PROCUREMENT POLICIES

Procurement – Goods and Services

The Charter School procures only those items and services that are required to perform the mission and/or fill a bona fide need. Each school is required to designate a procurement officer who must participate in the public purchasing official certification program conducted by the Office of the Inspector General. The Phoenix schools' Procurement Officer is the Director of Finance and H.R. He or she oversees procurement to ensure that contractors perform in accordance with the terms and conditions for contracts. Procurements are made using best value contracting which includes assessing the best value considering quality, performance and price. Only responsible contractors who have the ability to perform successfully under the terms and conditions of a proposed procurement should be selected. MGL, Chapter 30B is not required to be followed by Commonwealth Charter Schools, based on DOE Technical Advisory 98-1: Procurement Guidelines for Commonwealth Charter Schools. However, the school will use a competitive procurement process for non-federal procurement, which requires:

Determining Allowability of Costs

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval from the state.

When determining how the district will spend its grant funds, the Chief Operating Officer and Director of Finance will review the proposed cost to determine whether it is an allowable use of federal grant funds *before* obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in 2 CFR Part 200 Subpart E, which are provided in the bulleted list below and be approved in the grant application budget. The Chief Operating Officer/ Director of Finance and Grant Liaison will consider these factors when making an allowable ability determination. Additional helpful questions to ask when making allowable determinations are located on page 13 of this manual.

Be Necessary and Reasonable for the performance of the federal award. District staff must consider these elements when determining the reasonableness of a cost. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, reasonable means that sound business practices were followed, and purchases were comparable to market prices.

When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of the District or the proper and efficient performance of the federal award.
- The restraints or requirements imposed by factors, such as: sound business practices; arm's-length bargaining; federal, state, and other laws and regulations; and terms and conditions of the federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the District, its employees, its students, the public at large, and the federal government.
- Whether the district significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost. 2 C.F.R. §200.404 2 CFR § 200.404 Reasonable costs - Code of Federal Regulations (ecfr.io)

While 2 C.F.R. §200.404 does not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the district can demonstrate that the cost addresses an existing need and can prove it. For example, the district may deem a language skills software program necessary for a limited English proficiency program.

When determining whether a cost is necessary, consideration may be given to

- Whether the cost is needed for the proper and efficient performance of the grant program.
- Whether the cost is identified in the approved budget or application.
- Whether there is an educational benefit associated with the cost.
- Whether the cost aligns with identified needs based on results and findings from a need assessment.
- Whether the cost addresses program goals and objectives and is based on

program data.

- Allocable to the federal award: A cost is allocable to the federal award if the goods or services involved are chargeable or assignable to the federal award in accordance with the relative benefit received. This means that the federal grant program derived a benefit in proportion to the funds charged to the program. 2 C.F.R. §200.405. [2 CFR § 200.405 Allocable costs - Code of Federal Regulations (ecfr.io)] . For example, if 50% of a teacher's salary is paid with grant funds, then that teacher must spend at least 50% of his or her time on the grant program.
- Consistent with policies and procedures that apply uniformly to both federally financed and other activities of the District.
- Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award.
- Consistent treatment: A cost cannot be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned as an indirect cost under another award.
- Adequately documented. All expenditures must be properly documented.
- Be determined in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in 2 CFR Part 200.
- Not included as a match or cost-share unless the specific federal program authorizes federal costs to be treated as such. Some federal program statutes require the non-federal entity to contribute a certain amount of non-federal resources to be eligible for the federal program.
- Be the net of all applicable credits. The term "applicable credits" refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the state relate to the federal award, they shall be credited to the federal award, either as a cost reduction or a cash refund, as appropriate. 2 C.F.R. §200.406.
- Purchases for goods and services paid for with grant funds shall be net of all applicable credits. To avoid the earning of "credits" where the benefits are not reimbursable or credited to the federal grant, personal reimbursements are subject to the policies of the district. The district will take advantage of all prompt pay discounts. All payments from federal grants shall be processed through the district's accounting system through the invoice

payment process.

