchasing system had been initiated, superintendents were more likely to agree that the VPPA had improved cost effectiveness.

A moderate negative correlation of $-.384$ was found between a computerized purchasing system and the quality of goods and services. Superintendents who had computerized purchasing systems were more likely to agree

that the VPPA had improved the quality of goods and services than were superintendents without computerized purchasing systems.

A slight but significant negative relationship of $-.204$ was discovered between a computerized purchasing system and the meeting of delivery deadlines to the sites where supplies were needed. Superintendents with computerized purchasing systems were more likely to perceive the VPPA as improving the meeting of delivery deadlines than were superintendents without computerized purchasing systems.

A slight but significant negative relationship of $-.213$ was found between a computerized purchasing system and the number of awards made to local vendors. If computerized purchasing systems had been initiated, superintendents were more likely to agree that the VPPA had increased the number of awards made to local vendors.

A moderate negative correlation of $-.310$ was discovered between a computerized purchasing system and purchasing ethics. Superintendents with computerized purchasing systems were more likely to agree that the VPPA had improved purchasing ethics.

A moderate statistically significant relationship of $.451$ was found between a computerized purchasing system and the adequacy of purchasing procedures before the VPPA became effective. Superintendents in divisions without computerized purchasing systems were more likely to agree

that purchasing procedures were adequate before the VPPA became effective.

Finally, a moderate relationship of .380 was discovered between a computerized purchasing system and local control of purchasing. Superintendents in divisions without computerized purchasing systems were more likely to agree that purchasing codes and procedures should be left solely to the local school divisions.

Strengths and Weaknesses of the VPPA

The third research question was: What are the strengths and weaknesses of the VPPA as perceived by the Virginia public school division superintendents? To answer this research question the superintendents responded to two open-ended questions:

1. What are the strengths of the VPPA?
2. What are the weaknesses of the VPPA?

The superintendents' responses to each of the questions were coded and classified into categories.

Strengths of the VPPA

The most frequently cited strengths of the VPPA as perceived by the superintendents and the percentage of superintendents making each response are listed below in priority order:

1. Increases competition (39.8 percent)
2. Improves ethics and equity (37.3)
3. Provides uniformity and standardization of procedures (26.5 percent)

4. Lowers prices and improves cost effectiveness (12.0 percent)
5. Decreases the potential for litigation against the school division if the procedures are followed (7.2 percent).

Weaknesses of the VPPA

The most frequently cited weaknesses of the VPPA as perceived by the superintendents and the percentage of superintendents making each response are listed in priority order below:

1. Is too time consuming and requires additional work to deal with the "red tape" (34.6 percent)
2. Lowest bidder does not provide the same quality of goods and services as a higher bidder (25.9 percent)
3. Creates added expense to the locality in additional time and personnel (21.0 percent)
4. Is too cumbersome, bureaucratic, complex, impractical, and inflexible (16.0 percent)
5. Causes problems in the writing of specifications (9.9 percent).

Recommended Changes in the VPPA

To answer the fourth research question investigated in this study (What changes in the VPPA would Virginia public school division superintendents recommend?), the superintendents responded to the following open-ended question: What changes in the VPPA would you recommend?

The superintendents' responses to this question were coded and classified into categories.

The most frequently cited recommended changes in the VPPA as perceived by the superintendents and the percentage of superintendents making each response are listed below in priority order:

1. Make no changes (21.6 percent)
2. Repeal the VPPA on the local level and allow the localities to control purchasing procedures (13.5 percent)
3. Raise the limit for required competitive procedures above \$10,000 (10.8 percent)
4. Simplify the VPPA and reduce the paperwork (8.1 percent).

D. Conclusions

The findings in this study appear to indicate the following concluding statements:

1. Superintendents agreed with the following:
 - a. The VPPA has increased the percentage of purchases made through the use of competitive procedures such as competitive negotiations or competitive bidding.
 - b. The VPPA has increased the overall time spent on purchasing procedures.
 - c. The VPPA has resulted in purchasing the

same goods and services at an average lower cost.

- d. The VPPA has increased the amount of time devoted to the writing of specifications.
- e. The VPPA has improved purchasing ethics.
- f. The VPPA has increased the potential for litigation against the school division.
- g. School division purchasing procedures were adequate before the VPPA became effective.
- h. Purchasing codes and procedures should be left solely to the local school division.

2. Superintendents disagreed with the following:

- a. The VPPA has improved the overall quality of goods and services purchased.
- b. The VPPA has improved the meeting of delivery deadlines to the sites where supplies and services are needed.
- c. The VPPA has increased the number of awards made to single- (sole)-source vendors.
- d. The VPPA has increased the number of awards made to local vendors.
- e. There has been adequate training provided to assist school division personnel in understanding and complying with the requirements of the VPPA.

3. The demographic variables of school division size, years of experience as a superintendent, years of experience in purchasing, sex, predominant division classification (rural or urban), and computerized purchasing system may have been related to superintendents' perceptions toward selected key elements of the VPPA.

4. No significant relationships were found between the demographic variables of chronological age and race and superintendents' perceptions toward key elements of the VPPA.

5. The three most frequently cited strengths of the VPPA as perceived by the superintendents were:

- a. Increases competition
- b. Improves ethics and equity
- c. Provides uniformity and standardization of procedures.

6. As perceived by the superintendents, the three most frequently cited weaknesses of the VPPA were:

- a. Is too time consuming and requires additional work
- b. Low bidder often does not provide the same quality of goods and services
- c. Adds expenses to the locality in additional time and personnel.

7. The Virginia public school superintendents' three most frequently recommended changes in the VPPA were:

- a. Make no changes
- b. Repeal the act on the local level and allow localities to determine purchasing procedures
- c. Raise the limit above \$10,000 for required competitive procedures.

E. Recommendations for Further Research

A review of the literature revealed no known studies on superintendents' perceptions of the Virginia Public Procurement Act or on any other model procurement codes in any state in the United States. This study is apparently the first to investigate superintendents' perceptions toward a model procurement code. Therefore, this study can serve as a guideline for future research.

Recommendations for further research include the following:

1. Research should be done to determine the perceptions of principals in Virginia public schools regarding the VPPA.
2. A study should be done to investigate superintendents' perceptions of model procurement codes in other states in the United States. This investigation would be of benefit in making future changes in model procurement codes in the states which have already enacted model procurement codes, and it would also be of benefit in states which are in the process of enacting model procurement codes.

3. Additional studies are needed to ascertain the knowledge of superintendents, purchasing officials, and principals on key elements of the VPPA. These studies would provide vital information on the knowledge which school division personnel possess to understand and implement the VPPA. In addition, these studies would provide important information for the development of training programs based on the needs of local school division purchasing personnel.

4. Since this study revealed significant relationships between school division size, years of experience as a superintendent, years of experience in purchasing, sex, predominant division classification (rural or urban), and computerized purchasing systems and the superintendents' perceptions of key elements of the VPPA, there needs to be further research to investigate why these relationships exist. For example, it needs to be determined why predominantly rural school divisions are more likely than predominantly urban school divisions to agree that purchasing codes and procedures should be left to the local school division.

5. Research needs to be done on the major strengths and weaknesses of the VPPA as perceived by the superintendents and the superintendents' recommended changes in the VPPA to determine why the superintendents feel as they do and if changes need to be made in the

VPPA in order to better accommodate the procurement needs of Virginia public school divisions.

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APPENDIX A

Initial Letter to Superintendents

January 12, 1988

Dear Superintendent:

For her doctoral dissertation, Gwen Lilly is seeking to determine the perceptions of Virginia superintendents with respect to the Virginia Public Procurement Act. We hope that you will take a few minutes to let your opinions be known by completing the enclosed questionnaire. Ms. Lilly has made every effort to keep the questionnaire brief. We request that you return the completed survey to Ms. Lilly in the addressed, enclosed envelope within one week.

If you would like to receive a copy of the results of this survey, circle yes in the space at the bottom of this letter.

All data will be treated so as to preserve the anonymity of your responses. We shall appreciate very much your attention to this request.

Sincerely yours,

James E. Ward, President
Virginia Association of School
Business Officials

Charles C. Sharman, Assoc. Professor
Virginia Commonwealth University

Would you like a copy of the survey results?

