

POR VIDA INC.
DBA
POR VIDA ACADEMY
BOARD POLICY MANUAL
POLICY GROUP – FISCAL MANAGEMENT
POLICY FMPC
PURCHASING AND CONTRACTING
WITH STATE FUNDS

Sec. 1. Purpose of Policy.

The Board of Directors (the “Board”) and Superintendent of Por Vida, Inc. doing business as Por Vida Academy (the “Academy”) shall endeavor to comply with applicable legal requirements for purchasing and contracting with state funds. Through this policy, the Board shall address the legal requirements, as applicable, promulgated at:

- (a) Texas Business Organizations Code (“Tex. Bus. Org. Code”) Sections 3.101 and 22.201;
- (b) Texas Education Code (“Tex. Ed. Code”) Sections 12.1053(b)(2), 12.115(a)(2) 12.121 and Chapter 44, Subchapter B (“Chapter 44”);
- (c) Texas Government Code (“Tex. Gov’t. Code”) Chapter 2254, Subchapter A and Chapter 2269 (“Chapter 2269”);
- (d) Texas Administrative Code, Title 19 (“19 TAC”), Sections 100.006, 100.1033 and 100.1101;
- (e) Code of Federal Regulations, Title 2, Part 200 (“2 CFR 200”); and
- (f) Financial Accountability System Resource Guide.

Additionally, through this policy, the Board shall address best practices adopted by public schools.

Sec. 2. Applicability of Policy.

This policy pertains to the purchase of any and all goods and services from state funds.

Sec. 3. Final Authority.¹

Sec. 3.1. The Board may not delegate, and thus retains, final authority to:

- (a) Adopt this policy;
- (b) Adopt and amend the Academy’s budget;
- (c) Approve the obligation and expenditure of Academy funds; and
- (d) Direct the disposition and safekeeping of Academy records, including access to, control over and possession of such records.

Sec. 3.2. This final authority notwithstanding, the Superintendent may initially exercise the authority set forth in Sec. 2.1 of this policy in a manner consistent with this policy.

Sec. 3.3. At the Board’s discretion, the Board may review any business arrangement or transaction subject to this policy and approve or disapprove the Superintendent’s initial action on the Board’s behalf.

¹ Tex. Bus. Org. Code §§ 3.101 and 22.201; Tex. Ed. Code § 12.121; 19 TAC §§ 100.1033(b)(14)(C)(ii)-(iv) and 100.1101(a)/(d)

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Sec. 3.4. The Superintendent shall report to the Board any business arrangement or transaction with an individual or aggregate cost or value of \$50,000 or more for any twelve-month period.

Sec. 3.5. The Board shall have final authority over the obligation and expenditure of state funds for the purchase of goods and services, including the approval of any related contract.²

Sec. 3.6. Any delegation of authority notwithstanding, the Board remains responsible for any business arrangement or transaction undertaken by the Superintendent.³

Sec. 4. Designee.⁴

Sec. 3.1. In this policy, where the Superintendent is authorized to delegate authority to a designee (as denoted by the phrase “or designee”), the Superintendent may delegate such authority to a designee(s). If the Superintendent delegates authority to a designee, the Superintendent shall do so in writing through an administrative procedure, job description or internal memorandum. The Superintendent’s delegation of authority to a designee(s) must be specific and must cite the policy section from which it is derived. Any delegation of authority to a designee not documented as set forth in this section shall be null and void.

Sec. 3.2. Any delegation of authority notwithstanding, the Superintendent remains responsible for the business arrangement or transaction undertaken or that should have been undertaken pursuant to this policy.

Sec. 5. Definitions.⁵

In this policy and its related administrative procedure, the following terms have the meanings indicated hereunder.

- (a) “Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
- (b) “Goods” means personal property such as appliances, contract rights, equipment, furniture, intellectual property, materials, software, supplies and vehicles.
- (c) “Micro-purchase threshold” means \$10,000 for state funds.

