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Agora Cyber Charter School

Board of Trustees Policy

FEDERAL FISCAL COMPLIANCE POLICY

The Board of Trustees (the “Board”) of Agora Cyber (“Charter School”) shall ensure federal funds received by the Charter School are administered in accordance with federal requirements, including but not limited to the federal Uniform Grant Guidance.

The Board shall review and approve all applications for federal funds submitted by the Charter School.

The Board designates the Business Manager as the Charter School contact for all federal programs and funding.

The CEO or designee, in collaboration with the Federal Programs Coordinator and Business Manager, shall establish and maintain a sound financial management system to include internal controls and federal grant management standards covering the receipt of both direct and state-administered federal grants, and to track costs and expenditures of funds associated with grant awards.

The Charter School’s financial management system shall be designed with strong internal controls, a high level of transparency and accountability, and documented procedures to ensure that all financial management system requirements are met. Financial management standards and procedures shall assure that the following responsibilities are fulfilled:

Identification – the Charter School must identify, in its accounts, all federal awards received and expended, and the federal programs under which they were received.

Financial Reporting – Accurate, current, and complete disclosure of the financial results of each federal award or program must be made in accordance with the financial reporting requirements of the Education Department General Administrative Regulations (“EDGAR”).

Accounting Records – the Charter School must maintain records which adequately identify the source and application of funds provided for federally-assisted activities.

Internal Controls – Effective control and accountability must be maintained for all funds, real and personal property and other assets. The Charter School must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

Budget Control – Actual expenditures or outlays must be compared with budgeted amounts for each federal award. Procedures shall be developed to establish determination for allowability of costs for federal funds.

Cash Management – The Charter School shall maintain written procedures to implement the cash management requirements found in EDGAR. See Attachment.

Allowability of Costs – The Charter School shall ensure that allowability of all costs charged to each federal award is accurately determined and documented. See Attachments.

Procurement – The Charter School has outlined cost thresholds for determining when the quote or formal bidding procedures that are required by state law as reflected in the Purchases Subject to Bid Policy must be modified when making purchases for federally funded purposes to which the Uniform Grant Guidance or USDA regulations apply. See Attachment.

Standards of Conduct

The Charter School shall maintain standards of conduct covering conflicts of interest and the actions of employees and school officials engaged in the selection, award and administration of contracts.

All employees shall be informed of conduct that is required for federal fiscal compliance and the disciplinary actions that may be applied for violation of Board policies, administrative regulations, rules and procedures.

Employees - Time and Effort Reporting

All Charter School employees paid with federal funds shall document the time they expend in work performed in support of each federal program, in accordance with law. These time-and-effort reporting requirements do not apply to contracted individuals.

The Charter School’s CEO or his/her designee will ensure that supporting documentation for this time-and-effort will be maintained for Charter School employees with wages and/or benefits that are related to any combination of a federal award, cost objectives and/or other federal, state

or local funding sources. Supporting documentation for Charter School employee time and effort must be sufficient so that costs were correct and appropriately allotted.

All employees paid with federal funds, including any employee whose salary is paid with state or local funds and is used to meet a required "match" in a federal program, must submit either (1) a semi-annual certification or (2) a personnel activity report, as specified below. The type of form depends on the number of programs or cost objectives that an employee works on over the course of a school year. A cost objective is a program, function, activity, award, organizational subdivision, contract, or work unit of which cost data are described and from which provision is made to accumulate and measure the cost of processes, products, jobs, or capital projects. *See* 2 C.F.R. § 200.28.

All employees who work on a single program or cost objective must complete a semi-annual certification. The semi-annual certification must be: (1) completed at least every six months; (2) be signed by the employee or the supervisor with direct knowledge of the work being performed; (3) reflect an after-the-fact (as distinguished from budgeted) distribution of the actual activity; and (4) account for the total activity for which each employee is compensated.

All employees who work on multiple programs or cost objectives must complete a personnel activity report (*see* 2 C.F.R. § 200.430) that support the distribution of their salaries or wages that meet the following standards: (1) reflect an after-the-fact (as distinguished from budgeted) distribution of the actual activity; (2) account for the total activity for which each employee is compensated; (3) are prepared semi-annually; and (4) are signed by the employee.

Payroll charges shall match the actual distribution of time recorded on the certification documents. The certifications shall be collected from employees semi-annually and reviewed by each employee's supervisor. If an employee exits the federally-funded program mid-year, the employee's supervisor is responsible for collecting outstanding certifications even though the employee is no longer employed in that role.

