

IDEA Public Schools

PURCHASING POLICY



IDEA PUBLIC SCHOOLS BOARD POLICY

PURCHASING POLICY

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Sec. 1. PURPOSE OF POLICY.

The Board of Directors (“Board”) of IDEA Public Schools (“IDEA”) shall endeavor to maximize the use of IDEA funds to purchase goods and services to further IDEA’s mission and facilitate the implementation of the charter program. Through this policy, the Board shall address the legal requirements, as applicable and as may be amended, promulgated at:

- (a) Texas Education Code (“Tex. Ed. Code”), notably Sections 12.104(b)(1), 12.115(a)(2) 12.1053(b)(2), 12.107, 12.121 and Chapter 44, Subchapter B (“Chapter 44”);
- (b) Texas Government Code (“Government Code”) Chapter 2254, Subchapter A and Chapter 2269 (“Chapter 2269”);
- (c) Texas Local Government Code (“Local Government Code”) Chapter 271, Subchapter B;
- (d) Texas Business Organizations Code (“Tex. Bus. Org. Code”) , notably Sections 3.101, 22.201, 22.221 and 22.235;
- (e) Texas Administrative Code, Title 19 (“19 TAC”), Chapter 100, notably §§ 100.1001, 100.1006, 100.1033(b)(14)(C), 100.1047(b), and 100.1101;
- (f) Code of Federal Regulations, Title 2, Part 200 (“2 CFR 200”);
- (g) Financial Accountability System Resource Guide (“FASRG”);
- (h) *Standards for Internal Control in the Federal Government*; and
- (i) *Government Auditing Standards*.

Sec. 2. APPLICABILITY OF POLICY.

This policy pertains to the purchase of any and all goods and services through the use of local, state, or federal funds. If not otherwise defined herein, capitalized terms shall have the same meaning as found in applicable state or federal law.

Sec. 3. AUTHORITY OVER FISCAL AFFAIRS.

- (a) In accordance with state law, the Board has primary and ultimate authority over fiscal matters. If a matter or decision-making process is not addressed in this or other duly adopted policies of the Board, authority rests with the Board. In the event of a conflict between this policy and any other Board policy, such conflict shall be brought to the Board for resolution. Refer to the Board’s Authority Over Fiscal Matters Policy (the “Controlling Policy”) for requirements applicable to this policy.
- (b) The Delegates (as defined in Sec. 3(b) of the Controlling Policy) shall report to the Board any business arrangement or transaction with an individual that is an officer, as defined in Sec. 5 of the Controlling Policy, and any conflicted,¹ interested² or related³ party, as defined in other Board policy or applicable law. IDEA (and its officers) may not enter into

¹ Tex. Ed. Code § 12.1054; 19 TAC §§ 100.1131 through 100.1135

² 19 TAC § 100.1047(f)

³ Tex. Ed. Code § 12.1166

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a business arrangement or conduct a transaction in such a manner so as to circumvent this requirement. See Sec. 3.3 of the Financial Reporting policy.

- (c) As set forth in Sec. 2.2 of the Board's Policy relating to Capital Assets, the Board retains its final authority to authorize the expenditure or obligation of public funds or the use of public property for the acquisition of land and real estate. See Sec. 5.5 of this policy.

Sec. 4. DEFINITIONS.

Sec. 4.1. Component Purchases.

"Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.⁴

Sec. 4.2. EDGAR

"EDGAR" means the Education Department General Administrative Regulations which sets forth the procurement standards applicable to micro-purchases, small purchases, sealed bids and competitive proposals. See Appendix 1.

Sec. 4.3. Goods.

"Goods" means personal property such as appliances, contract rights, equipment, furniture, intellectual property, materials, software, supplies and vehicles.

Sec. 4.4. Local Funds.

"Local funds" means funds received from private donors, fundraising efforts, charter holder development activities, or other activities, efforts, functions, programs, and/or services not directly or indirectly supported by or with public funds (federal or state).

Sec. 4.5. Micro-purchase Threshold.

"Micro-purchase threshold" means \$10,000.⁵ See Appendix 1.

Sec. 4.6. Officer.

"Officer" has the meaning set forth in Sec. 5 of the Controlling Policy.

⁴ Tex. Ed. Code §44.032(a)(1)

⁵ 2 CFR §200.67; Office of Management and Budget June 20, 2018, Memorandum for Chief Financial Officers and Heads of Small Executive Agencies (M-18-18) at <https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>

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Sec. 4.7. Ordinary Care.

