

6320 – PROCUREMENT AND CONTRACTING

A. GENERALLY.

1. Purpose.

The purpose of this policy is to provide for a uniform and systematic method for procurements in an efficient, cost-effective manner in accordance with, and as permitted by, applicable federal and state laws, Florida State Board of Education Rules, School Board policies, and administrative procedures which promote transparency and accountability in the expenditure of public funds and the use of public resources. The goal of this policy is to assist The School Board of Brevard County, Florida (“Board” or “District”) and its employees in protecting the integrity of the procurement and contract award process, to inspire public confidence in the processes used to acquire commodities and contractual services, and to promote fair, open, and non-discriminatory competition in a manner that protects the Board’s assets and ensures that the District receives the maximum value and quality when expending public dollars for a public purpose.

2. Applicability.

This policy shall govern the procurement of commodities and contractual services (including construction) for the Board through the use of a competitive solicitation, where required by law or as determined to be in the best interest of the Board, and procurements which are specifically exempted by law from the competitive solicitation process. This policy also includes revenue generating agreements and transactions made by third party providers in which the District may not expend funds but maintains a relationship with said third party providers who derive revenue from such agreements.

3. Responsibility.

All procurement and contracting of commodities and contractual services shall be the responsibility of the Procurement and Distribution Services department under the general supervision of the Superintendent or designee.

4. Standards of Ethical Conduct.

All employees who perform or are anyway associated with procurement functions must comply with all Board Policies, Florida Statutes, and rules related to standards for ethical conduct. Employees involved in procurements for the District reflect their own reputation and the reputation of the District through dealings and contacts with customers and vendors. All employees have a responsibility to maintain a high ethical standard of conduct and a reputation for courtesy and fair dealings. As a representative of the District, in a procurement capacity, a reputation of fairness and honesty is key to establishing a professional atmosphere in which decisions and evaluations are based on sound business judgment. Each transaction shall be handled objectively, without favoritism or discrimination, and without seeking or dispensing personal favors. In addition to the Board Policies, Florida Statutes, and rules related to standards for ethical conduct, the Procurement and Distribution Services department, has adopted the National Institute of Governmental Purchasing (NIGP: The Institute for Public Procurement) Code of Ethics.

B. PROCUREMENT METHODS.

The Board or its designee shall purchase commodities and contractual services as set forth below.

1. Competitive Solicitation.

Except as authorized by law or rule, competitive solicitations shall be issued for the procurement of commodities and contractual services exceeding the amount established in Rule 6A-1.012(7), FAC. Procurements may not be divided so as to avoid this monetary threshold.

a. Invitation to Bid (ITB).

A solicitation for competitive sealed bids. The invitation to bid (ITB) is used when the District is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required. In acceptance of responses to ITBs, the Board or designee shall accept the lowest bid from a responsive and responsible bidder meeting all specifications, terms, and conditions published in the ITB. In the alternative, the Board or designee may award to the responsive, responsible bidder offering the lowest cost as the primary awardee and the next responsive, responsible bidder offering the next lowest cost as an alternate awardee(s) meeting all specifications, terms, and conditions. Nothing herein is meant to prevent multiple awards to the responsive and responsible bidders when such multiple awards are clearly stated in the bid solicitation documents.

b. Request for Proposal (RFP).

A solicitation for competitive sealed proposals. The request for proposal (RFP) is used when it is not practicable for the District to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the District is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. Utilization of this process is applicable where a solution may be variable and negotiation is permitted following selection. A best value decision may result from this process where price is not the sole determinant for award. In awarding to a proposer pursuant to a RFP, the Board or designee may award to one (1) or more responsive, responsible proposers in accordance with the selection criteria published in the RFP.

c. Invitation to Negotiate (ITN).

A solicitation for competitive sealed replies to select one (1) or more vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate (ITN) is used when the District determines that negotiations may be necessary for it to receive the best value.

d. Request for Qualifications (RFQ).

i. Consultants' Competitive Negotiation Act (CCNA).

Pursuant to F.S. 287.055, the CCNA process sets forth the appropriate administration of registration, public announcement and qualification procedures, competitive selection, and competitive negotiation to be employed when the District determines it requires a person or entity to provide professional services within the scope of the practice of architecture, professional engineering, landscape architecture, surveying and mapping, or construction services, including design-build, construction management, and program management.

ii. Non-CCNA.

