

Business Operations
Ofelia San Pedro, Deputy Superintendent

**SUBJECT: PROPOSED AMENDMENT OF SCHOOL BOARD RULE: FINAL
READING 6Gx13- 3C-1.11, BIDDING PROCESS**

COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL RELATIONS

**LINK TO DISTRICT
STRATEGIC PLAN: EVALUATE AND REDESIGN INTERNAL BUSINESS
OPERATIONS**

The School Board of Miami-Dade County, Florida, announced on April 18, 2007, its intention to amend School Board Rule 6Gx13- 3C-1.11, Bidding Process, to incorporate language requiring protest bonds, and to amend procedures for receipt of bids and posting of award recommendations, at the meeting of June 13, 2007. The amended rule incorporates the following:

- Language which mirrors State Statute, requiring any vendor filing a formal written protest to a solicitation of a bid or Request For Proposals, issued by Procurement Management, to also timely file a protest bond;
- Language specifying that the amount of the protest bond will be equal to one percent (1%) of the District's estimate of the dollar value of the proposed contract;
- Language permitting electronic submissions of bids to Procurement Management; and
- Changes to the procedure for posting the Notice of Intended Action, to incorporate electronic posting on the District's website.

The purpose of amending this School Board Rule to incorporate protest bonds is to implement best practices followed by other government agencies and minimize the number of frivolous protests that unnecessarily delay the procurement process. The amendments to the rule regarding bid submission and posting of award recommendation reflect current procedures.

E-202

The Notice of Intended Action was published in the *Miami Daily Business Review* on April 23, 2007, posted in various places for public information, and mailed to various organizations representing persons affected by the rule and to individuals requesting notification.

The time to request a hearing or protest the adoption of this rule has elapsed.

In accordance with the provisions of the Administrative Procedure Act, this rule is presented The School Board of Miami-Dade County, Florida, for adoption and authorization to file the rule in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notice of Intended Action and the proposed amended rule. Changes from the current rule are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, adopt amended School Board Rule 6Gx13- 3C-1.11, Bidding Process, and authorize the Superintendent to file the rule with The School Board of Miami-Dade County, Florida, to be effective June 13, 2007.

OSP:crl

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on April 18, 2007, its intention to amend Board Rule 6Gx13- 3C-1.11, Bidding Process, at its meeting of June 13, 2007.

PURPOSE AND EFFECT: The amendment to the School Board Rule will require the timely filing of a protest bond with the formal written protest of bid specifications or award as established by Florida Statutes and State Board of Education rules.

SUMMARY: The rule sets forth procedures for the Board to require, receive, and process protest bonds.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41(1)(2); 1001.42(22); 1001.43(10) F.S.

LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 120.57; 120.569; 287.057 F.S.; 6A-1.012 FAC.

IF REQUESTED, A HEARING WILL BE HELD DURING THE BOARD MEETING OF June 13, 2007, 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 by Section 120.541(1), F.S., must do so in writing by May 14, 2007, to the Superintendent of Schools, 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, Florida Statutes).

A COPY OF THE PROPOSED AMENDED RULE is available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

Originator: Mr. Joseph A. Gomez
Supervisor: Ms. Ofelia San Pedro
Date: March 29, 2007

Non-salaried Expenditures**BIDDING PROCESS**

The purpose of this rule is to set forth procedures by which the Board will issue, receive, open, tabulate, and award bids and process bid disputes. For purposes of this rule, the term "bid(s)" includes all Invitations to Bid (ITB) and Request for Proposals (RFP). The term "bidder" includes proposers.

I. Soliciting Competitive Bids

Good public administration requires that commodities bought by any school, department, or agency be purchased at the lowest possible cost, consistent with an adequate standard of quality, usually through competitive bidding. Employees of the Miami-Dade County Public school system, responsible for the expenditure of public funds, must be held to a high level of accountability.

Competitive bidding helps to do this and assures the public that the Board's purchases will be made without favoritism and as economically as possible consistent with an adequate standard of quality. The object of competitive bidding is to obtain prices from as many qualified sources as practical. Competition will provide reasonable costs and insure the school system a maximum yield from each tax dollar expended. It is necessary to furnish potential bidders specific detailed information concerning the item or items which the Board plans to purchase. Bidders may then establish a basis on which to compute their bid prices after determining which of their products meet the specifications.

In soliciting competitive bids it is necessary to solicit a minimum of three bids, unless otherwise waived by Board Rule, Department of Education Administrative Rule, or State Statute.

