

INTERNATIONAL AMERICAN EDUCATION FEDERATION, INC.
DBA
INTERNATIONAL LEADERSHIP OF TEXAS
BOARD POLICY MANUAL
POLICY GROUP – FISCAL MANAGEMENT
GUIDELINE FMPW
PURCHASING AND CONTRACTING FOR PUBLIC WORKS

Sec. 1. Purpose of Policy.

The Board of Directors (hereafter, the “Board”) and Superintendent of International American Education Federation, Inc. doing business as International Leadership of Texas (hereafter, the “District”) shall endeavor to maximize the use of District funds to purchase construction services to further the District’s mission and facilitate the implementation of the charter program. Through this policy, the Board shall address the legal requirements, as applicable, promulgated at:

- (a) Texas Education Code §12.1053;
- (b) Texas Administrative Code, Title 19, §100.1006;
- (c) Texas Education Code (“Tex. Ed. Code”) Chapter 44, Subchapter B (“Chapter 44”);
- (d) Texas Government Code (“Tex. Gov’t. Code”) Chapter 2269 (“Chapter 2269”); and
- (e) Texas Local Government Code (“Tex. Local Gov’t. Code”) Chapter 271, Subchapter B.

Sec. 2. Applicability of Procurement Laws.

Consistent with applicable statutory and administrative law and the District’s open-enrollment charter, as approved by the Commissioner of Education, the Board and Superintendent shall adhere to the legal requirements of Chapter 44 as the process for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property (hereafter, “public works”).

Sec. 3. Applicability of Policy.

This policy pertains to the purchase of goods and services for public works valued at \$50,000 or more in the aggregate for each twelve-month period and does not apply:

- (a) To the purchase of general goods and services from state funds;
- (b) To the purchase of general goods and services from federal funds;
- (c) To the purchase of goods and services for public works with a cost or value of less than \$50,000 in the aggregate for each twelve-month period; or
- (d) To the procurement of professional services.

With respect to (a), (b) and (d) above, the policy for Purchasing and Contracting from State Funds for General Services, Personal Property, Materials and Supplies (Policy FMPG), Purchasing and Contracting from Federal Funds for General Services, Personal Property, Materials and Supplies (Policy FMPF) and Purchasing and Contracting for Professional Services (Policy FMPS) shall apply, respectively. With respect to (c) above, Policy FMPG shall apply.

Sec. 4. Rules and Procedures.

Pursuant to Tex. Ed. Code §44.031(d) and Tex. Gov’t. Code §2269.051, the Board may adopt rules and procedures for the acquisition of goods or services related to public works, including construction services.

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Sec. 5. Delegation of Authority.

Sec. 5.1. Authority to Procure Construction Services.

Sec. 5.1.1. The Board may delegate its authority under Chapter 2269 regarding an action authorized or required by Chapter 2269 to a designated representative, committee, or other person.¹

Sec. 5.1.2. If the Board delegates its authority to a designated representative, committee, or other person, the District shall provide 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.²

Sec. 5.2. Authority to Contract.

Unless otherwise authorized by the Board, only a Board member, the Superintendent, or the Superintendent's designee shall be authorized to sign contracts obligating the District to disburse public funds for public works. Refer to Section 7 in Policy FMPG.

Sec. 6. Authorized Methods of Procurement.

Sec. 6.1. With the exception of the competitive bidding method, the Board shall determine which method set forth in Subsection 7.4 below provides the best value for the District before it advertises for requests for bids, proposals or qualifications.³

Sec. 6.2. The District shall base its selection among offerors on applicable criteria listed for the particular method used. The District shall publish in the request for bids, proposals or qualifications the criteria that will be used to evaluate the offerors and the applicable weighted value for each criterion.⁴

Sec. 6.3. Within seven (7) days after the date the contract is awarded, the District shall document the basis of its selection and shall make the evaluations public.⁵

Sec. 6.4. The Board or designee may award a contract for construction services using one of the following methods:

- (a) Interlocal agreement,⁶
- (b) Competitive bidding,⁷
- (c) Competitive sealed proposal,⁸
- (d) Construction manager-agent,⁹

¹ Tex. Gov't. Code §2269.053(a)

² Tex. Gov't. Code §2269.053(b)

³ Tex. Gov't. Code §2269.056(a)

⁴ Tex. Gov't. Code §2269.056(b)

⁵ Tex. Gov't. Code §§ 2269.056(c), 2269.105

⁶ Tex. Ed. Code §44.031(a)(4)

⁷ Tex. Ed. Code §44.031(a)(5), Tex. Gov't. Code Chapter 2269, Subchapter C

⁸ Tex. Ed. Code §44.031(a)(5), Tex. Gov't. Code Chapter 2269, Subchapter D

⁹ Tex. Ed. Code §44.031(a)(5), Tex. Gov't. Code Chapter 2269, Subchapter E

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- (e) Construction manager-at-risk,¹⁰
- (f) Design-build,¹¹ or
- (g) Job order contracts.¹²

Sec. 6.5. Unless determined otherwise by the Board, the District shall procure construction services using the competitive bidding method of procurement.

