

## Procurement Procedure

### Purpose

The overall goal of Ledyard Charter School's purchasing program is to obtain the best value for goods and services, relative to both price and quality, within the proper budgetary authority. These procedures will require that all purchases are made on properly approved purchase orders and that for items not put to bid, price quotations will be solicited. Special arrangements may be made for ordering perishable and emergency supplies.

The U.S. Federal Government requires purchases of goods and services meet specific standards when using Federal funds including grants, cooperative agreements, contracts, and Federal funds "passed-through". All purchases for property and services using federal funds are to be conducted in accordance with all applicable Federal, State, and local laws and regulations, the Uniform Grant Guidance, CFR 200.317 through 200.327 and Ledyard Charter School's relevant written policies and procedures.

Ledyard Charter School avoids situations that unnecessarily restrict competition and avoids acquisition of unnecessary or duplicative items. Individuals or organizations that develop or draft specifications, requirements, statements of work, and/or invitations for bids, requests for proposals, or invitations to negotiate, are excluded from competing for such purchases. 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 to 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.

Contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. No contract is awarded to a contractor who is suspended or debarred from eligibility for participation in federal assistance programs or activities.

Purchasing records are sufficiently maintained to detail the history of all procurements and must include at least the rationale for the method of procurement, selection of contract type, and contractor selection or rejection; the basis for the contract price; and verification that the contractor is not suspended or debarred.

The following standards apply to all purchases of goods and services using Federal funds:

1. Procurement transactions shall be conducted in a lawful and ethical manner.
2. Unnecessary/duplicative purchases are not permitted.

3. The use of a vendor or supplier on the U.S. Federal Government's Debarred and Suspended List (available at SAM.gov) is prohibited.
4. All individuals involved in the expenditure of federal monies must avoid any actual or apparent conflict of interest.
5. Procurement transactions must be conducted in a manner providing full and open competition.
6. Opportunities should be provided to minority businesses, women's business enterprises, and labor surplus area firms when possible.
7. Contracts and purchase orders should include the contract provisions required by 2 CFR 200 Appendix A.
8. Purchases of goods and services must include documentation detailing the history of the procurement.

## **Policy**

It is required that Purchasing Services approve purchase orders of any type prior to the commitment of Ledyard Charter School's funds. Purchases for equipment, goods, or services with an aggregate value of \$10,000 or more shall be competitively bid on.

*Competition:* All procurement transactions 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. To promote objective contractor performance and eliminate unfair competitive advantage, Ledyard Charter School 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:

1. unreasonable requirements on firms for them to qualify to do business;
2. unnecessary experience and excessive bonding requirements;
3. noncompetitive contracts to consultants that are on retainer contracts;
4. organizational conflicts of interest;
5. specification of only a "brand name" product instead of allowing for an "or equal" product to
6. be offered and describing the performance or other relevant requirements of the procurement;
7. and/or
8. 6. any arbitrary action in the procurement process.

Further, Ledyard Charter School 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; (2)

Ledyard Charter School 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 Ledyard Charter School uses a pre-qualified list of persons, firms or products to acquire goods and services, the pre-qualified list must include enough qualified sources to ensure maximum open and free competition. Ledyard Charter School allows vendors to apply for consideration to be placed on the list as requested.

*Solicitation Language:* Ledyard Charter School shall require that all solicitations 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 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 Board will not approve any expenditure for an unauthorized purchase or contract.

*Contract/Price Analysis:* Ledyard Charter School shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000 (i.e., the Simplified Acquisition/Small Purchase limit), including contract modifications. (See 2 CFR 200.324). 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, Ledyard Charter School shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, Ledyard Charter School 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:* Ledyard Charter School shall 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 Ledyard 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.

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, Ledyard Charter School sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, Ledyard Charter School shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls, and otherwise performs in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

*Suspension and Debarment:* Ledyard Charter School 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 Ledyard Charter School and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, Ledyard Charter School 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 Executive Director shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. Ledyard Charter School is subject to and shall abide by the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by Ledyard Charter School 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. (See 2 CFR Part 180 Subpart G).

