

School Board Attorney's Office  
Walter J. Harvey, School Board Attorney

**SUBJECT:** INITIAL **READING: PROPOSED PROMULGATION OF NEW POLICY 6465, COMMERCIAL ANTI-DISCRIMINATION, DIVERSITY AND INCLUSION, AND AMENDMENT TO SCHOOL BOARD POLICY 6320, PURCHASING.**

**COMMITTEE:** **INNOVATION, EFFICIENCY AND GOVERNMENTAL RELATIONS**

**LINK TO STRATEGIC FRAMEWORK:** **FINANCIAL EFFICIENCY AND STABILITY**

The School Board is committed to fostering an environment in which all businesses are free to participate in business opportunities and to flourish without the impediment of discrimination. The School Board has also strived for diversity in student body, staff, educational programming and business opportunities. The Board has already adopted a commercial non-discrimination program in Policy 6320, *Purchasing*, and numerous other policies prohibiting discrimination by employees. The Board is also committed to promoting an environment of diversity and inclusion in its schools and has established a Diversity Equity and Excellence Advisory Committee (DEEAC) in Policy 9142 to review issues related to diversity and make recommendations to the School Board and the Superintendent. In fact, the District was recently recognized for its commitment to promoting diversity and equality of opportunity in education and all of the District's operations by the Diversity Recruiters' Network and University of Phoenix "Diversity Spirit Achievement Award," a national honor recognizing organizations for actively supporting diversity in the community and workplace.

Currently, there are approximately 18,000 vendors qualified to do business with MDCPS Procurement Department, and approximately 550 qualified small, socially and economically disadvantaged minority-owned, female-owned and disabled-owned businesses, certified by the District's Office of Economic Opportunity, that are willing and available to participate in all types of District contracts on an equitable basis with other businesses.

As an additional measure to ensure that all businesses are free to participate in District contracts, this Item authorizes the Superintendent to initiate rulemaking to adopt new Policy 6465, *Commercial Anti-Discrimination, Diversity and Inclusion*, and amended Policy 6320, *Purchasing*, that would also prohibit District employees and contractors from discriminating against businesses wishing to do business with the School Board or

to obtain work on School Board projects based on sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. All bid solicitations, requests for proposals and contracts will include language reflecting this policy and contractors must certify that they will comply. The new Policy clarifies and specifies that employees and District contractors may not discriminate against businesses in the solicitation or selection of contract participants. All District employees involved in any procurement process will also be required to participate in training on implementing this policy and diversity. The new Policy includes complaint and investigation procedures, compliance measures, and sanctions for violations. The amendments to Policy 6320 are minor amendments required to conform to the new policy.

Attached are the Notice of Intended Action and the proposed new policy and amendments to a current policy. Changes from the current policy 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 pursuant to the Administrative Procedure Act to promulgate new policy 6465, *Commercial Anti-Discrimination, Diversity and Inclusion*, and amend Board Policy 6320, *Purchasing*.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings pursuant to the Administrative Procedure Act to promulgate new policy 6465, *Commercial Anti-Discrimination, Diversity and Inclusion*, and amend Board Policy 6320, *Purchasing*.

## **NOTICE OF INTENDED ACTION**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on October 7, 2014, its intention to promulgate new Board Policy 6465, *Commercial Anti-Discrimination, Diversity and Inclusion*, and amend Policy 6320, *Purchasing*, at its meeting of November 19, 2014.

**PURPOSE AND EFFECT:** The purpose of the new policy is to specifically establish a commercial anti-discrimination policy that prohibits District employees and contractors from discriminating against businesses seeking or currently doing business with the District or working on District projects, on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. Policy 6320 is being amended to conform to this new policy.

**SUMMARY:** The policy prohibits employees and all District contractors from discriminating on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. It requires the District to include language prohibiting discrimination in all District bid solicitations and contracts. It also requires contractors to certify that they will comply with this policy. The policy includes compliance provisions, sanctions for violations and procedures for filing a complaint. In addition, the policy requires employees involved in any procurement process to undergo mandatory training on implementation of this policy, diversity and inclusion.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** 1001.41 (1), (2), 1001.42 (25), 1001.43 (10), F.S.

**LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC:** 1001.41 (1), (2); 1001.42 (25); 1001.43 (10), F.S.,

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF November 19, 2014, 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 November 3, 2014, 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, Florida Statutes)

COPIES OF THE PROPOSED NEW AND AMENDED POLICIES are 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.

1

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 **Purchase Approval and Competitive Bidding Process Requirements**

15 Responsibilities

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

25 A. The Superintendent may be authorized to purchase commodities or  
26 contractual services where the total amount does not exceed an  
27 amount prescribed by the Board, and does not exceed the applicable  
28 appropriation in the District budget. The Superintendent may also  
29 be authorized to purchase commodities or is exempt by statute or  
30 Florida Administrative Code, or contractual services under  
31 Department of Management Services State term contracts.  
32 Assistants functioning under the Superintendent's direction may be  
33 authorized to perform these purchasing tasks.

- 1           B.     In each school district in which the purchasing agent for any public  
2                     agency is authorized by law to make purchases for the benefit of  
3                     other governmental agencies within the county, the Board shall have  
4                     the option to purchase under the current contracts as established  
5                     for these public agencies at or below the stated unit price, if the  
6                     purchase is economically advantageous to the Board, and the items  
7                     purchased conform to the standards and specifications prescribed  
8                     by the Superintendent.
- 9           C.     As required by F.S. 1001.42(12)(j), the Board shall receive and  
10                    consider available prices according to the rules of the Department of  
11                    Management Services, Division of Purchasing. The Board may use  
12                    prices established by the Division of Purchasing through its State  
13                    purchasing agreement price schedule. If Board policy provides for  
14                    purchasing under this State purchasing program, the conditions for  
15                    use shall be those imposed on State agencies.
- 16           D.     In lieu of requesting competitive solicitations from three (3) or more  
17                    sources, the Board may make purchases at or below the specified  
18                    prices from contracts awarded by other city or county governmental  
19                    agencies, other school boards, community colleges, Federal  
20                    agencies, the public or governmental agencies of any state, or from  
21                    State university system cooperative bid agreements, when the  
22                    proposer awarded a contract by another entity permits purchases by  
23                    a school board on the same terms, conditions, and prices (or below  
24                    such prices) awarded in the contract, and the purchases are  
25                    economically advantageous to the Board.
- 26           E.     Except as authorized by law or rule, competitive solicitations shall  
27                    be requested from three (3) or more sources for any authorized  
28                    commodities or contractual services exceeding \$50,000.
- 29           F.     The requirement for requesting competitive solicitations for  
30                    commodities or contractual services from three (3) or more sources  
31                    is waived pursuant to F.S. 1010.04(4)(a), for:
- 32                    1.     the purchase by the Board of professional services which  
33                    shall include artistic services, academic program reviews,  
34                    lectures by individuals, auditing services not subject to  
35                    F.S. 218.391, legal services, including attorney, paralegal,  
36                    expert witness, court reporting, appraisal or mediator  
37                    services; and health services involving examination,  
38                    diagnosis, treatment, prevention, medical consultation or  
39                    administration; and

