


<p>Bridges Charter School</p> 	<p>Board Policy- Procurement and Contract Bidding</p>	
<p>Policy Number: BP 3300.10</p>	<p>Adopted: 12/13/21</p>	<p>Revised:</p>

PROCUREMENT POLICY AND CONTRACT BIDDING POLICY

I. General

The Board of Directors (“Board”) for Bridges Charter School declares its intent for the Charter School to procure goods and services as well as bidding for construction projects such as new building and facility construction, reconstruction, rehabilitation, alterations and additions in a manner consistent with the guidelines set forth herein. The Charter School’s practices have been designed to give fair and equitable treatment to all persons who deal with the Charter School’s procurement system, to provide maximum economy in procurement activities, and to foster competition within the free enterprise system.

The policies and procedures presented herein are consistent with current applicable state and federal law. As, necessary, the Charter School’s Board of Directors will revise this document as the relevant laws may change from time to time.

II. Procurement Defined

Procurement for the purposes of this policy is defined as buying, purchasing, renting, leasing, or otherwise acquiring goods, services, or construction for the Charter School. It also includes all functions that pertain to the obtaining of any good, service, or construction for the Charter School, including complying with bidding procedures as described herein, as well as administering agreements for goods, services, or construction once established.

Procurement does not include expenditures that typically would not be reviewed by any system of hierarchy for approval, such as using a petty cash fund to purchase lunch for a group of teachers at a professional development seminar.

III. Procurement Policy

Any procurement of goods, services, or construction shall be made upon considering the totality of the circumstances surrounding the procurement, which may include but not be limited to price, quality, availability, timelines, reputation, and prior dealings.

No work, project, service, or purchase shall be split or separated into smaller work orders or projects for the purpose of evading the requirements of this policy.

The Director or designee will report to the Board on at least an annual basis on the overall debt load incurred through continuing contracts for goods and services (other than for employee salaries) which specifies the principal, interest paid and amount of outstanding obligations.

To be valid or to constitute an enforceable obligation against BRIDGES CHARTER SCHOOL, all contracts must be approved and/or ratified by the Board. Creditors are on notice that the Board may choose not to honor contracts made without proper authorization by designated school or other officials.

IV. Professional Services Contracts

The Charter School may hire such professional services as are needed for the operation of the Charter School without complying with the bidding procedures described in Sections VII and VIII herein. Such professional services include, but are not limited to, the following professionals: attorneys, architects, accountants, engineers, construction management, administrative services, and financial advisors.

In selecting professionals for engagement, the Charter School may consider all relevant factors, including but not limited to experience, education, expertise, reputation, and cost. The selection of professionals providing these services shall be within the sole discretion of the Board.

V. Construction Contracts

Procurement of construction and/or construction related services (other than those services which constitute professional services as described above in Section IV) must be made in accordance with the bidding procedures described herein. Additionally, the Charter School must comply with the prevailing wage laws applicable to certain construction and/or services that constitute a “public works” project as defined under the Labor Code. (Labor Code §§ 1720, 1720.2, and 1720.3.)

A “public works” project is defined as “construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds...” (Labor Code § 1720(a)(1).)

An outline of the additional requirements applicable to public works projects are further described in Section X.

VI. Guidelines for Selecting Contractors/Vendors

A. Prequalification Procedures

The Charter School may, but is not required to, establish prequalification procedures for any contract for which bids are required.

B. Suspended and Debarred Contractors/Subcontractors

The Charter School may not consider any contractor or subcontractor that is debarred, suspended or is otherwise excluded from bidding on, accepting, or performing any public works contracts, by the Division of Labor Standards Enforcement (“DLSE”) of the California Department of Industrial Relations (“DIR”).

The Charter School is required to vet any potential contractor or subcontractor for suspension or debarment before a contract may be awarded. A list of suspended and debarred contractors and subcontractors may be accessed through the DLSE Debarments Web Site at <http://www.dir.ca.gov/dlse/debar.html>.

VII. Informal Bidding and Contract Approval – Contracts up to \$25,000

All purchases of at least \$5,000 and up to \$25,000 must include documentation of a good faith effort to secure the lowest possible cost for comparable goods or services of similar value. The Director or designee shall not approve invoices, purchase orders, or check requests lacking such documentation. Documentation shall be attached to all invoices, purchase orders, and check requests indicating that at least three (3) contractors/vendors were contacted, and such documentation shall be maintained for three (3) years. Informal quotes or proposals for goods and/or services may be requested and received in writing by mail, email, facsimile, and/or verbally, such as by telephone, as long as properly documented.

