

Purchasing, Procurement and Contracting Policy

Adopted: July 23, 2024

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I. PURPOSE

The purpose of this policy is to establish procedures for carrying out purchasing, procurement and contracting functions of Minnesota Online High School (MNOHS), 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 MNOHS 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, MNOHS 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),

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23 has a financial or other interest in the entity with which the charter school is contracting. A
24 violation of this prohibition renders the contract void. The foregoing does not apply to
25 compensation paid to a teacher employed as a teacher by MNOHS or a teacher who
26 provides instructional services to MNOHS through a cooperative formed under chapter
27 308A when the teacher also serves on the MNOHS board of directors. Likewise, it does not
28 apply to a MNOHS teacher or other staff member when their partner or immediate family
29 member is employed as a teacher by MNOHS or a teacher who provides instructional
30 services to MNOHS through a cooperative formed under chapter 308A and also serves on
31 the MNOHS board of directors. In such cases, the MNOHS Nepotism Policy is in full force.

32 2. Minn. Stat. 124E.07, Subd. 3(e): A contractor providing facilities, goods, or services to a charter
33 school must not serve on the board of directors. In addition, an individual is prohibited from serving
34 as a member of the charter school board of directors if: (1) the individual, an immediate family
35 member, or the individual's partner is a full or part owner or principal with a for-profit or nonprofit
36 entity or independent contractor with whom the charter school contracts, directly or indirectly, for
37 professional services, goods, or facilities; or (2) an immediate family member is an employee of the
38 school and the individual is not eligible for board service as a teacher employed as a teacher by the
39 charter school or a teacher who provides instructional services to the charter school through a
40 cooperative formed under chapter 308A. An individual may serve as a member of the board of
41 directors if no conflict of interest exists under this paragraph, consistent with this section.

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

51 IV. GENERAL PROCUREMENT PROVISIONS

52 1. **Authorization:** The charter school director or chief administrator (hereinafter referred to as the

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- 53 “Executive Director”), in conjunction with the board of directors (hereinafter referred to as the
54 “board”), is responsible for overseeing the procurement process, including establishment of
55 procedures, internal controls, quality assurance, methods of greatest economy, and compliance with
56 all applicable laws. To be valid, all contracts must be approved by the board.
- 57 Individual MNOHS employees may incur expenditures in the following amounts without prior
58 board approval so long as such expenditures are consistent with the school’s board-approved
59 budget, provided that in all cases, the board retains authority to disapprove any expenditure for
60 any reason at the sole discretion of the board:
- 61 a. Any MNOHS employee may purchase goods or services for use in connection with school
62 operations where the expenditure is less than \$1,000. The school may issue credit or debit
63 cards to individual employees for these expenditures.
- 64 b. In addition to the foregoing, the MNOHS Executive Director may execute a purchase or
65 procurement that requires the expenditure of up to \$25,000 or may delegate this authority.
- 66 2. **Scope:** Purchasing procedures apply to procurement of equipment, supplies, and services, including
67 services provided by vendors and by individuals who are engaged by MNOHS as independent
68 contractors (i.e. – individuals who receive a form 1099 rather than form W-2). Purchasing procedures
69 do not apply to hiring employees of MNOHS (i.e. – individuals who receive a W-2).
- 70 3. **Documentation:** The Executive Director shall design and implement procedures to create and
71 preserve documentation establishing that all procurement is implemented in accordance with this
72 policy. The Executive Director will provide such documentation to the MNOHS board upon request
73 by the board.
- 74 4. **Economy:** Good business practice dictates that products will be purchased for the lowest price for
75 acceptable quality. Lower prices can be achieved through researching prices, cultivating business
76 relationships, negotiating price contracts, buying in quantity, competitive quotation, or formal bid
77 process.
- 78 5. **Best Value:** The school shall endeavor in all cases to obtain the best value in all purchase or
79 procurement decisions, taking into account the price, quality, and quantity of the goods or services
80 being purchased or procured, along with consideration of other criteria, which may include, but are
81 not limited to:

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

94 6. All expenditures must be spent in accordance with the approved school budget and must be made
95 according to internal controls established by the Executive Director including purchase order and/or
96 written quote, invoice, payment request and expenditures reviewed monthly by the Board.

