

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

SUBJECT: **FINAL READING: PROPOSED NEW POLICY 6327, PUBLIC-PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS, AND CONFORMING AMENDMENTS TO BOARD BYLAW 0166, NON-PUBLIC MEETINGS; BOARD POLICIES 6320, PURCHASING; 6320.03, BIDS AND AWARD OF CONSTRUCTION CONTRACT PROCEDURES AND REGULATIONS; 6330, ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, LAND SURVEYING, CONSTRUCTION MANAGEMENT, PROGRAM MANAGEMENT, AND INSPECTION SERVICES; AND 6325, CONE OF SILENCE**

COMMITTEE: **FACILITIES AND CONSTRUCTION**

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

At its December 14, 2016, regular meeting, the Board approved Agenda Item G-1 ("Public-Private Partnerships/Unsolicited Proposals") authorizing the Superintendent to initiate rulemaking proceedings to promulgate new Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, to allow the School Board to solicit private-partnerships and receive unsolicited proposals from private entities in accordance with the new state law. Amendments are also proposed to Board Bylaw 0166, *Non-Public Meetings*; Board Policies 6320, *Purchasing*, 6320.03, *Bids and Award of Construction Contract Procedures and Regulations*; 6330, *Architectural, Engineering, Landscape Architectural, Land Surveying, Construction Management, Program Management, and Inspection Services*, and 6325, *Cone of Silence*, to conform and refer to the proposed new policy.

Until recently, most School Board facility construction has been contracted through traditional methods in accordance with state laws governing procurement and construction of facilities, including competitive bidding, construction management, and program management. Last year, however, the Florida Legislature enacted Section 255.065, F.S., to allow public entities, including School Boards, to procure facility construction, renovations and improvements through partnerships with private entities. The law's express purpose is to provide the greatest possible flexibility to public and private entities contracting for the provision of public services and to promote financing incentives. In doing so, the Legislature recognized that public-private partnerships can meet public facility construction needs by improving the schedule for delivery and lowering the costs.

G-1

The proposed new Policy addresses the identification of qualifying projects and the processes to be used for the submission, evaluation, review, publication, negotiation, and Board approval of solicited and unsolicited public-private partnership proposals from private entities. The Policy provides that the Board may reject or approve these proposals at any time in the process and is not obligated to accept any proposal. As is the case in traditional procurement, the Board may approve a comprehensive agreement with the proposer upon the recommendation of the Superintendent. The policy does not preclude or prohibit other construction contracting arrangements with the School Board that may include multiple government or private entities.

The new policy was developed in collaboration with the Superintendent's Office, Facilities, Treasurer, Financial Operations, and Procurement Management. It was also reviewed by bond counsel Robert Gang, Esq., Greenberg Traurig, and Richard Perez, Esq., Holland & Knight.

The Notice of Intended Action was published in the *Miami Daily Business Review* on December 19, 2016, posted in various places for public information and mailed to various organizations representing persons affected by the new and amended policies and to individuals requesting notification. The time to request a hearing or protest the adoption of these amendments has elapsed.

In accordance with the Administrative Procedure Act, these new and amended policies are presented to The School Board of Miami-Dade County, Florida, for adoption and authorization to file in the official records of The School Board of Miami-Dade County, Florida.

Attached are the Notice of Intended Action and the proposed new policies and policy amendments. Changes 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 new policy new Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, amendments to Board Bylaw 0166, *Non-Public Meetings*; Board Policies 6320, *Purchasing*, 6320.03, *Bids and Award of Construction Contract Procedures and Regulations*; 6330, *Architectural, Engineering, Landscape Architectural, Land Surveying, Construction Management, Program Management, and Inspection Services*, and 6325, *Cone of Silence*, and authorize the Superintendent to file the new and amended policies with The School Board of Miami-Dade County, Florida, to be effective January 25, 2017.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on December 14, 2016, its intention to promulgate new policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, and to amend Bylaw 0166, *Non-Public Meetings*; Policies 6320, *Purchasing*; 6320.03, *Bids and Award of Construction Contract Procedures and Regulations*; 6330, *Architectural, Engineering, Landscape Architectural, Land Surveying, Construction Management, Program Management, and Inspection Services*, and 6325, *Cone of Silence*, at its regular meeting on January 25, 2017.

PURPOSE AND EFFECT: New Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, is proposed to govern School Board solicitations for public-private partnerships and its receipt of unsolicited proposals in accordance with state law, Section 255.065, F.S. Amendments are also proposed to Board Bylaw 0166, *Non-Public Meetings*; Board Policies 6320, *Purchasing*, 6320.03, *Bids and Award Of Construction Contract Procedures and Regulations*; and 6330, *Architectural, Engineering, Landscape Architectural, Land Surveying, Construction Management, Program Management, And Inspection Services*, and 6325, *Cone of Silence*, to conform to the new policy.

SUMMARY: In accordance with Section 255.065, F.S., the proposed new Policy addresses the identification of qualifying projects and the processes to be used for the submission, evaluation, review, publication and Board approval of solicited and unsolicited public-private partnership proposals from private entities. The Policy provides that the Board may reject or approve these proposals at any time in the process and is not obligated to accept any proposal. As is the case with traditional procurement methods, the Board may approve a comprehensive agreement with the proposer upon the recommendation of the Superintendent.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1) (2), (4), (5); 1001.42 (11), (12); 1001.43 (2), (5), (10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: U.S. Titles 23 and 49 C.F.R.; Section 24(b), Article 1, Florida Constitution; 11.066(5), 119.07(1), 119.071(1), 255.05, 255.065, 286.011, 287.055 F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING THE SCHOOL BOARD MEETING on January 25, 2017, 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 January 11, 2017, to the Superintendent, Room 912, at the same address.

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

COPIES OF THE PROPOSED 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.

NEW POLICY

6327 – PUBLIC-PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS

The School Board recognizes that there is a public need for timely and cost-effective construction or upgrades of educational and other facilities that may not be wholly satisfied by the Board's existing procurement methods such as competitive bidding, design-build, and selection of construction or program management companies. In accordance with state law, this policy provides that in addition to its existing procurement methods, the School Board may solicit proposals or receive unsolicited proposals for qualifying public-private project(s) and may thereafter enter into a comprehensive agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities. This policy does not preclude or prohibit other contracting arrangements that include multiple government and private entities.

Definitions

Comprehensive Agreement - the contract between the School Board and the private entity that defines the terms and services to be provided with respect to a qualifying project; must include the requirements of Section 255.065(7), F.S. and those outlined in this policy

Develop – to plan, design, finance, lease, acquire, install, construct, and/or expand a qualifying project

Fees – charges imposed by the private entity of a qualifying project, other than a lease payment, for use of all or a portion of the qualifying project pursuant to a comprehensive agreement; this term does not refer to the unsolicited proposal application fee described in this policy

Lease Payment – any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

Material Default – nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project

Operate – to finance, maintain, improve, equip, modify, or repair a qualifying project

Private Entity– any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity

Proposal – a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixed costs, payment schedules, financing, deliverables, and project schedule are defined

Qualifying Project – a facility or project that serves a public purpose, including but not limited to, vehicle parking facility, fuel supply facility, recreational facility, sporting

or cultural facility, medical or nursing care facility, educational facility or other building or facility that is used or will be used by a public educational institution in support of its core educational mission, or any other facility or infrastructure that could be used by the public at large and supports the School Board's educational mission

Revenues – all income, earnings, user fees, lease payments, or other service payments relating to the qualifying project, including, but not limited to, grant funds

Designation of Qualifying Projects

The School Board may designate qualifying projects as recommended by the Superintendent.

