

GCCSA Procurement Policy

1. Introduction and Purpose.

In keeping with its commitment to maintain the highest standards of conduct and ethics, Gate City Charter School for the Arts (“GCCSA”) has adopted the following Procurement Policy and Procedure to ensure that goods and services purchased by GCCSA are obtained in a cost-effective manner and in compliance with applicable federal and state laws. The acquisition processes described in this Policy apply to all purchases made by (1) GCCSA’s Administrative Department, and (2) GCCSA programs independent of the Administrative Department by employees, directors, officers, or agents (together, “GCCSA Purchasers”). Purchases may also be subject to prior funding source approval and additional requirements imposed by grants or contracts. Program Directors are responsible for reviewing any such additional requirements, bringing them to the attention of the Administrative Department, and ensuring that contractors and vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

2. Code of Conduct.

A. GCCSA Purchasers shall not participate in the selection, award, or administration of a contract if they have a real or apparent conflict of interest. Such a conflict arises when:

i. The GCCSA Purchaser; any immediate family member (spouse, child, parent, parent in-law, sibling, or sibling-in-law); partner; or an organization that employs, or is about to employ, any of the above has a direct or indirect financial or other interest in or will receive a tangible personal benefit from a firm or individual considered for the contract award.

ii. An “organizational conflict of interest” is created because of a relationship GCCSA has with a parent, affiliate, or subsidiary organization that is involved in the transaction such that GCCSA is or appears to be unable to be impartial in conducting a procurement action involving the related organization.

B. GCCSA Purchasers shall not solicit or accept gifts, money, gratuities, favors, or anything of monetary value, except unsolicited items or services of nominal value from vendors, prospective vendors, parties to subcontracts, or any other person or entity that receives, or may receive, compensation for providing goods or performing services for GCCSA.

C. All GCCSA Purchasers shall review and comply with the GCCSA’s procedures for disclosing, reviewing and addressing actual and potential conflicts of interest.

3. Procurement Requirements and Considerations.

All purchases for property and services made using federal funds must be conducted in accordance with all applicable Federal, State and local laws and regulations, the Uniform Guidance, and the District's written policies and procedures.

Procurement of all supplies, materials equipment, and services paid for from Federal funds or school matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, District policies, and procedures.

The Director shall maintain a procurement and contract administration system in accordance with the USDOE requirements (2 CFR 200.317-327) for the administration and management of Federal grants and Federally-funded programs. GCCSA shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall also conform to the provisions of GCCSA's documented general purchase Policy.

GCCSA avoids situations that unnecessarily restrict competition and avoids acquisition of unnecessary or duplicative items. Individuals or organizations that develop or draft specifications, requirements, statements of work, and/or invitations for bids, requests for proposals, or invitations to negotiate, are excluded from competing for such purchases. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis shall be made to lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

Contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. No contract is awarded to a contractor who is suspended or debarred from eligibility for participation in federal assistance programs or activities.

Purchasing records are sufficiently maintained to detail the history of all procurements and must include at least the rationale for the method of procurement, selection of contract type, and contractor selection or rejection; the basis for the contract price; and verification that the contractor is not suspended or debarred.

To foster greater economy and efficiency, GCCSA may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

A. **Competition:** All procurement transactions shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgement. In order to promote objective contractor performance and eliminate unfair competitive advantage, GCCSA shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition

for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

1. unreasonable requirements on firms in order for them to qualify to do business;
2. unnecessary experience and excessive bonding requirements;
3. noncompetitive contracts to consultants that are on retainer contracts;
4. organizational conflicts of interest;
5. specification of only a “brand name” product instead of allowing for an “or equal” product to be offered and describing the performance or other relevant requirements of the procurement; and/or
6. any arbitrary action in the procurement process.

Further, GCCSA does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; (2) GCCSA is contracting for architectural and engineering services, in which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

To the extent that GCCSA uses a pre-qualified list of persons, firms or products to acquire goods and services, the pre-qualified list must include enough qualified sources as to ensure maximum open and free competition. GCCSA allows vendors to apply for consideration to be placed on the list as requested.

