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TO: Board of Education

FROM: Kevin Lancaster

DATE: October 3rd, 2016

SUBJ: Agenda Items – Policies 6420, 9030, 9120, 9130 for Approval

Attached you will find proposed Policy Codes for your consideration.

Policy Code 6420 Contacts with the Board

Policy Code 9030 Facility Construction

Policy Code 9120 Bidding for Construction Work

Policy Code 9130 Supervision of Construction Contracts

These policies were presented at the September board meeting for first reading.

These are action items and will require a vote.

The board is the sole entity authorized to execute formal contracts between the school system and any firm or person offering to provide materials, equipment, or services to the school system. Creditors are on notice that the board may choose not to honor contracts entered into by school or school system officials without authority to enter into contracts.

A. AUTHORIZATION TO ENTER INTO CONTRACTS

No contract requiring the expenditure of funds may be entered into unless the budget resolution adopted pursuant to policy 8110, Budget Resolution, authorizes the expense and there is a sufficient unencumbered balance to pay the amount to be disbursed. (See policy 6421, Pre-Audit Certification.) No contract may be entered into with a person or entity that is on the state treasurer's Final Divestment List or Iran Parent and Subsidiary Guidance List, except as permitted by G.S. 147, art. 6E.

Any contract involving expenditures in excess of \$5,000.00 must be reviewed by the board attorney and approved in advance by the board unless provided otherwise in board policy. (Approval requirements for construction and repair contracts are established in policy 9120, Bidding for Construction Work.) Unless otherwise prohibited by statute or regulation, the superintendent or designee is authorized to enter into contracts or approve amendments to contracts involving amounts up to \$5,000.00. However, change orders for construction and repair contracts are subject to the requirements of policy 9030, Facility Construction, not this provision.

To provide greater flexibility at the school level, the superintendent also may establish circumstances in which principals may enter contracts involving amounts up to \$5,000.00. The superintendent, with appropriate involvement of the finance officer, shall establish any procedures necessary to ensure fiscal accountability and reporting by principals who enter into contracts.

At least monthly, the superintendent shall report to the board all contracts and contract amendments approved by the superintendent under this policy that exceed \$5,000.

B. CONTRACT FORMS

The board attorney shall review any contract forms developed for use by a school or the school system.

C. LEASE PURCHASE CONTRACTS

The finance officer must approve any request to enter lease purchase contracts as authorized by G.S. 115C-528, regardless of the dollar amount. After considering the principal and amount of interest, the superintendent must determine that the lease purchase is a fiscally prudent choice that is consistent with board policy.

The finance officer shall provide the board with periodic reports on lease purchase contracts, including the amount of the principal, interest paid, and the amount of the outstanding obligation.

D. OTHER APPLICABLE POLICIES AND LAWS

Purchases may be made through the State Division of Purchase and Contract in accordance with the Division's rules and regulations, as authorized by G.S. 115C-522.

All contracts involving construction or repair work or purchase of apparatus, supplies, materials, or equipment must be undertaken in compliance with Chapter 143 of the North Carolina General Statutes, except as provided elsewhere by state law. Contracts must also comply with applicable board policies, including, but not limited to, policies 6430, State Purchasing Requirements for Equipment, Materials, and Supplies; 6440, Local Purchasing Requirements for Equipment, Materials, and Supplies; 6450, Purchase of Services; 9030, Facility Construction; 9110, Use and Selection of Architects, Engineers, Surveyors, and Construction Managers at Risk; and 9120, Bidding for Construction Work.

All contracts subject to the E-Verify requirement will contain a provision stating that the contractor and contractor's subcontractors must comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

Legal References: G.S. 64, art. 2; 115C-36, -47, -264, -440, -441, -522, -528; 143-49 and art. 8

Cross References: Pre-Audit Certification (policy 6421), State Purchasing Requirements for Equipment, Material, and Supplies (policy 6430), Local Purchasing Requirements for Equipment, Materials, and Supplies (policy 6440), Purchase of Services (policy 6450), Budget Resolution (policy 8110), Facility Construction (policy 9030), Use and Selection of Architects, Engineers, Surveyors, and Construction Managers at Risk (policy 9110), Bidding for Construction Work (policy 9120)

Adopted: January 11, 2016

Updated: June 6, 2016

Updated: August 23, 2016

Facility construction will be undertaken in accordance with the long range plan adopted by the board of education and the facility design approved by the board. Any repairs or renovations of school facilities should be undertaken in such a way as to minimize disruption of instructional time and the educational environment.