“Ordinary care” means “the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.”⁶

Sec. 4.8. Other Services.

“Other services” means any service not specifically identified as a professional service.

Sec. 4.9. Personal Property.

“Personal property” means an interest in tangible and intangible property other than real property, including:

- (a) furniture, equipment, supplies, and other goods;
- (b) computer hardware and software;
- (c) contract rights, intellectual property such as patents, and other intangible property;
- (d) cash, currency, funds, bank accounts, securities, and other investment instruments;
- (e) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and
- (f) any other form of personal property recognized by Texas law.⁷

Sec. 4.10. Professional Services.

“Professional services” means services:

- (a) Within the scope of the practice, as defined by state law, of:
 - (1) Accounting;
 - (2) Architecture;
 - (3) Landscape architecture;
 - (4) Land surveying;
 - (5) Medicine;
 - (6) Optometry;
 - (7) Professional engineering;
 - (8) Real estate appraising; or
 - (9) Professional nursing; or
- (b) Provided in connection with the professional employment or practice of a person who is licensed or registered as:
 - (1) A certified public accountant;
 - (2) An architect;

⁶ Tex. Bus. Org. Code §22.001(6)

⁷ 19 TAC §100.1001(6), 2 CFR §200.78

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- (3) A landscape architect;
- (4) A land surveyor;
- (5) A physician, including a surgeon;
- (6) An optometrist;
- (7) A professional engineer;
- (8) A state certified or state licensed real estate appraiser; or
- (9) A registered nurse; or

- (c) Provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer.⁸

Sec. 4.11. Public Funds.

“Public funds” means funds received from the State of Texas pursuant to Tex. Ed. Code §12.106. Public funds also include any funds raised or received as a result of the expenditure of public funds received pursuant to Tex. Ed. Code §12.106 and/or the use of public property or through the use of public funds or public property as collateral for borrowed funds. It also includes federal funds, including where IDEA is grantee or subgrantee.⁹

Sec. 4.12. Public Works.

“Public works” means the construction, renovation, or repair of a structure, road, highway, or other improvement or addition to real property.

Sec. 4.13. Separate Purchases.

“Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

Sec. 4.14. Sequential Purchases.

“Sequential purchases” means purchases, made over a period of time, of items that in normal purchasing practices would be purchased in one purchase.

Sec. 4.15. Services.

“Services” means professional services and other services.

Sec. 4.16. Simplified Acquisition Threshold.

“Simplified acquisition threshold” means the amount set forth at 2 CFR §200.88, or as otherwise authorized by the Office of Management and Budget in an official policy statement. Effective July

⁸ Tex. Gov’t. Code §2254.002(2)

⁹ Tex. Ed. Code §§ 12.107 and 12.128; 19 TAC §100.1001(8)/(11)

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1, 2018, the simplified acquisition threshold is \$250,000. For funds administered by Texas Department of Agriculture, the simplified acquisition threshold is \$50,000 See Appendix 1.

Sec. 4.17. Supplies.

In accordance with 2 CFR §200.94, “supplies” means all tangible personal property other than those described in 2 CFR §200.33, Equipment. A computing device, as defined at 2 CFR §200.20, is a supply if the acquisition cost is less than the lesser of the capitalization level established by IDEA for financial statement purposes or \$5,000, regardless of the length of its useful life.

Sec. 5. GENERAL REQUIREMENTS APPLICABLE TO ALL PURCHASES.

Sec. 5.1. Prudent Person Rule.

IDEA’s Board, officers and employees shall procure goods and services with ordinary care¹⁰ and in a manner “that a prudent person would consider reasonable and necessary business practice given the facts and circumstances.”¹¹ Importantly, IDEA officers and employees shall procure goods and services at a cost that is reasonable which means that, in its nature and amount, the purchase price does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.¹²

Sec. 5.2. Use of State Aid for Social Activities.

“Unless directly related to the benefit of students, costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable. In addition to demonstrating that this type of expense resulted in a direct benefit to the students, [IDEA officers and employees] must identify the students that benefited from the applicable disbursement of public funds.”¹³ The Board must also make findings that the expenditure of public funds is “necessary for the conduct of the public schools” and “in the best interest of students” pursuant to applicable provisions of Education Code Chapter 12 and Section 45.105(c).

