

VENDOR RELATIONS

FILE: DJG

TITLE: Vendor Dispute and Performance Evaluation Process

POLICY:

The purpose of this policy is to provide a process for managing unacceptable performance by Vendors. The term "Vendors" shall include general contractors, construction managers, design-builders, consultants, all professional service providers selected through the CCNA process, and firms providing services and products through the competitive solicitation process, herein individually referred to as a "Vendor" and collectively referred to as "Vendors."

- (1) It is the policy of the School Board of Orange County, Florida ("Board") to require for all Vendors to fully comply with all contractual obligations in each contracting, selection, or award document. Failure to comply with these obligations may result in the Board exercising any of the remedies available to it, including, but not limited to, any of the following remedies: assessment of liquidated damages, termination for default, termination for convenience, back charge for corrective costs, taking back a portion or all of the work, suspension, or debarment. The Board will maintain records regarding the performance of each Vendor. This information will be reviewed by the Board when a Vendor is being considered for future business opportunities with the Board. There may be times when continued defective or deficient performance by a Vendor may result in the suspension and/or debarment of that Vendor's right to perform work for the Board for a specified period of time.
- (2) Centralized File for Vendor Performance
 - (a) Standardized forms (issued by the Procurement Services Department) will be utilized by the Board to document performance by each Vendor.
 - (b) The Procurement Services Department will maintain a file on all Vendor evaluation reports, deficiency reports, and disputes, including, but not limited to, the failure to timely perform corrective or warranty work, assessment of liquidated damages, termination, failure to comply with schedules, failure to meet material contractual obligations, errors and omissions, failure to meet solicitation requirements, providing products not meeting the required specifications, failure to deliver products or services within the time specified, and/or payment disputes. The Procurement Services Department will provide the applicable Vendor files to Selection Committees for their review and consideration during the selection process for Vendors. This information will be used by the Selection Committees to evaluate the past performance of all Vendors seeking new opportunities to contract with the Board or it may be used by the Procurement Services Department to determine Vendor responsibility during a solicitation process.

- (c) Further, these files will be used to track and document the occurrence of repetitive problems with any particular Vendor. If repetitive problems are discovered, the Procurement Services Department will make a recommendation to the appropriate Review Committee Contractor Review Board (CRB) or the Purchasing Advisory Committee to recommend to the Superintendent to suspend and/or debar the Vendor from seeking any new work from the Board for the time periods hereafter provided. The CRB shall consist of the following members: Chief Operations Officer, Chief Facilities Officer, Chief Financial Officer, OCPS Legal Counsel, and the Senior Director Procurement Services or designees. The Purchasing Advisory Committee shall consist of the following members: Chief Operations Officer, Chief Facilities Officer, Chief Financial Officer, OCPS Legal Counsel, and the Senior Director of Procurement Services or designees.

TITLE: Authority to Suspend or Debar

- (1) The Board may suspend a Vendor who fails to fulfill any of its duties in a contract. The Board may reinstate any such Vendor when it is satisfied that further instances of default will not occur.
- (2) The Board may debar a Vendor for cause from consideration or award of future contracts or subcontracts. The debarment shall be for a period commensurate with the seriousness of the causes and shall run for a period no less than six (6) months from the date of Board action and shall generally not exceed a period of three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period. This sanction shall be imposed only when it is in the best interest of the Board and for protection of the public, and not for punishment.
- (3) Review Committees (CRB or Purchasing Advisory Committee when appropriate)

The CRB or Purchasing Advisory Committee, when appropriate (as the Superintendent's representatives), will review the recommendation to suspend and/or debar a Vendor. The subject Vendor shall be provided with written notice (at the last address the Board has on file for the Vendor) of the suspension and/or debarment recommendation. The Vendor may submit to the appropriate Review Committee any additional information it wishes the Review Committee to consider before it renders its decision. In addition to the documentation on file, the subject Vendor may be requested by the Review Committee to submit additional information. The Review Committee will review all documentation regarding the recommendation and determine if a recommendation to suspend and/or debar the Vendor to the Superintendent is justified based on the following guidelines.

- (a) Vendor Suspension and/or Debarment. The Superintendent may, for good cause, recommend to the Board that it suspend and/or debar a Vendor from being considered for any new Board contracts for the specified time periods hereafter noted. Good cause for such suspension and/or debarment shall include, but is not limited to, one or more of the following:
- (i) Termination of a Board contract with a Vendor due to the Vendor's default or abandonment of any contract requirement or project;
 - (ii) The Vendor is adjudged to be bankrupt, has filed a petition for bankruptcy or makes an assignment for creditors;
 - (iii) The Vendor's performance is materially late without justifiable excuse;
 - (iv) The Vendor materially has breached, without justification, any of its contractual obligations on a Board contract or project pursuant to any of the following:
 - a. Failure to comply with requirements of The Jessica Lunsford Act regarding personnel badges and security fencing;
 - b. A substantial or repeated failure to comply with contract documents;
 - c. A substantial or repeated failure to provide supervision and coordination of subcontractor's or subconsultant's or supplier's (if any) work;
 - d. Substantial deviation from required contract or project time schedules without correction after written notice of non-compliance and/or failure to timely provide and comply with make-up schedules, resources loaded schedules, and any other schedule required by the contract;
 - e. Substantial or repeated failure to pay subcontractors, subconsultants, and suppliers in a timely manner after the Board has paid the Vendor for the work performed by such parties;
 - f. Substantial or repeated failure to provide the quality of workmanship compatible with the applicable trade's standards;
 - g. Substantial or repeated failure to provide the quality of products or services specified in the contract documents;

