

Policy 3800  
PURCHASING POLICY

This policy is adopted to exercise the authority conferred upon The School Board by applicable laws and rules regarding the processes by which it procures commodities and services required for the operation of the school district.

In many instances, these laws require that commodities and services be procured through competitive solicitations for the protection of the public. Competitive solicitations create a means by which goods or services required by the school district may generally be acquired at the lowest possible cost. The competitive solicitation system confers reciprocal benefits upon both the proposer and the school district and exacts reciprocal obligations from each of them. The proposer is assured fair consideration of its offer and is awarded a contract if it is the lowest responsive responsible bidder or if it is the highest ranked responsive, responsible proposer with whom successful negotiations can be had and an award meets the needs of the school district. The principal benefit flowing to the school district authority is the opportunity to purchase the goods and services required by it at the best price obtainable or from the highest-ranked responsive, responsible proposer with whom successful negotiations can be had. Under this system, the public authority may not arbitrarily or capriciously discriminate between bidders or make the award on the basis of personal preference. Except as otherwise provided by applicable law or rule, the contract award must be made to the lowest responsive responsible bidder or to the highest ranked responsive, responsible proposer with whom successful negotiations can be had, or all bids or proposals must be rejected.

The Florida Legislature and the Florida Board of Education have also enacted laws and adopted rules that recognize that there are some instances in which the character of the commodities or services required or the circumstances present render competitive bidding impractical. In such instances, The School Board's governing laws and rules authorize it to procure such commodities and services through alternate means that are exempt from the requirement of competitive solicitations.

This policy sets forth The School Board's exercise of its authority under its governing laws and rules to procure commodities and services required for the operation of the school district through competitive solicitations or by available alternative means and exemptions.

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## I. DEFINITIONS

**“Competitive Solicitation”**: In accordance with Section 6A-1.012(1)(a), F.A.C., the term “competitive solicitation” shall be defined for the purposes of this policy as purchasing made through the issuance of an invitation to bid, request for proposals, or an invitation to negotiate. Competitive solicitations are not required for purchases made through the pool purchase provisions of Section 1006.27, Florida Statutes, or under any available exemptions or alternatives permitted under applicable law or rules, including, without limitation, Section 6A-1.012, F.A.C., and this policy.

**“Invitation to Bid”**: In accordance with Section 6A-1.012(1)(b), F.A.C., the term “invitation to bid” shall be defined for the purposes of this policy as a written solicitation for competitive sealed bids. An invitation to bid is used when the school district is capable of specifically defining the scope of work for which a contractual service is required or when the School Board is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written competitive solicitation includes an invitation to bid that is publicly posted.

**“Invitation to Negotiate”**: In accordance with Section 6A-1.012(1)(c), F.A.C., the term “invitation to negotiate” shall be defined for the purposes of this policy as a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. An invitation to negotiate is used when The School Board determines that negotiations may be necessary for it to receive the best value. A written competitive solicitation includes a publicly posted invitation to negotiate.

**“Lobbying”**: The term “lobbying,” as defined in Policy 1100B, shall have the same definition for this policy.

**“Lobbyist”**: The term “lobbyist,” as defined in Policy 1100B, shall have the same definition for this policy.

**“Principal”**: The term “principal” is defined for the purposes of this policy with regard to lobbyist activities as an individual, firm, corporation, or other business entity that has employed or retained the services of a lobbyist or which stands to benefit from the lobbying activities of a lobbyist. In all contexts within this policy other than those dealing with lobbying, the term “principal” shall refer to a school-based administrator.

**“Proposer”**: In accordance with Section 6A-1.012(1)(d), F.A.C., the term “proposer” shall be defined for the purposes of this policy to include those vendors submitting bids or responses to a competitive solicitation.

**“Request for Proposals”**: In accordance with Section 6A-1.012(1)(e), F.A.C., the term “request for proposals” shall be defined for the purposes of this policy as a written solicitation for competitive sealed proposals. A request for proposals is used when it is not practicable for the school district to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the district school board is

requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A written competitive solicitation includes a request for proposals that is publicly posted.

**“Superintendent”:** The term “Superintendent” shall be defined for the purposes of this policy to mean the Superintendent of Schools or her/his designee(s), including, but not limited to, the Chief Operations Officer, Executive Director of Operations, and the Director of Procurement and Warehousing Services.

## **II. DELEGATION OF AUTHORITY**

As set forth below, The School Board has delegated limited authority to the Superintendent or his/her designee(s), including the Director of Procurement and Warehousing Services, Department Heads or Directors, and School Principals relating to the purchase of commodities and contractual services for the school district in compliance with applicable federal and state laws, Florida Board of Education Rules, School Board Policies, and administrative rules. Authority for any purchases not specifically delegated to the Superintendent or his/her designee(s), the Director of Procurement and Warehousing Services, Department Heads or Directors, or School Principals must be approved in advance by The School Board.

**Multi-Year Agreements** - While multi-year agreements may be recommended when they are administratively determined to be advantageous to the school district, only The School Board has the authority to enter into multi-year agreements, regardless of value, and to obligate funds based on budget appropriation approval. All agreements in excess of one (1) year in duration must contain a provision that allows The School Board to terminate the obligation upon a prescribed number of days advance written notice.

**Prohibited Unauthorized Purchases:** Pursuant to Section 6A-1.012(2), F.A.C., no person, unless specifically authorized to purchase commodities or contractual services under School Board policies, may make any purchase or enter any contract involving the use of school or school district funds. Payment for any unauthorized purchase shall be the personal responsibility by the person(s) involved in placing the unauthorized order.

### **Renewals on Existing Contracts:**

On a contract that was approved by The School Board with renewal options, the Superintendent and his/her designee, the Director of Procurement and Warehousing Services, may renew the contract with the original budgeted yearly contract spend without School Board's approval the contract is administratively determined to be of an economic advantage to the school district.

**Administrative Purchasing Procedures:** The School Board authorizes the Superintendent to establish procedures and to designate the authority necessary for school district staff to implement this policy. In addition, wherever this policy mentions procedures to be established or implemented by the Superintendent, certain internal operational procedures and guidelines may be set administratively forth in manuals and related documentation where appropriate.

**Delegation of Contract Authority to Superintendent:** Pursuant to Section 6A-1.012(2), F.A.C., The School Board delegates to the Superintendent or her/his predetermined designee(s) the authority to execute contracts for purchases of commodities or services up to \$500,000 or below, provided that such contracts have been reviewed and approved as to form and legal content by the Office of the General Counsel and do not contain provisions that necessitate School Board approval or that exceed the applicable appropriation in the school district budget. Pursuant to Section 6A-1.012(4),(5),(6) F.A.C., the Superintendent is authorized to purchase commodities or contractual services up to \$500,000 or below under Department of Management Services state term contracts, purchases from contracts of other Broward County agencies, purchases at or below the specified prices from competitively solicited contracts awarded by other city or county governmental agencies, other district school boards, regional consortium service organizations, community colleges, federal agencies, the public or governmental agencies of any state, or from state university system cooperative bid agreements, and any purchase where competitive solicitation is waived as authorized by Section 1010.04(4)(a), F.S., provided that such contracts have been reviewed and approved as to form and legal content by the Office of the General Counsel and do not contain provisions that necessitate School Board approval or that exceed the applicable appropriation in the school district budget.

**Specifications for Commodities and Services:** Pursuant to Section 6A-1.012(3), F.A.C., the Superintendent shall, insofar as possible, propose standards and specifications before making any purchase of commodities or services for which the Superintendent is authorized by The School Board to make or before recommending any purchase to The School Board. The Superintendent shall ensure that the resultant purchase or contract conforms to those standards and specifications and shall take such other steps as are necessary to see that the maximum value is being received by the school district for any purchase. Specifications for any commodity may be limited to a specific brand or product when necessary to supplement existing school district installations or for purposes of standardization. However, specifications that exceed industry standards for the product's intended use must be justified in writing by the requesting school district department or facility and authorized by the Superintendent's direct reports.