2 CFR Part 200 Cost Principles in Subpart E must be considered when federal grant funds are expended. As provided above, federal rules require state- and District-level requirements and policies regarding expenditures to be followed as well. For example, state and/or District policies relating to travel or equipment may be narrower than the federal rules, and the stricter State and/or District policies must be followed. Further, certain types of incentives are allowable under federal law, but are not allowable under State law.

Purchase Process

All purchases require a purchase order/Invoice. In addition to this procedure, sub recipients must also follow both state and local procurement rules. State and local procurement rules are often stricter than federal requirements. Accordingly, this section should be revised to account for the appropriate thresholds and purchasing procedures within each threshold amount in accordance with any state and local procurement rules.

Phoenix Charter Academy utilizes Bill.Com financial system for the processing of all purchase orders/Invoice. Bill.Com access is given to all accounts payable and bookkeeping staff within the Finance Department. Access is reviewed by the Chief Operating Officer in conjunction with the Director of Finance. If access is approved, the Chief Operating Officer and Director of Finance discuss the level of security appropriate for the individual. Based on the outcome of this meeting, a security profile is assigned by the Director of Finance who oversees Bill.Com.

Once the username and password have been assigned, the Director of Finance schedules training with other individuals within the department. Once training is completed, the individual may submit a purchase order / invoice through the following process:

1. Submit a purchase order/invoice of a good or services in which the bookkeeper enters the purchase order/invoice into Bill.com. It is then submitted to the school base agent for approval, in which if approved then it is submitted to the Business Office for the Director of Finance's approval. If the purchase is $10,000 or more than it will then need to be submitted to the CEO for approval. If the purchase is $25,000 or more, then it is also submitted to the Board Treasurer.

2. Each purchase order/invoice must contain the vendor name/number, ship

to location, quantity, item description, unit price, freight amount, and account code to be charged. The item description must be clear so as to properly communicate to the vendor the exact item requested and/or service to be performed, and deadlines for delivery and/or completion.

Upon approval, the original purchase order/Invoice is sent to the person/department initiating the order. A copy is maintained by the Bookkeeping Department to await the receiving copy and invoice.

A. The School adheres to the following objectives:

1. Procurements will be completely impartial based strictly on the merits of supplier and contractor proposals and applicable related considerations such as delivery, quantity, etc.

2. Make all purchases in the best interests of the school and its funding sources.

3. Obtain quality supplies/services needed for delivery at the time and place required.

4. Buy from responsible and dependable sources of supply.

5. Obtain maximum value for all expenditures.

6. Deal fairly and impartially with all vendors.

7. Be above suspicion of unethical behavior at all times; 1) avoid any conflict of interest, related parties, or even the appearance of a conflict of interest in the Charter School supplier relationships, 2) avoid organizational conflicts of interest for relationships with parent, affiliate or subsidiary organizations (if any), and 3) the school will take disciplinary actions for violations of the procurement standards by employees, officers, or agents. (See also Section 203 Organizational Conflict of Interest or Self-Dealing (Related Parties))

8. Review recent invoices from the same vendor or for similar items to avoid acquisition of unnecessary or duplicative items.

9. Use federal excess and surplus property in lieu of purchasing new equipment and property to reduce project costs, such as by contacting the Massachusetts State Agency for Surplus Property.

10. Use recordkeeping, including but not limited to: rational for the method of procurements, selection of contract type, contractor selections or rejections, and the

basis for the contract price.

11. Contact the Director of Finance to address issues arising out of procurements, such as: source evaluation, protests, disputes and claims;

12. Make efforts to contract with small and minority businesses, women-owned business enterprises and labor surplus area firms.

13. Analyze potential contract cost and price to determine the relevant procurement procedures to follow when selecting a contracted vendor.