B. Solicitation Language: GCCSA shall require that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

C. Procurement Methods: GCCSA shall utilize the following methods of procurement:

1. Micro-purchases: Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000. To the extent practicable, GCCSA shall distribute micro-purchase equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if the Director considers the price to be reasonable. GCCSA maintains evidence of this reasonableness in the records of all purchases made by this method.

2. Small Purchases (Simplified Acquisition): Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property which is acquired above the aggregate dollar micro-purchase threshold and not exceeding the competitive bid threshold of \$250,000. Small purchase procedures require that price or rate quotations shall be obtained from an adequate number of qualified sources.

3. Sealed Bids: Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to \$250,000 and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed \$250,000.

a. In order for sealed bidding to be feasible, the following conditions shall be present:

- i. a complete, adequate, and realistic specification or purchase description is available;
- ii. two (2) or more responsible bidders are willing and able to compete effectively for the business; and
- iii. the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

b. When sealed bids are used, the following requirements apply:

- i. Bids shall be solicited in accordance with the provisions of State law. Bids shall be solicited from an adequate number of qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
- ii. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
- iii. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
- iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost,

and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.

v. The Board reserves the right to reject any and all bids for sound documented reason.

vi. Bid protests shall be handled pursuant to the process set forth in DAF-3.I.

4. Competitive Proposals: Procurement by competitive proposal, normally conducted with more than one source submitting an offer, is generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method.

If this method is used, the following requirements apply:

- a. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- b. Proposals shall be solicited from an adequate number of sources.
- c. GCCSA shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

GCCSA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Noncompetitive Proposals: Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. the item is available only for a single source;
- b. the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

c. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from GCCSA; and/or

d. after solicitation of a number of sources, competition is determined to be inadequate.

D. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms:

GCCSA must take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

E. Contract/Price Analysis: GCCSA shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000 (i.e., the Simplified Acquisition/Small Purchase limit), including contract modifications. (See 2 CFR 200.324). A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, GCCSA shall come to an independent estimate prior to receiving bids or proposals. When performing a cost analysis, GCCSA shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

F. Time and Materials Contracts: GCCSA shall use a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) if

the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to GCCSA is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiently. Therefore, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, GCCSA shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls, and otherwise performs in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

G. Suspension and Debarment: GCCSA will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of GCCSA and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, GCCSA shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The Director shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. GCCSA is subject to and shall abide by the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by GCCSA that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensure. A person so excluded is suspended. (See 2 CFR Part 180 Subpart G).

Debarment is an action taken by the Director to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (See 2 CFR Part 180 Subpart H).

GCCSA shall not subcontract with or award sub-grants to any person or company who is debarred or suspended. For contracts over \$25,000 GCCSA shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management ("SAM"), which maintains a list of such debarred or suspended vendors at www.sam.gov (which replaced the former Excluded Parties List System or EPLS); or collecting a certification from the vendor. (See 2 CFR Part 180 Sub part C).

Documentation that debarment/suspension was queried must be retained for each covered transaction as part of the documentation required under DAF-3, paragraph J. This documentation should include the date(s) queried and copy(ies) of the SAM result report/screen shot, or a copy of the or certification from the vendor. It should be attached to the payment backup and retained for future audit review.

H. Additional Requirements for Procurement Contracts Using Federal Funds:

1. Clause for Remedies Arising from Breach: For any contract using Federal funds under which the contract amount exceeds the upper limit for Simplified Acquisition/Small Purchases (see DAF-3.C.2), the contract must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties. (See 2 CFR 200, Appendix II(A)).

2. Termination clause: For any contract using Federal funds under which the contract amount exceeds \$10,000, it must address GCCSA's authority to terminate the contract for cause and for convenience, including the manner by which termination will be effected and the basis for settlement. (See 2 CFR 200, Appendix II (B)).

3. Anti-pollution clause: For any contract using Federal funds under which the contract amount exceeds \$150,000, the contract must include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act. (See 2 CFR 200, Appendix II (G)).

4. Anti-lobbying clause: For any contract using Federal funds under which the contract exceeds \$100,000, the contract must include an anti-lobbying clause, and require bidders to submit Anti-Lobbying Certification as required under 2 CFR 200, Appendix II (I).

5. Negotiation of profit: For each contract using Federal funds and for which there is no price competition, and for each Federal fund contract in which a cost analysis is performed, the District shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's past performance, and industry profit rates in the surrounding geographical area for similar work. (See 2 CFR 200.324(b)).