Yes

No

APPENDIX B

Superintendents' Perception Survey on the
Virginia Public Procurement Act

SUPERINTENDENTS' PERCEPTION SURVEY ON
THE VIRGINIA PUBLIC PROCUREMENT ACT

Personal and Demographic Data

DIRECTIONS:

PART I: Items 1-8 refer to personal and demographic information. Please fill in the blanks for items 1-4 and circle your response to items 5-8.

1. Approximate number of students served in your school division_____.
2. Years of experience as a superintendent_____.
3. Chronological age_____.
4. Years of experience in purchasing_____.
5. Sex: Female Male
6. Race: White Non-White
7. Predominant division classification:
 Rural Urban
8. Computerized purchasing system has been initiated:
 Yes No

PLEASE TURN TO THE BACK OF THIS SHEET FOR PAGE 2

Gwen E. Lilly
Director of Instruction and Personnel
King William County Public Schools
P.O. Box 185
King William, Virginia 23086

DIRECTIONS:

PART II: Items 9-21 are designed to determine your perceptions of the Virginia Public Procurement Act. Please indicate the degree to which you agree or disagree with each item by circling your response. Use the response key below to indicate the degree of preference.

Response Key

- SD - Strongly disagree (Strongly disagree with the statement)
 D - Disagree (Mildly disagree with the statement)
 U - Uncertain
 A - Agree (Mildly agree with the statement)
 SA - Strongly agree (Strongly agree with the statement)

9. The Virginia Public Procurement Act has increased the percentage of purchases made in my school division through competitive procedures such as competitive negotiations or competitive bidding.

SD D U A SA

10. The Virginia Public Procurement Act has increased the overall time spent on purchasing procedures.

SD D U A SA

11. The Virginia Public Procurement Act has resulted in purchasing the same goods and services at an average lower cost.

SD D U A SA

12. The Virginia Public Procurement Act has improved the overall quality of the goods and services purchased.

SD D U A SA

13. The Virginia Public Procurement Act has increased the amount of time devoted to the writing of specifications.

SD D U A SA

PLEASE TURN TO PAGE 3.

14. The Virginia Public Procurement Act has improved the meeting of delivery deadlines to the sites where supplies and services are needed.
- SD D U A SA
15. The Virginia Public Procurement Act has increased the number of awards made to single- (sole)-source vendors.
- SD D U A SA
16. The Virginia Public Procurement Act has increased the number of awards made to local vendors.
- SD D U A SA
17. The Virginia Public Procurement Act has improved purchasing ethics.
- SD D U A SA
18. The Virginia Public Procurement Act has increased the potential for litigation against the school division.
- SD D U A SA
19. There has been adequate training provided to assist school division personnel in understanding and complying with the requirements of the Virginia Public Procurement Act.
- SD D U A SA
20. My school division purchasing procedures were adequate before the Virginia Public Procurement Act became effective.
- SD D U A SA
21. Purchasing codes and procedures should be left solely to the local school division.
- SD D U A SA

PLEASE TURN TO THE BACK OF THIS SHEET FOR PAGE 4.

DIRECTIONS:

PART III: Items 22-24 are designed to enable you to answer specific questions about the VPPA. Please respond in the space provided; however, if you need additional space please attach extra pages.

22. What are the strengths of the VPPA?

23. What are the weaknesses of the VPPA?

24. What changes in the VPPA would you recommend?

WHEN YOU HAVE COMPLETED THIS SURVEY, PLEASE PLACE IT IN
THE ADDRESSED ENVELOPE AND DROP THE ENVELOPE IN THE MAIL.

THANK YOU.

APPENDIX C

Second Letter to Superintendents

January 26, 1988

Dear Superintendent:

On January 12, 1988, I mailed you a questionnaire concerning the perceptions of Virginia superintendents in regards to the Virginia Public Procurement Act. The response has been very good, but in order to improve the quality of this study a higher percentage of return is necessary.

If you have returned the first questionnaire, I am appreciative. If for some reason you did not receive or return your questionnaire, please take time to complete the one enclosed and return it in the addressed envelope within one week.

Thank you very much for giving this matter your prompt attention.

Sincerely yours,

Gwen E. Lilly

Would you like a copy of the survey results?

Yes

No

APPENDIX D

Letter to Panel of Experts

December 14, 1987

Dr. Patrick Russo, Superintendent
Hopewell Public Schools
103 N. 11th Street
Hopewell, Virginia 23860

Dear Dr. Russo:

For my doctoral dissertation at Virginia Commonwealth University, I am seeking to determine the perceptions of Virginia superintendents with respect to the Virginia Public Procurement Act. The superintendents' perceptions will be measured using the enclosed instrument titled Superintendents' Perception Survey on the Virginia Public Procurement Act. Since this instrument was developed by the researcher based on an extensive literature review, a panel of five experts has been chosen to validate the perception items on the instrument. Thank you for agreeing to serve as a member of the validation panel.

The form for validating the survey instrument is enclosed. Please read the directions on the validation form carefully, complete the form, and return it to me in the enclosed addressed envelope by December 21, 1987. If you have any questions, please call me at 769-4916 or 746-1291.

Thank you for your assistance.

Sincerely,

Gwen E. Lilly

APPENDIX E

Instrument Validation Form

INSTRUMENT VALIDATION

PANEL MEMBERS

Dr. Stephen M. Baker, Superintendent, Hanover County
Public Schools

Dr. Nicholas K. Maschal, Superintendent, King William
Public Schools

Dr. Patrick Russo, Superintendent, Hopewell Public
Schools

Dr. George H. Stainback, Superintendent, West Point
Public Schools

Mr. James E. Ward, Assistant Director of Business and
Finance, Chesterfield County Public Schools &
President of the Virginia Association of School
Business Officials

DIRECTIONS:

Items 9-21 on the Superintendents' Perception Survey on the Virginia Public Procurement Act are designed to determine superintendents' perceptions of the effects of the Virginia Public Procurement Act. The form below contains the perception item numbers and the perception that each item (9-21) is intended to measure. Please read the item on the Superintendents' Perception Survey on the Virginia Public Procurement Act and respond on this form to the degree to which you feel that each item measures the perception listed. Use the response key below to circle the degree to which each item measures the perception.

A perception is defined as the insight, knowledge, or intuitive judgment a superintendent has toward the Virginia Public Procurement Act.

Response Key

NO	-the item does not measure the perception
NOT SURE	-not sure if the item measures the item
YES	-the item measures the perception

- | | | | |
|-----|-------------|--|-----|
| 9. | PERCEPTION: | effect on the use of competitive procedures | |
| | NO | NOT SURE | YES |
| 10. | PERCEPTION: | effect on the time spent on purchasing procedures | |
| | NO | NOT SURE | YES |
| 11. | PERCEPTION: | effect on the average cost of goods and services | |
| | NO | NOT SURE | YES |
| 12. | PERCEPTION: | effect on the quality of goods and services | |
| | NO | NOT SURE | YES |
| 13. | PERCEPTION: | effect on the time devoted to writing specifications | |
| | NO | NOT SURE | YES |
| 14. | PERCEPTION: | effect on meeting delivery deadlines to the site | |
| | NO | NOT SURE | YES |
| 15. | PERCEPTION: | effect on the use of sole-source vendors | |
| | NO | NOT SURE | YES |
| 16. | PERCEPTION: | effect on the use of local vendors | |
| | NO | NOT SURE | YES |
| 17. | PERCEPTION: | effect on purchasing ethics | |
| | NO | NOT SURE | YES |
| 18. | PERCEPTION: | effect on the amount of litigation | |
| | NO | NOT SURE | YES |

19. PERCEPTION: adequacy of training

NO

NOT SURE

YES

20. PERCEPTION: adequacy of prior purchasing procedures

NO

NOT SURE

YES

21. PERCEPTION: local power over purchasing

NO

NOT SURE

YES

WHEN YOU HAVE COMPLETED THIS VALIDATION, PLEASE PLACE IT
IN THE ADDRESSED ENVELOPE AND DROP THE ENVELOPE IN THE
MAIL.

THANK YOU.

Reliability Reverse Coding Key

<u>ITEM</u>	<u>SD</u>	<u>D</u>	<u>U</u>	<u>A</u>	<u>SA</u>
11. Competitive procedures	1	2	3	4	5
12. Time	5	4	3	2	1
13. Lower cost	1	2	3	4	5
14. Quality	1	2	3	4	5
15. Specifications	5	4	3	2	1
16. Delivery deadlines	1	2	3	4	5
17. Sole-source vendors	5	4	3	2	1
18. Local vendors	1	2	3	4	5
19. Ethics	1	2	3	4	5
20. Litigation	5	4	3	2	1
21. Training	1	2	3	4	5
22. Adequate prior	5	4	3	2	1
23. Local codes	5	4	3	2	1

APPENDIX F

Virginia Public Procurement Act

VIRGINIA SCHOOL LAWS

CHAPTER 7.