² *El Paso Education Initiative, Inc. v. Amex Properties, LLC*, 385 S.W.3d 701, 706, 708 (Tex. App.–El Paso 2012, pet. denied.)

³ Tex. Ed. Code §12.121; 19 TAC §100.1101(d)

⁴ 19 TAC §100.1033(b)(14)(D)(i)

⁵ 19 TAC §100.1001(16); Tex. Ed. Code §§ 12.104(b)(1), 12.1053(b)(1)(B), 44.031(a)(5) and 44.032(a); Tex. Gov’t. Code §§ 2254.002(2) and 2269.001(6); Tex. Local Gov’t. Code §§ 271.021 and 271.024; 2 CFR §§ 200.67 and 200.88

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- (d) “Officer” means a person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, as these terms are defined at 19 TAC §§ 100.1001(17) thru 100.1001(20), regardless of whether the person is an employee or contractor of the Academy or a volunteer working under the direction of the Academy.
- (e) “Other services” means any service not specifically identified as a professional service.
- (f) “Professional services” means services:
 - (1) Within the scope of the practice, as defined by state law, of:
 - (A) Accounting;
 - (B) Architecture;
 - (C) Landscape architecture;
 - (D) Land surveying;
 - (E) Medicine;
 - (F) Optometry;
 - (G) Professional engineering;
 - (H) Real estate appraising; or
 - (I) Professional nursing; or
 - (2) Provided in connection with the professional employment or practice of a person who is licensed or registered as:
 - (A) A certified public accountant;
 - (B) An architect;
 - (C) A landscape architect;
 - (D) A land surveyor;
 - (E) A physician, including a surgeon;
 - (F) An optometrist;
 - (G) A professional engineer;
 - (H) A state certified or state licensed real estate appraiser; or
 - (I) A registered nurse or
 - (3) Provided by a person lawfully engaged in interior design.
- (g) “Public works” means the construction, alteration, renovation, or repair of a public building, structure, road, highway, or other improvement or addition to real property.
- (h) “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
- (i) “Sequential purchases” means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

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- (j) “Services” means professional services and other services.
- (k) “Simplified acquisition threshold” means \$50,000 for public works contracts and \$250,000 for state funds in general.

Sec. 6. General Requirements Applicable to All Purchases.

Sec. 6.1. Segregation of Duties; Checks and Balances.⁶

To the degree feasible the Superintendent or designee shall ensure an appropriate segregation of duties between the following functions: (1) the obligation of funds through the procurement of goods and services; (2) the receipt of goods and services including the preparation and maintenance of property inventory records; (3) the receipt of vendor invoices; (4) the disbursement of funds; (5) the accounting of purchases and payments; and (6) the reconciliation of accounting and bank records. Where an appropriate segregation of duties between these functions is not feasible, the Superintendent shall ensure the appropriate review and approval of contractual arrangements and business transactions.

Sec. 6.2. Authority to Procure Goods and Services.⁷

The Board authorizes the Superintendent or designee to procure or cause the procurement of goods and services pursuant to the budget adopted and amended by the Board. The Superintendent or designee may not procure or approve the procurement of goods and services that are not approved by the Board in the budget, as initially adopted and subsequently amended, and result in the expenditure of funds in excess of the item(s) appropriated in the budget.

Sec. 6.3. Contract Required.⁸

The Superintendent or designee shall procure or cause the procurement of goods and services with a cost or value exceeding the Simplified Acquisition Threshold through a fully executed contract or other written legal agreement signed by all parties that protects the Academy's interests in the underlying business arrangement and transaction.

Sec. 6.4. Board Approval Required.⁹

Prior to executing a contract for the procurement of goods and services with a cost or value exceeding the Simplified Acquisition Threshold, the Board shall approve the contract.

