

Book	BOARD POLICIES
Section	6000 BP - Finances
Title	PURCHASING
Code	6320 BP
Status	Active
Adopted	October 9, 2023

## **PURCHASING**

Reference: MCL 380.1267, 380.1274 et seq.

Procurement of all supplies, materials, equipment, and services paid for from Academy funds shall be made in accordance with all applicable federal and State statutes, Board policies, and administrative procedures. Standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts are established in Policy 1130, Policy 3110, and Policy 4110 (as applicable) – Conflict of Interest.

All procurement transactions shall be conducted in a manner that encourages full and open competition and in accordance with good administrative practice and sound business judgment.

Each year the State of Michigan informs the School of the legal amount for purchases which require a formal bidding process of a single item.

Purchases in a single transaction that are in excess of the dollar amount permitted by State statute shall require competitive bids and, whenever possible, have at least three (3) such bids for substantiation of purchase and shall require approval of the Board prior to purchase.

### **Competitive Bids**

Competitive bids are not required for items purchased through the cooperative bulk purchasing program operated by the Michigan Department of Management and Budget pursuant to M.C.L.A. 18.1263.

Competitive bids are not required for food purchases, unless food purchased in a single transaction costs \$100,000 or more.

Bids shall be sealed and shall be opened by the Board Treasurer in the presence of at least one (1) witness. All orders or contracts should be awarded to the lowest responsible bidder; however, consideration can be given to:

1. the quality of the item(s) to be supplied;
2. delivery terms;
3. past performance of vendor.

In addition to the factors above, the Board may consider and provide a preference to bidders which use a Michigan-based business as the primary contractor or which use one (1) or more Michigan-based business as subcontractors.

For purposes of this preference a Michigan-based business means a business that would qualify for a Michigan preference for procurement contracts under M.C.L.A. 18.1268, which requires that the businesses certify that since inception or during the last twelve (12) months it has done one of the following:

- A. have filed a Michigan business tax return showing an allocation of income tax base to Michigan
- B. have filed a Michigan income tax return showing income generated in or attributed to Michigan
- C. withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Michigan Department of Treasury

This preference shall not apply to any procurement or project using Federal funds, nor shall it be used if it would violate any Federal law or requirements.

The Board reserves the right to reject any and all bids.

## **Bid Protest**

A bidder who wishes to file a bid protest must file such notice and follow procedures prescribed by the Request For Proposals (RFP) or the individual bid specifications package, for resolution. Bid protests must be filed in writing with the Educational Service Provider within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Educational Service Provider shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

## **General Provisions**

The Educational Service Provider is authorized to purchase all items within budget allocations.

The Board should be advised, for prior approval, of all purchases of equipment, materials, and services when the purchase exceeds the line item.

The Educational Service Provider is authorized to make emergency purchases, without prior approval, of those goods and/or services needed to keep the school in operation. Such purchases shall be brought to the Board's attention at the next regular meeting.

In order to promote efficiency and economy in the operation of the school, the Board requires that the Educational Service Provider periodically estimate requirements for standard items or classes of items and make quantity purchases on a bid basis to procure the lowest cost consistent with good quality.

Whenever storage facilities or other conditions make it impractical to receive total delivery at any one time, the total quantity to be shipped but with staggered delivery dates, shall be made a part of the bid specifications.

Before placing a purchase order, the Educational Service Provider shall check as to whether the proposed purchase is subject to bid, whether sufficient funds exist in the budget, and whether the material might be available elsewhere in the school. All purchase orders shall be numbered consecutively.

In the interests of economy, fairness, and efficiency in its business dealings, the Board requires that opportunity be provided to as many responsible suppliers as possible to do business with the Academy.

The Educational Service Provider shall determine the amount of purchase which shall be allowed without a properly signed purchase order. Employees may be held personally responsible for anything purchased without a properly signed purchase order or authorization.

The Board may acquire office equipment as defined in law by lease, by installment payments, by entering into lease-purchase agreements, or by lease with an option to purchase, provided the contract sets forth the terms of such a purchase.

## **Procurement – Federal Grants**

The Educational Service Provider shall maintain a procurement and contract administration system in accordance with the United States Department of Education requirements (34 CFR 80.36) for the administration and management of Federal grants and federally-funded programs. The Academy shall maintain a compliance system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of this policy and administrative guidelines.

Book	BOARD POLICIES
Section	6000 BP - Finances
Title	PROCUREMENT FEDERAL GRANTS/FUNDS
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## **PROCUREMENT – FEDERAL GRANTS/FUNDS**

Reference:

2 C.F.R. 200.317 - .326, Appendix II to Part 200  
2 C.F.R. 200.520

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or Academy matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Board policies, and administrative procedures.

The Educational Service Provider shall have and use a procurement and contract administration system in accordance with the USDOE requirements (2 CFR 200.317-.326), including affirmative steps for small and minority businesses and women's business enterprises, for the administration and management of Federal grants and Federally-funded programs. The Educational Service Provider shall maintain oversight that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the Academy's documented general purchasing Policy 6320.

When required by Federal program legislation, all Federally-funded contracts in excess of \$2,000 related to construction, alteration, repairs, painting, decorating, etc. must comply with Davis-Bacon prevailing wage requirements.

All Academy employees, whether employed by the Board or by an Educational Service Provider, all officers of the Academy, and all agents of the Academy who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, whether employed by the Board or by an Educational Service Provider, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 1130 and Policy 3110 – Conflict of Interest.

