

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: **INITIAL READING: PROPOSED AMENDMENTS TO POLICIES 6320, PURCHASING, AND 0133, QUASI-JUDICIAL**

COMMITTEE: **FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS**

LINK TO STRATEGIC BLUEPRINT: **EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

At its meeting of July 25, 2018, the School Board approved Agenda Item H-3 (Bid Protest Notification), sponsored by Ms. Maria Teresa Rojas, Board Member, directing the Superintendent, with the assistance of the School Board Attorney, to recommend Board Policy amendments that would require certain notifications to the Board regarding bid protests. This item requests that the Board approve proposed amendments to Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial*, that require the Board Clerk to forward a copy of any Notice of Protest to the Board upon receipt. After a Notice of Protest is filed, the amendments would require the Clerk to notify the Board when a formal protest is filed and also to notify the Board if no formal protest is filed after the statutory time period for filing a formal protest has elapsed. The Board will also be notified of the resolution of any bid protest, whether or not it requires a formal administrative hearing.

This item also requests the Board's approval for technical amendments to Policy 0133 related to hearings for charter school terminations and non-renewal hearings necessitated by HB 7055 in the last Florida legislative session and to change the name of the policy to *Quasi-Judicial Proceedings*.

Attached is the Notice of Intended Action and Policy amendment. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial*.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on September 5, 2018, its intention to amend Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial*, on October 10, 2018.

PURPOSE AND EFFECT: Proposed amendments to Board Policies 6320, *Purchasing*, and 0133, *Quasi-Judicial*, would require the Board Clerk to forward a copy of any Notice of Protest to the Board upon receipt. After a Notice of Protest is filed, the amendments would require the Clerk to notify the Board when a formal protest is filed and also to notify the Board if no formal protest is filed after the statutory time period for filing a formal protest has elapsed. The Board will also be notified of the resolution of any bid protest, whether or not it requires a formal administrative hearing.

SUMMARY: The proposed Board Policy amendments would require certain notifications to the Board regarding bid protests. Technical amendments to Policy 0133, *Quasi-Judicial*, are also proposed related to hearings for charter school terminations and non-renewal hearings necessitated by HB 7055 in the last Florida legislative session and to change the name of the policy to *Quasi-Judicial Proceedings*.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1), (2) (12); 1001.42 (12); 1001.43(2)(6)(10); 1001.49(3), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.42(12)(j); 1001.43(10), 1002.33(8)(b) F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING on October 10, 2018, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by October 1, 2018, to the Superintendent, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. Section 286.0105, F.S.

COPIES OF THE PROPOSED AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.

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PURCHASING

2 All procurement of supplies, materials, equipment, and services paid for from county
3 school funds shall be the responsibility of the procurement department under the
4 general supervision of the Chief Procurement Officer and shall be made in
5 accordance with all applicable State statutes, Florida State Board of Education
6 Rules, School Board policies, and administrative procedures.

7 No person may make any purchase with Board funds unless authorized to do so by
8 Board policy or by administrative directive, or manuals approved by the
9 Superintendent.

10 The agency designated for making purchases with Board funds is the Board's
11 Procurement Management Services.

12 Payment for any unauthorized purchase may be the responsibility of the person
13 placing the order.

14 **Definitions**

15 A. *Competitive Solicitation* - purchasing made through the issuance of
16 an invitation to bid, request for proposals, and invitation to
17 negotiate.

18 B. *Construction Services* - all labor, services, and materials provided in
19 connection with the construction, alterations, repair, demolition,
20 reconstruction, or any other improvements to real property.

21 C. *Cooperative Purchasing* - action taken when two (2) or more entities
22 combine their requirements to obtain advantages of volume
23 purchases including administrative savings and other benefits.
24 Cooperative procurement efforts may result in contracts that other
25 entities may "piggyback".

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- 1 D. *Invitation to Bid* - a written solicitation for competitive sealed bids
2 used when the Board is capable of specifically defining the scope of
3 work for which a contractual service is required or when the Board
4 is capable of establishing precise specifications defining the actual
5 commodity or group of commodities required.
- 6 E. *Invitation to Negotiate* - a written solicitation for competitive sealed
7 replies to select one (1) or more vendors with which to negotiate for
8 the procurement of commodities or contractual services used when
9 the Board determines that negotiations may be necessary to receive
10 the best value.
- 11 F. *Originating Department* - the department requesting informal and/or
12 formal solicitations. This department is responsible for the product
13 and/or services sought and for monitoring vendor performance.
- 14 G. *PCards* - a payment method in which School District requisitioners
15 purchase directly from a vendor using a credit card; a
16 pre-established credit limit is generally established for each card
17 issued.
- 18 H. *Proposer* - vendors submitting bids or responses to a competitive
19 solicitation.
- 20 I. *Request for Information* - a non-binding method whereby a
21 jurisdiction publishes via newspaper, internet, or direct mail its
22 need for input from interested parties for an upcoming solicitation.
23 A procurement practice used to obtain comments, feedback, or
24 reactions from potential suppliers (contractors) prior to issuing of a
25 solicitation. Generally price or cost is not required. Feedback may
26 include best practices, industry standards, technology issues, etc.

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1 J. *Request for Proposals* - a written solicitation for competitive sealed
2 proposals used when it is not practicable for the Board to
3 specifically define the scope of work for which the commodity, group
4 of commodities, or contractual service is required and when the
5 Board is requesting that a responsible vendor propose a commodity,
6 group of commodities, or contractual service to meet the
7 specifications of the solicitation document.

8 K. *State Appropriated Funds* - funds appropriated in the Florida
9 General Appropriations Act, excluding Federal funds; does not
10 include general obligation bond funds for capital construction or
11 funds raised through local capital outlay millage.

12 L. *Vendor File* - accumulated record of a vendor maintained by
13 Procurement Management Services, including information on the
14 vendor's relationship with the Board, application for inclusion on
15 the bidder's list, record of performance under contracts, and
16 correspondence.

17 **Purchase Approval and Competitive Bidding Process Requirements**

18 Responsibilities

19 The Superintendent shall be responsible for the procurement of supplies, materials,
20 equipment, and services paid for from Board funds. The several schools,
21 departments, and agencies of the District under the jurisdiction of the Board shall
22 purchase their materials or commodities through the Procurement Management
23 Services, the Board's official purchasing agency. All purchases shall comply with
24 law, rules, regulations, and Board policies. The Superintendent may approve or
25 reject purchase requisitions when the total amount does not exceed \$50,000 or the
26 current threshold set by statute. Purchases in excess of \$50,000 or current
27 threshold set by statute shall be approved by the Board except for those delineated
28 below:

29 A. The Superintendent may be authorized to purchase commodities or
30 contractual services where the total amount does not exceed an
31 amount prescribed by the Board, and does not exceed the applicable
32 appropriation in the District budget. The Superintendent may also
33 be authorized to purchase commodities or is exempt by statute or
34 Florida Administrative Code, or contractual services under

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- 1 Department of Management Services State term contracts. The
2 Superintendent may authorize designated staff to perform these
3 purchasing tasks.
- 4 B. Where the purchasing agent for any public agency is authorized by
5 law to make purchases for the benefit of other governmental
6 agencies within the county, the Board shall have the option to
7 purchase under the current contracts as established for these public
8 agencies at or below the stated unit price, if the purchase is
9 economically advantageous to the Board, and the items purchased
10 conform to the standards and specifications prescribed by the
11 Superintendent.
- 12 C. As required by F.S. 1001.42(12)(j), the Board shall receive and
13 consider available prices according to the rules of the Department of
14 Management Services, Division of Purchasing. The Board may use
15 prices established by the Division of Purchasing through its State
16 purchasing agreement price schedule. If Board policy provides for
17 purchasing under this State purchasing program, the conditions for
18 use shall be those imposed on State agencies.
- 19 D. In lieu of requesting competitive solicitations from three (3) or more
20 sources, the Board may make purchases at or below the specified
21 prices from contracts awarded by other city or county governmental
22 agencies, other school boards, community colleges, Federal
23 agencies, the public or governmental agencies of any state, or from
24 State university system cooperative bid agreements, when the
25 proposer awarded a contract by another entity permits purchases by
26 a school board on the same terms, conditions, and prices (or below
27 such prices) awarded in the contract, and the purchases are
28 economically advantageous to the Board.
- 29 E. Except as authorized by law or rule, competitive solicitations shall
30 be requested from three (3) or more sources for any authorized
31 commodities or contractual services exceeding \$50,000.
- 32 F. The requirement for requesting competitive solicitations for
33 commodities or contractual services from three (3) or more sources
34 is waived pursuant to F.S. 1010.04(4)(a), for:
- 35 1. the purchase by the Board of professional services which
36 shall include artistic services, academic program reviews,
37 lectures by individuals, auditing services not subject to