B. All new school building lease agreements will be evidenced by a lease or sublease agreement approved by the Board of Trustees and signed by the Charter Leader. The agreement will identify all the terms and conditions of the lease. Any real estate agreement to rent or sell will require a beneficial interest disclosure as required in MGL Chapter 7, §40J.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Federally Funded Procurement:

Effective as of July 1, 2018 (after adopting the three-year grace period extension), the following procedures apply to **federal grants** used to procurement goods or services as required by the OMB Uniform Guidance. Any employee who violates the standards set forth herein with respect to federally funded procurement is subject to disciplinary action by the School.

The procurement process varies based upon the cost of the expenditure. In all cases of federally-funded procurement, the following standards must be adhered to:

● The purchases are necessary and not duplicative, and consideration is given to consolidating or breaking out procurements to obtain more economical purchases.

● Open competition: will not use restrictive practices such as requiring unnecessary experience or excessive bonding.

<u>Full and Open Competition</u>

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.

The district **negotiates profit** as a separate element of the price of each contract in which there is no price competition and, in all cases, where cost analysis is performed.

● Conflict of interest: no employee may participate in the procurement process if s/he has an apparent or real conflict of interest, financial or otherwise. The School follows M.G.L. Chapter 257A and M.G.L. Chapter 61, §79(v) regarding conflicts of interest and disclosures and School employees complete State conflict of interest training and annually receive copies of the state summary of the conflict of interest law.

● Related-party transactions shall include transactions between a School and members of the Board of Trustees, management, contracted management organization, employees, related individuals and affiliated companies. Related individuals within the scope of this definition include spouses, parents, children, spouses of children, grandchildren, siblings, father-in-law, mother-in law, sister-in-law and brother-in-law of a board member or School employee.

- Proper documentation is maintained for each purchase, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price, and cost and price analysis for purchases over $150,000.

Purchases by School staff will proceed through the steps listed below: (Note: the thresholds detailed below are set by the Federal Acquisition Regulation (FAR) at 49 CFR Subpart 21 and are subject to adjustment every five years.)

- For contracts less than $10,000, the school will use sound business practices
- For contracts greater than $10,000 and less than $50,000, the school will also seek quotes from three vendors and award the contract to the responsible vendor offering the supply or service needed for the best price.
- For contracts greater than $50,000, the school will conduct a formal advertised competition by issuing an invitation to bid or a request for proposals.

- Micro-purchases (<$15,000 aggregate): may be awarded without soliciting bids if the cost is reasonable, and micro-purchases should be distributed equitably among qualified suppliers.
- Small Purchases ($50,000 - $150K): price or rate quotations must be obtained from at least three qualified sources.
  - o Solicit at least two quotes, either orally, in writing or via information obtained from the vendor's website and document all steps taken.
  - o Award contract to the vendor who: (1) meets your request; (2) is responsible (based on various factors including vendor's capability, integrity, reliability, quality, value and reputation); and (3) offers the lowest price
  - o Document the quotations received and the basis for vendor selection.
- Purchases (>$150K): the School must perform and document a cost or price analysis and use one of the following methods:
  - o Sealed Bids (formal advertising):

This method will be used when:

- A complete, adequate and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- 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.

The requirements for the sealed bid process include:

- Bids must be publicly advertised and solicited from at least two known suppliers, providing them sufficient response time.

- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services.
- All bids will be opened at the time and place prescribed in the invitation for bids.
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there is a sound documented reason.
  - o Competitive Proposals: this method is used when conditions are not appropriate for the use of sealed bids.

When this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance.
- Proposals must be solicited from at least two qualified sources.
- The basis for considering and selecting the vendor and the cost and price analysis must be documented.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Bid Splitting

Splitting purchases over several days, weeks, or months is considered "bid-splitting" when the appearance is that this is being done to avoid meeting thresholds which require a more complex procurement. Certain unexpected small expenses sometimes make good business sense and are not problematic. However, to purposely purchase items over time and under the procurement thresholds is illegal.

Noncompetitive Proposals *(sole source):* solicitation from a sole source may only be used if one or more of these criteria are met: 1) the service or good provided is unique, 2) in the case of an emergency, 3) if your federal funder authorizes it, or (4) after solicitation, competition is determined inadequate. The basis for considering and selecting the vendor must be documented.