**II(b). Superintendent's Delegate(s)**

- i. The School Board delegates authority to the Superintendent or his/her designee, specifically the Chief Operations Officer, Executive Director, Operations, and to the Director, Procurement and Warehousing Services to:
  - a. approve purchases for departments and schools for professional services in an amount in excess of five thousand dollars (\$5,000) and up to fifty thousand dollars (\$50,000);
  - b. waive the requirement for three (3) written quotations on purchases from \$5,000 to \$50,000;
  - c. except where specifically set forth herein and excluding professional services, to approve purchases for commodities and contractual services arising out of any competitive solicitation or alternate source contract made in accordance with The School Board's governing laws, rules, and policies, up to five hundred thousand (\$500,000) per vendor per fiscal year for any awarded contract. A monthly report of such purchases must be provided to The School Board.

- d. recommend the rejection of any or all proposals, responses, bids, or replies to any competitive solicitation and, after approval by The School Board, thereafter, re-advertise or purchase the required commodities or contractual services in any manner authorized by The School Board's governing laws, rules, and policies; and
- e. approve purchases of the following commodities and contractual services without limitation as to the amount:
  - i. Emergency purchases as defined in Section 6A-1.012(12)(e), F.A.C.;
  - ii. Purchases of regulated utilities or government-franchised services pursuant to Section 6A-1.012(12)(g), F.A.C.;
  - iii. Publication of public notices in newspapers at the rates specified by Section 50.061, Florida Statutes, unless lower rates are established by a competitive solicitation awarded by The School Board;
  - iv. subscription services that are exempt from competitive solicitation;
  - v. professional association fees or membership dues for educational or non-profit organizations that serve the needs of the school district;
  - vi. For professional or other organizations that do not accept institutional memberships, the Superintendent may authorize the use of school district funds for the payment of individual membership dues when such membership is essential to the job duties and responsibilities of a school district employee.
  - vii. Fees charged by the Florida Department of Law Enforcement for screenings of employees and vendors;
  - viii. travel expenditures and reimbursements in compliance with School Board Policy 3400, 3401, and 4007 and Chapter 112, Florida Statutes; and
  - ix. postage.
- ii. Pursuant to the previous paragraph, the Superintendent delegates their purchasing authority up to \$250,000 per purchase for the Chief Operations Officer, \$100,000 per purchase for the Executive Director, Operations, and \$50,000 per purchase for the Director of Procurement and Warehousing Services.
- iii. The Superintendent transfers his purchasing authority to his designee when the Superintendent establishes in writing who the designee is and for how long they will serve as the Superintendent's designee.

**District Purchasing Forms:** Except for such forms that are required to be adopted through a School Board policy by Section 120.52(16), Florida Statutes, the Superintendent's designees are authorized to prepare and distribute any forms that are necessary to carry out the provisions of this policy and such forms are considered to be official components of the school district's purchasing procedures. Whenever permitted, staff will use electronic signatures.

**Annual Report of P-Card Transactions:** The Superintendent or designee shall furnish The School Board with an annual report of school district P-Card transactions, by December 1<sup>st</sup>. The report shall include vendor name, dollar amount, description of the service or good, address, and the principal.

### **II(c). Director of Procurement and Warehousing Services**

The School Board designates the Procurement and Warehousing Services Department as the school district's official purchasing agent. Accordingly, authority is delegated to the Director of Procurement and Warehousing Services to:

- a. coordinate with the school district's user departments to select the most appropriate and cost-effective purchasing method of contract procurement, including competitive solicitations, direct negotiations, and/or methods that will allow the school district to take advantage of value discounts and special pricing agreements, where appropriate;
- b. coordinate with the school district's user departments the evaluation criteria for procuring commodities and contractual services, including any preference required or allowable by law, rule, or School Board policy;
- c. oversee the competitive solicitation process in collaboration with the school district end-users to include receipt of formal information through Requests for Information when needed; create the competitive solicitation document including the school district user department's approved specifications, terms, and conditions; coordinate the end user's selection of evaluation committee members; and receive, open, tabulate, and evaluate proposals, responses, bids, and replies in accordance with the applicable provisions of law, rules, School Board policies, and the competitive solicitation;
- d. receive and process any and all notices of protest and formal written protests for the purpose of determining whether the notices or written protests are timely and have a timely and properly posted bond; forward any and all notices of protest and formal written protests for review by the Office of General Counsel; schedule and provide an opportunity to resolve a protest by mutual agreement between the parties pursuant to Section 120.57(3)(d). Florida Statutes;
- e. approve and issue purchase orders for purchases made in accordance with The School Board's applicable laws, rules, and School Board policies;
- f. track School Board-awarded contracts to ensure that the amount of funds encumbered by purchase orders does not exceed the budgeted funds approved by The School Board;
- g. coordinate the end-user department's negotiations with vendors when appropriate;
- h. coordinate the P-Card Program;
- i. oversee the management of the Central Warehouse;
- j. approve and issue purchase orders for Direct Material Purchases for the purpose of tax savings as allowed by Section 12A-1.094, Florida Administrative Code.
- k. The Director of Procurement and Warehousing Services shall provide prior written notice to the Office of the Chief Auditor of any evaluation committee meeting during which any matter relating to commodities or contractual services will be discussed.
- l. Review opportunities in the marketplace to obtain additional cost savings from contracts currently awarded or approved by the School Board.

## **II(d). Principals and Department Heads or Directors**

**Principals and Department Heads or Directors:** All requests for commodities or services will originate at the school/department level. As a result, the school principal or department director is responsible and accountable for ensuring that all commodities and services address the business needs of the school or department and that the use of the commodities or services complies with all applicable laws, rules, and School Board policies. In addition, school principals and department directors or their designees are responsible for the storage of backup documentation, including but not limited to vendor invoices, packaging slips, good receipts, etc., and validating that the school or department received the commodities or contractual services for which they were billed. Discrepancies with prices for goods received or services rendered shall be handled between the ordering school/department and the vendor. However, the school or department may seek the advice and guidance of other departments in the event of a vendor dispute.

**Hierarchy of Purchases of Awarded Commodities or Services:** Principals and Department Heads or Directors (“Requestor(s)”) shall first attempt to procure commodities that are stocked in the school district’s warehouse. If the Requestor would like to purchase contract services or a commodity not currently available at the school’s district warehouse, the Requestor shall use a current contract awarded by The School Board or its designee to an approved vendor. If extenuating circumstances exist that require deviation from this process, the reason for any requested alternative from this procedure must be fully justified and documented by the requesting principal, department head, or director and be approved by The School Board or by the Superintendent’s authorized designee in advance of any purchase. The Requestor must maintain the documentation in support of the requested alternative product for audit purposes. This requirement applies to all purchases of services or commodities from any funding source.

**Purchases up to \$5,000 pursuant to Rule 6A-1.012(7):** For purchases that do not exceed \$5,000, The School Board, the Superintendent or his/her designee, Department Heads or Directors, and/or School Principals may make and/or approve purchases of the commodities and contractual services in compliance with applicable law; rules, and, School Board policies. Competitive quotes for such purchases shall be requested from three (3) or more sources for commodities and contractual services when requisitioning any item or group of similar items exceeding five thousand dollars (\$5,000) except as exempted by applicable law, rules or the School Board policies.

**Request for Commodities and Contractual Services:** Principals and Department Heads shall submit a formal request for any desired commodities or contractual services in excess of \$50,000 that are not under a current school district contract and complete any forms required by the Procurement and Warehousing Services Department.