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- 1 F.S. 218.391, legal services, including attorney, paralegal,
2 expert witness, court reporting, appraisal or mediator
3 services; and health services involving examination,
4 diagnosis, treatment, prevention, medical consultation or
5 administration; and
- 6 2. the purchase by the Board of educational services and
7 copyrighted materials including educational tests, textbooks,
8 printed instructional materials, computer software, films,
9 filmstrips, videotapes, DVDs, disc or tape recordings, digital
10 recordings, or similar audio-visual materials, and for library
11 and reference books, and printed library cards where these
12 materials are purchased directly from the producer or
13 publisher, the owner of the copyright, an exclusive agent with
14 the State, a governmental agency or a recognized educational
15 institution.
- 16 G. The Board shall have the authority to reject any or all proposals
17 submitted in response to any competitive solicitation and to request
18 new proposals or purchase the required commodities or contractual
19 services in any other manner authorized by this section.
- 20 H. The purchase of food products except milk, required for the School
21 Food Service Program and other ancillary food operations are
22 exempt from the bid requirements pursuant to State Board of
23 Education Rule F.A.C. 6A-7.0411(2)(i)2.
- 24 I. Additional exemptions authorized under certain conditions:
- 25 The requirements for requesting competitive solicitations and
26 making purchases for commodities and contractual services are
27 waived pursuant to F.S. 1010.04(4)(a), when the following conditions
28 have been met by the Board:
- 29 1. competitive solicitations have been requested in the manner
30 prescribed by this rule, and
- 31 2. the Board has made a finding that no valid or acceptable firm
32 proposal has been received within the prescribed time.

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1 When such a finding has been officially made, the Board may enter
2 into negotiations with suppliers of such commodities and
3 contractual services and shall have the authority to execute
4 contracts with such vendors under the terms and conditions the
5 Board determines are in its best interests.

6 If fewer than two (2) responsive proposals for commodity or
7 contractual services are received, the Board may negotiate the best
8 terms and conditions or decide to reject all proposals. The Board
9 shall document the reasons that negotiating terms and conditions
10 with the sole proposer is in the best interest of the School District in
11 lieu of soliciting new proposals.

12 J. Commodities or contractual services available from a single source
13 may be exempted from the competitive solicitation requirements.
14 When the Board believes that commodities or contractual services
15 are available only from a single source, the Board shall electronically
16 or otherwise publicly post a description of the commodities or
17 contractual services for a period of at least seven (7) business days.
18 The description must include a request that prospective vendors
19 provide information regarding their ability to supply the
20 commodities or contractual services described. If it is determined in
21 writing by the Board, after reviewing any information received from
22 prospective vendors, that the commodities or contractual services
23 are available only from a single source, the Board shall provide
24 notice of its intended decision to enter a single source contract in
25 the manner specified in F.S. 120.57(3), and may negotiate the best
26 terms and conditions with the single source vendor.

27 K. The Board may dispense with requirements for competitive
28 solicitations for the emergency purchase of commodities or
29 contractual services when the Superintendent determines in writing
30 that an immediate danger to the public health, safety, or welfare or
31 other substantial loss to the School District requires emergency
32 action. After the Superintendent makes such a written
33 determination, the Board may procure commodities or contractual
34 services necessitated by the immediate danger, without requesting
35 competitive solicitations. However, such an emergency purchase
36 shall be made by obtaining pricing information from at least two (2)
37 prospective vendors, which must be retained in the contract file,

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- 1 unless the Superintendent determines in writing that the time
2 required to obtain pricing information will increase the immediate
3 danger to the public health, safety, or welfare or other substantial
4 loss to the District.
- 5 L. A contract for commodities or contractual services may be awarded
6 without competitive solicitations if State or Federal law, a grant or a
7 State or Federal agency contract prescribes with whom the Board
8 must contract or if the rate of payment is established during the
9 appropriations process.
- 10 M. A contract for regulated utilities or government-franchised services
11 may be awarded without competitive solicitations.
- 12 N. As much as practicable, all purchases shall be based on contracts,
13 purchasing card systems, electronic procurements, or purchase
14 orders.
- 15 O. The Board, when acquiring, whether by purchase, lease, lease with
16 option to purchase, rental or otherwise, information technology, as
17 defined in F.S. 282.0041(15), may make acquisitions through the
18 competitive solicitation process or by direct negotiation and contract
19 with a vendor or supplier, as fits the needs of the School District as
20 determined by the Board.
- 21 P. Except as otherwise required by statute, the Board, when
22 purchasing insurance, entering risk management programs, or
23 contracting with third party administrators, may use the competitive
24 solicitation process or direct negotiations and contract.
- 25 Q. Emergency purchases made and approved by the Superintendent or
26 the Superintendent's designated representative. The
27 Superintendent will report all emergency purchases to the Board, as
28 soon as possible.
- 29 When an emergency arises, circumstances contributing to such an
30 emergency shall be communicated to the proper department or
31 agency of the Board, which in turn will notify Procurement
32 Management, requesting the emergency purchase.
- 33 A requisition for an emergency purchase shall be accompanied by
34 the appropriate Emergency Purchase Request Form, explaining the
35 circumstances creating the emergency and clarifying that immediate

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- 1 action is required to protect the Board's interests. Emergency
2 purchases are divided into two (2) categories as follows:
- 3 1. Emergency Purchase Request (Form B FM-3739) estimated
4 expenditure \$50,000 and under requires the signature of the
5 initiating administrator, recommended by Director or above
6 and approval by the Assistant Superintendent or above.
- 7 2. Emergency Purchase Request (Form A FM-2333) estimated
8 expenditure over \$50,000 requires the signature of the
9 initiating administrator, recommended by the Assistant
10 Superintendent or above, or his/her designee(s) and approval
11 by Superintendent or designee. Emergency purchases over
12 \$50,000 shall be reported to the Board.
- 13 R. Competitive bidding is waived for purchases of maintenance and/or
14 service contracts, on various types of technical equipment, that are
15 offered and/or supplied only by the original manufacturer or its
16 representative, or that are required to maintain the integrity of the
17 manufacturer's warranty, or that are part of the manufacturer's
18 rental/lease/lease purchase agreements terms and conditions.
- 19 S. Non-Purchase Order Invoice Funds Reservation Purchases are
20 purchases for goods and services, expenditures, fund transfers, etc.,
21 where a professional service contract is not required, or a bid is in
22 place and that are not appropriate for normal competitive
23 purchasing procedures. Only the expenditures listed below will be
24 authorized and processed as Non-Purchase Order Invoice Funds
25 Reservation Purchases. Non-Purchase Order Invoice Funds
26 Reservation purchases require the same financial authorization and
27 approval process as purchase requisitions and shopping carts.
28 Those purchases for goods and services, expenditures, fund
29 transfers, etc., that are authorized for Non-Purchase Order Invoice
30 Funds Reservation Purchases are limited to include various types of
31 fund advances, services, reimbursements and purchases, and/or
32 payment for goods and services, which are not appropriate for
33 normal competitive purchasing procedures:
- 34 1. additional services where a professional service contract is
35 not required or there is no bid in place (polygraph,
36 transcribing, etc.)