Debarment is an action taken by the Executive Director 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. (See 2 CFR Part 180 Subpart H). Ledyard Charter School shall not subcontract with or award sub-grants to any person or company who is debarred or suspended. For contracts over \$25,000 Ledyard Charter School shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management ("SAM"), which maintains a list of such debarred or suspended vendors

at [www.sam.gov](http://www.sam.gov) (which replaced the former Excluded Parties List System or EPLS); or collecting a certification from the vendor. (See 2 CFR Part 180 Sub part C).

*Requirements for Procurement Contracts Using Federal Funds:*

1. Clause for Remedies Arising from Breach: For any contract using Federal funds under which the contract amount exceeds the upper limit for Simplified Acquisition/Small Purchases (see DAF-3.C.2), the contract must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for sanctions and penalties. (See 2 CFR 200, Appendix II(A)).
2. Termination clause: For any contract using Federal funds under which the contract amount exceeds \$10,000, it must address Ledyard Charter School's authority to terminate the contract for cause and for convenience, including the manner by which termination will be effected and the basis for settlement. (See 2 CFR 200, Appendix II (B)).
3. Anti-pollution clause: For any contract using Federal funds under which the contract amount exceeds \$150,000, the contract must include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act. (See 2 CFR 200, Appendix II (G)).
4. Anti-lobbying clause: For any contract using Federal funds under which the contract exceeds \$100,000, the contract must include an anti-lobbying clause, and require bidders to submit Anti-Lobbying Certification as required under 2 CFR 200, Appendix II (I).
5. Negotiation of profit: For each contract using Federal funds and for which there is no price competition, and for each Federal fund contract in which a cost analysis is performed, Ledyard Charter School shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration must be 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 the contractor's past performance, and industry profit rates in the surrounding geographical area for similar work. (See 2 CFR 200.324(b)).
6. "Domestic Preference" Requirement: Ledyard Charter School must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, to the greatest extent practicable. This requirement applies whether Ledyard Charter School is purchasing the products directly or when the products are purchased by third parties on Ledyard Charter School's behalf (e.g. subcontractor, food service management companies, etc.). It also generally applies to all purchases, even those below the micro-purchase threshold, unless otherwise stipulated by the Federal awarding agency. See also additional "Buy American" provisions in {\*\*}DAF-4.C regarding food service procurement.
7. Huawei Ban: Ledyard Charter School may not use Federal funds to procure, obtain, or enter into or renew a contract to procure or obtain equipment, services, or systems which

substantially use telecommunications equipment or services produced by Huawei Technologies Company or ZTE Corporation, or any of their subsidiaries.

*Maintenance of Procurement Records:* Ledyard Charter School shall maintain records sufficient to detail the history of all procurement. 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 records regarding debarment/suspension queries or actions. Such records shall be retained consistent with District Policy and District Administrative Procedures.

### **Procurement Definitions**

Micro-purchases - the acquisition of supplies or services, the aggregate dollar amount of which is less than \$10,000.

Small purchase - the acquisition of supplies, services or equipment in the range of \$10,000 to \$250,000. Written price or rate quotations must be obtained from a minimum of three qualified sources prior to making a purchase.

Sealed bids - For acquisitions costing more than \$250,000, bids are publicly solicited, and a firm fixed price contract is awarded to the responsible bidder whose bid is the lowest price.

Competitive proposals - For acquisitions costing more than \$250,000, conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program with price and other factors considered.

Noncompetitive proposals (Sole Source) - procurement through solicitation of a proposal from only one source. Prior to making the purchase a waiver must be granted by submitting a Vendor Selection Form – Federal Funds Only.

### **Purchasing Procedure**

A. The following set of procedures is established. These procedures recognize the need for convenience and flexibility in making individual purchases. This is balanced with the principles of effective budget management at the school level and the interests of Ledyard Charter School in making purchases with consistently high standards of quality at reasonable prices.