⁶ Tex. Ed. Code §12.115(a)(2); 2 CFR §§ 200.303 and 200.326

⁷ Tex. Ed. Code §44.052

⁸ Tex. Ed. Code §12.115(a)(2); 2 CFR §200.303

⁹ *El Paso Education Initiative, Inc. v. Amex Properties, LLC*, 385 S.W.3d 701, 706, 708 (Tex. App.–El Paso 2012, pet. denied.); Tex. Bus. Org. Code §§ 3.101 and 22.201; Tex. Ed. Code §§ 12.115(a)(2) and 12.121; 19 TAC §§ 100.1033(b)(14)(C)(ii), 100.1043(a)(2) and 100.1101(a)/(d)

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*Sec. 6.5. Signature Authority.*¹⁰

Only the Superintendent or designee shall be authorized to execute contracts or other written legal agreements that obligate the Academy to disburse funds for the receipt of goods and/or services. Only the Board's designee may execute a contract for goods and/or services with a cost or value exceeding the simplified acquisition threshold.

*Sec. 6.6. Purchase Order System.*¹¹

The Superintendent or designee shall establish and maintain a purchase order system. The purchase order shall serve as the formal method for procuring goods and/or services from a vendor and shall have the effect of obligating the Academy to remit payment to the vendor upon receipt of the goods and/or services purchased and of the related invoice.

Sec. 6.6.1. Required Approvals. Only the Superintendent or designee shall be authorized to approve purchase orders.

Sec. 6.6.2. Issuance Prohibited. Academy employees may not issue a purchase order to a vendor unless it has been approved by the Superintendent or designee.

Sec. 6.6.3. Failure to Properly Issue. If an Academy employee issues a purchase order to a vendor without the required approvals established in Subsection 6.7.1 of this policy, the employee shall be financially responsible for the purchase.

*Sec. 6.7. Corporate Card Program.*¹²

The Superintendent may establish a corporate charge or credit card program to permit authorized Academy employees to purchase goods and/or services. The Superintendent may only use and may only allow the use of the corporate card program for official Academy business and shall prohibit the use of the corporate card program for personal benefit or use. Any employee authorized to participate in the corporate card program shall be required to sign a corporate account usage agreement. In addition to other pertinent requirements, the corporate account usage agreement shall require the employee to pay for any unsubstantiated charges or for the unauthorized purchase of goods and/or services.

Sec. 6.7.1. Purchasing Thresholds. Employees authorized to participate in the corporate card program may do so pursuant to the following thresholds.

¹⁰ Tex. Bus. Org. Code §§ 3.101 and 22.201; Tex. Ed. Code §§ 12.115(a)(2) and 12.121; 19 TAC §§ 100.1033(b)(14)(C)(ii), 100.1043(a)(2) and 100.1101(a)/(d)

¹¹ Texas Business and Commerce Code §2.206(a)(2)

¹² Tex. Ed. Code §12.115(a)(2); 19 TAC §100.1043(a)(2); 2 CFR §§ 200.302(b)(4) and 200.303

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- (a) The Superintendent, Chief Financial Officer, and Campus Principals, may purchase goods and/or services through the corporate card program for an aggregate amount not exceeding the micro-purchase threshold.
- (b) Campus Principals and other employees may purchase goods and/or services through the corporate card program for individual transactions up to the maximum amount established by the Superintendent or designee.

Sec. 6.7.2. Method of Procurement. Employees authorized to use the corporate card program to purchase goods and services are required to and shall be responsible for procuring goods and services pursuant to the procurement methods identified in this policy.

Sec. 6.7.3. Required Records. Employees authorized to use the corporate card program shall document each purchase through the corporate card program. Accordingly, the Superintendent or designee shall require participating Academy employees to prepare a purchase order form, general expense reimbursement form, travel authorization form, travel expense reimbursement form or other internal accounting record for each corporate card purchase or use. Additionally, the Superintendent or designee shall require the employee to also provide an original, itemized vendor receipt or invoice for each individual purchase, with the exception of the purchase of travel-related meals subject to and in adherence with the maximum allowable reimbursement rates promulgated by the Texas Comptroller of Public Accounts.

Sec. 6.7.4. Failure to Document. If an employee fails to provide the required records pursuant to Subsection 6.8.3 of this policy, the employee shall be financially liable for the costs charged to the corporate card.