The School Board may approve the development or operation of an educational facility or other government facility needed by the School Board as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if it finds that all of the following criteria are met:

- There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.
- The estimated cost of the qualifying project is reasonable and beneficial to the Board in relation to similar facilities.
- The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Solicitation of Public-Private Partnership for Qualifying Projects

- (a) The Superintendent may solicit and recommend public-private partnerships and agreements with private entities to the Board for qualifying projects in accordance with law and this policy.
- (b) If the solicited qualifying project includes design work, the Board's solicitation must include a design criteria package prepared by an architect, a landscape architect, or an engineer licensed in Florida which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify reasonably specific criteria for the qualifying project such as the legal description of the site, with survey information, interior space requirements, material quality standards, schematic layouts and conceptual design criteria for the qualifying project, cost or budget estimates, design and construction schedules, and site development and utility requirements. The licensed design professional who prepares the design criteria package shall be retained to serve the Board through completion of the design and construction of the project. The outside, independent licensed design professional shall be selected through the Board's existing selection process and procedures. The costs incurred for retaining the licensed design professional may be reimbursed to the Board as part of the comprehensive agreement if the proposer is selected by the Board for

award. Notice shall be included in the solicitation documents that such reimbursement may be required under the comprehensive agreement if awarded.

- (c) The Board may also include a reasonable fee in the comprehensive agreement with the proposer that covers the costs of processing, reviewing, and evaluating the proposal, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors and consultants. The fee shall be determined by the Superintendent. Notice shall be included in the solicitation documents that such fees may be charged.

Unsolicited Proposals of Public-Private Partnership for Qualifying Projects

1. Any private entity may submit an unsolicited proposal to the School Board to contract for the design, construction, operation, ownership, acquisition, or leasing of a qualifying project.
2. Application Fees
 - (a) The School Board shall charge a fee to the private entity to cover the costs of processing, reviewing and evaluating any unsolicited proposal, including a fee to cover the costs of attorneys, engineers, consultants, and financial advisors. The fee charged for reviewing the proposal shall be based on the level of expertise deemed necessary by the Superintendent but will not be greater than the direct costs associated with evaluating the proposal. Direct costs may include, but are not limited to (a) the cost of staff time required to process, evaluate, review and respond to the proposal, and (b) the costs of attorneys, engineers, financial advisors and other consultants. If the project proceeds beyond the initial review and is published for competition, additional fees for review and evaluation may be charged.
 - (b) A private entity that submits an unsolicited proposal must concurrently submit an initial application fee of \$25,000. If the application fee is more than the direct costs for the evaluation, the difference will be refunded to the applicant. However, additional fees may be charged based on the nature and complexity of the proposal and review required. If the initial fee does not cover the direct costs to evaluate the proposal, the Superintendent must request in writing the additional amounts required. The private entity must pay the additional amounts within 30 days after receipt of the notice. If the entity fails to pay, the evaluation will not proceed. All fees must be paid prior to further evaluation. Payment must be made by electronic fund transfer wire, cashier's check or other non-cancelable instrument. Personal checks will not be accepted.
 - (c) If the proposal is not evaluated, the Superintendent must return the entire application fee to the private entity.

3. Initial Application Process

- (a) Unsolicited proposals and the required application fee shall be submitted to Procurement Management Services. The date and time of receipt will be stamped on the proposal.
- (b) An unsolicited proposal from a private entity for approval of a proposed qualifying project must be accompanied by the following material and information, if applicable:
- A detailed description of the proposed qualifying project.
 - A conceptual site plan, floor plans and elevations.
 - A description of the provision of services under the proposed qualifying project;
 - A schedule for the initiation and completion of the proposed qualifying project with sufficient detail as to projected milestones.
 - A description of the method by which the proposer will secure any necessary property interests that are required for the proposed qualifying project.
 - A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects.
 - A description of the proposer's general plans for financing the proposed qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity and the School Board.
 - Performance guarantees and any other proposed bonding to be provided by the proposer.
 - A listing of all proposed obligations or involvement of any other governmental entities, including, but not limited to, contributions to the project's financing, staffing, and permitting.
 - The name and address of a person who may be contacted for additional information concerning the proposal.
 - A description of the private entity including the names of owners, directors and officers of the proposer and such information necessary to evaluate the qualifications of the critical personnel to be engaged in the project.
 - A listing of all engineering or construction firms proposed to be included on the project and their qualifications and a description of their role in the project.
 - Information and supporting documentation of the benefit of the proposal to the public and the School Board.
 - The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for

and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

- Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.
- A description of how the project will benefit small and minority businesses, identification of all known small/micro and minority/women-owned business enterprises (as defined in Policy 6320.02) that will participate in the project and the proposed scope of work of each, and a written statement that the proposer and project will comply with all of the Board's diversity, inclusion and anti-discrimination policies, including 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, 6320.06, *Diversity, Equity, and Inclusion in Business Operations and Practices*, 6465, *Anti-Discrimination in Business Operations*, and 6460, *Business Code of Ethics*.

The Superintendent may waive any of these criteria as appropriate for each proposed qualifying project.

- (c) The unsolicited proposal shall include sufficient detail and information to evaluate the proposal and meet the above criteria. If the proposal is not deemed by the Superintendent to be complete or in sufficient detail, it may be rejected at the sole discretion of the Superintendent. The Superintendent shall inform the proposer in writing of the reason for rejection and return the application fee to the proposer.
- (d) If the Superintendent determines that the proposal meets the above requirements and chooses to evaluate an unsolicited proposal involving architecture, engineering, or landscape architecture, he/she must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to ensure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect, or an engineer licensed in this state qualified to perform the review and such professional shall advise the School Board through the completion of the design and construction of the project and selected through the Board's existing selection process and procedures.
- (e) Upon completion of the review and evaluation, the Superintendent shall either reject the proposal or proceed to publication of the proposal under this policy. The Superintendent shall respond to the proposer in writing as to the acceptance or rejection of the unsolicited proposal and inform the Board of any rejection(s).

Publication

- (a) In determining whether to publish a proposal, the Superintendent must determine that the proposed project:

- is in the public's best interest;
 - is for a facility that is owned by the School Board or is for a facility for which ownership will be conveyed to the School Board;
 - has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of a material default or cancellation of the comprehensive agreement by the School Board;
 - has adequate safeguards in place to ensure that the School Board or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes;
 - will be owned by the School Board upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed;
- (b) When a proposal is solicited from private entities for a qualifying project, or an unsolicited proposal is accepted for publication of the project described in the unsolicited proposal, the notice shall be published in the Florida Administrative Register and a newspaper of general circulation in Miami-Dade County at least once a week for two weeks stating the Board has received a proposal and will accept other proposals for the same project. The timeframe within which other proposals will be accepted shall be determined on a project-by-project basis based upon the complexity of the qualifying project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received. However, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days after the initial date of publication. If approved by a majority of the Board, the Board may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.
- (c) The Notice shall identify the procedures that will be used for submitting and evaluating the proposals which shall be the same as those for submission of unsolicited proposals, including the application fee.
- (f) The Cone of Silence in Policy 6325 shall be imposed from the time of publication of a competitive proposal, except for unsolicited proposals when the Cone of Silence will begin at the time the proposal is received in accordance with this policy, until the Board Committee meeting immediately prior to the meeting in which the Board will reject all bids or approve an award.

