PG-5.510: PUCHASING AND CONTRACTING

Sec. 1. PURPOSE OF POLICY.

Through this policy, the Board of Directors (hereafter, the "Board") of **Midland Academy Charter** doing business as **Midland Academy Charter** (hereafter, the "School") shall address the legal requirements, as applicable, promulgated at:

(a) Texas Business Organizations Code ("Tex. Bus. Org. Code") Sections 3.101, 22.201, and 22.221;
(b) Texas Education Code ("Tex. Ed. Code") Sections 12.104(b)(1), 12.1053(b)(2), 12.107(a), 12.115(a)(2) 12.121 and Chapter 44, Subchapter B ("Chapter 44");
(c) Texas Government Code ("Tex. Gov't. Code") Chapter 2254, Subchapter A and Chapter 2269 ("Chapter 2269");
(d) Texas Administrative Code, Title 19 ("19 TAC"), Chapter 100, notably §§ 100.006, 100.1033, 100.1047(b) and 100.1101;
(e) Code of Federal Regulations, Title 2, Part 200 ("2 CFR 200"); and
(f) Financial Accountability System Resource Guide ("FASRG"); and
(g) *Standards for Internal Control in the Federal Government*.

Additionally, through this policy, the Board shall address best practices adopted by public schools.

Sec. 2. APPLICABILITY OF POLICY.

This policy pertains to the purchase of any and all goods and services from local, state and federal funds.

Sec. 3. AUTHORITY OVER FISCAL MATTERS.

Sec. 3.1. In accordance with state law, the Board has primary and ultimate authority over fiscal matters. If a matter or decision-making process is not addressed in this or other duly adopted policies of the Board, authority rests with the Board. In the event of a conflict between this policy and any other Board policy, such conflict shall be brought to the Board for resolution. Refer to the Board's Policy relating to its Authority Over Fiscal Matters (the "Controlling Policy") for requirements applicable to this policy.

Sec. 3.2. The Delegate, as defined in Sec. 3.2 of the Controlling Policy, shall report to the Board any business arrangement or transaction with an individual that is an officer, as defined in Sec. 5 of the Controlling Policy, and any conflicted,[1] interested[2] or related[3] party, as defined in other

[1] Tex. Ed. Code §12.1054; 19 TAC §§ 100.1131 through 100.1135
[2] 19 TAC §100.1047(f)
[3] Tex. Ed. Code §12.1166

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Board policy or applicable law. The School and its officers may not enter into a business arrangement or conduct a transaction in such a manner so as to circumvent this requirement.

Sec. 3.3. As established in Sec. 4 of the Controlling Policy, where the Delegate is authorized to confer authority to a designee (as denoted by the phrase "or designee"), the Delegate may confer such authority to a single designee.

Sec. 4. DEFINITIONS.

Sec. 4.1. "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.[4]

Sec. 4.2. "Micro-purchase threshold" means the dollar amount set at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the Delegate and approved by the Texas Education Agency under an administrative procedure adopted pursuant to Sec. 6.3.1.5 and Sec. 11 of this policy.[5]

Sec. 4.3. "Officer" has the meaning set forth in Sec. 5 of the Controlling Policy.[6]

Sec. 4.4. "Non-professional services" means any service not specifically identified as a professional service under Sec. 4.6 of this policy.

Sec. 4.5. "Personal property" means an interest in tangible and intangible property other than real property, including:

(a) furniture, equipment, supplies, and other goods;
(b) computer hardware and software;
(c) contract rights, intellectual property such as patents, and other intangible property;
(d) cash, currency, funds, bank accounts, securities, and other investment instruments;
(e) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and
(f) any other form of personal property recognized by Texas law, such as vehicles.[7]

Sec. 4.6. "Professional services" means services:

(a) Within the scope of the practice, as defined by state law, of:

    (1) Accounting;
    (2) Architecture;
    (3) Landscape architecture;

[4] Tex. Ed. Code §44.032(a)(1)
[5] 2 CFR §§ 200.1 and 200.320(a)(1)(iv)
[6] 19 TAC §100.1001(16)-(20)
[7] 19 TAC §100.1001(6), 2 CFR §200.1

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(4) Land surveying;
(5) Medicine;
(6) Optometry;
(7) Professional engineering;
(8) Real estate appraising; or
(9) Professional nursing; or

(b) Provided in connection with the professional employment or practice of a person who is licensed or registered as:

(1) A certified public accountant;
(2) An architect;
(3) A landscape architect;
(4) A land surveyor;
(5) A physician, including a surgeon;
(6) An optometrist;
(7) A professional engineer;
(8) A state certified or state licensed real estate appraiser; or
(9) A registered nurse or

(c) Provided by a person lawfully engaged in interior design.[8]

Sec. 4.7. "Public works" means the construction, alteration, renovation, or repair of a public building, structure, road, highway, or other improvement or addition to real property.[9]

Sec. 4.8. "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.[10]

Sec. 4.9. "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.[11]

Sec. 4.10. "Services" means professional and non-professional services.