## **III. PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES**

### **A. Purchases Below \$50,000.**

**Purchases of Similar Commodities or Services:** Whenever possible, purchases of the same commodities or services should be combined by the requesting school district user department for competitive solicitation. Pursuant to Section 6A-1.012(7), F.A.C., orders may not be divided to avoid applicable requirements for competitive solicitation of commodities or services. Multiple orders or split invoicing shall not be used to circumvent such requirements.

**Purchases of Commodities and Services under \$5,000:** Quotations or solicitations are not required to procure commodities and services under \$5,000 that are not currently available from a contract awarded or approved for use by The School Board. A requisition or Purchasing Card (P-Card) shall be utilized for purchases of goods or services included in a contract awarded or approved for use by The School Board and for any expenditure permitted by an approved School Board agenda item. Vendors of catalog goods shall be requested in competitive solicitations and awarded contracts to permit individual district schools or departments to make purchases of any awarded goods at a lower price from other vendors if the individual school/department's total purchase order is less than \$5,000. When necessary, a confirming purchase order shall only be placed with a vendor by the Procurement and Warehousing Services Department after receiving an approved requisition. Departments shall not solicit vendors to render any commodities or services without an issued and approved purchase order or P-Card purchase. Small Business Enterprise (SBE) vendor participation will be strongly encouraged in this category of purchases.

**Solicitation of Quotes for Purchases from \$5,000 to \$50,000:** Purchases of commodities and services from \$5,000 to \$50,000 which are not currently available from a contract awarded or approved for use by The School Board requires school district staff to obtain and submit written quotations from a minimum of three (3) suppliers of the desired commodities or services unless the purchase is subject to an exemption or alternative under applicable law, rule, or School Board policy. At least one (1) certified Small Business Enterprise (SBE) vendor will be contacted for the procurement of commodities or services from the Economic Development and Diversity Compliance Certification Directory.

## **B. Competitive Solicitations**

**Competitive Solicitations for Purchases of \$50,000 or Greater:** Except as otherwise authorized by law or rule, competitive solicitations shall be requested from three (3) or more sources for any authorized commodities or services to the amount established in Section 6A-1.012(7), F.A.C. [This amount is currently \$50,000]. The procurement of required commodities or services may not be divided to avoid this monetary threshold requirement. Any exemptions or alternatives to competitive solicitations that are permitted by applicable law, rule, or policy may be considered for the purchases of commodities or services if doing so is administratively determined to be in the best interest of The School Board. Except as otherwise provided by law, School Board Members shall not serve as members of a school district procurement selection or competitive solicitation evaluation committee (please see Rule 6.0 of School Board Policy 1007 – Ethics Code for School Board Members).

**Invitations to Bid (ITB) – Acceptance of Responses:** In the submittal of bids in response to an Invitation to Bid, The School Board may accept the proposal of the lowest responsive, responsible proposer. In the alternative, The School Board may also choose to award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardees, from whom commodities or contractual services would be purchased should the primary awardee become unable to provide all of the commodities or contractual services required by The School Board during the term of the contract. When an Invitation to Bid has both a primary and alternate awardee and the primary awardee is unable to perform during the



term of the contract, The Procurement and Warehousing Services Department will negotiate with the alternate awardee seeking to obtain the same or lower unit prices as those submitted by the primary awardee. Nothing herein is meant to preclude The School Board from making multiple awards to the lowest responsive and responsible bidders when the intent to make such multiple awards is clearly stated in the bid solicitation documents.

**Requests for Proposals (RFP) – Number of Awardees:** In the submittal of responses to Requests for Proposals, The School Board may award contracts to one (1) or more responsive, responsible proposers in accordance with the selection criteria published in the Request for Proposal. The School Board is not required to request proposals for purchases made from contracts of the Department of Management Services as referenced in subsections (2) and (5) of 6A-1.012, Florida Administrative Code.

**Invitation To Negotiate:** When procurement for commodities and contractual services exceeding the amount established in Rule 6A-1.012(7), Florida Administrative Code, is not practicable by an Invitation to Bid or a Request For Proposal, the Superintendent or his/her designee may solicit competitive sealed replies to determine the best method for achieving specific goals or solving a particular problem and select one or more vendors with which The School Board's authorized designee may negotiate a contract in order to receive the best value based upon objective factors that may include but are not limited to price, quality, design, and workmanship.

**Rejection of Competitive Solicitations:** The School Board shall have the authority to reject any or all bids or proposals submitted in response to any competitive solicitation, to request new proposals, or to purchase the required commodities or contractual services in any other manner authorized by Section 6A-1.012 F.A.C.

### **C. Alternative Sourcing**

**Purchases from Contracts of Other Broward County Agencies:** Subject to conformance to the standards and specifications prescribed by the Superintendent and provided that such purchases are to SBBC's economic advantage, the school district has the option pursuant to Section 6A-1.012(4), F.A.C., to purchase commodities and services of the items of purchase under any current contracts that have been established by a public agency within Broward County through that agency's purchasing agent and at or below the unit prices awarded by that agency.

**Purchases from State Term Contracts:** Pursuant to Section 1001.42(12)(j), Florida Statutes, and Section 6A-1.012(2) and (5), F.A.C., The School Board shall receive and consider the prices available to it under rules of the Florida Department of Management Services, Division of Purchasing. The Procurement and Warehousing Services Department may use prices established by the Florida Division of Purchasing through its state purchasing agreement price schedule, and the conditions for the prices' use shall be materially the same as those imposed on state agencies. Purchases of services under this paragraph in the amount of \$500,000 or above require School Board approval.

**Alternative ("Piggyback") Purchases:** Pursuant to Section 6A-1.012(6), F.A.C., and Section 1001.451, Florida Statutes, in lieu of requesting competitive solicitations from three (3) or more sources, The School Board may make alternative ("piggyback") purchases at

or below the specified prices from competitively solicited contracts awarded by other city or county governmental agencies, other district school boards, regional consortium service organizations, community colleges, federal agencies, the public or governmental agencies of any state, or from state university system cooperative bid agreements. In order to exercise this authority, the proposer awarded a contract by another entity listed above must agree to permit The School Board to make alternative (“piggyback”) purchases upon terms, conditions, and prices (or below such prices) that are materially the same as those that were competitively awarded through the other entity’s contract, and the school district has determined such alternative (“piggyback”) purchases to be of economic advantage. Purchases of services under this paragraph in the amount of \$500,000 or above require School Board approval.

#### **D. Competitive Solicitation Not Required (Exemptions)**

The requirement for requesting competitive solicitations for commodities or contractual services from three (3) or more sources is hereby waived as authorized by Section 1010.04(4)(a), F.S., for:

**Professional Services:** Pursuant to Section 6A-1.012(11)(a), F.A.C., competitive solicitations are not required for the purchase of professional services including, without limitation, artistic services; academic program reviews; lectures by individuals; auditing services not subject to Section 218.391, Florida Statutes, legal services, including an attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration.

**Educational Services and Copyright Materials:** Pursuant to Section 6A-1.012(11)(b), F.A.C., competitive solicitations are not required for the purchase of 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, and for library and reference books, and printed library cards where such materials are purchased directly from the producer or publisher, the owner of the copyright, and exclusive agent within the state, a governmental agency, or a recognized educational institution.

**Instructional Materials:** Pursuant to Section 6A-1.012(11)(b), F.A.C. competitive solicitations or prior School Board approval is not required for the purchase of instructional materials from a state-authorized book depository or for instructional materials. The School Board may implement an adaptive instructional materials program pursuant to Sections 1006.283 & 1006.40, Florida Statutes.