Documentation of this will be stored by the Charter School for the required time period (see below for retention procedures).

Charter School employees shall be reimbursed for travel costs incurred in the course of performing services related to official business as a federal grant recipient.

The Charter School shall establish and maintain employee policies on hiring, benefits and leave and outside activities, as approved by the Board.

Record Keeping

The Charter School shall maintain a Records Management Plan and related Board policy and administrative regulations for the retention, retrieval and disposition of manual and electronic records, including emails.

The Charter School shall ensure the proper maintenance of federal fiscal records documenting:

- a. Amount of federal funds.
- b. How funds are used.
- c. Total cost of each project.
- d. Share of total cost of each project provided from other sources.
- e. Other records to facilitate an effective audit.
- f. Other records to show compliance with federal program requirements.
- g. Significant project experiences and results.
- h. All records must be retrievable and available for programmatic or financial audit.

The Charter School shall provide the federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, the right of access to any documents, papers, or other Charter School records which are pertinent to the federal award. The Charter School shall also permit timely and reasonable access to the Charter School's personnel for the purpose of interview and discussion related to such documents.

Records shall be retained for a minimum of five (5) years from the date on which the final Financial Status Report is submitted, or as otherwise specified in the requirements of the federal award, unless a written extension is provided by the awarding agency, cognizant agency for audit, oversight agency for audit or cognizant agency for indirect costs.

If any litigation, claim or audit is started before the expiration of the standard record retention period, the records shall be retained until all litigation, claims or audits have been resolved and final action taken.

As part of the Records Management Plan, the Charter School shall maintain a records retention schedule, which shall delineate the record retention format, retention period and method of disposal.

The Records Management Plan shall include identification of staff authorized to access records, appropriate training, and preservation measures to protect the integrity of records and data.

The Charter School shall ensure that all personally identifiable data protected by law or regulations is handled in accordance with the requirements of applicable law, regulations, Board policy and administrative regulations.

Subrecipient Monitoring

In the event that the Charter School awards subgrants, the Charter School shall establish procedures to:

- a. Assess the risk of noncompliance.
- b. Monitor grant subrecipients to ensure compliance with federal, state, and local laws and Board policy and procedures.
- c. Ensure the Charter School's record retention schedule addresses document retention on assessment and monitoring.

Compliance Violations

Employees and contractors involved in federally funded programs and subrecipients shall be made aware that failure to comply with federal law, regulations or terms and conditions of a federal award may result in the federal awarding agency or pass-through entity imposing additional conditions or terminating the award in whole or in part.

TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH THE SCHOOL'S CHARTER AND/OR APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS AND/OR CHARTER CONTROL.

ADOPTED this _____ day of _____, 2022

President

Secretary

Cash Management – Federal Programs

The Charter School receives payment from the Pennsylvania Department of Education (PDE) on a reimbursement basis. The Charter School may receive an advance of federal grant funds. The Charter School shall maintain accounting methods and internal controls and procedures that assure those responsibilities are met.

Payment Methods

Reimbursements -

The Charter School will initially charge federal grant expenditures to nonfederal funds. The Business Manager will request reimbursement for actual expenditures incurred under the federal grants.

Such requests shall be submitted with appropriate documentation and signed by the requestor. Requests for reimbursements will be approved by the Business Manager.

Reimbursement will be submitted on the appropriate form to the PDE portal. All reimbursements are based on actual disbursements, not on obligations. PDE will process reimbursement requests within the timeframes required for disbursement.

Consistent with state and federal requirements, the Charter School will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for PDE to review upon request. Reimbursements of actual expenditures do not involve interest calculations.

Advances -

When the Charter School receives advance payments of federal grant funds, it must minimize the time elapsing between the transfer of funds to the Charter School and the expenditure of those funds on allowable costs of the applicable federal program. (2 CFR Sec. 200.305(b)) The Charter School shall attempt to expend all advances of federal funds within seventy-two (72) hours of receipt.

When applicable, the Charter School shall use existing resources available within a program before requesting additional advances. Such resources include program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds. (2 CFR Sec. 305(b)(5))

The Charter School shall hold federal advance payments in insured, interest-bearing accounts.

