

Escuela Éxitos

Bidding and Procurement Policy

General Statement of Policy

The purpose of this policy is to establish procedures for carrying out purchasing, procurement and contracting functions of Escuela Éxitos as a Minnesota federal Charter Schools Program (CSP) subgrantee, and to provide efficient management of public monies and ensure compliance with all applicable state and federal laws, including requirements when using federal funds to make purchases under Minnesota's CSP. It is the policy of Escuela Éxitos' Board of Directors to utilize resources to the greatest benefit of our students' education, and to establish procedures for all expenditures made with charter school funds to ensure efficiency, economy, legal compliance, internal control, ethical behavior by all staff members, and fairness in dealing with vendors.

I. PERMITTED PROCUREMENT METHODS

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

1. Micro-Purchases. This designation is used for the acquisition of supplies or services where the aggregate amount does not exceed \$3,000.

a. The micro-purchase method may be awarded without soliciting competitive quotations if Escuela Éxitos as a CSP subgrantee considers the cost to be reasonable. Use of a board adopted pre-qualified vendor list for micro-purchases will serve to document grantee determination of cost reasonableness.

b. To the extent practicable CSP grantees must distribute micro-purchases equitably among qualified suppliers.

2. Small Purchases. This designation is used for procurement of \$150,000 or less in the aggregate:

a. Small purchases are usually made through the use of purchase orders for purchases of goods and written contracts for purchases of consultant vendor services;

b. Price or rate quotations must be obtained from an adequate number of qualified sources (three to five).

c. For procurement of goods, catalogs or price lists may also be used. d. A procurement in excess of the micro-purchase threshold (less than \$3,000) may not be inappropriately broken up into smaller components solely to qualify for the less complicated procedures followed under the "micro-purchases" approach.

3. Competitive Proposals. This designation is used for procurement over

\$150,000 in the aggregate:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b. Proposals must be solicited from an adequate number of qualified sources.
 - c. Escuela Éxitos as a CSP subgrantee will use the Purchasing Procurement and Contracting Record below as a written method for conducting technical evaluations of the proposals received and for selecting recipients.
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
 - e. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
 - f. A procurement in excess of the small purchase threshold (more than \$150,000) may not be inappropriately broken up into smaller components solely to qualify for the less complicated procedures followed under the “small purchases” approach.
- G. Contact MDE’s Charter Center for guidance on competitive proposal procedures.

4. Noncompetitive Proposals. Noncompetitive negotiations may be utilized only under very limited circumstances. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. The item is only available from a single source.
- b. There is a public emergency that will not permit delay.
- c. MDE expressly authorizes noncompetitive proposals in response to a written request from Escuela Éxitos as a CSP subgrantee.
- d. After soliciting a number of sources, competition is determined inadequate.

(Inclusion of a preferred vendor in an approved grant application does not satisfy the above. Written approval must be requested from and approved by MDE.)

II. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Escuela Éxitos as a CSP subgrantee will take all necessary affirmative steps to assure that small and minority firms and women’s business enterprises and labor surplus area firms are used when possible. Affirmative steps include:

- a. Placing qualified small and minority business and women’s business enterprises on solicitation lists;

- b. Assuring that small and minority business and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirements permits, which encourage participation by small and minority business and women's' business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

III. DEBARRED AND SUSPENDED PARTIES

Escuela Éxitos as a CSP subgrantee will not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs or activities under Executive Order 12549. Escuela Éxitos as a CSP subgrantee is subject to the non- procurement debarment and suspension regulations implementing Executive Orders 12549 and 12659, 2 CFR part 180:

- a. Escuela Éxitos as a CSP subgrantee will verify that persons with whom the school intends to do business is not excluded or disqualified from participation in Federal assistance programs or activities by checking the federal System for Awards Management (SAM)
- b. A print record of the search conducted will be kept with other procurement records.

IV. THE ADMINISTRATIVE PROCESS

a. Written Procurement Procedures:

1. For procurements within the small purchase threshold (less than \$150,000), written procurement procedures must:

- a. Ensure that the purchase of unnecessary or duplicate items is avoided; and
- b. Make sure a cost or price analysis is performed for every proposed procurement action, including contract modifications, and documentation to that effect is maintained in the procurement file.

- Escuela Éxitos will check with other schools and charter school resource organizations for current best procurement methods, sources for goods, products or services, and current cost or price trends.