Contracts for purchases of up to \$5,000 may be executed by the Director without prior Board approval.

No contract requiring the expenditure of funds may be agreed upon unless the budget resolution adopted pursuant to Board policy authorizes the expense and there is a sufficient unencumbered balance to pay the amount to be disbursed.

When required by law, contracts and subcontracts made by BRIDGES CHARTER SCHOOL shall contain a nondiscrimination clause prohibiting discrimination by contractors or subcontractors.

VIII. Formal Bidding and Contract Approval – Contracts Over \$25,000

Contracts for the purchase of more than \$25,000 worth of equipment, materials or supplies to be furnished, sold, or leased to the Charter School, or contracts for more than \$25,000 worth of services or construction (excluding those professional services agreements enumerated in Section IV), shall be subject to the formal bidding requirements set forth herein.

If formal bidding is required, the Charter School shall utilize the following procedures:

A. Seeking Bids

The Charter School shall seek bids from those sources able to offer the best prices, consistent with quality, quantity, delivery, and service. To ensure that good value is

received for funds expended, the request for bids shall be carefully designed to clearly and completely describe in detail the quality, delivery, and service required, and shall include the criteria that will be used to evaluate the offers and the relative weights given to the criteria. Further, the request for bids shall specify the date in which all bids must be received by the Charter School.

Notice of the request for bids may be provided in one or more of the following ways:

- (1) Publishing the request for bids in at least one newspaper of general circulation within the boundaries of Ventura County, once a week for at least [two (2) weeks] before the deadline for receiving bids;
- (2) Posting the request for bids on the Charter School's website or other electronic portal for at least [two (2) weeks] before the deadline for receiving bids; and/or
- (3) Directly submitting notice of the request for bids to an adequate number of qualified sources to permit reasonable competition consistent with the nature and purpose of this policy. Any list of potential contractors/vendors that is generated must be current and include enough qualified sources to ensure reasonable open and free competition.

B. Opening Bids

Bids may be opened only at the time and place prescribed by the Director or designee. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. However, bidders retain the right to withdraw a bid due to a material mistake in the bid. After bids have been opened, they shall be available for inspection or copy by any interested party. The Charter School must maintain the bid document(s) for the duration of the contract and for three (3) years beyond the completion of the contract.

C. Contract Award

The Board, or any employee of the Charter School to whom responsibility has been delegated, shall award a competitively bid contract at the bid amount to the bidder offering the best value to the Charter School according to its selection criteria. The contract need not be awarded to the lowest responsible bidder. The selection criteria may include the following factors:

- (1) Purchase price;
- (2) Reputation of the contractor/vendor and of the contractor's/vendor's goods and/or services;
- (3) Quality of the contractor's/vendor's goods and/or services;
- (4) Extent to which the goods and/or services meet the Charter School's needs;
- (5) Contractor's/vendor's record of past performance;
- (6) Contractor's/vendor's financial standing and capacity;
- (7) Contractor's/vendor's past relationship with the Charter School; and
- (8) Total long-term cost to the Charter School to acquire the goods and/or services.

Contracts over \$25,000 must be approved by the Board prior to execution by the Director. All purchases in excess of \$25,000 must have dual signatures by a board member and an officer of the corporation.

Any and all bids may be rejected if there is a sound, documented reason for doing so.

D. Protest by Bidders

A bidder may protest a bid award if he/she believes that the award was inconsistent with this policy, the bid's specifications, or was not in compliance with law.

A protest must be filed in writing with the Director or designee within five (5) business days after receipt of notification of the contract award. The bidder shall submit all documents supporting or justifying the protest. A bidder's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract.

The Director or designee shall review the documents submitted with the bidder's claims and render a decision in writing within thirty (30) business days. The Director or designee may also convene a meeting with the bidder to attempt to resolve the problem.

The bidder may appeal the Director or designee's decision to the Board. The Director or designee shall provide reasonable notice to the bidder of the time for Board consideration of the contract award. The Board's decision shall be final.