The Charter School is permitted to retain for administrative expense up to \$500 per year of interest earned on federal grant cash balances. Regardless of the federal awarding agency, interest earnings exceeding \$500 per year shall be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. (2 CFR Sec. 200.305(b)(9))

Consistent with state guidelines, interest accruing on total federal grant cash balances shall be calculated on cash balances per grant and applying the actual or average interest rate earned. Remittance of interest shall be responsibility of the Business Manager.

Allowability of Costs – Federal Programs

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.

Delegation of Responsibility

When determining how the Charter School will spend its grant funds, the Business Manager 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.

Allowability Determinations

All costs supported by federal education funds must meet the standards outlined in Education Department General Administrative Regulations (“EDGAR”), 2 CFR Part 3474 and 2 CFR Part 200, Subpart E. The Business Manager must consider these factors when making an allowability determination.

Part 200 sets forth general cost guidelines that must be considered, as well as rules for specific types of items, both of which must be considered when determining whether a cost is an allowable expenditure of federal funds. The expenditure must also be allowable under the applicable program statute (e.g., Title I of the Elementary and Secondary Education Act (ESEA), or the Carl D. Perkins Career and Technical Education Act (Perkins)), along with accompanying program regulations, nonregulatory guidance and grant award notifications.

Restrictions in state and local rules or policy also must be considered. Whichever allowability requirements are stricter will govern whether a cost is allowable.

General allowability determination factors include the following:

1. Be Necessary and Reasonable for the performance of the federal award. 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 Charter School 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 individual incurring the cost acted with prudence in the circumstances considering responsibilities to the Charter School, its employees, its students, the public at large, and the federal government.
- Whether the Charter School significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost. (2 CFR Sec. 200.404)

Whether a cost is **necessary** will be 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 Charter School can demonstrate that the cost addresses an existing need, and can prove it.

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 federal award 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 needs assessment.
 - Whether the cost addresses program goals and objectives and is based on program data.
2. 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 CFR Sec. 200.405)
 3. Consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the school entity.

4. Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award.
5. 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.
6. Adequately documented. All expenditures must be properly documented.
7. Be calculated in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in Part 200.
8. 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 nonfederal entity to contribute a certain amount of nonfederal resources to be eligible for the federal program.
9. 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 CFR Sec. 200.406)

Selected Items of Cost

Charter School personnel responsible for spending federal grant funds and for determining allowability must be familiar with and refer to the Part 200 selected items of cost section. These rules must be followed when charging these specific expenditures to a federal grant. When applicable, employees must check costs against the selected items of cost requirements to ensure the cost is allowable, and also check state, Charter School and program-specific rules.

Any questions related to specific costs should be forwarded to the Business Manager who shall consult with the school solicitor for clarification as appropriate.

Administration of Federal Funds – Type of Costs, Obligations and Property Management

The Charter School establishes and maintains Board policies, administrative regulations and procedures on administration of federal funds in federal programs as required by the Uniform Grant Guidance and other federal, state and local laws, regulations and requirements. The Charter School's financial management system includes internal controls and grant management standards in the following areas.

Direct and Indirect Costs

Direct costs – costs that can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

Indirect costs – costs incurred for a common or joint purpose benefiting more than one (1) cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. (2 CFR Sec. 200.405, 200.413)

Identification with the federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs.

Direct and indirect costs shall be determined in accordance with law, regulations, the terms and conditions of the federal award, and the Charter School's negotiated indirect cost rate.

The Charter School shall develop an indirect cost rate proposal and cost allocation plan in accordance with law, regulations and the terms and conditions of the federal award.

Timely Obligation of Funds

Obligations – orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the Charter School during the same or a future period.

All obligations must occur between the beginning and ending dates of the federal award project, which is known as the period of performance. The period of performance is dictated by law and regulations and will be indicated in the federal award. Specific requirements for carryover funds may be specified in the federal award and must be adhered to by the Charter School. (2 CFR Sec. 200.77, 200.309)

The Charter School will handle obligations and carry over of state-administered and direct grants in accordance with state and federal law and regulations, and the terms and conditions of the federal award. Carryover will be calculated and documented by the Business Manager.

The Charter School may exercise an extension of the period of performance under a direct grant in accordance with law, regulations and the terms and conditions of the federal award when written notice is provided to the federal awarding agency at least ten (10) calendar days prior to the end of the period of performance. (2 CFR Sec. 200.308(d)(2))

The CEO along with the Business Manager will decide when an extension of the period of performance is necessary and will recommend that the Board approve this process.

