

Office of the General Counsel
Walter J. Harvey, General Counsel

SUBJECT: **FINAL READING: PROPOSED AMENDMENTS TO SCHOOL BOARD POLICIES 1130.01, ASSIGNMENT OF ADMINISTRATORS, AND 6327, PUBLIC-PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS**

COMMITTEE: **FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS**

LINK TO STRATEGIC PLAN: **EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES**

Board Policy 1130.01, *Assignment of Administrators*, is proposed for amendment pursuant to Board Agenda Item H-8, *Organizational Charts*, sponsored by former Board Chair, Ms. Perla Tabares Hantman, and approved by the Board at its regular meeting of October 19, 2022. Item H-8 directed the Superintendent to review School Board policy, procedures, and practices, and where necessary and appropriate, initiate rulemaking to require the regular and timely submittal to the Board of up-to-date organizational charts bearing the name of the officeholder, to take place as part of the Superintendent's yearly reorganization and be updated, as needed, thereafter, to accurately reflect the prevailing senior administrative structure in District offices. Organizational charts shall also be made available on the District's website.

Board Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, is proposed for amendment pursuant to Board Agenda Item H-9 (Rev.²), *Policies, Procedures, Partnerships, and Provisions Regarding School Board Owned Property*, sponsored by Board Member, Dr. Steve Gallon, III, and approved by the Board at its regular meeting of August 15, 2022. Item H-8 required the Superintendent to review, in consultation with the School Board Attorney, Board policies concerning the development and use of Board-owned real estate, to ensure that the Board's interest in public education is protected and promoted when contemplating, proposing, and negotiating such transactions. The proposed amendments also ensure that the Office of Inspector General is notified of major solicitations or negotiations involving public-private partnerships for complex real estate transactions.

The policy amendments were drafted in collaboration with, and reviewed by the Superintendent, Cabinet, and District staff. The Notice of Intended Action and policies with strikethroughs and underlines are attached. The Notice of Intended Action was published in the Miami Daily Business Review on November 21, 2022 and posted in various places for public information and mailed to various organizations representing persons affected by the adopted and amended Board policies and individuals requesting notification. The time to request a hearing or protest the adoption and amendment of these policies has elapsed.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, amend Board Policies 1130.01, *Assignment of Administrators*, and 6327, *Public-Private Partnerships and Unsolicited Proposals*, and authorize the Superintendent to file the policies with The School Board of Miami-Dade County, Florida, to be effective January 18, 2023.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on November 16, 2022, its intention to amend Board Policies 1030, *Superintendent of Schools*, 1130.01, *Assignment of Administrators*, and 6327, *Public-Private Partnerships and Unsolicited Proposals*, at its meeting of January 18, 2023.

PURPOSE AND EFFECT: Board Policies 1030, *Superintendent of Schools*, 1130.01, *Assignment of Administrators*, and 6327, *Public-Private Partnerships and Unsolicited Proposals*, are proposed for amendment as a result of statutory amendment and Board initiatives.

SUMMARY: Board Policy 1130.01, *Assignment of Administrators*, is proposed for amendment pursuant to action by the Board at its regular meeting of October 19, 2022. The amendments require the regular and timely submittal to the Board of up-to-date organizational charts bearing the name of the officeholder, to take place as part of the Superintendent's yearly reorganization and be updated, as needed, thereafter, to accurately reflect the prevailing senior administrative structure in District offices. Organizational charts shall also be made available on the District's website. Board Policy 6327, *Public-Private Partnerships and Unsolicited Proposals*, is proposed for amendment pursuant to Board action at its regular meeting on August 15, 2022. The proposed amendments require that the Board's interest in public education is protected and promoted when contemplating, proposing, and negotiating the development and use of Board-owned real estate. The proposed amendments also ensure that the Office of Inspector General is notified of major solicitations or negotiations involving public-private partnerships for complex real estate transactions. Board Policy 1030, *Superintendent of Schools*, is proposed for amendment in response to SB 2524 (2022) amending Section 1001.51, Florida Statutes, *Duties and Responsibilities of District School Superintendent*. The policy amendments are proposed to require administrators to keep all records and reports as required by F.S. 1001.51(12), Board policies, rules, and procedures, and/or as the Superintendent may deem necessary for the effective administration of the schools/departments. Such records and reports shall include any determination to withhold from a parent information regarding the provision of any services to support the mental, physical, or emotional well-being of the parent's minor child. Any such determination must be based solely on child-specific information personally known to the school personnel and documented and approved by the principal. Such determination must be annually reviewed and redetermined. Administrators shall be responsible to the Superintendent for the accurate and prompt submission of all reports, whether developed by an employee or by the administrator. All reports shall be officially reviewed by the immediate supervisor and brought up to date by the employee before a resigning or retiring administrator receives final pay.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: Fla. Stat. ss. 1001.41(1), (2); 1001.42(5); 1001.43(11), (12).