Note that for federally funded procurement of construction and land improvement must also comply with the requirements of M.G.L c.149 and M.G.L. c.30, §39M, as set forth above.

The School will make efforts to use federal excess and surplus property in lieu of purchasing new equipment and property to reduce project costs. In addition, the School will take affirmative steps to utilize minority-owned, women-owned, and small business enterprises to the fullest extent practicable, including:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, 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 businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- 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.
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5), above.

Emergency Purchases

An emergency purchase is the purchase of goods or services that are so badly needed that the school will suffer financial or operational damage if they are not secured immediately. A decision to purchase may be declared in an emergency at the school's discretion and ―best value procurement guidelines must be followed. In addition, the purchase (if over $10,000) must be authorized by the Treasurer or another Charter School designee.

Geographical Preferences Prohibited (Under Emergency Procurements)

The District must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, 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.

Use of Intergovernmental Agreements-Statewide Contracts

To foster greater economy and efficiency, the District enters into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services. The district will ensure these collaborative purchases were conducted with full competition and are for the specifications and requirements determined by the district. Under MGL Chapter 30B, municipalities may use the Commonwealth of Massachusetts Statewide Contract System. In using the system, the requirements of MGL Chapter 30B are determined to be met per the MA Office of Inspector General. In using this system, the contract must abide by the Statewide contract specifications and the specific Contract Guide for that contract and use the strictest requirements, which will be the UGG 2 CFR 200.320 procurement methods and federal thresholds to determine the steps to be taken. The District will ensure that all intergovernmental agreements were procured in a competitive manner by following the Uniform Grant Guidance (UGG) 2 CFR 200.318-327 Procurement thresholds, procurements from 10,000 to $250,000 will require at least 2 quotes.

COMMBUYS - The Commonwealth's Operation Services Division (OSD) procures and awards a number of statewide contracts that are available to municipalities. Departments who wish to procure an item or services from an OSD contract may request to be identified as a user on COMMBUYS, OSD's purchasing portal. Once approved, the COMMBUYS user will have full access to all COMMBUYS contracts and will have the ability to purchase directly through the COMMBUYS portal.

COMMBUYS users will be expected to read the Contract User Guide for the purchase they are attempting to make and shall comply with all terms of use for said contract. Remember that not all contractors listed on COMMBUYS are included on a State Contract. All purchases in COMMBUYS will be subject to confirmation by the CPO prior to approval.

When using COMMBUYS, the District will adhere to all system requirements, all required terms for specific statewide contracts, and to the terms of their respective user agreements for COMMBUY.

Go to www.commbuys.com to access contract information, training resources, and buyer information.

Debarment and Suspension

The District awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The District may not subcontract with or award sub grants to any person or company who is debarred or suspended. For all contracts over $25,000 the District verifies that the vendor with whom the District intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix **II** (1) and 2 C.F.R. §§ 180.220 and 180.300.

Maintenance of Procurement Records

The District must 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 verification that the contractor is not suspended or debarred.

Procurement – Construction

The School is required to comply with certain laws while constructing a new facility or performing construction on its current facility. These laws include numerous federal and state laws inclusive of the Commonwealth's public bidding and prevailing wage laws. When undertaking construction or renovation projects, the school should seek advice from the Commonwealth of Massachusetts Office of the Attorney General and the Commonwealth of Massachusetts Division of Occupational Safety regarding the applicability of these laws and also the advice of legal counsel regarding the specific construction project.

Public Bidding Laws : This law applies to the ―construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than $25,000 (M.G.L. c. 149, § 44A(2)). Charter Schools are considered public agencies under the statutes of the Commonwealth.

Prevailing Wage Statute :This law requires payment of a minimum hourly wage rate for certain classifications of labor performed on state and local construction projects. (M.G.L. c. 149, §§ 26-27D). The Division of Occupational Safety issues prevailing wage schedules for construction projects covered by the prevailing wage statute and determines whether the prevailing wage statute applies to certain construction projects.