#### **E. Competitive Solicitation Not Required**

**No Responsive Proposals Received for a Competitive Solicitation:** Pursuant to Section 1010.04(4)(a), Florida Statutes, and Section 6A-1.012(12), F.A.C., competitive solicitations for commodities and services are not required when the following conditions have been met by the school district:

- a. Competitive solicitations have been requested by the school district in the manner prescribed by its governing laws, rules, and policies;
- b. The school district administration has made a finding that no valid or acceptable firm proposal has been received within the prescribed time. When

such a finding has been posted, school district staff may enter into negotiations with suppliers of such commodities and services for contracts with such vendors under whatever terms and conditions are in The School Board's best interests and

**Only One Proposer on a Competitive Solicitation:** Pursuant to Section 6A-1.012(12)(c), F.A.C., if less than two (2) responsive proposals for a commodity or service are received, the school district may negotiate with the sole responsive proposer upon the best available terms and conditions or may decide to reject all proposals. To consider the negotiation of a contract with the sole responsive proposer, the school district shall first document the reasons that negotiating terms and conditions with the sole responsive proposer is in the school district's best interest of the school district in lieu of re-soliciting proposals. Since any contracts arising under a competitive solicitation process require School Board approval, any contracts awarded under this paragraph must be placed upon a School Board agenda for approval and are not within the scope of contract authority delegated to the Superintendent and her/his designees under this policy.

**Single Source Commodities or Services:** Pursuant to Section 6A-1.012(12)(d), F.A.C., competitive solicitations are not required for commodities or services that are only available from a single source. When the school district believes that a commodity or service is only available from a single source, the Procurement and Warehousing Services Department shall electronically post a description of the commodities or contractual services sought for a period of at least seven (7) business days. The calculation of business days under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed. The electronically posted description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If the district school board determines in writing, after reviewing any information received from prospective vendors, that the commodities or contractual services are only available from a single source, the school district shall electronically post in the manner specified in Section 120.57(3), Florida Statutes, a notice of its intended decision to enter into a single source contract and may negotiate on the best available terms and conditions with the single-source vendor. Purchases of services under this paragraph in the amount of \$500,000 or above require School Board approval.

**Emergency Purchases:** Pursuant to Section 6A-1.012(12)(e), F.A.C., the requirement for competitive solicitations is waived for the emergency purchase of commodities or services when the Superintendent determines, in writing, that an immediate danger to the public health safety or welfare or other substantial loss to the school district requires emergency action. After the Superintendent makes such a written determination, the school district may proceed without requesting competitive solicitations with the procurement of those commodities or contractual services that are necessitated by the immediate danger. However, the school district must obtain pricing information from at least two (2) prospective vendors prior to making such an emergency purchase, and those price quotations must be retained in the contract file unless the Superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health safety or welfare or cause the school district to sustain other substantial loss. Subsequent to the emergency circumstances, written notification of the emergency purchase shall be submitted to The School Board.

**Government/Grant Prescribed Vendors and Rates:** Pursuant to Section 6A-1.012(12)(f), F.A.C., competitive solicitations are not required to award a contract for commodities or services if state or federal law, a grant, or a state or federal agency contract prescribes with whom The School Board must contract or if the rate of payment is established during the appropriations process.

**Regulated Utilities and Government Franchised Services:** Pursuant to Section 6A-1.012(12)(g), F.A.C., competitive solicitations are not required to award a contract for regulated utilities or government franchised services.

**Technology Purchases:** Pursuant to Section 6A-1.012(14), F.A.C., The School Board, when acquiring, whether by purchase, lease, lease with option to purchase, rental, or otherwise, information technology as defined in Section 282.0041(20), Florida Statutes, may make any acquisition through competitive solicitations or by direct negotiation and contract with a vendor or supplier, as best fits the needs of the school district as determined by The School Board.

1. **Maintenance/Service/Warranty.** Pursuant to Section 6A-1.012(12)(d), F.A.C., The School Board or its designee may award contracts for maintenance and/or service contracts 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-purchase agreement terms and conditions.
2. **Implementation, programming, or training services available from the owner of copyrighted software or its agent.** Pursuant to Section 6A-1.012(11)(b), F.A.C., The School Board or its designee may award contracts to the owner of copyrighted software or its agent for implementation, programming, or training services.

**Methods of Procurement – Risk Management & Benefits:** Except as otherwise required by law, The School Board is authorized by Section 6A-1.012(15), F.A.C., to purchase insurance, enter into risk management programs, or contract with third-party administrators through the competitive solicitation process or by direct negotiations and contract.

#### **F. Competitive Solicitation not required (Board Approval)**

In addition to waivers of competitive solicitation for commodities and services exempt by statute or rule, The School Board hereby waives the requirements for competitive solicitations for the commodities and services below:

- 1) Services provided to persons with mental or physical disabilities by not-for-profit corporations organized under the provisions of s. 501(c)(3) of the Internal Revenue Code or services governed by the provisions of the Office of Management and Budget Circular A-122.
- 2) Medicaid services delivered to an eligible Medicaid recipient by a healthcare provider who has not previously applied for and received a Medicaid provider number from the Department of Children and Family Services. This exception will be valid for a period not to exceed ninety (90) calendar days after the date of delivery to the Medicaid recipient and shall not be renewed.
- 3) Family placement services.

- 4) Training and continuing education events or programs that are offered to the general public for which fees have been collected to pay all expenses associated with the event or program.
- 5) Association fees, Professional Association Dues, Academy Certification Requirements, and any other District Membership fees paid to organizations.
- 6) All utility service, connection charges, and fees.
- 7) Groceries and supplies for educational use in alternative programs or academic requirements.
- 8) Advertising (newspaper, radio, television, brochures, pamphlets, etc.).
- 9) Services or commodities provided by the Federal Government, the state, other states, political subdivisions, or other public entities, colleges, and universities.
- 10) Postage requisitions.
- 11) Toll charges for authorized school district departments.
- 12) Contracts by the School Board's General Counsel for legal services for attorneys retained, contracted, and supervised by the General Counsel and for contracted third-party claims administration. Although such contracts and services are exempt from competitive solicitation and do not require prior School Board authorization, the anticipated expenditures for such contracts must be within the School Board-approved budget for these expenses. The General Counsel shall provide quarterly reports to the School Board delineating all contracts for legal services provided by outside counsel that exceed or are anticipated to exceed \$50,000.
- 13) Regulated public communications, except long-distance telecommunication services or facilities.
- 14) District rental/lease of facilities that conform to the requirements established in the School Board Policy 2314.
- 15) Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, are operated by not-for-profit corporations. However, in acquiring such services, the Superintendent's designee shall consider the ability of the vendor, past performance, willingness to meet time requirements, and price.
- 16) Expenditures for field trips that fully comply with School Board Policy 6310 do not require bidding or School Board approval.

#### **G. Agreements:**

If a school district end-user desires to procure an item exempt from competitive solicitation, the end user will be responsible for negotiating and drafting the agreement between the school district and the vendor. The end user will be responsible for ensuring the implementation of the scope of work, pricing, and other agreement terms. The agreement must be approved as to form and legal content by the Office of the General Counsel.

#### **H. Methods for Purchases:**

Insofar as practicable, all purchases of commodities and services shall be made through contracts, purchasing card systems, electronic procurements, or purchase orders. A Direct Pay, Check Request, or P-Card may be used for purchases of commodities or services when a Purchase Order is not required for such items or items exempt from competitive solicitation pursuant to applicable law, rules, or policy. A requisition or an approved active P-Card shall be utilized for purchases of goods or services included in a contract awarded or approved for use by The School Board and for any expenditure under an agenda item approved by The School Board. When necessary, a confirming Purchase Order shall only

be placed with the vendor by the Procurement and Warehousing Services Department after receiving an approved requisition.

### **Purchase Requisitions**

Procurements shall be based upon a requisition or an approved purchasing card transaction originating from the work location where the commodity or contractual service is to be used, except in emergencies when the Superintendent or designee may grant permission for such procurement. Each requisition, transaction, or contract shall be properly financed, budgeted, and encumbered prior to the issuance of a purchase order. The Superintendent, the Executive Director, Operations, the Director of Procurement & Warehousing Services, or the designee shall approve the purchase order. In no case shall the procurement precede the date of the requisition except as provided herein for emergency purposes.

