

**Alameda Community Learning Center
Contracting Standards and Employee Standards of Conduct**

These contract standards and code of conduct have been adopted for use when awarding and administering contracts paid with funds awarded under the federal Public Charter School Grant Program (PCSGP). These standards reflect applicable state and federal laws and regulations and will be used by Alameda Community Learning Center (ACLC) to evaluate any and all contracts for the purchase of goods or services to be paid using PCSGP funds.

CONTRACTING STANDARDS

Contractor Standards of Conduct

ACLC will make contract awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed contract. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

For purposes of this policy, “contractor” shall mean any vendor, service provider or other third party that is a prospective provider of services, goods or materials to ACLC in exchange for value.

Contracts Restrictive of Competition Prohibited

ACLC shall not enter into contracts that are deemed to be overly restrictive of competition. ACLC shall not:

- Place unreasonable requirements on firms in order for them to qualify to do business,
- Require unnecessary experience and excessive bonding,
- Condone or enable noncompetitive pricing practices between firms or between affiliated companies,
- Grant noncompetitive awards to consultants that are on retainer contracts,
- Allow organizational conflicts of interest,
- Specify only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, OR
- Conduct the procurement process in an arbitrary manner.

Contracting Methods and Guidelines

The following methods and guidelines shall be used when entering into purchasing or procurement contracts.

(1) *Contracting by small purchase procedures.* Small purchase procedures are those relatively simple and informal contracting methods for securing services, supplies, or other property for which the contracting price is not more than one hundred thousand dollars (\$100,000).

(a) *Non-material transactions.* No competitive process is required for purchases not exceeding one thousand dollars (\$1,000); however, whenever there is reason to believe a single quotation is not fair and reasonable to the charter school, additional competition should be sought.

(b) *Solicit quotes for small purchases.* For transactions greater than \$1,000 but less than \$100,000, reasonable best efforts shall be made to solicit price or rate quotations from an adequate number of qualified sources, which generally should include a minimum of two (2) quotations if at least two (2) qualified sources are available. Additional proposals are warranted if additional qualified bidders are readily available and there is reason to believe that the two (2) received proposals are not fair and reasonable to the charter school.

Contract awards will be made to the responsible firm whose proposal is most advantageous to the charter school, with price and other factors considered. Contracting for professional services requires a qualifications-based selection based on prescribed criteria, and selection is based solely on a firm's qualifications with cost not being a primary factor.

Oral quote solicitations may be acceptable for very small procurements. For other than very small purchases, a written solicitation should be used to request a written proposal. If fewer than two (2) total sources are solicited, the reasons must be documented and approved by the ACLC Director or Board of Directors.

(2) *Contracting by competitive proposals.* For transactions of one hundred thousand dollars (\$100,000) or greater in value, competitive proposals must be sought. 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.

If this method is used, the following requirements apply:

- Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- Proposals will be solicited from an adequate number of qualified sources, which shall include at least three (3) sources unless fewer qualified sources are found to exist after reasonable search efforts;
- ACLC will have a pre-defined method for conducting technical evaluations of the proposals received and for selecting contractors; and
- Contract awards will be made to the responsible firm whose proposal is most advantageous to the charter school, with price and other factors considered. Contracting for professional services requires a qualifications-based selection based on prescribed criteria, and selection is based solely on a firm's qualifications with cost not being a primary factor.

(3) *Contracting by Noncompetitive Proposals.* Contract by noncompetitive proposals is contracting through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(a) Contracting by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures or competitive proposals and one of the following circumstances applies:

- The good or service is available only from a single source;
- An emergency for the requirement will not permit a delay resulting from competitive solicitation;
- Noncompetitive proposals are authorized by the state or federal government grant awarding agencies; OR

- After solicitation of a number of sources, competition is determined inadequate.
- (b) Cost analysis of the proposed contract terms is required (i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits).

Guidelines for Quote Solicitations

For any and all quotation solicitations made, the following guidelines shall apply:

- (i) A minimum of two (2) working days shall be allowed for receipt of quotations.
- (ii) All written or facsimile solicitations shall include the closing date, time, and all pertinent competitive requirements and specifications necessary for a contractor to make an acceptable quotation.
- (iii) Precautionary measures shall be taken to safeguard the confidentiality of contractor responses prior to the closing time for receipt of quotations. Quotations shall be evaluated using only the criteria disclosed in the solicitation.
- (iv) Whenever practicable, at least one (1) of the bona fide, qualified contractors solicited shall be a small or minority-owned business, or women's business enterprises.
- (v) All solicitations should include a clear and accurate description of the technical requirements for the material, product, or service to be provided.
 - Such description shall not contain features which unduly restrict competition in competitive procurements.
 - When necessary, the description shall set forth the minimum essential characteristics and standards to which it must conform to satisfy its intended use, and may include a statement of the qualitative nature of the material, product or service to be provided.
 - Overly detailed specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define
- (vi) Solicitations should identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (vii) Evidence of all solicitations should be well documented as set forth in the record-keeping section below.

Acceptable Contract Types

ACLCL will use time and material contracts only under the following conditions:

1. After a determination that no other contract is suitable, AND
2. If the contract includes a ceiling price that the contractor exceeds at its own risk.

Contract Cost/Price Determinations

(1) ACLCL will perform a cost or price analysis in connection with every contracting action (including contract modifications). The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, at minimum, such analysis shall include an independent estimate of cost or price before receiving bids or proposals.