Domestic preferences for procurements (relates to construction) 2 CFR 200.322

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application

of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

<u>Contract Types</u>

There are numerous contract methods allowed at the federal and local levels. Below are contract types that may be used along with contracts that should be avoided.

Contract Types that may be used include (but are not limited to):

Lump sum	• Contract for work within a prescribed boundary with a clearly defined scope and total price
Unit price	• Work done on an item-by-item basis, with cost determined per unit (e.g., box, cubic yard, etc.)
Cost plus fixed fee	• Total known cost with a defined fixed fee added to the price
Inter-governmental agreements	• Subrecipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services. Using Statewide contracts, you must comply with the contract guide, abide by the specifications of the statewide contract and federal procurement methods thresholds. The Statewide contract price reflects the highest price an approved vendor may charge. You may still negotiate a price. You must follow the specific contract guide guidance and for contracts that require or recommend solicitation, you must follow the guidance to be in compliance with federal procurement requirements.

Contract Types that should be avoided are:

Piggyback	● Piggybacks are generally ineligible. ● However, work done using another sub-recipient's pre-existing, properly procured contract must meet strict criteria to be eligible. The existing contract must be viable (i.e., the same item must be purchased, price and vendor must be the same, and must include written mutual consent of the original contracting parties) Adopting a pre-existing contract solicited and awarded by another entity is referred to as 'piggy-backing'. These contracts should be avoided as they may not contain all required clauses, are improper in scope, or are not procured in compliance with the federal procurement standards
Time and Materials (T + M)	● T + M type contract means a contract whose cost to a non- Federal entity is the sum of (1) the actual cost of materials; and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit [2 CFR 200.318(j)(1)]. ● Use T + M type contracts only after determining that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Last option not recommended by the Federal Government

Cost-plus-percentage-of- costs	• Strictly prohibited
Percentage-of-construction-cost	• Strictly prohibited

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Time and Materials Contracts

The District may 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 mean a contract whose cost to the District 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 efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the District must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls

Procurement - Child Nutrition Program

(A) Procurement Code of Conduct

The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by School Food and Nutrition Program Funds.

These written standards of conduct include:

1. No employee, officer or agent of the Phoenix Charter Academy shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.

   Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:

   (1) The employee, officer or agent;

   (2) Any member of the immediate family;

   (3) His or her partner;

   (4) An organization which employs or is about to employ one of the above.

2. The Phoenix Charter Academy employees, officers or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

3. Penalties for violation of the standards of code of conduct of the (School Food Authority) School Child Nutrition Program should be:

   a. Verbal and/or Written Reprimand by School Administration;

   b. Suspension by School Administration;

   c. Dismissal/Termination by School Administration;

   d. Any legal action necessary.

   e. Other local procurement requirements that may be required.

(B) Procurement Procedures

- The Phoenix Charter Academy plan for procuring items for use in the Child Nutrition Program is as follows. The procurement procedures maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities.

- If the amount of purchases is more than the small purchase Federal threshold of $350,000 (or SFA approved threshold if less), formal procurement procedures will be used as required by 2 CFR 200.318-.326.

- If the amount of purchases is between $15,001 and $350,000 (or SFA approved threshold if less), informal procurement procedures (small purchase) will be required.

- Micropurchase method should be utilized for any procurement of $15,000 or less (based upon more restrictive Federal guidelines).

- Bid procedures will be applied on the basis of:

Category	Procurement Method	Evaluation Used	Contract Award Type	Contract Duration/ Frequency
All perishable and non-perishable foods and Manual-All Purpose Cleaning Supplies, Paper and Plastic Supplies	Formal	Bottom line	Cost-reimbursable plus fixed fee	Annual with 2, one-year optional renewals
Dish machine Chemicals	Formal	Bottom line	Fixed price with price adjustment	July 1-June 30 annual
Small wares	Formal	Bottom line	Fixed price	annual, if budget available
Capital Equipment	Formal	Bottom line	Fixed price	annual, if budget available
Fresh Bread	Formal	Bottom line	Fixed price with price adjustment	Annual July 1-June 30
Milk and Dairy Products	Formal	Bottom line	Fixed price with price adjustment	Annual July 1- June 30