A. QUALITY OF CONSTRUCTION

Buildings should be constructed with durable materials that, when possible, permit space to be adapted to various purposes and to be adjusted to changes in technology or the educational program.

The board will not be involved in substandard construction. In the event of insufficient funding for a project, the board will defer parts of the long range plan to later phases.

Any repairs or renovations of school facilities should be undertaken in such a way as to minimize disruption to instructional time and the educational environment.

B. CHANGE ORDERS FOR CONSTRUCTION OR REPAIR WORK CONTRACTS

1. All Contracts for Construction of Repair Work

a. Use of Change Orders

After a contract for construction or repair work has been awarded, the need may arise to amend the terms, conditions, or specifications of the contract by a change order. Change orders may not be used or divided to evade bidding requirements or the requirements of this policy.

b. Change Orders That Must Be Reported to the Board

Unless otherwise prohibited by statute or regulation, the superintendent or designee is authorized to approve change orders involving additive or deductive sums up to \$50,000 so long as funding for the change order is available within the established project budget. The superintendent shall report to the board all change orders that were approved by the superintendent, including those that do not impact the contract amount. The report will be provided to board members in writing on a monthly basis or at the next board meeting and will include the following information: (1) the contractor's name; (2) the project name; (3) brief description of the change; (4) the contract amount, including amount(s) of any prior changes; and (5) the change order amount. The superintendent is not required to report any proposed change order that was denied by the superintendent or designee.

c. Change Orders Requiring Board Approval

Change orders that (1) involve amounts over \$50,000 (2) are in excess of the remaining funds in the project budget, or (3) cause the total cost of a contract that has not been previously approved by the board to exceed \$50,000 require board approval. The superintendent shall present all such proposed change orders that are recommended for approval to the board at a board meeting. The superintendent is not required to present to the board any change order not recommended for approval.

If, in the superintendent's opinion, a change order requires expedited review, the superintendent shall notify the board chair, who will decide whether a special meeting must be called to address the proposed change order before the next board meeting.

2. Additional Requirements for Contracts in Excess of \$300,000

When amendments to a contract in excess of \$300,000 are necessary, the contractor shall submit a proposed change order in writing to the project architect/engineer for review. If the project does not have an architect/engineer, the change order must be submitted to the superintendent or designee. Any request for expedited review must also be in writing and accompany the proposed change order. The contract for construction projects in excess of \$300,000 must specify the manner in which change orders will be submitted on those projects.

Legal References: G.S. 115C-521, -524

Cross References: Planning for Facility Needs (policy 9000), Facility Design (policy 9020), Bidding for Construction Work (policy 9120)

Adopted: May, 2000

Revised: August 1, 2000

Revised: August 23, 2016

The board strives to obtain high quality services at a reasonable price through the bidding process employed by the school system.

A. STANDARDS FOR PARTICIPATION IN CONSTRUCTION CONTRACTS

All contracts formally or informally bid will be awarded to the lowest responsible bidder, taking into consideration quality, performance, reliability, and the time specified in the bids for performance of the contract. Contracts will contain a provision stating that the contractor and contractor's subcontractors, if any, must comply with the requirements of G.S. Chapter 64, Article 2. Prior to bidding, contractors may be required to prequalify if the board has elected to use this process. For all contracts valued at \$1,000 or more, the board will require each bidder or vendor to certify that it is not listed on the state treasurer's Final Divestment List or Iran Parent and Subsidiary Guidance list, as required by G.S. 147, Article 6E, and that it will not engage subcontractors who are on either list.

The board prohibits discrimination against any person or business on the basis of race, color, ethnic origin, sex, disability, or religion. In addition, in accordance with G.S. 143-133.5, the board prohibits discrimination against a bidder or contractor for being party to, refusing to be party to, adhering to, or refusing to adhere to an agreement with a labor organization. The superintendent is required to conduct contracting and purchasing programs so as to prevent such discrimination

The superintendent, on behalf of the board, must certify that good faith efforts have been made to increase the participation in construction contracts by minority-owned and female-owned businesses, as required by policy 9125, Participation by Women- and Minority-Owned Businesses.

The board will grant a North Carolina resident firm providing architectural, engineering, surveying, construction management at-risk service, design-build services, or public-private construction services a preference over a nonresident firm, if the home state of the nonresident firm has a practice of granting a preference to its resident firms over North Carolina resident firms. Any preference granted to a resident firm will be in the same manner, on the same basis, and to the same extent as the preference granted by the nonresident firm's home state. The school system's bid documents will require that nonresident firms disclose and describe any construction contract preferences granted by the firm's home state.