Sec. 5.3. Segregation of Duties; Checks and Balances.

To the degree feasible the Delegates 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; and (5) the accounting of purchases and payments including the reconciliation of accounting and bank records. Where an appropriate segregation of duties between these functions is not feasible, the

¹⁰ Tex. Bus. Org. Code §§ 22.221(a) and 22.235(a)

¹¹ *Government Auditing Standards* (2018 Revision), §6.23
Standards for Internal Control in the Federal Government, §8.03

¹² 2 CFR §200.404

¹³ 10 FASRG §1.8.2.9.1

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Delegates shall ensure the appropriate review and approval of contractual arrangements and business transactions.

Sec. 5.4. Purchasing Officer.

The Delegates may delegate the purchasing function to an employee designated as the purchasing officer.

Sec. 5.5. Authority to Procure Goods and Services.

- (a) The Board authorizes the Delegates or designee to procure or cause the procurement of goods and services pursuant to the budget adopted and amended by the Board. The Delegates or designee may not procure or approve the procurement of goods and services that are not approved by the Board in the budget or by amendment to the budget.
- (b) With respect to the purchase of land or real estate, see Sec. 3.3 of the Board's Policy relating to Capital Assets.

Sec. 5.6. Signature Authority.

Only the Delegates or designee shall be authorized to execute contracts or other written legal agreements that obligate IDEA to disburse funds for the receipt of goods and/or services. Automatic renewals are prohibited. The Delegates or designee shall, to the degree feasible, use standardized contracts, terms and conditions favorable to IDEA or have the contract reviewed by legal counsel prior to execution.

Sec. 5.7. Purchase Order System.

The Delegates 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 IDEA to remit payment to the vendor upon receipt of the goods and/or services purchased and of the related invoice.

Sec. 5.7.1. Required Approvals.

The Director of Accounting – Operations shall be authorized to approve purchase orders.

Sec. 5.7.2. Issuance Prohibited.

IDEA employees may not issue a purchase order to a vendor unless it has been approved by the Director of Accounting Operations.

Sec. 5.7.3. Failure to Properly Issue.

If an IDEA employee issues a purchase order to a vendor without the required approvals established in Subsection 6.5., the employee may be financially responsible for the purchase, and may also be subject to adverse employment action, up to and including termination.

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Sec. 5.8. Receipt of Goods and Services.

The Delegates 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. 5.9. Budget Owner Responsibilities.

Each budget owner shall be responsible for expenditures from the budget approved for his or her campus/department. Each budget owner must work with the designated budget partner to purchase goods and/or services pursuant to this policy.

Sec. 5.10. Employee Purchases Prohibited.

IDEA employees are prohibited from conducting any transaction that results in the purchase of goods and services, that obligates IDEA funds, or results in the expenditure of IDEA funds except as provided in this policy. If an IDEA employee fails to follow this policy to purchase goods and services, the employee may be financially responsible for any expenses incurred regardless of the benefit to IDEA and its students, and may also be subject to adverse employment action, up to and including termination.

Sec. 5.11. Authorized Vendors.

The Delegates or designee shall require the procurement of goods and/or services from authorized vendors. Authorized vendors must be properly entered into IDEA's accounting system. Any requests to change vendor bank information must be approved by the Delegates.

Sec. 5.12. Separate, Sequential, or Component Purchases Prohibited.

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

Sec. 5.13. Required Records.

IDEA employees shall document and substantiate each purchase of goods and services through the preparation of internal accounting records and the submittal of original, itemized vendor invoices or receipts.

Sec. 5.14. Awards, Gifts, and Business Expenses.

In addition to the purchasing and contracting requirements set forth in this policy and in applicable state and federal law and regulation, including the Internal Revenue Code and Internal Revenue Regulations, IDEA officers and employees shall purchase any awards and gifts and incur business expenses, including the cost of business meals, pursuant to the various policies adopted by the Board including the Corporate Card Policy, Accountable Plan Policy, and Employee Awards and Gifts Policy, as applicable.

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If an IDEA officer or employee fails to follow this policy to purchase goods and services, the officer or employee shall be personally financially responsible for any expenses incurred, particularly for any unsubstantiated charges or for the purchase of non-business related goods and/or services, regardless of the benefit to IDEA and its students.