VIRGINIA PUBLIC PROCUREMENT ACT.

Article 1.

General Provisions.

Sec.

- 11-35. Title; purpose; applicability.
- 11-36. Implementation.
- 11-37. Definitions.
- 11-38. [Reserved.]
- 11-39. Compliance with conditions on federal grants or contracts.
- 11-40. Cooperative procurement.
- 11-40.1. Maintenance of centralized lists of projects and consultants.
- 11-40.2. Exemptions for certain legislative activities.

Article 2.

Contract Formation and Administration.

- 11-41. Methods of procurement.
- 11-41.1. Competitive bidding or competitive negotiations on state-aid projects.
- 11-41.2. Design-build or construction management contracts authorized.
- 11-42. Cancellation, rejection of bids; waiver of informalities.
- 11-43. Contract pricing arrangements.
- 11-44. Discrimination prohibited.
- 11-45. Exceptions to requirement for competitive procurement.
- 11-46. Prequalification.
- 11-46.1. Debarment.
- 11-47. Preference for Virginia products and firms.
- 11-48. Participation of small businesses and businesses owned by women and minorities.
- 11-49. Use of brand names.
- 11-50. Comments concerning specifications.
- 11-51. Employment discrimination by contractor prohibited.
- 11-52. Public inspection of certain records.
- 11-53. Negotiation with lowest responsible bidder.
- 11-54. Withdrawal of bid due to error.
- 11-55. Modification of the contract.
- 11-56. Retainage on construction contracts.
- 11-57. Bid bonds.
- 11-58. Performance and payment bonds.
- 11-59. Action on performance bond.
- 11-60. Action on payment bonds.

Sec.

- 11-61. Alternative forms of security.
- 11-62. Bonds on other than construction contracts.

Article 2.1.

Prompt Payment.

- 11-62.1. Definitions.
- 11-62.2. Prompt payment of bills.
- 11-62.3. Separate payment dates.
- 11-62.4. Defect or impropriety in the invoice or goods and/or services received.
- 11-62.5. Interest penalty.
- 11-62.6. Date of postmark deemed to be date payment is made.
- 11-62.7. Secretary of Administration to file report.
- 11-62.8. Retainage to remain valid.
- 11-62.9. Exemptions.

Article 3.

Remedies.

- 11-63. Ineligibility.
- 11-64. Appeal of denial of withdrawal of bid.
- 11-65. Determination of nonresponsibility.
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ARTICLE 1.

General Provisions.

§ 11-35. **Title; purpose; applicability.** — A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources.

C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a population of less than 3,500 as determined by the last official United States census.

D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of this section, remain in effect in such county, city or town.

Except to the extent adopted by such school board, the provisions of this chapter shall not apply, except as stipulated in subsection E, to any school division whose school board adopts by policy or regulation alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth. The method for procurement of professional services set forth in paragraph 3 (a) of § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$20,000.

F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the laws in effect at the time those contracts were executed.

G. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. (1982, c. 647; 1983, c. 593; 1984, c. 764.)

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Cross reference. — For provision that this article shall not apply to contracts for the printing of ballots, statements of results, or other material essential to the conduct of an election, see § 24.1-113.1.

Effective date. — This chapter is effective January 1, 1983.

The 1983 amendment substituted "the provisions of §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80" for "subsection E" in subsection C, added the second paragraph of subsection D, and in subsection E substituted "subsection D" for "subsections C and D," deleted "and" preceding "11-72," inserted "and the method for pro-

curement of professional services set forth in § 11-37 in the definition of competitive negotiation, paragraph 3(a)," and substituted "school divisions, and to all towns having a population greater than 3,500" for "towns," all in the present first sentence.

The 1984 amendment inserted "and" preceding "11-72 through 11-80" and deleted "and the method for procurement of professional services set forth in § 11-37 in the definition of competitive negotiation, paragraph 3(a)," thereafter in the first sentence of subsection E and added the second sentence of subsection E.

§ 11-36. Implementation. — This chapter may be implemented by ordinances, resolutions or regulations consistent with this act and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees. (1982, c. 647).

§ 11-37. Definitions. — The words defined in this section shall have the meanings set forth below throughout this chapter.

"*Competitive sealed bidding*" is a method of contractor selection which includes the following elements:

1. Issuance of a written invitation to bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Any such additional solicitations shall include businesses selected from a list made available by the Office of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, 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.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.

6. Competitive sealed bidding shall not be required for procurement of professional services.

"*Competitive negotiation*" is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used

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in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

2. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices or by publication in a newspaper of general circulation in the area in which the contract is to be performed, or both. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. — The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this paragraph above, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. 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 and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

b. Procurement of other than professional services. — Selection shall be made of two 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 shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Construction" shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Goods" shall mean all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" shall mean a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal,

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which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"*Nonprofessional services*" shall mean any services not specifically identified as professional services in the following definition.

"*Professional services*" shall mean work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry or professional engineering.

"*Public body*" shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

"*Responsible bidder*" or "*offeror*" shall mean a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

"*Responsive bidder*" shall mean a person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

"*Services*" shall mean any work performed by an independent 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*" shall mean a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status. (1982, c. 647; 1984, cc. 279, 764.)

The 1984 amendments. — The first 1984 amendment added the last sentence of subdivision 2 of the definition of "Competitive sealed bidding."

The second 1984 amendment, in subdivision 3a of the definition of "Competitive negotiation," substituted "two or more offerors" for "all offerors" in the first sentence, rewrote the

fourth sentence, which read "These discussions may encompass nonbinding estimates of total project costs, including, where appropriate, design, construction and life cycle costs," and deleted the former fifth sentence, which read "Methods to be utilized in arriving at price for services may also be discussed."

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§ 11-39. Compliance with conditions on federal grants or contracts. — Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract. (1982, c. 647.)

§ 11-40. Cooperative procurement. — A. Any public body may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement

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agreement with a county, city or town whose governing body has adopted alternative policies and procedures pursuant to § 11-35 C or § 11-35 D of this chapter shall comply with said alternative policies and procedures so adopted by said governing body of such county, city or town.

B. Subject to the provisions of §§ 2.1-440, 2.1-442 and 2.1-447, any department, agency or institution of the Commonwealth may participate in, sponsor, conduct or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in the acquisition of major equipment or instrumentation. For the purpose of this section, "major equipment or instrumentation" shall mean equipment or instrumentation, for which the cost per unit or the cost of the entire system to be acquired is estimated to be in excess of \$150,000. In such instances, deviation from the procurement procedures set forth in the Virginia Public Procurement Act (§ 11-35 et seq.) and the administrative policies and procedures established to implement said Act will be permitted, if approved by the Director of the Division of Purchases and Supply; however, such acquisitions shall be procured competitively. (1982, c. 647; 1984, c. 330.)

The 1984 amendment designated the existing provisions as subsection A and added subsection B.

§ 11-40.1. Maintenance of centralized lists of projects and consultants. — The Director of General Services shall direct the Division of Engineering and Buildings to maintain a list of all authorized state capital projects covered by this article and to maintain a list of all professional consultants with whom the Commonwealth has contracted for capital project services over the previous two bienniums. Both lists shall be held open to public inspection. (1982, c. 647.)

§ 11-40.2. Exemptions for certain legislative activities. — The provisions of this chapter and the contract review provisions of § 2.1-410 shall not apply to the purchase of goods and services by agencies of the legislative branch which may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. The exemption shall be in writing and kept on file with the agency's disbursement records. (1984, c. 159.)

Editor's note. — Section 2.1-410, referred to in this section, is repealed by Acts 1984, c. 746.

Effective date. — This section is effective March 11, 1984.

ARTICLE 2.

Contract Formation and Administration.

§ 11-41. Methods of procurement. — A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services may be procured by competitive negotiation.

C. Upon a determination in writing that competitive sealed bidding is either not practicable or not advantageous to the public, goods, services, insurance or

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construction may be procured by competitive negotiation. The writing shall document the basis for this determination.

D. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

F. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed \$10,000; however, such small purchase procedures shall provide for competition wherever practicable. (1982, c. 647.)