- 1                   2.     the purchase by the Board of educational services and  
2                   copyrighted materials including educational tests, textbooks,  
3                   printed instructional materials, computer software, films,  
4                   filmstrips, videotapes, DVDs, disc or tape recordings, digital  
5                   recordings, or similar audio-visual materials, and for library  
6                   and reference books, and printed library cards where these  
7                   materials are purchased directly from the producer or  
8                   publisher, the owner of the copyright, an exclusive agent with  
9                   the State, a governmental agency or a recognized educational  
10                  institution.
- 11                 G.     The Board shall have the authority to reject any or all proposals  
12                 submitted in response to any competitive solicitation and to request  
13                 new proposals or purchase the required commodities or contractual  
14                 services in any other manner authorized by this section.
- 15                 H.     Regarding invitations to bid, the Board may accept the proposal of  
16                 the lowest responsive, responsible proposer. Alternatively, the  
17                 Board may also award contracts to the lowest responsive,  
18                 responsible bidder as the primary awardee of a contract and to the  
19                 next lowest responsive, responsible bidder(s) as alternate awardees  
20                 from whom commodities or contractual services would be purchased  
21                 should the primary awardee become unable to provide all of the  
22                 commodities or contractual services required by the Board during  
23                 the term of the contract. Multiple awards to the lowest responsive  
24                 and responsible bidders are permitted when multiple awards are  
25                 clearly allowed by the bid solicitation documents.
- 26                 I.     Regarding requests for proposals, the Board may award contracts to  
27                 one (1) or more responsive, responsible proposers in accordance  
28                 with the selection criteria published in the request for proposal. The  
29                 Board is not required to request proposals for purchases made from  
30                 contracts of the Department of Management Services.
- 31                 J.     The purchase of food products except milk, required for the School  
32                 Food Service Program and other ancillary food operations are  
33                 exempt from the bid requirements pursuant to State Board of  
34                 Education Rule F.A.C. 6A-7.0411(2)(i)2.

1           K.     Additional exemptions authorized under certain conditions:

2                     The requirements for requesting competitive solicitations and  
3                     making purchases for commodities and contractual services are  
4                     waived pursuant to F.S. 1010.04(4)(a), when the following conditions  
5                     have been met by the Board:

6                     1.     competitive solicitations have been requested in the manner  
7                     prescribed by this rule, and

8                     2.     the Board has made a finding that no valid or acceptable firm  
9                     proposal has been received within the prescribed time.

10                    When such a finding has been officially made, the Board may enter  
11                    into negotiations with suppliers of such commodities and  
12                    contractual services and shall have the authority to execute  
13                    contracts with such vendors under the terms and conditions the  
14                    Board determines are in its best interests.

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

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

- 1 M. The Board may dispense with requirements for competitive  
2 solicitations for the emergency purchase of commodities or  
3 contractual services when the Superintendent determines in writing  
4 that an immediate danger to the public health, safety, or welfare or  
5 other substantial loss to the School District requires emergency  
6 action. After the Superintendent makes such a written  
7 determination, the Board may procure commodities or contractual  
8 services necessitated by the immediate danger, without requesting  
9 competitive solicitations. However, such an emergency purchase  
10 shall be made by obtaining pricing information from at least two (2)  
11 prospective vendors, which must be retained in the contract file,  
12 unless the Superintendent determines in writing that the time  
13 required to obtain pricing information will increase the immediate  
14 danger to the public health, safety, or welfare or other substantial  
15 loss to the District.
- 16 N. A contract for commodities or contractual services may be awarded  
17 without competitive solicitations if State or Federal law, a grant or a  
18 State or Federal agency contract prescribes with whom the Board  
19 must contract or if the rate of payment is established during the  
20 appropriations process.
- 21 O. A contract for regulated utilities or government-franchised services  
22 may be awarded without competitive solicitations.
- 23 P. As much as practicable, all purchases shall be based on contracts,  
24 purchasing card systems, electronic procurements or purchase  
25 orders.
- 26 Q. The Board, when acquiring, whether by purchase, lease, lease with  
27 option to purchase, rental or otherwise, information technology, as  
28 defined in F.S. 282.0041(15), may make acquisitions through the  
29 competitive solicitation process or by direct negotiation and contract  
30 with a vendor or supplier, as fits the needs of the School District as  
31 determined by the Board.
- 32 R. Except as otherwise required by statute, the Board, when  
33 purchasing insurance, entering risk management programs, or  
34 contracting with third party administrators, may use the competitive  
35 solicitation process or direct negotiations and contract.



1           S.    Emergency purchases made and approved by the Superintendent or  
2                    the Superintendent's designated representative.    The  
3                    Superintendent will report all emergency purchases to the Board, as  
4                    soon as possible.

5                    When an emergency arises, circumstances contributing to such an  
6                    emergency shall be communicated to the proper department or  
7                    agency of the Board, which in turn will notify Procurement  
8                    Management, requesting the emergency purchase.

9                    A requisition for an emergency purchase shall be accompanied by  
10                   the appropriate Emergency Purchase Request Form, explaining the  
11                   circumstances creating the emergency and clarifying that immediate  
12                   action is required to protect the Board's interests.   Emergency  
13                   purchases are divided into two (2) categories as follows:

14                   1.    Emergency Purchase Request (Form B FM-3739) estimated  
15                   expenditure \$50,000 and under requires the signature of the  
16                   initiating administrator, recommended by Director or above  
17                   and approval by the Assistant Superintendent or above.