Sec. 6. AUTHORIZED PROCUREMENT METHODS.

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

Sec. 6.1. Purchases with Local Funds.

The Delegates or designee may use the most expedient manner available to procure goods and services through local funds, while still exercising prudence and ensuring IDEA receives appropriate value and that funds are not unnecessarily wasted or expended. IDEA employees should apply the prudent person rule with all such purchases using local funds and maintain appropriate documentation to support compliance with this section (i.e. price comparisons, quotes, advertised prices, etc.).

Sec. 6.2. Purchases with State or Public Funds.***Sec. 6.2.1. Other Goods and Services.*****(a) No Method Required.**

The Delegates or designee may procure goods and non-professional services through the most expedient manner available yielding best value and to demonstrate proper stewardship of public funds. The Delegates may also adopt purchasing procedures to implement this policy and to provide further guidance to IDEA's administration and staff.

(b) Cooperative.

For purchases subject to this subsection, the Delegates or designee may join and procure goods and other services through a recognized local government or interlocal cooperative, and preferably those that provides written assurance of compliance with applicable legal purchasing requirements. However, in the event that a participating vendor in any purchasing cooperative program quotes a lower direct price for the same goods or other services, the Delegates or designee may procure the goods and other services using the vendor's direct quote and outside of the cooperative after comparing prices.

Sec. 6.2.2. Public Works Contracts.

For public works contracts (i.e., a contract for improvements to real property, including the construction, repair or renovation of a building, requiring expenditures over \$50,000) IDEA adopted the purchasing requirements set forth in the Texas Education Code, Chapter 44,

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Subchapter B. Pursuant to Texas Education Code §44.031(a)(5), IDEA must contract for construction services valued at \$50,000 or more in the aggregate for each twelve-month period by a method provided by Chapter 2269, Texas Government Code, that provides the best value for IDEA. In accordance with Texas Government Code §2269.056(a), the Board (or its designee described below) must determine which method provides the best value for IDEA. As set forth in Texas Government Code §2269.053, the Board may, by written authorized Resolution or by policy, delegate its authority to a designated representative, committee or other person provided that 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. Notice of this delegation shall be by written Resolution or by policy and also published and made as required above and pursuant to law.

Sec. 6.2.3. Professional Services Contracts.

The Education Code also requires open-enrollment charter schools to comply with the Professional Services Procurement Act (Texas Government Code, Chapter 2254). This Act applies when an open enrollment charter school seeks a contract for certain professional services. Under Chapter 2254, a contract for professional services cannot be awarded on the basis of competitive bids. A provider of professional services, as defined in Chapter 2254, must be selected on the basis of demonstrated competence, demonstrated qualifications, and a fair and reasonable price. See Section 9 below for related policy on professional services contracts.

Sec. 6.2.4. State Grants.

The Delegates or designee shall procure goods and other services utilizing state grant funds pursuant to applicable state law, rule, and grant requirement.

Sec. 6.3. Purchases with Federal Funds.

The following applies to purchases using any federal funds, including Child Nutrition Program funds and E-Rate where program specific regulations and requirements may otherwise apply. See Appendix 1 for thresholds applicable to TDA/USDA and to other federal funds.

Sec. 6.3.1. Micro-Purchase Procedure – 2 CFR § 200.320(a).

The Delegates or designee may procure supplies and other services that have a cost or value of less than the Micro-Purchase Threshold established at Sec. 3.5 of this policy through the most expedient manner available yielding best value and demonstrating proper stewardship of federal funds. However, to the extent practicable, IDEA must distribute micro-purchases equitably among vendors. Additionally, if a purchase is made without soliciting competitive quotes, IDEA employees must document that the price was reasonable.

Sec. 6.3.2. Small Purchase Procedure – 2 CFR § 200.320(b).

The Delegates or designee shall procure supplies, personal property and other services that have a cost or value of no less than the Micro-Purchase Threshold established at Sec. 3.5 of this policy

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and no more than the Simplified Acquisition Threshold established at Sec. 3.15 of this policy through the solicitation of two (2) or more quotes.

Sec. 6.3.3. Sealed Bids – 2 CFR § 200.320(c).

The Delegates or designee shall procure goods and other services that have a cost or value exceeding the Simplified Acquisition Threshold established at Sec. 3.15 of this policy 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
- (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.

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; and
- (e) Any or all bids may be rejected if there is a sound documented reason.

