

Policy Manual



Title: Vendor Rights and Responsibilities	Number: 6Hx2-6.35
Legal Authority: <i>Fla. Statutes</i> Florida Statutes 120.57, 287.017 and 287.055.	Page: 1 of 7

GENERAL STATEMENT

The purpose of this policy is to facilitate understanding and adherence to the general requirements of *Florida Statutes, Florida Department of Education Rules for Community Colleges and State Requirements for Education Facilities* as these relate to the responsibilities of vendors participating in the College's procurement activities. This policy also serves:

- (a) to ensure the fair and equitable treatment of all businesses and persons who deal with the procurement activities of the College;
- (b) to make consistent the procurement practices among campuses and college divisions; and
- (c) to ensure fiduciary responsibility in College procurement activities and to maximize to the fullest extent practical the purchasing value of the resources of the College; and
- (d) to ensure that small disadvantaged firms, including minority and women-owned businesses, are included in the College's procurement activities and awarding of contracts; and
- (e) to provide safeguards for the maintenance of a procurement system of quality and integrity that protects the interests of the College, and
- (f) to obtain in a cost-effective and, responsive and responsible manner the goods and services required by the College in order to better serve its students, and
- (g) to model sound environmental sustainability practices in college procurement activities.

The President shall establish procedures for the efficient and economical purchase of materials and services required for the operation of the College, which shall comply with this policy.

THE POLICY and THE FACULTY AND STAFF.

I. Applicability. This Policy shall apply to all vendors engaged in the College's procurement activities, irrespective of the source of funds being used, including federal and state grant monies. In cases where the requirements of federal or state grant monies differ from this policy, the stricter of the two shall apply. Nothing in this policy or in procedures promulgated hereunder shall prevent the College from complying with the terms and conditions of any federal, state, or local law or regulation.

II. Commitment to Non-Discriminatory Business Practices. The College recognizes its obligation to work towards a College community in which supplier diversity is valued and procurement opportunities are provided free from discrimination in accordance with federal and state laws. As such, the College commits to conducting all procurement activities in a fair, equitable and inclusive manner.

III. Vendor Suspension and Debarment. The president is authorized to establish procedures to suspend or debar a vendor for cause from consideration for award of contracts. When the president takes action to suspend or debar a vendor, the name of the vendor and the circumstances surrounding the action taken shall be submitted to the District Board of Trustees for ratification. The reasons for suspension or debarment are as follows:

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A. Reasons for Suspension.

1. Failure to remedy a performance failure, of which the vendor has been notified, during the delivery of goods or services to the College, or
2. Failure to remedy a performance failure, of which the vendor has been notified, during the delivery of goods or services to another public sector agency, or
3. Indictment under any state or federal statute of any offense indicating a lack of business integrity, including anti-trust statutes.
4. Contacting proposal/bid evaluators or any other person who may have influence over the award regarding a bid or proposal under consideration, without authorization from the Procurement Services Department, for the purpose of influencing the award of a contract.
5. Giving gifts, (other than incidental advertising items with a value less than \$25), meals, or trips to a College employee which provide a personal benefit to that employee and not a benefit to the college as a whole or to influence the award of a contract.
6. Refutation of an offer by failure to provide bonds, insurance or other required certificates required in a formal competitive solicitation, or

B. Reasons for Debarment.

1. Conviction under any state or federal statute of any offense indicating a lack of business integrity, including anti-trust statutes, or
2. Debarment by another public sector agency, or
3. Recurrent suspensions, or
5. Violations of contract provisions or performance requirement failures which are deemed, by the president, to be so serious as to justify debarment.

C. Request for Reinstatement after Suspension or Debarment. A suspended or debarred vendor may be considered for reinstatement by the president after submittal of a request for reinstatement which shall include, at a minimum, the following:

1. A request for reinstatement which includes a statement of facts indicating how circumstance(s) that led to suspension or debarment have been cured, and
2. Proof of financial capacity and responsibility of firm by an independent party as indicated by the College and applicable to situation, and
3. A list of contracts and references by other public sector agencies obtained during or after the suspension or debarment period, and
4. Any and all other information justifying reinstatement including, but not limited to, change of ownership/management or other pertinent facts.

When the president takes action to reinstate a vendor, the name of the vendor and the circumstances surrounding the reinstatement shall be submitted to the District Board of Trustees for ratification.