Sec. 4.11. "Simplified acquisition threshold" means $50,000 for funds administered by the Texas Department of Agriculture and for public works contracts and $250,000 for state or other federal funds.[12]

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8 Tex. Gov't. Code §2254.002(2)
9 Tex. Gov't. Code §2269.001(6); Tex. Local Gov't. Code §271.024
10 Tex. Ed. Code §44.032(a)(2)
11 Tex. Ed. Code §44.032(a)(3)
12 Administrator's Reference Manual Section 17; 2 CFR §200.1

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Sec. 5. GENERAL REQUIREMENTS APPLICABLE TO ALL PURCHASES.

The policy requirements established under this Sec. 5 shall apply to all purchases of goods and services regardless of fund source used.

Sec. 5.1. AUTHORITY TO PROCURE GOODS AND SERVICES.[13]

Sec. 5.1.1. The Delegate or designee may approve the procurement of goods and services conforming with this policy and applicable law up to the amounts authorized by the Board in the Adopted Budget,[14] as amended.

Sec. 5.1.2. The Delegate or designee may not approve the procurement of goods and services that result in an expenditure of funds in excess of the item(s) appropriated in the Adopted Budget, as amended.

Sec. 5.1.3. The Delegate or designee may not approve a procurement of goods and services failing to conform with this policy and applicable law.

Sec. 5.2. BENEFIT OF THE STUDENTS.[15]

The School shall only acquire goods and services for the benefit of the School's students and that provide best value to the students.

Sec. 5.3. BOARD APPROVAL REQUIRED.[16]

Prior to executing any contract for the procurement of goods and services, the Board shall approve the contract.

Sec. 5.4. CONFLICTED,[17] INTERESTED[18] AND RELATED[19] PARTY TRANSACTIONS.

Sec. 5.4.1. The Board shall approve or disapprove any business arrangement or transaction with an individual that is an officer and any conflicted, interested or related party, as defined in other Board policy or applicable law.

Sec. 5.4.2. The School may not enter into a business arrangement or conduct a transaction in such a manner so as to circumvent this requirement.

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13 Tex. Ed. Code §44.052
14 *See* Board Policy relating to Authorization for the Obligation and Expenditure of Funds, Sec. 3.8.
15 Tex. Ed. Code §12.107(a); 19 TAC §100.1043(a)
16 *See* Controlling Policy, Sec. 3.1(j) and 6.2.
17 Tex. Ed. Code §12.1054; 19 TAC §§ 100.1131 through 100.1135
18 19 TAC §100.1047(f)
19 Tex. Ed. Code §12.1166

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Sec. 5.5. CONTRACT REQUIRED.[20]

The Delegate or designee shall only approve the procurement of goods and services with a cost or value exceeding the Simplified Acquisition Threshold through a fully executed contract or other written legal agreement signed by all parties that protects the School's interests in the underlying business arrangement and transaction.

Sec. 5.6. CORPORATE CREDIT ACCOUNTS.[21]

See Board Policy relating to Corporate Credit Accounts.

Sec. 5.6.1. Purchasing Thresholds. Employees authorized to use the corporate credit account(s) may do so pursuant to the following thresholds.

(a) The Superintendent, Chief Financial Officer, Chief Academic Officer, Chief Information Officer, General Counsel and assistant superintendents may purchase goods and/or services through the corporate credit account(s) for individual transactions not exceeding the micro-purchase threshold.

(b) Campus principals and other employees may purchase goods and/or services through the corporate credit account(s) for individual transactions not exceeding $2,500.00.

Sec. 5.6.2. Method of Procurement. Employees authorized to use the corporate credit account(s) to purchase goods and services are required to and shall be responsible for procuring goods and services pursuant to the procurement methods identified in this policy. *See* Board Policy relating to Corporate Credit Accounts, Sec. 8.10.

Sec. 5.6.3. Required Records. Employees authorized to use the corporate credit account(s) shall document each purchase through the corporate credit account(s). *See* Board Policy relating to Corporate Credit Accounts, Sec. 12, and Travel, Sec. 16 and 17.

