Adopted: 7-23-2024

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TRIO Wolf Creek (the "Charter School")

POLICY No. 721.1

PURCHASING, PROCUREMENT, AND CONTRACTING

I. PURPOSE

The purpose of this policy is to establish procedures for carrying out purchasing, procurement and contracting functions of the charter school, to provide efficient use of public monies, and to ensure compliance with all applicable state and federal laws, including Minn. Stat. 124E.26, Subd. 4, with respect to procurement using state funds.

II. GENERAL STATEMENT OF POLICY

It is the policy of the Charter School board to utilize resources to the greatest benefit of our students' education and to establish procedures for all expenditures made with charter school funds to ensure efficiency, economy, legal compliance, internal control, ethical behavior by all staff members, and fairness in dealing with vendors.

III. CONFLICT OF INTEREST

Notwithstanding anything in this policy to the contrary, the Charter School shall not enter into any contract or agreement that does not align with the provisions of this Section III.

1. Minn. Stat. 124E.14:

    a. No member of the board of directors, employee, officer, or agent of a charter school shall participate in selecting, awarding, or administering a contract if a conflict of interest exists. A conflict exists when:

        i. the board member, employee, officer, or agent;

        ii. the immediate family member of the board member, employee, officer, or agent;

        iii. the partner of the board member, employee, officer, or agent; or

        iv. an organization that employs, or is about to employ any individual in clauses (1) to (3),

    has a financial or other interest in the entity with which the charter school is contracting. A violation of this prohibition renders the contract void. The foregoing does not apply to compensation paid to a teacher employed as a teacher by the charter school or a teacher

who provides instructional services to the charter school through a cooperative formed under chapter 308A when the teacher also serves on the charter school board of directors.

2. Minn. Stat. 124E.07, Subd. 3(e): A contractor providing facilities, goods, or services to a charter school must not serve on the board of directors. In addition, an individual is prohibited from serving as a member of the charter school board of directors if: (1) the individual, an immediate family member, or the individual's partner is a full or part owner or principal with a for-profit or nonprofit entity or independent contractor with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities; or (2) an immediate family member is an employee of the school. An individual may serve as a member of the board of directors if no conflict of interest exists under this paragraph, consistent with this section.

3. Minn. Stat. 124E.10, Subd. 2(a): The charter school must disclose to the commissioner any potential contract, lease, or purchase of service from the school's authorizer or a current board member, employee, contractor, volunteer, or agent of the school's authorizer. The contract, lease, or purchase must be accepted through an open bidding process and be separate from the charter contract. The school must document the open bidding process. An authorizer must not enter into a contract to provide management and financial services to a school it authorizes, unless the school documents receiving at least two competitive bids. This paragraph does not apply to a charter school or an authorizer when contracting for legal services from a lawyer that provides professional services to the charter school or authorizer and who is subject to the Minnesota Rules of Professional Conduct.

IV. GENERAL PROCUREMENT PROVISIONS

1. **Authorization:** The charter school director or chief administrator (hereinafter referred to as the "director"), in conjunction with the board of directors (hereinafter referred to as the "board"), is responsible for overseeing the procurement process, including establishment of procedures, internal controls, quality assurance, methods of greatest economy, and compliance with all applicable laws. To be valid, all contracts must be approved by the board.

   Individual school employees may incur expenditures in the following amounts without prior board approval so long as such expenditures are consistent with the school's board-approved budget, provided that in all cases, the board retains authority to disapprove any expenditure for any reason at the sole discretion of the board:

   a. Any school employee may purchase goods (but not services) for use in connection with school operations where the expenditure is less than $1,000. The school may issue credit or debit cards to individual employees for these expenditures.

   b. In addition to the foregoing, the following school employees may execute a purchase or procurement that requires the expenditure of up to the following amounts:

      i. Executive Director/chief administrator: Up to $100,000;

2. **Scope:** Purchasing procedures apply to procurement of equipment, supplies, and services, including services provided by vendors and by individuals who are engaged by the charter school as independent contractors (i.e. – individuals who receive a form 1099 rather than form W-2). Purchasing procedures do not apply to hiring employees of the charter school (i.e. – individuals who receive a W-2).

3. **Documentation:** The director shall design and implement procedures to create and preserve documentation establishing that all procurement is implemented in accordance with this policy. The director will provide such documentation to the charter school board upon request by the board.

4. **Economy:** Good business practice dictates that products will be purchased for the lowest price for acceptable quality. Lower prices can be achieved through researching prices, cultivating business relationships, negotiating price contracts, buying in quantity, competitive quotation, or formal bid process.