Sec. 6.6. The Superintendent may recommend to the Board a method of procurement, other than the competitive bidding method, from those listed under Subsection 6.4. In this event, the Superintendent shall provide the Board with a written proposal, including the justification for utilizing a different method of procurement.

Sec. 6.7. In the event that the Board determines that another procurement method is in the District's best interest, the Board's determination will be documented in the minutes to the pertinent Board meeting.

Sec. 6.8. The Board and District may seek legal and professional advice and counsel regarding the legal and other requirements applicable to the procurement method selected by the Board.

Sec. 7. Component, Separate and Sequential Purchases Prohibited.

Refer to Policy FMPG Subsection 9.1.¹³

Sec. 8. Notice.

The District 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. The District 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. If there is not a newspaper in that county, the District shall publish its advertisement in a newspaper in the county nearest the county seat of the county in which its central administrative office is located. In a two-step procurement process, the District is not required to separately publish the time and place where the second-step bids, proposals, or responses will be received.¹⁴

Sec. 9. Response to Requests for Bids, Proposals or Qualifications.

Sec. 9.1. Sealed Bids, Proposals or Qualifications Required.

Sec. 9.1.1. A person who submits a bid, proposal, or qualification is required to seal it before delivery.¹⁵

¹⁰ Tex. Ed. Code §44.031(a)(5), Tex. Gov't. Code Chapter 2269, Subchapter F

¹¹ Tex. Ed. Code §44.031(a)(5), Tex. Gov't. Code Chapter 2269, Subchapter G

¹² Tex. Ed. Code §44.031(a)(5), Tex. Gov't. Code Chapter 2269, Subchapter I

¹³ Tex. Ed. Code §44.032

¹⁴ Tex. Ed. Code §44.031(g), Tex. Gov't. Code §2269.052(a)-(b)

¹⁵ Tex. Govt. Code §2269.059

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Sec. 9.1.2. The Superintendent or designee shall reject any bid, proposal or qualification that is not sealed and return it to the offeror with a statement:

1. Representing that the bid, proposal or qualification was not opened, viewed or otherwise examined;
2. Asserting that the content and form of the bid, proposal, or qualification was not duplicated or disseminated with any person or entity; and
3. Instructing the offeror to resubmit an appropriately sealed bid, proposal or qualification as required by state law.

Sec. 9.2. Receipt and Opening of Bids.

Sec. 9.2.1. The District shall receive, publicly open, and read aloud the names of the offerors and their bids.¹⁶

Sec. 9.2.2. Only the Board, during a lawfully convened Board meeting, or the Board's designee, at or in District's central administrative office, may open the bids submitted by offerors.¹⁷

Sec. 9.2.3. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.¹⁸

Sec. 9.2.4. A bidder has the common law right to withdraw a bid due to a material mistake in the bid.¹⁹

Sec. 9.2.5. The District is entitled to reject any and all bids.²⁰

Sec. 10. Awarding of Contract Under Competitive Bidding Method.

Sec. 10.1. In accordance with state law, "competitive bidding" is a procurement method by which the District may contract with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.²¹

Sec. 10.2. The District 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.²²

¹⁶ Tex. Govt. Code §2269.104

¹⁷ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.026(a)

¹⁸ *Ibid*

¹⁹ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.026(b)

²⁰ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.027(a)

²¹ Tex. Govt. Code §2269.101(a)

²² Tex. Govt. Code §2269.101(b)

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Sec. 11. Responsible Bidder Defined.

Sec. 11.1. 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.²³

Sec. 11.2. 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 Tex. Govt. 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 Tex. Govt. 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 Tex. Govt. 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.
- (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.

²³ Financial Accountability System Resource Guide Module 3, Glossary of Terms

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Sec. 11.3. The District must include the requirements to be used to establish an offeror as a responsible bidder in the request for bids, proposals or qualifications.

Sec. 12. Criteria to Consider.

Sec. 12.1. In determining the award of a contract pursuant to this section, the District 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 the District's needs;
- (e) The vendor's past relationship with the District;
- (f) The impact on the ability of the District to comply with rules relating to historically underutilized businesses;
- (g) The total long-term cost to the District 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.²⁴

Sec. 12.2. In determining the award of a contract under this chapter, the District shall:

- (a) Consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

²⁴ Tex. Govt. Code §2269.055; Tex. Ed. Code §44.031(b)

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- (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.²⁵

Sec. 13. Safety Record of Bidder Considered.