18                   2.    Emergency Purchase Request (Form A FM-2333) estimated  
19                   expenditure over \$50,000 requires the signature of the  
20                   initiating administrator, recommended by the Assistant  
21                   Superintendent or above, or his/her designee(s) and approval  
22                   by Superintendent or designee.   Emergency purchases over  
23                   \$50,000 shall be reported to the Board.

24           T.    Competitive bidding is waived for purchases of maintenance and/or  
25                   service contracts, on various types of technical equipment, that are  
26                   offered and/or supplied only by the original manufacturer or its  
27                   representative, or that are required to maintain the integrity of the  
28                   manufacturer's warranty, or that are part of the manufacturer's  
29                   rental/lease/lease purchase agreements terms and conditions.

- 1 U. Non-Purchase Order Invoice Funds Reservation Purchases are  
2 purchases for goods and services, expenditures, fund transfers, etc.,  
3 that are not appropriate for normal competitive purchasing  
4 procedures. Only the expenditures listed will be authorized and  
5 processed as Non-Purchase Order Invoice Funds Reservation  
6 Purchases. Non-Purchase Order Invoice Funds Reservation  
7 purchases require the same financial authorization and approval  
8 process as purchase requisitions and shopping carts. Those  
9 purchases for goods and services, expenditures, fund transfers, etc.,  
10 that are authorized for Non-Purchase Order Invoice Funds  
11 Reservation Purchases are limited to include various types of fund  
12 advances, services, reimbursements and purchases, and/or  
13 payment for goods and services, which are not appropriate for  
14 normal competitive purchasing procedures:
- 15 1. Additional Contracted Services (polygraph, court  
16 reporting/transcribing, etc.)
- 17 2. Admission Fees
- 18 3. Association Fees, Professional Association Dues and Charges  
19 Distribution of Funds -Athletic Programs, Vending Machine  
20 Commissions
- 21 4. Facilities Fees, Rentals/Leases and Utilities including  
22 monthly utility charges, service and connection fees
- 23 5. Fees for Graduation Exercises (non-employees, union  
24 charges, etc.)
- 25 6. Field Trips
- 26 7. Tickets
- 27 8. Advance Registration
- 28 9. Hotel Accommodations
- 29 10. Groceries and Supplies for Home Economics Classes
- 30 11. Insurance Policies Reimbursements

- 1                   12.    Legal Settlement Payments and bonds
- 2                   13.    License Fees and Agreements
- 3                   14.    Media Advertising (newspaper, radio, television, etc.)
- 4                   15.    Media Programs, Refreshments, Reimbursement - Grant
- 5                                Funds
- 6                   16.    Permit Fees
- 7                   17.    Petty Cash Replenishment
- 8                   18.    Postage Requisitions
- 9                   19.    Property Loss Payment
- 10                  20.    Registration Fees
- 11                  21.    State Fees (retirement, unemployment compensation, etc.)
- 12                  22.    Tax Related Payments
- 13                  23.    Toll Charges for Transportation, Maintenance, Stores and
- 14                                Distribution, and other departments, as may be required
- 15                  24.    Travel Reimbursement for Non-Employees

16    **Purchase Requisitions**

17    District schools, departments, and agencies shall initiate a properly executed  
18    purchase requisition, containing authorized approvals of the originating  
19    administrator, principal, department or agency head, for the purchase of any and all  
20    items desired, except where small purchases, transactions not in excess of  
21    \$3,000.00 per requisition, and market difficulties, make the cost of some purchases  
22    in this manner economically unsound. In those instances, administrative directives  
23    or operating manuals may be issued, when deemed necessary, containing the  
24    procedures to economically perform the purchasing function within the controls  
25    required and authority provided by Florida statute, Florida Board of Education  
26    Administrative Rules and Board policies.

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

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

3 **Protests**

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

6 **Protest of Specifications**

7 Any notice of protest of the specifications contained in an Invitation to Bid (ITB) or  
8 Request for Proposal (RFP) shall be filed in writing with the Clerk of The School  
9 Board of Miami-Dade County, Florida, who shall maintain offices in the School  
10 Board Administration Building.

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

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.

28 3. Pursuant to F.S. 287.042(2)(c), if, the Board prevails in the  
29 administrative hearing process and any appellate court  
30 proceedings, it shall be entitled to recover all costs and  
31 charges which are included in the final order or judgment,  
32 excluding attorneys' fees. Upon payment of such costs and  
33 charges by the person protesting the decision or intended  
34 decision or contract award, the bond, cashier's check or  
35 money order shall be returned to the protestor. If the  
36 protestor prevails, the protestor may recover from the Board  
37 the costs and charges which are included in the final order or  
38 judgment, excluding attorneys' fees.

- 1           B.     Bond: Competitive Bids for Lease of Space -- Pursuant to  
2           F.S. 255.25(3)(c), any person who files an action protesting a  
3           decision or intended decision pertaining to a competitive bid for  
4           space to be leased by the Board shall post with the Board, at the  
5           time of filing the formal written protest, a bond payable to the Board  
6           in an amount equal to one percent (1%) of the estimated total rental  
7           of the basic lease period or \$5,000, whichever is greater. The bond  
8           shall be conditioned upon the payment of all costs which may be  
9           levied against him/her in the administrative hearing in which the  
10          action is brought and in any subsequent appellate court proceeding.  
11          If the Board prevails in the administrative hearing process and any  
12          appellate court proceedings, it shall recover all costs and charges,  
13          which are included in the final order or judgment, excluding  
14          attorneys' fees. Upon payment of such costs and charges by the  
15          person protesting the award, the bond shall be returned to him/her.  
16          If the person protesting the award prevails, the bond shall be  
17          returned to that person and s/he shall recover from the Board the  
18          costs and charges which are included in the final order or judgment,  
19          excluding attorneys' fees.
- 20          C.     Bond: Construction Purchasing - Construction purchasing is  
21          separately governed by Board policy, and persons protesting  
22          competitive procurement related to educational facilities shall be  
23          required to post a bond in the amount specified in F.S. 255.0516,  
24          which also governs recovery of fees and costs including attorneys'  
25          fees.
- 26          D.     Staying the Procurement Process - Upon timely receipt of the formal  
27          written protest petition, and posting of the bond, the solicitation or  
28          contract award process shall be stayed until the protest is resolved  
29          by final agency action, unless the Board sets forth, in writing,  
30          particular facts and circumstances which require the continuance of  
31          the solicitation or contract award process in order to avoid an  
32          immediate and serious danger to the public health, safety, and  
33          welfare.
- 34          The Formal Written Protest will be reviewed by Procurement Management Services  
35          who will offer the protesting bidder the opportunity to meet and discuss the merits  
36          of the protest. If the protest is not resolved, the matter may be referred for  
37          proceedings pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests  
38          pursuant to F.S. 120.569 and 120.57 must be filed according to Board policy on  
39          adjudicatory proceedings.