Upon approval by the Board, the Delegates 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. 6.3.4. Competitive Proposals – 2 CFR § 200.320(d).

If conditions are not appropriate for the use of sealed bids, the Delegates or designee shall procure goods and services that have a cost or value exceeding the Simplified Acquisition Threshold established at Sec. 3.15 of this policy 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) IDEA must have a written method for conducting technical evaluations of the proposals received and for selecting recipients. See Appendix 2.
- (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) IDEA 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. 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.

IDEA shall award either a fixed-price or cost-reimbursement type contract.

Sec. 6.3.5. Noncompetitive Proposals – 2 CFR § 200.320(f).

The Delegates or designee(s) may procure goods through the solicitation of a proposal from a single 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 IDEA; or
- (d) After solicitation of a number of sources, competition is determined inadequate.

Sec. 6.3.6. Bid Specifications.

The campus or department making a request shall prepare bid specifications for each requested competitive bid. IDEA shall not accept any bid that does not conform to the bid specifications or that is received after the deadline for submitting a bid.

Sec. 6.3.7. Evaluation Committee.

- (a) Select three or more individuals to serve on the committee. IDEA's code of conduct, prohibits real or apparent conflicts of interest for employees engaged in the selection, award, and administration of contracts. Conflicts of interest are defined to include "insiders" under federal regulations and guidelines, other conflicts under federal law, and as defined in Local Government Code Chapters 171 and 176.
- (b) Each member shall be contacted before the process to ensure they understand their role and the importance of keeping information confidential until awarded.
- (c) The Purchasing department may provide guidance on member selection.

Sec. 6.3.8. Withdrawal by Bidder.

The bidder may withdraw a bid at any time prior to the scheduled time for the bid opening.

Sec. 6.3.9. Bid Opening.

The campus or department making request shall invite the public and all bidders to attend the bid opening. A log of bidders shall be maintained.

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Sec. 6.3.10. Evaluation, Notice and Documentation.

A. Evaluation/Scoring.

- i. Proposals/bids shall be opened on a designated date with all members present.
- ii. Determine scoring criteria for the score card, considering the following:
 1. The total cost of the goods and/or services;
 2. The reputation of the vendor and of the vendor's goods and services;
 3. The quality of the vendor's goods and/or services;
 4. The extent to which the goods and/or services meet IDEA's need(s);
 5. The vendor's past relationship with IDEA;
 6. The total long-term cost to IDEA to acquire the vendor's goods and/or services; and
 7. Any other factor specifically listed in the request for bids.
- iii. Score cards shall be given to each member.
- iv. Each member evaluates each proposal/bid.
- v. Score cards are tabulated to determine the vendor to award.
- vi. Award is made.

B. Notice.

- i. A letter is sent to awarded vendor.
- ii. A regret letter is sent to all other vendors.

C. Documentation.

The following documents must be maintained:

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- i. Original proposal request,
- ii. Copy of notice/advertisement,
- iii. Score sheets,
- iv. Proposals/bids received/submitted,
- v. Award letter, and
- vi. Regret letter(s).

Sec. 6.3.11. Rejection of Bids.

The Board, Delegates, or designee may reject any and all bids.

Sec. 6.3.12. Separate Bids for Entities.

Individual proposal requests must be made for IDEA (Texas) and IPS (all other states) depending on campus making purchase. Ideally, for IPS, a request for proposal will identify the campus seeking goods/services. If the campus has not been identified, a subsequent Memorandum of Understanding (MOU) between IPS and the campus will be agreed to.

Sec. 6.3.13. Other Federal Procurement Standards.

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

Texas Department of Agriculture (TDA) requires that IDEA maintain additional documents for its Child Nutrition Program, including a signed Procurement Standards of Conduct Certification Statement (See Appendix 6). Additionally, IDEA must comply with additional procurement requirements as documented in Appendix 7 to this policy.

Sec. 7. PROCUREMENT OF PROFESSIONAL SERVICES.

Sec. 7.1. Selection of Provider.

The Delegates 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/or Delegates 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.
- (b) The fairness and reasonableness of the provider's price.

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Sec. 7.2. Limitation on Fees.

A provider may not charge a fee for professional services that exceeds any maximum provided by law.

Sec. 7.3. Monitoring of Provider Performance.

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

Sec. 8. PROCUREMENT OF PUBLIC WORKS.