Sec. 13.1. In determining who is a responsible bidder, the Board 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.²⁶

Sec. 13.2. In determining who is a responsible bidder, the Board may take into account the following definition and criteria for accurately determining the safety record of a bidder.²⁷

- (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, the Board 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.

²⁵ *Ibid*

²⁶ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.0275

²⁷ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.0275(1)

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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.

Sec. 13.3. Before considering the safety record of the bidder, the District 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.²⁸

Sec. 13.4. In making determinations concerning the safety records of the bidders, the Board, Superintendent, and District employees are prohibited from making the determinations in an arbitrary and capricious manner.²⁹

Sec. 13.5. The Superintendent 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. 14. Notification of Contractor's Criminal History.

Sec. 14.1. If the person or an owner or operator of the business entity has been convicted of a felony, the District 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.³⁰

Sec. 14.2. The District may terminate a contract with a person or business entity if the District determines that the person or business entity failed to give notice as required by Subsection 14.1 or misrepresented the conduct resulting in the conviction. The District must compensate the person or business entity for services performed before the termination of the contract.³¹

Sec. 14.3. This subsection does not apply to a publicly held corporation.³²

Sec. 15. Contract with Person Indebted to District.

Sec. 15.1. The Board may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the District.³³

Sec. 15.2. 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 the District requiring approval by the Board.³⁴

²⁸ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.0275(2)

²⁹ Tex. Govt. Code §2269.106; Tex. Local Govt. Code §271.0275(3)

³⁰ Tex. Ed. Code §44.034(a)

³¹ Tex. Ed. Code §44.034(b)

³² Tex. Ed. Code §44.034(c)

³³ Tex. Ed. Code §44.044(a) and (b)

³⁴ Tex. Ed. Code §44.044(c)

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Sec. 15.3. The Superintendent or designee shall notify the Board of any debt due by an apparent low bidder or successful proposer. In the notice to the Board, the Superintendent or designee must disclose:

- (a) The amount outstanding;
- (b) The date(s) of when the bidder or proposer became indebted to the District;
- (c) The cause(s) resulting in the bidder's or proposer's indebtedness;
- (d) Any adverse consequence to the District resulting from the bidder's or proposer's indebtedness;
- (e) The date of the last written correspondence to the bidder or proposer requesting the bidder's or proposer's satisfactory settlement of the indebtedness; and
- (f) The frequency of requests for settlement of the indebtedness.

Sec. 16. 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, the District:

- (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.³⁵

Sec. 17. Contracts to Minority Companies.³⁶

As set forth in the charter application, the District will look for "opportunities to consummate contracts with a sizeable portion to minority companies."

Sec. 18. Selection of Architect or Engineer.

Unless the District employs an architect or engineer on a full-time basis to oversee construction projects, the District shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Tex. Govt. Code §2254.004.³⁷ Refer to Policy FMPS.

Sec. 19. Other Professional Services.

The District shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of a facility. The

³⁵ Tex. Govt. Code §2269.054

³⁶ Application for Open-Enrollment Charter, page 224 of 566.

³⁷ Tex. Govt. Code §2269.057(b)

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District shall select the services for which it contracts under this subsection in accordance with Tex. Govt. Code §2254.004.³⁸ Refer to Policy FMPS.

Sec. 20. Suspension of Policy.

If a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the Board 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 school facility, or portion of the school facility may be made by a method other than the methods required by this policy.³⁹

Sec. 21. Change Orders.

Sec. 21.1. 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 Superintendent or designee has general authority to approve change orders making the changes.⁴⁰

Sec. 21.2. 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 for by the authorization of the issuance of time warrants.⁴¹

Sec. 21.3. 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.⁴²

Sec. 22. Monitoring and Oversight.

Sec. 22.1. The Superintendent or designee shall monitor and oversee all construction projects and services. The Superintendent or designee shall document their monitoring and oversight activities.

Sec. 22.2. The Superintendent or designee shall report to the Board the progress and status of any and all public works procured under this Policy.

Sec. 22.3. The Superintendent or designee shall not make any final payments for public works procured under this Policy until the work has been completed. Upon completion of a public work, the Superintendent or designee shall provide a final report to the Board. Upon accepting the work performed, the Board may authorize the Superintendent or designee to issue final payment(s).

³⁸ Tex. Govt. Code §2269.058

³⁹ Tex. Ed. Code §44.031(h)

⁴⁰ Tex. Ed. Code §44.0411(a) and (c)

⁴¹ Tex. Ed. Code §44.0411(b)

⁴² Tex. Ed. Code §44.0411(d)

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Sec. 23. Administrative Procedures.

The Superintendent or designee shall prepare and formally adopt administrative procedures as reasonably necessary to properly administer this policy and to adhere to applicable law.