When a need for commodities or contractual services is anticipated, the establishment of a list of responsive and responsible vendors to be utilized on an as-needed basis, or the selection of vendor(s) for a specific project, who have met a set of defined qualifications to

provide specific commodities and/or contractual services will be solicited and awarded either as a continuing contract or in a project/task specific agreement.

2. Alternate Source Contracting.

The Board or designee may procure commodities or contractual services from agreements that have been awarded by another governmental agency, by a group of governmental agencies, or as a participant of a group of governmental agencies as allowed by law and when in the best interest of the Board.

a. State of Florida, Department of Management Services.

As required by F.S. 1010.04, the Board or designee shall receive and give consideration to the prices available to it under rules of the Department of Management Services, Division of Purchasing. The Board or designee may use prices established by the Division of Purchasing through its state purchasing agreement price schedule under the same conditions for use imposed on state agencies.

b. Piggyback from Other Agency or Groups of Agencies.

The Board or designee may make procurements at or below the specified prices from agreements awarded by other city or county governmental agencies, other district school boards, community colleges, federal agencies, public or governmental agencies of any state, state university systems, or from cooperative, interlocal, or pooled solicitation agreements, when the vendor will permit procurements by the Board or designee at the same terms, conditions, and prices (or below such prices) awarded in such contract, and such procurements are to the economic advantage of the District.

c. Pool Procurement.

The Board or designee may procure school buses, equipment, and related contractual needs and supplies through the pool-purchase provisions of F.S. 1006.27.

d. Procurement Consortium.

The Board or designee may enter into interlocal agreements as provided in F.S. 163.01 to establish a consortium and maximize procurement power for commodities and contractual services. A consortium may be nationwide, statewide, or regional as appropriate to achieve the lowest cost.

3. Direct Negotiation.

a. Generally.

The Board or designee may approve agreements using direct negotiations where allowed by law. The Director of Procurement and Distribution Services or designee shall maintain adequate documentation commensurate with the value of the contract reflecting the rationale for using direct negotiation as the procurement method and the basis for determining that the resulting contract is in the best interest of the District.

b. Finding of No Acceptable Proposal or Less than Two (2) Responsive Proposals.

Where competitive solicitations have been requested in the manner prescribed by this policy, and the Board, through the Director of Procurement and Distribution Services or designee, makes a specific finding in writing that:

- i. No valid or acceptable firm proposal has been received within the prescribed time, the Director of Procurement and Distribution Services or designee may enter into direct negotiations with a vendor providing such commodities and contractual services. The Director of Procurement and Distribution Services or designee shall document that a re-solicitation is not likely to generate sufficient competition or has been determined to not be in the best interest of the District, and that it has been appropriately sourced to allow for competition.
- ii. Less than two (2) responsive proposals for commodities or contractual services were received, the Director of Procurement and Distribution Services or designee may negotiate on the best terms and conditions or decide to reject all proposals. The Director of Procurement and Distribution Services or designee shall document the reasons that negotiating terms and conditions with a particular vendor is in the best interest of the District in lieu of re-soliciting proposals.

4. Competitive Solicitation Waived or Not Required.

As provided in Rule 6A-1.012, FAC, F.S. 1010.04(4)(a), or other laws, in addition to the methods described above, the Board or designee may procure commodities and contractual services without requesting competitive proposals, bids, or replies from three (3) or more sources, as set forth below:

a. Use of Approved Solicitations or Agreements.

Commodities or contractual services must be procured from an awarded or approved solicitation or agreement if one is available. Any deviation must be justified and documented by the principal or departmental director as to the reason for the exception, and pre-approved by the Director of Procurement and Distribution Services. This rule applies to purchases made through all funding sources, including internal funds.

b. No Quotes Required.

Procurements less than five thousand dollars (\$5,000.00) that are not available from an awarded or approved solicitation or agreement do not require multiple quotations.

c. Quote Thresholds.

- i. "Request for Quotations" means an informal process to solicit quotes for commodities or contractual services with standard specifications and valued under the threshold requiring formal competitive solicitations.
- ii. Procurements five thousand dollars (\$5,000.00) or more, but less than fifty thousand dollars (\$50,000.00) that are not available from an awarded or approved solicitation or agreement require competitive quotes, unless there is an exemption to this requirement as established herein.
- iii. Quotes shall be requested from two (2) or more sources for procurements five thousand dollars (\$5,000.00) or more, but less than fifteen thousand dollars (\$15,000.00).
- iv. Quotes shall be requested from three (3) or more sources for procurements fifteen thousand dollars (\$15,000.00) or more, but less than fifty thousand dollars (\$50,000.00).

d. Information Technology.