Proposal Evaluation and Approval

- (a) After the response period for a solicited proposal, or the public notification period for an unsolicited proposal has expired, all proposals received shall be evaluated according to the published criteria and ranked in order of preference. The ranking shall be conducted by a selection committee

appointed by the Superintendent on a project-by-project basis and in compliance with existing procurement policies. Factors that must be considered in ranking the proposals include, but are not limited to, professional qualifications of the proposer(s), general business terms, innovative design techniques or cost-reduction terms, and finance plans. The Superintendent may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the negotiation results are not satisfactory, the Superintendent may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. No proposer is guaranteed the award of a contract as a result of being favorably ranked for this project and the issuance of an unsolicited proposal shall create no rights in the proposer including rights as a bidder, under contract, or intellectual property. If only one proposal is received, the Superintendent may negotiate in good faith, but if the negotiation is unsatisfactory, negotiations may be terminated. Notwithstanding this process, any and all proposals may be rejected by the Superintendent or School Board in accordance with this policy at any point in the process.

- (b) The bid protest process in Policy 6320 shall apply only to any final Board decision to recommend a contract award to a proposer or to reject all bids, unless such protest is waived.
- (c) The Superintendent shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the contract is recommended to the School Board for award.

Comprehensive Agreement

- (a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the School Board.
- (b) The agreement shall include the requirements required by Section 255.065(7), F.S., and those which address
 - delivery of performance and guarantee bonds in compliance with Section 255.05, F.S.,
 - School Board approvals of the project design, inspection and monitoring by the School Board during the course of the project,
 - maintenance of public liability insurance by the private entity, periodic filing of financial statements by the private entity,
 - procedures governing the rights and responsibilities of the parties during the course of the project and in the event of material default by the private entity,

- provisions for the transfer or purchase of the property or other interest of the private entity by the School Board,
 - payment schedules and financing arrangements,
 - provisions evidencing the private entity's compliance with all of the Board's diversity, inclusion and anti-discrimination policies, including 6320.02, *Small/Micro and Minority/Women-Owned Business Enterprise Programs*, 6320.06, *Diversity, Equity, and Inclusion in Business Operations and Practices*, 6465, *Anti-Discrimination in Business Operations*, and 6460, *Business Code of Ethics*, and
 - any other provisions deemed necessary for the qualifying project.
- (c) In accordance with Section 255.065(7)(b), F.S., the agreement may also include provisions that
- allow the School Board to make grants or loans to the private entity,
 - relate to notice of fault, cure rights and unavoidable delays, or
 - terminate the authority and duties of the private entity and dedicate the qualifying project to the School Board.
 - address reimbursement and/or payment for costs incurred by the Board in reviewing and processing the initial proposal.

Qualifying Project Financing

- (a) The private entity may secure its own private-source financing which must be paid in full upon transfer of the facility to the School Board in accordance with the comprehensive agreement.
- (b) As provided in, and in accordance with state law, the School Board may use innovative finance techniques including Federal loans as provided in Titles 23 and 49, C.F.R., commercial bank loans, other public and/or private sources, from its own capital or operating budget, or any other legally permissible funding source including proceeds of debt issuance.
- (c) Financing arrangements, however, shall not require the School Board to indemnify the financing source, subject the facility to liens in violation of Section 11.066(5), or secure financing by a mortgage on, or security interest in, the real or tangible property of the School Board in a manner that could result in the loss of the fee ownership of the property or facility by the School Board, or otherwise result in the foreclosure of the School Board's interest in such property.
- (d) If School Board financing of a debt obligation is involved, the Board's Treasury Advisory Committee shall review and approve the financing and debt proposal prior to publication.
- (e) The full faith and credit of the School Board may not be pledged to secure the financing of the private entity.

Expiration or Termination

- (a) Upon expiration or termination of a comprehensive agreement, the School Board may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project, or for any other purpose deemed appropriate by the Board and allowed by law.
- (b) If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders in the same way provided in the comprehensive agreement. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under those agreements.
- (c) The School Board may terminate a comprehensive agreement with cause and exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement.
- (d) The assumption of the development or operation of the qualifying project does not obligate the School Board to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

Sovereign Immunity

Neither the sovereign immunity of the School Board nor any School Board officer or employee is waived as a result of participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project.

Public Records and Public Meeting Exemptions for Unsolicited Proposals

1. An unsolicited proposal received by the School Board is exempt from Section 119.07(1) and Section 24(a), Art. I, Florida Constitution, until the recommendation for award or rejection is posted.
 - If all proposals submitted pursuant to a competitive solicitation for a qualifying project are rejected and notice of an intent to seek additional proposals for such project is concurrently provided, the unsolicited proposal remains exempt until the notice of an intended decision concerning the reissued competitive solicitation for the qualifying project is posted or until the reissued competitive solicitation for such project is withdrawn.
 - An unsolicited proposal is exempt for no longer than 90 days after the initial notice rejecting all proposals is posted.

2. If no competitive solicitation for a qualifying project is issued, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal.
3. Any portion of any meeting during which an unsolicited proposal that is exempt is discussed is exempt from Section 286.011 and Section 24(b), Art. I, Florida Constitution.
 - A complete recording must be made of any portion of an exempt meeting. No portion of the meeting may be held off the record.
 - The recording of, and any records generated during, the exempt meeting are exempt from Section 119.07(1) and Section 24(a), Art. I, Fl. Constitution, until such time as the Superintendent posts notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the School Board if no competitive solicitation for the project is issued.
 - If the intended decision is to reject all proposals and the Superintendent concurrently provides notice of an intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from 119.07(1) and Section 24(a), Art. I, Florida Constitution, until such time as the notice of an intended decision concerning the reissued competitive solicitation is posted or until the School Board withdraws the reissued competitive solicitation for the project.
 - A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice rejecting all proposals is posted.
4. Board meetings to discuss exempt unsolicited proposals shall be conducted in accordance with Policy 0166, *Non-Public Meetings*, and called and noticed as a Special Meeting under Policies 0164, *Notice of Meetings*, and 0165, *Public Meetings*.

U.S. Titles 23 and 49, C.F.R
Section 24(a), Article I, Florida Constitution
F.S. 11.066(5), 119.07(1), 119.071(1), 255.05, 255.065, 286.011, 287.055

1

MEETINGS

2 0166

Non-Public Meetings

3

A. Attorney-Client Sessions

4

5

6

The School Board and its attorneys may meet in private to discuss pending litigation to which the Board is presently a party under the following conditions:

7

8

9

10

11

1. The Board Attorney shall advise the Board at a public meeting that s/he desires advice concerning the litigation. Alternatively, the Board Attorney may submit a written request for an attorney-client session to the Board Chair.

12

13

14

2. The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

15

16

17

18

19

20

21

22

23

3. The Board shall give reasonable public notice on the Board's website and a local newspaper of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending.

24

25

26

27

28

29

30

31

32

4. The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the Clerk of the Board within a reasonable time after the meeting.

