FSOA CONFERENCE • SESSION 2

FROM AWARD TO EXECUTION

Avoiding Common Contracting & Procurement Pitfalls

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The contract is where procurement risk becomes district risk

A winning bid is not the same thing as a protective contract.

PRICE

Can the District prove that it will pay only for authorized, verified performance?

PERFORMANCE

Who bears responsibility for delays, defective work, and subcontractors?

PUBLIC ACCOUNTABILITY

Can the District document legality, transparency, and responsible stewardship?

Five outcomes for today

- Identify contract terms that shift risk to the District
- Spot gaps in insurance, bonds, indemnity, and remedies
- Strengthen payments, change orders, and approval controls
- Recognize statutory and procurement-compliance traps
- Leave with a usable pre-signature and post-award checklist

From solicitation to closeout: six control gates

01	02	03	04	05	06
Solicit	**Select**	**Negotiate**	**Execute**	**Administer**	**Close**
Law + published criteria	Fair scoring + record	Risk allocation	Approval + security	Invoices + changes	Warranties + records

Failure at an early gate multiplies cost at every later gate.

The procurement framework is not one-size-fits-all

Traditional purchases

District policies; applicable competitive sourcing requirements.

Professional / CM services

CCNA and construction management statutes where applicable.

Construction work

Public construction, prequalification, and bond rules.

P3 / unsolicited proposals

§255.065: separate procurement, analysis, and agreement safeguards.

Do not assume every §287.057 state-agency procedure automatically binds every district purchase.

TRACK A | Construction & professional services

FACILITIES • CONSTRUCTION MANAGERS • ARCHITECTS & ENGINEERS

Qualifications, delivery risk, bonds, site safety and project closeout

SELECTION PATHWAY

Construction and design: choose the governing route

Traditional construction

Confirm §255.20, Ch. 1013, SREF and board policy; use advertised, documented competitive process where required.

Design professionals / CCNA

For covered architecture, engineering, landscape architecture or surveying: qualifications-based selection; negotiate compensation after ranking.

Construction manager / design-build

Evaluate §§255.103, 287.055 and delivery-specific rules; document why the chosen model fits the project.

P3 / unsolicited proposal

Section 255.065 is its own path; preserve public-interest findings, opportunity for competing proposals, and contract controls.

Contractor prequalification is a gate—not a formality

Before the advertisement

Use objective, published criteria: license, financial capacity, project experience, staffing and relevant safety/performance record.

Verify supporting documents

Current licenses and certifications; financial statements; insurance; surety letter showing sufficient bonding capacity.

Check project-specific fitness

SREF familiarity; comparable occupied-campus projects; key personnel and subcontractor qualifications.

Recheck before award and GMP

Refresh qualification, bonds and insurance if project price increases; document who verified each item.

Cone of silence: protect the competition

Set the rule before release

Define restricted period, covered people, permitted channels and sanctions in solicitation and board policy.

One procurement point of contact

Require written questions through procurement; publish substantive answers to all participants through addenda.

Train evaluation committees

Disclose conflicts; explain communications restrictions, Sunshine/public records, scoring and documentation.

Document and enforce

Preserve contact logs and report attempted lobbying; refer potential violations for consistent legal review.

AUDIENCE CASE STUDY

Cone of silence: “Can I call the board member?”

The scenario

A bidder calls a school board member after RFQ release to complain about its score and asks for a private meeting.

Immediate response

Do not discuss the merits. Route contact to procurement and counsel; preserve voicemail, email and the contact chronology.

Procurement response

Apply the solicitation’s contact restrictions; evaluate any disqualification and protest issues on the actual governing authority.

Prevent recurrence

Use written acknowledgments and panel training; keep score sheets and contemporaneous deliberation records.

Lessons from a Florida District’s procurement review

Publish evaluation criteria

Scoring categories and rubrics should be disclosed before competition.

Train panel members

Conflicts, cone of silence, public meetings, scoring instructions.

Separate roles

Procurement facilitation; consider audit validation and neutral tabulation.

Follow the manual

Policy deviation creates protest and reputational exposure.

Marion opinion letter (June 18, 2024), pp. 9–12, 19–26

When audits identify the cost of weak controls

$2.3M

Restricted capital expenditures questioned; reconcile spending to approved project lists.