Ratifications may be considered by The School Board when an unauthorized procurement action has occurred. While it is possible that the school district employee making the unauthorized purchase may be disciplined and/or held personally liable for the purchase, a complete explanation by the individual who made the transaction, coordinated by their supervisor and the cognizant chief, will be presented to the Superintendent or designee for consideration by The School Board. In the event of any conflict with another section of this policy, this section shall govern.

### **Purchasing Card**

The Director of Procurement & Warehousing Services or designee is authorized to administer a purchasing card program and to establish relevant procedures. The program shall include the establishment, communication, and maintenance procedures for the control and use of such cards, including internal controls to monitor compliance with said program.

The purchasing card 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 School Board or when authorized by this policy.

The Superintendent or designee may utilize purchasing cards to procure commodities and contractual services deemed in the school district's best interest and consistent with School Board policies.

Selected district staff will be eligible to use a purchasing card upon approval by the Superintendent, the Director of Procurement and Warehousing Services, or the designee after completing the relevant training and application procedures containing the appropriate-use standards. By signing the applicant agreement, each user shall acknowledge that the user must reimburse The School Board for any misuse of the purchasing card and that a violation of those standards and procedures will be cause for discipline up to and including termination.

### **Direct Pay/Check Requests**

Direct Pay or Check Requests are purchases for goods and services, expenditures, fund transfers, etc., that are limited to include various types of fund advances, services, reimbursements, and purchases, and/or payment for goods and services that are not appropriate for normal competitive purchasing procedures. Direct Pay/Check Requests

purchases require the same financial authorization and approval process as purchase requisitions. An example of this would be the payment of a utility. While acceptable, direct payment is not to be used to circumvent this policy.

### **Advance Payments:**

Advanced payment for goods and contractual services is discouraged to ensure adequate protection to the school district that goods and contractual services will be provided. With adequate safeguards, however, The School Board may approve advance payments for contracts requiring School Board approval; the Superintendent or his/her designee may approve advance payments for contracts requiring his/her approval; and the Director of Procurement and Warehousing Services may approve advance payments for all other contracts, as follows:

- a. for maintenance agreements, software license agreements, subscriptions, contracts to reserve space, and certain other commodities, when advance payment will result in savings to the school district equal to or greater than the amount the school district would earn by investing the funds and paying in arrears, or where those items are essential to the operation of the school district and are available only if advance payment is made; or
- b. in accordance with School Board Policy 3400, 3401, and 4007 and Chapter 112, Florida Statutes regarding certain employee travel expenses.

### **I. Tangible Personal Property**

Any leasing or rental of tangible personal property (equipment and vehicles) shall be based upon both the school district's total combined expenditure and the requirements established in this policy for requesting either written quotations or competitive solicitations. Contracts resulting from a competitive solicitation shall be placed by the Director of Procurement and Warehousing Services for approval on a School Board agenda. Contracts not resulting from a competitive solicitation shall be placed by the applicable division/department head on the agenda for School Board approval. Copies of all contracts approved by The School Board shall be retained by Official School Board Records.

## **IV. CONTRACT ADMINISTRATION**

- a. **Contract Administrator:** Unless otherwise specified in the contract, the Director or principal of the location using the contract, or the Principal/Director's designee, will serve as Contract Administrator and will monitor compliance by the School District and the vendor with all material terms and conditions of the contract. The Contract Administrator must maintain a written record of performance for each contract, including vendor performance evaluations.
- b. **Documentation of Quotations:** Quotations obtained shall be electronically attached to or included with the purchase order, by written notations or electronic reference indicating quotation prices and sources, and certification by signature or facsimile. The requisition shall be approved for purchase as authorized by the Superintendent.
- c. **Maintenance of Insurance:** If the Contract Administrator learns that a vendor cancels or fails to maintain the insurance required by its contract, the Contract

Administrator shall immediately notify the vendor in writing that it must obtain the required insurance. If the vendor fails to do so in a timely manner, the Contract Administrator shall recommend termination of the contract to the Director of Procurement and Warehousing Services.

- d. **Resolution of Breach by Contract Administrator:** In cases where the vendor does not adhere to the contract terms or conditions or is in breach of a contract, the Contract Administrator shall promptly attempt to rectify the situation with the vendor and shall maintain a written record of these attempts.
- e. **Resolution of Breach by Director of Procurement and Warehousing Services:** If the Contract Administrator is unable to rectify a breach of contract by the vendor promptly, the Contract Administrator shall refer the matter and provide all documents relevant to the breach to the Director of Procurement and Warehousing Services for resolution. If the Director of Procurement and Warehousing Services is unable to resolve the breach, the Director of Procurement and Warehousing Services may terminate the contract (if the value of the contract was within the Director of Procurement and Warehousing Services' award authority). If the contract exceeds the Director of Procurement and Warehousing Services' award authority, he/she shall recommend that The School Board terminate the contract, suspend or debar the contractor, and/or refer the matter for appropriate legal action.
- f. **Complaints from Vendors; Informal Dispute Resolution Process:** Vendors who have a disagreement with the Contract Administrator regarding the performance of the contract may file a complaint with the Department Principal/Director for the location use. If the vendor is dissatisfied with the Principal/Director's determination, the vendor may seek review of that determination by requesting such review from the Director of Procurement and Warehousing Services, in writing, within an allotted number of days after notice of the Department Director's determination. The review request must state the factual and contractual issues on which it is based. The Director of Procurement and Warehousing Services shall investigate the matter and consult with the Office of General Counsel and the Contract Administrator. Unless resolved by mutual agreement, the Director of Procurement and Warehousing Services shall email and mail to the vendor the Director's written decision regarding the matter of disagreement within seven (7) days after receipt of the review request. The Director of Procurement and Warehousing Services shall copy the Contract Administrator with the decision sent to the vendor.

## **V. THRESHOLDS ON CATALOG BIDS AND POOL OF VENDOR CONTRACTS**

School district use of competitively awarded contracts shall be in accordance with the awarded contract's terms. The use of a contract that is broad in scope, such as a catalog bid or a pool of vendors that requires the purchase of more than \$500,000 in services or a specific commodity to be provided by one (1) vendor, shall have specifications defined and quantified and shall be competitively solicited within the awardees. If the use of the contract exceeds \$2,000,000 for one (1) vendor on services or purchases of a specific commodity, the scope of services shall be redefined, a competitive solicitation shall be issued, and a recommendation shall be presented to The School Board for approval.



## **VI. BID NOTIFICATION**

**Online and Electronic Procurement and Notice:** The Director of Procurement and Warehousing Services may utilize a third-party online system to post solicitations, including addenda; descriptions of commodities or contractual services believed to be available only from a single source; and notices of decisions or intended decisions, and a third-party online system may be used to receive responses, bids, and replies from bidders and proposers.