Sec. 5.6.4. Failure to Document. If an employee fails to provide the required records pursuant to Sec. 5.6.3 of this policy, the employee shall be financially liable for the costs charged to the corporate card.

Sec. 5.7. EMPLOYEE PURCHASES PROHIBITED.[22]

School employees are prohibited from conducting any transaction that results in the purchase of goods and services and that obligates School funds and otherwise results in the expenditure of School funds except as provided in this and other Board policy. If a School employee fails to

[20] Tex. Ed. Code §12.115(a)(2); 2 CFR §200.303
[21] Tex. Ed. Code §12.115(a)(2); 19 TAC §100.1043(a)(2); 2 CFR §§ 200.302(b)(4) and 200.303
[22] Ibid.

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follow this policy to purchase goods and services, the employee shall be financially responsible for any expenses incurred regardless of the benefit to the School and its students.

Sec. 5.8. OFFICER RESPONSIBLE.

Each School officer shall be responsible for any and all expenses from the budget approved for their department or campus. Each officer (or designee) must work with the Delegate or designee to purchase goods and services pursuant to this policy. Alternatively, the officer may use the corporate credit account(s) to purchase goods and services up to the limits established in this policy.

Sec. 5.9. PURCHASE ORDER SYSTEM.[23]

The Delegate or designee shall establish and maintain a purchase order system. The purchase order shall serve as the formal method for procuring goods and/or services from a vendor and shall have the effect of obligating the School to remit payment to the vendor upon receipt of the goods and/or services purchased and of the related invoice.

Sec. 5.9.1. Required Approvals. Only the Delegate or designee shall be authorized to approve purchase orders.

Sec. 5.9.2. Issuance Prohibited. School employees may not issue a purchase order to a vendor unless it has been approved by the Delegate or designee.

Sec. 5.9.3. Failure to Properly Issue. If a School employee issues a purchase order to a vendor without the required approvals established in Subsection 5.9.1 of this policy, the employee shall be financially responsible for the purchase.

Sec. 5.10. QUALIFIED VENDORS.[24]

Sec. 5.10.1. School officers and employees shall only procure goods and/or services from qualified vendors.

Sec. 5.10.2. For purposes of this policy, a qualified vendor is a responsible contractor possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

Sec. 5.10.3. To provide fair and open competition for each procurement, School officers and employees shall consider the following matters in determining if a vendor is qualified:

(a) Contractor integrity.

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[23] Texas Business and Commerce Code §2.206(a)(2)
[24] Tex. Ed. Code §44.031(b); 2 CFR §200.318(h)

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(b) Extent to which the goods or services meet the School's needs.

(c) Financial and technical resources.

(d) Quality of the vendor's goods or services.

(e) Record of past performance, including:

(1) Reputation of the vendor and of the vendor's goods or services.

(2) Vendor's past relationship with the School and other public schools.

Sec. 5.10.4. The Delegate or designee may maintain a list of qualified vendors to facilitate the procurement process.

Sec. 5.11. RECEIPT OF GOODS AND SERVICES.[25]

The Delegate or designee shall establish and maintain a system for documenting the receipt of goods and services from a vendor including the condition and number of items received, the satisfactory performance of services rendered, and any dispute with the condition and number of items or performance of services.

Sec. 5.12. SEGREGATION OF DUTIES; CHECKS AND BALANCES.[26]

The Delegate shall ensure an appropriate segregation of duties between the following functions:

(a) Preparation of purchase requisitions and purchase orders;

(b) Solicitation of quotes or preparation of requests for bids, proposals or qualifications;

(c) Receipt of personal property and/or services and preparation of receiving report attesting to receipt of purchased property;

(d) Receipt of invoices and reconciliation of invoices to receiving reports and purchase orders;

(e) Preparation of payment requests;

(f) Accounting for purchases; and

(g) Approval for all of the above.

[25] Tex. Ed. Code §12.115(a)(2); 2 CFR §§ 200.303 and 200.318(b)
[26] Tex. Ed. Code §12.115(a)(2); 2 CFR §§ 200.303 and 200.328

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Sec. 5.13. SEPARATE, SEQUENTIAL OR COMPONENT PURCHASES PROHIBITED.[27]

The Delegate or designee and School employees are prohibited from making or authorizing separate, sequential, or component purchases to avoid the requirements of this policy.

Sec. 5.14. SIGNATURE AUTHORITY.[28]

Sec. 5.14.1. Only the Delegate or designee may execute contracts or other written legal agreements that obligate the School to disburse funds for the receipt of goods and/or services with a cost or value of less than the simplified acquisition threshold.