In accordance with Rule 6A-1.012(14), FAC, the Board or designee, when acquiring, whether by purchase, lease, lease with option to purchase, rental or otherwise, information technology, as defined in F.S. 282.0041(14), may make any acquisition through the competitive solicitation

process as described herein or by direct negotiation and contract with a vendor or supplier, as best fits the needs of the Board as determined by the Director of Procurement and Distribution Services or designee. The Director of Procurement and Distribution Services or designee shall document in writing the reasoning for concluding that direct negotiation instead of competitive solicitation is in the best interest of the District.

e. **Risk Management.**

The Board or designee may, except as otherwise required by statute, utilize the competitive solicitation process or enter into direct negotiations and contract with a vendor or supplier that best meets the needs of the District when acquiring insurance, entering risk management programs, or contracting with third party administrators. The procurement of employee group insurance must be competitively selected in accordance with F.S. 112.08.

f. **Educational Services/Copyrighted Materials.**

The Board or designee may procure educational services and any type of copyrighted materials including, without limitation, educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, dvds, disc or tape recordings, digital recordings, or similar audio-visual materials, library and reference books, and printed library cards where such materials are procured directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency, or a recognized educational institution.

g. **PRIDE/RESPECT.**

The Board or designee may procure commodities and contractual services from PRIDE (Prison Rehabilitative Industries and Diversified Enterprises, Inc.) or RESPECT (Florida's preferential purchasing program for individuals with disabilities), as authorized by the Florida Statutes.

h. **Regulated Utilities.**

The Board or designee may procure regulated utilities or government-franchise services.

i. **Grant or Law.**

The Board or designee may enter into a contract where state or federal law, a grant, or state or federal agency contract prescribes with whom the Board must contract or if the rate of payment is established during the annual appropriation process.

j. **Professional Services.**

The Board or designee may procure professional services which shall include, without limitation, artistic services; academic program reviews; lectures by individuals; auditing services not subject to F.S. 218.391; legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration.

k. **Single/Sole Source.**

When it is believed that commodities or contractual services are available only from a single/sole source, the Director of Procurement and Distribution Services or designee shall electronically or otherwise publicly post a description of the commodities or contractual services sought for a period of at least seven (7) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the Director of Procurement

and Distribution Services or designee, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single/sole source, the Director of Procurement and Distribution Services or designee shall provide notice of the Decision or Intended Decision to enter a single/sole source contract in the manner specified in F.S. 120.57(3), and may negotiate on the best terms and conditions with the single/sole source vendor.

I. Emergency Procurements.

Pursuant to Rule 6A-1.012 (12)(e), FAC, the Board or designee may dispense with requirements for competitive solicitations for the emergency purchase of commodities or contractual services when the Superintendent or designee determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the Board requires emergency action. After the Superintendent or designee makes such a written determination, the Director of Procurement and Distribution Services or designee may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors, which must be retained in the contract file, unless the Superintendent or designee determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the Board. For emergency procurements that exceed the Board approval threshold specified herein, the Superintendent or designee shall seek ratification by the Board at the next regularly scheduled meeting.

m. Maintenance/Service/Warranty.

The Board or designee may award agreements for maintenance and/or service agreements, on various types of technical equipment, that are offered and/or supplied only by the original manufacturer or its representative, or that are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental/lease/lease procurement agreement terms and conditions.

n. Other Means.

Any other means allowable by state law or rule.

5. Electronic Procurements.

The Procurement and Distribution Services department may utilize a third-party electronic procurement system to post solicitations, including addenda, sole source notices, notices of intended decisions, and/or to receive and evaluate responses.

6. Federal Grants/Funds.

- a. Procurement of all supplies, materials, equipment, and services paid for from Federal funds shall be made in accordance with all applicable Federal, State, and local laws and/or regulations, the terms and conditions of the Federal grant, Board policies, and administrative procedures.
- b. The Superintendent or designee shall maintain a procurement and contract administration system in accordance with the United States Department of Education (USDOE) requirements for the administration and management of Federal grants and Federally funded programs. The District shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their agreements or purchase orders.