Subcontracts

Documentation did not demonstrate verification of competitive, qualified subcontractor selection.

$2.5M GAP

An $8.4M preliminary bond was below the ultimate contract price by $2.5M.

Takeaway: document funding authority, subcontractor selection, and bond sufficiency before approval.

Marion opinion letter, pp. 29–31

Case study: a Florida high school P3 agreement

$177.5M

Stated lump-sum agreement price

Delivery obligation

Turnkey delivery of a fully operational, code-compliant, occupancy-ready high school.

Polk Comprehensive Agreement, final draft 4/22/26, pp. 8–9

Clause spotlight | Scope and responsibility

"Nothing in this Agreement shall be interpreted to make the School Board responsible for the Contract Services."

Comprehensive Agreement §5.1(B), p. 39

WHY IT MATTERS

Define complete deliverables, name a single responsible contractor, and say District review or approval does not shift means, methods, code, or design responsibility.

Clause spotlight | Prevent unauthorized change orders

"No Technical Requirements Changes shall be made except with the written consent of the School Board."

Comprehensive Agreement §6.1, p. 52

WHY IT MATTERS

Require a written scope, itemized price, schedule impact, budget certification, and authorized approval BEFORE added work begins.

Change-order discipline: a practical workflow

01
Written request

02
Scope + pricing

03
Critical path impact

04
Funds certification

05
Approval + execution

No verbal directions. No retroactive approval as standard practice. No untracked schedule extension.

Duty to defend is NOT the same as indemnity

Indemnify / hold harmless

Addresses ultimate responsibility for covered liabilities and losses, often depending on fault and causation.

Defend

Addresses who appoints and pays counsel when a claim is made—before final liability has been decided.

Draft the trigger precisely

Specify tender, notice, counsel selection, conflicts, advancement of costs, settlement consent and reimbursement allocation.

Insurance must align

Review additional-insured status, contractual liability, exclusions and completed operations; distinguish duty under policy from contract duty.

When a liability claim arrives: 5 questions

1. Who receives the tender?

Require prompt written notice and identify an authorized risk-management contact.

2. Who pays defense costs now?

State whether advancement begins upon allegation, subject to later allocation, or only after fault is established.

3. Who selects counsel?

Resolve consent, hourly rates, conflict counsel, reporting and privilege.

4. Limits and settlements

Test indemnity caps, insurance limits and §725.06; reserve district consent for settlements and non-monetary terms.

Polk draft §§9.1, 18.1–18.2

Clause spotlight | A real contractual duty to defend

Express defense obligation

Volusia draft §5.2 expressly calls for defense of covered claims at developer expense, including allegations claimed to be groundless or false.

20-day election

Draft indemnity procedure requires written notice of intent to defend within 20 calendar days after tender; if absent, district may retain counsel.

Control of counsel

School Board Attorney may approve defense counsel; consider conflicts, reservation of rights, litigation control and settlement authority.

Avoid unintended limits

Reconcile defense costs, mixed allegations, fault-based indemnity, liability caps and §725.06 before relying on the clause.

Volusia marked-up draft pp.8–11; Polk draft pp.89–90

Indemnification: language that matters

Protective elements

Negligence-based allocation; third-party injury/property losses; attorney-fee treatment; flow-down to material subcontractors.

Draft issue to negotiate

Draft §18.1 sets a $2 million per-occurrence cap on developer indemnification, even for a much larger project.

Evaluate §725.06 enforceability, independent defense duties, exceptions, limits and insurance alignment.

Insurance: never stop at the certificate

Verify the coverage

Limits, coverage type, carrier, additional insured endorsement, ongoing/completed operations, primary/noncontributory status where available.

Verify the controls

Policy and endorsement copies; renewals; subcontractor flow-down; lapse notice; replacement/stop-work remedies.

A certificate describes coverage; it does not amend an insurance policy.

Clause spotlight | Insurance language worth standardizing

Additional insured

Volusia calls for endorsement-backed additional-insured status and primary/noncontributory coverage; verify policy endorsements, not just COIs.

Completed operations

Draft §6.1 seeks five years of completed-operations coverage; tailor duration to project, exposure and availability.

Professional exposure

Draft §6.11 separately specifies professional-liability/E&O coverage for design professionals and pollution coverage when the scope warrants it.