Sec. 5.14.2. Only the Board's designee(s) may execute a contract for goods and/or services with a cost or value exceeding the simplified acquisition threshold.

Sec. 6. AUTHORIZED PROCUREMENT METHODS.

Except as provided in Sec. 7 of this policy for professional services and Sec. 8 of this policy for public works, School officers and employees shall procure goods and services as set forth in this Sec. 6.

Sec. 6.1. PURCHASES WITH LOCAL FUNDS.[29]

Sec. 6.1.1. No Method Required. School officers and employees may procure goods and services valued at less than the simplified acquisition threshold through the most expedient manner available.

Sec. 6.1.2. Quotes. School officers and employees shall procure goods and services valued at the simplified acquisition threshold or more in the aggregate through the solicitation of two (2) or more written quotes from qualified vendors.

Sec. 6.2. PURCHASES WITH STATE FUNDS.[30]

Sec. 6.2.1. No Method Required. School officers and employees may procure goods and services valued at less than the micro-purchase threshold through the most expedient manner available.

Sec. 6.2.2. Quotes. School officers and employees shall procure goods and services valued at no less than the micro-purchase threshold and at no more than the simplified acquisition threshold in the aggregate through the solicitation of two (2) or more written quotes from qualified vendors.

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[27] Tex. Ed. Code §44.032
[28] *Ibid*.
[29] Tex. Ed. Code §12.115(a)(2)
[30] Tex. Ed. Code §§ 12.1053 and 12.115(a)(2); FASRG

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Sec. 6.2.3. Bids or Proposals. School officers and employees shall procure goods and services valued at the simplified acquisition threshold or more in the aggregate through the solicitation of bids or proposals, as appropriate.

Sec. 6.3. PURCHASES WITH FEDERAL FUNDS.[31]

Sec. 6.3.1. Procurement by Micro-Purchase Procedure.

Sec. 6.3.1.1. No Method Required. School officers and employees may procure supplies[32] or services valued at less than the micro-purchase threshold in the aggregate through the most expedient manner available.

Sec. 6.3.1.2. Reasonableness of Price. If a micro-purchase is made without soliciting competitive quotes, School officers and employees shall document that the price is reasonable, as determined on the basis of research, experience, purchase history or other information.

Sec. 6.3.1.3. Equitable Distribution. To the maximum extent practicable, the School must distribute micro-purchases equitably among qualified vendors.

Sec. 6.3.1.4. Use of Corporate Credit. School officers and employees may use their assigned corporate credit account(s) pursuant to the administrative procedures adopted by the Delegate.

Sec. 6.3.1.5. Adoption of Higher Micro-Purchase Threshold. The Delegate may adopt a higher micro-purchase threshold pursuant to the policy directives of the Texas Education Agency or other regulatory agency.

Sec. 6.3.2. Procurement by Small Purchase Procedure.

School officers and employees shall procure property[33] or services valued at no less than micro-purchase threshold and no more than the simplified acquisition threshold in the aggregate through the solicitation of three (3) or more written competitive quotes from qualified vendors.

Sec. 6.3.3. Procurement by Sealed Bids.

Sec. 6.3.3.1. School officers and employees shall procure property[34] or services valued at the simplified acquisition threshold or more in the aggregate through the public solicitation of sealed bids if the necessary conditions[35] are present and if the applicable requirements[36] are met.

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31 2 CFR §200.320; Administrator's Reference Manual, Section 17 (August 16, 2021); Tex. Ed. Code §12.115(a)(2)
32 *See* 2 CFR §200.1.
33 *Ibid*.
34 *Ibid*.
35 *See* 2 CFR §200.320(b)(1)(i).
36 *See* 2 CFR §200.320(b)(1)(ii).

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Sec. 6.3.3.2. The School may only award a firm fixed price contract to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids and is the lowest price.

Sec. 6.3.4. Procurement by Competitive Proposals.

Sec. 6.3.4.1. If the conditions are not appropriate for the use of sealed bids, School officers and employees shall procure property[37] or services valued at the simplified acquisition threshold or more in the aggregate through competitive proposals if the applicable requirements[38] are met.

Sec. 6.3.4.2. The School may award either a fixed price or cost-reimbursement type contract to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered.

Sec. 6.3.5. Procurement by Noncompetitive Proposals.

School officers and employees may only procure property[39] or services through the solicitation of a quote, bid or proposal from only one source only when one or more of the following documented circumstances apply.

(a) The acquisition is for property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

(b) The item is available only from a single source.

(c) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.