Office Supplies	District contract	Bottom line	Cost reimbursable plus fixed-fee	Annual July 1-June 30
Processing USDA Foods	Formal	Bottom line	Fixed price	Annual July 1 – June 30
Emergency	Micro-purchase/small purchase procedures (requires authorized PO)	Price reasonable	No contract, equitable distribution, transactions limited to $10,000 each	As needed:

- Formal bid procedures will be applied on *the basis of a:*
  - _______ Centralized System
  - _______ Individual School
  - ___X____ Multi-School Systems
  - _______ State Contract
  - _______ Combination of above (specify):
    - ________________________________
    - ________________________________

- Because of the potential for purchasing more than $350,000, it will be the responsibility of the Director of Strategic Initiatives to document the amounts to be purchased so the correct method of procurement will be followed.

Formal Procurements

When a formal procurement method is required, the following *COMPETITIVE SEALED BID or an Invitation for Bid (IFB) or COMPETITIVE PROPOSAL in the form of a Request for Proposal (RFP)* procedures will apply:

1) An announcement of an *Invitation for Bid (IFB) or a Request for Proposal (RFP)* will be placed in the (Newspaper/media, SFA's Website, SFA's Office, COMMBUYS, Goods and Service Bulletin if $100,000 or greater) to publicize the intent of the School Food Authority to purchase needed items. The advertisement for bids/proposals or legal notice must be published a minimum of 21 days (recommend allowing 4-6 weeks) prior to the time specified in the IFB/RFP for the receipt of bids.

2) An advertisement is required for all purchases over the small purchase threshold of $250,000. The announcement (advertisement or legal notice) will contain a:

i) general description of items to be purchased
ii) deadline for submission of questions and the date written responses will be provided including addenda to bid specifications, terms and conditions as needed
iii) date of pre-bid meeting, if provided, and if attendance is a requirement for bid award
iv) deadline for submission of sealed bids or proposals, and
v) address of location where complete specifications and bid forms may be obtained.

3) In an IFB or RFP, each vendor will be given an opportunity to bid on the same specifications.

4) The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.

5) The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:

- Contract period
- SFA is responsible for all contracts awarded (statement)
- Date, time, and location of IFB/RFP opening
- How vendor is to be informed of bid acceptance or rejection
- Delivery schedule
- Set forth requirements (terms and conditions) which bidder must fulfill in order for bid to be evaluated
- Benefits to which the School Food Authority will be entitled if the contractor cannot or will not perform as required
- Statement assuring positive efforts will be made to involve minority and small business
- Statement regarding the return of purchase incentives, discounts, rebates, and credits to the School Food Authority's non-profit Child Nutrition account
- Contract provisions as required in Appendix II to 2 CFR 200
- Contract provisions as required in 7 CFR 210.21(f) for all cost reimbursable contracts
- Contract provisions as required in 7 CFR 210.16(a)(1-10) and 7 CFR 250.53 for Food Service Management Company contracts
- Procuring instrument to be used are purchase orders from firm fixed prices after formal bidding

- Price adjustment clause (tied to a standard index) (Consumer price index, or other as stated in terms and conditions for pricing and price adjustments)
- Method of evaluation and type of contract to be awarded – solicitations using an invitation for bid are awarded to the lowest responsive and responsible bidder; requests for proposal are awarded to the most advantageous bidder/offeror with price as the primary factor among factors considered
- Method of award announcement and effective date (if intent to award is required by local procurement requirements)
- Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
- Provision requiring access by duly authorized representatives of the School Food Authority, State Agency, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
- Method of shipment or delivery upon contract award
- Provision requiring contractor to maintain all required records for ***six*** years after final payment and all other pending matters (audits) are closed for all negotiated contracts
- Description of process for enabling vendors to receive or pick up orders upon contract award
- Provision requiring the contractor to recognize mandatory standards/policies related to energy efficiency contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165)
- Signed statement of non-collusion
- Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS).
- Provision requiring "Buy American" as outlined in 7 CFR Part 210.21(d); specific instructions for prior approval of all non-domestic product (s).