- c. The District shall take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible in accordance with 2 C.F.R. 200.321.
- d. All District employees, officers, and agents who have procurement authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of agreements as established in Policy 3129 and Policy 3210.

7. Purchasing Cards (P-Cards).

- a. The Director of Procurement and Distribution Services or designee is authorized to administer a purchasing card program and to establish relevant procedures. The program shall include internal controls to monitor compliance with said program.
- b. The purchasing card administrative procedures shall establish guidelines for the use and control of purchasing cards which will be assigned to and utilized by designated employees to procure commodities and contractual services, on behalf of the Board or when authorized by this policy.
- c. Designated employees will be eligible to use a purchasing card upon approval by the Superintendent or designee after completion of the application, training, and signing the cardholder agreement which contain the appropriate-use standards.
- d. Under no circumstances shall purchasing cards be used for personal purchases or the purchase of alcoholic beverages regardless of whether the purchase of such beverages is made in connection with a meal.
- e. Inappropriate or illegal use of the purchasing card and/or failure to comply fully with the limitations and requirements set forth in the administrative procedures may result in a loss of purchasing card privileges; disciplinary action, up to and including termination; personal responsibility for any and all inappropriate charges; including finance charges and interest assessed in connection with the purchase; and/or possible referral to law enforcement authorities for prosecution.

8. Purchase Orders.

Each purchase shall be based upon a request originating from the principal or department director, except in emergency situations, when the Superintendent or designee may grant permission for such purchases. Each emergency purchase shall be followed immediately with a confirming purchase order. Each request, or agreement/contract, shall be properly budgeted. The payment of an unauthorized purchase shall be the sole responsibility of the person authorizing the order. The principal or department director may designate his/her purchase order requisition approval authority to an administrator or manager under his/her supervision. Such designation shall not relieve the principal or department director of his/her fiscal responsibility for his/her assigned facility or facilities.

9. Advance Payments.

To ensure adequate protection to the Board that commodities and contractual services will be provided, advance payment for commodities and contractual services is discouraged. With adequate safeguards, however, the Board may approve advance payments for agreements requiring Board approval; the Superintendent or designee may approve advance payments for agreements requiring the Superintendent's approval; and the Director of Procurement and

Distribution Services or designee may approve advance payments for all other agreements, as follows:

- a. For maintenance agreements, software license agreements, subscriptions, agreements to reserve space, and certain other commodities or contractual services, when advance payment will result in a savings to the Board equal to or greater than the amount the Board would earn by investing the funds and paying in arrears, or where those items are essential to the operation of the Board and are available only if advance payment is made; or
- b. In accordance with the Board's travel policy.

10. Cone of Silence.

- a. A "cone of silence" is hereby established for all competitive selection processes including Invitations to Bid (ITB), Request for Proposal (RFP), Invitations to Negotiate (ITN), and Request for Qualifications (RFQ) for the provision of commodities and contractual services. The cone of silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award. This cone of silence shall be imposed on these procurements after advertisement of same.
- b. The cone of silence prohibits any communication regarding a competitive solicitation between:
 - i. a potential vendor, service provider, bidder, lobbyist, or consultant and the staff of the District, including school principals and department directors; and
 - ii. a potential vendor, service provider, bidder, lobbyist, or consultant and any one (1) or more of the Board members or member-elects.
- c. Unless specifically provided otherwise in the applicable competitive solicitation the cone of silence does not apply to the following:
 - i. Communications between a potential vendor, service provider, bidder, lobbyist, or consultant and the District's Procurement and Distribution Services department.
 - ii. Communications between a potential vendor, service provider, bidder, lobbyist, or consultant and the School Board Attorney.
 - iii. Communications at duly noticed pre-bid meetings and site visits prior to bid opening or post bid-opening meetings and site visits, which are administered by the District's Procurement and Distribution Services department, prior to issuance of a written recommendation of contract award.
- d. The cone of silence commences after the competitive solicitation is publicly issued.
- e. The cone of silence terminates at the time the Board acts on a written recommendation from the District's Procurement and Distribution Services department regarding contract award; provided, however, that communications are permitted when the Board receives public comment at the meeting when the recommendation is presented; or at the time the Superintendent or designee acts on a written recommendation from the District's Procurement and Distribution Services department regarding contract award.
- f. The District's Procurement and Distribution Services department shall ensure that all solicitations include provisions describing the requirements and prohibitions of the cone of silence, including how a potential vendor, service provider, bidder, lobbyist, or consultant may communicate with District personnel.