(d) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the School.

(e) After solicitation of a number of sources, competition is determined inadequate.

Sec. 6.3.6. Other Procurement Requirements.

The Delegate or designee shall ensure that School officers and employees procure property[40] and services in accordance with the following federal procurement standards:

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37 *See* 2 CFR §200.1.
38 *See* 2 CFR §200.320(b)(2).
39 *See* 2 CFR §200.1.
40 *Ibid*.

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(a) Analysis of contract cost and price.[41]

(b) Avoidance of unnecessary or duplicative items.[42]

(c) Contract provisions.[43]

(d) Domestic preferences.[44]

(e) Exclusion of certain contractors.[45]

(f) Maintenance of records sufficient to detail the history of a procurement.[46]

(g) Prohibition of administratively imposed geographical preferences.[47]

(h) Required solicitation content.[48]

(i) Use of prequalified lists of vendors or products.[49]

(j) Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.[50]

(k) Written standards of conduct covering organizational conflicts of interest.[51]

(l) Other applicable legal requirements.

Sec. 6.4. PURCHASES THROUGH COOPERATIVE.[52]

Sec. 6.4.1. General. School officers and employees may use local, state or federal funds to procure goods or services through a cooperative that provides written assurance of compliance with purchasing law.

Sec. 6.4.2. Due Diligence. School officers and employees shall ensure that the use of Federal funds for a procurement of goods or services through a cooperative complies with the applicable Federal

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41 2 CFR §200.324
42 2 CFR §200.318(d)
43 2 CFR §200.327
44 2 CFR §200.322
45 2 CFR §200.319(b)
46 2 CFR §200.318(i)
47 2 CFR §200.319(c)
48 2 CFR §200.319(d)
49 2 CFR §200.319(e)
50 2 CFR §200.318(c)(1)
51 2 CFR §200.318(c)(2)
52 Tex. Ed. Code §§ 12.1058(a)(1) and 12.115(a)(2); FASRG; 2 CFR §200.318(e)

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procurement standards. School officers and employees shall maintain supporting documentation to this effect.

Sec. 6.4.3. Exception. In the event that a participating vendor in the purchasing cooperative program quotes a lower price for the same goods or services, School officers and employees may procure the goods and services using the vendor's direct quote.

Sec. 7. PURCHASE OF PROFESSIONAL SERVICES.[53]

Sec. 7.1. SELECTION OF PROVIDER.

Sec. 7.1.1. The Board and Delegate or designee shall not select a provider of professional services or a group or association of providers or award a contract for professional services on the basis of competitive bids submitted for the contract or for the professional services.

Sec. 7.1.2. The Board and Delegate or designee shall select the provider for the professional service to be procured based on the following criteria:

(a) The provider's demonstrated competence and qualifications to perform the services; and

(b) The fairness and reasonableness of the provider's price.

Sec. 7.2. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER OR SURVEYOR.

Sec. 7.2.1. In procuring architectural, engineering, or land surveying services, the Board and Delegate or designee shall:

(a) First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(b) Then attempt to negotiate with that provider a contract at a fair and reasonable price.

Sec. 7.2.2. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the Board and Delegate or designee shall:

(a) Formally end negotiations with that provider;

(b) Select the next most highly qualified provider;

(c) Attempt to negotiate a contract with that provider at a fair and reasonable price; and

[53] Tex. Ed. Code §12.1053(b)(2); Tex. Gov't. Code Chapter 2254, Subchapter A

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(d) Continue the process described in subsections (a) through (c) to select and negotiate with providers until a contract is entered into.

Sec. 8. PROCUREMENT OF PUBLIC WORKS.

Sec. 8.1. RULES AND PROCEDURES.

Pursuant to Tex. Ed. Code §44.031(d) and Tex. Gov't. Code §2269.051, the Board may adopt rules and procedures for the acquisition of goods or services related to public works, including construction services.

Sec. 8.2. DELEGATION OF AUTHORITY.

Sec. 8.2.1. Authority to Procure Construction Services. The Board may delegate its authority under Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person. If the Board delegates its authority to a designated representative, committee, or other person, the School shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Sec. 8.2.2. Authority to Contract. Unless otherwise authorized by the Board, only a Board member, the Delegate, or the Delegate's designee shall be authorized to sign contracts obligating the School to disburse public funds for public works.

Sec. 8.3. AUTHORIZED METHODS OF PROCUREMENT.

Sec. 8.3.1. With the exception of the competitive bidding method, the Board shall determine which method set forth in this subsection provides the best value for the School before it advertises for requests for bids, proposals or qualifications.