- 1 5. At the conclusion of the attorney-client session, the
2 meeting shall be reopened, and the person chairing the
3 meeting shall announce the termination of the session.
- 4 6. The transcript shall be made part of the public record
5 upon conclusion of the litigation.
- 6 7. Any discussions held during the attorney-client session
7 and any materials presented at the session are
8 confidential and may not be publicly disclosed, except
9 as provided under F.S. 286.011(8).
- 10 B. Risk Management Sessions
- 11 The Board and its attorneys may meet in private to discuss
12 the evaluation of claims filed with the risk management
13 program or which relate solely to offers of compromise of
14 claims filed with the risk management program. Until
15 termination of all litigation and settlement of all claims
16 arising out of the same incident, persons involved in
17 discussions pertinent to the evaluation of a filed claim shall
18 not be subject to subpoena in any administrative or civil
19 proceeding with regard to the content of those discussions.
- 20 All risk management sessions held between the Board, its
21 attorneys and members of the School District's Risk
22 Management department shall abide by the recording
23 requirements. The Board Attorney shall communicate the
24 need for a Risk Management session to the Chair of the Board
25 who shall determine the date the meeting will be held.
- 26 Risk management sessions do not require public notice. Any
27 discussions held during a risk management session and any
28 materials presented at the session are confidential and may
29 not be publicly disclosed until termination of all litigation and
30 settlement of all claims arising out of the same incident,
31 although portions of the claim files may remain exempt from
32 disclosure.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

C. Executive Sessions

The Board may meet privately in confidential executive session to discuss issues related to collective bargaining.

All work product developed by the Superintendent or the Board in preparation for negotiations, and during negotiations are confidential and exempt from Public Records laws.

The Superintendent shall notify the Board of the need for an executive session at the earliest practical date before the session is scheduled.

Executive sessions of the Board do not require public notice, but the memorandum setting the date, time and purpose of the session may be publicly disseminated. Any discussions held during an executive session and any materials presented at the session are confidential, and may not be publicly disclosed.

D. Public-Private Partnerships and Unsolicited Proposals

In accordance with Section 255.065, F.S., and Policy 6327, Public-Private Partnerships and Unsolicited Proposals, any portion of a meeting of the School Board during which an unsolicited proposal that is exempt is discussed is non-public. Board meetings to discuss exempt unsolicited proposals shall be conducted in accordance with Policy 0166, Non-Public Meetings, and called and noticed in the same manner as a Special Meeting under Policies 0164, Notice of Meetings, and 0165, Public Meetings.

A complete recording must be made of any portion of an exempt meeting. No portion of the meetings may be held off the record. The recording of, and any records generated during, the exempt meeting are exempt from Section 119.07(1) and Section 24(a), Art. I, Fl. Constitution, until such time as the School Board provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the School Board if the School Board does not issue a competitive solicitation for the project.

If the School Board rejects all proposals and concurrently provides notice of its intent to reissue a competitive

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

solicitation, the recording and any records generated at the exempt meeting remain exempt from 119.07(1) and Section 24(a), Art. I, Florida Constitution, until the School Board provides notice of an intended decision concerning the reissued competitive solicitation or until the School Board withdraws the reissued competitive solicitation for the project.

A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the School Board rejecting all proposals.

DE. Penalties For Violation of Confidentiality of Closed Sessions

All participants attending these non-public meetings must maintain the confidentiality of the information provided and may not disclose this information to the public. Disclosure of confidential information may place the Board in a disadvantageous position in either litigation or in collective bargaining. In addition, disclosure of such confidential information could be a violation of the Code of Ethics for Public Officers and Employees as outlined under F.S. Chapter 112. A complaint shall be filed, if deemed appropriate, by the Ethics Advisory Committee with the Florida Commission on Ethics against any individual who is determined to have disclosed confidential information that was provided solely at an attorney-client, risk management, or executive session. The Florida Commission on Ethics has the authority to make final determinations with regard to such complaints. Participants at these sessions are not precluded from using the information provided in these sessions to fulfill the duties and responsibilities of their assigned administrative positions.

1 | EF. Settlement Authority

2 Any settlements of civil cases that are reached as a result of
3 an attorney-client session and that are beyond the monetary
4 threshold afforded to the Board Attorney, shall be presented
5 to the Board for approval. Settlements of tort cases that are
6 reached as a result of direction given at a risk management
7 session do not require Board authorization if they do not go
8 beyond the previously established monetary thresholds.

9 | FG. Scheduling

10 The Board shall first consider Wednesdays to schedule all
11 meetings in which Board members are requested to attend,
12 recognizing that certain factors may impede consideration for
13 Wednesdays including, but not limited to, advertisements,
14 agenda publication deadlines, emergency meetings, annual
15 organizational meeting, legislatively mandated periods for
16 special meetings and budget public hearings, religious
17 holidays, previously scheduled calendared conflicts and
18 travel, legislative session, Dade Days, and graduations.

19 |
20 |
21 |
22 |
23 | Revised 6/18/14

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 1 of 34

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 **Definitions**

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

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

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

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 2 of 34

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

policy

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

FINANCES
6320/page 3 of 34

- 1 J. *Request for Proposals* - a written solicitation for competitive sealed
2 proposals used when it is not practicable for the Board to
3 specifically define the scope of work for which the commodity, group
4 of commodities, or contractual service is required and when the
5 Board is requesting that a responsible vendor propose a commodity,
6 group of commodities, or contractual service to meet the
7 specifications of the solicitation document.
- 8 K. *State Appropriated Funds* - funds appropriated in the Florida
9 General Appropriations Act, excluding Federal funds; does not
10 include general obligation bond funds for capital construction or
11 funds raised through local capital outlay millage.
- 12 L. *Vendor File* - accumulated record of a vendor maintained by
13 Procurement Management Services, including information on the
14 vendor's relationship with the Board, application for inclusion on
15 the bidder's list, record of performance under contracts, and
16 correspondence.

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

18 Responsibilities

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

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

policy

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

FINANCES
6320/page 4 of 34

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

policy

THE SCHOOL BOARD OF MIAMI-DADE COUNTY

FINANCES
6320/page 5 of 34

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

policy

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

FINANCES
6320/page 6 of 34

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

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

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

policy

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

FINANCES
6320/page 7 of 34

- 1 K. 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 L. 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 M. A contract for regulated utilities or government-franchised services
22 may be awarded without competitive solicitations.
- 23 N. As much as practicable, all purchases shall be based on contracts,
24 purchasing card systems, electronic procurements, or purchase
25 orders.
- 26 O. 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.

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 8 of 34

- 1 P. Except as otherwise required by statute, the Board, when
2 purchasing insurance, entering risk management programs, or
3 contracting with third party administrators, may use the competitive
4 solicitation process or direct negotiations and contract.
- 5 Q. Emergency purchases made and approved by the Superintendent or
6 the Superintendent's designated representative. The
7 Superintendent will report all emergency purchases to the Board, as
8 soon as possible.
- 9 When an emergency arises, circumstances contributing to such an
10 emergency shall be communicated to the proper department or
11 agency of the Board, which in turn will notify Procurement
12 Management, requesting the emergency purchase.
- 13 A requisition for an emergency purchase shall be accompanied by
14 the appropriate Emergency Purchase Request Form, explaining the
15 circumstances creating the emergency and clarifying that immediate
16 action is required to protect the Board's interests. Emergency
17 purchases are divided into two (2) categories as follows:
- 18 1. Emergency Purchase Request (Form B FM-3739) estimated
19 expenditure \$50,000 and under requires the signature of the
20 initiating administrator, recommended by Director or above
21 and approval by the Assistant Superintendent or above.
- 22 2. Emergency Purchase Request (Form A FM-2333) estimated
23 expenditure over \$50,000 requires the signature of the
24 initiating administrator, recommended by the Assistant
25 Superintendent or above, or his/her designee(s) and approval
26 by Superintendent or designee. Emergency purchases over
27 \$50,000 shall be reported to the Board.