Sec. 6.8. Receipt of Goods and Services.¹³

The Superintendent or designee shall establish and maintain a system for documenting the receipt of goods and services from a vendor including the condition and number of items received, the satisfactory performance of services rendered, and any dispute with the condition and number of items or performance of services.

Sec. 6.9. Employee Purchases Prohibited.

Academy employees are prohibited from conducting any transaction that results in the purchase of goods and services and that obligates Academy funds and otherwise results in the expenditure of Academy funds except as provided in this policy. If an Academy employee fails to follow this policy to purchase goods and services, the employee shall be financially responsible for any expenses incurred regardless of the benefit to the Academy and its students.

¹³ Tex. Ed. Code §12.115(a)(2); 2 CFR §§ 200.303 and 200.318(b)

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*Sec. 6.10. Separate, Sequential or Component Purchases Prohibited.*¹⁴

The Superintendent or designee and Academy employees are prohibited from making or authorizing separate, sequential, or component purchases to avoid the requirements of this policy.

Sec. 7. Authorized Procurement Methods.

The Superintendent or designee shall procure or cause the procurement of goods and services through the following methods for the amounts indicated.

*Sec. 7.1. Purchases with State Funds Generally.*¹⁵

Sec. 7.1.1. No Method Required. The Superintendent or designee may procure goods and services that have a cost or value of less than the micro-purchase threshold through the most expedient manner available.

Sec. 7.1.2. Informal Quotes. The Superintendent or designee shall procure goods and services that have a cost or value exceeding the micro-purchase threshold but not more than the simplified acquisition threshold through the solicitation of three or more written quotes from authorized vendors.

Sec. 7.1.3. Formal Quotes. The Superintendent or designee shall procure goods and services that have a cost or value exceeding the simplified acquisition threshold through the formal solicitation of three or more written quotes from authorized vendors.

*Sec. 7.2. Purchases Through Cooperative.*¹⁶

The Superintendent or designee may use local, state or federal funds to procure goods and services through a cooperative that provides written assurance of compliance with state purchasing requirements.

Sec. 7.2.1. Exception. In the event that a participating vendor in the purchasing cooperative program quotes a lower price for the same goods or services, the Superintendent or designee may procure the goods and services using the vendor's direct quote.

Sec. 7.2.2. Campus Utilization. To the degree authorized by the Superintendent, campus principals may purchase goods and services through a cooperative that meet the following requirements.

¹⁴ Tex. Ed. Code §44.032

¹⁵ Tex. Ed. Code §§ 12.1053 and 12.115(a)(2); FASRG

¹⁶ Tex. Ed. Code §§ 12.1058(a)(1) and 12.115(a)(2); FASRG; 2 CFR §200.318(e)

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- (a) For purchases not subject to Sec. 8 and Sec. 9 of this policy.
- (b) For purchases not exceeding the micro-purchase threshold.

Sec. 8. Purchase of Professional Services.¹⁷

Sec. 8.1. Selection of Provider.

The Board and Superintendent or designee shall not select a provider of professional services or a group or association of providers or award a contract for professional services on the basis of competitive bids submitted for the contract or for the professional services. Instead, the Board and Superintendent or designee shall select the provider for the professional service to be procured based on the following criteria:

- (a) The provider's demonstrated competence and qualifications to perform the services; and
- (b) The fairness and reasonableness of the provider's price.

Sec. 8.2. Contract for Professional Services of Architect, Engineer or Surveyor.

Sec. 8.2.1. In procuring architectural, engineering, or land surveying services, the Board and Superintendent or designee shall:

- (a) First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
- (b) Then attempt to negotiate with that provider a contract at a fair and reasonable price.

Sec. 8.2.2. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the Board and Superintendent or designee shall:

- (a) Formally end negotiations with that provider;
- (b) Select the next most highly qualified provider;
- (c) Attempt to negotiate a contract with that provider at a fair and reasonable price; and
- (d) Continue the process described in subsections (a) through (c) to select and negotiate with providers until a contract is entered into.

