

Por Vida Inc.
DBA
Por Vida Academy
BOARD POLICY MANUAL
POLICY GROUP – FISCAL MANAGEMENT
POLICY FMPG
PURCHASING AND CONTRACTING
FROM FEDERAL FUNDS
FOR GENERAL SERVICES, PERSONAL PROPERTY, MATERIALS AND SUPPLIES

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 maximize the use of Academy funds to purchase goods and services to further the Academy’s mission and facilitate the implementation of the charter program. Through this policy, the Board shall address the legal requirements, as applicable, promulgated at:

- (a) Texas Education Code, Section 12.115(a)(2);
- (b) Code of Federal Regulations, Title 2, Part 200 (“2 CFR 200”);
- (c) Financial Accountability System Resource Guide; and
- (d) Administrator’s Reference Manual, Section 17.

Sec. 2. Applicability of Policy.

This policy pertains to the purchase of goods and services generally (“general purchases”) from federal funds, including funds disbursed by the Food Nutrition Division of the Texas Department of Agriculture, and does not apply:

- (a) To the purchase of general goods and services from state funds;
- (b) To the purchase of goods and services for the construction, renovation, or repair of a structure, road, highway, or other improvement or addition to real property (hereafter, “real property improvements”) with a cost or value exceeding \$50,000; or
- (c) To the procurement of professional services.

In the application of this policy, the Academy officers and employees shall consider the Board’s Policy for Purchasing and Contracting with State Funds.

Sec. 3. Final Authority.¹

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

Sec. 4. Designee(s).

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. 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 must be specific, must cite the policy section from which it is derived, and must utilize thresholds for each approval level. The

¹ Tex. Ed. Code §§ 12.102(1), 12.107(a)(2) and 12.128(a)(2); 19 TAC §§ 100.1001(6), 100.1033(b)(14)(C)(ii), 100.1043(a), and 100.1063(b)(c).

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

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Superintendent may not delegate authority for contracts and/or transactions with a cost or value exceeding \$50,000 from funds administered by the Texas Department of Agriculture³ and \$250,000 from other local, state or federal funds.⁴ Any delegation of authority to a designee not documented as set forth in this section shall be null and void.

Sec. 5. Authorized Procurement Methods.⁵

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

Sec. 5.1. Procurement by Micro-Purchase Procedure.

The Superintendent or designee may procure goods and/or services through a single business arrangement (as evidenced by an executed contract), purchase or transaction with an aggregate total cost or value that does not exceed \$10,000 through the most expedient manner available. However, to the extent practicable, the Academy must distribute micro-purchases equitably among authorized vendors. Additionally, if a purchase is made without competitive soliciting quotes, Academy employees must document that the price was reasonable.

Sec. 5.2. Procurement by Small Purchase Procedure.

The Superintendent or designee shall procure goods and/or services through a single business arrangement (as evidenced by an executed contract), purchase or transaction with an aggregate total cost or value that exceeds \$10,000 but does not exceed \$250,000 from funds administered by the Texas Department of Agriculture or \$250,000 from other federal funds through the solicitation of three written competitive quotes from authorized vendors.

Sec. 5.3. Competitive Bids.

The Superintendent or designee shall procure goods and/or services that have a cost or value of \$50,000 or more from funds administered by the Texas Department of Agriculture or \$250,000 or more from other federal funds through competitive bids from authorized vendors.

Sec. 5.3.1. *Procurement by Sealed Bids.*

Sec. 5.3.1.1. The Superintendent or designee shall procure goods and/or services through the public solicitation of sealed bids if the following conditions apply:

- (a) A complete, adequate, and realistic specification or purchase description is available;
- (b) Two or more responsible bidders are willing and able to compete effectively for the business; and

³ Conforms to Section 17 of the Administrators Reference Manual issued by the Texas Department of Agriculture.

⁴ Conforms to 2 CFR §§ 200.88 and 200.320.

⁵ Conforms to Texas Education Code, Section 12.115(a)(2), 2 CFR §§ 200.302, 200.303 and 200.320 and the Administrator's Reference Manual issued by the Texas Department of Agriculture.

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- (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Sec. 5.3.1.2. If sealed bids are used, the following requirements apply:

- (a) Bids must be solicited from an adequate number of authorized vendors, providing them sufficient response time prior to the date set for opening the bids;
- (b) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (c) All bids will be opened at the time and place prescribed in the invitation for bids;
- (d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (e) Any or all bids may be rejected if there is a sound documented reason.

Sec. 5.3.1.3. Upon approval by the Board, the Superintendent or designee shall award a firm fixed price contract to the lowest responsible bidder with the bid that conforms with all the material terms and conditions of the invitation for bids.

Sec. 5.3.2. Procurement by Competitive Proposals.

Sec. 5.3.2.1. If conditions are not appropriate for the use of sealed bids, the Superintendent or designee shall procure goods and/or services through competitive proposals if the following requirements are met:

- (a) Requests for proposals must be publicized and identify all evaluation factors and their relative importance;
- (b) Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (c) Proposals must be solicited from an adequate number of qualified sources;
- (d) The Academy must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (e) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

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- (f) The Academy may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.⁶

Sec. 5.3.2.2. The Academy shall award either a fixed price or cost reimbursement type contract.

Sec. 5.4. Procurement by Noncompetitive Proposals.

The Superintendent or designee may procure goods through the solicitation of a proposal from only one source only when one or more of the following circumstances apply:

- (a) The item is available only from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Academy; or
- (d) After solicitation of a number of sources, competition is determined inadequate.

Sec. 6. Other Federal Procurement Standards.

In addition to this policy, the Superintendent or designee shall procure goods and services utilizing federal funds pursuant to other applicable federal procurement standards.

Sec. 1. Training and Updates.⁷

The Superintendent or designee shall properly train 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 officers and employees informed of any changes to this policy and related requirements.

Sec. 7. Administrative Procedures.⁸

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

⁶ The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

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

⁸ 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

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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.

Sec. 2. Date Adopted and Effective.

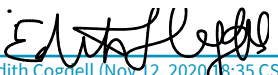
As set forth in the pertinent minutes to the meeting of the Board, the Board adopted this policy on 11/11/2020 and became effective on 11/11/2020.

Sec. 3. Retention.⁹

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

Sec. 4. Certification.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to Purchasing and Contracting from Federal 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 12, 2020 13:35 CST)

Edith Cogdell, Secretary

Nov 12, 2020

Date Certified

authority and, as such, manages and directs Academy's business and affairs through Board actions, resolutions and policy.

⁹ 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 FMPG - Purchasing and Contracting from Federal Funds (Final Review)

Final Audit Report

2020-11-13

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