policy

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

FINANCES
6320/page 9 of 34

- 1 R. Competitive bidding is waived for purchases of maintenance and/or
2 service contracts, on various types of technical equipment, that are
3 offered and/or supplied only by the original manufacturer or its
4 representative, or that are required to maintain the integrity of the
5 manufacturer's warranty, or that are part of the manufacturer's
6 rental/lease/lease purchase agreements terms and conditions.
- 7 S. Non-Purchase Order Invoice Funds Reservation Purchases are
8 purchases for goods and services, expenditures, fund transfers, etc.,
9 where a professional service contract is not required, or a bid is in
10 place and that are not appropriate for normal competitive
11 purchasing procedures. Only the expenditures listed below will be
12 authorized and processed as Non-Purchase Order Invoice Funds
13 Reservation Purchases. Non-Purchase Order Invoice Funds
14 Reservation purchases require the same financial authorization and
15 approval process as purchase requisitions and shopping carts.
16 Those purchases for goods and services, expenditures, fund
17 transfers, etc., that are authorized for Non-Purchase Order Invoice
18 Funds Reservation Purchases are limited to include various types of
19 fund advances, services, reimbursements and purchases, and/or
20 payment for goods and services, which are not appropriate for
21 normal competitive purchasing procedures:
- 22 1. additional services where a professional service contract is
23 not required or there is no bid in place (polygraph,
24 transcribing, etc.)
- 25 2. employee related admission/registration fees to workshops
26 and conferences that are not expensed to out-of-county travel
27 (all out-of-county travel must be entered through and
28 approved by the travel system process)
- 29 3. association fees, professional association dues, academy
30 certification requirements and District membership to
31 organizations

policy

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

FINANCES
6320/page 10 of 34

- 1 4. internal distribution of funds to school athletic programs,
2 vending machine commissions, diplomas, and savings
3 programs
- 4 5. District rental/lease of facilities
- 5 6. all utility service, connection charges, and fees
- 6 7. graduation program fees (non-employees, union charges,
7 etc.), including facility rental, equipment requirements,
8 foliage rental, non-employees, and union charges
- 9 8. student related field trips that are not handled through a tour
10 company or travel agency, tickets, and admissions to parks,
11 registration fees for competitions, and hotel accommodations
- 12 9. groceries and supplies for educational use in alternative
13 programs or academic requirements
- 14 10. insurance policies payments/reimbursements, State fees
15 (retirement, unemployment compensation, etc.), tax related
16 payments, legal settlement payments and bonds, license fees
17 and agreements, permit fees, property loss payment
- 18 11. media advertising (newspaper, radio, television, banners,
19 brochures, pamphlets, etc.)
- 20 12. grant authorized workshop reimbursements including
21 refreshments
- 22 13. petty cash replenishment
- 23 14. postage requisitions
- 24 15. toll charges for authorized District departments
- 25 16. travel reimbursement for non-employees

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 11 of 34

T. In accordance with state law and Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, the Superintendent may submit proposed public-private partnership agreements for qualifying projects, including those resulting from unsolicited proposals, to the Board for consideration. The Superintendent and Board shall evaluate and consider all proposed public-private partnership agreements according to the guidelines in Section 255.065, F.S., and Policy 6327.

1 **Competitive Bidding Requirement**

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

3 For each purchase of \$50,000 or less and over the minimum
4 quotation threshold established by Procurement Management
5 Services, staff shall obtain written, telephone, or electronic
6 quotations from three (3) or more sources. If possible, vendors
7 contacted shall include M/WBE vendor participation. If only one (1)
8 of those sources respond with prices, two (2) additional sources, if
9 available, may be contacted for pricing, including, if possible, an
10 M/WBE vendor. If no additional prices are obtained from those
11 sources, the award shall be made to the vendor who submitted the
12 lowest and best price quotation. If all three (3) of the vendors first
13 contacted for prices respond with valid price quotations, the award
14 shall be made to the vendor who submitted the lowest price
15 quotation meeting the bid specifications, with no additional requests
16 from other vendors required.

17 Quotations obtained shall be attached to or included with the
18 purchase order by written notations or electronic reference
19 indicating quotation prices and sources, certification by signature or
20 facsimile. The requisition shall be approved for purchase as
21 authorized by the Superintendent. All internal fund purchases shall
22 comply with Policy 6610.

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 12 of 34

- 1 B. Invitation to Bid
- 2 1. The Board may accept the proposal of the lowest responsive,
3 responsible proposer. Alternatively, the Board may award
4 contracts to the lowest responsive, responsible bidder as the
5 primary awardee of a contract and to the next lowest
6 responsive, responsible bidder(s) as alternate awardee(s) from
7 whom commodities or contractual services would be
8 purchased should the primary awardee becomes unable to
9 provide all of the commodities or contractual services
10 required by the Board during the term of the contract.
11 Multiple awards to the lowest responsive and responsible
12 bidders are permitted when multiple awards are clearly
13 allowed by the bid solicitation documents.
- 14 2. When the determination is made that a bid is appropriate, the
15 performance specifications and standard requirements shall
16 be stated in detail and shall be furnished to Procurement
17 Management Services. After review, Procurement
18 Management Services shall issue the invitation to bids,
19 including all general and special conditions, and evaluate the
20 bids submitted. The requirements for solicitation and review
21 of bids by the Goal Setting Committee (GSC) shall be followed
22 in all cases. Board approval is required for contracts
23 recommended for award.

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 13 of 34

- 1 3. For each purchase of more than \$50,000, bids shall be
2 requested from three (3) or more sources. Notices of bids
3 shall be electronically posted or may be sent to all vendors on
4 the active vendor mailing list for that category of goods or
5 services. This list shall include all minority/women business
6 enterprises (M/WBE) vendors, identified by the Board in
7 accordance with Policy 6320.02, for that particular category
8 of goods or services, as well as organizations involved in
9 assisting M/WBEs. Notices of bids shall be advertised in
10 one (1) or more major local newspapers or electronically
11 posted at least seven (7) days prior to the bid opening date.
12 This may include, as necessary, major newspapers having
13 circulation representative of the various relevant minority
14 classifications or electronic posting. Tabulations of current
15 bids shall be retained in bid files and shall be available for
16 reference. Standard bid forms used shall be those approved
17 by the Superintendent and the Board attorney's office.
- 18 C. Development of Specifications, Determination of Quantities, and
19 Standardization of Supplies and Equipment
- 20 1. To achieve both quality control and the price advantages of
21 quantity purchasing, the administration shall:
- 22 a. establish specifications for goods and services as
23 needed;
- 24 b. identify several existing, commercially available
25 "standard brands" that meet the specifications
26 acceptable as examples; and
- 27 c. invite vendors to bid on the standard brands identified
28 or their equivalent.

policy

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

FINANCES
6320/page 14 of 34

- 1 2. All bid quantities and specifications shall be transmitted to
2 Procurement Management Services by the originating
3 department in writing. The originating department shall also
4 certify to Procurement Management Services in writing that
5 the specifications for an existing bid (to be rebid) are still
6 appropriate before issuance of the bid. Specifications
7 originated by Procurement Management Services shall follow
8 similar certification procedures.

- 9 3. All increases to quantities specified in an existing term bid
10 requiring a supplemental bid award shall be requested in
11 writing by the originating department, countersigned by an
12 administrator reporting directly to the Superintendent, and
13 identifying the reason why the increase in quantities was
14 unavoidable. If an adequate reason cannot be identified, then
15 the corrective action to be taken by the originating
16 department to prevent a future underestimate of quantities
17 shall be described. A similar procedure will be followed for
18 term bids originated by Procurement Management Services.