- g. Any person, whether employed by the District or not, who knowingly violates a provision of this policy shall be prohibited from serving on a District competitive selection committee.
- h. Violation of this policy by a particular bidder, proposer, respondent, and/or representative may, at the discretion of the District, result in rejection of said bidder, proposer, respondent, and/or representative's bid, proposal, or offer and may render any contract award to said bidder, proposer, or respondent voidable.
- i. In addition to any other penalty provided by law, violation of this policy by a Board employee shall subject said employee to disciplinary action up to and including dismissal from service.

11. Protests Arising from Solicitation or Contract Award Process.

Solicitation or contract award protests shall be resolved under procedures set forth in this policy and in conformity with the requirements of F.S. 120.57(3) and the Uniform Rules at F.A.C. Chapters 28-106 and -110.

a. Definitions.

- i. "Decision or intended decision" means:
 - a) the contents of a solicitation, including addenda;
 - b) a determination that a specified procurement can be made only from a single source;
 - c) rejection of a response or all responses to a solicitation; or
 - d) intention to award a contract as indicated by a posted solicitation tabulation or other written notice.
- ii. "Filed" means that a document has been physically received and time/date stamped by the Procurement and Distribution Services department within the time required by this policy.
- iii. "Person" means an individual and includes company, corporation, partnership, limited partnership, joint venture or any other legally recognized business entity.

b. Notice of Decision or Intended Decision.

The Director of Procurement and Distribution Services or designee shall post notice of a decision or intended decision by electronic posting. All such notices shall contain the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post a bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

c. Notice of Protest.

Any person who is adversely affected by the agency decision or intended decision and intends to protest the decision or intended decision, shall file a notice of protest in writing with the Director of Procurement and Distribution Services within seventy-two (72) hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding agreements, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within seventy-two (72) hours after the posting of the solicitation.

- i. A notice of protest should not be filed before the seventy-two (72) hour period begins. The seventy-two (72) hour period begins upon posting of the Decision or Intended Decision.
- ii. The notice of protest must be actually received by the District's Procurement and Distribution Services department before the seventy-two (72) hour period expires. The seventy-two (72) hour period excludes Saturdays, Sundays, and holidays when the District administrative office is closed. The seventy-two (72) hour period is not extended by service of the notice of protest by mail. Failure to timely file a notice of protest shall constitute a waiver of proceedings under this section and F.S. 120.57(3).
- iii. The notice of protest shall identify the procurement by number and title or any other language that will clearly enable the District to identify it; and the person that intends to protest the decision.

d. Formal Written Protest.

In addition to filing a notice of protest, a protesting person must file a formal written protest.

The formal written protest must be filed with the Director of Procurement and Distribution Services within ten (10) days after the date the notice of protest is filed. Failure to timely file the formal written protest shall constitute a waiver of proceedings under this Policy and F.S. 120.57(3). The ten (10) day period for filing the petition is not extended by service of the petition by mail.

- i. The formal written protest shall be a petition that:
 - a) states with particularity the facts and law upon which the protest is based;
 - b) contains all the information specified in Rule 28-106.201(2), FAC and Rule 28-106.301(2), FAC;
 - c) is substantially in the form of petition set forth in Rule 28-110.004(2), FAC, naming "The School Board of Brevard County, Florida" as the Respondent; and
 - d) should include a request for a hearing involving disputed issues of material fact; or, if the relevant facts are not in dispute, the petition should so allege and request a hearing not involving disputed issues of material fact.
- ii. Pursuant to Rule 28-110.004(1), FAC, if the formal written protest is filed in proper form within the seventy-two (72) hour period for filing a notice of protest, the formal written protest will also constitute the notice of protest, and all time limits applicable to a notice of protest are waived and the time limits relative to formal written protests shall apply.

e. Protest Bond.

Any person who files an action protesting a decision or intended decision pertaining to a solicitation or contract award shall post with the Director of Procurement and Distribution Services, at the time of filing the formal written protest, a bond secured by an acceptable surety company in Florida, payable to "The School Board of Brevard County, Florida" in an amount of \$25,000.00 or two percent (2%) of the estimated contract amount, whichever is greater, for projects valued over \$500,000.00; and five percent (5%) of the estimated contract amount for all other projects.