97 7. In some instances, MNOHS faculty and staff may find it more convenient to pay for a product
98 themselves and then be reimbursed through the school. In all cases, these purchases must receive
99 prior approval from the Executive Director or from administrative staff members to whom the
100 Executive Director has delegated responsibility for specific budget line items. Reimbursement
101 requests will be submitted on the Reimbursement Form and accompanied by original receipts or
102 invoices. Reimbursements to the Executive Director must be approved by the Board President.

103 8. Prior to and upon the acceptance and expenditure of funds awarded to MNOHS by the Federal
104 Government, MNOHS will ensure that the funds will be used for the purposes of fulfilling the grant.
105 The funds will be used in line with state and federal statutes, rules, and regulations.

106 9. Likewise, MNOHS will use all funds awarded to MNOHS under any special grant by the State
107 Government or by a private foundation to fulfill the grant.

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108 **V. PURCHASES OF GOODS USING STATE FUNDS**

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

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

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

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

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

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

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135 VI. PROCUREMENT OF SERVICES USING STATE FUNDS

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

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

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

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

154 2. **Procurement of \$25,000 Or More.** Prior to entering into an agreement to procure a service of
155 \$25,000 or more, the director shall obtain bids or quotations from at least two vendors or
156 contractors, if market conditions for acquiring a particular service are such that vendors or
157 contractors will not respond to a request for bids or quotations, shall otherwise endeavor to compare
158 the prices of a least two vendors or contractors, in all cases endeavoring to ensure that each of the
159 bids, quotes, or comparison prices reflects substantially equal quantity and quality consistent with
160 the “best value” factors outlined above in this Section VI.

161 a. To solicit bids or quotations the director (i) shall post a request for bids or quotations on a
162 public portion of the charter school’s web site, or utilize another public posting mechanism
163 as reasonably determined by the director, and (ii) shall deliver solicitations directly to two or

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- 164 more potential vendors or contractors,. The director shall provide a reasonable time period,
165 and in no event fewer than five (5) business days for response to any solicitation of or posting
166 for bids or quotations.
- 167 b. If, after such reasonable time period, the director has not received two or more bids or
168 quotations for the service to be procured, the director shall use reasonably prudent inquiry
169 to ascertain the price for such goods from two or more vendors or contractors.
- 170 c. If (i) after complying with all of the foregoing the director is able to locate only a single vendor
171 or contractor from which to procure a particular service, or (ii) due to the nature of the
172 services being procured, the market for such services is such that there is only one vendor or
173 contractor to supply such service, the director shall, to the extent reasonably practicable,
174 endeavor to negotiate for the most favorable price that may be obtained from such vendor
175 or contractor.

176 VII. USE OF FEDERAL FUNDS¹ [Effective October 1, 2024]

- 177 1. **Procurement Methods.** There are three types of procurement methods 1) informal (for micro-
178 purchases and simplified acquisitions) 2) formal (through sealed bids or proposals) and 3)
179 noncompetitive. For all of these methods, the recipient or subrecipient must maintain and use
180 documented procurement procedures.
- 181 a. **Informal Procurement Methods for Small Purchases.**
- 182 i. Micro-purchases: the aggregate amount of the procurement transaction does not
183 exceed \$10,000, which may be increased to \$50,000 on an annual basis if the recipient
184 or sub-recipient self-certifies and provides supporting documentation. Micro-
185 purchases may be awarded without soliciting competitive price or rate quotes if the
186 recipient or subrecipient considers the price reasonable based on research,
187 experience, purchase history, or other information; and maintains documentation to
188 support its conclusion.
- 189 ii. Simplified Acquisitions: for procurement transactions in which the aggregate dollar
190 amount of the procurement transaction is higher than the micro-purchase threshold
191 (\$10,000, or \$50,000, if applicable), but lower than \$250,000. In simplified

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.