- 19 4. All changes to specifications for an existing bid (to be rebid) or
20 similar bid shall be identified in writing, including the reason
21 for the change, by the originating department or Procurement
22 Management Services if it is the originator.

- 23 5. The chief procurement officer of Procurement Management
24 Services shall identify specifications which appear to limit the
25 bidding process to a single vendor. In the event that the chief
26 procurement officer has identified such a set of specifications,
27 the originating department shall be required to justify in
28 writing the specifications which appear to favor a single
29 vendor. This documentation shall be countersigned by an
30 administrator reporting directly to the Superintendent.

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 15 of 34

1 D. Request for Proposals (RFP)

2 The Board may award contracts to one (1) or more responsive,
3 responsible proposers in accordance with the selection criteria
4 published in the request for proposal. The Board is not required to
5 request proposals for purchases made from contracts of the
6 Department of Management Services.

7 The RFP shall be used when the purposes and uses for which the
8 commodity, group of commodities, or contractual service being
9 sought can be specifically defined and the agency is capable of
10 identifying necessary deliverables. Various combinations or versions
11 of commodities or contractual services may be proposed by a
12 responsive vendor to meet the specifications of the solicitation
13 document. A written solicitation includes a solicitation that is
14 electronically posted.

15 The following process shall be followed for an RFP:

16 1. For contracts estimated to be more than \$50,000 annually:

17 a. Prior to issuing the RFP and in accordance with Board
18 Policy 6320.02, the GSC shall review the RFP to
19 determine Small Business Enterprise (SBE), Micro
20 Business Enterprise (MBE), M/WBE participation in
21 the project.

22 b. The RFP shall be advertised to solicit maximum vendor
23 participation. To enhance M/WBE participation,
24 advertisements must be published and announced in
25 major publications that serve minority communities.

26 2. For contracts estimated to cost less than \$50,000 annually:

27 a. There must be evidence that at least three (3) vendors
28 were contacted in writing, and if possible, at least
29 one (1) of these vendors shall be a M/WBE.

policy

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

FINANCES
6320/page 17 of 34

1 E. Invitation to Negotiate

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

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

10 F. Evaluation Committee Meetings

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

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

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

policy

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

FINANCES
6320/page 18 of 34

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

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 19 of 34

1 2. The Professional Services Contract Committee (PSCC) may
2 consider requests for exceptions. The committee shall be
3 comprised of three (3) representatives from senior staff,
4 two (2) representatives from education and curriculum,
5 one (1) representative from the GSC, one (1) representative
6 from the Office of Economic Opportunity (OEO), and
7 nonvoting representatives, from Procurement Management
8 Services, Board attorney's office, and Management and
9 Compliance Audits. Exceptions may be granted for sole
10 source contracts, contractors having specific expertise, or as
11 otherwise determined by the committee to be in the best
12 interest of the Board. For contracts with an annual estimated
13 cost of more than \$50,000, exceptions recommended by the
14 committee must be approved by the Board.

15 I. RFP and Professional Service Contracts:

16 Professional service is any type of personal service to the District
17 which requires as a condition precedent to the rendering of such
18 service:

- 19 1. the obtaining of a license or other legal authorization; or
- 20 2. work which can only be performed by one (1) who has
21 achieved a high level of training and proficiency in the work to
22 be performed.

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

27 The Board may make further exceptions on a case-by-case basis upon
28 recommendation of the Superintendent.

policy

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

FINANCES
6320/page 20 of 34

1 **Purchase Requisitions**

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

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

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

16 **Protests**

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

19 **Protest of Specifications**

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

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

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 21 of 34

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.

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 22 of 34

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

policy

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

FINANCES
6320/page 23 of 34

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

15 **Protest of Bid Award**

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

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

policy

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

FINANCES
6320/page 24 of 34

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

7 **Receiving and Opening of Bids**

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

10 A. Bids are to be submitted to Procurement Management Services or
11 electronically up to the time and on the date specified in the bid
12 documents. Bids received after the date and hour specified in the
13 Bidder Qualification Form will not be considered.

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

15 1. The District Director, Procurement Management Services, or
16 an administrator designated by the District Director shall
17 serve as chairperson.

18 2. A person designated by the District Director, Procurement
19 Management, to record the minutes of the bid opening, and
20 such minutes shall be reported to the Board at the next
21 regularly scheduled Board meeting.

22 3. The Executive Director, Project and Contract Management, or
23 an administrator designated by the Executive Director.

24 4. Those additional administrators and support staff required
25 for the efficient handling of this procedure.

26 C. All construction bids shall be opened and tabulated prior to bids
27 being released by the recording secretary.

policy

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

FINANCES
6320/page 25 of 34

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

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

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

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

12 **Rejection of Bids**

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

21 **Irregular or Deviating Bids**

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

policy

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

FINANCES
6320/page 26 of 34

1 **Award Recommendation**

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

5 **Official Award Date**

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

8 **Contract Renewals**

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

13 **Legal Basis for Procedures**

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

17 **Bidding**

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

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 27 of 34

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

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

5 A. A business that certifies that it has implemented a drug-free work
6 place program shall be given preference in accordance with the
7 provisions of F.S. 287.087;

8 B. Local vendor as defined by Board Policy 6320.05;

9 C. Certified service-disabled Veteran business;

10 D. A certified Minority/Women Business Enterprise vendor;

11 E. The Miami-Dade County SBE/Micro/Minority/Women Business
12 Enterprise vendor;

13 F. The Broward, Palm Beach or Monroe County
14 SBE/Micro/Minority/Women Business Enterprise vendor;

15 G. The Broward, Palm Beach or Monroe County vendor, other than the
16 SBE/Micro/Minority/Women Business Enterprise vendor;

17 H. The Florida vendor who is a SBE/Micro/Minority/Women Business
18 Enterprise vendor;

19 I. The Florida vendor, other than a Minority/Women Business
20 Enterprise vendor;

21 J. The Minority/Women Business Enterprise vendor, who, because of
22 lower prices, receives a larger dollar award for other items; and

23 K. The SBE/Micro/non-Minority/Women Business Enterprise vendor,
24 who, because of lower prices, receives a larger dollar award for other
25 items.

policy

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

FINANCES
6320/page 28 of 34

1 In accordance with Florida law, local preference shall not be applied to competitive
2 solicitations for construction services in which fifty percent (50%) or more of the cost
3 will be paid from state-appropriated funds which have been appropriated at the time
4 of the competitive solicitation. The solicitation documents for construction services
5 in this event must disclose that no local preference consideration will be applied.

6 If application of the above criteria does not indicate a priority for award or cannot be
7 applied by law, Board administration shall determine if the award is capable of being
8 split, and, if the vendors will agree to split the award. If the award cannot be split,
9 or the vendors do not agree to split the award, the award will be decided by the toss
10 of a coin. The toss of a coin shall be held publicly, with the tie low bid vendors
11 invited to be present as witnesses and participants. A staff member from the
12 Division of Procurement Management will preside over the coin toss and a member
13 from Internal Audits will observe.

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

15 The Board provides a vendor preference for certified service disabled veteran
16 businesses in accordance with Board Policy 6320.02 and State law.

17 In assessing priorities for award, when identical prices are received from two (2) or
18 more vendors and all other factors are equal, priority for award shall be given to a
19 certified service-disabled veteran business enterprise as defined by F.S. 295.187 and
20 Policy 6320.02. In the event there are two (2) or more certified-disabled veteran
21 business enterprises entitled to the preference, then the award shall be given to the
22 business having the smallest net worth.

23 The vendor preference for certified service-disabled veteran businesses shall be
24 subordinate only to the vendor preference for businesses implementing a drug-free
25 workplace.