- i. The Director of Procurement and Distribution Services shall provide the estimated contract amount to the protester within seventy-two (72) hours (excluding Saturdays, Sundays, and

holidays when the District administrative offices are closed) after the filing of the notice of protest. The estimated contract amount is not subject to protest under this Policy or F.S. 120.57(3). This information may be provided as part of the decision or intended decision documents. In lieu of a bond, the Director of Procurement and Distribution Services may accept a cashier's check, official bank check, or money order in the amount of the bond.

- ii. The bond shall be conditioned upon the payment of all costs and charges which may be adjudged against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.
- iii. If, after completion of the administrative hearing process and any appellate court proceedings, the Board prevails, it shall be entitled to recover all costs and charges which are included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the person protesting the decision or intended decision or contract award, the bond, cashier's check, official bank check, or money order shall be returned to the protestor. If, after the completion of the administrative hearing process and any appellate court proceedings, the protestor prevails, the protestor may recover from the Board the costs and charges which are included in the final order or judgment, excluding attorney's fees.

f. Informal Resolution Meeting.

The Director of Procurement and Distribution Services shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven (7) business days (excluding Saturdays, Sundays, and holidays when the District administrative offices are closed) of receipt of the formal written protest. All affected parties shall be notified of the notice of protest.

i. Hearing.

If the protest is not resolved by mutual agreement within seven (7) business days (excluding Saturdays, Sundays, and holidays when the District administrative offices are closed) after receipt of the formal written protest; and

- a) if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to F.S. 120.57(2) and applicable Board Policies, and may be conducted before an impartial hearing officer who is a member in good standing of The Florida Bar; or
 - b) if there is a disputed issue of material fact, in accordance with F.S. 120.569, the protest shall be referred within fifteen (15) days after the Director of Procurement and Distribution Services receives the formal written protest to the Division of Administrative Hearings for a formal hearing under F.S. 120.57(1).
- ii. As stated in F.S. 120.57(3)(f), the burden of proof shall rest with the party protesting the proposed agency action.
 - iii. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review shall be whether the Board's intended action is illegal, arbitrary, dishonest, or fraudulent.
 - iv. In competitive-procurement protests other than those contesting an intended agency action to reject all bids, proposals, or replies, the hearing officer or administrative law judge will conduct a de novo proceeding to determine whether the Board's proposed action is contrary to the governing statutes, the Board's Policies, or the solicitation

documents. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

g. Stopping the Procurement Process.

Upon receipt of the formal written protest that has been timely filed, the solicitation or contract award process shall be stopped until the subject of the protest is resolved by final agency action, unless the Superintendent sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

C. AGREEMENTS.

1. Definitions.

- a. An "agreement" sets forth the understanding between two (2) or more parties that is intended to have legal effect and to which the parties agree to be bound. Agreements document the mutual understanding between the parties as to the terms and conditions of their agreement, contain mutual obligations, and clearly state the agreement's consideration.
- b. The term "consideration" includes the cost of the services and/or products to be provided by second party (vendor or service provider) and any non-monetary performance.
- c. No school, department, or other organizational unit has authority to contract in its own name. All Board agreements must be made in the legal name of the Board, "The School Board of Brevard County, Florida." The school or department may extend this name to include the school or department as follows, "The School Board of Brevard County, Florida o/b/o (insert the school or department name)" where o/b/o means "on behalf of."

2. Agreement Review.

All agreements shall be reviewed and approved by the Director of Procurement and Distribution Services or designee, and/or the School Board Attorney, to ensure legality, compliance with Board policy, and to ensure the Board's interests are protected before the authorized signatory may execute the agreement.

D. APPROVAL AND SIGNATURE AUTHORITY.

1. Board Approval.

All agreements and solicitation awards with a value of fifty thousand dollars (\$50,000.00) or more shall be submitted to the Board for approval at a regular or special meeting and signed by the Board Chairman.

2. Delegated Authority.

a. Superintendent.

All agreements and solicitation awards with a value of twenty-five thousand dollars (\$25,000.00) or more, but less than fifty thousand dollars (\$50,000.00) shall be approved by the Superintendent or designee.

b. Cabinet.