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Legal Authority: Fla. Statutes Florida Statutes 120.57, 287.017 and 287.055.	Page: 3 of 7

IV. Tie Bids. When identical prices are received from two or more vendors in response to an Invitation to Bid (ITB) or Request to Quote (RTQ) and all other factors are equal, priority for award shall be given to vendors in the following sequence:

- A. A business that certifies that it has implemented a drug-free work place program shall be given preference in accordance with the provisions of 287.087, Florida Statutes;
- B. The Broward County Certified Minority/Women Business Enterprise Vendor;
- C. The Palm Beach or Dade County Certified Minority/Women Business Enterprise Vendor;
- D. The Florida Certified Minority/Women Business Enterprise Vendor;
- E. The Broward County Vendor, other than a Minority/Women Business Enterprise Vendor;
- F. The Palm Beach or Dade County Vendor, other than a Minority/Women Business Enterprise Vendor;
- G. The Florida Vendor, other than a Minority/Women Business Enterprise Vendor;
- H. The vendor having received the least amount of direct College work (in dollars paid pursuant to College issued Purchase Orders) over the immediately preceding five year period;
- I. If application of the above criteria does not indicate a priority for award, the award will be decided by a coin toss. The coin toss shall be held publicly at the location where the bids were opened; the tied low bid vendors will be invited to be present as witnesses.

V. Tie Proposals. When two or more proposals received in response to an RFP, ITN or RLI are tied after final evaluation, the lowest priced proposal shall prevail. In the event that proposal costs are identical, the process described herein for the breaking of tie bids shall be utilized.

VI. Cone of Silence. Any bidder/proposer or a lobbyist for a bidder/proposer is prohibited from having any communication concerning a College's competitive solicitation or any response to a competitive solicitation with any member of the College District Board of Trustees, the College President, any Evaluation Committee Member or any other College employee after the submittal of their bid/proposal and prior to the contract being awarded with the exception of communications with the office of the Associate Vice-President for Procurement Services, unless so notified by the Procurement Services Department. A bid/proposal from any firm will be disqualified when the bidder/proposer or a lobbyist for the bidder/proposer violates this condition. The College will only be bound by information provided in the competitive solicitation document or by addenda to the solicitation.

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VII. Vendor Protest Arising from the Competitive Solicitation Process.

A. Notice of Decision or Intent to Award. The College shall provide notice of any decision or intended decision concerning a bid solicitation or a contract award as follows:

- 1. Posting of Decision or Intended Decision.** For a formal competitive solicitation, notice of a decision or intended decision shall be given by electronic posting. When posting electronically, the date, time and location of the posting shall be made known to bidders within the solicitation document. Any change to the date and time of the posting shall be made known to bidders at least 72 hours, excluding Saturday, Sunday and days during which the College is not open, prior to the posting of decision or intended decision.
- 2. Action Differing from Notice of Decision or Intended Decision.** In the event that the College takes action to award a bid in a manner which differs from the posted notice of intended decision, or the last notice of intended decision if more than one notice was provided, such award does not become final until seven calendar days after the College action. Within two working days of such College action, all bidders shall be notified of the action by electronic notice. A written notice of protest filed by a bidder within 72 hours after receipt of this letter shall stop the award process and invoke the procedures described herein. Saturdays, Sundays, and days during which the College administration is closed shall be excluded in the computation of the 72-hour time period provided by this Rule.

B. Filing of Specification Protest. A notice of protest of the specifications contained in an invitation to bid, a request for proposals or invitation to negotiate shall be filed in writing within 72 hours after the receipt of notice of the bid documents. The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and days during which the College administration is closed shall be excluded in the computation of the 72-hour time periods provided by this Rule. If the tenth day in which to file a formal written protest falls on a Saturday, Sunday, or days during which the College administration is closed, the formal written protest must be filed the next day the College administration is open. For the method of computing the ten days in which a person 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 as one of the ten days.

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J. David Anthony J.

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C. Filing of Award Protest. A notice of protest of an award or award recommendation shall be filed with the College in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the College's decision or intended decision. Bidder shall file a formal written protest within 10 days after filing the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and days during which the College administration is closed shall be excluded in the computation of the 72-hour time periods provided by this Rule. If the tenth day in which to file a formal written protest falls on a Saturday, Sunday, or days during which the College administration is closed, the formal written protest must be filed the next day the College administration is open. For the method of computing the ten days in which a person 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 as one of the ten days.

D. Method of Filing Protests. A notice of protest or a formal written protest shall be filed with the College at the time and location described in the bid documents, by email to the procurement agent named in the bid documents or by facsimile to the number described in the bid documents. Protests not received within the prescribed time at the location indicated in the bid documents will not be considered. A protest is filed when it is received in its entirety at the described location. It is the sole responsibility of the protestant filing the protest to be certain that the protest is properly and completely filed. Incomplete protests will not be considered.