The competitive bid process, as stated above, is not applicable in those instances where only one source can supply and only one price is available for commodities which can be offered by only one vendor or source. Documentary evidence, in writing, showing the sole source status of the goods or service being ordered and justification as to why that particular goods or service is needed, must accompany the requisition.

When soliciting bids, all reasonable methods should be exhausted in order to insure full and free competition. Special attention should be given to bids where only one known source has previously been identified as able to supply the commodities or

service. Prior to bidding, staff should attempt to contact other prospective vendors who could possibly provide the same commodity or service. Newspaper advertisements, telephone or other market contacts should be used as means for solicitation. Documentary evidence of the results, in writing, must become part of the Master Bid File for that particular bid. Care should be exercised to insure that bids are solicited sufficiently in advance of the opening of bid time to allow bidders adequate opportunity to prepare and submit their bids.

II. Mailing to Prospective Bidders

When invitations to bid are prepared by the Board they should be disseminated to known prospective bidders and in response to subsequent requests.

III. Maintenance of Potential Bidders List

Procurement Management Services shall maintain as large a list as possible of responsible bidders to whom invitations to bid are sent. The list shall be divided into various commodity classes. Any bidder desiring to be placed on the bid list should submit a request to Procurement Management Services advising of those commodities in which the bidder regularly deals and which the bidder desires to sell to the Board. This list shall be continually reviewed and kept up to date.

IV. Protest of Specifications

Any notice of protest of the specifications contained in an invitation to bid shall be filed in writing with the Clerk of the School Board of Miami-Dade County, Florida, who shall maintain offices in the School Board Administration Building.

With respect to a protest of the specifications contained in an Invitation to Bid (ITB) or in a Request for Proposals (RFP), the Notice of Protest shall be filed in writing within 72 hours after the posting of a solicitation. The Formal Written Protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a Notice of Protest or failure to file a Formal Written Protest shall constitute a waiver of proceedings under this rule. The Formal Written Protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the 72 hour time periods provided by this paragraph.

V. Posting the Bond

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

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

A. The District shall provide the estimated contract amount to the protester within seventy-two (72) hours (excluding Saturdays, Sundays, and holidays when the District administrative office is closed) after the filing of the notice of protest. The estimated contract amount is not subject to protest under this Rule or Fla. Stat. § 120.57(3). In lieu of a bond, the Board may accept a cashier's check or money order in the amount of the bond.

B. The bond shall be conditioned upon the payment of all costs and charges which may be adjudged against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.

C. Pursuant to Fla. Stat. § 287.042(2)(c), if, after completion of the administrative hearing process and any appellate court proceedings the Board prevails, it shall be entitled to recover all costs and charges which are included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person protesting the decision or intended decision or contract award, the bond, cashier's check or money order shall be returned to the protestor. If, after the completion of the administrative hearing process and any appellate court proceedings, the protestor prevails,

the protestor may recover from the Board the costs and charges which are included in the final order or judgment, excluding attorney's fees.

- ii. **Bond: Competitive Bids for Lease of Space --** Pursuant to Fla. Stat. § 255.25(3)(c), any person who files an action protesting a decision or intended decision pertaining to a competitive bid for space to be leased by the Board shall post with the Board, at the time of filing the formal written protest, a bond payable to The School Board of Miami-Dade County, Florida, in an amount equal to one percent (1%) of the estimated total rental of the basic lease period or \$5,000, whichever is greater, which bond shall be conditioned upon the payment of all costs which may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the Board prevails after completion of the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges which are included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him or her. If the person protesting the award prevails, the bond shall be returned to that person and he or she shall recover from the Board the costs and charges which are included in the final order or judgment, excluding attorney's fees.
- iii. **Bond: Construction Purchasing --** Construction purchasing is separately governed by Board Rule 6Gx13-7D-1.01, and protestors regarding competitive procurement related to educational facilities shall be required to post a bond in the amount specified in Fla. Stat. § 255.0516, which also governs recovery of fees and costs including attorney's fees.
- iv. **Staying the Procurement Process --** Upon timely receipt of the formal written protest petition, and posting of the bond, the solicitation or contract award process shall be stopped until the subject of

the protest is resolved by final agency action, unless the School Board sets forth in writing, particular facts and circumstances which require the continuance of the solicitation or contract award process without delay, in order to avoid an immediate and serious danger to the public health, safety, or welfare.