## **VII. THE INTEGRITY OF THE AWARD PROCESS**

- a) The time between the release of any competitive solicitation through the time an award is made or all bids or proposals are rejected [this period is referred to as the "Cone of Silence"]. During the Cone of Silence, potential vendors, bidders, proposers, and any employees, representatives, partners, directors, officers, lobbyists, agents, or other individuals acting on behalf of a vendor, bidder, or proposer, are prohibited from communicating with lobbying any school district employee, School Board Member, or a member of a school district advisory committee that may evaluate the proposed contract award, or any person selected to evaluate or recommend a selection of the awarded proposer. Lobbying or communications in violation of this policy or the School Board's lobbying policy during the Cone of Silence shall result in rejection/disqualification of the bidder or proposer from consideration for the award of a contract arising out of the competitive solicitation. Further, to protect the integrity of the award process, all questions regarding the competitive solicitation during the Cone of Silence must be directed to the purchasing agent designated by the Procurement and Warehousing Services Department, who will respond in writing and post such responses to ensure that all vendors receive the same information.
- b) Sealed bids, proposals, or replies received in response to a competitive solicitation are exempt from Section 119.07(1), Florida Statutes and Section 24(a), Article I of the State Constitution until such time as The School Board or authorized designee provides notice of a decision or intended decision or until thirty (30) calendar days after opening the bids, proposals, or final replies, whichever is earlier.
- c) Pursuant to Section 286.0113(2)(b), Florida Statutes, any portion of a meeting at which a negotiation with a proposer is conducted pursuant to a competitive solicitation, at which a proposer makes an oral presentation as part of a competitive solicitation, or at which a proposer answers questions as part of a competitive solicitation is exempt from Section 286.011, Florida Statutes, and Section 24(b), Art. I of the State Constitution. Pursuant to Section 286.0113(2)(b), Florida Statutes, any portion of an evaluation committee meeting at which negotiation strategies are discussed is exempt from Section 286.011, Florida Statutes, and Section 24(b), Art. I of the State Constitution. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

## **VIII. CONE OF SILENCE**

**Cone of Silence – Defined and Duration:** Any bidder or proposer or its lobbyist is prohibited from having any communications (except as permitted in this policy or in School Board Policy 1100B – Lobbyist Activities for Economic Gain) concerning any pending competitive solicitation with any School Board Member, the Superintendent, any competitive solicitation evaluation committee member, or any other school district employee other than permitted school district personnel after the release of a competitive solicitation to the general public and continuing through The School Board's approval of

an award under the competitive solicitation or the rejection of all bids or proposals. This period of prohibited communications is referred to as the “Cone of Silence.” All communications regarding the competitive solicitation during the Cone of Silence shall be directed to the purchasing agent designated in the competitive solicitation or as directed by the purchasing agent to that person’s supervisors in the Procurement and Warehousing Services Department.

**Cone of Silence – Communications during Scheduled Oral Presentations, Q&A Segments, and Negotiations:** The Cone of Silence does not preclude any bidder or proposer or its lobbyist from answering questions as a scheduled part of a competitive solicitation, from making an oral presentation as a scheduled part of a competitive solicitation, or from engaging in negotiations pursuant to a pending competitive solicitation as permitted by Section 286.0113(2)(b), Florida Statutes.

**Cone of Silence – Communications with PWS and General Counsel Personnel:** The Cone of Silence does not preclude any bidder or proposer or its lobbyist or attorneys from contacting the Director of Procurement and Warehousing Services or the Department’s supervisors of the purchasing agent designated within the pending competitive solicitation regarding that matter. The Cone of Silence does not preclude any bidder or proposer or its lobbyist or attorneys from contacting the attorneys and staff of the Office of the General Counsel regarding the pending competitive solicitation.

**Cone of Silence – Communications about Public Records Requests:** The Cone of Silence does not preclude any bidder or proposer or its lobbyist or attorneys from contacting any school district personnel with regard to any public records request made pursuant to Section 119.07, Florida Statutes regarding a pending competitive solicitation or any other type of public records request.

**Cone of Silence – Communications during School Board Meeting:** Pursuant to Section 286.0114, Florida Statutes, the Cone of Silence does not preclude any bidder or proposer or its lobbyist or attorneys from being heard at the public meeting at which The School Board considers an agenda item concerning the pending competitive solicitation.

**Cone of Silence – Communications about Current Contract:** The Cone of Silence does not preclude any bidder or proposer or its lobbyist from discussing its current contract obligations, performance, and responsibilities with a School Board Member, the Superintendent, or any other school district personnel.

**Cone of Silence – Investigations of Violations; Penalties:** Violations of the Cone of Silence shall be promptly reported to the Director of Procurement and Warehousing Services. The Director shall conduct such investigation of the allegations as the Director deems to be appropriate. Any bidder or proposer or lobbyist who violates the Cone of Silence shall cause the bidder or proposer to be considered non-responsive and, therefore, ineligible for award under the pending competitive solicitation. If the Director finds that a Cone of Silence violation has occurred, a recommendation shall be made that the decision or intended decision regarding the pending competitive solicitation shall include disqualification of the violating proposer from consideration for the award. In addition, the Director may also recommend that The School Board render a final order warning, reprimanding, suspending, or prohibiting the violating lobbyist from appearing

before The School Board or any of its advisory committees or competitive solicitation committees for a period of time not to exceed two (2) years. Lobbyists who have previously been found in violation of the Cone of Silence will be subject to penalties of a greater duration. No penalty shall be imposed upon a violating lobbyist without first providing the lobbyist notice of the violation and an opportunity to be heard. The School Board's final order shall be subject to review pursuant to Sections 120.569 and 120.57(1), Florida Statutes. In addition, The School Board may also declare void any school district contract that was entered into in during which the Cone of Silence was violated.

## **IX. EVALUATION COMMITTEES**

The school district end-user shall develop the scope of services and the requirements needed for a competitive solicitation with guidance and advice from Procurement and Warehousing Services. In addition, the user department head or their designee must select the various members to participate on a procurement evaluation committee that will include subject matter experts on the requested commodity or contractual service. The person tasked with selecting the evaluation committee cannot have a conflict of interest with the bidders or proposers and may not be someone who submits evaluations of any of the bidders or proposers to their direct or indirect reports.

## **X. TIE-BREAKING**

**Invitations to Bid - Tiebreaker Procedures:** When identical prices are received in a competitive solicitation using an invitation to bid from two (2) or more vendors and all other factors are equal, priority for award shall be given to vendors in the following sequence:

1. A business that certifies that it has implemented a drug-free workplace program shall be given preference in accordance with the provisions of Chapter 287.087, Florida Statutes, as currently enacted or as amended from time to time;
2. The School Board of Broward County, Florida, M/WBE certified vendor;
3. The Broward County Certified Minority/Women Business Enterprise vendor;
4. The Palm Beach County or Miami-Dade County Certified Minority/Women Business Enterprise vendor;
5. The Florida Certified Minority/Women Business Enterprise vendor;
6. The Broward County vendor, other than a Minority/Women Business Enterprise vendor;
7. The Palm Beach County or Miami-Dade County vendor, other than a Minority/Women Business Enterprise vendor;
8. The Florida vendor, whose main office is in the State of Florida, other than a Minority/Women Business Enterprise vendor.
9. If the application of the above criteria does not indicate a priority for an award, the award will be decided by a coin toss. The coin toss shall be held publicly in Procurement & Warehousing Services, and the tie low bid vendors are invited to be present as witnesses.

**Requests for Proposals - Tiebreaker Procedures:** In a competitive procurement utilizing a Request for Proposals ("RFP") process, when an evaluation committee assigns points to the proposals received, resulting in two (2) or more proposals receiving identical points and all other factors are equal, priority for award shall be given to vendors in the following sequence:

1. A business that certifies that it has implemented a drug-free workplace program shall be given preference in accordance with the provisions of Chapter 287.087, Florida

- Statutes, as currently enacted or as amended from time to time;
2. The School Board of Broward County, Florida, M/WBE certified vendor;
  3. The Broward County Certified Minority/Women Business Enterprise vendor;
  4. The Palm Beach County or Miami-Dade County Certified Minority/Women Business Enterprise vendor;
  5. The Florida Certified Minority/Women Business Enterprise vendor;
  6. The Broward County vendor, other than a Minority/Women Business Enterprise vendor;
  7. The Palm Beach County or Miami-Dade County vendor, other than a Minority/Women Business Enterprise vendor;
  8. The Florida vendor, whose main office is in the State of Florida, other than a Minority/Women Business Enterprise vendor.
  9. If the application of the above criteria does not indicate a priority for an award, the award will be decided by a coin toss. The coin toss shall be held publicly in Procurement & Warehousing Services, and the tie low bid vendors are invited to be present as witnesses.

