



POLICY 7.225

4-E I recommend that the Board adopt the proposed new Policy 7.225, entitled “Use of Contingency Funds for Construction Projects.”

[Contact: Joseph Sanches, PX 47573.]

Adoption

CONSENT ITEM

- The Board approved development of this revised Policy at the development reading on March 7, 2012.
- The proposed policy is being presented to improve construction-related processes.
- The policy was reviewed by the Construction Oversight and Review Committee (CORC) and Audit Committee. CORC reviewed the proposed policy at its February 9, 2012 meeting. Changes recommended by the committee were presented as part of the proposed policy’s development reading on March 7, 2012.
- The proposed policy provides for:
 - A construction project’s budget to include contingency funding to cover unforeseen conditions or additional work.
 - Any unused contingency to be returned to the appropriate District budget.
 - Three (3) categories of contingency funding: design, construction and project contingencies.
 - The Superintendent is delegated authority to approve up to \$100,000 per instance for design and construction contingencies. Any uses of a design or construction contingency which exceed the above amount must be approved by the Board.
 - As requested by the Board during the March 7, 2012 development hearing, a provision is provided for the Superintendent’s designee to have authority up to \$50,000 per instance.
 - A construction contingency to not be used for a change in work, to change the amount of a contract, or to adjust the substantial or final

completion date of a contract.

- The Treasurer to maintain a capital contingency for construction and outlines when capital contingency may be used to provide additional funding for a construction project.

- Staff to make reports to CORC and Board on the use of and balances for all categories of contingency funds.

POLICY 7.225

USE OF CONTINGENCY FUNDS FOR CONSTRUCTION PROJECTS

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3 1. **Purpose**

4 This policy establishes guidelines for appropriate creation and use of contingency
5 funds, including the framework, authority, and procedures for which budgeted
6 contingency funds for a construction project will be used for the School District of
7 Palm Beach County (District).

8 2. **Application**

9 This policy applies to all construction projects of the School Board of Palm Beach
10 County (Board).

11 3. **Definitions**

12 a. *Budgeted Funds* mean funds appropriated by the Board for a construction or
13 capital project to be administered by Facilities Services. Budgeted Funds may
14 include contingency funds within a construction project.

15 b. *Buyout Savings* mean the difference, either positive or negative, between the
16 line item amounts in the Board approved guaranteed maximum price (GMP)
17 and the total sum of all contractual obligations between the construction
18 manager and his subcontractors and vendors, self-performed work and
19 unpurchased scope for that line item.

20 c. *Change Order* means a written amendment to the construction contract issued
21 and signed by the Superintendent or designee, the architect-engineer, and the
22 contractor authorizing a change in the scope of Work, an adjustment in the
23 contract sum or contract time, or both.

24 d. *Construction* means demolition, renovation, remodeling, or new construction.
25 It does not include the routine operation, routine repair or routine maintenance
26 of existing structures, buildings or real property.

27 e. *Construction Contingency Use Authorizations (CCUA)* authorize the
28 Construction Manager to use construction contingency on Construction
29 Management at Risk projects to do work resulting from buyout, unforeseen
30 conditions, design omissions, and permitting agency decisions. CCUAs are
31 used when the Architect, Construction Manager and District have agreed on
32 compensation for the work.

33 f. *Construction Contingency Use Directives (CCUD)* direct the Construction

34 Manager to use construction contingency on Construction Management at
35 Risk projects to do work resulting from buyout, unforeseen conditions, design
36 omissions, and permitting agency decisions. CCUDs are used when the
37 Architect, Construction Manager and District have not agreed on
38 compensation for the work.

39 g. Contingency Funds mean a set percentage(s) or amount(s) held within the
40 approved construction project budget to pay for design change orders,
41 construction change orders, and construction change directives for unforeseen
42 conditions or design shortfalls identified after construction commences, and
43 variances in actual costs versus budgeted amounts for all other line items in
44 the project budget. For the purposes of this policy, the District may have a
45 construction, design, and project contingency.

46 h. Construction Delivery Method means the use of one of the following
47 construction contracting methods or modes for entering into a construction
48 contract: design-bid-build (also called "lump-sum"), design-build, or
49 construction management.