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: Fla. Stat. s. 1001.51; Fla. Stat. Ch. 1012; Fla. Stat. s. 255.065.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF January 18, 2023, 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 December 14, 2022, to the Superintendent, Room 912, at the same address.

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

COPIES OF THE PROPOSED AMENDED POLICY 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.



Book	Policy Manual
Section	January 18, 2023 - <u>Final</u> Reading
Title	RE-ASSIGNMENTS OF ADMINISTRATORS
Code	1130.01
Status	<u>Final</u> Reading
Adopted	May 11, 2011

1130.01 - RE-ASSIGNMENTS OF ADMINISTRATORS

The Superintendent may recommend qualified candidates to the School Board for assignment, transfer, and/or appointment to managerial exempt level positions.

The Board may reject for good cause a candidate recommended by the Superintendent as provided in F.S. 1012.22(1)(a)2. Good cause exists when the candidate is morally or professionally unqualified.

Managerial exempt employees reassigned to another job position are not entitled to a hearing.

In the event of a personnel reorganization, the agenda item shall be presented at the appropriate Board Committee. ~~In addition~~ Pursuant to Policy 0165.1, *Agendas*, the Superintendent shall provide the Board, no later than forty-eight (48) hours ~~three (3) business days~~ prior to the regular Board meeting where the matter will be considered by the Board, the following information:

- A. An explanation as to how the proposed job positions to be established, abolished or reclassified in the reorganization meet or enhance the District's strategic plan.
- B. A statement of any improvements the reorganization will bring to District operations and the objectives and desired outcomes of the reorganization.
- C. A statement of the budgetary impact of the proposed positions to be established, abolished, or reclassified.
- D. A statement of reasons for the timing of the reorganization.
- E. Organizational charts reflecting any proposed restructuring of the senior administrative structure in District offices, which shall also be updated as needed for accuracy and made available on the District's website. If a reorganization is not contemplated or does take place during a calendar year, the organizational charts shall be updated at least once during that year.
- F. No employee names shall be provided in this information.

Effective 7/1/11	F.S. 1012.01, 1012.33
Legal	Mathos v. School Board of Miami-Dade County, Florida, 29 FLW D1, 3rd DCA, December 17, 2003

Book	Policy Manual
Section	January 18, 2023 - <u>Final</u> Reading
Title	PUBLIC-PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS
Code	6327
Status	<u>Final</u> Reading
Adopted	January 25, 2017

6327 - PUBLIC-PRIVATE PARTNERSHIPS, ~~AND~~ UNSOLICITED PROPOSALS, COMPETITIVE SOLICITATIONS, AND DIRECT NEGOTIATIONS REGARDING BOARD-OWNED PROPERTY AND RESOURCES

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 Board may solicit proposals or receive unsolicited proposals for qualifying public-private project(s) and may thereafter enter into a comprehensive agreement or an interim 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~~ In addition, the Board may enter into a comprehensive agreement or interim agreement, or other contracting arrangements that include multiple government and private entities.

I. Definitions

Comprehensive Agreement - the contract between the 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 F.S. 255.065 ~~(7)~~ 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.

Interim Agreement – an agreement, before or in connection with the negotiation of a Comprehensive Agreement, between the Board and a contracting entity, whereby the contracting entity may be authorized by the Board to conduct due diligence or further studies or investigations related to the Proposed Project which may include, but not be limited to, project planning and development, design, engineering, environmental analysis and mitigation, surveying, financial and revenue analysis, ascertaining the availability of financing, or any other aspect of the Proposed Project. The rights of the contracting entity and the Board will be governed by the Interim Agreement, which must be in writing. No purported Interim Agreement or terms relating thereto shall be effective, binding, or valid until approved by the Board and signed in writing.

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. A private entity includes a “Proposer” that submits an unsolicited proposal or a “Respondent” that submits a proposal in response to a

solicitation. "Private entity" also means each individual entity participating in or comprising a Proposer's or Respondent's team.

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.