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- 1 2. employee related admission/registration fees to workshops
2 and conferences that are not expensed to out-of-county travel
3 (all out-of-county travel must be entered through and
4 approved by the travel system process)

- 5 3. association fees, professional association dues, academy
6 certification requirements and District membership to
7 organizations

- 8 4. internal distribution of funds to school athletic programs,
9 vending machine commissions, diplomas, and savings
10 programs

- 11 5. District rental/lease of facilities

- 12 6. all utility service, connection charges, and fees

- 13 7. graduation program fees (non-employees, union charges,
14 etc.), including facility rental, equipment requirements,
15 foliage rental, non-employees, and union charges

- 16 8. student related field trips that are not handled through a tour
17 company or travel agency, tickets, and admissions to parks,
18 registration fees for competitions, and hotel accommodations

- 19 9. groceries and supplies for educational use in alternative
20 programs or academic requirements

- 21 10. insurance policies payments/reimbursements, State fees
22 (retirement, unemployment compensation, etc.), tax related
23 payments, legal settlement payments and bonds, license fees
24 and agreements, permit fees, property loss payment

- 25 11. media advertising (newspaper, radio, television, banners,
26 brochures, pamphlets, etc.)

- 27 12. grant authorized workshop reimbursements including
28 refreshments

- 29 13. petty cash replenishment

- 30 14. postage requisitions

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- 1 15. toll charges for authorized District departments
- 2 16. travel reimbursement for non-employees
- 3 T. In accordance with State law and Policy 6327, Public-Private
4 Partnerships and Unsolicited Proposals, the Superintendent may
5 submit proposed public-private partnership agreements for
6 qualifying projects, including those resulting from unsolicited
7 proposals, to the Board for consideration. The Superintendent and
8 Board shall evaluate and consider all proposed public-private
9 partnership agreements according to the guidelines in F.S. 255.065
10 and Policy 6327.
- 11 U. Procurement Management Services staff will provide the Board a
12 quarterly written expenditure report of purchases made using the
13 exemptions above and that exceed \$100,000.00. The report shall
14 include date of purchase, vendor, amount, funding source, and
15 purchasing authority.

16 **Competitive Bidding Requirement**

17 A. Written or Electronic Quotations (Request for Quotes)

18 For each purchase of \$50,000 or less and over the minimum
19 quotation threshold established by Procurement Management
20 Services, staff shall obtain written, telephone, or electronic
21 quotations from three (3) or more sources. If possible, vendors
22 contacted shall include M/WBE vendor participation. If only one (1)
23 of those sources respond with prices, two (2) additional sources, if
24 available, may be contacted for pricing, including, if possible, an
25 M/WBE vendor. If no additional prices are obtained from those
26 sources, the award shall be made to the vendor who submitted the
27 lowest and best price quotation. If all three (3) of the vendors first
28 contacted for prices respond with valid price quotations, the award
29 shall be made to the vendor who submitted the lowest price
30 quotation meeting the bid specifications, with no additional requests
31 from other vendors required.

32 Quotations obtained shall be attached to or included with the
33 purchase order by written notations or electronic reference
34 indicating quotation prices and sources, certification by signature or
35 facsimile. The requisition shall be approved for purchase as

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1 authorized by the Superintendent. All internal fund purchases shall
2 comply with Policy 6610.

3 B. Invitation to Bid

4 1. The Board may accept the proposal of the lowest responsive,
5 responsible proposer. Alternatively, the Board may award
6 contracts to the lowest responsive, responsible bidder as the
7 primary awardee of a contract and to the next lowest
8 responsive, responsible bidder(s) as alternate awardee(s) from
9 whom commodities or contractual services would be
10 purchased should the primary awardee becomes unable to
11 provide all of the commodities or contractual services
12 required by the Board during the term of the contract.
13 Multiple awards to the lowest responsive and responsible
14 bidders are permitted when multiple awards are clearly
15 allowed by the bid solicitation documents.

16 2. When the determination is made that a bid is appropriate, the
17 performance specifications and standard requirements shall
18 be stated in detail and shall be furnished to Procurement
19 Management Services. After review, Procurement
20 Management Services shall issue the invitation to bids,
21 including all general and special conditions, and evaluate the
22 bids submitted. The requirements for solicitation and review
23 of bids by the Goal Setting Committee (GSC) shall be followed
24 in all cases. Board approval is required for contracts
25 recommended for award.

26 3. For each purchase of more than \$50,000, bids shall be
27 requested from three (3) or more sources. Notices of bids
28 shall be electronically posted or may be sent to all vendors on
29 the active vendor mailing list for that category of goods or
30 services. This list shall include all minority/women business
31 enterprises (M/WBE) vendors, identified by the Board in
32 accordance with Policy 6320.02, for that particular category
33 of goods or services, as well as organizations involved in
34 assisting M/WBEs. Notices of bids shall be advertised in
35 one (1) or more major local newspapers or electronically
36 posted at least seven (7) days prior to the bid opening date.
37 This may include, as necessary, major newspapers having
38 circulation representative of the various relevant minority
39 classifications or electronic posting. Tabulations of current

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1 bids shall be retained in bid files and shall be available for
2 reference. Standard bid forms used shall be those approved
3 by the Superintendent and the Board attorney's office.

4 C. Development of Specifications, Determination of Quantities, and
5 Standardization of Supplies and Equipment

6 1. To achieve both quality control and the price advantages of
7 quantity purchasing, the administration shall:

8 a. establish specifications for goods and services as
9 needed;

10 b. identify several existing, commercially available
11 "standard brands" that meet the specifications
12 acceptable as examples; and

13 c. invite vendors to bid on the standard brands identified
14 or their equivalent.

15 2. All bid quantities and specifications shall be transmitted to
16 Procurement Management Services by the originating
17 department in writing. The originating department shall also
18 certify to Procurement Management Services in writing that
19 the specifications for an existing bid (to be rebid) are still
20 appropriate before issuance of the bid. Specifications
21 originated by Procurement Management Services shall follow
22 similar certification procedures.

23 3. All increases to quantities specified in an existing term bid
24 requiring a supplemental bid award shall be requested in
25 writing by the originating department, countersigned by an
26 administrator reporting directly to the Superintendent, and
27 identifying the reason why the increase in quantities was
28 unavoidable. If an adequate reason cannot be identified, then
29 the corrective action to be taken by the originating
30 department to prevent a future underestimate of quantities
31 shall be described. A similar procedure will be followed for
32 term bids originated by Procurement Management Services.

33 4. All changes to specifications for an existing bid (to be rebid) or
34 similar bid shall be identified in writing, including the reason

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1 for the change, by the originating department or Procurement
2 Management Services if it is the originator.

- 3 5. The chief procurement officer of Procurement Management
4 Services shall identify specifications which appear to limit the
5 bidding process to a single vendor. In the event that the chief
6 procurement officer has identified such a set of specifications,
7 the originating department shall be required to justify in
8 writing the specifications which appear to favor a single
9 vendor. This documentation shall be countersigned by an
10 administrator reporting directly to the Superintendent.

11 D. Request for Proposals (RFP)

12 The Board may award contracts to one (1) or more responsive,
13 responsible proposers in accordance with the selection criteria
14 published in the request for proposal. The Board is not required to
15 request proposals for purchases made from contracts of the
16 Department of Management Services.

17 The RFP shall be used when the purposes and uses for which the
18 commodity, group of commodities, or contractual service being
19 sought can be specifically defined and the agency is capable of
20 identifying necessary deliverables. Various combinations or versions
21 of commodities or contractual services may be proposed by a
22 responsive vendor to meet the specifications of the solicitation
23 document. A written solicitation includes a solicitation that is
24 electronically posted.

25 The following process shall be followed for an RFP:

- 26 1. For contracts estimated to be more than \$50,000 annually:
- 27 a. Prior to issuing the RFP and in accordance with Board
28 Policy 6320.02, the GSC shall review the RFP to
29 determine Small Business Enterprise (SBE), Micro
30 Business Enterprise (MBE), M/WBE participation in
31 the project.