50 i. Construction Management Services mean those services whereby the
51 construction manager is selected pursuant to a competitive solicitation
52 process, to provide consulting services during the design phase, and
53 management and contractual responsibility for the total construction project
54 under a negotiated fee and GMP construction contracting method. A fee is
55 negotiated for profit, overhead, and direct management costs. Trade contracts
56 are awarded by the construction manager based on competitive bids received
57 in response to invitations to bid issued by the construction manager. A GMP is
58 provided by the construction manager, and the total price paid to the
59 construction manager is either the fee plus the actual cost or the guaranteed
60 maximum price, whichever is less.

61 j. Design-Build Services mean those services whereby one single legal entity is
62 selected pursuant to a competitive solicitation process and is responsible for
63 the design and construction services under one contract. Where such
64 services are within the scope of practice of architecture, or professional
65 engineering as defined by law, they are to be performed by a registered
66 architect or professional engineer, and where those services are within the
67 scope of construction contracting as defined by law for construction, they are
68 to be performed by a certified or registered contractor as applicable according
69 to Florida Statute. The Work on a design project is defined in the Board
70 approved Educational Specification. Design deviations from the Educational
71 Specification would be a Change in the Work, necessitating a construction
72 change order.

73 k. Guaranteed Maximum Price means the fixed amount in a negotiated contract

74 within which the construction will be achieved. It includes both the fee and
75 construction cost.

76 i. Lump Sum Construction (also known as design-bid-build) means a
77 construction project delivery method in which the contractor commits to
78 perform the specified work for a stated fixed amount. The work on a Lump
79 Sum construction project is defined by the plans and specifications. Revisions
80 to the plans and specifications would be a change in the Work, necessitating a
81 construction change order.

82 m. Project means the total design and construction of which the Work performed
83 under the contract documents may be the whole or a part.

84 n. Work means the construction and services required by the construction
85 contract documents, whether completed or partially completed, and includes
86 all other labor, materials, equipment and services provided or to be provided
87 by the architect, construction manager or contractor to fulfill their obligations to
88 the School Board. The Work may constitute the whole or a part of a
89 construction project.

90 o. Work means the construction and services required by the construction
91 contract documents, whether completed or partially completed, and includes
92 all other labor, materials, equipment and services provided or to be provided
93 by the architect, construction manager or contractor to fulfill their obligations to
94 the School Board. The Work may constitute the whole or a part of a
95 construction project.

96 p. All contingencies for a construction project shall be budgeted. All unused
97 contingency funds shall be returned to the appropriate District's budget, upon
98 project closeout.

99 q. No contingency shall be used to change the amount of a Board approved
100 allowance.

101 r. The School Board, at its own discretion, or based on the recommendation of
102 the Construction Oversight and Review Committee or the Superintendent, may
103 halt the further use of construction contingency funds on any or multiple
104 projects for any reasonable purpose as determined by the School Board.

105 4. Categories of Contingency Funding for Construction Projects

106 Each construction project, whether submitted individually or as part of the five-year
107 capital improvement budget, shall have in the budget of the construction project a
108 line item for all contingency funding for the project. Contingency funding for a
109 construction project may consist of the following project contingency categories.

110 a. Design Contingency may be included in the Architect Agreement on major
111 construction projects, and shall not exceed 10% of the basic services amount
112 for the architect. The design contingency may be used for items such as
113 feasibility studies, environmental studies, site comparison studies, financial
114 feasibility studies, services in connection with legal proceedings or insurance
115 claims, cost estimates of construction, and costs that cannot be anticipated
116 during the design period because they have not been documented or cannot
117 be anticipated. It is a part of the construction cost estimate and; therefore,
118 must be within the budgeted construction budget for a project.

119 i. When a design contingency is provided for, the provision of the design
120 contingency in a project shall be included in the budget to provide
121 additional funding to a construction project. Upon completion of contract,
122 any funds remaining in design contingency shall be transferred to the
123 project contingency. On project closeout, such funds shall be transferred
124 to the capital contingency.

125 b. Construction Contingency may be budgeted for a Construction Manager at
126 Risk project and used for buyout adjustments, design omissions, code
127 requirements, outside agency requirements, constructability suggestions by
128 the construction manager, and concealed conditions that can be reasonably
129 inferred from the contract documents and/or the Work.