Proposer – a Private Entity that submits or is considering submitting an unsolicited proposal. "Proposer" is the Private Entity with whom the Board is expected to contract for a Proposed Project. If the Private Entity has not yet been formed, then the "Proposer" shall mean all entities collectively who are known and intend at that time to participate on the Proposer's team.

Proposed Project – a facility or project that is intended to fulfill a purpose that supports the core mission of Miami-Dade County Public Schools, as stated in its policies and Board action.

Qualifying Project – a facility or project that serves a public education purpose and/or the core mission of the Miami-Dade County Public Schools, 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 Board's educational mission. **Notwithstanding anything herein to the contrary, a Qualifying Project may also include, in addition to a public facility or project, residential or other private revenue-operating facilities and uses, as appropriate to achieve a purpose that supports the core mission of Miami-Dade County Public Schools, and that is on a cost model and timeline acceptable to the Board.**

Respondent – a Private entity that submits a proposal in response to a Solicitation.

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

Solicitation – a written request for bids or proposals issued by the Board soliciting responses for a Public Private Partnership ("P3") project, including, but not limited to, business plans, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

II. Designation of Qualifying Projects

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

The Board may approve the development or operation of an educational facility or other government facility needed by the 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:

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

III. Competitive Solicitation of Public-Private Partnership for Qualifying Projects

- A. The Superintendent may **competitively** 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.

IV. Unsolicited Proposals of Public-Private Partnership for Qualifying Projects

- A. Any private entity may submit an unsolicited proposal to the Board **for any P3 project in accordance with § 255.065, Florida Statutes**, to contract for the design, construction, operation, ownership, acquisition, or leasing of a qualifying project. **The unsolicited proposal should be submitted in accordance with this Policy and submitted to the following:**

To: Procurement Director
1450 NE 2nd Avenue, 6th Floor
Miami, Florida 33132

Copy: Superintendent of Schools
1450 NE 2nd Avenue, Suite 900
Miami, Florida 33132

B. Application Fees

1. The 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.
2. 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 thirty (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.
3. **The Superintendent shall notify the Board upon receipt of the unsolicited proposal, at which time the cone of silence shall be imposed.**
4. If the proposal is not evaluated, the Superintendent must return the entire application fee to the private entity.

C. Initial Application Process

1. Unsolicited proposals and the required application fee shall be submitted to Procurement Management Services **as indicated above**. The date and time of receipt will be stamped on the proposal.
2. 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. A detailed description of the proposed qualifying project.
 - b. A conceptual site plan, floor plans, and elevations.
 - c. A description of the provision of services under the proposed qualifying project.
 - d. A schedule for the initiation and completion of the proposed qualifying project with sufficient detail as to projected milestones.
 - e. A description of the method by which the proposer will secure any necessary property interests that are required for the proposed qualifying project.
 - f. 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.

- g. 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 Board.
- h. Performance guarantees and any other proposed bonding to be provided by the proposer.
- i. 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.
- j. The name and address of a person who may be contacted for additional information concerning the proposal.
- k. 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. **Within this description of private entities, identify all private entities, and each entity's principals, who will be directly involved in the proposed qualifying project. Include the scope of each entity's engagement, relevant experience, address, email address and telephone number.**
- l. 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.
- m. Information, **description,** and supporting documentation of the benefit of the proposal to the public and the Board **and a description of how the proposed qualifying project supports the education mission of the Board.**
- n. **Identification of all known community stakeholders and anticipated benefits and a description of how Proposer will manage outreach and community input and communication with all stakeholders.**
- o. 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.
- p. Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.
- q. 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 Policy 6320.02, Small/Micro and Minority/Women-Owned Business Enterprise Programs; Policy 6320.06, Diversity, Equity, and Inclusion in Business Operations and Practices; Policy 6465, Anti-Discrimination in Business Operations; and Policy 6460, Business Code of Ethics.

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

- 3. **Any additional required procedures may be found on the District's Procurement Management website under "Unsolicited Proposals."**
- 4. 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.
- 5. If the Superintendent determines that the proposal meets the above requirements and chooses to evaluate an unsolicited proposal involving architecture, engineering, or landscape architecture, s/he 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 Board through the completion of the design and construction of the project and selected through the Board's existing selection process and procedures.
- 6. 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).

