

Adopted: 03-16-2015

Revised: _____

ROCHESTER BEACON ACADEMY- RBA

POLICY No. 315

PROCUREMENT POLICY

I. PURPOSE

The purpose of this policy is to establish the authority to approve purchases on behalf of the Board of Directors.

II. GENERAL STATEMENT OF POLICY

- A.** The Executive Director, designee or Board of Director Treasurer shall supervise the purchasing of materials, supplies, equipment, furnishings, and services.
- B.** Absent a specific authorization of the Board of Directors to the contrary, only the Board of Directors may enter into contracts for the purchase of materials, supplies, equipment, furnishings or services.
- C.** Purchases of goods and services on behalf of the School that meet certain dollar amounts are subject to a bidding process. All purchases must follow Federal Charter School Program

III. RESPONSIBILITY

The Executive Director is authorized to promulgate procedures to implement this policy.

IV. PURCHASING

All purchases must follow the Federal Charter School Program Procurement and contracting rules as set by MDE found in Appendix A

APPENDIX A

FEDERAL CHARTER SCHOOLS PROGRAM (CSP) PROCUREMENT AND CONTRACTING

This handout outlines the requirements when using federal funds to purchase materials, products, or services under Minnesota's federal Charter Schools Program (CSP). Whether you are purchasing occasional office supplies or consultant services, the requirements governing the purchasing process are designed to ensure that CSP subgrantees:

- Follow a **free and open competitive process** in securing those products or services.
- Properly **document** your purchasing activities and decisions.
- Observe the special **rules for particular kinds of purchases** typically used under the federal Charter School Program.

The federal requirements for these administrative areas are found in the Code of Federal Regulations (CFR) at **34 CFR 80.36 for governmental subrecipients** and **34 CFR 74.40-48 for subrecipients that are nonprofit organizations (e.g. CSP subgrantees)**. These regulations are found at www.ed.gov/policy/fund/reg.

By observing the basic rules, you'll also find your purchasing decisions can be more efficient. For example, if you set up a standardized purchasing system for securing price quotations and preparing purchase orders, you won't have to reinvent the wheel every time you want to buy materials and supplies. These efficiencies in turn can help make your limited purchasing budgets go much farther. You'll also have the satisfaction of knowing you paid a fair price for every purchase.

In addition, when you use federal funds to purchase materials or services, it is not sufficient simply to *state* that you got the lowest possible price and followed the rules. You have to be able to *prove it*. Therefore, to avoid disallowed costs and/or recapture of payments, it is necessary that you document the background, need, and the details of every purchasing decision, whether it involves buying a copier or buying reams of paper. At first, this may appear burdensome, but full documentation can only help you avoid serious problems and a lot of extra work in the long run.

THE THREE PERMITTED PROCUREMENT METHODS

Depending on the scarcity of the item or service desired, and the size of the purchase, different methods of procurement are available for use by CSP subgrantees under federal regulations.

- **Small purchases** (34 CFR 80.36(d)(1)):

- May be used for procurement of **\$100,000 or less** in the aggregate;
 - Small purchases are usually made through the use of purchase orders for purchases of goods and written contracts for purchases of consultant vendor services;
 - Proposals must be solicited from an adequate number of qualified sources (three to five) consistent with the nature and requirements of the procurement;
 - Competition is sought through oral or written price quotations; and ➤ For procurement of goods, catalogs or price lists may also be used.
- **Competitive Proposals** (34 CFR 80.36(d)(3)):
 - A procurement in excess of the small purchase threshold (**more than \$100,000**) may not be inappropriately broken up into smaller components solely to qualify for the less complicated procedures followed under the “small purchases” approach.
 - Contact Cecilia Cannon at (651) 582-8449 for guidance on competitive proposal procedures.
- **Noncompetitive proposals/sole source procurement** (34 CFR Part 80.36(d) (4))
 Noncompetitive negotiations may be utilized only under **very limited circumstances**. The CSP subgrantee must show that another method of procurement was infeasible because:
 - The item or service was only available from a single source;
 - A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
 - Competition was determined to be inadequate after receiving proposals from numerous sources.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN’S BUSINESS ENTERPRISES (34 CFR Part 80.36 (e))

Grantees and subgrantees will take all necessary affirmative steps to assure that small and minority firms and women’s business enterprises are used when possible. Affirmative steps include:

- Placing qualified small and minority business and women’s business enterprises on solicitation lists;
- Assuring that small and minority business and women’s business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
- Establishing delivery schedules, where the requirements permits, which encourage participation by small and minority business and women’s’ business enterprises; and

- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

DEBARRED AND SUSPENDED PARTIES (24CFR Sec. 80.35)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in

Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

The EPLS database located at <https://explore.data.gov/> is part of the federal System for Awards Management (SAM) as required by FAR Subpart 9.4 and Executive Orders 12549 and 12689.