130 i. Upon completion of contract, any funds remaining in construction
131 contingency shall be transferred to the project contingency. On project
132 closeout such funds shall be transferred to the capital contingency.

133 c. Project Contingency is approved by the Board as part of the project budget.
134 This contingency is used to offset the differences between the budgeted
135 amounts and the actual amounts within a project such as design services,
136 construction services, other costs (construction testing, utilities, etc.), and
137 furniture, fixtures and equipment (FF&E). If the actual cost for each of these
138 items is higher than the budgeted amount, the additional funds required are
139 transferred from the Project Contingency to the line item needing additional
140 funds. If the actual cost is less than the budgeted amount, the excess funds
141 are transferred to Project Contingency.

142 5. **Contingency Authorization and Use on Construction Projects**

143 a. Delegation of Authority - Design Contingency Authorization. The
144 Superintendent or his/her designee may approve uses of design contingency
145 up to \$100,000 per instance. A proposed use of design contingency shall not
146 be split so that the resulting design contingency use does not exceed the
147 \$100,000 limit established by this policy. All uses of design contingency that
148 exceed \$100,000 must be approved by the Board. An Architect Contingency

149 Use Authorization (ACUA), attached and incorporated hereto, shall be issued
150 to the Architect-Engineer for each authorized Design Contingency use.

151 i. Designee Authority. If the Superintendent delegates any of his authority
152 as provided herein, the delegation shall be limited to the following:

153 A. The designee has authority to approve uses of design contingency
154 up to \$50,000 per instance.

155 B. The designee may not re-delegate such authority.

156 b. The design contingency approved by the Superintendent or designee shall not
157 be used for a change in the Work or to change the amount of the design
158 agreement, unless a change order has been issued and approved in
159 accordance with Policy 7.22.

160 c. Delegation of Authority - Construction Contingency Authorization. The
161 Superintendent or his designee may approve uses of construction contingency
162 up to \$100,000 per instance. A proposed use of construction contingency
163 shall not be split so that the resulting construction contingency use does not
164 exceed the \$100,000 limit established by this policy. All uses of contingency
165 that exceed \$100,000 per instance must be approved by the Board. The
166 cumulative approval spending limit for the construction contingency of a
167 Construction Manager at Risk project shall be the amount originally
168 established within the GMP summary that was approved by the Board, and
169 shall not include the buyout savings.

170 d. A Construction Contingency Use Authorization (CCUA), attached and
171 incorporated hereto, or Construction Contingency Use Directive (CCUD),
172 attached and incorporated hereto, shall be issued to the contractor for each
173 authorized construction contingency use.

174 i. The construction contingency shall not be used for a change in the Work,
175 to change the amount of the contract, or adjust the substantial or final
176 completion date of the contract, unless a construction change order has
177 been issued and approved in accordance with Policy 7.22.

178 6. **Use of Capital Contingency for Construction**

179 a. The Treasurer shall maintain a Capital Contingency as provided in the
180 District's capital budget. The Capital Contingency may be used to provide
181 additional funding to a project provided:

182 i. necessary construction costs arise on a project after the design,
183 construction, and project contingencies have been exhausted;

- 184 ii. necessary construction costs arise which were not budgeted for; and
185 iii. the Board has approved the project budget increase.
186 b. Upon the closing out of a construction project any excess funds shall be
187 placed in the appropriate District budget.

188 7. **Reporting for Contingency Funding Use**

- 189 a. Reports to CORC and Board. Staff shall report the use of and balances for all
190 categories of construction contingency funds on all construction projects to the
191 Construction Oversight and Review Committee (CORC) and the School Board
192 on a monthly basis.
193 b. Staff shall report all contingency balances to CORC quarterly (March, June,
194 September and December) and discuss, on a project by project basis, if a
195 reduction in contingency is warranted. When warranted, contingency shall be
196 reduced and the funds returned to the appropriate District budget.

197 8. **Administrative Procedures**

198 The Superintendent, or designee, shall develop administrative procedures and
199 guidelines for the implementation of this policy.