7. Where such unsolicited proposal involves any interest in Board-owned property or assets, the Superintendent shall obtain, as applicable, a reliable estimate of the value of such property or assets in a manner consistent with the appraisal and/or valuation procedures outlined in Policy 7315, Disposal of Surplus Land and Other Real Property, for a transfer, trade, public or private sale, and any other procedure associated with obtaining a fair and independent value of the property.

V. Publication and Solicitation of a Proposal

- A. In determining whether to publish a proposal, the Superintendent must determine that the proposed project:
 1. is in the public's best interest;
 2. supports the education mission of the Board;
 3. is for a facility that is owned by the Board or is for a facility for which ownership will be conveyed to the Board;
 4. 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 Board;
 5. has adequate safeguards in place to ensure that the Board or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes;
 6. will be owned by the 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 (2) weeks stating the Board has received a proposal and will accept other proposals for the same project. At the time of publication of the project, the Procurement Director shall also notify the Inspector General. 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 twenty-one (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.
- D. ~~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.~~ The cone of silence is governed by Policy 6325. } Revised

VI. Proposal Evaluation and Approval of a Proposal

- 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 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 Board for award.

VII. Interim and Comprehensive Agreement

The terms of any Interim or Comprehensive Agreement to be negotiated shall include, but not be limited to, the scope, design, amenities, total cost, and duration of the proposed project. The terms will include the Board's review, approval, and control of project design and performance standards for construction, operations, and maintenance, for which compensation to the Respondent/Proposer may be adjusted should the performance standards not be met. Terms will also include the Board's right to inspect construction, operations, and maintenance, as well as the records relating to the cost of such operations; labor wage and local workforce requirements; events of default and the parties' rights and responsibilities in the event of same; fees, lease payments or service payments to be paid under the agreement; the School Board maintains ownership and operation of the property during the use restriction period; the owner shall not convey, sublease, or transfer the property approved for this disposition without the consent of the Board, the restrictions in favor of the Board shall run with the land; and any other terms the Board deems appropriate for the proposed project.

Any Interim or Comprehensive Agreement shall define the rights and obligations of the Board and the contracting person with regard to the proposed project. Prior to entering into a Comprehensive Agreement, an Interim Agreement may be entered into that permits a Respondent/Proposer or other private entity to perform activities, which may be compensable, related to the proposed project, usually in the nature of continued due diligence activities to inform the Board about the proposed project's feasibility. The Interim Agreement is a discretionary step, not necessary in all cases, but is available should the Board determine more investigation or due diligence is necessary about the proposed project before entering into a Comprehensive Agreement. The Board shall not be bound to enter into a Comprehensive Agreement merely because it entered into an Interim Agreement. However, prior to developing or operating the Proposed Project, the Respondent/Proposer shall enter into a Comprehensive Agreement with the Board.

- A. Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the Board.
- B. The **Comprehensive Agreement** shall include the requirements required by F.S. 255.065(7), including but not limited to~~nd those which address~~:
1. delivery of performance and guarantee bonds in compliance with F.S. 255.05;
 2. Board approvals of the project design, inspection and monitoring by the Board during the course of the project;
 3. maintenance of public liability insurance by the private entity, periodic filing of financial statements by the private entity;
 4. 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;
 5. provisions for the transfer or purchase of the property or other interest of the private entity by the Board;
 6. payment schedules and financing arrangements;
 7. provisions evidencing the private entity's compliance with all of the Board's diversity, inclusion and anti-discrimination policies, including Policy 6320.02, Small/Micro and Minority/Women-Owned Business Enterprise Programs; Policy 6320.06, Diversity, Equity, and Inclusion in Business Operations and Practices; Policy 6465, Anti-Discrimination in Business Operations; and Policy 6460, Business Code of Ethics; and
 8. any other provisions deemed necessary for the qualifying project.
- C. In accordance with F.S. 255.065(7)(b), the agreement may also include provisions that:
1. allow the Board to make grants or loans to the private entity;
 2. relate to notice of fault, cure rights, and unavoidable delays;
 3. terminate the authority and duties of the private entity and dedicate the qualifying project to the Board;
 4. address reimbursement and/or payment for costs incurred by the Board in reviewing and processing the initial proposal.

VIII. Material Terms and Modifications

Any changes to the terms of an Interim or Comprehensive Agreement, as may be agreed upon in writing by the parties from time to time, and in order to be enforceable, shall be added to the Interim or Comprehensive Agreement only by written amendment as approved by the Board. Verbal changes shall not be enforceable against the Board. No act or omission or verbal representation shall be enforceable against the Board.

