



## POLICY 7.225

5-E I recommend the Board approve development of the proposed new Policy 7.225, entitled "Use of Contingency Funds for Construction Projects."

[Contact: Joseph Sanches, PX 47573.]

### Development

### CONSENT ITEM

- The proposed policy is being presented to improve construction-related processes.
- The policy has been 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 CORC are represented by blue underlinings for additions and ~~strikeovers~~ for deletions. Red underlinings represent actions taken by the Audit Committee at its February 10, 2012 meeting.
- The provisions for administrative procedures in Section 9 (green underlinings), were added by staff on final review of the policy.
- 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, or his designee, 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.
  - 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

1  
2  
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. It  
25 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

- 74 k. Guaranteed Maximum Price means the fixed amount in a negotiated contract  
75 within which the construction will be achieved. It includes both the fee and  
76 construction cost.
- 77 l. Lump Sum Construction (also known as design-bid-build) means a  
78 construction project delivery method in which the contractor commits to  
79 perform the specified work for a stated fixed amount. The work on a Lump  
80 Sum construction project is defined by the plans and specifications. Revisions  
81 to the plans and specifications would be a change in the Work, necessitating a  
82 construction change order.
- 83 m. Project means the total design and construction of which the Work performed  
84 under the contract documents may be the whole or a part.
- 85 n. Work means the construction and services required by the construction  
86 contract documents, whether completed or partially completed, and includes  
87 all other labor, materials, equipment and services provided or to be provided  
88 by the architect, construction manager or contractor to fulfill their obligations to  
89 the School Board. The Work may constitute the whole or a part of a  
90 construction project.
- 91 o. Work means the construction and services required by the construction  
92 contract documents, whether completed or partially completed, and includes  
93 all other labor, materials, equipment and services provided or to be provided  
94 by the architect, construction manager or contractor to fulfill their obligations to  
95 the School Board. The Work may constitute the whole or a part of a  
96 construction project.
- 97 p. All contingencies for a construction project shall be budgeted. All unused  
98 contingency funds shall be returned to the appropriate District's budget, upon  
99 project closeout.
- 100 q. No contingency shall be used to change the amount of a Board approved  
101 allowance.
- 102 r. The School Board, at its own discretion, or based on the recommendation of  
103 the Construction Oversight and Review Committee or the Superintendent, may  
104 halt the further use of construction contingency funds on any or multiple  
105 projects for any reasonable purpose as determined by the School Board.
- 106 4. Categories of **Contingency Funding for Construction Projects**
- 107 Each construction project, whether submitted individually or as part of the five-year  
108 capital improvement budget, shall have in the budget of the construction project a  
109 line item for all contingency funding for the project. Contingency funding for a  
110 construction project may consist of the following project contingency categories.

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

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

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

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

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

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

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

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

152 i. The design contingency shall not be used for a change in the Work, or to  
153 change the amount of the design agreement, unless a change order has  
154 been issued and approved in accordance with Policy 7.22.

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

165 c. A Construction Contingency Use Authorization (CCUA), attached and  
166 incorporated hereto, or Construction Contingency Use Directive (CCUD),  
167 attached and incorporated hereto, shall be issued to the contractor for each  
168 authorized construction contingency use.

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

## 173 6. Use of Capital Contingency for Construction

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

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

179 ii. necessary construction costs arise which were not budgeted for; and

180 iii. the Board has approved the project budget increase.

181 b. Upon the closing out of a construction project any excess funds shall be  
182 placed in the appropriate District budget.

## 183 7. Reporting for Contingency Funding Use

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

192 8. Administrative Procedures

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

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

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

197 HISTORY: \_\_/\_\_/2012

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199

200 **Cross References:**

201 Policy **7.065** *Errors and Omissions of Construction-Related Professionals*  
202 Policy **7.02** *Educational Facilities Specifications*  
203 Policy **7.22** *Construction Change Orders*  
204 Policy **7.132** *Five-Year Plan and Capital Budget; Annual Update, Amendment*  
205 *and Adoption*



Legal Signoff:

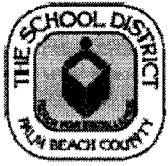
The Legal Department has reviewed proposed Policy 7.225 and finds it legally sufficient for development by the Board.

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Attorney

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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

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**PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_  
**CCUA NUMBER:** \_\_\_\_\_  
**DATE OF ISSUANCE:** \_\_\_\_\_

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**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)**

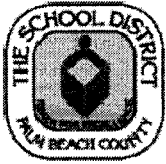
- Buyout                       Design Omission                       Permitting Agency                       Unforeseen Condition

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



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