Coverage enforcement

Draft §§6.12 addresses renewals, claims-made retroactive dates, cancellation notice, subcontractor compliance and lapses.

Performance and payment bonds are not static

CHECK THE BOND AGAINST THE ACTUAL AWARD / GMP

- Confirm legal amount, obligee, surety qualifications, and recorded bond
- Increase or replace bonds when contract amount or covered work changes
- Verify endorsements and surety consent where required
- Preserve the complete bond record before authorizing payment

Polk draft p. 61; Marion report pp. 29–31

Protecting public funds: invoice to payment

VERIFY

Schedule of values, observed progress, current schedule, supporting documents.

WITHHOLD

Defective/incomplete work, disputed amounts, offsets where authorized.

DOCUMENT

Approval, conditional releases, payments to subs, retained amounts.

Pay undisputed amounts when due; follow applicable prompt-payment deadlines.

Time is money: deadlines must have teeth

SUBSTANTIAL COMPLETION

May 1, 2028 target in draft; $10,000/day stipulated delay damages; $2M cap.

FINAL COMPLETION

August 1, 2028 target in draft; $1,000/day delayed final completion; $500k cap.

Tie milestones to district operations: student occupancy, life safety, training, manuals, commissioning.

Liquidated damages: enforceable leverage—not a penalty

ACTUAL FLORIDA DISTRICT EXAMPLE

Substantial completion: $10,000 per calendar day (cap $2M). Final completion: $1,000 per calendar day (cap $500K); no duplicative recovery. Draft §13.3(D) makes delay LDs exclusive.

THE FLORIDA ENFORCEABILITY TEST

At contracting, actual delay harm must be difficult to ascertain; the stipulated amount must not be grossly disproportionate to anticipated damages. A punitive amount risks being struck as a penalty.

FINANCE OFFICER CHECK: Document a reasonable pre-award estimate; clarify when each clock starts/stops, extensions, caps and remedies. Reconcile §7.6(B) (Aug. 1) with §7.7(A) (90 days after substantial completion).

Polk draft pp. 57, 59, 75 • Hyman v. Cohen

Termination rights: protect the exit

For cause

Define material breaches, notice, cure, insurance/bond failure, public safety, and post-default remedies.

For convenience

Pay verified work and reasonable unavoidable costs; exclude anticipated profits on unperformed services.

Ensure step-in rights, assignment of subcontracts, access to plans/data, transfer of warranties, and a safe site.

Audit-ready turnover: records you can actually obtain

Access during performance

Include district/Auditor General access to invoices, payment support, subcontracts, time records, change-order pricing and electronic data.

Retention and format

Identify retention schedule, legal holds, metadata, usable electronic formats, and secure transfer to the records custodian.

Closeout deliverables

Require an index, final records transfer, missing-record certification, warranty/record drawings and subcontractor records where applicable.

Remedies and survival

Tie production to payment/closeout; preserve inspection rights after termination and provide enforceable breach/cure provisions.

Clause spotlight | Audit rights must produce usable records

Audit at every stage

Volusia §4.4 reserves an audit during any phase and a final audit, with access to financial records, project materials and relevant personnel.

Beyond public records

Draft §10.2 addresses Chapter 119 turnover. Contract separately for underlying cost backup, subcontract files and audit trail.

Closeout package

Require itemized electronic index, invoices, source receipts, change-order support, bid tabs, approvals, payroll where relevant and subcontractor data.

Make it enforceable

Identify production deadlines, retention, read-only system access, third-party flow-down, audit assistance and remedies for missing documents.

Audit example: three gaps, three safeguards

Subcontractor selection

Document competitive subcontractor selection, qualifications, approvals and bid tabs—not merely a prime contractor assertion.

Bond shortfall

Match surety amount to the required contract scope and update after GMP/approved price changes.

Restricted capital funds

Reconcile project expenditure to authorized purpose, funding source, approved project list and amendments.

Records ownership

Appoint a district custodian for procurement, contract, construction, finance and closeout file repositories.

TRACK B | Goods & contractual services

COMMODITIES • TECHNOLOGY • OPERATIONS • SERVICE CONTRACTS

Price, performance metrics, renewals, data, acceptance and exit

Use the district purchasing framework—not CCNA

Start with district authority

Review §1010.04, State Board Rule 6A-1.012, board policy, dollar thresholds and approved exceptions.