Cross reference. — For provision that this article shall not apply to contracts for the printing of ballots, statements of results, or

other material essential to the conduct of an election, see § 24.1-113.1.

§ 11-41.1. Competitive bidding or competitive negotiations on state-aid projects. — No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of \$10,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or competitive negotiation. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, *mutatis mutandis*, to this chapter. No person or firm shall be eligible to bid on or submit a proposal for any such contract under competitive sealed bidding or competitive negotiation procedures nor to have the same awarded to him or it who has been engaged as architect or engineer for the same project under a separate contract. (1982, c. 647; 1983, c. 436.)

The 1983 amendment in the first sentence inserted "by any local government or subdivision of local government," substituted "\$10,000" for "\$100,000," and substituted "competitive sealed bidding or competitive negotiation" for "competitive bidding," in the second

sentence inserted "or for proposals" and inserted "for" preceding "letting," and in the third sentence inserted "or submit a proposal for," inserted "under competitive sealed bidding or competitive negotiation procedures," and inserted "under a separate contract."

§ 11-41.2. Design-build or construction management contracts authorized. — Notwithstanding any other provisions of law to the contrary, the Commonwealth of Virginia may enter into contracts on a fixed price design-build basis or construction management basis in accordance with procedures developed by the Secretary of Administration after a public hearing, and approved by the House Appropriations and Senate Finance Committees, such procedures to include provisions: to assure that negotiations and consultations with a contractor or construction manager for a design-build or construction management contract shall be initiated not earlier than ten days after the Commonwealth advertises its intent to proceed under the authority of this section; to require a preplanning study for any project which includes a structure of 20,000 or more square feet or which is estimated to cost one million dollars or more; and to transmit copies of each such preplanning study to the chairman of the House Appropriations Committee and the chairman of the

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Senate Finance Committee. Preplanning studies for projects estimated to cost less than two million dollars shall be done at a cost not exceeding \$25,000. Preplanning studies for projects estimated to cost two million dollars or more shall be done at a cost not exceeding \$50,000. Exceptions to these limitations upon the cost of preplanning studies may be authorized by the House Appropriations and Senate Finance Committees. For purposes of this chapter, a design-build contract is a contract between the Commonwealth of Virginia and another party in which the party contracting with the Commonwealth of Virginia agrees to both design and build the structure, roadway or other item specified in the contract. (1983, c. 615.)

Editor's note. — Clause 2 of Acts 1983, c. 615 provides: "That the provisions of this act shall expire on July 1, 1988."

§ 11-42. Cancellation, rejection of bids; waiver of informalities. — A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.

B. A public body may waive informalities in bids. (1982, c. 647.)

§ 11-43. Contract pricing arrangements. — A. Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. (1982, c. 647.)

§ 11-44. Discrimination prohibited. — In the solicitation or awarding of contracts, no public body shall discriminate because of the race, religion, color, sex, or national origin of the bidder or offeror. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Office of Minority Business Enterprise. (1982, c. 647; 1984, c. 279.)

The 1984 amendment added the second sentence.

§ 11-45. Exceptions to requirement for competitive procurement. — A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 of the Code remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d) and (e) of this Code.

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E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87 or the fuel assistance program may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41. (1982, c. 647; 1984, c. 764.)

The 1984 amendment rewrote subsection B, which read "Any public body may enter into contracts for legal services, expert witnesses, and other services associated with litigation or regulatory proceedings without competitive

sealed bidding or competitive negotiation, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 of the Code remain applicable," and added subsection F.

§ 11-46. Prequalification. — Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process. (1982, c. 647.)

§ 11-46.1. Debarment. — Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency or agencies the Governor may designate, and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body. (1982, c. 647.)

§ 11-47. Preference for Virginia products and firms. — A. In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia. (1982, c. 647.)

§ 11-48. Participation of small businesses and businesses owned by women and minorities. — All public bodies shall establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and shall include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. State agencies shall submit annual progress reports on minority business procurement to the State Office of Minority Business Enterprise. (1982, c. 647; 1984, c. 279.)

The 1984 amendment substituted "shall establish" for "may establish" in the first sentence, substituted "shall include" for "may

include" in the second sentence, and added the final sentence.

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§ 11-49. Use of brand names. — Unless otherwise provided in the invitation to bid, 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 any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. (1982, c. 647.)

§ 11-50. Comments concerning specifications. — Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract. (1982, c. 647.)

§ 11-51. Employment discrimination by contractor prohibited. — All public bodies shall include in every contract of over \$10,000 the provisions in 1 and 2 herein:

1. 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 or national origin, except where religion, sex or national origin 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 law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. (1982, c. 647.)

§ 11-52. Public inspection of certain records. — A. Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.1-340 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

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

C1. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

C2. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

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D. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. (1982, c. 647; 1984, c. 705.)

The 1984 amendment added subsection C1. In addition, the amendment designated the former last sentence of subsection C as subsection C2, and in subsection C substituted "Any competitive sealed bidding bidder" for "Any

bidder or offeror" at the beginning of the first sentence and deleted "and proposal" following "the opportunity to inspect bid" in the first sentence and following "Otherwise, bid" in the second sentence.

§ 11-53. Negotiation with lowest responsible bidder. — Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein. (1982, c. 647.)

§ 11-54. Withdrawal of bid due to error. — A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his 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. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure; or (ii) the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid may be withdrawn under this section when the result would be the awarding of 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.

D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

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E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to 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.

F. If the public body denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision. (1982, c. 647.)

§ 11-55. Modification of the contract. — A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$10,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions.

B. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications. (1982, c. 647.)

§ 11-56. Retainage on construction contracts. — A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations. (1982, c. 647.)

§ 11-57. Bid bonds. — A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000. (1982, c. 647; 1984, c. 160.)

The 1984 amendment substituted
"\$100,000" for "\$25,000" in the first sentence of
subsection A and added subsection C.

§ 11-58. Performance and payment bonds. — A. Upon the award of any public construction contract exceeding \$100,000 awarded to any prime contractor, such contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such

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contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

C. If the public body is the Commonwealth of Virginia, or any agency or institution thereof, such bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

D. Each of the bonds shall be filed with the public body which awarded the contract, or a designated office or official thereof.

E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$100,000.

F. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract. (1982, c. 647; 1984, c. 160.)

The 1984 amendment substituted language of subsection A and in subsection E. "\$100,000" for "\$25,000" in the introductory

§ 11-59. Action on performance bond. — No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the chief engineer, Department of Highways and Transportation, in cases where the public body is the Department of Highways and Transportation, or within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such, in all other cases. (1982, c. 647.)

§ 11-60. Actions on payment bonds. — A. Subject to the provisions of subsection B hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under § 11-58 F but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was

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furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under § 11-58 F but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials. (1982, c. 647.)

§ 11-61. Alternative forms of security. — A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond. (1982, c. 647.)

§ 11-62. Bonds on other than construction contracts. — A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal. (1982, c. 647.)

ARTICLE 2.1.

Prompt Payment.

§ 11-62.1. Definitions. — As used in this article, unless the context clearly shows otherwise, the term or phrase:

"*Payment date*" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii), if such date has not been established by contract, thirty days after receipt of a proper invoice for the amount of payment due, or thirty days after receipt of the goods or services, whichever is later.

"*State agency*" means any authority, board, department, instrumentality, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority. (1984, c. 736.)

§ 11-62.2. Prompt payment of bills. — Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date. (1984, c. 736.)

§ 11-62.3. Separate payment dates. — Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution. (1984, c. 736.)

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§ 11-62.4. Defect or impropriety in the invoice or goods and/or services received. — In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if such defect or impropriety would prevent payment by the payment date, within fifteen days after receipt of such invoice or such goods or services. (1984, c. 736.)

§ 11-62.5. Interest penalty. — A. Interest shall accrue, at the rate determined pursuant to subsection B of this section, on all amounts owed by a state agency to a vendor which remain unpaid after fifteen days following the payment date, provided, that nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A of this section shall be the discounted ninety-day U. S. Treasury bill rate as established by the Weekly Auction immediately preceding the issuance by a vendor of an invoice for interest due from a state agency, and as reported in the publication entitled *The Wall Street Journal* on the weekday following such Weekly Auction. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A of this section, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for such goods or services. The exception from the interest penalty provided by this paragraph shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. (1984, c. 736.)