2. All bid solicitations shall:

- a. Identify all requirements which are to be fulfilled and all factors to be used in evaluating bids or proposals; and

b. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured:

- Such description must not, in competitive procurements, contain features which unduly restrict competition.
- The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- Detailed product specifications should be avoided if at all possible.
- When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement.
- The specific features of the named brand which must be met by offers must be clearly stated;

3. Selection Procedures:

Escuela Éxitos’ selection procedures will ensure that:

- a. Awards are made to the bidder/offeror whose offer is responsive to the solicitation and is most advantageous to The Escuela Éxitos as a CSP subgrantee, price and other factors considered;
- b. Any and all offers may be rejected when it is in The Escuela Éxitos’ interest to do so;
- c. The award is only made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement;
- d. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources as deciphered after checking contractor references, contacting contractors’ current and prior clients, checking resource organization websites, etc.; and
- e. There are protest procedures in place to handle and resolve disputes relating to procurement, and in all instances The Escuela Éxitos will report such disputes to MDE.

4. Contract Administration Procedures:

The Escuela Éxitos’ contract administration procedures will:

- a. Insure all purchase orders (and contracts) are signed by the authorized official(s) of Escuela Éxitos as a CSP subgrantee;
- b. Determine the adequacy of contractor performance; and

- Establish reasonable payment schedules defining amount and timing of funds to be paid (recommend payment after services rendered).
 - Insure items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
- c. Provide that timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.

Written contracts with vendors must include the following:

a. In addition to the contract certification provision under DEBARRED AND SUSPENDED PARTIES above, written contracts with vendors must include the following:

- For CSP financed contracts (which may only be non- construction), contracts must include provisions found in 34CFR 80.36(if):

i. Paragraph (7) Notice of awarding agency requirements and regulations pertaining to reporting;

ii. Paragraph (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to nay discovery or invention which arises or is developed in the course of or under such contract;

iii. Paragraph (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data;

iv. Paragraph (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;

v. Paragraph (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed; and;

vi. Paragraph (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94 163, 89 Stat. 871).

- For CSP financed non-construction contracts of \$10,000 or more, contracts must include, in addition to above, provision found in paragraph (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.

- For CSP financed non-construction contracts of \$100,000 or more, contracts must include in addition to above, the following provisions found in:

vii. Paragraph (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate; and

viii.Paragraph (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and

ix. Appendix A to Part 74-Contract Provisions, paragraph (8) Byrd Anti-Lobbying Amendment (31U.S. C. 1332).

b. All contracts in excess of \$10,000 must address termination for cause and for convenience by The Escuela Éxitos including the manner by which it will be effected and the basis for settlement.

c. 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 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.

V. RECORDS TO BE MAINTAINED

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

- a. The rationale for selecting the method of procurement used;
- b. The rationale for selecting/rejecting the contractor;
- c. The rationale for selecting the type of contract;
- d. The basis for the cost or price of a contract;
- e. The receipt of an adequate number of price or rate quotations from qualified sources; and
- f. Justification for lack of competition when competitive bids or offers are not obtained.

Escuela Éxitos will use the Purchasing Procurement and Contracting Record below when maintaining records.

VI. MDE PRE-PROCUREMENT REVIEW

Upon request of MDE, The Escuela Éxitos as a CSP subgrantee will make available procurement documents where:

- a. MDE believes a review is needed to ensure that the item or service specified is the one being proposed for acquisition;

b. The Escuela Éxitos' procurement procedures or operations fail to comply with the procurement standards in Part 200;

c. The procurement is expected to exceed the Simplified Acquisition Threshold [currently \$150,000] and

1. The procurement is to be awarded without competition or only one bid/offer is received in response to a solicitation;

2. The procurement specifies a "brand name" product; and

3. The proposed contract is to be awarded to other than the apparent low bidder under a sealed bid procurement; and/or

d. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

VI. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

a. No employee, officer, or agent of The Escuela Éxitos may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. A conflict arises when any of the following has a financial or other interest in or a tangible personal benefit from a firm considered for a contract:

1. An employee, officer or agent;

2. Any member of that person's immediate family;

3. That person's partner; and/or

4. An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award.

b. The officers, employees, and agents of Escuela Éxitos as a CSP subgrantee may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts

c. Disclosure is required in writing to MDE of any potential conflict of interest to MDE; and

d. Escuela Éxitos must disclose, in a timely manner, in writing MDE, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

e. Organizational conflicts of interest are prohibited. Escuela Éxitos employees, officers or agents engaged in the selection, award, and/or administration of federally financed contracts in relationship with an affiliate or subsidiary organization will demonstrate compliance with this provision.

f. 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.

Adopted and Board Approved
5-12-2021

By: _____
Sam Pfeifer (Board Chair)

Date: _____