

**Virtual Learning Academy of St. Clair County (VLA)
Board of Education Policy**

Procurement – Federal Grants/Funds

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or VLA matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grand, Board of Education policies, and administrative procedures.

The superintendent shall maintain a procurement and contract administration system in accordance with the USDOE requirements (2 CFR 200.317-.326) for the administration and management of Federal grants and Federally-funded programs. The VLA shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the VLA’s documented general purchasing policies.

All VLA employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in VLA policy.

The VLA will avoid acquisition of unnecessary of duplicative items. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the permissibility of each purchase made with Federal funds.

To foster greater economy and efficiency, the VLA may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Competition

All procurement transactions shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgement. In order to promote objective contractor performance and eliminate unfair competitive advantage, the VLA shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms in order for them to qualify to do business;
- B. unnecessary experience and excessive bonding requirements;
- C. noncompetitive contracts to consultations that are on retainer contracts;
- D. organizational conflicts of interest;

- E. specification of only a “brand name” product instead of allowing for an “or equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- F. any arbitrary action in the procurement process.

Further, the VLA does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; or (2) the VLA is contracting for architectural and engineering services, in which case geographical location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

To the extent that the VLA uses a pre-qualified list of persons, firms or products to acquire goods and services, the pre-qualified list includes enough qualified sources as to ensure maximum open and free competition. The VLA allows vendors to apply for consideration to be placed on the list periodically.

Solicitation Language

The VLA shall require that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features, which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product 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 equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

Procurement Methods

The VLA shall utilize the following methods of procurement:

- A. Micro-purchases

Procurement by micro purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000.00 or the annually indexed, state mandated amount. To the extent practicable, the VLA shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if Superintendent considers the price to be reasonable. The VLA maintains evidence of this reasonableness in the records of all purchases made by this method.

B. Small Purchases

Small purchase procedures provide for relatively simple and informal procurement methods for securing, supplies, and other property that does not exceed the competitive bid threshold of the annually adjusted Michigan statute. Small purchase procedure require that price or rate quotations shall be obtained from an adequate number of qualified sources.

C. Sealed Bids

Sealed, competitive bids shall be obtained when the purchased of, and contract for, single items of supplies, materials, or equipment which amounts to the amount allowed by Michigan statute and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed the amount allowed by Michigan statute.

In order for sealed bidding to be feasible, the following conditions shall be present:

1. a complete, adequate, and realistic specification or purchase description is available;
2. two (2) or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

When sealed bids are used, the following requirements apply:

1. Bids shall be solicited in accordance with the provisions of State law and purchasing guidelines.
2. Bids shall be solicited from two (2) or more responsible bidders and an adequate number of qualified suppliers, providing sufficient response time prior to the date set for the opening bids. The invitation to bid shall be publicly advertised.
3. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
4. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
5. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.

6. The Board reserves the right to reject any or all bids for sound documented reason.

D. Competitive Proposals

Procurement by competitive proposal, normally conducted with more than one source submitting an offer, is generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method. Federal law does not require a competitive proposal unless the procurement is for over \$150,000. The State/VLA may set a lower threshold for sealed bids and competitive proposals. Michigan law stipulates a threshold for which sealed bids are required.

If this method is used, the following requirements apply:

1. Requests for proposals be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
2. Proposals shall be solicited from an adequate number of sources.
3. The VLA shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
4. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The VLA 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 that firms are a potential source to perform the proposed effort.

E. Noncompetitive Proposals

Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstance apply:

1. The item is only available from a single source,
2. the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation,
3. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the VLA;
4. after solicitation of a number of sources, competition is determined to be inadequate.

Contract/Price Analysis

The VLA shall perform a cost or price analysis in connection with every procurement action in excess of \$150,000 including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the VLA shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the VLA shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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.

Time and Material Contracts

The VLA uses a time and materials contract only (1) after a determination that no other contractor exceeds at its own risk. Time and materials type contracts means a contract whose cost to the VLA is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this Formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, the VLA sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the VLA shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Suspension and Debarment

The VLA will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the VLA and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the VLA shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The Superintendent shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The VLA is subject to and shall abide by the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by the VLA that immediately prohibits a person from participating from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR Part 180 Subpart G)

Debarment is an action taken by the Superintendent to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR Part 180 Subpart H)

The VLA shall not subcontract with or award sub-grants to any person or company who is debarred or suspended. For contracts over \$25,000, the VLA shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at www.sam.gov; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 CFR Part 180 Subpart C)

Bid Protest

The VLA maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request for Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall file such notice in writing with the Superintendent within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Superintendent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

Maintenance of Procurement Records

The VLA maintains records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (including a cost or price analysis).

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LEGAL REF: 2 C.F.R. 200.317-.326