§ 11-62.6. Date of postmark deemed to be date payment is made. — In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter. (1984, c. 736.)

§ 11-62.7. Secretary of Administration to file report. — The Secretary of Administration shall file a report with the Governor on November 1, 1985, describing (i) the payment practices of state agencies and (ii) actions taken to achieve the objectives of the provisions of this chapter. (1984, c. 736.)

§ 11-62.8. Retainage to remain valid. — Notwithstanding the provisions of this article, the provisions of § 11-56 relating to retainage shall remain valid. (1984, c. 736.)

§ 11-62.9. Exemptions. — The provisions of this article shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission. (1984, c. 736.)

ARTICLE 3.

Remedies.

§ 11-63. Ineligibility. — A. Any bidder, offeror or contractor refused permission to, or disqualified from, participation in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals

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within thirty days of receipt by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative by instituting legal action as provided in § 11-70 of this Code.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility. (1982, c. 647.)

Cross reference. — For provision that this article shall not apply to contracts for the printing of ballots, statements of results, or other material essential to the conduct of an election, see § 24.1-113.1.

§ 11-64. Appeal of denial of withdrawal of bid. — A. A decision denying withdrawal of bid under the provisions of § 11-54 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 11-71, if available; or in the alternative by instituting legal action as provided in § 11-70 of this Code.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 11-54, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid. (1982, c. 647.)

§ 11-65. Determination of nonresponsibility. — A. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative, by instituting legal action as provided in § 11-70 of the Code.

B. If, upon appeal, it is determined that the decision of the public body was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the public body was arbitrary or capricious, the relief shall be as set forth in § 11-66 B.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under § 11-66 of the Code.

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. (1982, c. 647.)

§ 11-66. Protest of award or decision to award. — A. Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days

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stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking administrative procedures meeting the standards of § 11-71, if available; or in the alternative by instituting legal action as provided in § 11-70 of this Code.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 4 (§ 11-72 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder. (1982, c. 647.)

§ 11-67. **Effect of appeal upon contract.** — Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed. (1982, c. 647.)

§ 11-68. **Stay of award during protest.** — An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire. (1982, c. 647.)

§ 11-69. **Contractual disputes.** — A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the public body.

C. A contractor may not invoke administrative procedures meeting the standards of § 11-71, if available, or institute legal action as provided in § 11-70 of this Code, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract.

D. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative by instituting legal action as provided in § 11-70 of this Code. (1982, c. 647.)

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§ 11-70. Legal actions. — A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

B. A bidder denied withdrawal of a bid under § 11-64 of this Code may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was clearly erroneous.

C. A bidder, offeror or contractor may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 11-71 of this Code, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor. (1982, c. 647.)

§ 11-71. Administrative appeals procedure. — A. A public body may establish an administrative procedure for hearing protests of a decision to award or an award, appeals from refusals to allow withdrawal of bids, appeals from disqualifications and determinations of nonresponsibility, and appeals from decisions on disputes arising during the performance of a contract, or any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision. (1982, c. 647.)

ARTICLE 4.

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§ 11-72. Purpose. — The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Comprehensive Conflict of Interests Act (§ 2.1-599 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 apply notwithstanding the fact that the conduct described may not constitute a violation of the Comprehensive Conflict of Interests Act. (1982, c. 647.)

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Cross reference. — For provision that this article shall apply to contracts for the printing of ballots, statements of results, or other material essential to the conduct of an election, see § 24.1-113.1.

§ 11-73. Definitions. — The words defined in this section shall have the meanings set forth below throughout this article.

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

"Official responsibility" shall mean 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" shall mean a material financial interest as defined in the Comprehensive Conflict of Interests Act (§ 2.1-599 et seq.).

"Procurement transaction" shall mean 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" shall mean any person employed by a public body, including elected officials or appointed members of governing bodies. (1982, c. 647.)

§ 11-74. Proscribed participation by public employees in procurement transactions. — 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:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or

2. 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; or

3. 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

4. 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. (1982, c. 647.)

§ 11-75. Solicitation or acceptance of gifts. — 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 section. (1982, c. 647.)

§ 11-76. Disclosure of subsequent employment. — 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. (1982, c. 647.)

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§ 11-77. Gifts by bidders, offerors, contractors or subcontractors. — 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. (1982, c. 647.)

§ 11-78. Kickbacks. — 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 will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties. (1982, c. 647.)

§ 11-79. Purchase of building materials, etc., from architect or engineer prohibited. — Except in cases of emergency, 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 pecuniary interest. (1982, c. 647.)

§ 11-80. Penalty for violation. — Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment. (1982, c. 647.)

Cross reference. — As to punishment for Class 1 misdemeanors, see § 18.2-11.

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Services, Department of Social Services and Department for the Visually Handicapped. The Secretary of Economic Development and Secretary of Human Resources shall serve ex officio on the Council. The appropriate agency executive may appoint additional members as required. The Council shall annually elect a chairman. Each agency shall contribute a pro rata share of the required support services.

The Council shall provide and promote cross-secretariat interagency leadership for comprehensive planning and coordinated implementation of proposals to increase and maximize use of existing low-income housing for the disabled and to ensure development of accompanying community support services. The Council shall stimulate action by government agencies and enlist the cooperation of the nonprofit and private sectors. The Council shall develop a state policy on housing for the disabled for submission to the Governor no later than January 1, 1987. The policy shall be reviewed and updated as necessary. The Council shall submit to the Governor and various agency executives a report and recommendations at least annually. The first such report shall be submitted no later than July 1, 1987. (1986, c. 244.)

Title 11.

Contracts.

CHAPTER 4.1.

USE OF DOMESTIC STEEL IN PUBLIC WORKS PROJECTS.

§§ 11-23.6 through 11-23.10: Expired.

CHAPTER 7.

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- 11-64. Appeal of denial of withdrawal of bid.

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11-74. Proscribed participation by public employees in procurement transactions.

Article 4.

Ethics in Public Contracting.

11-72. Purpose.

ARTICLE 1.

General Provisions.

§ 11-35. Title; purpose; applicability. — A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources.

C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a population of less than 3,500 as determined by the last official United States census.

D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of this section, remain in effect in such county, city or town.

Except to the extent adopted by such school board, the provisions of this chapter shall not apply, except as stipulated in subsection E, to any school division whose school board adopts by policy or regulation alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$20,000.

F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the laws in effect at the time those contracts were executed.

G. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public

business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia Supplemental Retirement System related to the management, purchase or sale of authorized investments, including but not limited to actuarial services, shall be governed by the standards set forth in § 51-111.24:2 and shall not be subject to the provisions of this chapter.

I. The provisions of this chapter shall apply to procurement of any construction or planning and design services for construction by a Virginia not-for-profit corporation or organization not otherwise specifically exempted when the planning, design or construction is funded by state appropriations greater than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to procurement procedures which are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of this chapter. (1982, c. 647; 1983, c. 593; 1984, c. 764; 1986, cc. 149, 212, 559.)

The 1986 amendments. — The first 1986 amendment added subsection H.

The second 1986 amendment added subsection I.

The third 1986 amendment added a reference to § 11-41 C in subsection E.

Richmond Business Minority Utilization Plan does not violate Va. Const., Art. I, § 11. J.A. Croson Co. v. City of Richmond, 779 F.2d 181 (4th Cir. 1985).

Richmond Business Minority Utilization Plan is based on competitive principles and therefore the authority for the adoption of the set-aside Plan was "fairly implied" from the power expressly granted to Richmond to develop its own procurement procedures under subsection D of this section. J.A. Croson Co. v. City of Richmond, 779 F.2d 181 (4th Cir. 1985).

Richmond Business Minority Utilization Plan is not contrary to public policy of Virginia expressed in § 11-44. In the first place, the city's Plan is specifically exempted from this and other requirements of the state procurement scheme by subsection D of this section since it is adopted by an ordinance "based on competitive principles." The exemption, however, is not necessary to refute the assertion that the Plan is contrary to public policy, in view of the policy implications of § 11-48, which is devoted to encouraging the participation of minority businesses in the performance of public contracting. J.A. Croson Co. v. City of Richmond, 779 F.2d 181 (4th Cir. 1985).

§ 11-37. Definitions. — The words defined in this section shall have the meanings set forth below throughout this chapter.

"Competitive sealed bidding" is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, or publication in

a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Any such additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, 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.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the Invitation to Bid, awards may be made to more than one bidder.