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1 e. other instructions specific to RFP.

2 E. Invitation to Negotiate

3 The Invitation to Negotiate (ITN) shall be used when a written
4 solicitation obtains competitive sealed proposals and the evaluation
5 committee recommends selecting one (1) or more vendors with
6 which to negotiate for the procurement of commodities or
7 contractual services and when the Board determines that
8 negotiations may be necessary to receive the best value.

9 Invitations to Negotiate shall follow the process noted above for
10 RFPs.

11 F. Evaluation Committee Meetings

12 1. The committee shall consist of at least: 1) two (2) individuals
13 from the originating department; however, not more than
14 one (1) of these individuals can be from the requesting
15 department bureau; 2) two (2) individuals from outside the
16 requesting department; 3) one (1) individual from the Office of
17 Economic Opportunity; and 4) one (1) individual from
18 Procurement Management Services (non-voting). Additional
19 members may be appointed at the discretion of the
20 Superintendent. The committee shall to the extent possible,
21 be ethnically and gender representative.

22 2. These meetings are subject to F.S. Chapter 286 except for
23 meetings in which the vendors will be making oral
24 presentations and answering questions as part of the
25 solicitation process which shall be closed to the public in
26 accordance with F.S. 286.0113(2)(b)(1).

27 3. When committees are established to evaluate a RFP, the
28 Procurement Management Services staff will conduct the
29 meetings, and ensure that: 1) minutes are recorded, and
30 2) proper documentation and records of committee actions
31 are maintained.

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- 1 4. The evaluation committee's written recommendation must
2 include the following for inclusion in the master file within
3 Procurement Management Services:
 - 4 a. clear objective of the RFP,
 - 5 b. identification of the committee members,
 - 6 c. committee meeting dates and brief synopsis of the
7 general discussion,
 - 8 d. dates of any or all interviews,
 - 9 e. name and location of the offeror(s),
 - 10 f. evaluation criteria,
 - 11 g. explanation of the basis for selection,
 - 12 h. recommendation of acceptance of the offeror(s)
13 proposal,
 - 14 i. committee member votes.
- 15 G. When the committee evaluation process is complete, the
16 Superintendent will forward the recommendations to the Board for
17 approval before any contract will be issued.
- 18 H. The following exceptions to this rule apply:
 - 19 1. Contracts for legal services by the Board attorney and the
20 attorneys supervised by the Board attorney, contracted
21 third-party claims administration, nonpublic school
22 placements and other services/goods for which selection
23 procedures are provided by State statute, State Board rule, or
24 other Board policy.

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- 1 2. The Professional Services Contract Committee (PSCC) may
2 consider requests for exceptions. The committee shall be
3 comprised of three (3) representatives from senior staff,
4 two (2) representatives from education and curriculum,
5 one (1) representative from the GSC, one (1) representative
6 from the Office of Economic Opportunity (OEO), and
7 nonvoting representatives, from Procurement Management
8 Services, Board attorney's office, and Management and
9 Compliance Audits. Exceptions may be granted for sole
10 source contracts, contractors having specific expertise, or as
11 otherwise determined by the committee to be in the best
12 interest of the Board. For contracts with an annual estimated
13 cost of more than \$50,000, exceptions recommended by the
14 committee must be approved by the Board.
- 15 I. RFP and Professional Service Contracts:
- 16 Professional service is any type of personal service to the District
17 which requires as a condition precedent to the rendering of such
18 service:
- 19 1. the obtaining of a license or other legal authorization; or
- 20 2. work which can only be performed by one (1) who has
21 achieved a high level of training and proficiency in the work to
22 be performed.
- 23 Where the contract is estimated to cost less than \$50,000, but more than the
24 threshold established for quotations, and an exception for the procedure outlined
25 above is sought, the contract is not required to be submitted to the Board for
26 approval if the committee has granted an exception pursuant to this policy.
- 27 The Board may make further exceptions on a case-by-case basis upon
28 recommendation of the Superintendent.

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1 **Purchase Requisitions**

2 District schools, departments, and agencies shall initiate a properly executed
3 purchase requisition, containing authorized approvals of the originating
4 administrator, principal, department or agency head, for the purchase of any and all
5 items desired, except where small purchases, transactions not in excess of
6 \$3,000.00 per requisition, and market difficulties, make the cost of some purchases
7 in this manner economically unsound. In those instances, administrative directives
8 or operating manuals may be issued, when deemed necessary, containing the
9 procedures to economically perform the purchasing function within the controls
10 required and authority provided by Florida statute, Florida Board of Education
11 Administrative Rules and Board policies.

12 Split requisitions, to bypass the approval requirements and/or the bidding process,
13 are specifically forbidden.

14 Requisitions must contain the appropriate authorized approvals as prescribed by
15 administrative procedures for the SAP system.

16 **Protests**

17 A bidder, who wishes to file a bid protest, must file such notice and follow
18 procedures prescribed by F.S. 120.57(3) and Bylaw 0133, for resolution.

19 **Protest of Specifications**

20 Any notice of protest of the specifications contained in an Invitation to Bid (ITB) or
21 Request for Proposal (RFP) shall be filed accordance with Board Bylaw 0133.

22 For a protest of the specifications contained in an Invitation to Bid (ITB) or in a
23 Request for Proposals (RFP), the Notice of Protest shall be filed in writing within
24 seventy-two (72) hours after the posting of a solicitation. The Formal Written Protest
25 shall be filed within ten (10) calendar days after the date the notice of protest is filed.
26 Failure to file a Notice of Protest or failure to file a Formal Written Protest shall
27 constitute a waiver of proceedings under this rule. The Formal Written Protest shall
28 state with particularity the facts and law upon which the protest is based.
29 Saturdays, Sundays, and legal holidays shall be excluded in the computation of the
30 seventy-two (72) hour time period provided by this paragraph.

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1 **Posting the Bond**

2 The protesting party shall post a bond in a form consistent with F.A.C.
3 Rule 28-110.005(2). A notice of decision or intended decision shall contain this
4 statement: "Failure to file a protest within the time prescribed in F.S. 120.57(3), or
5 failure to post the bond or other security required by law within the time allowed for
6 filing a bond shall constitute a waiver of proceeding under F.S. Chapter 120."

7 A. Bond: Commodities (Other than Lease of Space) and Contractual
8 Services (Including Professional Services and Insurance) – Pursuant
9 to F.S. 287.042(2)(c), any person who files an action protesting a
10 decision or intended decision pertaining to a solicitation or contract
11 award shall post with the Board, at the time of filing the formal
12 written protest, a bond secured by an acceptable surety company in
13 Florida, payable to The School Board of Miami-Dade County,
14 Florida, in an amount equal to one percent (1%) of the District's
15 estimate of the dollar value of the proposed contract.

16 1. The District shall provide the estimated contract amount to
17 the protestor within seventy-two (72) hours (excluding
18 Saturdays, Sundays, and holidays when the District
19 administrative office is closed) after the filing of the Notice of
20 Protest. The estimated contract amount is not subject to
21 protest under this policy or F.S. 120.57(3). In lieu of a bond,
22 the Board may accept a cashier's check or money order in the
23 amount of the bond.

24 2. The bond shall be conditioned upon the payment of all costs
25 and charges which may be levied against the protestor in the
26 administrative hearing in which the action is brought and in
27 any subsequent appellate court proceeding.