Sec. 8.1. Rules and Procedures.

Pursuant to Tex. Ed. Code §44.031(d) and Government Code §2269.051, the Board hereby adopts the policy statements of this policy as its rules for the acquisition of goods or services related to public works, including construction services. Additionally, as established in Government Code §2269.051, the Board further delegates to the Delegates or designee the responsibility of adopting procedures for the acquisition of goods or services related to public works, including construction services.

Sec. 8.2. Delegation of Authority.

Pursuant to Government Code §2269.053, the Board hereby delegates its full authority under Chapter 2269 to the Delegates or designee, including a committee formed by the Delegates or designee. The Delegates or designee shall provide notice of this delegation, the limits of the delegation, and the name or title of each person designated through this policy or in the request for bids, proposals, or qualifications or in an addendum to said request.

Sec. 8.3. Authorized Methods of Procurement.

The Delegates or designee may award a contract for construction services using the method, of the following methods, that provides the best value for IDEA:

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

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IDEA may seek legal and professional advice and counsel regarding the legal and other requirements applicable to the procurement method selected.

Sec. 8.4. Notice.

IDEA 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. IDEA 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. In a two-step procurement process, IDEA is not required to separately publish the time and place where the second-step bids, proposals, or responses will be received.

Sec. 8.5. Response to Requests for Bids, Proposals, or Qualifications.

i. Sealed Bids, Proposals, or Qualifications Required.

A person who submits a bid, proposal, or qualification is required to seal it before delivery.

The Delegates 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.

ii. Receipt and Opening of Bids.

IDEA 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 IDEA's central administrative office or location chosen by designee, 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.

IDEA is entitled to reject any and all bids.

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Sec. 8.6. Awarding of Contract Under Competitive Bidding Method.

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

IDEA 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.

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 Government 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 Government 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 Government Code §2253.
- (f) Have adequate financial resources or ability to obtain such resources as required during the performance of any resulting contract.
- (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.

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- (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.

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

Sec. 8.7. Criteria to Consider.

In determining the award of a contract pursuant to this section, IDEA 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 IDEA's needs;
- (e) The vendor's past relationship with IDEA;
- (f) The impact on the ability of IDEA to comply with rules relating to historically underutilized businesses;
- (g) The total long-term cost to IDEA 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;
- (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.

In determining the award of a contract under this chapter, IDEA shall to the extent required:

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- (a) Consider and apply any existing laws, including any criteria, related to historically underutilized businesses that may be applicable under law or ordinance; 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 that may be applicable under law or ordinance.

Sec. 8.8. Safety Record of Bidder Considered.

In determining who is a responsible bidder, IDEA 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.

In determining who is a responsible bidder, IDEA 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.
- (c) Based upon the bidder’s response to certain questions, IDEA 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.

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- (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.

Before considering the safety record of the bidder, IDEA 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.

In making determinations concerning the safety records of the bidders, the Board, Delegates, and IDEA employees are prohibited from making the determinations in an arbitrary and capricious manner.

The Delegates 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. 8.9. Notification of Contractor's Criminal History.

If the person or an owner or operator of the business entity has been convicted of a felony, IDEA 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.

IDEA may terminate a contract with a person or business entity if IDEA determines that the person or business entity failed to give notice as required by this subsection or misrepresented the conduct resulting in the conviction. IDEA must compensate the person or business entity for services performed before the termination of the contract.

Sec. 8.10. Contract with Person Indebted to IDEA.

The Delegates or designee may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to IDEA.

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 IDEA.

Sec. 8.11. 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, IDEA:

- (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.

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Sec. 8.12. Contracts to Minority Companies.

IDEA will look for opportunities to consummate contracts with a sizeable portion to minority companies.

Sec. 8.13. Selection of Architect or Engineer.

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

Sec. 8.14. Other Professional Services.

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

Sec. 8.15. Suspension of Policy for Emergencies.

If a facility, or a portion of a facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the Delegates or designee 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 facility, or portion of the facility may be made by a method other than the methods required by this policy.

Sec. 8.16. Change Orders.

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 Delegates or designee has general authority to approve change orders making the changes.

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 by the authorization of the issuance of time warrants.

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.

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Sec. 8.17. Monitoring and Oversight.

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

The Delegates or designee shall report to the Board the progress and status of any and all public works procured under this Policy.