6. Competitive sealed bidding shall not be required for procurement of professional services.

"*Competitive negotiation*" is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities of qualifications which will be required of the contractor.

2. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices or by publication in a newspaper of general circulation in the area in which the contract is to be performed, or both. In addition, proposals may be solicited directly from potential contractors.

3. a. *Procurement of professional services.* — The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision above, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. 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 and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

b. *Procurement of other than professional services.* — Selection shall be made of two 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 shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of §§ 11-66 and 11-70 means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry or professional engineering.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

"Responsible bidder" or *"offeror"* means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

"Services" means any work performed by an independent 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" means a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work

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experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status. (1982, c. 647; 1984, cc. 279, 764; 1985, c. 164; 1987, cc. 176, 218, 474.)

The 1985 amendment substituted "definition of professional services" for "following definition" in the definition of "nonprofessional services" and added the definition of "potential bidder or offeror."

The 1987 amendments. — Acts 1987, c. 176

inserted the fourth sentence of subdivision 3 a of the definition of "Competitive negotiation."

Acts 1987, cc. 218 and 474 are identical and inserted the definition of "Design-build contract" and substituted "means" for "shall mean" throughout the section.

§ 11-40. Cooperative procurement. — A. Any public body may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with a county, city or town whose governing body has adopted alternative policies and procedures pursuant to § 11-35 C or § 11-35 D of this chapter shall comply with said alternative policies and procedures so adopted by said governing body of such county, city or town.

B. Subject to the provisions of §§ 2.1-440, 2.1-442 and 2.1-447, any department, agency or institution of the Commonwealth may participate in, sponsor, conduct or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any major acquisition of equipment, instrumentation, or medical care supplies. For the purpose of this section, a "major acquisition shall mean equipment, instrumentation, or medical care supplies for which the cost per unit, or the cost of the entire system, or the cost of all items to be acquired over a period of twelve months under the same contract is estimated to be in excess of \$150,000. In such instances, deviation from the procurement procedures set forth in the Virginia Public Procurement Act (§ 11-35 et seq.) and the administrative policies and procedures established to implement said Act will be permitted, if approved by the Director of the Division of Purchases and Supply; however, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. (1982, c. 647; 1984, c. 330; 1987, c. 583.)

The 1987 amendment substituted "any major acquisition of equipment, instrumentation, or medical care supplies" for "the acquisition of major equipment or instrumentation" at the end of the first sentence of subsection B, substituted "a major acquisition" shall mean equipment, instrumentation, or medical care supplies for which the cost per unit, or the cost of the entire system, or the cost of all items to

be acquired over a period of twelve months under the same contract" for "'major equipment or instrumentation' shall mean equipment or instrumentation, for which the cost per unit or the cost of the entire system to be acquired" in the second sentence in subsection B, and added the final sentence of subsection B.

§ 11-40.2. Exemptions for certain legislative activities. — The provisions of this chapter and the contract review provisions of § 2.1-563.17 shall not apply to the purchase of goods and services by agencies of the legislative branch which may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. The exemption shall be in writing and kept on file with the agency's disbursement records. (1984, c. 159; 1985, c. 74.)

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The 1985 amendment substituted
 "§ 2.1-563.17" for "2.1-410."

ARTICLE 2.

Contract Formation and Administration.

§ 11-41. Methods of procurement. — A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. 1. 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, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

2. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances 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:

(i) By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 11-41.2;

(ii) By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;

(iii) By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or

(iv) As otherwise provided in § 11-41.2:1.

D. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

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F. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed \$10,000; however, such small purchase procedures shall provide for competition wherever practicable.

G. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter, competitive sealed bidding not necessarily being required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws. (1982, c. 647; 1985, c. 164; 1986, cc. 332, 559; 1987, c. 456.)

The 1985 amendment substituted "shall" for "may" in subsection B, added the last two sentences of subsection D, and added the last two sentences of subsection E.

The 1986 amendments. — The first 1986 amendment added subsection G.

The second 1986 amendment rewrote the first sentence of subsection C.

The 1987 amendment designated the first

paragraph of subsection C as subdivision C 1, in the first sentence of subdivision C 1 deleted "after reasonable notice to the public" following "made in advance by the public body" and substituted "goods, services, or insurance may be procured" for "for a specific procurement of goods, services, insurance or construction, then that specific procurement may be made," and added subdivision C 2.

§ 11-41.1. Competitive bidding on state-aid projects. — No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of \$10,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subdivision 2 of subsection C of § 11-41. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter. A person or firm who has been engaged as an architect or engineer for the same project under a separate contract shall not be eligible to bid on or submit a proposal for any such contract or to have the contract awarded to him. (1982, c. 647; 1983, c. 436; 1987, c. 456.)

The 1987 amendment substituted "after competitive negotiation as provided under subdivision 2 of subsection C of § 11-41" for "competitive negotiation" at the end of the first sentence, and rewrote the third sentence, which formerly read "No person or firm shall

be eligible to bid on or submit a proposal for any such contract under competitive sealed bidding or competitive negotiation procedures nor to have the same awarded to him or it who has been engaged as architect or engineer for the same project under a separate contract."

§ 11-41.2. Design-build or construction management contracts for Commonwealth authorized. — Notwithstanding any other provisions of law to the contrary, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with procedures developed by the Secretary of Administration after a public hearing, and approved by the House Appropriations and Senate Finance Committees. The procedures shall include provisions: to assure that negotiations and consultations with a contractor or construction manager for a design-build or construction management contract shall be initiated not earlier than ten days after the Commonwealth advertises its intent to proceed under the authority of this section; to require a preplanning study for any

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project which includes a structure of 20,000 or more square feet or which is estimated to cost one million dollars or more; and to transmit copies of each such preplanning study to the chairman of the House Appropriations Committee and the chairman of the Senate Finance Committee. Preplanning studies for projects estimated to cost less than \$2 million shall be done at a cost not exceeding \$25,000. Preplanning studies for projects estimated to cost \$2 million or more shall be done at a cost not exceeding \$50,000. Exceptions to these limitations upon the cost of preplanning studies may be authorized by the House Appropriations and Senate Finance Committees. (1983, cc. 615; 1987, c. 218, 474.)

Cross reference. — As to the definitions of design-build and construction management contracts, see § 11-37.

The 1987 amendments. — Both 1987 amendments are identical and divided the former first sentence of the section into the present first and second sentences, in the present second sentence substituted "The procedures shall include" for "such procedures to

include." and deleted a former final sentence, which read "For purposes of this chapter, a design-build contract is a contract between the Commonwealth of Virginia and another party in which the party contracting with the Commonwealth of Virginia agrees to both design and build the structure, roadway or other item specified in the contract."

§ 11-41.2:1. Design-build or construction management contracts for public bodies other than the Commonwealth authorized. — Notwithstanding any other provisions of law to the contrary, the City of Richmond may enter into a contract for the construction of a visitors' center on a fixed price or not-to-exceed price design-build basis or construction management basis in accordance with procedures consistent with those described in this chapter for procurement of nonprofessional services through competitive negotiation. City Council may authorize payment to no more than three responsive bidders who are not awarded the design-build contract if City Council determines that such payment is necessary to promote competition. The City of Richmond shall not be required to award a design-build contract to the lowest bidder, but may consider price as one factor in evaluating a request for proposals. The City of Richmond shall maintain adequate records to allow post-project evaluation by the Commonwealth. (1987, cc. 218, 474.)

§ 11-41.3. Purchase of certain software exempt from competition. — Institutions of higher education may enter into separate agreements, without competition, with software developers who offer their product for instructional use at a price which is at least fifty percent below the price of the product on the Department of Information Technology's competitively bid Hardware/Software Contract List. Any such agreements and applicable software license agreements shall be approved by the office of the Attorney General prior to acceptance by the institution. (1985, c. 164.)

§ 11-44. Discrimination prohibited.

Richmond Business Minority Utilization Plan is not contrary to public policy of Virginia expressed in this section. In the first place, the city's Plan is specifically exempted from this and other requirements of the state procurement scheme by § 11-35 (D) since it is adopted by an ordinance "based on competitive principles." The exemption, however, is not

necessary to refute the assertion that the Plan is contrary to public policy, in view of the policy implications of § 11-48, which is devoted to encouraging the participation of minority businesses in the performance of public contracting. *J.A. Croson Co. v. City of Richmond*, 779 F.2d 181 (4th Cir. 1985).