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**THE SCHOOL BOARD OF
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- 1 3. Pursuant to F.S. 287.042(2)(c), if, the Board prevails in the
2 administrative hearing process and any appellate court
3 proceedings, it shall be entitled to recover all costs and
4 charges which are included in the final order or judgment,
5 excluding attorneys' fees. Upon payment of such costs and
6 charges by the person protesting the decision or intended
7 decision or contract award, the bond, cashier's check, or
8 money order shall be returned to the protestor. If the
9 protestor prevails, the protestor may recover from the Board
10 the costs and charges which are included in the final order or
11 judgment, excluding attorneys' fees.
- 12 B. Bond: Competitive Bids for Lease of Space -- Pursuant to
13 F.S. 255.25(3)(c), any person who files an action protesting a
14 decision or intended decision pertaining to a competitive bid for
15 space to be leased by the Board shall post with the Board, at the
16 time of filing the formal written protest, a bond payable to the Board
17 in an amount equal to one percent (1%) of the estimated total rental
18 of the basic lease period or \$5,000, whichever is greater. The bond
19 shall be conditioned upon the payment of all costs which may be
20 levied against him/her in the administrative hearing in which the
21 action is brought and in any subsequent appellate court proceeding.
22 If the Board prevails in the administrative hearing process and any
23 appellate court proceedings, it shall recover all costs and charges,
24 which are included in the final order or judgment, excluding
25 attorneys' fees. Upon payment of such costs and charges by the
26 person protesting the award, the bond shall be returned to him/her.
27 If the person protesting the award prevails, the bond shall be
28 returned to that person and s/he shall recover from the Board the
29 costs and charges which are included in the final order or judgment,
30 excluding attorneys' fees.

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- 1 C. Bond: Construction Purchasing – Construction purchasing is
2 separately governed by Board policy, and persons protesting
3 competitive procurement related to educational facilities shall be
4 required to post a bond in the amount specified in F.S. 255.0516,
5 which also governs recovery of fees and costs including attorneys’
6 fees.
- 7 D. Staying the Procurement Process – Upon timely receipt of the formal
8 written protest petition, and posting of the bond, the solicitation or
9 contract award process shall be stayed until the protest is resolved
10 by final agency action, unless the Board sets forth, in writing,
11 particular facts and circumstances which require the continuance of
12 the solicitation or contract award process in order to avoid an
13 immediate and serious danger to the public health, safety, and
14 welfare.

15 **Protest of Bid Award**

16 ~~Any letters of protest of an intended award may be filed in writing with the Clerk of~~
17 ~~the Board who shall maintain offices in the Board Administration Building.~~

18 Any person who is adversely affected by the ~~agency~~Board’s decision or intended
19 decision, shall file ~~with the agency~~ a Notice of Protest in writing with the Clerk of the
20 Board, who shall maintain an office in the Board Administration building, within
21 seventy-two (72) hours after the posting of the bid tabulation or after receipt of the
22 notice of the ~~agency~~Board’s decision or intended decision and shall file a Formal
23 Written Protest within ten (10) calendar days after filing the Notice of Protest. The
24 protesting bidder shall also be required to post a bond, consistent with this rule.
25 Failure to file a Notice of Protest or failure to file a Formal Written Protest shall
26 constitute a waiver of proceedings under F.S. Chapter 120.57. The formal written
27 protest shall state with particularity the facts and law upon which the protest is
28 based. Saturdays, Sundays, and legal holidays shall be excluded in the
29 computation of the seventy-two (72) hour time period provided by this paragraph.

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1 The Formal Written Protest will be reviewed by Procurement Management Services,
2 who will offer the protesting bidder the opportunity to meet and discuss the merits
3 of the protest. If the protest is not resolved, the matter may be referred for
4 proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests
5 pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board
6 Bylaw 0133 on quasi-judicial proceedings.

7
8 Upon receipt, the Board Clerk shall forward a copy of any Notice of Protest to the
9 Board. After a Notice of Protest is filed, the Clerk shall notify the Board upon receipt
10 of a Formal Written Protest, and shall also notify the Board if no Formal Written
11 Protest is submitted after the statutory time period for filing a Formal Written
12 Protest has elapsed. The Clerk will inform the Board of the final resolution of any
13 Formal Written Protest, regardless of whether the resolution involved a formal
14 administrative hearing. If the resolution involved a formal administrative hearing,
15 the Board will be informed of the results in accordance with Policy 0133, *Quasi-*
16 *Judicial Proceedings.*

17 **Receiving and Opening of Bids**

18 The Superintendent, or an administrator designated by the Superintendent, shall
19 designate the time and place for receiving and opening of bids.

20 A. Bids are to be submitted to Procurement Management Services or
21 electronically up to the time and on the date specified in the bid
22 documents. Bids received after the date and hour specified in the
23 Bidder Qualification Form will not be considered.

24 B. The following persons shall participate in the bid opening function:

25 1. The District Director, Procurement Management Services, or
26 an administrator designated by the District Director shall
27 serve as chairperson.

28 2. A person designated by the District Director, Procurement
29 Management, to record the minutes of the bid opening, and
30 such minutes shall be reported to the Board at the next
31 regularly scheduled Board meeting.

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- 1 3. The Executive Director, Project and Contract Management, or
2 an administrator designated by the Executive Director.
- 3 4. Those additional administrators and support staff required
4 for the efficient handling of this procedure.
- 5 C. All construction bids shall be opened and tabulated prior to bids
6 being released by the recording secretary.

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1 D. All purchasing bids will be recorded at the time they are received,
2 showing the bid number, bid title, and the names of the bidders
3 submitting bid forms. The record shall be made prior to the release
4 of the bid material by the recording secretary.

5 The above guidelines for receiving bids do not apply to the awarding of bids at Board
6 meetings.

7 **The Recording or Tabulation of Purchasing Bids**

8 The names of bidders, the prices submitted, and such other pertinent data, will be
9 electronically available or entered on a tabulation sheet by Procurement
10 Management Services. This information shall be available as set forth in
11 F.S. 119.07.

12 **Rejection of Bids**

13 The right to reject any and all bids is reserved by the Board and such reservation
14 shall be indicated in all advertising and invitations. When bids are rejected and the
15 project or requirement is not abandoned, new bids may be issued. Bids which
16 contain any alterations or erasures may be rejected. Bids will be rejected for good
17 and sufficient cause, such as faulty specifications, excessive cost, and abandonment
18 of the requirements, insufficient funds, or other irregularities. Bids may be rejected
19 for failure by the bidder to comply with any requirement stated in the bid document,
20 the bid proposal form, or any attachments which become part of the bid.

21 **Irregular or Deviating Bids**

22 In the event that Procurement Management Services wishes to make a
23 recommendation of an award of a bid to a bidder who has deviated from
24 specifications, or in which there is any irregularity, the report recommending such
25 an award should contain in detail: the manner in which the bid deviates from the
26 specifications or is irregular, the reasons for the recommendation of the award, and
27 approval by the Board Attorney.

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1 **Award Recommendation**

2 Notice of Intended Action will be posted on the District's website for Procurement
3 bids no later than the Friday preceding the week when the award is scheduled to be
4 made by the Board or Superintendent.

5 **Official Award Date**

6 Awards become official when made, unless otherwise specified in the award
7 recommendation.

8 **Contract Renewals**

9 The Board shall have the authority to award bids and reject any or all bids. The
10 Superintendent shall have the authority to exercise, in subsequent years, any
11 renewal options included in a bid solicitation, provided terms and conditions are
12 favorable for the School District and subject to the availability of funds.

13 **Legal Basis for Procedures**

14 The procedures for the purchase of commodities and services, and construction of
15 facilities for the District shall comply with the Florida statutes and the Florida
16 Administrative Code.

17 **Bidding**

18 It is the policy of the Board that the Superintendent shall be responsible for
19 estimating needs for items in common use and making quantity purchases. All
20 items, or group of related items that cost in excess of the amount defined in
21 F.A.C. 6A-1.012(6), shall be purchased based on competitive bids, except as
22 otherwise authorized by Florida statutes and/or Florida Administrative Code.