5. **Best Value**: The school shall endeavor in all cases to obtain the best value in all purchase or procurement decisions, taking into account the price, quality, and quantity of the goods or services being purchased or procured, along with consideration of other criteria, which may include, but are not limited to:

   (i) the vendor's or contractor's knowledge or expertise with respect to services as evidenced by performance on previous projects;
   (ii) the quality and timeliness of the vendor's or contractor's performance on previous projects;
   (iii) the level of customer satisfaction with the vendor's or contractor's performance on previous projects;
   (iv) the vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;
   (v) the vendor's or contractor's ability to minimize change orders;
   (vi) the vendor's or contractor's ability to prepare appropriate project plans;
   (vii) the vendor's or contractor's technical capabilities;
   (viii) the individual qualifications of the contractor's key personnel; or
   (ix) the vendor's or contractor's ability to assess and minimize risks.

V. PURCHASES OF GOODS USING STATE FUNDS

The following will govern purchases of goods using state funds. The school shall not break up any purchase into smaller component purchases to avoid the threshold in this Section V. In all cases, the school shall endeavor to complete each purchase in a manner that obtains the best value for the charter school, taking into account the factors enumerated in Section IV, above.

1. **Purchases Less than $25,000.** The director shall be responsible for implementing purchases within these limits. The director shall, when reasonably practicable, use processes to endeavor to obtain competitive market rates or purchase at reasonably competitive available prices or rates.

2. **Purchases of $25,000 Or More.** Prior to any purchase of $25,000 or above, the director shall obtain bids or quotations from at least two sellers or vendors or, if market conditions for a purchase are such that sellers or vendors will not respond to a request for bids or quotations, shall otherwise endeavor to compare the prices of a least two sellers or vendors, in all cases endeavoring to ensure that each of the bids, quotes, or comparison prices reflects substantially equal quantity and quality.

   a. To solicit bids or quotations the director (i) shall post a request for bids or quotations on a public portion of the charter school's web site, or utilize another public posting mechanism as reasonably determined by the director, and (ii) shall deliver solicitations to two or more potential vendors. The director shall provide a reasonable time period, and in no event fewer than five (5) business days, for response to any solicitation of or posting for bids or quotations.

b. If, after such reasonable time period, the director has not received two or more bids or quotations for the goods to be purchased, the director shall use reasonably prudent inquiry to ascertain the price for such goods from two or more vendors.

c. If, after complying with all of the foregoing, the director is able to locate only a single seller, vendor, or supplier from which to purchase any particular good, the director shall, to the extent reasonably practicable, endeavor to negotiate for the most favorable price that may be obtained from such vendor.

VI. PROCUREMENT OF SERVICES USING STATE FUNDS

The following will govern procurement of services using state funds. The school shall not break up any procurement into smaller component purchases to avoid the threshold in this Section VI. In all cases, the school shall endeavor to complete each purchase in a manner that obtains the best value for the charter school, taking into account the factors enumerated in Section IV, above.

In determining the amount of a contract for services, the total cost of the contract under its stated term shall apply. For contracts that have annual price but a multi-year term, or include an automatic annual renewal (or so-called "evergreen") provision, the total of all years shall apply. Under no circumstances will a charter school enter into a multi-year or automatic annual renewal agreement with an outside term greater than five (5) years; provided that the foregoing limit will not apply to a lease for school facilities.

1. **Procurement Less than $25,000.** The director shall be responsible for implementing procurement within these limits. The director shall, when reasonably practicable, use processes to endeavor to obtain "best value" prices or rates and shall maintain records documenting efforts to obtain "best value".

   The foregoing shall apply to contracts for services where the total cost of services cannot be determined because the cost is dependent upon periodic or "as-needed" requests for services by the charter school, at its discretion, and the following are true: (a) the contract does not require an advance payment or deposit, and (b) the contract or the services may be terminated without cause at any time by the charter school.

2. **Procurement of $25,000 Or More.** Prior to entering into an agreement to procure a service of $25,000 or more, the director shall obtain bids or quotations from at least two vendors or contractors, if market conditions for acquiring a particular service are such that vendors or contractors will not respond to a request for bids or quotations, shall otherwise endeavor to compare the prices of a least two vendors or contractors, in all cases endeavoring to ensure that each of the bids, quotes, or comparison prices reflects substantially equal quantity and quality consistent with the "best value" factors outlined above in this Section VI.

   a. To solicit bids or quotations the director (i) shall post a request for bids or quotations on a public portion of the charter school's web site, or utilize another public posting mechanism as reasonably determined by the director, and (ii) shall deliver solicitations directly to two or more potential vendors or contractors,. The director shall provide a reasonable time period, and in no event fewer than five (5) business days for response to any solicitation of or posting for bids or quotations.

   b. If, after such reasonable time period, the director has not received two or more bids or quotations for the service to be procured, the director shall use reasonably prudent inquiry to ascertain the price for such goods from two or more vendors or contractors.

c. If (i) after complying with all of the foregoing the director is able to locate only a single vendor or contractor from which to procure a particular service, or (ii) due to the nature of the services being procured, the market for such services is such that there is only one vendor or contractor to supply such service, the director shall, to the extent reasonably practicable, endeavor to negotiate for the most favorable price that may be obtained from such vendor or contractor.