All agreements with a value of five thousand dollars (\$5,000.00) or more, but less than twenty-five thousand dollars (\$25,000.00) shall be approved by an Assistant Superintendent or Cabinet Member.

c. Director of Procurement and Distribution Services.

The Director of Procurement and Distribution Services may approve the following:

- i. Utilization of State of Florida, Department of Management Services or Piggyback from Other Agency or Groups of Agencies with a value less than fifty thousand dollars (\$50,000.00).
- ii. Renewal of solicitations or agreements at the same terms and conditions, if the renewal term was included in the solicitation or agreement.
- iii. Extension of solicitations or agreements for up to six (6) months, to allow time for a new solicitation or agreement to be awarded.
- iv. Approval and issuance of all Purchase Orders.

d. Department Directors/Principals.

All agreements with a value of less than five thousand dollars (\$5,000.00), shall be approved by a Department Director or Principal.

e. Amendments.

Amendments shall follow the same approval and signature authority as the original agreement, unless the amendment places the total value of the agreement into a different authority level.

f. Unauthorized Agreements.

The Board will not recognize an agreement as binding unless executed by an authorized employee in accordance with this policy. Vendors that enter into an agreement are required to determine if the person purporting to execute an agreement on behalf of the Board or the Board on behalf of a school or department is authorized to do so. Employees who enter into agreements without authority may be personally liable for such agreements, whether oral or written. Employees who enter into unauthorized agreements may be subject to disciplinary action up to and including dismissal from service.

E. AUTHORITY TO DEBAR OR SUSPEND.

The Director of Procurement and Distribution Services shall have the authority to debar a person/corporation, for cause, from consideration or award of further agreements. The debarment shall be for a period commensurate with the seriousness of the cause, generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall not be considered in determining the debarment period. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

1. Cause of Debarment.

The term "debar" or "debarment" means to remove a vendor from consideration of award in a competitive solicitation for District work and may include termination of existing contracts for cause. Causes for debarment include, but are not limited to, the following:

- a. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or sub-contract, or in performance of such contract;
- b. conviction under State or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a vendor;
- c. conviction under State or Federal anti-trust statutes arising out of submission of bids or proposals;
- d. violation of contract provisions, including, but not limited to, the following:
 - i. deliberate failure, without good cause, to perform in accordance with specifications or within the time limits provided in the contract(s);
 - ii. a recent record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one (1) or more agreements; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the vendor shall not be considered to be a basis for debarment;
 - iii. refutation of an offer by failure to provide bonds, insurance or other required certificates within the time period as specified in solicitation response;
 - iv. refusal to accept a purchase order, agreement, or contract, or to perform thereon, provided such order was issued timely and in conformance with the offer received;
 - v. presence of principals or corporate officers in the business of concern who were principals within another business at the time when the other business was suspended within the last three (3) years under the provisions of this section;
 - vi. violation of the ethical standards set forth in State law;
 - vii. providing or offering to provide anything of value, including, but not limited to, a gift, loan, reward, promise of future employment, favor or service to any employee to influence the award of contract or purchase items from a vendor;
 - viii. existence of unresolved disputes between the vendor and the District arising out of or relating to prior agreements between the District and the vendor, work performed by the vendor, or services or products delivered; and/or
 - ix. any other cause the Director of Procurement and Distribution Services determines to be so serious and compelling as to affect credibility as a District vendor, including debarment by another governmental entity for any cause listed in this policy.

2. Notice of Recommended Decision.

The Director of Procurement and Distribution Services or designee shall issue a notice letter that advises the party that it is debarred or suspended. The letter shall:

- a. state the reason(s) for the action taken; and
- b. inform the vendor of its right to petition the Board for reconsideration.

3. Right to Request a Hearing.

Any person who is dissatisfied or aggrieved with the notification of the determination to debar or suspend must, within ten (10) calendar days of such notification, appeal such determination to the Board.

4. Hearing Date.

The Board shall schedule a hearing at which time the person shall be given the opportunity to demonstrate why the debarment/suspension by the Director of Procurement and Distribution Services should be overturned. All parties shall be given notice of the hearing date.

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F.S. 112.08
F.S. 120.569
F.S. 120.57
F.S. 163.01
F.S. 255.0516
F.S. 287.055
F.S. 1006.27
F.S. 1010.04
F.A.C. 6A-1.012