1    **Protest of Bid Award**

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

4    Any person who is adversely affected by the agency decision or intended decision,  
5    shall file with the agency a Notice of Protest in writing within seventy-two (72) hours  
6    after the posting of the bid tabulation or after receipt of the notice of the agency  
7    decision or intended decision and shall file a Formal Written Protest within ten (10)  
8    calendar days after filing the Notice of Protest. The protesting bidder shall also be  
9    required to post a bond, consistent with this rule. Failure to file a Notice of Protest  
10   or failure to file a Formal Written Protest shall constitute a waiver of proceedings  
11   under F.S. Chapter 120.57. The formal written protest shall state with particularity  
12   the facts and law upon which the protest is based. Saturdays, Sundays, and legal  
13   holidays shall be excluded in the computation of the seventy-two (72) hour time  
14   period provided by this paragraph.

15   The Formal Written Protest will be reviewed by Procurement Management Services,  
16   who will offer the protesting bidder the opportunity to meet and discuss the merits  
17   of the protest. If the protest is not resolved, the matter may be referred for  
18   proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests  
19   pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board policy  
20   on adjudicatory proceedings.

21   **Receiving and Opening of Bids**

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

24           A.    Bids are to be submitted to Procurement Management Services or  
25                electronically up to the time and on the date specified in the bid  
26                documents. Bids received after the date and hour specified in the  
27                Bidder Qualification Form will not be considered.

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

29                   1.    The District Director, Procurement Management, or an  
30                        administrator designated by the District Director shall serve  
31                        as chairperson.

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

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

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

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

22     **Rejection of Bids**

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



1 **Irregular or Deviating Bids**

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

8 **Award Recommendation**

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

12 **Official Award Date**

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

15 **Contract Renewals**

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

20 **Legal Basis for Procedures**

21 The procedures for the purchase of commodities and services, and construction of  
22 facilities for the District shall comply with the Florida statutes and the Florida  
23 Administrative Code.

24 **Bidding**

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

1 **Competitive Bidding Requirements**

2 Definitions

3 A. The term "competitive solicitation" includes purchasing made  
4 through the issuance of an Invitation to Bid, Request for Proposals  
5 and Invitation to Negotiate. Competitive solicitations are not  
6 required for purchases made through the pool purchase provisions  
7 of F.S. 1006.27.

8 B. "Invitation to Bid" is a written solicitation for competitive sealed  
9 bids. The Invitation to Bid is used when the Board is capable of  
10 specifically defining the scope of work for which a contractual  
11 service is required or when the Board is capable of establishing  
12 precise specifications defining the actual commodity or group of  
13 commodities required.

14 C. "Invitation to Negotiate" is a written solicitation for competitive  
15 sealed replies to select one or more vendors with which to negotiate  
16 for the procurement of commodities or contractual services. The  
17 Invitation to Negotiate is used when the Board determines that  
18 negotiations may be necessary for it to receive the best value.

19 D. "Request for Proposals" shall be defined for the purposes of this rule  
20 as a written solicitation for competitive sealed proposals. The  
21 Request for Proposals is used when it is not practicable for the  
22 Board to specifically define the scope of work for which the  
23 commodity, group of commodities, or contractual service is required  
24 and when the Board is requesting that a responsible vendor propose  
25 a commodity, group of commodities, or contractual service to meet  
26 the specifications of the solicitation document.

27 E. The term "proposer" includes those vendors submitting bids or  
28 responses to a competitive solicitation.

29 The major consideration given to bid evaluations is lowest price meeting  
30 specifications.

1 When the determination is made that a bid is appropriate, the performance  
2 specifications and standards requirements shall be spelled out in detail and shall be  
3 furnished to Procurement Management. After review, Procurement Management  
4 shall issue the Invitation for Bids, including all general and special conditions, and  
5 evaluate the bids submitted. The requirements for solicitation and review of bids by  
6 the Goal Setting Committee (GSC) shall be followed in all cases. Board approval is  
7 required for contracts recommended for award.

8 For each purchase of more than \$50,000, bids shall be requested from three (3) or  
9 more sources. Notices of bids shall be electronically posted or may be sent to all  
10 vendors on the active vendor mailing list for that category of goods or services. This  
11 list shall include all minority/women vendors identified with the Board for that  
12 particular category of goods or services, as well as organizations involved in assisting  
13 M/WBE firms, by posting and disseminating information regarding available  
14 contracts. Notices of bids shall be advertised in one (1) or more major, local  
15 newspapers or electronically posted at least seven (7) days prior to the bid opening  
16 date. This may include, as necessary, major newspapers having circulation  
17 representative of the various relevant minority classifications or electronic posting.  
18 Tabulations of current bids shall be retained in bid files and shall be available for  
19 reference. Standard bid forms used shall be as approved by the Superintendent and  
20 the Board Attorney.

21           A.       Written, Telephone, or Electronic Quotations

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

1           Quotations obtained shall be attached to the purchase order by  
2           written notations or electronic reference indicating prices and  
3           sources thereof, and certification of same by signature, electronic  
4           signature, or facsimile. The requisition shall be approved for  
5           purchase as authorized by the Superintendent.

6           B. Schools making internal fund purchases shall comply with  
7           Policy 6610.

8           **Quantity Purchasing--Development of Specifications, Determination of**  
9           **Quantities and Standardization of Supplies and Equipment**

10          A. To help achieve both quality control and the price advantages of  
11          quantity purchasing, the administration is directed to:

- 12           1. set specifications for goods and services as needed;
- 13           2. cite several existing, commercially available "standard  
14           brands" that meet those specifications acceptably as  
15           examples; and
- 16           3. invite vendors to bid on those examples, or equal ones, which  
17           the vendors believe to be acceptable according to the  
18           specifications.