#### **B. Purchase Orders**

1. Purchase orders shall be required for all individual purchases. Purchase orders must be requested and approved by the Executive Director prior to placement of an order. The distribution of copies of the approved completed purchase order is as follows:

- a. Original copy to vendor, where necessary;
  - b. One copy for requesting department files; and
  - c. One copy for Finance Department files.
2. The following information must be included on the purchase order:
- a. A statement of Domestic Preference for the goods being procured.
  - b. Date;
  - c. Amount of Purchase, including an estimate for shipping, etc.;
  - d. Vendor's name and address;
  - e. Quantity and description of item(s); and
  - f. Department and account to be charged.
3. The Purchasing Agent may require further information regarding the purchase.
4. Approved purchase orders shall either be returned to the department placing the order, or mailed directly to the vendor, as appropriate. Vendor order forms must accompany direct mail purchase orders where necessary.
5. Purchase orders that are not approved by the appropriate designee shall be returned to the department placing the order accompanied by a memorandum explaining why the purchase order was not approved.
6. Purchase orders over \$10,000 and under \$100,000 shall require the signature of the Executive Director or his/her designee.
7. Purchases \$100,000 and over shall require the approval of the Executive Director.
8. Purchases over \$25,000 that were not budgeted, or any purchase that commits Ledyard Charter School to more than one fiscal year, shall require the approval of the Executive Director and of the School Board.

### C. Procurements Steps

Step 1: Identify a need for a non-salary and benefit purchase. Requester should notify the grants manager of the need via an email or purchase requisition. The grants manager will determine if the cost is necessary, reasonable and /or allocable. The Allowability of Cost Procedure Form, see appendix, should be issued by the Grants Manager and follow the purchase.

Step 2: Determine method of procurement.

There are 5 allowable methods of procurement:

Micro-purchase – The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the Micro-Purchase Threshold as set by the Federal Acquisition at 48 CFR Subpart 2.1 currently \$10,000.

- i) To the extent practicable, purchase must be distributed among qualified suppliers
- ii) Purchases exceeding the threshold cannot be divided solely to meet this threshold
- iii) Davis-Bacon Act applies to any purchase over \$2,000.

Small Purchases – The acquisition of services, supplies, or other property, the aggregate dollar amount of which does not exceed the Simplified Acquisition Threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 currently \$250,000.

- i) Must obtain two or more prices and document the reason vendor was selected
- ii) Vendor/costs may be identified through internet search, telephone calls, advertisement, email or written requests for information.

Sealed Bids – Formal advertising when a complete, adequate and realistic specification or purchase description is available. For sealed bidding to be feasible, the following conditions shall be present:

- i) Bids must be solicited from a minimum of two (2) of sources, subject to the availability of qualified vendors.
- ii) Sufficient time must be allowed for potential vendors to submit bids
- iii) Invitation for bids will be publically advertised and include any specifications for the bidder to properly respond
- iv) All bids will be publically opened at the time and place determined by the invitation to bid
- v) A firm fixed price contract will be awarded to the lowest responsive bidder
- vi) Any or all bids may be rejected if there is a sound documented reason

Competitive Proposals – Formal advertising when a sealed bid is not appropriate.

- i) Proposals must be solicited from an adequate number of sources
- ii) Requests for proposals must be publicized and identify all evaluation factors and their relative importance
- iii) A written method of conducting technical evaluations must be established prior to the evaluation of proposals.
- iv) A contract will be awarded to the vendor whose proposal is most advantageous to the program, with price and other factors considered

Non-Competitive Proposals – Procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (i) The item is available only from a single source
- (ii) A public emergency
- (iii) The Federal awarding agency or pass-through entity expressly authorizes the noncompetitive proposals in response to a written request. Naming a vendor in a grant application, strategy, investment, or award does not constitute a sole source approval. A separate written request and approval are both still required.
- (iv) After solicitation of a number of sources, competition is determined to be inadequate.
- (v) The cost is below the micro-purchase threshold (above).