The CEO along with the Business Manager will develop the required written notice, including the reasons for the extension and revised period of performance; the notice will be issued no later than ten (10) calendar days prior to the end of the currently documented period of performance in the federal award.

The Charter School must seek approval from the federal awarding agency for an extension of the period of performance when the extension is not contrary to federal law or regulations, and the following conditions apply:

- a. The terms and conditions of the federal award prohibit the extension;
- b. The extension requires additional federal funds; or
- c. The extension involves any change in the approved objectives or scope of the project. (2 CFR Sec. §200.308)

The CEO along with the Business Manager will determine when an extension must be requested for approval by the federal awarding agency, draft the written request and notify the Board of the requested extension.

Management of Property Acquired With Federal Funds

Contract and Purchasing Administration -

The Charter School maintains internal controls, administrative regulations and procedures to ensure that contractors deliver goods and services in accordance with the terms, conditions and specifications of the designated contract, purchase order or requisition.

Property Classifications -

Property shall be classified as equipment, supplies, computing devices and capital assets as defined and specified in accordance with law, regulations and Board policy.

Inventory Control/Management -

All property purchased with federal funds, regardless of cost, will be inventoried as a safeguard.

Inventory will be received by the department or program requesting the item; designated staff will inspect the property, compare it to the applicable purchase order or requisition, and ensure it is appropriately logged and tagged in the Charter School's property management system.

Items acquired will be physically labeled by source of funding and acquisition date.

Inventory records of equipment and computing devices must be current and available for review and audit, and include the following information:

- a. Description of the item, including any manufacturer's model number.
- b. Manufacturer's serial number or other identification number.
- c. Identification of funding source.
- d. Acquisition date and unit cost.
- e. Source of items, such as company name.
- f. Percentage of federal funds used in the purchase.
- g. Present location, use, condition of item, and date information was reported.
- h. Pertinent information on the ultimate transfer, replacement or disposition of the item and sale price of the property.

Inventory will be updated as items are sold, lost or stolen, or cannot be repaired, and new items are purchased.

Physical Inventory -

Physical inventory of property will be completed by designated Charter School staff in accordance with applicable federal and state law and regulation and Board policy.

The physical inventory of items will be conducted annually, and the results will be reconciled with the inventory records and reported to the federal awarding agency.

Maintenance -

The Charter School establishes adequate maintenance procedures to ensure that property is maintained in good condition in accordance with law, regulation and Board policy.

Safeguards -

The Charter School ensures that adequate safeguards are in place to prevent loss, damage or theft of property:

- a. Any loss, damage or theft will be reported to the CEO and investigated and fully documented, and may be reported to local law enforcement.

- b. If stolen items are not recovered, the Charter School will submit copies of the investigative report and insurance claim to the federal awarding agency.
- c. The Charter School may be responsible for replacing or repairing lost, damaged, destroyed or stolen items.
- d. Replaced equipment is property of the originally funded program and should be inventoried accordingly.
- e. Charter School property may only be loaned in accordance with Board policy and administrative regulations.

Disposition of Property Acquired with Federal Funds –

When the Charter School determines that equipment or supplies acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the Principal will contact the federal awarding agency or pass-through entity administering the program to obtain disposition instructions, based on the fair market value of the equipment or supplies.

Generally, items with a fair market value of \$5,000 or less that are no longer effective may be retained, sold, purged, or transferred to the Charter School. For items with a fair market value greater than \$5,000, the federal awarding agency is entitled to the federal share of the current market value or sales proceeds.

If the Charter School will be replacing the equipment or supplies, the Charter School may use the existing equipment or supplies as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

The Business Manager will be responsible for contacting the federal awarding agency and determining the process for disposition of equipment or supplies.

The Charter School may use the following methods in disposing of unnecessary equipment or supplies acquired with federal funds:

- a. Public auction and/or online sale – generally conducted by a licensed auctioneer.
- b. Salvage – scrap sold to local dealers.
- c. Negotiated sale – normally used when disposing of items of substantial value.
- d. Sealed bid – normally used for items of substantial value or unique qualities.
- e. Pre-priced sale – large quantities of obsolete or surplus equipment or supplies may be sold by this method.
- f. Donation to charitable organizations, for equipment or supplies with little to no value.
- g. Disposition to trash for equipment or supplies with no value.