#### **XI. PROTESTS ARISING FROM COMPETITIVE SOLICITATIONS, CONTRACT AWARDS, AND ALTERNATIVE (“PIGGYBACK”) PURCHASES**

**Electronic Posting of Decisions or Intended Decisions:** Pursuant to Section 120.57(3)a), Florida Statutes, The School Board shall provide notice by electronic posting of any decision or intended decision concerning a competitive solicitation; a contract awarded pursuant to a competitive solicitation; or to make an alternative (“piggyback”) purchase as authorized by Section 6A-1.012, F.A.C., or by this policy. The term “competitive solicitation” shall be construed under this policy as it is defined in Section 6A-1.012, F.A.C.:

**Required Text in Notices of Decision or Intended Decision:** Each notice of a decision or intended decision required by this policy shall contain the following statement: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure within the time allowed for filing any bond or other security required by law including, without limitation, any bond required by School Board Policy 3800, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

**Competitive Solicitation Schedule and Changes:** The date and time of posting the tabulation of any competitive solicitation may be established within the terms and conditions of the competitive solicitation. Bidders and proposers will be notified of the competitive solicitation’s tabulation posting date and time by electronic posting or by certified United States Mail, another express delivery service, return receipt requested or if that information is not included in the competitive solicitation documents, or if the previously established tabulation posting date and time has been changed. Any notification shall advise bidders and proposers of the date and time at which the competitive solicitation tabulation will be posted, and the date shall be at least three (3) business days subsequent to the date that the notification is given. The calculation of business days under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed.

**Action Taken Different from Posted Notice:** In the event that The School Board takes action to award a bid in a manner that differs from its posted notice of an intended decision or its most recent notice of an intended decision if more than one (1) notice was provided, such award shall not become final until seven (7) calendar days following The School Board action. All proposers shall be notified, by electronic posting, of The School Board's action within two (2) business days. A written notice of protest filed by a proposer within seventy-two (72) hours after the electronic posting of The School Board's action shall stop the award process and invoke the procedures described in Section 120.57(3), Florida Statutes, and herein. The calculation of business days and of the seventy-two (72) hour period under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed.

**Notices of Protest and Formal Written Protests:** Any person whose substantial interests are affected by The School Board's decision or intended decision regarding a competitive solicitation or to make an alternative ("piggyback") purchase as authorized by Section 6A-1.012, F.A.C., or by this policy; shall file a notice of protest with The School Board in writing within seventy-two (72) hours after the posting of the competitive solicitation tabulation or after posting of the notice of The School Board's decision or intended decision, and shall file a formal written protest within ten (10) calendar days after filing the notice of protest. With respect to a protest of the specifications contained in a competitive solicitation, the notice of protest shall be filed in writing within seventy-two (72) hours after the posting of the terms and conditions of the competitive solicitation, and the formal written protest shall be filed within ten (10) calendar days after the date the notice of protest is filed. Failure to timely file a notice of protest, failure to timely file a formal written protest, or failure to timely file the required protest surety bond shall constitute a waiver of proceedings under Section 120.57(3), Florida Statutes, and under this policy. Any formal written protest shall state with particularity the facts and law upon which the protest is based. The calculation of the seventy-two (72) hour period under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed.

**Location for Filing Protest Documents:** A notice of protest or a formal written protest shall be filed with The School Board at the location specified in the bid documents. A protest is considered to be filed when it is received in its entirety at the specified location. It is the sole responsibility of the protester to ensure that its notice of protest, formal written protest, and required protest surety bond are properly, completely, and timely filed at the specified location. The decision as to the time that the protest is filed in its entirety at the described location is solely that of The School Board. Although a notice of protest or a formal written protest may be filed electronically or by facsimile at a location specified by The School Board, a protester must submit its original physical protest surety bond to the physical location specified within the competitive solicitation's terms and conditions. If a protest advances to administrative proceedings, any filings made subsequent to the rendition of a recommended order (such as exceptions or motions to award and assess costs) shall be filed at the same location as that specified in the competitive solicitation for the filing of notices of protests and formal written protests.

**Calculation of Time – Filing of Formal Written Protests:** If the tenth (10<sup>th</sup>) day within which a formal written protest is to be filed falls on a Saturday, Sunday, or a day during which the school district administration is closed, the formal written protest must be filed on the next business day. For the method of computing the ten (10) calendar days within

which a protester has to file a formal written protest after the notice of protest is received, the day that the notice of protest is filed is not considered one of the ten (10) calendar days. The calculation of business days under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed.

**Stay of Competitive Solicitation Pending Protest:** Upon receipt of a timely filed formal written protest, The School Board shall stop the competitive solicitation process, contract award process, or alternative (“piggyback”) purchase until the subject of the protest is resolved by final School Board action unless the Superintendent sets forth in writing particular facts and circumstances which require the continuance of the competitive solicitation process, contract award process or alternative (“piggyback”) purchase without delay in order to avoid immediate and serious danger to the public health, safety, or welfare pursuant to Section 120.57(3)(c), Florida Statutes. When the Superintendent so notifies The School Board, then the Superintendent is authorized to continue the bid solicitation process or the contract award process and to release purchase orders for purchases regardless of the pending protest.

**Extension of Current Contracts During Stay of Competitive Solicitation:** Whenever a competitive solicitation process, the award of a competitive solicitation or contract, or an alternative (“piggyback”) purchase is stopped due to the filing of a formal written protest, The School Board authorizes the extension of any existing contract for the commodities or services sought through the protested competitive solicitation, contract or alternative (“piggyback”) purchase under whatever terms and conditions are determined by the Superintendent to be in the best interest of The School Board until such time as The School Board can approve a new award for the commodities or services subject to protest.

**Opportunity to Resolve Protest:** Pursuant to Section 120.57(3)d)1, Florida Statutes, the School Board shall provide an opportunity to resolve the protest by mutual agreement between the parties by convening a meeting of its Bid Protest Committee. This meeting is subject to the requirements of Section 286.011, Florida Statutes (the “Sunshine Law”), and the public notice requirements of Section 1001.372(2)(c), Florida Statutes. The Bid Protest Committee meeting shall be conducted within seven (7) business days after receipt of a formal written protest or at a time convenient to all parties as soon thereafter as possible upon publication of the required meeting notice. The calculation of days under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed.

**Sunshine Law and Bid Protest Committee Meetings:** Although the meetings of the Bid Protest Committee are open to the public, those meetings are convened to provide the statutorily required opportunity for the protester and the agency to resolve the protest by mutual agreement. As such, no public input will be received during Bid Protest Committee meetings. Other interested persons having a substantial interest in the competitive procurement will thereafter be afforded an opportunity to intervene in any subsequent administrative proceedings. Pursuant to Section 286.0114(2), Florida Statutes, members of the public will later be afforded an opportunity to speak to the matter before The School Board prior to it taking official action upon the competitive procurement.

**Protests with No Disputed Issues of Fact:** If the subject of a protest is not resolved by mutual agreement between the parties through the Bid Protest Committee meeting, and if there is no disputed issue of material fact, an informal proceeding shall be conducted

pursuant to Section 120.57(2), Florida Statutes, and applicable School Board rules before a person whose qualifications have been prescribed by rules of The School Board.

**Referral of Protests with Disputed Issues of Fact:** If the subject of a protest is not resolved by mutual agreement between the parties through the Bid Protest Committee meeting and if there is a disputed issue of material fact, The School Board shall refer the protest to the Florida Division of Administrative Hearings (DOAH) for proceedings under Chapter 120.57(3), Florida Statutes, upon the written request of the protester. The protester shall file its written request for DOAH referral within three business (3) days after its receipt of written notification of the outcome of the Bid Protest Committee meeting, and the request shall be filed at the same place at which the formal written protest was filed, The calculation of business days under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed.