- h. Substantial or repeated failure to comply with contractual warranty obligations;
 - i. Failure to maintain the required insurance coverage;
 - j. Failure to comply with the requirements of the Board's Building Code Officials (i.e. permitting) or of any other governmental authority having jurisdiction;
 - k. Failure to protect the work and adjoining property;
 - l. Failure to implement and maintain all required safety procedures and comply with all Board rules and requirements applicable to project site;
 - m. Failure to maintain and provide project records as required;
 - n. Any other material failure or breach by the Vendor of its contractual obligations to the Board;
 - o. Failure to comply with Board Standards and/or Design Guidelines, and/or Design Criteria; and/or
 - p. Substantial or repeated claims (i.e. corrective work and error and omissions).
- (v) Conviction or civil judgment for commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, performing, or making a claim upon any public entity contract or subcontract, or a contract funded in whole or in part with public funds;
- (vi) Conviction or civil judgment for commission of a fraud or a criminal offense as an incident to obtaining, attempting to obtain, performing, or making a claim upon any private contractor subcontract;
- (vii) Conviction or civil judgment under state or federal statutes of embezzlement, theft, forgery, bribery, collusion, racketeering, public entity crimes, dishonest services, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
- (viii) Conviction or civil judgment for violation of state or federal antitrust statutes arising out of the submission of offers, bids, or proposals;
- (ix) Violation of Policy KCE, the Ethics and Lobbying Policy;

- (x) Conviction or civil judgment for violating any federal or state immigration, minimum wage, or any other applicable employment related law;
 - (xi) Filing a lawsuit against the Board which a court of competent jurisdiction determines to be frivolous or in bad faith;
 - (xii) Any and all causes for Suspension or Revocation listed in State Requirements for Educational Facilities, Chapter 4, as amended;
 - (xiii) Providing anything of value, including but not limited to, a gift, loan, reward, promise of future employment, favor or service to any Board employee, Board member, or member of the evaluation committee for the purpose of influencing the award of a contract or the purchase of items from the vendor; and/or
 - (xiv) Any other cause the Senior Director of Procurement Services or designee determines to be so serious and compelling as to affect responsibility as Board awarded vendor doing business with the Board, including debarment by another governmental entity for any cause.
 - (xv) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the Vendor doing business with the Board shall not be considered to be a basis for debarment.
- (b) Board Action. All Superintendent suspension and/or debarment recommendations shall be presented to the Board for its review and action. The Board may reject, accept, or modify any such suspension and/or debarment recommendation.
- (c) Notification. The Board will provide written notice to the subject Vendor (at the last address the Board has on file for the Vendor) of the Board's decision concerning the Review Committee's suspension recommendation.
- (d) Suspension Time Periods. If this is the first suspension of the Vendor within a five (5) year period, the Board may order the Vendor's suspension for a period of up to one (1) year from the date of the Board's order. If this is at least the second suspension of the Vendor within a five (5) year period, the Board may order the Vendor's suspension for a period of up to three (3) years from the date of the Board's order.

- (e) Appeal. Vendors who have been suspended by the Board may appeal any such decision as follows:
 - (i) The aggrieved Vendor may, within fourteen (14) calendar days after the Board issues its written notification to the Vendor of such action, request in writing that the Board reconsider its suspension order. Failure to file such written request with the Board's Procurement Services Department within the required fourteen (14) day period shall constitute a waiver of the Vendor's right to appeal the Board's order. The Vendor may submit to the Review Committee any additional information the Vendor deems relevant to its appeal. Further, if so requested by the Vendor in its written request for reconsideration, the Vendor shall be entitled to a hearing before the Review Committee.
 - (ii) If the Vendor's written appeal request is timely filed with the Board as provided above, the Review Committee shall act upon that request within thirty (30) calendar days after it is filed with the Procurement Services Department. The Review Committee shall notify the Vendor of the recommendation it intends to submit to the Board. The Review Committee will submit its recommendation to the Board for the Board's review and action. The Vendor shall be notified in writing of the Board's decision on the Vendor's appeal. If the Vendor wishes to further appeal the Board's decision, it must commence suit in the appropriate state court for Orange County, Florida, within thirty (30) days of the date of the Board action or it will be deemed to have waived any rights it might otherwise have had to further appeal the Board's decision.
- (4) The Superintendent or designee may make a recommendation to the Board to suspend or debar. The Board shall approve, reject, or modify this recommendation at a public meeting.
- (5) A notice of the action taken by the Board under this section shall be mailed or otherwise furnished immediately to the suspended or debarred Vendor and any other party intervening. This notice shall include the following:
 - (a) the reasons for the action taken; and
 - (b) the length of time of the suspension or debarment.
- (6) Any Vendor who is suspended or debarred shall have the right to file a petition for Administrative Hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

SPECIFIC AUTHORITY:

Sections 120.569 and 125.57, Florida Statutes

ADOPTED: 11/17/08

REVISED: 4/24/12; 6/23/15