Sec. 8.3.2. The School shall base its selection among offerors on applicable criteria listed for the particular method used. The School shall publish in the request for bids, proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion.

Sec. 8.3.3. Within seven (7) days after the date the contract is awarded, the School shall document the basis of its selection and shall make the evaluations, including any scores, public and provide them to all offerors.

Sec. 8.3.4. The Board or designee may award a contract for construction services using one of the following methods:

(a) Competitive bidding,
(b) Competitive sealed proposal,

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(c) Construction manager-agent,
(d) Construction manager-at-risk,
(e) Design-build, or
(f) Job order contracts.

Sec. 8.3.5. Unless determined otherwise by the Board, the School shall procure construction services using the competitive bidding method of procurement.

Sec. 8.3.6. The Delegate may recommend to the Board a method of procurement, other than the competitive bidding method, from those listed under Subsection 6.4.3.4. In this event, the Delegate shall provide the Board with a written proposal, including the justification for utilizing a different method of procurement.

Sec. 8.3.7. In the event that the Board determines that another procurement method is in the School's best interest, the Board's determination will be documented in the minutes to the pertinent Board meeting.

Sec. 8.3.8. The Board and School may seek legal and professional advice and counsel regarding the legal and other requirements applicable to the procurement method selected by the Board.

Sec. 8.4. NOTICE.

The School shall publish a notice of the time by when and the place where the bids or proposals, or the responses to a request for qualifications, will be received and opened. The School shall publish the notice in the county in which its central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the School shall publish its advertisement in a newspaper in the county nearest the county seat of the county in which its central administrative office is located. In a two-step procurement process, the School is not required to separately publish the time and place where the second-step bids, proposals, or responses will be received.

Sec. 8.5. RESPONSE TO REQUESTS FOR BIDS, PROPOSALS OR QUALIFICATIONS.

Sec. 8.5.1. Sealed Bids, Proposals or Qualifications Required. A person who submits a bid, proposal, or qualification is required to seal it before delivery. The Delegate or designee shall reject any bid, proposal or qualification that is not sealed and return it to the offeror with a statement:

(a) Representing that the bid, proposal or qualification was not opened, viewed or otherwise examined;

(b) Asserting that the content and form of the bid, proposal, or qualification was not duplicated or disseminated with any person or entity; and

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(c) Instructing the offeror to resubmit an appropriately sealed bid, proposal or qualification as required by state law.

Sec. 8.5.2. Receipt and Opening of Bids. The School shall receive, publicly open, and read aloud the names of the offerors and their bids. Only the Board, during a lawfully convened Board meeting, or the Board's designee, at or in School's central administrative office, may open the bids submitted by offerors. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. A bidder has the common law right to withdraw a bid due to a material mistake in the bid. The School is entitled to reject any and all bids.

Sec. 8.6. AWARDING OF CONTRACT UNDER COMPETITIVE BIDDING METHOD.

Sec. 8.6.1. In accordance with state law, "competitive bidding" is a procurement method by which the School may contract with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

Sec. 8.6.2. The School may contract for the construction, alteration, rehabilitation, or repair of a facility only after it advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Sec. 8.7. RESPONSIBLE BIDDER DEFINED.

Sec. 8.7.1. A responsible bidder is a person who has the capability in all respects to perform in full the contract requirements and the integrity and reliability assuring good faith performance. A responsible bidder may be required to meet any or all of the following requirements.

(a) Be an experienced contractor who has served as a prime contractor on similar construction projects for Texas public schools, has satisfactorily completed the scope of work described in the construction documents, and is knowledgeable about the requirements for the construction of and the building elements for Texas public schools including, without limitation, applicable building code requirements.

(b) Provide a warranty and support for any equipment installed as part of the construction services and in accordance with the scope of work described in the construction documents.

(c) Be able to obtain payment and performance bonds of the types and in the amounts described in Tex. Govt. Code §2253.

(d) When submitting the bid, provide a Letter of Statement from a bonding company that the bidder is able to obtain both a payment bond and a performance bond described as stipulated in Tex. Govt. Code §2253.

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(e) Prior to executing the contract, obtain and provide the payment and performance bonds of the types and in the amounts established at Tex. Govt. Code §2253.

(f) Have adequate financial resources or ability to obtain such resources as required during the performance of any resulting contract.

(g) Be able to comply with the required performance schedule, taking into consideration all existing business commitments.

(h) Have necessary management and technical capability to perform any resulting contract for construction services.

(i) Be qualified as an established firm regularly engaged in the type of business to provide the items and work required by the request for bids.

