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## 703 Procurement Policy

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### I. PURPOSE

The purpose of this policy is to establish procedures for carrying out purchasing, procurement, and contracting functions of the charter school, to provide efficient use of public monies, and to ensure compliance with all applicable state and federal laws, including Minn. Stat. § 124E.26, Subd. 4, with respect to procurement using state and federal funds.

### II. GENERAL STATEMENT OF POLICY

It is the policy of the Charter School Board to utilize resources to the greatest benefit of students' education and to establish procedures for all expenditures made with charter school funds to ensure efficiency, economy, legal compliance, internal control, ethical behavior by all staff members, and fairness in dealing with vendors.

### III. CONFLICT OF INTEREST

Notwithstanding anything in this policy to the contrary, the Charter School shall not enter into any contract or agreement that does not align with the provisions of this Section III.

#### A. Minn. Stat. § 124E.14

No member of the Board of Directors, employee, officer, or agent of the charter school shall participate in selecting, awarding, or administering a contract if a conflict of interest exists. A conflict exists when:

1. the board member, employee, officer, or agent;
2. an immediate family member of the board member, employee, officer, or agent;
3. the partner of the board member, employee, officer, or agent; or
4. an organization that employs, or is about to employ, any individual described above

has a financial or other interest in the entity with which the charter school is contracting. A violation of this prohibition renders the contract void. This prohibition does not apply to compensation paid to a teacher employed by the charter school or a teacher providing instructional services through a cooperative formed under Chapter 308A when the teacher also serves on the charter school board.

B. Minn. Stat. § 124E.07, Subd. 3(e)

A contractor providing facilities, goods, or services to a charter school must not serve on the board of directors. An individual is also prohibited from serving on the board if:

1. the individual, an immediate family member, or the individual's partner is a full or partial owner, principal, or independent contractor with an entity that contracts with the school; or
2. an immediate family member is an employee of the school.

C. Minn. Stat. § 124E.10, Subd. 2(a)

The charter school must disclose to the commissioner any potential contract, lease, or purchase of service involving the school's authorizer, board members, employees, contractors, volunteers, or agents. Such contracts must be approved through an open bidding process, be separate from the charter contract, and be fully documented.

An authorizer must not enter into a contract to provide management and financial services to a school it authorizes, unless the school documents receiving at least two competitive bids. This paragraph does not apply to a charter school or an authorizer when contracting for legal services from a lawyer that provides professional services to the charter school or authorizer and who is subject to the Minnesota Rules of Professional Conduct.

## **IV. GENERAL PROCUREMENT PROVISIONS**

A. Authorization

The Charter School or chief administrator (the "Director"), in conjunction with the Board of Directors (the "Board"), is responsible for overseeing the procurement process, including establishment of procedures, internal controls, quality assurance, methods of greatest economy, and compliance with all applicable laws. To be valid, all contracts must be approved by the Board.

Individual school employees may incur expenditures without prior Board approval when consistent with the Board-approved budget, subject to the Board's authority to disapprove any expenditure:

1. Any employee may purchase goods (but not services) under \$1,000. The school may issue credit or debit cards to individual employees for these expenditures.
2. The following positions (each, a "Responsible Party") may execute purchases or procurements up to the amounts listed below:
  - (a) Executive Director: Up to \$100,000
  - (b) Assistant Directors: Up to \$100,000

**B. Scope**

Purchasing procedures apply to procurement of equipment, supplies, and services, including services provided by vendors and by individuals engaged as independent contractors (Form 1099). These procedures do not apply to hiring employees of the charter school (Form W-2).

**C. Documentation**

The Director shall design and implement procedures to create and preserve documentation demonstrating that all procurement activities comply with this policy. Documentation shall be provided to the Board upon request.

**D. Economy**

Good business practice dictates that products and services be purchased for the lowest price consistent with acceptable quality. Lower prices may be achieved through research, negotiation, bulk purchasing, competitive quotation, or formal bidding.