VII. USE OF FEDERAL FUNDS[1] [Effective October 1, 2024]

1. **Procurement Methods.** There are three types of procurement methods 1) informal (for micro-purchases and simplified acquisitions) 2) formal (through sealed bids or proposals) and 3) noncompetitive. For all of these methods, the recipient or subrecipient must maintain and use documented procurement procedures.

   a. **Informal Procurement Methods for Small Purchases.**

      i. Micro-purchases: the aggregate amount of the procurement transaction does not exceed $10,000, which may be increased to $50,000 on an annual basis if the recipient or sub-recipient self-certifies and provides supporting documentation. Micro-purchases may be awarded without soliciting competitive price or rate quotes if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information; and maintains documentation to support its conclusion.

      ii. Simplified Acquisitions: for procurement transactions in which the aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold ($10,000, or $50,000, if applicable), but lower than $250,000. In simplified acquisitions, the price or rate quotes must be obtained from an adequate number of qualified sources. The recipient or subrecipient may exercise judgment in determining what number is adequate.

   b. **Formal Procurement Methods.** The recipient or subrecipient is required to use one of the following formal procurement methods when the value of the procurement transaction exceeds the simplified acquisition threshold of the recipient or subrecipient. This method requires competition and public notice.

      i. Sealed Bids. Preferred for procuring construction services. Bids are publicly solicited through an invitation and a firm fixed-priced contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price.

         a. Sealed bids are appropriate when:

            i. A complete, adequate and realistic specification or purchase description is available;

            ii. Two or more responsible bidders have been identified as willing and able to compete effectively for the business;

[1] All the regulations in this section take effect on October 1, 2024 and can be found under 2 C.F.R. § 200.317-327.

and

iii. The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally on price

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

i. Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate;

ii. The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;

iii. All bids will be opened at the time and place prescribed in the invitation for bids.

iv. A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

v. The recipient or subrecipient must document and provide a justification for all bids it rejects.

ii. Proposals. Used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

a. Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.

b. The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.

c. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

d. The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

c. **Noncompetitive Procurement.** There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances applies:

i. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

ii. The procurement transaction can only be fulfilled by a single source;

iii. The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

iv. The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

v. After soliciting several sources, competition is determined inadequate.

2. **Contracting with small and minority firms, women's business enterprises, and labor surplus area firms, pursuant to 2 CFR § 200.321**. Non-Federal entities will take all necessary affirmative steps to assure that small and minority firms and women's business enterprises are used when possible. Affirmative steps include:

a. Placing qualified small and minority business and women's business enterprises on solicitation lists;

b. Assuring that small and minority business and women's business enterprises are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's' business enterprises;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps

listed in a-e above.

3. **Contract Cost, Price, and Monitoring by the non–Federal Entity.**

a. The non–Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non–Federal entity must make independent estimates before receiving bids or proposals.

b. The non–Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

c. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non–Federal entity under federal regulations. The non–Federal entity may reference its own cost principles that comply with the Federal cost principles.

d. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

e. The non–Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non–Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non–Federal entity must cover each program, function or activity. See also 2 C.F.R § 200.332.

VIII. RECORDS TO BE MAINTAINED

1. **Public Data.** All records of charter school expenditures are considered "public data" under Minn. Stat. Chapter 13 (the "**Minnesota Government Data Practices Act**" or the "**Act**"). The charter school will create, maintain, and preserve such records in accordance with the Act.

2. **Record Retention Requirements for Federal Awards.**[2] The recipient and subrecipient must retain all Federal award records for three years from the date of submission of their final financial report. For awards that are renewed quarterly or annually, the recipient and subrecipient must retain records for three years from the date of submission of their quarterly or annual financial report, respectively. Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through entities may not impose any other record retention requirements except for the following:

a. The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken if any litigation, claim, or audit is started

[2] These regulations take effect on October 1, 2024 and can be found under 2 C.F.R. § 200.334.

before the expiration of the three-year period.

b. When the recipient or subrecipient is notified in writing by the Federal agency or pass-through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

c. The records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition.

d. The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal agency.

e. The records for program income earned after the period of performance must be retained for three years from the end of the recipient's or subrecipient's fiscal year in which the program income is earned. This only applies if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of the Federal award.

f. The records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) must be retained according to the applicable option below:

    i. If submitted for negotiation. When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the date of submission.

    ii. If not submitted for negotiation. When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.