IX. Noncompetitive Proposals

A noncompetitive procurement proposal is the solicitation of a proposal from only one (1) source. Noncompetitive procurement proposals may only be used after the Charter School has solicited bids and/or proposals from at least three (3) sources, and has determined and documented that competition was inadequate. The Board, in its sole discretion, shall select the single source offering the best value to the Charter School according to its selection criteria list above. If a good, service, or construction is available only from a single source, this may also be documented to justify a noncompetitive proposal.

X. Public Works Projects and Prevailing Wage Requirements

A. Mandatory Public Works Project Request for Bids Terms and Specifications

All requests for bids (or the "call for bids") and bid specifications for construction and/or services, which constitute a "public works" project ("Project"), issued and published by the Charter School, must contain the following terms and specifications when applicable:

- (1) **General Project Description as Public Work**: In the call for bids, the Charter School must provide a general description of the work required for the Project and state that "the Project is classified as a 'public work,' as defined in Labor Code Section 1720, to which not less than the general prevailing rate of per diem wages

for work of a similar character and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract shall be paid to all workers employed on the Project in accordance with Labor Code Section 1771.”

- (2) **Bid Closing Date:** The Charter School must also specify in the call for bids the place the contractor’s bids are to be received, and the time by which they shall be received.
- (3) **Prevailing Wage Rate:** The Charter School is required to specify in the call for bids and in the bid specifications the general rate of per diem wages as described in Section (A)(1) above. (Labor Code § 1773.2.) The general prevailing wage rate must be obtained from the Director of the DIR. The applicable general prevailing wage rates for any such public works project are available on the DIR website at <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>.

In lieu of specifying the rate of wages, the Charter School may include a statement in the call for bids and in the bid specifications that “copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested part on request.” (Labor Code § 1773.2.)

- (4) **Notice of DIR Enforcement:** The Charter School shall specify in the call for bids that the Project is “subject to compliance monitoring and enforcement by the Department of Industrial Relations.” (Labor Code § 1771.4(a)(1).)
- (5) **Registered Contractor Notice:** The Charter School shall provide notice in the call for bids that “a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5.” The Charter School shall not accept a bid or enter into a contract or subcontract without proof of the contractor or subcontractor’s current registration to perform public work pursuant to Section 1725.5. (Labor Code § 1771.1.)¹
- (6) **Contractor/Vendor Bids:** The Charter School shall require all contractor/vendor bids to expressly state that the contractor/vendor “will pay its workers the applicable prevailing wage rate in accordance with Labor Code Sections 1771 and 1774.”

B. Mandatory Public Works Project Contract Terms

All contracts for construction and/or services that constitute a “public works” project (“Project”) entered into with the Charter School must contain the following terms and provisions when applicable:

¹Note that Section 1771.1 is not currently applicable to public works projects, but it will apply after March 1, 2015.

- (1) **General Project Description as Public Work**: The Charter School must provide a general description of the work required for the Project and specify in the Project Contract that “the Project is classified as a ‘public work,’ as defined in Labor Code Section 1720, to which not less than the general prevailing rate of per diem wages for work of a similar character and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to execute the contract shall be paid to all workers employed on the Project in accordance with Labor Code Section 1771.”
- (2) **Prevailing Wage Rate**: The Charter School is required to specify in the Project Contract the general rate of per diem wages as described in Section (B)(1) above. (Labor Code § 1773.2.) The general prevailing wage rate must be obtained from the Director of the DIR. The applicable general prevailing wage rates for any such public works project are available on the DIR Wage Determination website at <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>. In lieu of specifying the rate of wages, the Charter School may include a statement in the Project Contract that “copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested party on request.” (Labor Code § 1773.2.)
- (3) **Compensation Provision**: The Charter School shall include a clause in the Project Contract that states, “In accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.” (Labor Code § 1860.)
- (4) **Penalty Stipulation**: The Charter School shall also include a stipulation in the Project Contract that notifies the contractor that the contractor or subcontractor will be subject to a penalty of twenty-five dollars (\$25) for each calendar day a worker employed in the execution of the Contract is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week without payment of the applicable overtime rate of pay. (Labor Code § 1813.)
- (5) **Underpayment of Prevailing Wage**: The Project Contract must include a stipulation that states, “The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor in accordance with Section 1775 of the Labor Code.” (Labor Code § 1775(a)(2)(E).)
- (6) **Apprenticeship Requirement**: The Charter School must also include a provision in the Project Contract that effectuates Labor Code Section 1777.5, which requires the contractor to employ properly registered apprentices for the Project. Specifically, the contractual provision must fix the responsibility of compliance with the apprenticeship requirements under Section 1777.5 for all apprenticeable

occupations with the prime contractor on the Project. (Labor Code § 1777.5(n).)