**E. Best Value**

The school shall endeavor in all procurement decisions to obtain the best value, considering price, quality, quantity, and other relevant factors, including but not limited to:

1. vendor or contractor knowledge and expertise;
2. quality and timeliness of past performance;
3. customer satisfaction history;
4. ability to control costs and minimize overruns;
5. ability to minimize change orders;
6. technical capabilities and qualifications of key personnel; and
7. ability to assess and mitigate risk.

#### **F. Competitive Procurement Process**

As used in this policy, “Competitive Procurement Process” means procurement by sealed bids or procurement by proposals. When utilizing a Competitive Procurement Process, the Director or Responsible Party shall:

1. post a request for bids or proposals on a public portion of the charter school’s website or other public posting mechanism; and
2. solicit bids or proposals from at least two qualified vendors or contractors, providing a reasonable response period.

If fewer than two responses are received, reasonable market research or price verification shall be documented. When only a single vendor is available, the Director shall negotiate the most favorable terms reasonably obtainable.

#### **G. Procurement by Sealed Bids**

Procurement by sealed bids is preferred for construction services and results in a firm fixed-price contract awarded to the lowest responsive and responsible bidder. Sealed bids are appropriate when:

1. a complete and realistic specification is available;
2. two or more responsible bidders are able to compete; and
3. the contract can be awarded primarily on price.
4. 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 must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that the discounts are usually taken advantage of;
5. any or all bids may be rejected if there is a sound documented reason; and
6. in order for a sealed bid to be feasible, the following conditions must be present:
  - (a) a complete, adequate, and realistic specification or purchase description is available;
  - (b) two or more responsible bidders are willing and able to compete effectively for the business; and
  - (c) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the price.

All bids shall be publicly opened at the time and place stated in the invitation for bids, and the school shall document any rejected bids.

#### **H. Procurement by Proposals**

Procurement by proposals may be used when sealed bids are not appropriate and may result in a fixed-price or cost-reimbursement contract. Requests for proposals must include evaluation criteria and relative importance and be publicly noticed. Contracts shall be awarded to the proposal most advantageous to the school considering price and other factors.

1. requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
2. the charter school must have a written method for conducting technical evaluations of the proposals received and for making selections; and
3. contracts must be awarded to the responsible offeror whose proposal is most advantageous to the charter school, with price and other factors considered.

## **V. PROCUREMENT OF GOODS USING STATE FUNDS**

The school shall not divide procurements to avoid thresholds. All procurements shall seek best value.

**A. Procurements Less Than \$25,000**

The Director or Responsible Party shall implement procurements within this limit and, when practicable, obtain competitive pricing or document price reasonableness.

**B. Procurements Between \$25,000 and \$175,000**

Prior to procurement, the Director or Responsible Party shall either:

1. conduct a Competitive Procurement Process; or
2. obtain and document quotations from at least two vendors, or document market comparison or negotiation when only one vendor is available.

**C. Procurements Above \$175,000**

Procurements above \$175,000 require completion of a Competitive Procurement Process.

\*All procurements over \$5000 will require board approval.

## **VI. PROCUREMENT OF SERVICES USING STATE FUNDS**

The following will govern procurement of services using state funds. The school shall not break up any single procurement into smaller component procurements to avoid the threshold in this Section VI. In all cases, the school shall endeavor to complete each procurement in a manner that obtains the best value for the charter school, taking into account the factors enumerated in Section IV, subd. 5, above.

In determining the amount of a contract for services, the total cost of the contract under its stated term shall apply. For contracts that have an annual price but a multi-year term, or include an automatic annual renewal (or so-called "evergreen") provision, the total of all years shall apply. Under no circumstances will a charter school enter into a multi-year or automatic annual

renewal agreement with an outside term greater than five (5) years; provided that the foregoing limit will not apply to a lease for school facilities or an agreement that the charter school may terminate at will at any time without cause.

**A. Procurement Less than \$25,000.**

The director (or, as applicable, the responsible party) shall be responsible for implementing procurement within these limits. The director (or, as applicable, the responsible party) shall, when reasonably practicable, use processes to endeavor to obtain "best value" prices or rates and shall maintain records documenting efforts to obtain "best value".