- Prior to contract award financed in whole or part with federal CSP grant funds, CSP grantees **should use the EPLS database to ensure proposed contractors are not debarred or suspended or** otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549.
- In order to document compliance with this requirement, CSP grantees should file with each CSP financed contract:
 - Results of EPLS search; and
 - Certification as part of contract from the contractors that they have not been debarred or suspended from participation in federal programs.

THE ADMINISTRATIVE PROCESS

Your administrative procedures must include a *system of contract administration* that includes the following:

A. WRITTEN PROCUREMENT PROCEDURES

For procurements within the small purchase threshold (**\$100,000**) your written procurement procedures must:

- Ensure that the purchase of unnecessary or duplicate items is avoided; and

- Make sure a cost or price analysis is performed for every proposed procurement action, including contract modifications, and **documentation to that effect is maintained in the procurement file.**
 - Check with other schools and charter school resource organizations for current best procurement methods, sources for goods, products or services, and current cost or price trends.

B. SELECTION PROCEDURES

Your selection procedures must ensure that:

- Awards are to be made to the bidder/offeror whose offer is responsive to the solicitation and is most advantageous to the CSP subgrantee, price and other factors considered;
- Any and all offers may be rejected when it is in the CSP subgrantee's interest to do so;
- The CSP subgrantee must ensure that the award is only made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement;
- Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources; and
 - Check references, contact current and prior clients, check resource organization web sites, etc.
- There are **protest procedures in place** to handle and resolve disputes relating to procurement and in all instances report such disputes to the State (34 CFR 80.36(b)(12)).

C. CONTRACT ADMINISTRATION PROCEDURES

Your contract administration procedures must:

- Insure all purchase orders (and contracts) are signed by the authorized official(s) of the CSP subgrantee;
- Determine the adequacy of contractor performance (34 CFR 80.36(b)(2)); and
 - Establish reasonable payment schedules defining amount and timing of funds to be paid (we recommend payment *after* services rendered).
 - Insure items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
- Provide that timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.

Written contracts with vendors must include the following:

- In addition to the contract certification provision under **DEBARRED AND SUSPENDED PARTIES** above, and in accordance with 34CFR 80.36(i) and 34CFR 74.48(e), written contracts with vendors must include the following:

- For CSP financed contracts (which may only be non-construction), contracts must include provisions found in 34CFR 80.36(i):
 - i. Paragraph (7) Notice of awarding agency requirements and regulations pertaining to reporting;
 - ii. Paragraph (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
 - iii. Paragraph (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data;
 - iv. Paragraph (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
 - v. Paragraph (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed; and
 - vi. Paragraph (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94 163, 89 Stat. 871).
- For CSP financed non-construction contracts of \$10,000 or more, contracts must include, in addition to above, provision found in paragraph (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.
- For CSP financed non-construction contracts of \$100,000 or more, contracts must include in addition to above, the following provisions found in:
 - i. Paragraph (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate; and
 - ii. Paragraph (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and
 - iii. Appendix A to Part 74-Contract Provisions, paragraph (8) Byrd Anti-Lobbying Amendment (31U.S. C. 1332)

RECORDS TO BE MAINTAINED

According to 34 CFR 80.36(b) (9), a CSP subgrantee must maintain *records to detail the significant history of a procurement*. These records include, but are not limited to documentation on:

- The rationale for selecting the *method* of procurement used;
- The rationale for selecting/rejecting the *contractor*;

- The rationale for selecting the *type* of contract;
- The basis for the *cost or price* of a contract;
- The receipt of an adequate number of price or rate quotations from qualified sources; and
- Justification for lack of competition when competitive bids or offers are not obtained.