IX. 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 Board in accordance with the comprehensive agreement. **Upon transfer to the Board, title to the facility shall be free and clear of all encumbrances and liens of any kind whatsoever.**
- B. As provided in and in accordance with State law, the 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 Board to indemnify the financing source, subject the facility to liens in violation of F.S. 11.066(5), or secure financing by a mortgage on, or security interest in, the real or tangible property of the Board in a manner that could result in the loss of the fee ownership of the property or facility by the Board, or otherwise result in the foreclosure of the Board's interest in such property.
- D. If 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 Board may not be pledged to secure the financing of the private entity.

X. Default, Operation, Expiration ~~and~~ Termination

- A. Upon expiration or termination of a ~~e~~C~~omprehensive~~ ~~a~~A~~greement~~, the 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 ~~e~~C~~omprehensive~~ ~~a~~A~~greement~~, 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 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 Board to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the ~~e~~C~~omprehensive~~ ~~a~~A~~greement~~.

XI. Governmental Entities and Other Direct Negotiations

Aside from entering into a Comprehensive Agreement or Interim Agreement with a private entity or entities, the Board may enter into other contracting arrangements that include multiple government and private entities. When such contracting arrangements are contemplated, efforts must be undertaken to ensure that arrangements and transactions involving School Board-owned assets, real estate, and resources are properly evaluated and assessed prior to engaging into agreements that bind the Board beyond a period of one year.

In addition, the Superintendent must take steps to ensure that the transactions are transparent, as appropriate, and scrutinized and subject to audit, and that School Board-owned property is used for its intended purpose.

As such, the Board should be notified and appropriately briefed on any and all major transactions being contemplated by the Superintendent and/or District staff. This can be one Board item or several items, but all must be stated prior to the final approval of the project. Any Board agenda item(s) related to such transactions shall include and/or ensure the following:

A. Description of how the proposed project supports the education mission of the Board;

B. Description of the parties involved in the transaction, including those who are parties to any agreement wherein the School Board incurs liability. In identifying a party, the item should include the formal corporate name and fictitious names, if applicable. All related parties of interest must also be identified;

C. Detailed description of ownership interests, including parties' interests, the size, shape, location, lot size (square footage), building size;

D. Detailed description of the financial benefits to be obtained by all parties during the term of the agreements, including the benefits that accrue to the School Board;

E. All restrictions and encumbrances, covenants, use restrictions, and any other interests that bind and inure to the benefit of parties, their successors and assigns, and any other party that acquires any right, title, or interest in the project;

F. Development fees, lease payments, cash participation, net proceeds, payment provisions;

G. For projects involving leasehold interest, a full financial analysis with respect to the anticipated revenues and fiscal impact of the development over the life of a lease and the percentage, if any, and whether there are any archeological or historical designations or any biological, zoning or environmental problems (e.g., incinerators, active or inactive dump sites, toxic soil, underground storage tanks) on the property that could adversely impact the timely use of the property for the intended purpose;

H. Condition of title to the site or any known title defects;

I. Compatibility or incompatibility of present and projected uses of adjacent properties with the intended use;

J. Parties responsible for monitoring and enforcing any agreements or use restrictions concerning the project;

K. Estimated timeline for completion of the project;

L. Where such project involves any interest in Board-owned property or assets, the Superintendent shall obtain, as applicable, a reliable estimate of the value of such property or assets in a manner consistent with the appraisal and/or valuation procedures outlined in Policy 7315, *Disposal of Surplus Land and Other Real Property*, for a transfer, trade, public or private sale, and any other procedure associated with obtaining a fair and independent value of the property;

M. A recommendation from the School Site Planning Committee, if applicable, and a recommendation of the Chief Facilities Officer;

N. All agreements associated with a Board item must be provided to the Board at the time of the publication of the agenda for a Board meeting;

O. Incorporate a process for the Inspector General to be notified at the onset in any and all solicitations concerning such projects. In instances where a solicitation was not utilized, the Inspector General should be notified at the earliest opportunity and prior to publication of any and all Board items;

P. Use agreements and restrictions that must be recorded in a first priority position against the properties, prior to any financing documents or other encumbrances;

Q. The School Board maintains ownership and operation of the property during the use restriction period. The owner shall not convey, sublease, or transfer the property approved for this disposition without the consent of the Board, and the restrictions in favor of the Board shall run with the land;

R. Board Agenda Items resulting from such negotiations shall include and disclose those elements that are required for a Comprehensive Agreement as set forth in this policy.