The Formal Written Protest letter of protest will be reviewed by ~~either Procurement Management Services or Facilities Operations, Maintenance and Planning, when applicable, and within seven (7) days, who will offer~~ the protesting bidder will be offered the opportunity to meet and discuss the merits of the protest. If the protest is not resolved, the matter may be referred for proceedings pursuant to Section 120.569 and 120.57, Florida Statutes. Petitions for hearing on protests pursuant to Section 120.569 and 120.57, F.S., must be filed in accordance with School Board Rule 6Gx13- 8C-1.064, Adjudicatory Proceedings.

VI. Receiving and Opening of Bids

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

- A. ~~Bids are to be submitted to Procurement Management Services by U.S. Mail, courier/express service, or deposited in the "Bid Box" located in Room 352, School Board Administration Building, 1450 N.E. 2nd Avenue, Miami, FL 33132, 8:00 A.M. to 4:30 P.M., Monday through Friday, up to the time and on the date specified in the bid documents. The official time for accepting bids shall be determined by the clock located in the room which contains the "Bid Box." Bids received after the date and hour specified in the Bidder Qualification Form will not be considered.~~
- B. The following persons shall participate in the bid opening function:
 1. The District Director, Procurement Management, or an administrator designated by the District Director shall serve as chairperson.

2. A person designated by the District Director, Procurement Management, to record the minutes of the bid opening, and such minutes shall be reported to the Board at the next regularly scheduled Board meeting.
 3. The Executive Director, Project and Contract Management, or an administrator designated by the Executive Director.
 4. Those additional administrators and support staff required for the efficient handling of this procedure.
- C. All construction bids shall be opened and tabulated prior to bids being released by the recording secretary.
- D. All purchasing bids will be recorded at the time they are received, showing the bid number, bid title, and the names of the bidders submitting bid forms. The record shall be made prior to the release of the bid material by the recording secretary.

The above guides to receiving bids in no way affect the awarding of bids at Board meetings.

VII. The Recording or Tabulation of Purchasing Bids

The names of bidders, the prices submitted, and such other pertinent data, will be entered on a tabulation sheet by Procurement Management. This information shall be available for inspection by any interested party as set forth in Fla. Stat. 119.07.

VIII. Rejection of Bids

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

VIII. Irregular or Deviating Bids

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

IX. Award Recommendation

~~Bidder information phone lines have been established in Procurement Management for procurement bids, and in Project and Contract Management for construction bids. Bidders may call the appropriate department each Friday to be advised of the recommended bidders and the time it is contemplated that the recommendation will be made. This information will be provided by school system staff as available. In no case will information as to a recommended bidder be available~~ Notice of Intended Action will be posted on the District's website, for Procurement bids, no later than the Friday preceding the week when the award is scheduled to be made by the School Board or Superintendent.

XI. Protest of Bid Award

Any letters of protest of an intended award may be filed in writing with the Clerk of ~~the~~ The School Board of Miami-Dade County, Florida, who shall maintain offices in the School Board Administration Building.

Any person who is adversely affected by the agency decision or intended decision, shall file with the agency a Notice of Protest in writing, within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a Formal Written Protest within ten (10) days after filing the Notice of Protest. Protesting vendor shall also be required to post a bond, consistent with Section V of this rule. Failure to file a Notice of Protest or failure to file a Formal Written Protest shall constitute a waiver of proceedings under Chapter 120.57, Florida Statute. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the 72 hour time periods provided by this paragraph.

The Formal Written Protest ~~letters of protest~~ will be reviewed by ~~either Procurement Management Services or Facilities Operations, Maintenance and Planning, when applicable, and within seven (7) days, who will offer~~ the protesting bidder will be offered the opportunity to meet and discuss the merits of the protest. If the protest is not resolved, the matter may be referred for proceedings, pursuant to Section 120.569 and 120.57, Florida Statutes. Petitions for hearing on protests pursuant to Section 120.569 and 120.57, F.S., must be filed in accordance with School Board Rule 6Gx13- 8C-1.064, Adjudicatory Proceedings.

XII. Official Award Date

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

XIII. Contract Renewals

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

XIV. Legal Basis for Procedures

The procedures for the purchase of commodities and services, and construction of facilities for Miami-Dade County Public Schools shall comply with the Florida Statutes and the State Board of Education Rules.

Specific Authority: 1001.41(1)(2); 1001.42(22); 1001.43(10) F.S.

Law Implemented, Interpreted, or Made Specific: 120.57; 120.569; 287.057 F.S.; 6A-1.012 FAC

History

THE SCHOOL BOARD OF MIAMI-DADE COUNTY FLORIDA

Repromulgated: 12-11-74

Amended: 8-19-87; 6-28-89; 6-19-96; 8-20-03