- A cost analysis must be performed when the offeror is required to submit a breakdown of the elements of offeror's estimated cost (e.g., under professional or consulting services contracts).
- A cost analysis is necessary when adequate price competition is lacking, and for sole source procurements (including contract modifications), unless price reasonableness can be established by other means such as a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
- A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Contractor profit will be negotiated 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 will 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.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 34 CFR 80.22).

Contract Administration and Record-keeping

ACLC will maintain a contracts administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

ACLC will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following:

- the rationale for the method of procurement,
- selection of contract type,
- a listing of all solicited contractors and each party's contact person,
- a summary of quotations received,
- contractor selection or rejection,
- written confirmation of the quotation from the successful contractor, and
- the basis for the contract price, including clearly stated reasons why any lower cost quotation was rejected.

Unnecessary or Duplicative Purchases

The ACLC Lead Facilitator will review all proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical purchasing decision.

Protest Procedures

Each ACLC contract or procurement will be governed by the protest procedures attached hereto as Appendix A to handle and resolve disputes and shall in all instances disclose information regarding the protest to the awarding agency.

STANDARDS OF CONDUCT

The following standards of conduct govern the performance of ACLC employees engaged in the award and administration of contracts under the PCSGP grant program.

Conflict of Interest

No employee, officer or agent of the ACLC shall participate in selection, or in the award or administration of a contract supported by Federal PCSGP funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent,
2. Any member of his immediate family,
3. His or her partner, OR
4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Gifts, Gratuities and Bribes

The officers, employees or agents of ACLC will neither solicit nor accept gifts, gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, unless the gift is an unsolicited item not exceeding \$25 in value.

Compliance with the Law and this Code

Obedying federal and state law, both in letter and in spirit, and the standards set forth in this Code are in the best interests of ACLC and the students it seeks to serve. Violation of laws, rules and regulations may subject an individual, as well as ACLC, to civil and/or criminal penalties, and may jeopardize the funding received from the PCSGP and other federal and state funding programs. Any failure to adhere to the highest standards of integrity, including compliance with applicable laws, is subject to disciplinary action, including termination and/or to referral to appropriate enforcement agencies.

Conduct and records are subject to internal and external audits, and to discovery by third parties in the event of a government investigation or civil litigation. If you have a question in the area of legal compliance, it is important that you not hesitate to seek answers from legal counsel, where appropriate.

Appendix A
Alameda Community Learning Center
Contracting and Procurement Protest Procedures

1. Any offeror or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest in writing within 10 working days after such aggrieved person knows, or should know, of the protested action.
2. A formal protest must contain:
 - A. a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
 - B. a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (A) of this subsection;
 - C. a precise statement of the relevant facts;
 - D. an identification of the issue or issues to be resolved; and
 - E. an argument and authorities in support of the protest.
3. The ACLC Lead Facilitator shall raise all disputes to the attention of the board of directors, which shall have the authority to settle and resolve the dispute concerning the solicitation or award of a contract.
4. If the protest is not resolved by mutual agreement, the Lead Facilitator, with consent of the board of directors, will issue a written determination on the protest.
 - A. If the board of directors determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.
 - B. If the Lead Facilitator determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.
 - C. If the Lead Facilitator determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.
5. The charter school's determination on a protest may be appealed by an interested party to the board of directors. An appeal must be in writing and must be received no later than 10 working days after the date of the determination. The appeal shall be limited to review of the Lead Facilitator's written determination on the protest.
6. The charter school's legal counsel shall review the protest, the Lead Facilitator's determination, and the appeal and prepare a written opinion with recommendation to the board of directors, and the following requirements shall apply.

- A. Copies of the appeal, responses of interested parties, if any, and legal counsel recommendation shall be mailed to the board, and copies of the general counsel's recommendation shall be mailed to the appealing party and any other interested parties.
- B. All interested parties who wish to make an oral presentation at the board meeting at which the appeal will be considered are required to notify the legal counsel or the Lead Facilitator at least 48 hours in advance of the meeting.
- C. The board may consider oral presentations and written documents presented by staff and interested parties. The chairperson shall set the order and amount of time allowed for presentations.
- D. The board's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

7. Unless good cause for delay is shown or the board determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

8. A final decision on the appeal shall be issued either by the board in the board meeting or in writing.

Appendix B
Alameda Community Learning Center
Contract for Goods or Services Checklist

The following contract provisions or conditions shall be included in all procurement contracts and subcontracts to be paid using funds awarded under the federal Public Charter Schools Grant Program:

General Administrative Provisions

- Effective date of the contract.
- Names and addresses of the contracting parties.
- Citation of the authority of the grantee under which the contract is entered into and the source of the funds.
- Conditions and terms under which the contract may be terminated by either party and remedies for violation/breach of contract.
- Procedures for amending or revising the contract.

Scope of Services

- Detailed description of the extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any.
- Specification of materials or other services to be provided (i.e. reports, etc.).

Method of Compensation

- Provisions for compensation for services including fee and or payment schedules and specification of maximum amount payable under the contract.

Federal Standard Provisions

- Compliance with Executive Order 11246, as amended (Required for service contractors only if the contractor has 50 or more employees and the contract is for more than \$50,000).
- Title VI of the Civil Rights Act of 1964 clause.
- Section 109 of the Housing and Community Development Act of 1974 clause.
- Section 3 compliance clause (Required only if the contract exceeds \$100,000)
- Access to Records/Maintenance of Records clause.
- When required, all construction contracts exceeding \$2,000 shall include provisions for compliance with the Davis-Bacon Act (DBA), the Contract Work Hours and Safety Standards Act (CWHSSA), The Copeland Act (Anti-Kickback Act) clause, and the Fair Labor Standards Act (FLSA) clause.