6) Specifications and estimated quantities of products and services prepared by SFA and provided to potential contractors desiring to submit bids/proposals for the products or services requested.

7) If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by Director of Strategic Initiatives and date specified.

8) The Director of Strategic Initiatives will be responsible for securing all bids or proposals.

9) The Director of Strategic Initiatives will be responsible to ensure all SFA procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.

10) The following criteria will be used in awarding contracts as a result of bids/proposals.
    i) *Price*
    ii) Quality
    iii) Delivery

        (1) In awarding a RFP, a set of award criteria in the form of an evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration among all factors when awarding a contract. Following evaluation and negotiations a firm fixed price or cost reimbursable contract is awarded.

11) The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the SFA, price as the primary and other factors considered. Any and all bids or proposals may be rejected in accordance with law.

12) Director of Strategic Initiatives is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.

13) Director of Strategic Initiatives reviewing the procurement system to ensure compliance with applicable laws.

14) Director of Strategic Initiatives responsible for documentation the actual product specified is received.

15) Any time an accepted item is not available, the Director of Strategic Initiatives will select the acceptable alternative. The contractor must inform the Director of Strategic Initiatives by 4:00 p.m. on the day a product is not available. In the event a non-domestic agricultural product is to be provided to the SFA, the contractor must obtain, in advance, the written approval of the product. The Director of Strategic Initiatives must comply with the Buy American Provision.

16) Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is the Director of Strategic Initiatives.

17) The Director of Strategic Initiatives responsible for maintaining all procurement documentation.

Small Purchase Procurements

If the amount of purchases for items is less than the most restrictive small purchase threshold, the following *small purchase procedures, including written quotes*, will be used. Quotes from an adequate number of qualified sources will be required.

1. Written Specifications will be prepared and provided to the vendor.

2. Each vendor will be contacted and given an opportunity to provide a written price quote on the same specifications. A minimum of three vendors shall be contacted.

3. The Director of Strategic Initiatives will be responsible for contacting potential vendors when price quotes are needed.

4. The price quotes will receive appropriate confidentiality before award.

5. Quotes will be awarded by the Director of Strategic Initiatives. Quotes awarded will be to the lowest and best quote based upon quality, service availability, price, and/or _Delivery________.

6. The Director of Strategic Initiatives will be responsible for documentation of records to show written solicitation specifications were sent to a minimum of 3 vendors, selection of vendors, reasons for selection, names of all vendors contacted, and written price quotes from each vendor.

7. The (Title of Person) will be responsible for documentation that the actual product specified is received.

8. Any time an accepted item is not available, the Director of Strategic Initiatives will select the acceptable alternative. Full documentation will be made available as to the selection of the acceptable item.

9. Bids will be awarded on the following criteria:

    i. *Price*________________________________
    ii. Quality____________________________________
    iii. Delivery__

10. The Director of Strategic Initiatives is required to sign all quote tabulations, signifying a review and approval of the selections.

11. If the value of the purchase is greater than $10,000, a contract will be required. A purchase order containing all material terms and **signed by both the awarding authority and the vendor** will suffice as a written contract under Chapter 30B.

Micropurchases

If the purchase amount is $10,000 or less, the purchase can be made without soliciting competitive quotations if price is reasonable and purchases are distributed equitably among qualified suppliers

Non-Competitive Procurements

If items are available only from a single source *when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation*, NON-COMPETITIVE PROPOSAL procedures will be used.

Please note: a member of the Massachusetts Dept of Elementary and Secondary Education, Office for Food and Nutrition Programs, will approve, in advance, all procurements that result from non-competitive negotiations.

1. Written Specifications will be prepared and provided to the vendor.

2. The Director of Strategic Initiatives will be responsible for the documentation of records to fully explain the decision to use the non-competitive proposal. The records will be available for audit and review.