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1 **Identical Prices/Points--Priorities for Award**

2 When identical prices/points are received from two (2) or more vendors/firms and all
3 other factors are equal, priority for award shall be given to vendors/firms in the
4 following sequence:

- 5 A. A business that certifies that it has implemented a drug-free work
6 place program shall be given preference in accordance with the
7 provisions of F.S. 287.087;
- 8 B. Local vendor as defined by Board Policy 6320.05;
- 9 C. Certified service-disabled Veteran business;
- 10 D. A certified Minority/Women Business Enterprise vendor;
- 11 E. The Miami-Dade County SBE/Micro/Minority/Women Business
12 Enterprise vendor;
- 13 F. The Broward, Palm Beach or Monroe County
14 SBE/Micro/Minority/Women Business Enterprise vendor;
- 15 G. The Broward, Palm Beach or Monroe County vendor, other than the
16 SBE/Micro/Minority/Women Business Enterprise vendor;
- 17 H. The Florida vendor who is a SBE/Micro/Minority/Women Business
18 Enterprise vendor;
- 19 I. The Florida vendor, other than a Minority/Women Business
20 Enterprise vendor;
- 21 J. The Minority/Women Business Enterprise vendor, who, because of
22 lower prices, receives a larger dollar award for other items; and
- 23 K. The SBE/Micro/non-Minority/Women Business Enterprise vendor
24 who, because of lower prices, receives a larger dollar award for other
25 items.

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- 1 In accordance with Florida law, local preference shall not be applied to competitive
2 solicitations for construction services in which fifty percent (50%) or more of the cost
3 will be paid from state-appropriated funds which have been appropriated at the time
4 of the competitive solicitation. The solicitation documents for construction services
5 in this event must disclose that no local preference consideration will be applied.
- 6 If application of the above criteria does not indicate a priority for award or cannot be
7 applied by law, Board administration shall determine if the award is capable of being
8 split, and, if the vendors will agree to split the award. If the award cannot be split,
9 or the vendors do not agree to split the award, the award will be decided by the toss
10 of a coin. The toss of a coin shall be held publicly, with the tie low bid vendors
11 invited to be present as witnesses and participants. A staff member from the
12 Division of Procurement Management will preside over the coin toss and a member
13 from Internal Audits will observe.
- 14 **Vendor Preference for Certified Service-Disabled Veteran Business Enterprises**
- 15 The Board provides a vendor preference for certified service disabled veteran
16 businesses in accordance with Board Policy 6320.02 and State law.
- 17 In assessing priorities for award, when identical prices are received from two (2) or
18 more vendors and all other factors are equal, priority for award shall be given to a
19 certified service-disabled veteran business enterprise as defined by F.S. 295.187 and
20 Policy 6320.02. In the event there are two (2) or more certified-disabled veteran
21 business enterprises entitled to the preference, then the award shall be given to the
22 business having the smallest net worth.
- 23 The vendor preference for certified service-disabled veteran businesses shall be
24 subordinate only to the vendor preference for businesses implementing a drug-free
25 workplace.
- 26 The Board's goal for participation by service disabled veteran business enterprises
27 shall be established at three percent (3%) of the total value of all prime
28 contract/subcontract awards for each fiscal year.

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1 B. Performance Security on Awards Other than Construction

2 1. Bid awards of \$200,000 or less shall be exempt from
3 performance and payment security.

4 2. Performance security shall not be required unless otherwise
5 defined in the bid specification. Performance security shall
6 equal 100% of the award amount.

7 C. Bonding Company Qualifications

8 Bonds shall be written through a reputable and responsible surety
9 bond agency licensed to do business in the State of Florida and with
10 a surety company or corporation meeting both of the following
11 specifications:

12 1. Awards Greater than \$500,000

13 a. A minimum rating in the latest revision of Best's
14 Insurance Reports of:

Contract Amount	Minimum Rating by A.M. Best
------------------------	--

\$200,000.00 to \$5,000,000	A, No Minimum Class
--------------------------------	---------------------

\$5,000,000.01 to \$10,000,000	A, Class IV
-----------------------------------	-------------

\$10,000,000.01 or more	A, Class V
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1 b. Current certificate of authority as acceptable surety on
2 Federal Bonds in accordance with the latest edition of
3 the United States Treasury Department Circular 570
4 entitled "Companies Holding Certificates of Authority
5 as Acceptable Sureties on Federal Bonds and as
6 Acceptable Reinsuring Companies" and shall be
7 accepted for an amount not exceeding the underwriting
8 limitation thereon.

9 2. Awards of \$500,000 or less

10 Bonds shall be written with a surety company or corporation
11 meeting the qualifications as set forth in Paragraph A.2 above
12 or the qualifications set forth in F.S. 287.0935.

13 **Default by Vendor**

14 A bidder who declines an award shall either 1) pay liquidated damages of five
15 percent (5%) of the unit price bid times the quantity, or \$10, whichever is greater, or
16 2) lose eligibility to transact new business with the Board for a period of
17 fourteen (14) months from the date the Board acts on the withdrawn bid.

18 A bidder who accepts an award but fails to perform shall either (1) pay liquidated
19 damages of ten percent (10%) of the unit price of the item(s) awarded times the
20 quantity when no purchase order has been issued, ten percent (10%) of the
21 purchase order when a purchase order has been issued or \$100, whichever is
22 greater, or (2) lose eligibility to transact new business with the Board for a period of
23 fourteen (14) months from date of termination of award by the Board. The
24 ineligibility shall be applicable to the principals individually and the entity, as well
25 as any other firm in which a principal of a defaulting firm is a principal. If an
26 awardee fails to pay the liquidated damages within fifteen (15) days after it is
27 invoked, the awardee shall lose eligibility to transact new business with the Board
28 for a period of fourteen (14) months from the date of termination of award by the
29 Board. Bidders that are determined ineligible may request a hearing pursuant to
30 F.S. 120.57, Board Bylaw 0133. The Board reserves the right to waive liquidated
31 damages/loss of eligibility.

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1 Reinstatement of vendors losing eligibility to transact new business with the Board
2 will not be automatic and will be subject to review by the Contractor Disciplinary
3 Review Committee (CDRC) as defined in Board Policy 6320.04. Vendors will be
4 required to submit a request for reinstatement including, but not limited to,
5 information as to their status as a responsible vendor and what steps have been
6 taken to avoid such a situation which caused their suspension as a District vendor.
7 The CDRC will notify the Board of all vendors denied reinstatement, and the reasons
8 for denial.

9 "Principal" is defined as an officer of a corporation, partner of a partnership, sole
10 proprietor of a sole proprietorship, trustee of a trust, or any other person with
11 similar supervisory functions with respect to any legally organized entity.

12 Vendor suspension shall be governed by and accordance with Board Policy 6320.04.

13 **Signatures of Superintendent and Designees**

14 The Board authorizes the use of signatures of the Superintendent and his/her
15 designees on behalf of the Board on all contracts, agreements, and documents where
16 a signature of the Chair is not required by law or regulation of the Department of
17 Education. All contracts, agreements, and documents must be based upon
18 approvals previously adopted and spread upon the minutes of the Board, unless
19 exempted by Board policy.

20 **Purchasing Principles**

21 Employees shall be guided by the following principles and standards adopted by the
22 National Association of Purchasing Management:

23 A. Consider, first, the interest of his/her company (the Board) in all
24 transactions and to carry out and believe in its established policies.

25 B. Be receptive to competent counsel from his/her colleagues and to be
26 guided by such counsel without impairing the dignity and
27 responsibility of his/her office.

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- 1 C. Buy without prejudice, seeking to obtain the maximum ultimate
2 value for each dollar of expenditure.
- 3 D. Strive consistently for knowledge of the materials and processes of
4 manufacture, and to establish practical methods for the conduct of
5 his/her office.
- 6 E. Subscribe to and work for honesty and truth in buying and selling,
7 and to denounce all forms and manifestations of commercial
8 bribery.
- 9 F. Accord a prompt and courteous reception, so far as conditions will
10 permit, to all who call on a legitimate business mission.
- 11 G. Respect his/her obligations and to require that obligations to
12 him/her and to his/her concern be respected, consistent with good
13 business practice.
- 14 H. Avoid sharp practice.
- 15 I. Counsel and assist fellow purchasing agents in the performance of
16 their duties, whenever occasion permits.
- 17 J. Cooperate with all organizations and individuals engaged in
18 activities designed to enhance the development and standing of
19 purchasing.
- 20 Ethics training on ethical standards that are no lower than those prescribed by the
21 State shall be provided to all employees involved in procurement activities for the
22 Board.

