



Art and Science Academy Federal Procurement Policy

Adapted from MDE Charter Schools Office CSP Procurement and Contracting guidelines.

This handout outlines the requirements when using federal funds to purchase materials, products, or services under Minnesota's federal Charter Schools Program (CSP). ASA will follow a **free and open competitive process** in securing those products or services and properly **document** purchasing activities and decisions. Observe the special **rules for particular kinds of purchases**

THE THREE 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 ASA under federal regulations.

• **Small purchases** (34 CFR 80.36(d)(1)): ➤ May be used for procurement of **\$100,000 or less** in the aggregate: ➤ Small purchases are usually made through the use of purchase orders for purchases of goods and written contracts for purchases of consultant vendor services;

- Proposals must be solicited from an adequate number of qualified sources (three to five) consistent with the nature and requirements of the procurement;
- Competition is sought through oral or written price quotations; and
- For procurement of goods, catalogs or price lists may also be used.

Competitive Proposals (34 CFR 80.36(d)(3)): ➤ A procurement in excess of the small purchase threshold (**more than \$100,000**) may not be inappropriately broken up into smaller components solely to qualify for the less complicated procedures followed under the "small purchases" approach

Noncompetitive proposals/sole source procurement (34 CFR Part 80.36(d) (4)) Noncompetitive negotiations may be utilized only under **very limited circumstances**. ASA must show that another method of procurement was infeasible because:

- The item or service was only available from a single source;

- A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
- Competition was determined to be inadequate after receiving proposals from numerous sources.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES (34 CFR Part 80.36 (e)) ASA will take all necessary affirmative steps to assure that small and minority firms and women's business enterprises are used when possible. Affirmative steps include:

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

DEBARRED AND SUSPENDED PARTIES (24CFR Sec. 80.35)

ASA 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 under Executive Order 12549, "Debarment and Suspension." (Authority: 20 U.S.C. 3474; OMB Circular A-102)

The EPLS database located at <https://explore.data.gov/> is part of the federal System for Awards Management (SAM) as required by FAR Subpart 9.4 and Executive Orders 12549 and 12689.

Prior to contract award financed in whole or part with federal CSP grant funds, ASA **should use the EPLS database to ensure proposed contractors are not debarred or suspended or** otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549.

In order to document compliance with this requirement, ASA will file with each CSP financed contract:

Results of EPLS search; and

Certification as part of contract from the contractors that they have not been debarred or suspended from participation in federal programs.

THE ADMINISTRATIVE PROCESS Your administrative procedures must include a *system of contract administration* that includes the following:

A. WRITTEN PROCUREMENT PROCEDURES For procurements within the small purchase threshold (\$100,000) your written procurement procedures must:

- Ensure that the purchase of unnecessary or duplicate items is avoided; and
- 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.**

B. SELECTION PROCEDURES Your selection procedures must ensure that:

- Awards are to be made to the bidder/offeror whose offer is responsive to the solicitation and is most advantageous to ASA , price and other factors considered;
Any and all offers may be rejected when it is in ASA 's interest to do so;
- ASA will ensure that the award is only made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement;

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- Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources; and
 - Check references, contact current and prior clients, check resource organization web sites, etc.
 - There are *protest procedures in place* to handle and resolve disputes relating to procurement and in all instances report such disputes to the State (34 CFR 80.36(b)(12)).

C. CONTRACT ADMINISTRATION PROCEDURES Your contract administration procedures must:

- Insure all purchase orders (and contracts) are signed by the authorized official(s) of ASA ;
- Determine the adequacy of contractor performance (34 CFR 80.36(b)(2)); and
- Establish reasonable payment schedules defining amount and timing of funds to be paid (we 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;
- 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:

In addition to the contract certification provision under **DEBARRED AND SUSPENDED PARTIES** above, and in accordance with 34CFR 80.36(i) and 34CFR 74.48(e), 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(i):
 - Paragraph (7) Notice of awarding agency requirements and regulations pertaining to reporting;
 - Paragraph (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;

- Paragraph (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data;
 - Paragraph (10) Access by the ASA, 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;
 - Paragraph (11) Retention of all required records for three years after ASA makes final payments and all other pending matters are closed; and
 - 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 ASA 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:
 - 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
 - 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**

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

RECORDS TO BE MAINTAINED

According to 34 CFR 80.36(b) (9), a ASA will maintain *records to detail the significant history of a procurement*. These records include, but are not limited to documentation on:

The rationale for selecting the *method* of procurement used;

The rationale for selecting/rejecting the *contractor*;

The rationale for selecting the *type* of contract;

The basis for the *cost or price* of a contract;

The receipt of an adequate number of price or rate quotations from qualified sources; and Justification for lack of competition when competitive bids or offers are not obtained.