Choose solicitation design

ITB for objectively specifiable needs; RFP for evaluated solutions; other methods only where authorized by policy/law.

Price the full term

Unit prices, freight, installation, training, maintenance, auto-renewals, escalation, usage commitments and termination charges.

Evaluate fairly

Publish criteria, retain scoring/award rationale and conflict disclosures; use a consistent vendor Q&A channel.

Contract controls that differ from construction

Acceptance and payment

Milestones, objective acceptance tests, service credits, invoice verification, dispute/offset rights and prompt-payment compliance.

Technology and student data

Security controls, breach notification, access restrictions, data ownership, recovery and disposal; apply student privacy laws where relevant.

Renewal and exit

Non-appropriation, option exercise, transition assistance, no silent renewal, asset/records return and deletion verification.

Risk allocation

Service-specific liability, insurance, defense language, subcontracting permissions and remedies proportional to vendor risk.

Public records, sunshine and mandatory certifications

- Public records compliance and §119.0701 contractor notice
- E-Verify and subcontractor affidavits, §448.095
- Public entity crime, scrutinized companies, foreign-entity restrictions
- Applicable human-trafficking affidavit and other statutory certifications
- Procurement meeting notices, conflicts, and communication restrictions

The fine-print risks most likely to be missed

Deemed approval

Short windows can approve subcontract changes by silence (§8.3(F)).

Order of precedence

Resolve conflicts among agreement, appendices, amendments (§1.2(R)).

Liability caps & exclusions

Check indemnity caps, consequential-damage waivers, and remedies.

Inconsistent drafting

Review numbering, internal cross-references, defined terms and exhibits.

COMPARISON / TAKEAWAY

Two procurement tracks. One governance standard.

Construction / design

Qualified builder/designer • professional selection • bonds • site safety • change-order discipline • record drawings.

Goods / services

Responsiveness • price and scope • service-level controls • data privacy • renewal/exit management.

Shared procurement controls

Published criteria • cone-of-silence policy • conflict screening • documentation • authorization and signatures.

Shared contract controls

Appropriate defense/indemnity • insurance • audit access • public records • default/cure • appropriations.

Marion opinion; Polk draft; Florida procurement framework

Scenario: the $400,000 change order

A contractor performs added work after a school facilities manager says: “Go ahead—we’ll handle the paperwork.”

Discussion prompt

Is the district bound? Who had authority? What does the agreement require?

Control response

Pause, preserve documentation, evaluate authority and ratification, notify counsel, formalize process.

Best prevention: one designated contract authority and one written change-order process.

Scenario: the surety bond is too small

A district approves a higher guaranteed maximum price. The performance bond still reflects the preliminary estimate.

Question

Who verifies bond sufficiency at each price amendment and before release of funds?

Prevention

A mandatory finance–risk–facilities–counsel checklist and evidence of updated bond.

10-point checklist before the superintendent signs

01 Authority and funding confirmed

02 Applicable procurement record preserved

03 Scope and deliverables complete

04 Price, allowances, escalation fixed

05 Change-order authority defined

06 Insurance endorsements checked

07 Bonds sufficient and recorded

08 Indemnity and remedies negotiated

09 Records/statutory riders included

10 Exit, transition, and closeout secured

Post-award: the monthly contract-health dashboard

COST

Committed + pending changes

TIME

Milestones / critical path

RISK

Claims / insurance / bonds

COMPLIANCE

Records / subs / certifications

Escalate problems while remedies, leverage, records, and personnel are still available.

Recommendation 1 | A documented contract-approval chain

END-USER DEPARTMENT

Confirms business need, scope, deliverables, service levels and performance owner.

PROCUREMENT

Verifies solicitation method, vendor selection, required certifications and procurement record.

LEGAL / RISK MANAGEMENT

Reviews authority, indemnity / defense, insurance, statutory clauses and material exceptions.

FINANCE / OPERATIONS

Confirms funds, pricing, payment controls, operational readiness and ongoing oversight.

Rule: no execution until required sign-offs, delegated authority and exceptions are documented.