19          B. All bid quantities and specifications shall be transmitted to the  
20          Division of Procurement Management by the originating department,  
21          in writing. The originating department shall also certify to the  
22          Division of Procurement Management, in writing, that the  
23          specifications for an existing bid (to be rebid) are still appropriate  
24          before issuance of the bid. If the specifications are originated by the  
25          Division of Procurement Management, it shall follow similar  
26          certification procedures.

- 1 C. All increases to quantities specified in an existing term bid requiring  
2 a supplemental bid award shall be requested in writing by the  
3 originating department, countersigned by an administrator reporting  
4 directly to the Superintendent identifying the reason why the  
5 increase in quantities was unavoidable. If an adequate reason  
6 cannot be identified, then the corrective action to be taken by the  
7 originating department to prevent a future underestimate of  
8 quantities shall be described. A similar procedure will be followed  
9 for term bids originated by the Division of Procurement  
10 Management.
- 11 D. All changes to specifications for an existing bid (to be rebid) or  
12 similar bid shall be identified in writing, including the reason for the  
13 change, by the originating department or the Division of  
14 Procurement Management, if originator.
- 15 E. The District Director, Division of Procurement Management, shall  
16 initiate procedures to assure the identification of specifications  
17 which appear to limit the bidding process to a single vendor. In the  
18 event that the District Director has identified such a set of  
19 specifications, the originating department shall be required to justify  
20 in writing, those specifications which appear to favor a single  
21 vendor. This documentation shall be countersigned by an  
22 administrator reporting directly to the Superintendent.

23 **Request For Proposals and Professional Services Contracts**

- 24 For purposes of this rule, professional service is any type of personal service to the  
25 District which requires as a condition precedent to the rendering of such service:
- 26 A. the obtaining of a license or other legal authorization; or
- 27 B. work which can only be performed by one who has achieved a high  
28 level of training and proficiency in the work to be performed.

1    **Request for Proposals**

2    The Request for Proposal shall be used when seeking to contract for professional  
3    services, and when it is not practicable for the agency to specifically define the scope  
4    of work for which the commodity, group of commodities, or contractual service is  
5    required and when the agency is requesting that a responsible vendor proposed a  
6    commodity, group of commodities, or contractual service to meet the specifications  
7    of the solicitation document. A written solicitation includes a solicitation that is  
8    electronically posted.

9    The following process shall be followed for the Request for Proposal:

- 10           A.    If the cost of the contract is estimated to be more than \$50,000  
11                   annually:
- 12                   1.    The evaluation committee shall be specified in the Request for  
13                           Proposal. The committee shall consist of at least: (1) two (2)  
14                           individuals from the originating bureau/office, however, not  
15                           more than one (1) of these individuals can be from the  
16                           requesting department; (2) two (2) individuals from outside  
17                           the bureau/office; (3) one (1) individual from the Office of  
18                           Economic Opportunity; and (4) one (1) individual from  
19                           Procurement Management Services (non-voting). Additional  
20                           members may be appointed at the discretion of the  
21                           Superintendent or his/her designee. The committee shall to  
22                           the extent possible, be ethnically and gender representative.
- 23                   2.    The Goal Setting Committee shall review the Request for  
24                           Proposal to determine Small Business Enterprise (SBE), Micro  
25                           Business Enterprise (MBE), Minority/Women Business  
26                           Enterprise (M/WBE) participation in the project, prior to  
27                           issuing the Request for Proposals.
- 28                   3.    The Request for Proposal shall be advertised to solicit  
29                           maximum vendor participation. To enhance Minority/Women  
30                           Business Enterprise (M/WBE) participation, it is  
31                           recommended that all advertisements be published and  
32                           announced in major ethnic publications and organizations, as  
33                           outlined in applicable Board policies.
- 34                   4.    Board approval of recommendations by the evaluation  
35                           committee shall be obtained after the evaluation process is  
36                           completed and prior to the issuance of the contract.

- 1           B.     If the contract is estimated to cost less than \$50,000 annually:
- 2                 1.     There must be evidence that at least three (3) vendors were  
3                         contacted in writing, and if possible, at least one (1) of these  
4                         vendors shall be a Minority/Women Business Enterprise.
- 5                 2.     If only one (1) potential vendor is known, an advertisement  
6                         shall be placed in an appropriate publication that is widely  
7                         distributed. If no responses are received, the contract can be  
8                         developed with the one (1) known vendor, in accordance with  
9                         other established procedures.
- 10           C.     The Request for Proposal shall include an implementation schedule  
11                     consisting of the following:
- 12                 1.     Goal Setting Committee
- 13                 2.     Mailing/Posting Date
- 14                 3.     Pre-Proposal Conference (if required)
- 15                 4.     Opening Date and Time Evaluation Criteria
- 16                 5.     Interview Schedule (if required) Award Process
- 17           D.     The evaluation criteria which shall serve as the basis for  
18                     recommendations by the evaluation committee shall include, but are  
19                     not limited to:
- 20                 1.     Conformance to the Proposal Requirements Experience
- 21                 2.     Past Performance
- 22                 3.     Price
- 23                 4.     M/WBE Participation
- 24                 5.     Other Instructions

- 1           E.     Evaluation Committee Meetings
- 2           1.     When committees are established to evaluate Request for  
3           Proposals, the originating department (chairperson) will  
4           conduct the meetings, and ensure that: (1) minutes are  
5           recorded; and (2) proper documentation and records of  
6           committee actions are maintained. A copy of the minutes  
7           shall be forwarded to Procurement Management Services for  
8           inclusion in the master file.
- 9           2.     Subsequent to required oral interviews, and discussions, the  
10          evaluation committee will evaluate proposers and prepare a  
11          recommendation. The written recommendation and all other  
12          pertinent documentation shall be forwarded by the chair of  
13          the evaluation committee to Procurement Management  
14          Services.
- 15          3.     The evaluation committee's written recommendation must  
16          include the following for inclusion in the master file within  
17          Procurement Management Services:
- 18           a.     Clear Objective of the Request for Proposal
- 19           b.     Identification of the Committee Members
- 20           c.     Dates of Committee Meetings and a Brief Synopsis of  
21           the General Discussion
- 22           d.     Dates of the Oral Interviews, if any
- 23           e.     Name and Location of the Offeror(s)
- 24           f.     The Evaluation Criteria
- 25           g.     An Explanation for the Basis of Selection
- 26           h.     Recommendation of Acceptance of the Offeror(s)  
27           Proposal
- 28           i.     Votes of Committee Members