200 STATUTORY AUTHORITY: Fla. Stat. §§ 1001.41, 1001.42 (11)

201 LAWS IMPLEMENTED: Fla. Stat. §§ 1001.41, 1001.42 (11)

202 HISTORY: ___/___ 2012

203
204

205 **Cross References:**

206 Policy **7.065** *Errors and Omissions of Construction-Related Professionals*
207 Policy **7.02** *Educational Facilities Specifications*
208 Policy **7.22** *Construction Change Orders*
209 Policy **7.132** *Five-Year Plan and Capital Budget; Annual Update, Amendment*
210 *and Adoption*

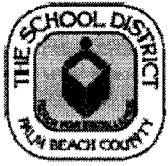
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Legal Signoff:

The Legal Department has reviewed proposed Policy 7.225 and finds it legally sufficient for adoption by the Board.

Attorney

Date



SCHOOL DISTRICT OF PALM BEACH COUNTY
 Department of Facilities Services
 3361 Interstate Park Road N., Suite 200
 Riviera Beach, FL 33404
 Phone: (561) 882-1900

CONSTRUCTION CONTINGENCY USE AUTHORIZATION (CCUA)

Revised: 2/3/12

PROJECT NAME: _____
PROJECT NUMBER: _____
CCUA NUMBER: _____
DATE OF ISSUANCE: _____

FROM: _____ **To:** _____

You are hereby authorized to use Contingency funds for the following work: _____

1. PROPOSED ADJUSTMENTS

The proposed basis of adjustment to the Contingency is:

Lump Sum: Increase Decrease of \$ _____

Cause: (check one)

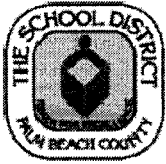
Buyout Design Omission Permitting Agency Unforeseen Condition

ACKNOWLEDGEMENTS:

The aforementioned use authorization, and work affected thereby, is subject to all the provisions of the original contract. It is expressly understood and agreed that the approval of this Construction Contingency Use Authorization constitutes full and complete compensation for the work and time adjustments described herein, including any and all costs and financial impacts, extended overhead and home office expenses which may result from this work. It is also expressly understood and agreed that the approval of this Construction Contingency Use Authority will not change the contract time.

APPROVALS

1 – Submitted: _____ Date: _____ Construction Manager	2 – Reviewed: _____ Date: _____ Architect	3 – Reviewed/Approved: _____ Date: _____ Senior Projects Administrator
4 – Reviewed: _____ Date: _____ Estimator	5 – Reviewed: _____ Date: _____ General Manager of Project Controls	6 – Reviewed/Approved: _____ Date: _____ General Mgr of Facilities Services or Director of Facilities Services or Chief of Support Operations or Superintendent



SCHOOL DISTRICT OF PALM BEACH COUNTY

Department of Facilities Services
3361 Interstate Park Road N., Suite 200
Riviera Beach, FL 33404
Phone: (561) 383-2000

CONSTRUCTION CONTINGENCY USE DIRECTIVE (CCUD)

Revised: 2/3/12

PROJECT NAME: _____
PROJECT NUMBER: _____
CCUD NUMBER: _____
DATE OF ISSUANCE: _____

FROM: _____ **To:** _____

You are hereby directed to use Contingency funds for the following work: _____

1. PROPOSED ADJUSTMENTS

The proposed basis of adjustment to the Contingency is:

Lump Sum: Increase Decrease of \$ _____

Cause: (check one)

Design Omission Unforeseen Condition Outside Agency

ACKNOWLEDGEMENTS:

The aforementioned use directive, and work affected thereby, is subject to all the provisions of the original contract. It is expressly understood and agreed that the approval of this Construction Contingency Use Directive constitutes the method that full and complete compensation for the work, including any and all costs and financial impacts, extended overhead and home office expenses which may result from this work will be determined. It is also expressly understood and agreed that the approval of this Construction Contingency Use Directive will not change the contract time.

APPROVALS

1 – Submitted: _____ 2 – Reviewed: _____ 3 – Reviewed/Approved: _____

Date: _____ Date: _____ Date: _____
Construction Manager **Architect** **Senior Project Administrator**

4 – Reviewed: _____ 5 – Reviewed: _____ 6 - Reviewed/Approved: _____

Date: _____ Date: _____ Date: _____
Estimator **General Manager – Project Controls** **General Mgr Facilities Services or
Director of Facilities Services or
Chief of Support Operations or
Superintendent**