The Business Manager will be responsible for maintaining records of obsolete and surplus property disposed of, and will report to the federal awarding agency when required.

Procurement – Federal Programs Policy Attachment

Responsibility for Purchasing

The Board of Trustees of the Charter School has outlined standard purchasing responsibilities, methods of purchasing, price quotations and bid requirements in the following Board policies and their accompanying administrative regulations or procedures:

Disqualification, Suspension Or Debarment Of Bidders Policy

Internal Controls Policy

Payment of Claims Policy

Purchases Subject to Bid Policy

Purchases Budgeted Policy

Purchase Methods

When a request for purchase of equipment, supplies or services has been submitted and approved as outlined below, the procurement method to be used will be determined based on the total cost of the purchase as further outlined below. This procedure outlines how the cost thresholds for determining when the quote or formal bidding procedures that are required by state law as reflected in the Purchases Subject to Bid Policy must be modified when making purchases for federally funded purposes to which the Uniform Grant Guidance or USDA regulations apply, so as to comply with both state and federal requirements. Final determination of which purchasing procedures are to be applied is delegated to the Business Manager under the authority of the Board.

Standard Procurement Documents and Purchase Request Process

The Charter School shall use purchase orders or requisition order forms for purchase requests in accordance with the applicable purchase method. The Charter School shall use paper and/or electronic purchasing records, which are pre-numbered and are accessible to designated purchasing staff in the Charter School main office.

Purchase requests by an employee must be submitted to the Principal. Purchase of all budgeted items or items approved by the CEO must be initiated by use of a purchase order or requisition submitted to the Business Manager.

Purchase orders and requisitions shall contain information including, but not limited to:

1. Description of the services to be performed or goods to be delivered.
2. Location of where services will be performed or goods will be delivered.
3. Appropriate dates of service or delivery.

Documentation on purchase orders and requisitions shall be maintained in accordance with the Charter School's Records Management Policy and records retention schedule.

Contracts shall be reviewed by the CEO prior to submission to the Board for approval.

Contracts to which the Uniform Grant Guidance apply shall contain the clauses specified in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), when applicable.

Micro-Purchases Not Requiring Quotes or Bidding (up to \$10,000)

For purposes of this procedure, micro-purchase means a purchase of equipment, supplies or services for use in federally funded programs using simplified acquisition procedures, the aggregate amount of which does not exceed a base amount of \$10,000. The micro-purchase dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than \$10,000.

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost. Procurement by micro-purchase is the acquisition of equipment, supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

The micro-purchase maximum for federal purposes is lower than the amount below which the PA Procurement Law allows purchase for non-federal purposes to be made without obtaining at least three written or telephonic quotes or using formal competitive bidding.

To the extent practicable, the Charter School distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices and other terms. The Business Manager will be responsible to determine the equitable distribution of micro-purchases.

Micro-purchases may be awarded without soliciting competitive quotations if the Charter School considers the price to be reasonable. The Charter School will maintain evidence of this reasonableness in the records of all micro-purchases. Reasonable means that sound business practices were followed and the purchase is comparable to market prices for the geographic area. Such determinations of reasonableness may include comparison of the price to previous purchases of the same item or comparison of the price of items similar to the item being purchased.

Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

Small Purchase Procedures (between \$10,000 and \$21,300)

For purposes of this procedure, small purchase procedures are those relatively simple and informal procurement methods for securing equipment, services, or supplies that cost more than the amount qualifying as a micro-purchase and do not cost \$21,300 or more. Small purchase procedures cannot be used for purchases of equipment or supplies or for construction, repair or maintenance services costing \$21,300 or more because the School Code requires formal competitive bidding at that level of cost.

The base amount at which bidding is required under state law is adjusted for inflation annually, and the amount most recently established and published in the Pennsylvania Bulletin shall apply if other than \$21,300. (24 P.S. Sec. 120)

Because state law does not require bidding for the purchase of services other than construction, maintenance or repairs on school facilities regardless of total cost, small purchase procedures, including a request for proposal (RFP) procedure, may be used for procurement of such other services except when the estimated total cost will be at or over the federal threshold at which formal competitive bidding is required (\$250,000).

If small purchase procedures are used, written or telephonic price or rate quotations are obtained from at least three (3) qualified sources and records of quotes are maintained.

Formal Competitive Bidding (\$21,300 or more).