¹⁷ Tex. Ed. Code §12.1053(b)(2); Tex. Gov't. Code Chapter 2254, Subchapter A

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Sec. 9. Procurement of Public Works.

Sec. 9.1. Rules and Procedures.

Pursuant to Tex. Ed. Code §44.031(d) and Tex. Gov't. Code §2269.051, the Board may adopt rules and procedures for the acquisition of goods or services related to public works, including construction services.

Sec. 9.2. Delegation of Authority.

Sec. 9.2.1. Authority to Procure Construction Services. The Board may delegate its authority under Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person. If the Board delegates its authority to a designated representative, committee, or other person, the Academy shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Sec. 9.2.2. Authority to Contract. Unless otherwise authorized by the Board, only a Board member, the Superintendent, or the Superintendent's designee shall be authorized to sign contracts obligating the Academy to disburse public funds for public works.

Sec. 9.3. Authorized Methods of Procurement.

Sec. 9.3.1. With the exception of the competitive bidding method, the Board shall determine which method set forth in this subsection provides the best value for the Academy before it advertises for requests for bids, proposals or qualifications.

Sec. 9.3.2. The Academy shall base its selection among offerors on applicable criteria listed for the particular method used. The Academy shall publish in the request for bids, proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion.

Sec. 9.3.3. Within seven (7) days after the date the contract is awarded, the Academy shall document the basis of its selection and shall make the evaluations public.

Sec. 9.3.4. The Board or designee may award a contract for construction services using one of the following methods:

- (a) Competitive bidding,
- (b) Competitive sealed proposal,
- (c) Construction manager-agent,
- (d) Construction manager-at-risk,
- (e) Design-build, or
- (f) Job order contracts.

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Sec. 9.3.5. Unless determined otherwise by the Board, the Academy shall procure construction services using the competitive bidding method of procurement.

Sec. 9.3.6. The Superintendent may recommend to the Board a method of procurement, other than the competitive bidding method, from those listed under Subsection 6.4.3.4. In this event, the Superintendent shall provide the Board with a written proposal, including the justification for utilizing a different method of procurement.

Sec. 9.3.7. In the event that the Board determines that another procurement method is in the Academy's best interest, the Board's determination will be documented in the minutes to the pertinent Board meeting.

Sec. 9.3.8. The Board and the Academy may seek legal and professional advice and counsel regarding the legal and other requirements applicable to the procurement method selected by the Board.

Sec. 9.4. Notice.

The Academy shall publish a notice of the time by when and the place where the bids or proposals, or the responses to a request for qualifications, will be received and opened. The Academy shall publish the notice in the county in which its central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the Academy shall publish its advertisement in a newspaper in the county nearest the county seat of the county in which its central administrative office is located. In a two-step procurement process, the Academy is not required to separately publish the time and place where the second-step bids, proposals, or responses will be received.

Sec. 9.5. Response to Requests for Bids, Proposals or Qualifications.

Sec. 9.5.1. Sealed Bids, Proposals or Qualifications Required. A person who submits a bid, proposal, or qualification is required to seal it before delivery. The Superintendent or designee shall reject any bid, proposal or qualification that is not sealed and return it to the offeror with a statement:

- (a) Representing that the bid, proposal or qualification was not opened, viewed or otherwise examined;
- (b) Asserting that the content and form of the bid, proposal, or qualification was not duplicated or disseminated with any person or entity; and
- (c) Instructing the offeror to resubmit an appropriately sealed bid, proposal or qualification as required by state law.

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Sec. 9.5.2. Receipt and Opening of Bids. The Academy shall receive, publicly open, and read aloud the names of the offerors and their bids. Only the Board, during a lawfully convened Board meeting, or the Board's designee, at or in Academy's central administrative office, may open the bids submitted by offerors. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. A bidder has the common law right to withdraw a bid due to a material mistake in the bid. The Academy is entitled to reject any and all bids.

Sec. 9.6. Awarding of Contract Under Competitive Bidding Method.