The foregoing shall include contracts for services where the total cost of services cannot be determined because the cost is dependent upon periodic or "as-needed" requests for services by the charter school, at its discretion, and the following are true: (a) the contract does not require an advance payment or deposit, and (b) the contract or the services may be terminated without cause at any time by the charter school.

**B. Procurement between \$25,000 and \$175,000.**

Prior to entering into an agreement to procure a service with a value of more than \$25,000 but not more than \$175,000 or more, the director (or, as applicable, the responsible party) shall (a) implement a Competitive Procurement Process or (b) obtain bids or quotations from at least two vendors or contractors, if market conditions for acquiring a particular service are such that vendors or contractors will not respond to a request for bids or quotations, shall otherwise endeavor to compare the prices of multiple vendors or contractors, or negotiate the price from the single available vendor, in all cases documenting efforts to obtain best value for the procurement, taking into account the factors enumerated in Section IV, subd. 5, above.

**C. Procurements Above \$175,000.**

Prior to any procurement above \$175,000, the charter school shall implement and complete a Competitive Procurement Process.

## **VII. USE OF FEDERAL FUNDS**

Procurement using federal funds shall comply with 2 C.F.R. Part 200.

**A. Procurement Methods**

1. Micro-purchases: Aggregate amount does not exceed \$10,000, or up to \$50,000 with annual self-certification and documentation. Price reasonableness must be documented.
2. Simplified Acquisitions: Above the micro-purchase threshold and below \$250,000. Price or rate quotations must be obtained from an adequate number of qualified sources.

3. Formal Procurement: Required above the simplified acquisition threshold and conducted through sealed bids or competitive proposals with public notice.

## B. Noncompetitive Procurement

1. Sealed Bids.

Preferred for procuring construction services. Bids are publicly solicited through an invitation and a firm fixed-priced contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price.

- a. Sealed bids are appropriate when:
    - i. A complete, adequate and realistic specification or purchase description is available;
    - ii. Two or more responsible bidders have been identified as 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 price
  - b. If sealed bids are used, the following requirements apply:
    - i. Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate;
    - ii. The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;
    - iii. All bids will be opened at the time and place prescribed in the invitation for bids.
    - iv. A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the

low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

v. The recipient or subrecipient must document and provide a justification for all bids it rejects.

## 2. Proposals.

Used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

- a. Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.
- b. The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.
- c. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and;
- d. The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

## 3. Noncompetitive Procurement.

There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances applies:

- a. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
- b. The procurement transaction can only be fulfilled by a single source;
- c. The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

- d. The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or
- e. After soliciting several sources, competition is determined inadequate.

#### **C. Contracting with Small and Minority Firms**

The school shall take affirmative steps to ensure the use of small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms in accordance with 2 C.F.R. § 200.321.

#### **D. Cost and Price Analysis and Contract Monitoring**

The school shall perform cost or price analysis as required, negotiate profit where applicable, prohibit cost-plus-percentage contracts, and monitor contractor performance to ensure compliance with federal requirements.

### **VIII. RECORDS TO BE MAINTAINED**

- A. **Public Data.** All records of charter school expenditures are considered "public data" under Minn. Stat. Chapter 13 (the "Minnesota Government Data Practices Act" or the "Act"). The charter school will create, maintain, and preserve such records in accordance with the Act.
- B. **Record Retention Requirements for Federal Awards.** The recipient and subrecipient must retain all Federal award records for three years from the date of submission of their final financial report. For awards that are renewed quarterly or annually, the recipient and subrecipient must retain records for three years from the date of submission of their quarterly or annual financial report, respectively. Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through entities may not impose any other record retention requirements except for the following:
  - 1. The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken if any litigation, claim, or audit is started before the expiration of the three-year period.
  - 2. When the recipient or subrecipient is notified in writing by the Federal agency or pass-through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.
  - 3. The records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition.

4. The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal agency.
5. The records for program income earned after the period of performance must be retained for three years from the end of the recipient's or subrecipient's fiscal year in which the program income is earned. This only applies if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of the Federal award.
6. The records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) must be retained according to the applicable option below:
  - a. If submitted for negotiation. When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the date of submission.
  - b. If not submitted for negotiation. When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.