Publicly Solicited Sealed Competitive Bids:

For purchases of equipment or supplies, or of services for construction, maintenance or repairs of school facilities, sealed competitive bids are publicly solicited and awarded to the lowest responsive and responsible bidder when the total cost is estimated to be \$21,300 or more.

State law does not require bidding for the purchase of services other than construction, maintenance or repairs on school facilities regardless of total cost. For procurement of such other services for federally funded purposes to which the Uniform Grant Guidance applies, formal competitive bidding will be used when the estimated total cost will be at or over the federal threshold of \$250,000.

The federal competitive bidding dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than \$250,000. (48 CFR Subpart 2.1)

For procurement of services costing at or over the \$250,000 federal threshold other than for construction, maintenance, or repairs on facilities, the use of competitive sealed bidding is considered feasible and appropriate when:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

Competitive Proposals

State law does not require public school entities to solicit competitive bids for services other than construction, repairs or maintenance of school facilities, for which competitive bidding is required if the cost will be a base amount of \$21,300 or more. State law allows competitive proposals relating to work on facilities in lieu of bidding only in the context of guaranteed energy savings contracts.

Federal regulations allow the use of competitive proposals as an alternative when formal bidding would otherwise be required only to procure architectural and engineering services. Other types of services for federally funded purposes to which the Uniform Grant Guidance applies, professional or otherwise, must be procured using competitive bidding when the cost would meet or exceed the federal threshold for competitive bidding (\$250,000).

In the case of services other than for construction, repairs or maintenance of school facilities costing less than that threshold, the Charter School may use small purchase procedures or micro-purchase procedures as applicable based on total cost. A request for proposal (RFP) process can also meet or exceed the small purchase competition requirements under state law and Board policy for the acquisition of services other than for construction, repairs or maintenance of school facilities, and can be used if the total cost will be less than \$250,000.

When permitted, the technique of competitive proposals is normally conducted with more than one (1) source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The Charter School shall comply with other applicable state and federal law and regulations, Board policy and administrative regulations regarding purchasing; the Charter School may consult with the school solicitor or other qualified counsel in determining the required process for purchasing through competitive proposals when necessary.

If this method is used, the following requirements apply:

- 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. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Competitive proposals shall be evaluated by the CEO based on factors including but not limited to:

- a. Cost.
- b. Experience of contractor.
- c. Availability.
- d. Personnel qualifications.

- e. Project management expertise.
- f. Understanding of Charter School needs.

Evaluations shall be completed in a timely manner, documented and shall be reviewed by the Board.

Contract/Price Analysis:

The Charter School performs a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. (2 CFR Sec. 200.323(a)).

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 Business Manager must come to an independent estimate prior to receiving bids or proposals. (2 CFR Sec. 200.323(a)). As part of the analysis, the Business Manager will enact established business practices which may include evaluation of similar prior procurements and a review process.

When performing a cost analysis, the Business Manager negotiates 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. (2 CFR Sec. 200.323(b)).

Negotiated Profit

In any procurement in which there has been no price competition, or in which a cost-analysis is performed, profit must be negotiated separately as an element of price. Accordingly, solicitations of bids, proposals or quotes shall require that bids, proposals, or quotes be limited to costs other than profit, and exclude profit.

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. (2 CFR §200.323(b))

When profit must be negotiated as a separate element of the total price, it shall be negotiated by the CEO.

Noncompetitive Proposals

Procurement by noncompetitive proposals means procurement through solicitation of a proposal from only one (1) source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An **emergency** exists whenever the time required for the Board to act in accordance with regular procedures would endanger life or property or threaten continuance of existing school classes.
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Charter School.
4. After solicitation of a number of sources, the Charter School determines the competition is inadequate.

In addition to standard procurement policy and procedures, the Charter School will document the grounds for using the noncompetitive method in lieu of an otherwise required competitive method of procurement, which may include written confirmation from the contractor as the sole source of the item. Documentation must be submitted to and maintained by the Business Office.

All noncompetitive proposals will ultimately be approved by the Board. The Charter School may utilize legal advice from the solicitor regarding noncompetitive proposals.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$250,000.

Purchase Cards

The Charter School approves the use of procurement cards for permissible purchases by designated employees to improve the efficiency of purchasing activities, reduce processing expenses, improve controls for small-dollar purchases, and streamline contractor payment.