- (7) **8-Hour Work Day**: The Project Contract shall also include a clause establishing that “Eight hours labor constitutes a legal day’s work.” (Labor Code § 1810.)
- (8) **Payroll Record Contract Provisions**: The Charter School shall include a stipulation in the Project Contract effectuating Labor Code Section 1776, which requires the contractor to maintain accurate certified payroll records that include the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each apprentice, worker, or other employee of the contractor in connection with the public work, and a written declaration of the employee verifying the truth of the payroll record. (Labor Code § 1776.)

The Charter School must designate the times the contractor and subcontractor are required to furnish the payroll records to the Compliance Monitoring Unit (“CMU”) of the DIR. (8 CCR § 16461(b).) The Project Contract shall specify that “the contractor and each subcontractor shall furnish the payroll record of wages paid as specified in Section 1776 directly to the Compliance Monitoring Unit (“CMU”) of the DIR on a monthly basis until the completion of the Project, or within 10 days of any separate request by the CMU.” (8 CCR § 16461(b).)

Further, the Project Contract must include a provision stating, “Contract payments shall not be made when payroll records are delinquent or inadequate.” (8 CCR § 16421(a)(6).)

XI. Food Service Procurement

A) Buy American Provision

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 Public Law 105-336 added a provision, Section 12(n), to the National School Lunch Act (NSLA) (42 *United States Code* Section 1760[n]), that requires all school food authorities (SFA) to purchase, to the maximum extent practical, domestic commodities or products. Section 12(n) of the NSLA defines a domestic commodity or product as an agricultural commodity (i.e., meat/meat alternate [M/MA], grain, fruit, vegetable, and fluid milk) or processed product (i.e., processed food product that includes components that contribute to a reimbursable meal, such as a chicken patty that contains an M/MA and grain component) that is processed in the United States using substantial agricultural commodities that are produced in the United States. Substantial means that over 51 percent of the final processed product consists of agricultural commodities that are grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

When funds are used from the nonprofit school food service account, SFAs must ensure that procurement transactions for food products comply with the Buy American Provision requirement in 7 *CFR*, sections

210.21(d) and 220.16(d), whether food products are purchased by SFAs or entities that are purchasing on their behalf.

Note: The SFA is not required to adhere to the domestic requirement for foods that are not creditable food components.

In compliance with this policy, the Director or Director's designee will ensure that the solicitation and contract language include the requirement for domestic agricultural commodities and products and retain records documenting any exceptions in advance of accepting deliveries. Implementation of the Buy American Provision by Director or Director's designee will be ensured by:

- Including the Buy American Provision requirement in food bid specifications, IFBs, RFPs, contracts, purchase orders, and other procurement documents issued
- Monitoring the contract to ensure that the domestic products solicited are the ones received
- Requiring suppliers to provide certification of domestic origin for all food products, from bids and proposals through receipts and invoices
- Conducting monthly reviews on storage facilities to ensure the domestic products received are the ones solicited for and awarded

Exceptions to the Buy American Provision will be used as a last resort and are only allowable for one of the two exceptions listed below and outlined in further detail in the USDA Policy Memorandum SP 38-2017: Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program.

- The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.
- Competitive bids reveal the costs of a United States product are significantly higher than the nondomestic product as determined by the Director: over 20 percent higher.

Note: Ingredients used to flavor, enhance, or prepare products (e.g., oil, yeast, spices, condiments, salad dressing) must also comply with the Buy American Provision requirement **only if** the first ingredient (or second after water) is one of the five components (breads/grains, fruits, vegetables, M/MA, and fluid milk) that contribute to a reimbursable meal. If the first ingredient in these products is not one of the five components that contribute to a reimbursable meal, the product does not have to comply with the Buy American Provision requirement. For example, catsup with tomato paste as the first ingredient must comply with the Buy American Provision requirement since tomato paste is creditable as a red/orange vegetable, **even though catsup is not a creditable item**. Mustard with distilled white vinegar as the first ingredient does not need to comply with the Buy American Provision requirement since vinegar is not a component that contributes to a reimbursable meal. Additionally, nonagricultural products such as paper, water, packaging, and labor do not need to comply with the Buy American Provision requirement.