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- 192 acquisitions, the price or rate quotes must be obtained from an adequate number of
193 qualified sources. The recipient or subrecipient may exercise judgment in determining
194 what number is adequate.
- 195 b. **Formal Procurement Methods.** The recipient or subrecipient is required to use one of the
196 following formal procurement methods when the value of the procurement transaction
197 exceeds the simplified acquisition threshold of the recipient or subrecipient. This method
198 requires competition and public notice.
- 199 i. Sealed Bids. Preferred for procuring construction services. Bids are publicly solicited
200 through an invitation and a firm fixed-priced contract (lump sum or unit price) is
201 awarded to the responsible bidder whose bid conforms with all the material terms
202 and conditions of the invitation and is the lowest in price.
- 203 a. Sealed bids are appropriate when:
- 204 i. A complete, adequate and realistic specification or purchase
205 description is available;
- 206 ii. Two or more responsible bidders have been identified as willing
207 and able to compete effectively for the business; and
- 208 iii. The procurement lends itself to a firm-fixed-price contract, and
209 the selection of the successful bidder can be made principally
210 on price
- 211 b. If sealed bids are used, the following requirements apply:
- 212 i. Bids must be solicited from an adequate number of qualified
213 sources, providing them with sufficient response time prior to
214 the date set for opening the bids. Unless specified by the
215 Federal agency, the recipient or subrecipient may exercise
216 judgment in determining what number is adequate;
- 217 ii. The invitation for bids must define the items or services with
218 specific information, including any required specifications, for
219 the bidder to properly respond;

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- 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

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- 250 be used to procure architectural/engineering (A/E) professional
 251 services. The method may not be used to purchase other services
 252 provided by A/E firms that are a potential source to perform the
 253 proposed effort.
- 254 c. **Noncompetitive Procurement.** There are specific circumstances in which the recipient or
 255 subrecipient may use a noncompetitive procurement method. The noncompetitive
 256 procurement method may only be used if one of the following circumstances applies:
- 257 i. The aggregate amount of the procurement transaction does not exceed the micro-
 258 purchase threshold (see paragraph (a)(1) of this section);
- 259 ii. The procurement transaction can only be fulfilled by a single source;
- 260 iii. The public exigency or emergency for the requirement will not permit a delay
 261 resulting from providing public notice of a competitive solicitation;
- 262 iv. The recipient or subrecipient requests in writing to use a noncompetitive
 263 procurement method, and the Federal agency or pass-through entity provides written
 264 approval; or
- 265 v. After soliciting several sources, competition is determined inadequate.
- 266 2. **Contracting with small and minority firms, women’s business enterprises, and labor surplus area**
 267 **firms, pursuant to 2 CFR § 200.321.** Non-Federal entities will take all necessary affirmative steps to
 268 assure that small and minority firms and women’s business enterprises are used when possible.
 269 Affirmative steps include:
- 270 a. Placing qualified small and minority business and women’s business enterprises on
 271 solicitation lists;
- 272 b. Assuring that small and minority business and women’s business enterprises are solicited
 273 whenever they are potential sources;
- 274 c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to
 275 permit maximum participation by small and minority business, and women’s’ business
 276 enterprises;