Recommendation 2 | One approval checklist; risk-based routing

GATE 1 • INITIATE

Business owner submits scope, term, budget, procurement category and draft documents.

GATE 2 • VALIDATE

Procurement verifies competition/exemption, responsiveness, debarment and approval authority.

GATE 3 • NEGOTIATE

Legal and Risk review deviations; Finance validates exposure, bond and payment terms.

GATE 4 • RELEASE

Approver signs; procurement records final version; project owner gets obligation calendar.

Keep a single approval record: approver • role • date • version • exception • disposition.

Recommendation 3 | Build a controlled library of form contracts

CONSTRUCTION / CMAR

GMP, schedule, change orders, bonds, site safety, quality, inspections, retainage and closeout.

ARCHITECTS / ENGINEERS

CCNA selection, professional standard of care, design deliverables, E&O, and document use.

GOODS / RECURRING SERVICES

Acceptance/testing, warranties, service levels, renewals, price adjustments and termination.

TECHNOLOGY / DATA

Cybersecurity, incident response, student data, access, ownership, export and destruction.

Use approved clause banks and version control; reserve exceptions for documented counsel review.

Recommendation 4 | Publish the proposed agreement with the RFP / ITB

BEFORE ADVERTISEMENT

Have legal, procurement, user department, finance and risk approve the agreement and exhibits.

WITH THE SOLICITATION

Include the proposed agreement, general conditions, insurance exhibit and mandatory forms.

DURING QUESTIONS

Require questions and proposed exceptions before the due date; answer uniformly by addendum.

AFTER SELECTION

Use the published terms as the baseline; document any lawful material revisions and approvals.

Benefit: fewer surprises after award—and less risk of undermining fair competition.

Palm Beach County Schools | Contract embedded in construction RFP

RFP 25C-003H • Palm Beach Central High School

- RFP issued August 5, 2024 for Construction Management at Risk services.
- Section 00510: proposed Owner–Construction Manager contract begins on PDF p. 93.
- The package includes general conditions and a sample GMP amendment (PDF p. 191).
- Article 1.1 makes the published RFP and its contract documents part of the agreement.

Illustrates an established, front-end contractual baseline—not a promise that all negotiations disappear.

Recommendation 5 | Write audit evidence into the contract

AUDIT ACCESS & RETENTION

Define records, subcontractor flow-down, audit rights, electronic formats and survival after termination.

PAYMENT SUPPORT

Require deliverable acceptance, schedule-of-values backup, lien/bond releases and authorized change orders.

RECORDS TURNOVER

Set indexed closeout inventory: as-builts, warranties, approvals, invoice support and subcontracts.

CONTROL OWNER

Assign who certifies records are complete and who tracks insurance, bonds, funding and compliance.

Draft for proof of performance—not merely a promise to perform.

P3 lesson | Control predevelopment before the final deal

Interim ≠ comprehensive

Volusia recitals and §3.3 say the interim agreement does not commit the district to execute the later comprehensive agreement.

Scope and milestones

Draft §3.2 identifies design, permitting, surveys and preconstruction tasks; Exhibit D links compensation to defined milestones.

Payment authorization

Cap aggregate exposure; require written change approval, finance sign-off, acceptable deliverables and proof of earned milestones.

Exit and work product

Preserve termination rights, ownership/use of paid deliverables, open records, transition assistance and completed due diligence.

A 90-day roadmap for district contracting improvements

DAYS 1–30 • INVENTORY

Collect existing forms; identify repeat findings, high-risk clauses and approval gaps.

DAYS 31–60 • STANDARDIZE

Approve form agreements, clause library, routing matrix and solicitation attachments.

DAYS 61–90 • PILOT

Pilot with one construction and one goods/services procurement; train approvers.

ONGOING • MEASURE

Track exceptions, post-award renegotiations, missing records and audit remediation.

Leadership question: Which control will prevent our next audit finding?

Key takeaways

- The lowest initial price is not necessarily the lowest total risk.
- Do not let the award process outrun the executed contract.
- A protective provision works only if someone administers it.
- Preserve approval authority, documentary proof and remedies.
- Build recurring coordination across finance, procurement, risk and counsel.

QUESTIONS & DISCUSSION

Better contracts.
Better controls.
Better schools.

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QUESTIONS?????

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