Procurement cards may be used for purchases under federal programs. The use of procurement cards is governed by Board Procurement Cards and established administrative regulations.

Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR Sec. 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:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.

5. Organizational conflicts of interest.
6. 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.
7. Any arbitrary action in the procurement process.

The Education Department General Administrative Regulations further requires the following to ensure adequate competition.

Minority Businesses, Women’s Business Enterprises, Labor Surplus Area Firms

The Charter School must take necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (2 CFR Sec. 200.321)

1. Placing qualified small and minority business and women’s business enterprises on solicitation lists.
2. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women’s business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises.
5. 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.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

Geographical Preferences Prohibited

The Charter School 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.

Prequalified Lists

The Charter School must ensure 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 ensure maximum open and free competition. Also, the Charter School must not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

The Charter School must ensure that all solicitations 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; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Avoiding Acquisition of Unnecessary or Duplicative Items

The Charter School must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases 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.

Use of Intergovernmental Agreements and Cooperative Purchasing

To foster greater economy and efficiency, the Charter School enters into state and local intergovernmental agreements where appropriate for cooperative purchasing or use of common or shared goods and services, as permitted by the Intergovernmental Cooperation Act and the Commonwealth Procurement Code. (53 Pa. C.S. Ch. 23; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the Uniform Grant Guidance applies, the Charter School shall verify that the organization conducting the procurement pursuant to such agreements complies with the applicable requirements and standards of the Uniform Grant Guidance as outlined in this procedure.

Use of Federal Excess and Surplus Property

The Charter School considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Debarment and Suspension

The Charter School 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 Charter School may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the Charter School verifies that the contractor with whom the Charter School intends to do business is not excluded or disqualified.

All successful contractors must provide written certification that they have not been suspended or debarred from federal projects. The Business Manager will be responsible for verification. Such verification may include accessing the online federal System for Award Management (SAM) to determine whether any relevant party is subject to any suspension or debarment restrictions.

Maintenance of Procurement Records

The Charter School 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.

Maintenance of records of procurement will be governed by Board policy relating to Records Management and established administrative regulations.

Time and Materials Contracts

The Charter School 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 means a contract whose cost to the Charter School 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.

The Charter School must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Settlements of Issues Arising Out of Procurements

The Charter School alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Charter School of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Protest Procedures to Resolve Dispute

The Charter School maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established Charter School administrative regulations and the advice of the solicitor.

Food Service Program Notes:

Exemption from Bidding for Perishable Food Items -

The School Code exempts purchases of perishable food items from bidding requirements. Bidding for perishable food items is required only if the cost would be at or over the federal threshold at which formal competitive bidding is required (\$250,000). Small purchase procedures may be used for purchases below \$250,000, or micro-purchase procedures for purchases below \$10,000. Use of bidding should be considered as an option if it is feasible and likely to result in cost savings. (24 P.S. Sec. 504(d))

Geographic Preferences -

The Charter School is permitted to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When a geographic preference is applied, the Charter School has discretion to determine the local area to which the geographic preference option will be applied.

Unprocessed locally grown or locally raised agricultural products means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two (2) or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk. (7 CFR Sec. 210.21, 215.14a, 220.16)

Buy American -

The Charter School shall purchase, to the maximum extent practicable, domestic commodities or products for food service purposes.

Mandatory Contract Clauses -

The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: (7 CFR Sec. 210.21, 215.14a, 220.16)

1. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

2. (a) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or (b) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
3. The contractor's determination of its allowable costs must be made in compliance with the applicable departmental and program regulations and Office of Management and Budget cost circulars;
4. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the state agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
5. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and
6. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the state agency, or the department.

Contracts with Food Service Management Companies -

Procedures for selecting and contracting with a food service management company (FSMC) shall comply with guidance provided by the Pennsylvania Department of Education, Division of Food and Nutrition, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts. (7 CFR Sec. 210.16, 210.19, 210.21, 215.14a, 220.16)

Pre-Plated Meals -

Procedures for selecting and contracting with contractors of pre-plated meals shall comply with guidance provided by the Pennsylvania Department of Education, Division of Food and Nutrition, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts. (7 CFR Sec. 210.16, 210.19, 210.21, 220.16)

The micro-purchase threshold and simplified acquisition threshold may be periodically adjusted for inflation. See 2 CFR §200.67. Changes in these thresholds are required to be published in the Federal Register.