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- 277 d. Establishing delivery schedules, where the requirement permits, which encourage
278 participation by small and minority business, and women’s business enterprises;
- 279 e. Using the services and assistance of the Small Business Administration, and the Minority
280 Business Development Agency of the Department of Commerce.
- 281 f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps
282 listed in a-e above.
- 283 3. **Contract Cost, Price, and Monitoring by the non-Federal Entity.**
- 284 a. The non-Federal entity must perform a cost or price analysis in connection with every
285 procurement action in excess of the Simplified Acquisition Threshold including contract
286 modifications. The method and degree of analysis is dependent on the facts surrounding the
287 particular procurement situation, but as a starting point, the non-Federal entity must make
288 independent estimates before receiving bids or proposals.
- 289 b. The non-Federal entity must negotiate profit as a separate element of the price for each
290 contract in which there is no price competition and in all cases where cost analysis is
291 performed. To establish a fair and reasonable profit, consideration must be given to the
292 complexity of the work to be performed, the risk borne by the contractor, the contractor's
293 investment, the amount of subcontracting, the quality of its record of past performance, and
294 industry profit rates in the surrounding geographical area for similar work.
- 295 c. Costs or prices based on estimated costs for contracts under the Federal award are allowable
296 only to the extent that costs incurred or cost estimates included in negotiated prices would
297 be allowable for the non-Federal entity under federal regulations. The non-Federal entity
298 may reference its own cost principles that comply with the Federal cost principles.
- 299 d. The cost plus a percentage of cost and percentage of construction cost methods of
300 contracting must not be used.
- 301 e. The non-Federal entity is responsible for oversight of the operations of the Federal award
302 supported activities. The non-Federal entity must monitor its activities under Federal awards
303 to assure compliance with applicable Federal requirements and performance expectations
304 are being achieved. Monitoring by the non-Federal entity must cover each program, function
305 or activity. See also 2 C.F.R § 200.332.

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306 VIII. RECORDS TO BE MAINTAINED

- 307 1. **Public Data.** All records of charter school expenditures are considered “public data” under Minn.
 308 Stat. Chapter 13 (the “**Minnesota Government Data Practices Act**” or the “**Act**”). The charter
 309 school will create, maintain, and preserve such records in accordance with the Act.
- 310 2. **Record Retention Requirements for Federal Awards.**² The recipient and subrecipient must
 311 retain all Federal award records for three years from the date of submission of their final financial
 312 report. For awards that are renewed quarterly or annually, the recipient and subrecipient must
 313 retain records for three years from the date of submission of their quarterly or annual financial
 314 report, respectively. Records to be retained include but are not limited to, financial records,
 315 supporting documentation, and statistical records. Federal agencies or pass-through entities may
 316 not impose any other record retention requirements except for the following:
- 317 f. The records must be retained until all litigation, claims, or audit findings involving the records
 318 have been resolved and final action taken if any litigation, claim, or audit is started before
 319 the expiration of the three-year period.
- 320 g. When the recipient or subrecipient is notified in writing by the Federal agency or pass-
 321 through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency
 322 for indirect costs to extend the retention period.
- 323 h. The records for property and equipment acquired with the support of Federal funds must be
 324 retained for three years after final disposition.
- 325 i. The three-year retention requirement does not apply to the recipient or subrecipient when
 326 records are transferred to or maintained by the Federal agency.
- 327 j. The records for program income earned after the period of performance must be retained
 328 for three years from the end of the recipient's or subrecipient's fiscal year in which the
 329 program income is earned. This only applies if the Federal agency or pass-through entity
 330 requires the recipient or subrecipient to report on program income earned after the period
 331 of performance in the terms and conditions of the Federal award.

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

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- 332 k. The records for indirect cost rate computations or proposals, cost allocation plans, and any
333 similar accounting computations of the rate at which a particular group of costs is chargeable
334 (such as computer usage chargeback rates or composite fringe benefit rates) must be
335 retained according to the applicable option below:
- 336 1. If submitted for negotiation. When a proposal, plan, or other computation
337 must be submitted to the Federal Government to form the basis for
338 negotiation of an indirect cost rate (or other standard rates), then the three-
339 year retention period for its supporting records starts from the date of
340 submission.
 - 341 2. If not submitted for negotiation. When a proposal, plan, or other computation
342 is not required to be submitted to the Federal Government to form the basis
343 for negotiation of an indirect cost rate (or other standard rates), then the
344 three-year retention period for its supporting records starts from the end of
345 the fiscal year (or other accounting period) covered by the proposal, plan, or
346 other computation.