26 The Board's goal for participation by service disabled veteran business enterprises
27 shall be established at three percent (3%) of the total value of all prime
28 contract/subcontract awards for each fiscal year.

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6320/page 30 of 34

- 1 B. Performance Security on Awards Other than Construction
- 2 1. Bid awards of \$200,000 or less shall be exempt from
- 3 performance and payment security.
- 4 2. Performance security shall not be required unless otherwise
- 5 defined in the bid specification. Performance security shall
- 6 equal 100% of the award amount.

7 C. Bonding Company Qualifications

8 Bonds shall be written through a reputable and responsible surety

9 bond agency licensed to do business in the State of Florida and with

10 a surety company or corporation meeting both of the following

11 specifications:

- 12 1. Awards Greater than \$500,000
- 13 a. A minimum rating in the latest revision of Best's
- 14 Insurance Reports of:

15	Contract Amount	Minimum Rating by
16		A.M. Best
17	\$200,000.00 to	
18	\$5,000,000	A, No Minimum Class
19	\$5,000,000.01 to	
20	\$10,000,000	A, Class IV
21	\$10,000,000.01 or more	A, Class V

policy

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

FINANCES
6320/page 32 of 34

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

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

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

13 **Signatures of Superintendent and Designees**

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

20 **Purchasing Principles**

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

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

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

policy

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

FINANCES
6320/page 33 of 34

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

policy

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

FINANCES
6320/page 34 of 34

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

4 F.S. 119.07, 120.569, 120.57, 120.57(3), 255.0516, 255.0991, 255.099
5 | F.S. 255.25(3)(c), 255.065, 282.041(15), 286.0113(2)(b)(1), 287.017, 287.042(2)(c),
6 287.056
7 F.S. 1001.41(1)(2), 1001.42(12)(j), 1001.42(26)
8 F.S. 1001.43(10), 1006.27, 1010.04(2), 1010.04(4)(a)
9 F.A.C. 6A-1.012, 6A-1.091, 6A-7.0411(2)(i), 28-110.005(2)

10 Revised 8/7/13
11 Revised 11/19/14
12 Revised 3/9/16

13 © **NEOLA 2010**

1 BIDS AND AWARD OF CONSTRUCTION CONTRACTS
2 PROCEDURES AND REGULATIONS

3 In addition to other applicable procedures contained in Policy 6320, the following
4 requirements shall apply to all bids and awards of construction contracts.

5 The procedures and regulations controlling these phases of new construction are
6 largely specified in the Florida statutes and the rules of the State Department of
7 Education. The instructions to bidders and general conditions shall follow State
8 statute and the rules of Florida Department of Education. These proforma contract
9 documents may be changed periodically and approved as to form and legal
10 sufficiency by the School Board Attorney.

11

In accordance with state law and Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, the Superintendent may submit proposed public-private partnership agreements for qualifying projects, including those resulting from unsolicited proposals, to the Board for consideration. The Superintendent and Board shall evaluate and consider all proposed public-private partnership agreements according to the guidelines in Section 255.065, F.S., and Policy 6327.

12 | F.S. 255.065, 1013.45, 1013.46, 1013.47
13 | F.A.C. 6A-2.0010
14 | SREF 4.2

1 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, LAND
2 SURVEYING, CONSTRUCTION MANAGEMENT, PROGRAM MANAGEMENT
3 AND INSPECTION SERVICES

4 The Superintendent shall recommend professional architectural and engineering
5 consultants to the School Board for commissioning in accordance with State law
6 (F.S. 287.055) and the most current version of the District's Procedures for Selection
7 of:

- 8 A. Architects and Engineers
- 9 B. Building Code Consultant – continuing contract
- 10 C. Architectural/Engineering Projects Consultant (A/EPC) and Special
11 Projects Consultant (SPC) – continuing contract
- 12 D. Land Surveying – continuing contract
- 13 E. Construction Management (CM), CM at-risk and Program
14 Management (PM) services
- 15 F. other design and construction-related continuing contract services,
16 including but not limited to, Construction Cost Estimating,
17 Construction Scheduling, Job Order Contracts (JOC) Consultant,
18 Geotechnical/Construction Material Testing and Environmental
19 Services, Building Commissioning Agent (Cxa) and HVAC Test and
20 Balance

21 The Board shall, in open meeting, commission all project Architects and Engineers
22 of Record, BCCs, A/EPCs, SPCs, CMs, PMs, and other professional services, except
23 for individual projects estimated to cost under the statutory limit, and for study
24 activities for which the fee does not exceed the statutory limit, or for work of a
25 specified nature as outlined in the agreement required by the Board. These size
26 projects and studies may be assigned under Board-commissioned agreements and
27 are defined by F.S. 287.055 as “Continuing Contracts” with the contract being for a
28 fixed term or with no time limitation except that the contract must provide a
29 termination clause. Firms providing professional services under continuing
30 contracts shall not be required to bid against one another. In these instances,
31 assignment shall be as described below.

1 **Professional Services**

2 A. Design and Construction - Related Services Administration

3 1. "Professional services" as defined in F.S. 287.055 means
4 those services within the scope of the practice of architecture,
5 professional engineering, landscape architecture, or
6 registered surveying and mapping, as defined by the laws of
7 the State, or those performed by any architect, professional
8 engineer, landscape architect, or registered surveyor and
9 mapper in connection with his/her professional employment
10 or practice.

11 2. In accordance with F.S. 1013.45 (except as otherwise stated
12 in F.S. 481.229), the services of a registered architect must be
13 used for the development of plans for the erection,
14 enlargement, or alteration of any educational facility.

15 3. The Chief Facilities Officer, or his/her successor, or designee,
16 will analyze the project(s) requirements and make the
17 determination regarding which design and construction
18 delivery method to employ.

19 4. The Chief Facilities Officer, his/her successor, or designee,
20 will also review the project workload and, as necessary,
21 authorize advertisement, evaluation, selection, and
22 recommend the commissioning of additional professional
23 consulting firms pursuant to the Procedures for the Selection
24 of Architects and Engineers, A/EPCs, SPCs or reassigning
25 projects as necessary for expeditious completion of projects.

26 B. Project Assignment and Procedures for A/EPC, SPC, CM At-Risk
27 Miscellaneous, and Other Design and Construction-Related
28 Professional Services Under Continuing Contracts:

29 1. The assignment of individual projects shall initially be based
30 upon the District's construction budget. Except in an
31 emergency, prior to commencing the design work, the A/EPC
32 (or SPC) shall develop a detailed cost estimate and, where
33 applicable, completion schedule.

- 1 2. For design and construction administration services, the
2 A/EPC (or SPC) shall develop a final scope of work, a
3 preliminary estimate of probable cost, schedule, and other
4 documents in accordance with the A/E Agreement. Other
5 consultants shall provide services as outlined in their
6 respective agreements based on pre-negotiated fee schedules.
- 7 3. Projects assigned by the Chief Facilities Officer, his/her
8 successor, or designee, may be discontinued at the discretion
9 of the Chief Facilities Officer.

10 C. Building Code Inspection and Review Services

11
12 Building Code Consultants (BCC) shall be selected in accordance
13 with the Procedures for Selection of Building Code Consultant.
14 BCCs must have full architectural and engineering capabilities,
15 however, joint ventures will be considered.

16
17 The BCC will not be considered for any architectural/engineering or
18 construction management projects or assignments, either solely or
19 in partnership or joint venture with other individuals or firms,
20 during the tenure as BCC.