The Director or vendor must document exceptions to the Buy American Provision requirement prior to accepting each and every nondomestic agricultural commodity or product. This documentation must be on file for at least the current year plus three years, and must be made available during an on-site administrative review and an off-site procurement review.

The documented exception will include the following:

- A description of the nondomestic item
- Alternative domestic commodities or products that the Director or Director's designee considered or the vendor offered and the reason they were not substituted for the nondomestic item
- A synopsis of what third-party verification (e.g., USDA Agricultural Marketing Service Run a Custom Report web page at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>) was done by the vendor or the Director or Director's designee to determine cost and availability
- Documentation by the vendor or the Director or Director's designee outlining the price of both domestic and nondomestic commodities or products or lack of availability to justify the exception
- The dates that the: (1) vendor informed the Director or Director's designee of the nondomestic commodity or product, (2) Director or Director's designee agreed to accept this food item in advance of delivery, and (3) commodity or product was received by the Charter School

XII. Mandatory Contract Terms

All contracts entered into with the Charter School must contain the following terms when applicable:

- (1) A ceiling price that the contractor/vendor exceeds at its own risk.
- (2) Retention of all required records by the contractor/vendor for three (3) years after the Charter School makes final payments and all other pending matters are closed.
- (3) Access by the Charter School 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.
- (4) Administrative, contractual, or legal remedies in instances where contractors/vendors violate or breach contract terms, and the sanctions and penalties that are appropriate.
- (5) Termination for cause and for convenience by the Charter School, including the manner by which it will be effected and the basis for settlement.

XIII. Maintenance of Records

The Charter School will maintain records sufficient to detail the history of the 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,
- a copy of the solicitation and contract,
- the basis for the contract price (the bidding history),

- rationale and approval for noncompetitive procurements,
- any contract amendments,
- billing and payment records,
- and a history of contractor claims

These shall be kept for the full term of the contract, any extensions thereto, or while any litigation or claim regarding the same is pending and for three additional school years subsequent. For Food Service Procurement, the CDE and USDA reviewers shall have full access to and the right to examine all procurement documentation occurring during this time period.

Documentation of each of these actions shall be prepared as the actions occur within any given instance of procurement. These records will identify the source and application of funds and demonstrate effective control over and accountability for all funds, property, and other assets.

XIV. Duplication of Goods or Services.

The Charter School will avoid the acquisition of unnecessary or duplicative items by determining whether the goods or services are necessary and ensuring that their purchase does not duplicate items or bids that the Charter School already has in place. The Bridges

XV. Clear and Accurate Description of Technical Requirements Required

The Charter School will have written procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service being procured and will not contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service being procured and minimum essential characteristics and standards. A **brand name** or **equivalent** description may be used as a means to define the performance or other salient requirements of procurement. The specific desired features of the named brand must be clearly stated, along with all requirements which the offerors must fulfill, and all other factors to be used in evaluating bids or proposals.

XVI. Contract Management

The Charter School must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Charter School will perform the following tasks to ensure compliance:

- Require vendors to provide periodic status updates in contracts, when appropriate;
- Assign a designee to oversee contractor/vendor performance;
- Scrutinize each delivery or project benchmark to ensure compliance with contract specifications;
- and

- Any other additional oversight necessary to ensure compliance.

XVII. Conflict of Interest

No Board member or Charter School employee shall have a material financial interest directly or indirectly in any contract made by the Board or in any contract made in their capacity as a Board member or Charter School employee.

No Board member or Charter School employee shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the Board member or Charter School employee, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ the Board member or Charter School employee, has a financial or other interest in the firm selected for an award. The Board member or Charter School employee shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements.

To the extent permitted by law, any Board member or Charter School employee who violates this section may be subject to penalties, sanctions, and other disciplinary actions.

XVIII. Reservation

The Charter School Procurement and Contract Bidding Policy shall be amended and updated if necessary to comply with changes in acceptable procurement practices.

XIX. Federal Grants or Programs

In addition to complying with all conditions herein, all contracts involving federal grants or other federal programs shall also fully comply with all applicable federal procurement guidelines related to such programs. In the event there is a conflict between this policy and the applicable federal procurement guidelines, the federal guidelines shall prevail.