E. Protest Bond. Any person who files a formal written protest shall post with the College, at the time of filing the formal written protest, a bond, payable to Broward College in an amount equal to one percent (1%) of the Board's estimate of the total volume of the contract. The College shall provide the estimated contract amount to the vendor within 72 hours, excluding Saturdays, Sundays and other days during which the College administration is closed. The estimated contract amount is not subject to protest pursuant to Section 120.57(3), Florida Statutes. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protestant in an Administrative Hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, the College may accept a cashier's check, official bank check or money order in the amount of the bond. If, after completion of the Administrative Hearing process and any appellate court proceedings, the College prevails, then the College shall recover all costs and charges which shall be included in the Final Order or judgment, including charges made by the Division of Administrative Hearings, but excluding attorney's fees. Upon payment of such costs and charges by the protestant, the remainder of bond shall be returned. If the protestant prevails, then the protestant shall recover from the College all costs and charges which shall be included in the Final Order or judgment, excluding attorney's fees.

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F. Ceasing Solicitation Process Upon Receipt of Protest. Upon receipt of the formal written protest which has been timely filed, the College shall cease the solicitation process or the contract award process until the subject of the protest is resolved by final College action, unless the President sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. When the President makes said determination, then the College is authorized to continue the solicitation process or the contract award process and to release Purchase Orders for purchases regardless of the protest.

G. Extension of Existing Contract. When the contract award process is stopped due to the filing of a formal written protest, the College may extend or continue any existing contract for the goods or services contained in the bid or request for proposals being protested under whatever terms and conditions are determined by the President to be in the best interest of the College until such time as the new award under protest can be approved by the College.

H. Resolution of Protest. The College shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven days, excluding Saturdays, Sundays, and days during which the College administration is closed, after receipt of a formal written protest. If the subject of a protest is not resolved by mutual agreement within seven days, excluding Saturdays, Sundays, and days during which the College administration is closed, after receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to Chapter 120.57(2), Florida Statutes. The informal proceeding shall be presided over by the College Attorney.

1. Protest Hearing Committee. When attempting to resolve the subject of a protest through an informal proceeding, the persons representing the College shall be as follows:

- a. The Chief Financial Officer (or designee);
- b. The Vice-President or Provost from the affected division (or designee); and
- c. A member of the President's Cabinet (or designee) not from the affected division.

I. Filing for Deferral to Florida State, Division of Administrative Hearings. If the protest is mutually resolved, then no further action is required by either the College or the protestant. If the subject of a protest is not resolved as a result of the informal proceeding or if there is a disputed issue of material fact, the College shall refer the protest to the Florida State, Division of Administrative Hearings for proceedings under Chapter 120.57(1), Florida Statutes, upon the written request of the protestant. This written request by the protestant shall be filed at the same place at which the formal written protest was filed within three days, excluding Saturdays, Sundays, and days during which the College administration is closed, after the attempt to resolve the protest by mutual agreement or informal proceeding.

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J. Final Recommended Order. Upon receipt by the College of a recommended order as the result of proceedings by the Florida State, Division of Administrative Hearings due to the filing of a formal written protest, then the College has the final decision whether to accept or reject the protest. A final order shall be entered by the College within 30 days of the entry of a recommended order. The provisions of this Rule may be waived upon stipulation by all parties.

IMPLEMENTATION and OVERSIGHT.

The Chief Financial Officer has responsibility for the implementation and oversight of this policy, including the investigation of any alleged policy violations.

VIOLATION OF POLICY.

All individuals in violation of this policy may be subject to disciplinary action, up to and including termination. Any person who knowingly files a false complaint of harassment or retaliation against another shall be subject to disciplinary action, up to and including dismissal or exclusion from the College procurement activities.

DEFINITIONS.

Goods & Services – the goods (equipment and supplies) and services required by the College to efficiently carry out the mission established by the District Board of Trustees. Where services provided are incidental to a supply of required goods, the entire procurement should be treated as a supply of goods and should be processed accordingly (RTQ, ITB). Similarly, when goods are incidental or supplementary to a supply of services, the entire procurement should be treated as a supply of services and should be processed accordingly (RLI, RFP, ITN).

Discrimination – treating any individual differently than others are treated based upon race, color, religion, age, disability, gender, national origin, marital status, sexual orientation, veteran status or other legally protected classification.

Suspension – temporary actions lasting up to two years that deems vendor ineligible for award of contract(s) based on any of the reasons or violations stated herein.

Debarment – temporary or permanent actions lasting not less than two years that deems vendor ineligible for award of contract(s) based on any of the reasons or violations stated herein.

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