- 1           F.     The following exclusions to this rule apply:
- 2           1.     Contracts for legal services by the Board Attorney and the  
3                     attorneys supervised by the Board Attorney, contracted  
4                     third-party claims administration, nonpublic school  
5                     placements and other services/goods for which selection  
6                     procedures are provided by State statute, State Board Rule or  
7                     other Board policy.
- 8           2.     The Professional Services Contract Committee shall be  
9                     comprised of three (3) representatives from Senior Staff,  
10                    two (2) representatives from Education and Curriculum,  
11                    one (1) representative from the Goal Setting Committee,  
12                    one (1) representative from the Office of Economic  
13                    Opportunity (OEO), and nonvoting representatives, from  
14                    Procurement Management Services, office of Board Attorney,  
15                    and Management and Compliance Audits shall meet to  
16                    consider requests for further exceptions to this rule. Such  
17                    exceptions may be granted in the case of sole sources,  
18                    contractors having specific expertise or as otherwise  
19                    determined by the committee to be in the best interest of the  
20                    Board. Exceptions recommended by the committee will be  
21                    submitted to the Board for approval for contracts with an  
22                    annual estimated cost of more than \$50,000.

23     In instances where the contract is estimated to cost less than \$50,000, but more  
24     than the threshold established for quotations, and an exception for the procedure  
25     outlined above is sought, the contract does not have to be submitted to the Board  
26     for approval if the committee has granted an exception pursuant to this policy.

27     The Board may make further exceptions to this policy on a case-by-case basis.

28     **Identical Prices--Priorities for Award**

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

- 31           A.     A business that certifies that it has implemented a drug-free work  
32                     place program shall be given preference in accordance with the  
33                     provisions of F.S. 287.087;
- 34           B.     Local vendor as defined by Board Policy 6320.05;

- 1 C. Certified service-disabled Veteran business;
- 2 D. A certified Minority/Women Business Enterprise vendor;
- 3 E. The Miami-Dade County SBE/Micro/Minority/Women Business  
4 Enterprise vendor;
- 5 F. The Broward, Palm Beach or Monroe County  
6 SBE/Micro/Minority/Women Business Enterprise vendor;
- 7 G. The Broward, Palm Beach or Monroe County vendor, other than the  
8 SBE/Micro/Minority/Women Business Enterprise vendor;
- 9 H. The Florida vendor who is a SBE/Micro/Minority/Women Business  
10 Enterprise vendor;
- 11 I. The Florida vendor, other than a Minority/Women Business  
12 Enterprise vendor;
- 13 J. The Minority/Women Business Enterprise vendor, who, because of  
14 lower prices, receives a larger dollar award for other items; and
- 15 K. The SBE/Micro/non-Minority/Women Business Enterprise vendor,  
16 who, because of lower prices, receives a larger dollar award for other  
17 items.

18 If application of the above criteria does not indicate a priority for award, Board  
19 administration shall determine if the award is capable of being split, and, if the  
20 vendors will agree to split the award. If the award cannot be split, or the vendors do  
21 not agree to split the award, the award will be decided by the toss of a coin. The  
22 toss of a coin shall be held publicly, with the tie low bid vendors invited to be  
23 present as witnesses and participants. A staff member from the Division of  
24 Procurement Management will preside over the coin toss and a member from  
25 Internal Audits will observe.

26 **Vendor Preference for Certified Service-Disabled Veteran Business Enterprises**

27 The Board adopts the relevant portions of "The Florida Service-Disabled Veteran  
28 Business Enterprise Opportunity Act," F.S. 295.187, which provides a vendor  
29 preference in favor of certified service disabled veteran businesses. The State,  
30 through its Department of Management Services, will develop a certification  
31 procedure.

1 In assessing priorities for award, when identical prices are received from two (2) or  
2 more vendors and all other factors are equal, priority for award shall be given to a  
3 certified service-disabled veteran business enterprise as defined by F.S. 295.187. In  
4 the event there are two (2) or more certified-disabled veteran business enterprises  
5 entitled to the preference, then the award shall be given to the business having the  
6 smallest net worth.

7 The vendor preference for certified service-disabled veteran businesses shall be  
8 subordinate only to the vendor preference for businesses implementing a drug-free  
9 workplace.

10 In adopting a major tenet of the Veterans Entrepreneurship and Small Business  
11 Development Act of 1999, (Public Law 106-50), which applies to Federal agencies,  
12 the Board goal for participation by service disabled veteran business enterprises  
13 shall be established at three percent (3%) of the total value of all prime  
14 contract/subcontract awards for each fiscal year.

15 To the extent that this policy is inconsistent with the provisions of any other Board  
16 policy, the provisions of this policy shall supersede.

17 **Performance and Payment Security, Declining a Bid Award, Default and**  
18 **Bonding Company Qualifications**

19 A. Performance Security on Construction Bids and Awards

20 1. Bid bond of five percent (5%) of the total bid amount is  
21 required.

22 2. In order to encourage participation in construction,  
23 remodeling, and renovation projects by small, woman owned,  
24 and minority owned businesses, at the option of the Board,  
25 no bid security or performance or payment bond shall be  
26 required for bids in an amount less than \$200,000.

1                   3.     Bid awards exceeding \$200,000 require a 100% performance  
2                   and payment security of the award amount. For construction  
3                   projects costing \$200,000 or more, the accepted bidder must  
4                   deliver performance and payment bonds equal to the contract  
5                   price, no later than twenty (20) days after the date of award of  
6                   the contract or Approval of the Guaranteed Maximum Price  
7                   (GMP) Amendment by the Board. Bonds must be issued by  
8                   surety companies admitted to do business in the State of  
9                   Florida and listed in the Federal Register of the U.S.  
10                  Department of Treasury for Surety Companies Acceptable on  
11                  Federal Bonds.

12                             Bid security shall be a certified check, cashier's check,  
13                             Treasurer's check, bank draft, or bid bond acceptable to the  
14                             Board in a form and manner that is acceptable to the Board.

15                             Should the accepted bidder refuse to enter into the contract  
16                             or fail to furnish performance and materials and payment  
17                             bonds, the amount of the bid security may be forfeited to the  
18                             District.

19                  B.     Performance Security on Awards Other than Construction

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

22                   2.     Performance security shall not be required unless otherwise  
23                   defined in the bid specification. Performance security shall  
24                   equal 100% of the award amount.