B. BIDDING METHODS

The board may request bids for contracts for building projects using single prime, multi-prime (separate prime), construction management at-risk, dual bidding, design-build, design-build bridging, and public-private partnership methods, as permitted by law. The superintendent shall make a recommendation to the board as to the method(s) that should be used for a particular project.

If the superintendent believes the project cannot be reasonably completed under the methods authorized by G.S. 143-128, the superintendent shall so inform the board and

make the recommendation to the board that it approve the use of alternative methods. Upon board approval, the superintendent shall submit to the State Building Commission a request to use an alternative contracting method along with supporting documentation.

C. FORMAL BIDDING

Construction and repair work requiring the estimated expenditure of \$500,000 or more will be advertised for bid and will be awarded through formal bidding procedures. Dividing contracts to lower the expenditure amounts so as to evade these requirements is prohibited. The board authorizes the use of newspaper advertisement, electronic advertisement, or both for formal bids; however, the superintendent has the authority to determine which method will be used for a specific purchase or categories of purchases. The superintendent shall establish formal bidding procedures consistent with this policy and applicable law and make the procedures available to all bidders or potential bidders.

D. INFORMAL BIDDING

Informal bids will be obtained for construction and repair contracts between \$30,000 and \$500,000. Quotations from contractors may be solicited by telephone or in writing. Informal bids are recommended, but not required, for construction and repair work costing less than \$30,000.

Dividing contracts to lower the expenditure amounts so as to evade the informal bidding requirements is prohibited. The superintendent shall develop informal bidding procedures consistent with this policy and applicable law and make the procedures available to all bidders and potential bidders.

E. APPROVAL

All formally bid construction contracts must be reviewed by the board attorney. The superintendent shall consult with the board attorney in developing standard form contracts for informally bid construction projects.

Any construction or repair contract involving expenditures in excess \$50,000 must be reviewed by the board attorney and approved in advance by the board unless provided otherwise in board policy. Unless otherwise prohibited by statute or regulation, the superintendent or designee is authorized to enter into construction or repair contracts involving amounts up to \$50,000. Change orders for construction and repair contracts will be subject to the requirements of policy 9030, Facility Construction, not this provision

F. RECORDS AND REPORTING REQUIREMENTS

Records of all informal or formal bids received will be maintained and will be available for public inspection. Such records should include the date the bid is received, from whom it is received, and what project it is for. The records will document why the selected contractor was the lowest responsive, responsible bidder if the contractor was not the low bidder.

The superintendent must submit required reports to the State and provide reports to the board on the progress being made towards reaching the board's goals.

At least monthly, the superintendent shall report to the board all contracts approved by the superintendent under this policy that exceed \$50,000.

G. DISPUTE RESOLUTION PROCESS

The board establishes the following dispute resolution process to resolve issues arising out of construction and repair projects or contracts related to such projects. The dispute resolution process may be used by any party involved in the construction project for those disputes in which the amount in controversy is at least \$15,000.

Prior to initiating litigation concerning a dispute, parties to the dispute must do the following: (1) submit the dispute for review by the superintendent or other designated school official and the project architect, as appropriate, and (2) participate in mediation, if the matter cannot be resolved by school officials and the architect. The cost of the dispute resolution process will be divided between the parties to the dispute. If the board is a party to the dispute, the board will pay at least one-third of the cost.

Legal References: G.S. 64, art. 2; 115C-521, -522; 143-64.31 and art. 8; 147, art. 6E

Cross References: Contracts with the Board (policy 6420), Facility Construction Policy (9030), Prequalification of Bidders for Construction Projects (policy 9115), Participation by Women- and Minority-Owned Businesses (policy 9125)

Adopted: January 11, 2016

Updated: June 6, 2016

Updated: August 23, 2016

The superintendent is responsible for monitoring construction the contracts with the architect and/or engineer and all contractors. The superintendent or designee will report periodically to the board on the progress being made by the contractors, architects and/or engineers, including whether the work is being performed in accordance with plans, specifications, contracts and specified deadlines.

Change orders for construction contracts shall be managed in accordance with the requirements established in policy 9030, Facility Construction.

The superintendent may utilize consultants in performing the review required by this policy. Any contract for such services must be included in the budget for the project.

Legal References: G.S. 115C-36, -47; 133-1.1

Cross References: Contracts with the Board (policy 6420), Facility Construction (policy 9030)

Adopted: May 1, 2000
Updated: July 12, 2011
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