3. The Director of Strategic Initiatives will be responsible for documentation that the actual product or service specified was received.

4. The Director of Strategic Initiatives will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive proposals are met.

5. Non-competitive proposals can be used for one-time purchases of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive negotiation purchase shall be maintained by the (School Food Authority Official). The record of non-competitive purchases shall include, at a minimum, the following:

    a. item name

b. dollar amount
c. vendor, and
d. reason for non-competitive procurement

Emergency or "Pressing Need" Purchases

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase must be authorized using a purchase order signed by the (School Food Authority/Business Official). The following emergency procedures shall be followed. All emergency procurements shall be approved by the (School Food Authority Official).
2. At a minimum, the following emergency procurement procedures shall be documented:
    a. item name
    b. dollar amount
    c. vendor, and
    d. reason for emergency
3. If it is necessary, in the course of a pressing need, to make an emergency purchase by means of "piggybacking" on the bid of another district, the following conditions must exist and approved procedures must be followed and appropriately documented as follows:
    a. The SFA originating the competitive procurement must have a "piggyback provision" in the original solicitation;
    b. Documentation of the emergency requiring the piggybacking must be maintained;
    c. Approval from the purchasing SFA's governing board will be obtained and documented;
    d. Approval from the SFA that originated the competitive procurement will be obtained and documented;
    e. Approval from the Vendor that was awarded the Contract (original solicitation) will be obtained and documented;
    f. Approval to piggyback will be obtained and documented from the governing board during a regularly scheduled meeting following the public notice;
    g. Notification to the Vendor of final approval will be documented and issued;

h. A contract with the Vendor will be developed including:

   i. The contractor shall agree to retain all books, records and other documents relative to the contract agreement for six (6) years after final payment, or until audited by SFA, whichever is sooner. The SFA, its authorized agents, and/or State and/or USDA auditors shall have full access to and the right to examine any of said materials during said period.

Record Keeping Requirements applicable to ALL Procurements

The SFA shall agree to retain all books, records and other documents relative to the award of the contract for six (6) years after final payment from the contract. Specifically the SFA shall maintain, at a minimum, the following documents:

1. Written rationale for the method of procurement;
2. A copy of the original solicitation;
3. The selection of contract type;
4. The bidding and negotiation history and working papers;
5. The basis for contractor selection;
6. Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
7. The basis for award cost or price;
8. The terms and conditions of the contract;
9. Any changes to the contract and negotiation history;
10. Billing and payment records;
11. A history of any contractor claims; and
12. A history of any contractor breaches.

***Contract conditions* under Uniform Grant Guidance as applicable are as follows:**

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33

U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

<u>Procurement – Educational Services</u>

The Commonwealth of Massachusetts Board of Education must approve the terms of the contracts with individuals or organizations that provide ―substantially all educational services‖ (M.G.L. 71, §89(j)(5). These contracts are not valid or in effect prior to receiving final approval from the Board of Education.

Phoenix
CHARTER ACADEMY
NETWORK

To: Federal Acquisition Regulation
From: Phoenix Charter Academy
Date: October 1, 2025
Subject: Revisions to Procurement Policy – Effective 10/1/2025
Summary: Changes to the Federal Acquisition Regulation (FAR), effective on October 1, 2025, increased a number of thresholds related to federal procurements to account for inflation, including those related to purchasing using federal grant funds.
Major changes include:
(1) Micro-purchase threshold increased from $10,000 to $15,000.
(2) Simplified Acquisition Threshold (SAT) increased from $250,000 to $350,000. For purchases between $15,000 and $350,000, the SAT requires an LEA to obtain an adequate number of quotes (more than one, generally three) from qualified sources.

To: DESE Nutrition Breakfast/Lunch Program
From: Phoenix Charter Academy
Date: June, 29 2025
Subject: Revisions to Procurement Policy – Effective 6/29/2026
Summary: Procurement Procedures Plan for Phoenix Charter Academy food service