1           C.     Bonding Company Qualifications

2                     Bonds shall be written through a reputable and responsible surety  
3                     bond agency licensed to do business in the State of Florida and with  
4                     a surety company or corporation meeting both of the following  
5                     specifications:

6                     1.     Awards Greater than \$500,000

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

9	<b>Contract Amount</b>	<b>Minimum Rating by</b>
10		<b>A.M. Best</b>
11	\$200,000.00 to	
12	\$5,000,000	A, No Minimum Class
13	\$5,000,000.01 to	
14	\$10,000,000	A, Class IV
15	\$10,000,000.01 or more	A, Class V

16                     b.     Current certificate of authority as acceptable surety on  
17                     Federal Bonds in accordance with the latest edition of  
18                     the United States Treasury Department Circular 570  
19                     entitled "Companies Holding Certificates of Authority  
20                     as Acceptable Sureties on Federal Bonds and as  
21                     Acceptable Reinsuring Companies" and shall be  
22                     accepted for an amount not exceeding the underwriting  
23                     limitation thereon.

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

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

1 **Default by Vendor**

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

6 A bidder who accepts an award but fails to perform shall either (1) pay liquidated  
7 damages of ten percent (10%) of the unit price of the item(s) awarded times the  
8 quantity when no purchase order has been issued, ten percent (10%) of the  
9 purchase order when a purchase order has been issued or \$100, whichever is  
10 greater, or (2) lose eligibility to transact new business with the Board for a period of  
11 fourteen (14) months from date of termination of award by the Board. The  
12 ineligibility shall be applicable to the principals individually and the entity, as well  
13 as any other firm in which a principal of a defaulting firm is a principal. If an  
14 awardee fails to pay the liquidated damages within fifteen (15) days after it is  
15 invoked, the awardee shall lose eligibility to transact new business with the Board  
16 for a period of fourteen (14) months from the date of termination of award by the  
17 Board. Bidders that are determined ineligible may request a hearing pursuant to  
18 F.S. 120.57, Bylaw 0120. The Board reserves the right to waive liquidated  
19 damages/loss of eligibility.

20 Reinstatement of vendors losing eligibility to transact new business with the Board  
21 will not be automatic and will be subject to review by the Contractor's Responsibility  
22 Committee. Vendors will be required to submit a request for reinstatement  
23 including, but not limited to, information as to their status as a responsible vendor  
24 and what steps have been taken to avoid such a situation which caused their  
25 suspension as a District vendor. Procurement Management Services will notify the  
26 Board of all vendors denied reinstatement, and the reasons for denial.

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

30 **Signatures of Superintendent and Designees**

31 The Board authorizes the use of signatures of the Superintendent and his/her  
32 designees on behalf of the Board on all contracts, agreements and documents where  
33 a signature of the Chair is not required by law or regulation of the Department of  
34 Education. All contracts, agreements and documents must be based upon  
35 approvals previously adopted and spread upon the minutes of the Board, unless  
36 exempted by Board policy.

1 **Purchasing Principles**

- 2 Employees shall be guided by the following principles and standards adopted by the  
3 National Association of Purchasing Management:
- 4           A. Consider, first, the interest of his/her company (the Board) in all  
5           transactions and to carry out and believe in its established policies.
  - 6           B. Be receptive to competent counsel from his/her colleagues and to be  
7           guided by such counsel without impairing the dignity and  
8           responsibility of his/her office.
  - 9           C. Buy without prejudice, seeking to obtain the maximum ultimate  
10           value for each dollar of expenditure.
  - 11          D. Strive consistently for knowledge of the materials and processes of  
12           manufacture, and to establish practical methods for the conduct of  
13           his/her office.
  - 14          E. Subscribe to and work for honesty and truth in buying and selling,  
15           and to denounce all forms and manifestations of commercial  
16           bribery.
  - 17          F. Accord a prompt and courteous reception, so far as conditions will  
18           permit, to all who call on a legitimate business mission.
  - 19          G. Respect his/her obligations and to require that obligations to  
20           him/her and to his/her concern be respected, consistent with good  
21           business practice.
  - 22          H. Avoid sharp practice.
  - 23          I. Counsel and assist fellow purchasing agents in the performance of  
24           their duties, whenever occasion permits.
  - 25          J. Cooperate with all organizations and individuals engaged in  
26           activities designed to enhance the development and standing of  
27           purchasing.

1 | **Commercial ~~NonAnti-d~~Discrimination Program**

- 2 |       A. Pursuant to Policy 6465, it is the policy of the Board to promote full  
3 |       and equal business opportunities for all persons doing business  
4 |       with the District by increasing the purchase of goods and services  
5 |       from small businesses within the area of Miami-Dade County.
- 6 |       B. Discrimination against businesses based on sex, race, color, ethnic  
7 |       or national origin, religion, marital status, disability, genetic  
8 |       information, age, political beliefs, sexual orientation, gender, gender  
9 |       identification, social and family background, linguistic preference,  
10 |       pregnancy, and any other legally prohibited basis, is strictly  
11 |       prohibited. No person shall be denied the benefit of, or otherwise  
12 |       discriminated against, on the grounds of sex, race, color, ethnic or  
13 |       national origin, religion, marital status, disability, genetic  
14 |       information, age, political beliefs, sexual orientation, gender, gender  
15 |       identification, social and family background, linguistic preference,  
16 |       pregnancy, and any other legally prohibited basis, in connection  
17 |       with the award and/or performance of contracts or modification of a  
18 |       contract between a vendor or contractor and the Board which  
19 |       contract is paid for, in whole or in part, with monetary  
20 |       appropriations by the Board.
- 21 |       C. The objective of the Commercial ~~NonAnti-d~~Discrimination Program  
22 |       is to promote and encourage full and open competition in the  
23 |       District, procurement and purchasing; encourage all District  
24 |       personnel involved with procurement and contracting activities to  
25 |       maintain good faith efforts and appropriate purchasing procedures;  
26 |       to protect the Board from becoming a passive participant in any  
27 |       unlawful discrimination; and to otherwise spur economic  
28 |       development in the public and private sectors of the local economy.
- 29 |       D. Complaints alleging discrimination under this Program may be filed  
30 |       pursuant to Policy 6465.  
31 |

32 | F.S. 119.07, 120.569, 120.57, 120.57(3), 255.0516, 255.25(3)(c), 282.041(15)  
33 | F.S. 287.017, 287.042(2)(c), 287.056, 1001.41(1)(2), 1001.42(12)(j), 1001.42(26)  
34 | F.S. 1001.43(10), 1006.27, 1010.04(4)(a)  
35 | F.A.C. 6A-1.012, 6A-1.091, 6A-7.0411(2)(i), 28-110.005(2)



**THE SCHOOL BOARD OF  
MIAMI-DADE COUNTY**

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## NEW POLICY

### **6465 - COMMERCIAL ANTI-DISCRIMINATION, DIVERSITY AND INCLUSION**

The School Board shall strive to ensure an equal opportunity for all businesses to participate in all District contracts (Contracts) and that District funds are not used to promote, reinforce or perpetuate discriminatory practices. The School Board is committed to fostering an environment in which all businesses are free to participate in business opportunities and to flourish without the impediments of discrimination.