21
22 The BCC firm(s) commissioned by the Board shall report directly to
23 the District Building Official. The Building Official, his/her
24 successor, or designee, shall assign projects (or discontinued
25 services) at his/her discretion.

1 **Construction Delivery Method**

2 The Chief Facilities Officer, his/her successor, or designee, shall determine which
3 projects are to be constructed through the utilization of CM, CM at-risk, Program
4 Management (PM) Services, Competitive (Conventional) Bid, Design-Build or other
5 delivery method. The Design-Build selection process shall be in accordance with
6 Policy 6331. The delivery method shall be identified at the time the A/E of Record is
7 commissioned by the Board.

8 A. CM or PM

9
10 CM services will include the coordination of contractors during the
11 construction phase of project(s). CM at-risk services will include
12 construction management and may include actual construction
13 services. PM services will generally include, but not be limited to,
14 coordination and/or management in providing or procuring
15 planning, design and construction services. Individual projects with
16 construction cost estimates that do not exceed the statutory limit
17 may be assigned under a Board-commissioned CM at-risk
18 Miscellaneous Continuing Contract. F.S. 1013.46 and Section
19 4.1(8), State Requirements for Educational Facilities ([SREF]),
20 requires school boards to prequalify contractors as eligible to bid on
21 construction or capital improvement projects (refer to Policy 6334
22 for contractor prequalification procedures).

23 B. Day Labor Contracts

24
25 Pursuant to F.S. 1013.45, projects estimated to cost \$280,000 or
26 less for construction, renovation, remodeling, or maintenance of
27 existing facilities may be approved and assigned to Maintenance
28 Operations by the Chief Facilities Officer, his/her successor, or
29 designee. Beginning January 2009, this amount shall be adjusted
30 annually based upon changes in the Consumer Price Index. For the
31 purposes of this section, "day labor contract" means a project
32 constructed using persons employed directly by the Board or by
33 contracted labor (such as term contracts).

34 C. Maintenance is defined as per F.S. 1013.01(12).

Public-Private Partnerships and Unsolicited Proposals

In accordance with state law and Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, the Superintendent may submit proposed public-private partnership agreements for qualifying projects, including those resulting from unsolicited proposals, to the Board for consideration. The Superintendent and Board shall evaluate and consider all proposed public-private partnership agreements according to the guidelines in Section 255.065, F.S., and Policy 6327.

1

2 **Drawings & Specifications for Competitive Bid Construction Delivery Method**

3 Approval of Phase III construction documents is required from the Board, or the
4 Board's authorized review agent before contracts have been let for construction.
5 Directions for obtaining approval are contained in the Florida statutes and in rules
6 of the State Department of Education.

7 **Contracts and Payment of Compensation**

8 A. The agreement between the professional firm and the Board or such
9 other form of agreement as may be acceptable by the Board and the
10 professional firm, approved by the Attorney for the Board, shall be
11 executed covering all construction projects. These contracts shall
12 include statements outlining specific requirements and procedures
13 which must be followed by the professional. The term of the
14 agreement(s) for continuing contracts may be extended at the option
15 of the Board. Procedures for establishing a contract shall be in
16 accordance with the Consultant's Competitive Negotiation Act
17 (CCNA) (F.S. 287.055).

18 B. The payment of professional services fees shall be made in
19 accordance with the agreement between the professional and the
20 Board or such other agreements as may be arrived at by the Board
21 and architect or engineer, as approved by the Attorney for the
22 Board. Compensation to the professional shall be made in
23 accordance with the CCNA.

24 | F.S. 255.103, 255.065, 287.055, 481.229, 1001.41(1)(2), 1001.42(22), 1001.43(2)(d)
25 | F.S. 1001.43(10), 1013.01(12), 1013.355, 1013.37, 1013.371, 1013.38, 1013.45
26 | F.S. 1013.46

policy

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY

FINANCES
6325/page 1 of 3

1

CONE OF SILENCE

2
3
4

A. "Cone of Silence" means a prohibition on any communication regarding a particular Request for Proposals (RFP), bid, invitation to bid, or other competitive solicitation between:

5
6
7
8
9
10

1. any person who seeks an award, including a potential vendor or vendor's representative, an employee, partner, director, or officer of a potential vendor, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a vendor, or any other individual acting through or on behalf of any person seeking an award; and

11
12
13
14
15

2. any School Board member or the member's staff, the Superintendent, Deputy Superintendent and their respective support staff, or any person appointed by the Board to evaluate or recommend selection in the competitive procurement process.

16
17
18
19
20
21
22
23
24
25
26
27

B. A Cone of Silence shall be applicable to each RFP, bid, invitation to bid, or other competitive solicitation during the solicitation, review and Board action of bid proposals as appropriate. At the time of issuance of the solicitation, the Superintendent shall provide public notice of the Cone of Silence and written notice, including electronic communication, to the Board, District staff and any other person involved in the review, evaluation, recommendation, approval, rejection or award of the responses as appropriate. The Superintendent shall include in any advertisement and public solicitation for goods and services a statement disclosing the requirements of this section.

28
29
30
31

C. For unsolicited public-private partnership proposals, the Cone of Silence shall be imposed from the time the proposal is received in accordance with Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*.

32
33
34
35
36

ED. The Cone of Silence shall terminate at the time the item is presented by the Superintendent to the appropriate Board committee immediately prior to the Board meeting at which the Board will award or approve a contract, reject all bids or responses, or take any other action that ends the solicitation and review process.

policy

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

FINANCES
6325/page 2 of 3

- 1 | DE. This rule shall not prohibit any potential vendor or vendor's
2 representative:
- 3 1. from making public representations at duly noticed pre-bid
4 conferences or before duly noticed selection and negotiation
5 committee meetings;
- 6 2. from engaging in contract negotiations during any duly
7 noticed selection and negotiation committee meetings;
- 8 3. from making a public presentation to the Board during any
9 duly noticed public meeting on any topic that is not under the
10 Cone of Silence and is otherwise permitted under
11 Bylaw 0169.1; or
- 12 4. from communicating in writing with any school district
13 employee who is not serving on the applicable evaluation
14 Committee, or the Board Attorney's office to seek clarification
15 or additional information, subject to the provisions of the
16 applicable RFP, or bid documents.
- 17 The potential vendor or vendor's representative shall file a copy of
18 any written communication with the Board Clerk who shall make
19 copies available to the public upon request.
- 20 | EF. The designated procurement official is not prohibited by this rule
21 from initiating contact with a potential vendor or vendor's
22 representative and engaging in subsequent communication related
23 thereto for the purposes of obtaining further clarification regarding a
24 response to an RFP, or competitive solicitation. Such contact shall
25 be in writing and shall be provided to the Board Clerk and members
26 of the applicable selection and negotiation committee, including any
27 response.

policy

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

FINANCES
6325/page 3 of 3

1 | FG. Any violation of this rule shall be investigated by the Board's
2 Inspector General and shall result in the disqualification of the
3 potential vendor from the competitive solicitation process, rejection
4 of any recommendation for award to the vendor, or the revocation of
5 an award to the vendor as being void, rendering void any previous or
6 prior awards. The potential vendor or vendor's representative
7 determined to have violated this rule, shall be subject to debarment.
8 In addition to any other penalty provided by law, violation of this
9 rule by a school district employee shall subject the employee to
10 disciplinary action up to and including dismissal.

11 F.S. 1001.41(1)(2), 1001.42(15)(25), 1001.43(10), 1001.51(14)

12 Revised 9/9/15

13 © MIAMI-DADE 2015