6. "Domestic Preference" Requirement: GCCSA must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, to the greatest extent practicable. This requirement applies whether GCCSA is purchasing the products directly or when the products are purchased by third parties on GCCSA's behalf (e.g. subcontractor, food service management companies, etc.). It also generally applies to all purchases, even those below the micro-purchase threshold, unless otherwise stipulated by the Federal awarding agency. See also additional "Buy American" provisions in DAF-4.C regarding food service procurement.

7. Huawei Ban: GCCSA may not use Federal funds to procure, obtain, or enter into or renew a contract to procure or obtain equipment, services, or systems which substantially use telecommunications equipment or services produced by Huawei Technologies Company or ZTE Corporation, or any of their subsidiaries.

I. Bid Protest: GCCSA maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information

regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the Director within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Director shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

J. Maintenance of Procurement Records: GCCSA shall maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and records regarding debarment/suspension queries or actions. Such records shall be retained consistent with District Policy EHB and District Administrative Procedures EHB-R .

DAF-4 PROCUREMENT – ADDITIONAL PROVISIONS PERTINENT TO FOOD SERVICE PROGRAM

The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: (7 CFR Sec. 210.21, 215.14a, 220.16)

A. Mandatory Contract Clauses: The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

1. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
2. The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or
3. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records

have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

4. The contractor's determination of its allowable costs must be made in compliance with the applicable departmental and program regulations and Office of Management and Budget cost circulars;

5. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the state agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

6. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

7. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the state agency, or the department.

B. Contracts with Food Service Management Companies: Procedures for selecting and contracting with a food service management company shall comply with guidance provided by the NHDOE, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts.

C. "Buy American" Requirement: NOTE - See DAF-3.H.6 regarding "domestic preference" requirements for procurements other than for food service.

Under the "Buy American" provision of the National School Lunch Act (the "NSLA"), school food authorities (SFAs) are required to purchase, to the maximum extent practicable, domestic commodity or product. As an SFA, GCCSA is required to comply with the "Buy American" procurement standards set forth in 7 CFR Part 210.21(d) when purchasing commercial food products served in the school meals programs. This requirement applies whether GCCSA is purchasing the products directly or when the products are purchased by third parties on GCCSA's behalf (e.g., food service management companies, group purchasing cooperatives, shared purchasing, etc.).

Under the NSLA, "domestic commodity or product" is defined as an agricultural commodity or product that is produced or processed in the United States using "substantial" agricultural commodities that are produced in the United States. For purposes of the act, "substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowable under this provision as territories of the United States.

Standard Methods of Procurement

Type	Threshold	Method
Micro-purchase	< \$10,000	Price must be reasonable Periodically distribute purchases equitably among qualified vendors
Small Purchase	\$10,000.01 < \$250,000	Obtain written price or rate quotations from at least two qualified vendors Example documentation: catalog price, online price, email or written quote
Sealed Bids	> \$250,000	<p><i>Pre-Solicitation</i></p> <ul style="list-style-type: none"> ● Conduct cost or price analysis <p><i>Solicitation</i></p> <ul style="list-style-type: none"> ● Publicly advertise invitation for bids ● Include specifications or information sufficient for bidders to respond ● Provide adequate time to respond ● Solicit a sufficient number of bids <p><i>Bid Review/Selection</i></p> <ul style="list-style-type: none"> ● Open bids at time and place set forth in invite ● Award to lowest responsive and responsible bidder ● May reject bids for sound, documented reason ● Award written, fixed price contract
Competitive Proposals	> \$250,000	<p><i>Pre-Solicitation -</i></p> <ul style="list-style-type: none"> ● Conduct cost or price analysis <p><i>Solicitation</i></p> <ul style="list-style-type: none"> ● Publicly advertise request for proposals ● Identifies all evaluation factors and their relative importance ● Solicit bids from at least two vendors <p><i>Proposal Review/Selection</i></p> <ul style="list-style-type: none"> ● Consider all proposals to maximum extent practical ● Use written method to conduct technical evaluations of the proposals ● Award contract to bidder with most advantageous proposal, considering price and other factors ● Award fixed price or cost-reimbursement contract