#### **Applicability**

This policy is applicable to all Contracts, including but not limited to: Contracts for the design, development, construction, operation and maintenance of school buildings and other buildings and structures owned, leased or used by the District or its contractors, assignees, lessees and licensees (Facilities); Contracts for professional services and Contracts for the purchase of goods, services, supplies and equipment for the District and Facilities.

#### **Discrimination Prohibited**

Contractors, vendors and consultants that contract with the District (Contractors), as well as School Board employees involved in the procurement process, (1) shall not discriminate against businesses based on sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis, in connection with the award and/or performance of contracts or modification of a contract between a vendor or contractor and the Board which contract is paid for, in whole or in part, with School Board appropriated funds, and (2) shall provide a full and fair opportunity for the participation of small/micro (SMBE), minority and women-owned business enterprises (M/WBE) in Contracts pursuant to Policies 6320 and 6320.02.

#### **Definitions**

“Contractors” includes any person, firm, partnership, non-profit corporation, for-profit corporation, limited liability company or other legal entity that contracts with the District.

“Small/micro, minority and women-owned business enterprises” are defined in Policy 6320.02.

## **Implementation**

### **A. Articulation, Certification and Dissemination of the Policy**

The Office of Economic Opportunity (OEO), in conjunction with the School Board Attorney's Office, will develop language to be included in bid solicitations, requests for proposals, and contracts that clearly sets forth the objective of the Policy (Solicitation Language). District employees shall include the Solicitation Language in all bids, public solicitations, requests for proposals, contracts and all communications to potential Contractors, including those who wish to provide professional services to the District. For every bid or proposal submitted, contractors must certify that they will comply with this policy.

The Policy shall be articulated to the public in general, and to each Contractor, assignee, lessee or licensee doing or seeking to do business with the District.

### **B. Compliance**

Substantiated violations of this Policy and the Commercial Anti-Discrimination provisions in Policy 6320 will result in sanctions. A violation of SMBE or M/WBE participation requirements under Policy 6320.02 may also be a violation of this policy.

## **Sanctions**

Sanctions for violation of this policy may include suspension, cancellation of the Contract and/or debarment from future contracting opportunities with the District pursuant to Policy 6320.04.

## **Investigation and Complaint Procedure**

Any person or business who has a good faith belief that they have been subjected to prohibited discrimination under this policy may seek resolution through these procedures.

### **A. Complaints Against Employees**

Complaints against employees must be submitted in writing to the Civil Rights Compliance Office (CRC) pursuant to Policy 1362.02. The CRC will follow the procedures in that policy for investigations of these complaints.

### **B. Complaints Against Contractors**

Complaints against businesses must also be submitted in writing to the CRC. All complaints must include the following information to the extent it is available: (1) the identity of the individual or business believed to have engaged in, or is engaging in, prohibited discrimination under this policy, (2) a detailed description of the facts upon which the complaint is based; (3) a list of potential witnesses; and (4) identification of the resolution the complainant seeks. If the CRC determines that the complaint alleges prohibited discrimination, an investigation will be conducted according to these procedures.

The Compliance Officer or designee will conduct an oral interview and prepare a written summary of the oral interview which will be presented to the complainant for verification by signature.

Upon receiving a written complaint, the Compliance Officer will consider, in conjunction with the head of the division or department, whether any action should be taken in the investigatory phase to protect the complainant from further legally prohibited discrimination. In making such a determination, the Compliance Officer should consult the complainant to assess his/her agreement to any action deemed appropriate.

Within three (3) business days of receiving the written complaint of legally prohibited discrimination, the Compliance Officer will inform the individual or company alleged to have engaged in the prohibited conduct that a complaint has been received.

Within five (5) business days of receiving the complaint, the Compliance Officer or a designee will initiate a formal investigation to determine whether the complainant has been subject to prohibited discrimination.

The Compliance Officer or designee will complete an investigation into the allegations of discrimination within forty-five (45) calendar days of receiving the written complaint. The investigation will include:

- A. interviews with the complainant;
- B. interviews with the respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other evidence presented by the

complainant, respondent, or any other witness which is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the respondent and the complainant will be provided a written report of the findings summarizing the evidence gathered during the investigation and the final determination of the case. If a finding of Probable Cause occurs, CRC will forward the completed investigative report, including the determination of Probable Cause, to the Superintendent to review the findings and make a recommendation for sanctions and final disposition of the case.

Complaints should be submitted as soon as possible after the prohibited conduct occurred while the facts are known and potential witnesses are available, and to ensure the prompt elimination of the conduct in question. Failure on the part of the person or business to initiate and/or follow-up on a complaint in a timely manner may result in the claim being considered abandoned. A contractor who fails to cooperate with the investigation will be subject to the sanctions for violation of this policy.

The complaint and any investigation shall remain confidential and not subject to disclosure under Chapter 119, F.S., until a final determination is made. When a final determination is made, the complaint and any records created or obtained during the investigation will be subject to disclosure as public records under Chapter 119, F.S.

These procedures are not intended to interfere with any person's right to pursue a complaint of legally prohibited discrimination with any state or federal enforcement agency.

### **Staff Training**

In all aspects of procurement throughout the District, the School Board shall promote transparency, accountability, diversity and inclusion of all businesses. Because of the multi-racial, multi-ethnic and culturally diverse nature of District staff and this community, the Superintendent shall provide mandatory anti-discrimination, diversity and inclusion training to all District staff involved in any and all District procurement processes.