Sec. 9.6.1. In accordance with state law, "competitive bidding" is a procurement method by which the Academy may contract with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

Sec. 9.6.2. The Academy may contract for the construction, alteration, rehabilitation, or repair of a facility only after it advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Sec. 9.7. Responsible Bidder Defined.

Sec. 9.7.1. A responsible bidder is a person who has the capability in all respects to perform in full the contract requirements and the integrity and reliability assuring good faith performance. A responsible bidder may be required to meet any or all of the following requirements.

- (a) Be an experienced contractor who has served as a prime contractor on similar construction projects for Texas public schools, has satisfactorily completed the scope of work described in the construction documents, and is knowledgeable about the requirements for the construction of and the building elements for Texas public schools including, without limitation, applicable building code requirements.
- (b) Provide a warranty and support for any equipment installed as part of the construction services and in accordance with the scope of work described in the construction documents.
- (c) Be able to obtain payment and performance bonds of the types and in the amounts described in Tex. Govt. Code §2253.
- (d) When submitting the bid, provide a Letter of Statement from a bonding company that the bidder is able to obtain both a payment bond and a performance bond described as stipulated in Tex. Govt. Code §2253.
- (e) Prior to executing the contract, obtain and provide the payment and performance bonds of the types and in the amounts established at Tex. Govt. Code §2253.
- (f) Have adequate financial resources or ability to obtain such resources as required during the performance of any resulting contract.

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- (g) Be able to comply with the required performance schedule, taking into consideration all existing business commitments.
- (h) Have necessary management and technical capability to perform any resulting contract for construction services.
- (i) Be qualified as an established firm regularly engaged in the type of business to provide the items and work required by the request for bids.
- (j) Be registered to do business in the State of Texas.
- (k) Be in good standing with the State of Texas.
- (l) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Sec. 9.7.2. The Academy must include the requirements to be used to establish an offeror as a responsible bidder in the request for bids, proposals or qualifications.

Sec. 9.8. Criteria to Consider.

Sec. 9.8.1. In determining the award of a contract pursuant to this section, the Academy may consider:

- (a) The price;
- (b) The offeror's experience and reputation;
- (c) The quality and reputation of the offeror's goods or services;
- (d) The extent to which the offeror's goods or services meet the Academy's needs;
- (e) The vendor's past relationship with the Academy;
- (f) The impact on the ability of the Academy to comply with rules relating to historically underutilized businesses;
- (g) The total long-term cost to the Academy to acquire the offeror's goods or services;
- (h) Whether the vendor or the vendor's ultimate parent company or majority owner:
 - (1) Has its principal place of business in this state; or
 - (2) Employs at least 500 persons in this state;

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- (i) The offeror's safety record;
- (j) The offeror's proposed personnel;
- (k) Whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (l) Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Sec. 9.8.2. In determining the award of a contract under this chapter, the Academy shall:

- (a) Consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and
- (b) Consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Sec. 9.9. Safety Record of Bidder Considered.

Sec. 9.9.1. In determining who is a responsible bidder, the Board may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution.

Sec. 9.9.2. In determining who is a responsible bidder, the Board may take into account the following definition and criteria for accurately determining the safety record of a bidder.

- (a) "Citations" include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. A Notice of Violation and Notice of Enforcement received from the Texas Commission on Environmental Quality ("TCEQ") shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History pursuant to Texas Administrative Code, Title 30, §60.2(d)(1) and (d)(2).
- (b) "Environmental Protection Agency" includes, but is not limited to the TCEQ, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

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- (c) Based upon the bidder's response to certain questions, the Board will consider the following criteria and, at its discretion, determine whether to disqualify the bidder.
- (1) The revelation of more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission ("OSHRC") against the bidder for serious violations of Occupational Safety & Health Administration ("OSHA") regulations within the past five (5) years.
 - (2) The revelation of more than one (1) case in which the bidder has received a citation or for which final orders have been entered from an environmental protection agency for violations within the past five (5) years.
 - (3) The revelation that the bidder has been convicted of a criminal offense within the past ten (10) years or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily harm or death.