§ 11-45. Exceptions to requirement for competitive procurement. —

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" for "facilities" as defined in § 15.1-1374 (d) and (e).

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87 or the fuel assistance program may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination. (1982, c. 647; 1984, c. 764; 1987, cc. 194, 248.)

The 1987 amendments. — The first 1987 amendment added subsection G. The second 1987 amendment inserted "or other nonprofit organizations which offer transitional or supported employment services" in clause (ii) of subsection A.

§ 11-47.1. Priority for Virginia coal used in state facilities. — In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere. (1987, cc. 81, 91.)

Editor's note. — Clauses 2 and 3 of Acts 1987, cc. 81 and 91 provide:

"2. That the enactment of this act by the General Assembly is an extraordinary measure to support the currently depressed coal industry in Virginia, despite the fact that it

contravenes the general procurement policy of the Commonwealth that suitable goods should be obtained at the lowest price, regardless of origin.

"3. That the provisions of this act shall expire on June 30, 1989."

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§ 11-48. Participation of small businesses and businesses owned by women and minorities.

Richmond Business Minority Utilization Plan is not contrary to public policy of Virginia expressed in § 11-44. In the first place, the city's Plan is specifically exempted from this and other requirements of the state procurement scheme by § 11-35 (D) since it is adopted by an ordinance "based on competitive principles." The exemption, however, is not

necessary to refute the assertion that the Plan is contrary to public policy, in view of the policy implications of this section, which is devoted to encouraging the participation of minority businesses in the performance of public contracting. *J.A. Croson Co. v. City of Richmond*, 779 F.2d 181 (4th Cir. 1985).

§ 11-54. Withdrawal of bid due to error. — A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his 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. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure; or (ii) the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid may be withdrawn under this section when the result would be the awarding of 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.

D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to 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.

F. If the public body denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. (1982, c. 647; 1985, c. 286.)

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The 1985 amendment added "and award provided such bidder is a responsible and the contract to such bidder at the bid price, responsive bidder" at the end of subsection F.

§ 11-55. Modification of the contract. — A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$10,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. 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. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications. (1982, c. 647; 1985, c. 286.)

The 1985 amendment added the last sentence of subsection A.

ARTICLE 2.1.

Prompt Payment.

§ 11-62.5. Interest penalty; exceptions. — A. Interest shall accrue, at the rate determined pursuant to subsection B of this section, on all amounts owed by a state agency to a vendor which remain unpaid after seven days following the payment date, provided, that nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A of this section shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates is to be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A of this section, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for such goods or services. The exception from the interest penalty provided by this paragraph shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement.

D. This section shall not apply to § 11-56 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement. (1984, c. 736; 1985, c. 101.)

The 1985 amendment in subsection A substituted "seven" for "fifteen," rewrote subsection B, and added subsection D.

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§ 11-62.7. Secretary of Administration to file annual report. — The Secretary of Administration shall file an annual report with the Governor, the Senate Finance Committee, the House Finance Committee and the House Appropriations Committee on November 1 for the preceding fiscal year including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments. (1984, c. 736; 1985, c. 101.)

The 1985 amendment rewrote this section.

§ 11-62.10. Prompt payment of bills by localities. — Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the business concern of any defect or impropriety which would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the business concern which do not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts. (1985, c. 454.)

ARTICLE 3.

Remedies.

§ 11-64. Appeal of denial of withdrawal of bid. — A. A decision denying withdrawal of bid under the provisions of § 11-54 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative by instituting legal action as provided in § 11-70 of this Code.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 11-54, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid. (1982, c. 647; 1985, c. 164.)

§ 11-66

VIRGINIA SCHOOL LAWS

§ 11-70

The 1985 amendment made a minor punctuation change in subsection A.

§ 11-66. Protest of award or decision to award. — A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit such protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. 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 such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 11-41. 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 which are subject to inspection under § 11-52, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 11-52, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative by instituting legal action as provided in § 11-70 of this Code.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 4 of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder. (1982, c. 647; 1985, c. 164.)

The 1985 amendment substituted "who desires to" for "may" and substituted "shall submit" for "by submitting" in the first sentence of subsection A and added the present second and third sentences of subsection A.

§ 11-70. Legal actions. — A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

§ 11-72

1987 CUMULATIVE SUPPLEMENT

§ 11-73

B. A bidder denied withdrawal of a bid under § 11-64 of this Code may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was clearly erroneous.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 11-41, whose protest of an award or decision to award under § 11-66 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 11-71 of this Code, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor. (1982, c. 647; 1985, c. 164.)

The 1985 amendment inserted the language beginning "or a potential bidder" and ending "under § 11-66 is denied" in subsection C.

Appellate jurisdiction for action protesting decision to award contract. — For an action protesting the decision to award a

contract brought under this section and not under the administrative appeals procedure authorized by § 11-71, appellate jurisdiction lies with the Supreme Court and not the Court of Appeals. *Allstar Towing, Inc. v. City of Alexandria*, 231 Va. 421, 344 S.E.2d 903 (1986).

ARTICLE 4.

Ethics in Public Contracting.

§ 11-72. **Purpose.** — The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.1-639.1 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 apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act. (1982, c. 647; 1987, Sp. Sess., c. 1.)

The 1987, Sp. Sess., amendment, effective Aug. 1, 1987, substituted reference to the State and Local Government Conflict of Interests Act

for reference to the Comprehensive Conflict of Interests Act in the first and second sentences.

§ 11-73. **Definitions.** — The words defined in this section shall have the meanings set forth below throughout this article.

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

§ 11-74

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§ 11-74

"Official responsibility" shall mean 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" shall mean a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.).

"Procurement transaction" shall mean 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" shall mean any person employed by a public body, including elected officials or appointed members of governing bodies. (1982, c. 647; 1987, Sp. Sess., c. 1.)

The 1987, Sp. Sess., amendment, effective Aug. 1, 1987, rewrote the paragraph defining "Pecuniary interest arising from the procurement," which formerly defined such interest as

"a material financial interest as defined in the Comprehensive Conflict of Interests Act (§ 2.1-599 et seq.)."

§ 11-74. Proscribed participation by public employees in procurement transactions. — Except as may be specifically allowed by provisions of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.), 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:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
2. 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; or
3. 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
4. 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. (1982, c. 647; 1985, c. 565; 1987, Sp. Sess., c. 1.)

The 1985 amendment, effective Mar. 25, 1985, inserted "Except as may be specifically allowed by provisions of the Comprehensive Conflict of Interests Act (§ 2.1-599 et seq.)" at the beginning of the introductory paragraph.

The 1987, Sp. Sess., amendment, effective Aug. 1, 1987, substituted reference to the State and Local Government Conflict of Interests Act for reference to the Comprehensive Conflict of Interests Act in the introductory paragraph.

APPENDIX G

ABA Model Procurement Code

Introduction

This American Bar Association Model Procurement Code for State and Local Governments provides (1) the statutory principles and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes; (2) contracts; and (3) a set of ethical standards governing public and private participants in the procurement process. The Code has been approved by the policymaking body of the American Bar Association, its House of Delegates. It represents over five years of intensive effort directed by a Coordinating Committee on a Model Procurement Code. The Coordinating Committee is a joint committee of the Code's cosponsoring Sections, the Section of Public Contract Law and the Section of Urban, State and Local Government Law.

Public Participation

Throughout the process of preparation of the Code, the Coordinating Committee has continually sought broad public participation in the Project. Following a year of intensive initial drafting and internal review by the National Substantive Committees created by the Coordinating Committee, Preliminary Working Paper No. 1 was released in June 1976 for public review and comment. More than 3,000 copies were distributed nationally. After a year of review and redrafting in response to the comments received, Preliminary Working Paper No. 2 was released in June 1977. Approximately 8,000 copies of that draft were distributed to the public. Both public review periods included open meetings in such geographically diverse locations as Philadelphia, Atlanta, Chicago, and San Francisco. Then, beginning in September 1977, the Coordinating Committee initiated a detailed review of Preliminary Working paper No. 2 and the public comments it had generated. In July 1978, the Coordinating Committee issued its Tentative Draft of the proposed Code. After a brief public review period, which included an open meeting on August 5th in New York City and meetings with representatives of interested groups, the Coordinating Committee prepared a Council Draft in October 1978 which was approved by the Councils of the cosponsoring Sections. In December, a Final Draft of the Code was prepared. It was considered and approved by the House of Delegates in February, during the 1979 Mid-Year Meeting.