Step 3: Use the method selected in Step 2 to select a vendor

Step 4: Check for vendor suspension or debarment at [www.sam.gov](http://www.sam.gov)

- (i) Suspended or Debarred vendors may not be selected.
- (ii) Retain a copy of search results for Step 5

Step 5: Document procurement process, see appendix for Procurement Documentation Form.

Documentation must include:

- (i) Method of procurement
- (ii) Solicitation method (advertisement, invitation, internet research, etc.) \*
- (iii) All vendor proposals (print-outs of internet research, phone conversation notes, bids, etc.)  
\*
- (iv) Suspension/Debarment results from Step 4

\* does not apply when using Micro-purchase method

Step 6: Prepare for a purchase order and or contract

A purchase order or contract. Contracts (only) shall comply with the requirements in Exhibit

A. Both purchase orders and Contracts must include the following:

- i) Accurate and detailed description of good or services as approved in grant investment
- ii) Clear definition of unit cost or rate of pay
- iii) Invoice requirements, clear billing information and break down of charges (Note for contracted services only, payment cannot be made until after services have been provided).
- iv) Signature by authorized individual as per procedure
- v) Contracts must be signed dated by both parties prior to start of work
- vi) Allowable cost only (sales tax, alcohol, donations, entertainment, lobbying, gift cards are NOT allowable)

### **Award**

- A. The award of a contract, or purchase of property follows the competitive selection process. Consistent with the other provisions of these guidelines, the criteria for award are flexible enough to allow consideration of all factors involved, yet still provide a clear sense of public policy intent.
- B. After bids or proposals have been received through the competitive selection process, the bids or proposals must be reviewed for completeness, including the submission of any such security established within the RFP. The bids or proposals must be reviewed to determine how well they meet the specifications or scope of work, the input from references, or other aspects indicating the overall ability of the prospective vendor to provide the good or service desired.

In all cases, the goal of the award shall be to select the vendor offering the best overall value to the School District; the “lowest, best” bidder. Price, quality, service, and experience, either demonstrated through other clients or within the SAU #48 School Districts, should be included in the determination of award.

### **Review**

- A. Ledyard Charter School must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such a review is needed to ensure that the item or service specified is the one being proposed for acquisition.
- B. Ledyard Charter School must make available upon request to the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates.
- C. Ledyard Charter School is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

### **PROCUREMENT – ADDITIONAL PROVISIONS PERTINENT TO FOOD SERVICE PROGRAM**

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)

A. **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:

- 1. 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. 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

3. 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;
4. 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;
5. 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;
6. 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
7. 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 shall comply with guidance provided by the NHDOE, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts.

*Buy American” Requirement:* NOTE - See {\*\*}DAF-3.H.6 regarding “domestic preference” requirements for procurements other than for food service.

Under the “Buy American” provision of the National School Lunch Act (the “NSLA”), school food authorities (SFAs) are required to purchase, to the maximum extent practicable, domestic commodity or product. As an SFA, Ledyard Charter School is required to comply with the “Buy American” procurement standards set forth in 7 CFR Part 210.21(d) when purchasing commercial food products served in the school meals programs. This requirement applies whether Ledyard Charter School is purchasing the products directly or when the products are purchased by third parties on Ledyard Charter School’s behalf (e.g., food service management companies, group purchasing cooperatives, shared purchasing, etc.).

Under the NSLA, “domestic commodity or product” is defined as an agricultural commodity or product that is produced or processed in the United States using “substantial” agricultural commodities that are produced in the United States. For purposes of the act, “substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products

from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowable under this provision as territories of the United States.

1. Exceptions: The two main exceptions to the Buy American requirements are:
  - a) The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
  - b) Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.
2. Steps to Comply with Buy American Requirements: In order to help assure that Ledyard Charter School remains in compliance with the Buy American requirement, the bookkeeper, shall
  - a) Include a Buy American clause in all procurement documents (product specifications, bid solicitations, requests for proposals, purchase orders, etc.);
  - b) Monitor contractor performance;
  - c) Require suppliers to certify the origin of the product;
  - d) Examine product packaging for identification of the country of origin; and
  - e) Require suppliers to provide specific information about the percentage of U.S. content in food products