Sec. 9.9.3. Before considering the safety record of the bidder, the Academy must give notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder.

Sec. 9.9.4. In making determinations concerning the safety records of the bidders, the Board, Superintendent, and Academy employees are prohibited from making the determinations in an arbitrary and capricious manner.

Sec. 9.9.5. The Superintendent or designee shall prepare and submit to the Board a summary report of the information and the responses provided by the bidder for its consideration and to facilitate its determination of whether to disqualify the bidder based upon its safety record.

Sec. 9.10. Notification of Contractor's Criminal History.

Sec. 9.10.1. If the person or an owner or operator of the business entity has been convicted of a felony, the Academy should ensure that the bidder's response includes an advance notice disclosing this fact. The notice must include a general description of the conduct resulting in the conviction of a felony.

Sec. 9.10.2. The Academy may terminate a contract with a person or business entity if the Academy determines that the person or business entity failed to give notice as required by Subsection 14.1 or misrepresented the conduct resulting in the conviction. The Academy must compensate the person or business entity for services performed before the termination of the contract.

Sec. 9.10.3. This subsection does not apply to a publicly held corporation.

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Sec. 9.11. Contract with Person Indebted to the Academy.

Sec. 9.11.1. The Board may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the Academy.

Sec. 9.11.2. For purposes of implementing this subsection, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the Academy requiring approval by the Board.

Sec. 9.11.3. The Superintendent or designee shall notify the Board of any debt due by an apparent low bidder or successful proposer. In the notice to the Board, the Superintendent or designee must disclose:

- (a) The amount outstanding;
- (b) The date(s) of when the bidder or proposer became indebted to the Academy;
- (c) The cause(s) resulting in the bidder's or proposer's indebtedness;
- (d) Any adverse consequence to the Academy resulting from the bidder's or proposer's indebtedness;
- (e) The date of the last written correspondence to the bidder or proposer requesting the bidder's or proposer's satisfactory settlement of the indebtedness; and
- (f) The frequency of requests for settlement of the indebtedness.

Sec. 9.12. Right to Work.

When procuring goods or services, awarding a contract or overseeing procurement or construction for a public work to which this Policy applies, the Academy:

- (a) May not consider whether a person is a member of or has another relationship with any organization; and
- (b) Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Sec. 9.13. Contracts to Minority Companies.

As set forth in the charter application, the Academy will look for "opportunities to consummate contracts with a sizeable portion to minority companies."

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Sec. 9.14. Selection of Architect or Engineer.

Unless the Academy employs an architect or engineer on a full-time basis to oversee construction projects, the Academy shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Tex. Govt. Code §2254.004.

Sec. 9.15. Other Professional Services.

The Academy shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of a facility. The Academy shall select the services for which it contracts under this subsection in accordance with Tex. Govt. Code §2254.004.

Sec. 9.16. Suspension of Policy.

If a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the Board determines that the delay posed by the contract methods required by this Policy would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the school facility, or portion of the school facility may be made by a method other than the methods required by this policy.

Sec. 9.17. Change Orders.

Sec. 9.17.1. If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the Superintendent or designee has general authority to approve change orders making the changes.

Sec. 9.17.2. The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

Sec. 9.17.3. A contract with an original contract price of \$1 million or more may not be increased under this subsection by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Sec. 9.18. Monitoring and Oversight.

Sec. 9.18.1. The Superintendent or designee shall monitor and oversee all construction projects and services. The Superintendent or designee shall document their monitoring and oversight activities.

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Sec. 9.18.2. The Superintendent or designee shall report to the Board the progress and status of any and all public works procured under this policy.

Sec. 9.18.3. The Superintendent or designee shall not make any final payments for public works procured under this Policy until the work has been completed. Upon completion of a public work, the Superintendent or designee shall provide a final report to the Board. Upon accepting the work performed, the Board may authorize the Superintendent or designee to issue final payment(s).

Sec. 10. Monitoring of Service Provider Performance.