From the beginning, the Coordinating Committee sought to ensure active participation by interested organizations outside of the Association. At the very outset, it established an active Liaison Committee with State and Local Purchasing Officials. Participation by

representatives of the National Association of State Purchasing Officials and the National Institute of Governmental Purchasing was especially helpful. The Coordinating Committee also established an Advisory Board, comprised of nineteen organizations interested in improving state and local purchasing, including associations of state and local officials and associations representing various vendors. The organization comprising the Advisory Board, and the membership of the other parts of the Coordinating Committee's organizational structure are listed in the Appendix to the Code.

The Coordinating Committee also entered upon joint ventures with a number of state and local governments during the process of drafting the Code. Under this Pilot Jurisdiction Program selected States and cities entered into a close working relationship with the Coordinating Committee. The Pilot Jurisdictions have included:

Commonwealth of Kentucky	Louisville, Kentucky
State of Tennessee	Knoxville, Tennessee
State of New Mexico	Baltimore, Maryland
State of Louisiana	San Diego, California
State of Utah	

In addition, the Committee worked cooperatively with a number of other jurisdictions, including California, Delaware, the District of Columbia, Maryland, Massachusetts, Pennsylvania, South Carolina, and Virginia. In California, the Committee participated in a comprehensive study of the State's public contract system which was made by the California Department of General Services. In Massachusetts and Pennsylvania, the Project conducted several colloquia sessions to provide a broad orientation on the Code's proposals to interested persons and organizations.

Drafting Concepts

At an early stage a decision was made to develop a "model" rather than a "uniform" procurement code because of the diverse organizational structures used by the States and the multitude of local government bodies and the differences in their procurement needs. The Coordinating Committee recognized that varying organizational and political constraints in enacting jurisdictions might require the adaptation of any proposed code to particular state and local situations. In substantive matters, however, it was concluded that the Model Procurement Code should reflect certain basic policies equally applicable to the conduct of procurement by all public bodies.

In addition, the Model Procurement Code was drafted on the concept that it should be a short statute providing the fundamentals of sound procurement which should be implemented by regulations consistent with the statutory framework. Procurement is a dynamic process which is continually evolving and which requires revision of procurement methods as experience and requirements change. Moreover, experience has shown that incorporating a large number of details in a statute tends to establish an overly rigid structure which constricts good procurement practices, hinders improvement and reform, and may lead to strained judicial interpretations.

The use of regulations to implement statutory policies, however, permits change and modification and provides a means for expeditious improvement and innovation in procurement techniques. When coupled with requirements for public participation in the issuance and revision of procurement regulations and appropriate legislative oversight, a comprehensive statute implemented by more specific regulations will provide a flexible system capable of promoting efficiency in procurement and conserving the taxpayers' money.

Mechanics of Drafting

In some Articles of the Code, alternative provisions articulating more than one approach to a given procurement policy are included. However, except as specifically indicated, the order in which alternatives are presented does not signify a preference for any particular alternative.

Code Commentary is used, where appropriate, to explain the rationale underlying various Sections, to aid in the interpretation of the statutory language, and to provide guidance in the development of regulations.

Bracketed material [] indicates areas needing the particular attention of enacting jurisdictions. Brackets enclosing a blank require insertion of language appropriate to that jurisdiction for such things as dollar and time limitations, position descriptions, or references to specific state laws. Suggested language in brackets indicates that the enacting jurisdiction may want to make changes in light of its own experience and circumstances, or other legislative requirements that may be applicable. Two bracketed phrases appearing side-by-side usually indicate that one should be inserted and the other deleted.

One bracketed item which appears consistently throughout the Code is the word "State". This means, of course, that an enacting city, county, or other local unit

should appropriately change that word. In addition, since the Code is primarily oriented to state-level procurement, enactment by local governments will necessitate a close scrutiny of all of the Code's provisions so that they may be adapted to their administrative needs.

An Overview of the Code Articles

Articles 1 through 10 cover basic policies for the procurement of supplies, services, and construction; management and disposal of supplies; and legal remedies. Article 11 provides socioeconomic policies which a State may wish to amplify. Article 12 establishes ethical standards for public officials and contractors in connection with procurement. The following is a synopsis of the scope of each Article.

General Provisions

Article 1 describes the general purposes of the Code, specifies its applicability, provides guidance for interpretations, and contains definitions of terms used in more than one Article.

Procurement Organization

Article 2 sets forth the basic organizational concepts for establishing procurement policy and conducting procurement operations. It also contains several alternative proposals for establishing the policymaking office. In addition, Article 2 provides for certain exemptions from central procurement and authorizes the creation of a Procurement Advisory Council to suggest reforms and improvements and a Procurement Institute to train procurement personnel.

Source Selection and Contract Formation

Article 3 establishes competitive sealed bidding as the preferred method for contracting but also authorizes the use of other source selection methods in appropriate, specified situations. The other source selection methods are competitive sealed proposals, small purchase procedures, sole source procurement, emergency procurements, and a competitive selection procedure for designated types of services. The Article contains requirements for contracting by each method, and contracts not awarded by competitive sealed bidding generally require a written justification which will be a matter of public record. The Article permits the use of any type of contract although it prohibits cost-plus-a-percentage-of-cost contracts. It also requires the submission of cost or

pricing data for contracts awarded without adequate price competition and for contract price adjustments.

Specifications

Article 4 contains requirements for developing, monitoring, and using specifications. It requires that specifications be written in a manner to maximize competition to the extent possible.

Procurement of Construction, Architect-Engineer and Land Surveying Services

Article 5 covers special aspects of construction procurement, including the promulgation of regulations to facilitate the use of various construction contracting and management methods: use of bid, performance, and payment bonds; and contract clauses for change orders, variations in estimated quantities, suspension of work, and termination. It also establishes criteria for making price adjustments due to changes and variations in estimated quantities.

The Article also includes provisions governing the competitive award of contracts for architect-engineer and land surveying services in lieu of competitive sealed bidding or competitive sealed proposals as provided in Article 3.

Modification and Termination of Contracts for Supplies and Services

Article 6 authorizes the use of clauses in contracts for supplies and services covering changes and variations in estimated quantities and sets forth the criteria for making price adjustments pursuant to such clauses. It also authorizes the inclusion of other clauses, including liquidated damages, excusable delay, and termination.

Cost Principles

Article 7 provides for the promulgation of regulations establishing cost principles to be used to determine types of costs reimbursable under cost-type contracts.

Supply Management

Article 8 establishes requirements for control over the life cycle of supplies procured and establishes criteria for management, transfer, and disposal of surplus property.

Legal and Contractual Remedies

Article 9 provides mechanisms for the resolution of disputes relating to solicitations and awards, contract performance, and debarment or suspension determinations. In addition, this Article provides procedures for handling contracts awarded in violation of law.

Intergovernmental Relations

Article 10 contains provisions designed to facilitate cooperative procurement among the various units of government. It permits standardization of specifications for use by several jurisdictions, joint use of real and personal property, and sharing of personnel among local governments and between a State and its political subdivisions. The Article also provides that a State, at the request of other jurisdictions, may provide procurement information and technical services to those jurisdictions.

Assistance to Small and Disadvantaged Businesses; Federal Assistance or Contract Procurement Requirements

Article 11 provides administrative procedures for assisting small and disadvantaged businesses in learning how to do business with the enacting jurisdiction. This Article also can be used to incorporate additional state socioeconomic policies that are to be implemented through the procurement process. Article 11 requires compliance with federal law and regulations not presently reflected in the Code when a procurement involves the expenditure of federal assistance or contract funds.

Ethics in Public Contracting

Article 12 contains ethical standards with accompanying sanctions that are applicable to all participants in the public procurement process. The proposed ethical standards cover conflicts of interest, gratuities and kickbacks, contingent fees, and misuse of confidential information. Additionally, this Article authorizes establishment of an Ethics Commission with authority to render advisory opinions to participants in the procurement process.

Implementing Regulations

The proposed Model Procurement Code contemplates the issuance of implementing regulations by the State Procurement Policy Office established under Article 2. Time and resource limitations did not permit the simultaneous drafting of the Code and regulations.

However, the Coordinating Committee is now preparing suggested regulations so that regulatory materials may be available to state and local governments considering the Model Procurement Code.

American Bar Association. (1979, February). The model procurement code for state and local governments.
Author.

Vita