(j) Be registered to do business in the State of Texas.

(k) Be in good standing with the State of Texas.

(l) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Sec. 8.7.2. The School must include the requirements to be used to establish an offeror as a responsible bidder in the request for bids, proposals or qualifications.

Sec. 8.8. CRITERIA TO CONSIDER.

Sec. 8.8.1. In determining the award of a contract pursuant to this section, the School may consider:

(a) The price;

(b) The offeror's experience and reputation;

(c) The quality and reputation of the offeror's goods or services;

(d) The extent to which the offeror's goods or services meet the School's needs;

(e) The vendor's past relationship with the School;

(f) The impact on the ability of the School to comply with rules relating to historically underutilized businesses;

(g) The total long-term cost to the School to acquire the offeror's goods or services;

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(h) Whether the vendor or the vendor's ultimate parent company or majority owner:

(1) Has its principal place of business in this state; or

(2) Employs at least 500 persons in this state;

(i) The offeror's safety record;

(j) The offeror's proposed personnel;

(k) Whether the offeror's financial capability is appropriate to the size and scope of the project; and

(l) Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Sec. 8.8.2. In determining the award of a contract under this chapter, the School shall:

(a) Consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

(b) Consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Sec. 8.9. SAFETY RECORD OF BIDDER CONSIDERED.

Sec. 8.9.1. In determining who is a responsible bidder, the Board may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution.

Sec. 8.9.2. In determining who is a responsible bidder, the Board may take into account the following definition and criteria for accurately determining the safety record of a bidder.

(a) "Citations" include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. A Notice of Violation and Notice of Enforcement received from the Texas Commission on Environmental Quality ("TCEQ") shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History pursuant to Texas Administrative Code, Title 30, §60.2(d)(1) and (d)(2).

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(b) "Environmental Protection Agency" includes, but is not limited to the TCEQ, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

(c) Based upon the bidder's response to certain questions, the Board will consider the following criteria and, at its discretion, determine whether to disqualify the bidder.

(1) The revelation of more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission ("OSHRC") against the bidder for serious violations of Occupational Safety & Health Administration ("OSHA") regulations within the past five (5) years.

(2) The revelation of more than one (1) case in which the bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years.

(3) The revelation that the bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death.

Sec. 8.9.3. Before considering the safety record of the bidder, the School must give notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder.

Sec. 8.9.4. In making determinations concerning the safety records of the bidders, the Board, Delegate, and School employees are prohibited from making the determinations in an arbitrary and capricious manner.

Sec. 8.9.5. The Delegate or designee shall prepare and submit to the Board a summary report of the information and the responses provided by the bidder for its consideration and to facilitate its determination of whether to disqualify the bidder based upon its safety record.

Sec. 8.10. <u>NOTIFICATION OF CONTRACTOR'S CRIMINAL HISTORY.</u>

Sec. 8.10.1. If the person or an owner or operator of the business entity has been convicted of a felony, the School should ensure that the bidder's response includes an advance notice disclosing this fact. The notice must include a general description of the conduct resulting in the conviction of a felony.

Sec. 8.10.2. The School may terminate a contract with a person or business entity if the School determines that the person or business entity failed to give notice as required by Subsection 14.1

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or misrepresented the conduct resulting in the conviction. The School must compensate the person or business entity for services performed before the termination of the contract.

Sec. 8.10.3. This subsection does not apply to a publicly held corporation.

Sec. 8.11. CONTRACT WITH PERSON INDEBTED TO SCHOOL.

Sec. 8.11.1. The Board may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the School.

Sec. 8.11.2. For purposes of implementing this subsection, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the School requiring approval by the Board.

Sec. 8.11.3. The Delegate or designee shall notify the Board of any debt due by an apparent low bidder or successful proposer. In the notice to the Board, the Delegate or designee must disclose:

(a) The amount outstanding;

(b) The date(s) of when the bidder or proposer became indebted to the School;

(c) The cause(s) resulting in the bidder's or proposer's indebtedness;

(d) Any adverse consequence to the School resulting from the bidder's or proposer's indebtedness;

(e) The date of the last written correspondence to the bidder or proposer requesting the bidder's or proposer's satisfactory settlement of the indebtedness; and

(f) The frequency of requests for settlement of the indebtedness.

Sec. 8.12. RIGHT TO WORK.

When procuring goods or services, awarding a contract or overseeing procurement or construction for a public work to which this Policy applies, the School:

(a) May not consider whether a person is a member of or has another relationship with any organization; and

(b) Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

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Sec. 8.13. CONTRACTS TO MINORITY COMPANIES.