The Academy will avoid acquisition of unnecessary or duplicative items. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase, and where appropriate, an analysis shall be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

To foster greater economy and efficiency, the Academy may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

### **Competition**

All procurement transactions for the acquisition of property or services required under a Federal award paid for from Federal funds or Academy matching funds shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgement. In order to promote objective contractor performance and eliminate unfair competitive advantage, the Academy shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms in order for them to qualify to do business;
- B. unnecessary experience and excessive bonding requirements;
- C. noncompetitive pricing practices between firms or between affiliated companies;
- D. noncompetitive contracts to consultants that are on retainer contracts;
- E. organizational conflicts of interest;

F. specification of only a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

G. any arbitrary action in the procurement process.

Further, the Academy does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; or (2) the Academy is contracting for architectural and engineering services, in which case 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.

To the extent that the Academy uses a pre-qualified list of persons, firms or products to acquire goods and services that are subject to this policy, the pre-qualified list includes enough qualified sources as to ensure maximum open and free competition. The Academy allows vendors to apply for consideration to be placed on the list continuously.

The Academy shall require that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to provide maximum open and free competition. The Academy shall not preclude potential bidders from qualifying during the solicitation period.

### **Solicitation Language (Purchasing Procedures)**

The Academy shall have written procurement procedures that require that all solicitations made pursuant to this policy incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall set forth those minimum essential characteristics and standards to which it shall 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 shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Academy will not approve any expenditure for an unauthorized purchase or contract.

### **Procurement Methods**

The Academy shall have and use documented procedures, consistent with the standards described above for the following methods of procurement:

#### **A. Informal Procurement Methods**

When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold, or a lower threshold established by the State, formal procurement methods are not required. The Academy may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the simplified acquisition threshold include:

##### **1. Micro-purchases**

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$7,500. To the maximum extent practicable, the Academy should distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if Educational Service Provider considers the price to be reasonable based on research, experience, purchase history or other relevant information and documents are filed accordingly. The Academy shall maintain evidence of this reasonableness in the records of all purchases made by this method.

Unless otherwise defined by State or local law, Academies are responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of the risk, and its documented procurement procedures. The micro-purchase threshold used by the Academy shall be authorized or not prohibited under State, local, or tribal laws or regulations. An Academy which is qualified as a low-risk auditee for the most recent audit (C.F.R. 200.520) may increase the micro-purchase threshold up to \$26,046. An eligible Academy may self-certify the micro-purchase threshold on an annual basis (not to exceed \$ 26,046) after completing the annual internal institutional risk assessment to identify, mitigate, and manage financial risks. The self-certification, in accordance with C.F.R. 200.334, must include a justification, clear identification of the threshold, and supporting documentation of the qualifications listed above.

##### **2. Small Purchases**

Small purchases include the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold as established by the State annually. Small purchase procedures require that price or rate quotations shall be obtained from three (3) qualified sources.

Academies are responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures which must not exceed the threshold established in the Federal Acquisition Regulations (FAR). When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

## B. Formal Procurement Methods

When the value of the procurement for property or services under a Federal award exceeds the simplified acquisition threshold, or a lower threshold established by the State, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement method can be used in accordance with the standards on competition in C.F.R. 200.319 or non-competitive procurement. The formal methods of procurement are:

### 1. Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts more than to the amount allowed by Michigan statute and when the Board determines to build, repair, enlarge, improve, or demolish an academy building/facility the cost of which will exceed the amount allowed by Michigan statute.

In order for sealed bidding to be feasible, the following conditions shall be present:

- a. a complete, adequate, and realistic specification or purchase description is available;
- b. two (2) or more responsible bidders are willing and able to compete effectively for the business; and
- c. the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

When sealed bids are used, the following requirements apply:

- a. Bids shall be solicited in accordance with the provisions of State law and Policy 6320. Bids shall be solicited from three (3) qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
- b. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
- c. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
- d. A firm fixed price contract award will be made in writing to the lowest responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.
- e. The Board reserves the right to reject any or all bids for sound documented reason.

### 2. Proposals

Procurement by proposals is a method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method. (See Policy 6320 for competitive bid procedures.)

If this method is used, the following requirements apply:

- a. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- b. Proposals shall be solicited from an adequate number of sources.

- c. The Academy shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The Academy may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. 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 that firms are a potential source to perform the proposed effort.

### 3. Noncompetitive Procurement

Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. micro-purchases
- 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 noncompetitive proposals in response to a written request from the Academy
- e. after solicitation of a number of sources, competition is determined to be inadequate

#### **Domestic Preference for Procurement**

As appropriate and to the extent consistent with law, the Academy shall, to the extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards including all contracts and purchase orders for work or products under the Federal award.

#### **Contract/Price Analysis**

The Academy shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Academy shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the Academy shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

#### **Time and Materials Contracts**

The Academy uses 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. A time-and-materials type contract means a contract whose cost to the Academy 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, the Academy sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the Academy shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

#### **Suspension and Debarment**

The Academy will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the Academy and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the Academy shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The Educational Service Provider shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The Academy is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by the Academy that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR Part 180 Subpart G)

Debarment is an action taken by the Educational Service Provider to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR Part 180 Subpart H)

The Academy shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over \$25,000, the Academy shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at [www.sam.gov](http://www.sam.gov); collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 CFR Part 180 Subpart C)

### **Bid Protest**

The Academy maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the Educational Service Provider within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Educational Service Provider shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

### **Maintenance of Procurement Records**

The Academy shall 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, and the basis for the contract price (including a cost or price analysis).