



POLICY 7.23

4-K I recommend that the Board approve the proposed revised Policy 7.23, entitled “Retainage Withheld on Construction Contracts.”

[Contact: Thomas Johns, PX 48867; Joseph Sanches, PX 47573]

Development

CONSENT ITEM

- This revision would conform the Policy to recent legislation for local-government entities codified at Fla. Stat. § 218.735 (the same as requirements for State-government entities under §§ 255.078 and 255.077).

- The specific legal basis for each provision is shown in footnotes citing Florida Statutes and/or the DOE’s State Requirements for Educational Facilities (SREF). (These footnotes will not appear in the final, adopted Policy.)

- CORC reviewed and unanimously approved of this proposed revision on January 13, 2006.

POLICY 7.23

RETAINAGE WITHHELD ON CONSTRUCTION CONTRACTS

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- 5 1. Where the cost of construction services identified in the contract is over \$200,000,¹
6 the School District shall withhold ten percent (10%) of the payment from each
7 progress payment made to the contractor.² This 10% retainage shall continue until
8 50-percent completion of the construction services purchased under the contract.³
- 9 a. The term "50-percent completion" means the point at which the District has
10 expended 50 percent of the total cost of the construction services purchased
11 as identified in the contract together with all costs associated with existing
12 change orders and other approved additions or modifications to the
13 construction services provided for in the contract.⁴
- 14 b. "Construction services" means all labor, services, and materials provided in
15 connection with the construction, alteration, repair, demolition, reconstruction,
16 or any other improvements to real property.⁵
- 17 c. "Contractor" means any person who contracts directly with the School Board
18 to provide construction services.⁶
- 19 2. After 50-percent completion, the District shall reduce to five percent (5%) the
20 amount of retainage withheld from each subsequent progress payment made to the
21 contractor.⁷ (After 50-percent completion, the contractor may also present a
22 payment request for up to one-half of the retainage withheld by the District during
23 the pre-50% portion, and this payment shall promptly be made unless there are
24 grounds for withholding the payment under paragraphs (3)(b)(iii), (iv), or (v) below.)
- 25 3. Each contract for construction services shall provide for a list of items required to
26 render complete, satisfactory, and acceptable the contracted construction services
27 for each building, structure, or phase of the project.⁸ Upon completing all the
28 construction services purchased pursuant to the contract, including all items on the
29 list, the contractor may submit a payment request for all remaining retainage
30 withheld.⁹
- 31 a. If a good faith dispute exists as to whether one or more items identified on the
32 list have been completed pursuant to the contract, the District may continue to

1. Fla. Stat. § 218.735(8)(i).
2. Fla. Stat. § 218.735(8)(a).
3. Fla. Stat. § 218.735(8)(a).
4. Fla. Stat. § 218.735(8)(b).
5. Fla. Stat. § 218.72(7).
6. Fla. Stat. § 218.72(10).
7. Fla. Stat. § 218.735(8)(b).
8. Fla. Stat. § 218.735(7)(a), (b).
9. Fla. Stat. § 218.735(7)(c), (d).

- 33 withhold an amount not to exceed 150 percent of the total costs to complete
34 such items (as estimated by the architect and accepted by the School
35 District).¹⁰
- 36 b. The District need not pay or process any payment request for the remaining
37 retainage if:¹¹
- 38 i. the contractor has, in whole or in part, failed to cooperate with the District
39 in the development of the list described in section (3);¹²
- 40 ii. the contractor has failed to perform its contractual responsibilities, if any,
41 with regard to the development of the list;¹³
- 42 iii. the remaining retainage is the subject of a good faith dispute;¹⁴
- 43 iv. the remaining retainage is the subject of a claim brought pursuant to Fla.
44 Stat. § 255.05;¹⁵ or
- 45 v. the remaining retainage is otherwise the subject of a claim or demand by
46 the District or the contractor.¹⁶
- 47 c. Moreover, the final payment to the contractor shall not be made until:
- 48 i. the construction project has been inspected by the architect or other
49 person designated by the Board for that purpose;¹⁷
- 50 ii. the architect or other person designated by the Board for that purpose
51 has issued a written certificate that the project has been constructed (and
52 completed¹⁸) in accordance with the approved plans and specifications
53 and approved change orders;¹⁹
- 54 iii. the Board, acting on these recommendations, has accepted the project²⁰
55 (and the Board hereby delegates to the Superintendent or designee the
56 authority to accept the project on behalf of the Board);
- 57 iv. an Occupancy Certificate has been issued.²¹

10. Fla. Stat. § 218.735(7)(d).
11. Fla. Stat. § 218.735(7)(h).
12. Fla. Stat. § 218.735(7)(h).
13. Fla. Stat. § 218.735(7)(h).
14. Fla. Stat. § 218.735(8)(f).
15. Fla. Stat. § 218.735(8)(f).
16. Fla. Stat. § 218.735(8)(f).
17. Fla. Stat. § 1013.50(1).
18. SREF § 4.2(3) (a DOE rule).
19. Fla. Stat. § 1013.50(1).
20. Fla. Stat. § 1013.50(1).
21. SREF § 4.2(3) (a DOE rule).

58 4. Implementation of this Policy shall also be consistent with the provisions of Fla.
59 Stat. § 218.735(8)(c) – (h) & (9) to the extent they are applicable.

60 1. ~~During the construction of facilities, the School Board shall withhold the amount of~~
61 ~~ten (10%) percent from each payment made to the contractor.~~

62 2. ~~The monies withheld are to assure completion of all work as stipulated in the~~
63 ~~Contract Documents.~~

64 3. ~~The amount of retainage may be reduced after the project has achieved Substantial~~
65 ~~Completion and the proposed reduction has been approved by the School Board. The~~
66 ~~Superintendent shall add any additional conditions necessary to protect the interests of~~
67 ~~the School Board and promulgate directives.~~

68 STATUTORY AUTHORITY: §§ 120.53, F.S., 230.22, F.S. 1001.41(2); 1001.42(22);
69 1001.43(2)(d), (4), Fla. Stat.

70 LAWS IMPLEMENTED: §§ ~~235.33, F.S.~~ 218.735; 1001.42(9); 1013.50; Fla. Stat.

71 RULES SUPPLEMENTED: State Requirements for Educational Facilities § 4.2(3).

72 HISTORY: New: 5/23/90; / /2006

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Legal Signoff:

The Legal Department has reviewed proposed Policy 7.23 and finds it legally sufficient for development by the Board.

Attorney

Date