As set forth in the charter application, the School will look for "opportunities to consummate contracts with a sizeable portion to minority companies."

Sec. 8.14. SELECTION OF ARCHITECT OR ENGINEER.

Unless the School employs an architect or engineer on a full-time basis to oversee construction projects, the School shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Tex. Govt. Code §2254.004.

Sec. 8.15. OTHER PROFESSIONAL SERVICES.

The School shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of a facility. The School shall select the services for which it contracts under this subsection in accordance with Tex. Govt. Code §2254.004.

Sec. 8.16. SUSPENSION OF POLICY.

If a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the Board determines that the delay posed by the contract methods required by this Policy would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the school facility, or portion of the school facility may be made by a method other than the methods required by this policy.

Sec. 8.17. CHANGE ORDERS.

Sec. 8.17.1. If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the Delegate or designee has general authority to approve change orders making the changes.

Sec. 8.17.2. The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

Sec. 8.17.3. A contract with an original contract price of $1 million or more may not be increased under this subsection by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

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Sec. 8.18. MONITORING AND OVERSIGHT.

Sec. 8.18.1. The Delegate or designee shall monitor and oversee all construction projects and services. The Delegate or designee shall document their monitoring and oversight activities.

Sec. 8.18.2. The Delegate or designee shall report to the Board the progress and status of any and all public works procured under this policy.

Sec. 8.18.3. The Delegate or designee shall not make any final payments for public works procured under this Policy until the work has been completed. Upon completion of a public work, the Delegate or designee shall provide a final report to the Board. Upon accepting the work performed, the Board may authorize the Delegate or designee to issue final payment(s).

Sec. 9. MONITORING OF SERVICE PROVIDER PERFORMANCE.

The Delegate or designee shall monitor the services and work of all service providers. In developing a system for monitoring the service provider's performance, the Delegate or designee shall consider the inclusion of deliverables and other measurable outcomes that demonstrate the delivery of the services procured from the service provider and that enable the Delegate or designee to evaluate the quality of the services rendered and satisfactory performance of the provider.

Sec. 10. TRAINING AND UPDATES.[54]

The Delegate or designee shall properly train officers and employees on the requirements of this policy and any administrative procedure(s) adopted to implement this policy. Additionally, the Delegate or designee shall keep officers and employees informed of any changes to this policy and related requirements.

Sec. 11. ADMINISTRATIVE PROCEDURES.[55]

The Delegate shall formally adopt administrative procedures as reasonably necessary to properly administer this policy and to adhere to applicable law and rule. In doing so, the Delegate shall not adopt, and is prohibited from adopting, an administrative procedure that conflicts with applicable law or this policy. Accordingly, the Delegate shall confer with the Board or legal counsel before deviating from the requirements set forth in this policy. In the event that a deviation from this policy becomes necessary, the Delegate shall either recommend an amendment to this policy or

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[54] 2 CFR § 200.303(a), U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*, 4.02 and 4.05.

[55] Tex. Ed. Code § 12.115(a)(2); FASRG Module 2; 2 CFR § 200.303. Consistent with 19 TAC § 100.1033(b)(14)(C)(iv), the Board has the final authority to adopt policies governing charter school operations, including authorizing the Delegate or designee to adopt an administrative procedure to implement this policy. Moreover, as set forth in School's Articles of Incorporation and Bylaws and in accordance with Tex. Bus. Org. Code §§ 3.101 and 22.201, the Board is the School's governing authority and, as such, manages and directs School's business and affairs through Board actions, resolutions and policy.

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the Board's approval of a specific deviation, including the purpose, scope and duration of the requested deviation.

Sec. 12. DATE ADOPTED AND EFFECTIVE.

As set forth in the pertinent minutes to the meeting of the Board, the Board adopted this policy on 09/20/2022 and became effective on 09/20/2022.

Sec. 13. RETENTION.[56]

This policy shall be retained until superseded, expired or discontinued and for five (5) years thereafter.

Sec. 14. CERTIFICATION.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to the Purchasing and Contracting, as originally adopted by the Board on MDY, which Policy is in full force and effect and has not been revoked or amended.

_____

Print
Name:_____
Secretary

_____

Date Certified

[56] Tex. Ed. Code §12.1052; 19 TAC §100.1203; *See* Record Number GR1000-38 and GR1025-25 in Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition (Effective April 17, 2016) adopted by the Texas State Library and Archives Commission at Texas Administrative Code, Title 13, §7.125(a)(1).

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