The Delegates or designee shall not make any final payments for public works procured under this Policy until the work has been completed. Upon completion and acceptance of the work performed, the Delegates or designee to may issue final payment(s).

Sec. 9. TRAINING AND UPDATES.

The Delegates or designee shall properly train or ensure training is provided to IDEA officers and employees on the requirements of this policy and any administrative procedures adopted to implement this policy. Additionally, the Delegates or designee shall keep IDEA officers and employees informed of any changes to this policy and related requirements.

Sec. 10. ADMINISTRATIVE PROCEDURES.¹⁴

The Delegates 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 Delegates shall not adopt, and are prohibited from adopting, an administrative procedure that conflicts with applicable law or this policy. Accordingly, the Delegates 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 Delegates 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. 11. DATE ADOPTED AND EFFECTIVE.

As set forth in the pertinent minutes to the meeting of the Board, the Board amended this policy on June 12, 2020, and it became effective on June 12, 2020.

¹⁴ 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 Delegates or designee to adopt an administrative procedure to implement this policy. Moreover, as set forth in IDEA's Articles of Incorporation and Bylaws and in accordance with Tex. Bus. Org. Code §§ 3.101 and 22.201, the Board is IDEA's governing authority and, as such, manages and directs IDEA's business and affairs through Board actions, resolutions and policy.

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Sec. 12. RETENTION.¹⁵

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

Sec. 13. CERTIFICATION.

The Undersigned, being the Secretary of the Corporation, hereby certifies that the foregoing represents a true copy of the Board Policy relating to the Authorization for the Obligation and Expenditure of Funds, as originally adopted by the Board on May 1, 2020, and as subsequently amended by the Board on June 12, 2020, which Policy, as amended, is in full force and effect and has not been revoked or amended.

DocuSigned by:

8733898FD696495...

Ryan Vaughan, Secretary

6/15/2020

Date Certified

¹⁵ 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).

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Sec. 14. APPENDIX 1: EDGAR THRESHOLDS MATRIX

TYPES OF PURCHASES	NEW THRESHOLDS As of July 1, 2018 OMB Memorandum M-18-18	THRESHOLD DESCRIPTION	REQUIREMENTS EDGAR §200.320 - Methods of procurement to be followed
Micro-Purchases	\$0 to 10,000	The max threshold for each type of purchase must be considered in the aggregate over the entire period of applicable federal grant. The cost of items/services is cumulative across the grant year and cannot exceed the max threshold.	Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
Small Purchases, non-TDA funds Small Purchases, using TDA monies	\$10,000.01 - \$250,000 \$10,000.01 - \$50,000		<u>Price or rate quotations</u> must be obtained from at least two qualified sources.
+ Purchases, non-TDA monies + Purchases, using TDA monies	\$250,000 and above \$50,000 and above		<u>Procurement by competitive proposals.</u> The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. <u>Procurement by sealed bids</u> (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction

Sec. 15. APPENDIX 2: BID TECHNICAL FORM /SCORE CARD

Proposal or Project ID:	
Department:	
Goods/Services to Purchase:	
Committee Member #:	

Criteria	Max Points	Awarded Points	Comments
Total Cost of Goods and/or Services	40		
Vendors Location	5		
Reputation of Vendor	10		
Quality of Goods and/or Services	15		
Extent to which the Goods and/or Services meet IDEA's needs.	20		
Past relationship with IDEA	5		
Long-term cost of services	5		
Any other factors to consider	<u>0</u>		
	100 *		

* This is an example, can allocate as necessary. Must total 100 points.

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Sec. 16. APPENDIX 3. RFP TEMPLATE – PENDING ATTORNEY

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Sec. 17. APPENDIX 4. RFQ TEMPLATE – PENDING ATTORNEY

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Sec. 18. APPENDIX 5: PURCHASING CODE OF CONDUCT (EFFECTIVE DATE: JANUARY 2017)

Sec. 18.1. CODE OF CONDUCT

Sec. 18.1.1. Standards of Conduct

School personnel shall be responsible for adhering to the following standards of conduct when using School funds for the purchase of goods and services.