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1 Complaints alleging discrimination against any commercial enterprise doing
2 business with the Board must be filed and will be investigated and addressed in
3 accordance with Board Policy 6465.

4 F.S. 119.07
5 F.S. 120.569
6 F.S. 120.57
7 F.S. 120.57(3)
8 F.S. 255.0516
9 F.S. 255.065
10 F.S. 255.099
11 F.S. 255.0991
12 F.S. 255.25(3)(c)
13 F.S. 282.041(15)
14 F.S. 286.0113(2)(b)(1)
15 F.S. 287.017
16 F.S. 287.042(2)(c)
17 F.S. 287.056
18 F.S. 1001.41(1)(2)
19 F.S. 1001.42(12)(j)
20 F.S. 1001.42(26)
21 F.S. 1001.43(10)
22 F.S. 1006.27
23 F.S. 1010.04(2)
24 F.S. 1010.04(4)(a)
25 F.A.C. 6A-1.012
26 F.A.C. 6A-1.091
27 F.A.C. 6A-7.0411(2)(i)
28 F.A.C. 28-110.005(2)

29 Revised 8/7/13
30 Revised 11/19/14
31 Revised 3/9/16
32 Revised 1/25/17
33 Revised 4/25/18

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bylaws

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BYLAWS
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1

FUNCTIONS

2 | 0133

Quasi-Judicial Proceedings

3 The School Board may assume jurisdiction over any dispute or
4 controversy arising within the District and concerning any matter in
5 which authority has been vested in the Board by statute, contract,
6 or policy. The Board shall act as final appeal in the resolution of all
7 matters of dispute within the school system including personnel due
8 process hearings, student expulsions and alternative education
9 assignments, and bid protests, ~~and charter school contract~~
10 ~~terminations and nonrenewals.~~ These appeals shall appear on the
11 agenda in order to be adjudicated by the Board.

Due Process Hearings

13 This section provides the due process request procedures for
14 adjudicatory proceedings in which the Board is a party.

A. Filing Timelines

16 All parties entitled to a hearing under a collective bargaining
17 agreement may file a request according to the rules and time
18 limits in the agreement. Failure to file a timely request shall
19 be deemed a waiver of the right to a hearing.

20 Students and parents/guardians of students recommended
21 for expulsion or alternative educational assignment shall file
22 a request for hearing within fifteen (15) calendar days of the
23 date of the notice of disciplinary action. Failure to file a
24 timely request shall be deemed a waiver of the right to a
25 hearing.

26 Parents or guardians of students requesting a hearing on
27 identification, evaluation, placement, or the provision of a free
28 appropriate public education to exceptional education
29 students shall proceed according to the procedural
30 safeguards in Policy 2460.

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1 | A ~~n~~Notice of bid ~~p~~Protest shall be filed within seventy-two (72)
2 | hours after the posting of the bid tabulation or receipt of
3 | notice of the Board's decision or intended action. A ~~f~~Formal
4 | ~~petition~~Written Protest, including posting of required bond,
5 | must be filed within ten (10) days after filing the ~~n~~Notice of
6 | ~~p~~Protest. Saturdays, Sundays, and legal holidays shall be
7 | excluded in the computation of the seventy-two (72) hour
8 | time period. Failure to file a timely ~~petition~~ Formal Written
9 | Protest and required bond shall be deemed a waiver of the
10 | right to a hearing. Upon receipt, the Board Clerk shall
11 | forward a copy of any Notice of Protest to the Board. After a
12 | Notice of Protest is filed, the Clerk shall notify the Board upon
13 | receipt of a Formal Written Protest and shall also notify the
14 | Board if no Formal Written Protest is submitted after the
15 | statutory time period for filing the Formal Written Protest has
16 | elapsed.

17 | A request for a hearing to appeal a ninety (90) day charter
18 | contract termination or non-renewal must be filed by the
19 | charter school governing board within fourteen (14) calendar
20 | days after receiving the notice of termination. A request for a
21 | hearing to appeal an immediate termination must be filed
22 | within ten (10) calendar days. Failure to file a timely request
23 | shall be deemed a waiver of the right to a hearing.

24 | B. Filing Requirements

25 | All requests for hearings must be in writing and filed with the
26 | Clerk of the Board.

27 | Requests for hearings on student expulsions and alternative
28 | educational assignments will be granted or denied within
29 | fifteen (15) calendar days of receipt. A request may be denied
30 | if it is untimely or fails to meet filing requirements.

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1 Requests for all hearings, including student expulsions,
2 alternative education assignments, employee disciplinary
3 matters, ~~formal petitions~~ Formal Written Protest for bid
4 protests, and charter contract terminations and nonrenewals
5 must contain:

- 6 1. name and address of the petitioner;
- 7 2. explanation of substantial interests that will be
8 affected by the Board's action;
- 9 3. statement of when and how petitioner received the
10 notice of the Board decision;
- 11 4. statement of disputed issues of material fact; if there
12 are none, the request must state that there is no
13 disputed issue of material fact;
- 14 5. a concise statement of the ultimate facts alleged, and
15 the rules, regulations, statutes and constitutional
16 provisions which entitle the petitioner to relief; and
- 17 6. a description of the relief requested.

18 Hearing requests that do not comply with these conditions
19 are subject to dismissal for lack of legal sufficiency.

20 C. Proceedings

21 When a request for hearing is made, unless the Board
22 determines that it is not timely or does not meet the filing
23 requirements, the Board shall forward the request and all
24 accompanying materials to the Division of Administrative
25 Hearings and shall notify all parties of its action.

26 1. Employee discipline

27 Hearings on employee disciplinary matters shall be
28 conducted according to the appropriate collective
29 bargaining agreement.

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2. General student expulsion and alternative education assignment
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- Hearings on student expulsions and alternative education assignments shall be conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings pursuant to F.S. Chapter 120.
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- The Board shall provide a court reporter but the cost of preparing the hearing transcript shall be the financial responsibility of the party requesting the transcript. Students and parents who cannot afford a hearing transcript may petition the Board to pay the cost of the transcript by filing an affidavit stating that the student participates in or is eligible for the Board's free and reduced meal program. If the student is not eligible for the free and reduced meal program, the student or parent must provide an insolvency affidavit that identifies the members of the household, the total wages, benefits, or other income received by all members of the household, and the time period in which those resources are received. The Board Clerk shall verify and certify that the student is indigent according to applicable guidelines. Upon certification, the Board Attorney shall order and pay the costs of the transcript. A denial of certification may be reviewed by the Superintendent whose decision shall be final.
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- Following the assignment of an Administrative Law Judge, the Board shall file a Notice of Specific Charges that contains:
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- a. name of student;
 - b. explanation of how the student will be affected by the Board's action;
 - c. statement of when and how the School Board delivered its notice of disciplinary action to student or student's parent;
 - d. a concise statement of material facts, disputed or otherwise;

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1 e. rules, regulations, statutes and/or
2 constitutional provisions that the Board is
3 relying upon; and

4 f. demand for relief.

5 Within ten (10) business days of the date of the notice,
6 the student or parent may submit a written answer to
7 the Notice of Specific Charges challenging the Board's
8 action. The Board may submit a written response to
9 any written answer filed by the student or parent.

10 The recommended order issued by the Administrative
11 Law Judge shall be submitted to the Board within
12 fifteen (15) calendar days of the hearing unless another
13 date is agreed upon.

14 3. Students with disabilities

15 Hearings on students with disabilities, including
16 disciplinary action, shall be conducted by an
17 Administrative Law Judge assigned by the Division of
18 Administrative Hearings.

19 4. Bid protests

20 Hearings on bid protests shall be conducted by an
21 Administrative Law Judge assigned by the Division of
22 Administrative Hearings pursuant to F.S. Chapter 120.