The Board and the Superintendent shall be notified in a manner deemed appropriate if negotiations with the governmental entities and private entities have been determined viable by the Superintendent. The Superintendent shall also provide quarterly updates to the Board. This can be one Board item or several items, but all must be stated prior to the final approval of the project.

XII. Affordable Housing and Workforce Housing

Florida Statutes, Section 1001.43(12) permits the Board to use portions of school sites, land deemed not usable, or land declared as surplus by the Board to provide sites for affordable housing for teachers and other District personnel independently or in conjunction with other government agencies. In considering such arrangements, the Superintendent shall take steps to ensure that the mission of the District is being met, and that in making this determination, the Superintendent considers federal affordable housing laws that may limit the Board's ability to restrict affordable housing to teachers and district personnel.

Board Agenda Items involving Affordable Housing and Workforce shall include and disclose those items set forth in Section XI. above, and should also include those elements that are required for a Comprehensive Agreement as set forth in Section VII. of this policy. Based on a fiscal impact review, financial benefits to the Board and to any other parties shall be duly disclosed and substantiated.

When negotiations are in progress concerning a proposed affordable housing and/or workforce housing project, and such project has been determined by the Superintendent to be both viable and worthy of proceeding, the Superintendent shall notify the Board and the Inspector General. The Superintendent shall also provide quarterly updates to the Board.

XIII. Sovereign Immunity

Neither the sovereign immunity of the Board nor any 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.

XIV. Confidential Materials

The Board shall not be liable for any costs incurred by private entities in preparing, submitting, or presenting unsolicited proposals or competing proposals.

Respondent/Proposer may assert that any trade secrets, financial records, and proprietary or other confidential information in its unsolicited proposal are confidential information that it claims to be exempt from disclosure under applicable Florida public records laws. Such information may be included in the unsolicited proposal, but submitted in a separate, sealed binder, designed with the cover as CONFIDENTIAL MATERIALS. A Respondent/Proposer submitting materials claimed to be confidential shall include a cover letter listing all material designated as confidential and clearly mark each page of any material believed to be a trade secret or other confidential information/document in all capital letters and bold font as CONFIDENTIAL MATERIALS. If any portion of the unsolicited proposal or responding proposals contains non-confidential and confidential information, the Respondent/Proposer shall provide a redacted copy of the document within three (3) days of the request by the District. Failure to properly list a confidential document or the failure to redact a confidential document that is only partially confidential shall result in a waiver of any claim that the document is confidential or that the unredacted document contains confidential information.

If any person requests that the Board produce or disclose any of said purported confidential documents, the Board will advise the Respondent/Proposer and afford the Respondent/Proposer an opportunity to protect its assertion that said confidential information is exempt from production. If Respondent/Proposer fails to timely authorize the production of the information or document and/or fails to timely seek a protective order, and/or is unsuccessful in obtaining a protective order, the Board will produce the requested information or document. The Board will not actively contest any request to disclose such alleged confidential information or documents, and the Board cannot guarantee that the alleged confidential document or information may not be disclosed should it ultimately be determined not to be confidential under applicable Florida public records laws. The Respondent/Proposer shall indemnify the Board for any damages and costs the Board may incur due to the Respondent/Proposer's claim that its document or information is confidential. The Board can only agree to advise the Respondent/Proposer of such request and give the Respondent/Proposer an opportunity, at the Respondent/Proposer's sole and exclusive cost, to defend the request for disclosure of the confidential information or document in a court of competent jurisdiction or other applicable forum.

~~Public Records and Public Meeting Exemptions for Unsolicited Proposal~~

~~An unsolicited proposal received by the Board is exempt from F.S. 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 ninety (90) days after the initial notice rejecting all proposals is posted.~~

~~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.~~

~~Any portion of any meeting during which an unsolicited proposal that is exempt is discussed is exempt from F.S. 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 F.S. 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 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 F.S. 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 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 ninety (90) days after the initial notice rejecting all proposals is posted.~~

~~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 Policy 0164, Notice of Meetings, and Policy 0165, Public Meetings.~~

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Legal

- F.S. 1001.43(12)
- U.S. Titles 23 and 49, C.F.R.
- Section 24(a), Article I, Florida Constitution
- F.S. 11.066(5)
- F.S. 119.07(1)
- F.S. 119.071(1)
- F.S. 255.05
- F.S. 255.065
- F.S. 286.011
- F.S. 287.055