- (a) It is a breach of ethics to attempt to realize personal gain through public employment with the School by any conduct inconsistent with the proper discharge of an employee's duties.
- (b) It is a breach of ethics to attempt to influence any School employee to breach the standards of ethical conduct set forth in this code.
- (c) It is a breach of ethics for any School employee to participate directly or indirectly in a procurement when the employee knows that:
 - (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (d) It is a breach of ethics to offer, give or agree to give any School employee or former School employee, or for any School employee or former School employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before the School. Acceptance of gratuities may be construed as a criminal offense.
- (e) It is a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any School contract, or any person associated therewith, as an inducement for the award of a subcontract or order.

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- (f) The prohibition against gratuities and kickbacks prescribed at (d) and (e) above should be conspicuously set forth in every contract and solicitation therefore.
- (g) It is a breach of ethics for any School employee or former School employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Sec. 18.1.2. Organizational Conflicts

An organizational conflict of interest may result when the School conducts a business transaction with an affiliate or subsidiary organization and, as a result this relationship, the School is unable or appears to be unable to be impartial in conducting a procurement action involving its affiliate or subsidiary. Generally, because of its relationship with an affiliate or subsidiary, the School may encounter one or more of the following types of organizational conflict of interest.

- (a) Unequal access to information
- (b) Biased ground rules
- (c) Impaired objectivity

Thus, when using federal funds to procure goods and services from an affiliate or subsidiary organization, the Board and School officers and employees are to avoid and take other actions to mitigate the potential for significant organizational conflicts of interest that may result in an unfair competitive advantage to an affiliate or subsidiary. If School personnel identify an organizational conflict of interest, the employee must prepare a memorandum to the Superintendent identifying the proposed procurement, the conflicted entity, and circumstances giving rise to the conflict. Upon review, the Superintendent must submit the memorandum and a proposed remedy to the Board for consideration and approval.

Sec. 18.1.3. Gifts

No employee shall accept or solicit any gifts, favor, services, or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities or could be perceived as having been offered because of an existing or potential business relationship. Employees shall disclose any gifts, favors, services, or benefits received with an aggregate value of \$100 or more from any one individual over the course of one school year to the Delegates. This includes items of food, lodging, transportation, tickets, or business entertainment accepted as a guest. When the employee is in doubt of the value of the gift, he or she should report it to the Delegates. If an employee has any questions regarding acceptable conduct or the interpretation of this policy, or if he or she is in doubt about the best course of action in a particular situation, the employee must seek clarification from his or her supervisor or the Delegates. Failure by an employee to disclose gifts pursuant to this policy could result in adverse personnel action against the employee.

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Sec. 19. APPENDIX 6:

PROCUREMENT STANDARDS OF CONDUCT CERTIFICATION STATEMENT

I, _____ (Authorized Representative) for IDEA Public Schools, Inc. hereby certify the following:

- (a) Officers, employees, and agents shall conduct all procurement transactions in a manner providing full and open competition consistent with the standards of **§200.319**, inclusive of written procedures for procurement transactions that:
 - (1) Ensure clear and accurate description of technical requirements for the material, product, or service to be procured;
 - (2) Identify all requirements which must be fulfilled by offerors and all factors to be used in the evaluation of bids and proposals;
 - (3) Ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition; and
 - (4) Ensure that potential bidders are not precluded from qualifying during the solicitation period.
- (b) Officers, employees, and agents shall conduct all procurement transaction, using one of the methods of procurement noted in **§200.320** (*micro-purchases, small purchase, sealed bids, competitive proposals, non-competitive proposals**)

*See §200.320(f) for listing of criteria that must be established in order to utilize non-competitive proposals.

- (c) Officers, employees, and agents shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with **§200.321**.
- (d) Officers, employees, and agents shall comply with the procurement of recovered materials, as specified in **§200.322**.
- (e) Officers, employees, and agents shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications, in accordance with **§200.323**.
- (f) Officers, employees, and agents shall ensure that the bonding requirements are followed, in accordance with **§200.325**
- (g) Officers, employees, and agents shall ensure that the all contracts contain the applicable provisions described in Appendix II to Part 200, in accordance with **§200.326**

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- (h) Officers, employees, and agents shall comply with the retention requirements for records, in accordance with **§200.333**
- (i) Officers, employees, and agents shall provide access to records, in accordance with **§200.336**
- (j) Officers, employees, and agents shall adhere to the Cost Principles contained in Subpart E **§200.403- §200.475**

Authorized Representative

Date

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Sec. 20. APPENDIX 7: CNP ADDITIONAL PROCUREMENT GUIDANCE FROM TDA