23 | Following receipt of a ~~f~~Formal ~~w~~Written bid ~~p~~Protest,
24 | and prior to forwarding it to the Division of
25 | Administrative Hearings, the Board shall provide an
26 | opportunity to resolve the protest within seven (7)
27 | days, excluding Saturdays, Sundays and legal
28 | holidays. The Clerk will inform the Board if the protest
29 | is resolved prior to hearing.

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1 5. Charter contract terminations and non-renewals

2 Hearings on charter contract terminations and
3 non-renewals shall be conducted by an Administrative
4 Law Judge assigned by the Division of Administrative
5 Hearings pursuant to F.S. Chapter 120. For
6 ninety (90) day terminations and non-renewals, the
7 hearing must take place within ~~sixty (60)~~ninety (90)
8 days after receipt of a request for hearing. For
9 immediate terminations, the hearing must take place
10 and a final order issued within sixty (60) days.

11 6. Other Due Process Requests and Appeals

12 Other types of cases may be referred to the Division of
13 Administrative Hearings as specifically authorized in
14 any other Board policy.

15 D. *Ex Parte* Communications

16 Pursuant to F.S. 120.66, *ex parte* communications to the
17 Board related to the merits of any dispute governed by this
18 policy are prohibited beginning when the Board receives the
19 Recommended Order from the Division of Administrative
20 Hearings or the local hearing officer, until the Board issues a
21 Final Order. If a Board member receives an *ex parte*
22 communication in violation of this provision, the process in
23 F.S. 120.66(2) shall be followed.

24 E. Exceptions

25 1. For due process hearings involving students with
26 disabilities and charter school terminations and non-
27 renewals, no exceptions are allowed. For all other
28 hearings governed by this policy, any party may
29 submit written exceptions to the hearing officer's
30 recommended order within fifteen (15) calendar days of
31 the date of the recommended order. For bid protests,
32 exceptions must be filed within ten (10) calendar days.
33 Failure to timely file exceptions shall constitute an

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1 acceptance of all portions of a recommended order to
2 which exceptions have not been filed. Any party may
3 file a written response to any exceptions filed within
4 ten (10) calendar days from the date the exceptions
5 were served. These timelines may be shortened for
6 charter contract terminations and non-renewals unless
7 the parties agree to extend the statutory deadline for
8 issuance of a final order.

9 2. All portions of the record, including the transcript and
10 proposed final orders must be filed with any
11 exceptions.

12 3. A written request for oral argument must be filed at
13 least seven (7) days prior to the meeting during which
14 the Board will consider the exceptions. If oral
15 argument is timely requested, each party shall be
16 provided ten (10) minutes at the Board meeting to
17 argue the exceptions.

18 F. Options Concerning Recommended Orders

19 1. The Board may adopt the recommended order as the
20 final order of the Board.

21 2. The Board may reject or modify the conclusions of law
22 and interpretations of administrative rules over which
23 it has substantive jurisdiction.

24 3. The Board may not reject or modify the findings of fact
25 contained in the recommended order unless the Board
26 first determines from a review of the complete record
27 and states with particularity in the order that the
28 evidence or that the proceedings on which the findings
29 were based did not comply with the essential
30 requirements of the law.

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- 1 4. The Board may accept the recommended order but
2 may not substantially modify or alter it without a
3 review of the complete record. If the Board
4 substantially alters or modifies the recommended
5 order, it must state with particularity its reasons for
6 doing so and cite to the record to justify the action.
- 7 5. The Board's decision shall be based solely on the
8 record and no Board member shall consider any
9 matter not contained in the record as a basis for
10 deciding the case.
- 11 G. Final Order
- 12 1. The final order must be in writing and include any
13 findings of fact and conclusions of law separately
14 stated.
- 15 2. If exceptions are heard, the final order must explicitly
16 rule on each exception. The Board is not required,
17 however, to rule on an exception that does not clearly
18 identify the disputed portion of the recommended order
19 by page number or paragraph, that does not identify
20 the legal basis for the exception or that does not
21 include appropriate and specific citations to the record.
- 22 3. The Board member presiding over the meeting at which
23 the order is adopted shall execute the final order.
- 24 4. Each final order shall contain a statement that judicial
25 review is available under F.S. 120.68 within thirty (30)
26 calendar days of the rendition of the final order.

27 **Indexing, Management, and Availability of Final Orders**

28 All final orders and a current subject-matter index identifying all
29 final orders shall be made available for public inspection and
30 copying, at no more than cost.

31 All final orders issued pursuant to F.S. 120.569, 120.57 (1), (2), and
32 (3), shall be indexed and maintained in accordance with this policy
33 and Florida law.

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1 All final orders shall be sequentially numbered as rendered using a
2 two-part number separated by a dash with the first part before the
3 dash indicating the year and the second part indicating the
4 numerical sequence of the order issued for that year beginning with
5 number 1 of each new calendar year. The assigned designation
6 prefix, which is "MDCPS", shall precede the two-part number.

7 A. System for Indexing Final Orders

8 1. The index shall be alphabetically arranged by main
9 subject headings. The applicable subject of the action
10 construed within the final order shall determine the
11 main subject headings and subheadings in the index.
12 Main subject headings shall be all capital letters and
13 shall be flush left on the page followed by relevant
14 subheadings which shall be initial caps and lower case
15 letters indented. Subheadings and sub-subheadings
16 at equal indentations shall be alphabetized. The
17 numbers of the final orders shall be listed sequentially
18 in an indentation immediately below the applicable
19 subheading. Cross references shall be used to direct
20 the user to subject headings which contain the
21 relevant information. Related key words (specific
22 words, terms, and phrases) and common and
23 colloquial words shall be listed and cross referenced to
24 the appropriate main subject headings.

25 2. The main subject headings to be used in the index are
26 as follows:

- 27 a. BID PROTESTS
- 28 b. BUSINESS SERVICES
- 29 c. EMPLOYEES
- 30 d. HEARING DENIALS
- 31 e. PROCEDURE
- 32 f. STUDENTS

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- 1 3. The main subject headings shall be consulted by the
2 Board Clerk and subsequent similar entries shall be
3 indexed under the existing appropriate heading. The
4 index shall be cumulative and shall be updated and
5 made accessible to the public at least every 120 days.
6 New main subject headings will be added when
7 necessary. The index shall be cumulative for one (1)
8 calendar year.

- 9 4. The Clerk of the Board shall index all final orders.

- 10 B. Maintenance of Records

11 All final orders that comprise final Board action and that
12 must be indexed pursuant to this rule shall be permanently
13 maintained by the Board pursuant to the retention schedule
14 provided by law Department of State, Division of Library and
15 Information Services.

- 16 C. Plan

17 1. The Board shall make final orders accessible and
18 available to the public by sequentially numbering and
19 indexing all final orders. The Board shall make the
20 final orders and subject matter index available to the
21 public.

- 22 2. The Board Clerk shall assist the public in obtaining
23 information pertaining to final orders.

- 24 3. The system or process used by the Board Clerk to
25 search and locate all final orders is as follows:
 - 26 a. The Clerk shall enter into a computer all final
27 orders according to subject matter.

 - 28 b. The Clerk shall search and locate final orders by
29 consulting main subject headings, subheadings,
30 and sub-subheadings. The Clerk shall then
31 locate the requested final order which will be
32 filed sequentially by final order number and
33 housed in the office of the Board Clerk.

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1 4. The Board maintains and stores the final orders and
2 index in the office of the Board Clerk located in the
3 Board Administration Building, 1450 N.E. 2nd Avenue,
4 Miami, Florida 33132. The office of the Board Clerk is
5 open to the public between the hours of 8:00 a.m. and
6 4:30 p.m., excluding holidays and weekends.

7 | F.S. 120.53, 120.569, 120.57, 1002.33, 1006.07, 1012.22, 1012.34

8 Revised 11/22/11

9 Revised 3/9/16

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