The Superintendent or designee shall monitor the services and work of all service providers. In developing a system for monitoring the service provider's performance, the Superintendent or designee shall consider the inclusion of deliverables and other measurable outcomes that demonstrate the delivery of the services procured from the service provider and that enable the Superintendent or designee to evaluate the quality of the services rendered and satisfactory performance of the provider.

Sec. 11. Training and Updates.¹⁸

The Superintendent or designee shall properly train Academy officers and employees on the requirements of this policy and any administrative procedure(s) adopted to implement this policy. Additionally, the Superintendent or designee shall keep Academy officers and employees informed of any changes to this policy and related requirements.

Sec. 12. Administrative Procedures.¹⁹

The Superintendent shall formally adopt administrative procedures as reasonably necessary to properly administer this policy and to adhere to applicable law and rule. In doing so, the Superintendent shall not adopt, and is prohibited from adopting, an administrative procedure that conflicts with applicable law or this policy. Accordingly, the Superintendent shall confer with the Board or legal counsel before deviating from the requirements set forth in this policy. In the event that a deviation from this policy becomes necessary, the Superintendent shall either recommend an amendment to this policy or the Board's approval of a specific deviation, including the purpose, scope and duration of the requested deviation.

¹⁸ 2 CFR §200.303(a), U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*, 4.02 and 4.05.

¹⁹ Tex. Ed. Code §12.115(a)(2); FASRG Module 2; 2 CFR §200.303. Consistent with 19 TAC § 100.1033(b)(14)(C)(iv), the Board has the final authority to adopt policies governing charter school operations, including authorizing the Delegate or designee to adopt an administrative procedure to implement this policy. Moreover, as set forth in Academy's Articles of Incorporation and Bylaws and in accordance with Tex. Bus. Org. Code §§ 3.101 and 22.201, the Board is the Academy's governing authority and, as such, manages and directs Academy's business and affairs through Board actions, resolutions and policy.

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Sec. 13. Date Adopted and Effective.

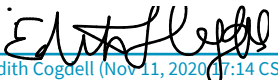
As set forth in the pertinent minutes to the meeting of the Board, the Board adopted this policy on 11/11/2020 and became effective on 11/11/2020.

Sec. 14. Retention.²⁰

This policy shall be retained until superseded, expired or discontinued and for five (5) years thereafter.

Sec. 15. Certification.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to Allowable and Prohibited Uses of Funds, as originally adopted by the Board on 11/11/2020, which Policy is in full force and effect and has not been revoked or amended.


Edith Cogdell (Nov 11, 2020 17:14 CST)

Edith Cogdell, Secretary

Nov 11, 2020

Date Certified

²⁰ Tex. Ed. Code §12.1052; 19 TAC §100.1203; See Record Number GR1000-38 and GR1025-25 in Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition (Effective April 17, 2016) adopted by the Texas State Library and Archives Commission at Texas Administrative Code, Title 13, §7.125(a)(1).

Policy FMPC - Purchasing and Contracting with State Funds (Final Review)

Final Audit Report

2020-11-11

Created:	2020-11-11
By:	Marilyn Dovalina (mdovalina@por-vida.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhW-HLRSdAohuhwy6vzi9e-qm24zJi1vM

"Policy FMPC - Purchasing and Contracting with State Funds (Final Review)" History

-  Document created by Marilyn Dovalina (mdovalina@por-vida.org)
2020-11-11 - 11:10:32 PM GMT- IP address: 68.201.212.120
-  Document emailed to Edith Cogdell (cogdell@uiwtx.edu) for signature
2020-11-11 - 11:11:10 PM GMT
-  Email viewed by Edith Cogdell (cogdell@uiwtx.edu)
2020-11-11 - 11:13:49 PM GMT- IP address: 104.219.136.54
-  Document e-signed by Edith Cogdell (cogdell@uiwtx.edu)
Signature Date: 2020-11-11 - 11:14:03 PM GMT - Time Source: server- IP address: 104.219.136.54
-  Agreement completed.
2020-11-11 - 11:14:03 PM GMT