**Composition of Bid Protest Committee:** The membership of the Bid Protest Committee shall be as follows:

1. The Chief People Officer or designee.
2. The Associate Superintendent of Finance, or designee; and
3. The Superintendent's designee from the affected division and

A representative of the General Counsel's Office shall serve as a resource to the Bid Protest Committee and facilitator for the conduct of the Bid Protest Committee meeting and shall not be considered to be a Committee Member. A court reporter shall record the Bid Protest Committee meeting, and the transcript of the meeting shall serve as the meeting minutes.

**Procedures upon Protest Resolution:** If the protest is mutually resolved during the Bid Protest Committee meeting, then no further action is required by either The School Board or the protester, and action or intended action upon the competitive solicitation shall proceed as originally posted or as revised by a subsequent posting that reflects the outcome of the Bid Protest Committee meeting.

**Protest Surety Bond:** Any person who files a formal written protest shall, at the time of filing the formal written protest, post with The School Board an original physical protest surety bond, payable to the order of "The School Board of Broward County, Florida," in an amount equal to one percent (1%) of the school district's estimate of the total volume of the contract. The School Board's Procurement and Warehousing Services Department shall provide the protester with its estimated contract amount within three (3) business days of its receipt of the protester's notice of intent to protest. The estimated contract amount is not subject to protest pursuant to Section 120.57(3), Florida Statutes. The calculation of business days under this paragraph shall exclude Saturdays, Sundays, and days during which the school district administration is closed. Transmittal of facsimile copies in lieu of the required original physical protest surety bond will not be accepted, nor will such copies toll the time for bond submittal. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protestant in any formal administrative proceedings to which the protest is referred and in any subsequent appellate court proceedings. In lieu of a surety bond, The School Board may accept a cashier's check, official bank check, or money order in the amount of the required bond.

**Taxable Costs in Bid Protest Proceedings:** If, after completion of the administrative proceedings and any appellate court proceedings, The School Board prevails, then The School Board shall recover all taxable costs and charges against the protester. The protest surety bond does not apply to any attorney's fees incurred in the administrative proceedings, and no provision is made within this policy for the award of attorney's fees associated with any protest. If it prevails in the recommended order, the costs taxable in favor of The School Board shall include, but not be limited to, any charges invoiced by DOAH for its services and its costs incurred during the administrative proceedings but shall not include an award of attorney's fees. Any motions to award and assess such costs and charges shall be filed with The School Board subsequent to the rendition of a recommended order by the DOAH administrative law judge. The School Board shall consider such motions in conjunction with its deliberations upon the recommended order and shall rule upon any such motion in its final order. Upon the protester's payment of any awarded costs and charges, the protest surety bond posted by the protester shall be returned. If, after completion of the administrative proceedings and any appellate court proceedings, the protester prevails, the protester shall recover all taxable costs and charges, which shall be included in the final order but shall not be entitled to an award of attorney's fees.

**Final Orders in Protest Proceedings:** Upon its receipt from DOAH of a recommended order upon a protest, The School Board will decide, pursuant to Section 120.57(3)(l), Florida Statutes, whether to accept or reject the protest and any timely filed exceptions. A final order shall be entered by The School Board within thirty (30) calendar days of the entry of a recommended order or as soon thereafter when a meeting can be publicly noticed and convened at a time mutually convenient to the parties. The bid protest provisions of this policy may be waived upon stipulation by all parties, and the School Board delegates to its attorneys the authority to make such stipulations or to waive any formalities under Section 120.57(3), Florida Statutes.

## **XII. AUTHORITY TO DEBAR OR SUSPEND**

**Ineligibility of Defaulted Contractors:** Whenever a vendor is in default of an awarded contract, The School Board may enter a final order that declares the vendor to be in default of the contract, removes the vendor from all of the school district's competitive solicitation lists for a period of two (2) years, and declares the vendor to be considered non-responsive and ineligible during that two (2) year period for any new contract awards. At the end of the two (2) year ineligibility period, the vendor may apply for participation in future competitive solicitations and consideration for any future awards. The School Board's determination of default and ineligibility for future competitive solicitations shall be made in a final order and shall be subject to review pursuant to Sections 120.569 and 120.57(1), Florida Statutes. The actions that may be taken by The School Board by final order pursuant to this paragraph are in addition to and separate from any other actions The School Board may take against a defaulting vendor, including, without limitation, termination of the contract.

## **XIII. PURCHASING PRINCIPLES**

Employees shall be guided by the following principles and standards adopted by the National Institute of Governmental Purchasing (NIGP):

1. **Accountability:** taking ownership and being responsible to stakeholders for our actions is essential to preserve the public trust and protect the public interest.



2. **Ethics:** acting in a manner true to these values is essential to preserve the public's trust.
3. **Impartiality:** unbiased decision-making and action, essential to ensure fairness for the public good.
4. **Professionalism:** upholding high standards of job performance and ethical behavior, essential to balance diverse public interests.
5. **Service:** The obligation to assist stakeholders is essential to support the public good.
6. **Transparency:** easily accessible and understandable policies and processes essential to demonstrate responsible use of public funds.

Training on ethical standards that are no lower than those prescribed by the state shall be provided by the Office of Academics and Professional Development to all school district employees and contracted outside personnel whose job or contractual duties involve procurements conducted for the school district. Complaints alleging discrimination against any commercial enterprise doing business with The School Board must be filed with the Equal Employment Opportunity/Americans with Disabilities Act Compliance Department and will be investigated and addressed by appropriate District personnel.

**Definition of Purchasing Officer:** For the purposes of this rule, the term “purchasing officer” shall be defined to apply to any school district employee, competitive solicitation evaluation committee member, or school district consultant who is authorized to purchase or recommend the purchase of any commodities or services on behalf of the school district or who is responsible for proposing standards and specifications for any services or commodities. The term “purchasing officer” applies to any school district employee possessing such authority or responsibilities regardless of such employee’s job title or area of assignment.

1. **Compliance with Ethics Rules and Policies:** To the extent applicable, purchasing officers shall comply with the following:
  - Florida Constitution, Article II, Sec.8
  - Florida Code of Ethics for Public Officers and Employees: Part III of Chapter 112, Fl a. Stat.
  - Florida Commission on Ethics Opinions, Rules, and Orders: see Research page
  - Florida Public Records Law: Chapter 119, Florida Statutes
  - Florida Open Meetings (Sunshine) Law: Florida Statute Sec. 286.011
  - Florida Bribery and Misuse of Public Office: Chapter 838, Florida Statutes
  - Florida Offenses by Public Officers and Employees: Chapter 839, Florida Statutes
  - U.S. Mail and Wire Fraud: U.S. Code Title 18, Chapter 63
  - School Board Policy 5202 - Gifts: Solicitation and Receipt.
2. **Prohibition of Gifts for Influence.** Pursuant to Section 112.313(2), Florida Statutes, and Rule 2 of School Board Policy 5202 – Gifts: Solicitation and Receipt, no purchasing officer shall solicit or accept anything of value to the purchasing officer, including a gift, loan, reward, promise of future employment, favor or service based upon any understanding that the vote, official action or judgment of the purchasing officer would be influenced thereby.
3. **Compliance with Laws, Rules, and Policies:** Purchasing officers shall comply with all applicable laws, rules, and School Board policies governing the

- purchase of commodities and services.
4. **Maximum Value for Purchases:** Pursuant to Section 6A-1.012(3), F.A.C., the Superintendent and purchasing officers shall see that the maximum value is being received by the school district for any purchase of commodities or services.
  5. **Standards and Specifications:** Purchasing officers shall acquire commodities and services, to the extent possible, in compliance with any standards and specifications proposed by the Superintendent for such commodities and services pursuant to Section 6A-1.012(3), F.A.C.

Policy Custodian: Procurement and Warehousing Services

Authority: Sections 1001.41(2), 1001.32(2), and 1010.04(2), Florida Statutes; Section 6A-1.012, F.A.C.

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