

**Policy Title:** 15.10 Procurement

**Policy Reference:** PL.143

**Board Approved:** 9-12-2023

**Attaches To:** (see page 1 and 2, Objects(s): Job Descriptions, Etc., Applied To)

**15.10.1 Description:**

Vanguard Academy will follow applicable state and federal laws in connection with the procurement of supplies, equipment, and services, including but not limited to the applicable provisions of the Utah Procurement Code.

**15.10.2 Purpose:**

To ensure that all purchases are authorized by Vanguard Academy and in compliance with applicable law(s).

**15.10.3 Scope:** All purchases

**15.10.4 Legal Reference:**

**15.10.4-1 State Law Requirements**

This policy is established pursuant to all applicable laws including Utah Code § 63G-6a-101 et. seq. and Utah Administrative Rules, Title R33, and requires all Vanguard Academy employees to comply. Certain components of the law particularly relevant to Vanguard Academy employees are included below:

1. Contracts must follow the applicable provisions outlined in the State Procurement Code, including without limitation laws regarding the length of multi-year contracts (Utah Code § 63G-6a-1204(7)).
2. Construction and improvements must comply with the applicable provisions of the State Procurement Code (Utah Code § 63G-6a-1302; Utah State Board of Education Administrative Rules, and Title IX and XIII; 5-1 Vanguard Academy Fiscal Policy Manual – 2019 Section 5 – Procurement).
3. Exclusive contracts must comply with the provisions outlined in the State Procurement Code (Utah Code § 63G-6a-101 et. seq.), Vanguard Academy's procurement policy, and the Utah Public Officers' and Employees' Ethics Act (Utah Code § 67-16-1 et. seq.).

**15.10.4-2 Federal Law Requirements (Procurement and Allowability)**

1. This policy is established pursuant to Federal Code (200.318). Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- a. Be necessary and reasonable in price for the performance of the award and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of Vanguard Academy.
- d. Be accorded consistent treatment. A cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the award as an indirect cost.
- e. Be determined in accordance with generally accepted accounting principles (GAAP).
- f. Be adequately documented.
- g. Cost must be incurred during the approved budget.
  - i. 200.319 Competition
    1. All transactions for acquisition of property or services required under Federal Award must be conducted in a manner providing full and open competition.
  - ii. 200.213 Inventory Management (use of Federal Funds)
    1. All equipment acquired by Vanguard Academy with use of Federal Funds will be used in the program or project for which it was acquired.
    2. All equipment and supplies acquired by Vanguard Academy with a Federal Award will be inventoried and records will be maintained, which will include a description, serial number, source of funding, acquisition date, and cost.
    3. A physical inventory will be conducted at least every two years.
    4. A control system will be in place to ensure adequate safeguards to prevent loss, damage, or theft.

5. If Vanguard Academy is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

#### **h. Disposition**

Except as otherwise provided in Federal statutes, regulations, or Federal XIV. 5-4 awarding agency disposition instructions, when original or replacement equipment acquired under a federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, Vanguard Academy must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- i. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.

### **15.10.5 General Provisions**

1. **Procurement Officer Designated:** A procurement/compliance officer (the "Procurement Officer") shall be hired by the board of directors and shall report directly to the Procurement Oversight Committee. The Procurement Officer shall oversee and review all purchases and procurements on behalf of Vanguard Academy to ensure that the procurement process complies with all federal and state statutes, rules and local LEA policies. The Procurement Officer shall also (a) ensure that each procurement is completed in a fair process, free from influence and/or conflicts of interest; and (b) oversee the preparation, and open and fair administration of all RFPs.
2. **Purchasing Agent Designated:** The purchasing agent (the "Purchasing Agent") is hereby appointed and designated as Vanguard Academy's purchasing agent. The Purchasing Agent may from time to time appoint another person to undertake all or some of the duties of the Purchasing Agent set forth herein or appointed to the Purchasing Agent.
3. **Authority to Enter into and Execute Contracts:** All employment contracts are to be approved by the Director, with the exception of employees with a familial conflict of interest. Those employee contracts shall be approved by the Procurement Officer. Non-employee contracts shall be approved by the Procurement Officer. No department, office, advisory or policy board or other organization of Vanguard Academy, nor any officer or employee thereof, shall be empowered to execute any purchase order or contract except as specifically authorized in this policy or by other

applicable law. All contracts in violation of this provision are considered void and may result in the personal obligation and liability of persons at fault for such violations.

4. **Conflict of Interests Prohibited:** No officer, employee, agent, representative or member of any committee of Vanguard Academy shall have a financial interest in any contract, bid, or proposal; receive any compensation or gift from any bidder or proposer; or have any other conflict of interest (See Utah Code 67- 16 and 17-16a).
5. **Competitive Procurement:** Unless exempted by this policy, all purchases and contracts shall be awarded on a competitive basis, as required by this Policy and applicable State and Federal law.
6. **Participation in State Procurement Unit Agreement and Contracts:** Utah Code § 63G-6a-2105. In addition, Vanguard Academy shall make purchases from or participate in state public procurement unit agreements and contracts, pursuant to the terms of said agreements and contracts without soliciting additional procurement options, unless a state preferred provider is not available.
7. **Unethical Purchasing Practices:** Failure of any agent, officer or employee to comply with ethical purchasing requirements may result in suspension, termination, being personally liable for the purchase and/or criminal prosecution. All agents, officers and employees engaged in the procurement process for Vanguard Academy will maintain high ethical behavior in agreement with Utah Code 67-16, Utah Public Officers' and Employees' Ethics Act and avoid the following practices:
  - a. Dividing a procurement to avoid following policy (see Utah Code 63G-6a-2404.3)
  - b. Kickbacks and Gratuities (see Utah Code 63G-6a-2404, 67-16-5 through 67-16-6)
  - c. Failure to Disclose conflicts (see Utah Code 63G-6a-1205 & 67-16-9) Cost-plus-a-percentage-of-cost contracts (see Utah Code 63G-6a-1205)
8. Vanguard Academy purchases are not subject to sales tax. For vendors requiring documentation of tax exempt status, a TC-712G Exemption Certificate for Vanguard Academy may be obtained from the Purchasing Agent.
9. When a procurement involves the expenditure of State or Federal funds, Vanguard Academy shall comply with the applicable State and Federal laws and regulations.

#### **15.10.5-1 Authorization Requirements for Purchases**

1. **Purchases up to \$1,000:** All purchases less than \$1,000 may be approved by Vanguard Academy's designated Purchasing Agent, as long as the purchases have

been budgeted for within the requesting department budget and are in line with the budgeted purposes and responsibilities of that department. Vanguard may make purchases from any vendor without obtaining competitive bids.

2. **Purchases \$1,001 - \$5,000:** The “Quote for Small Purchases Form” must be completed for all small purchases over \$1,000. All purchases of goods and services between \$1,001 and \$5,000 may be approved by the Director. When purchasing an individual procurement item costing up to \$5,000 Vanguard may select the best source by direct award without seeking competitive bids or quotes (R33-5-104(3)).
3. **Purchases over \$5,000:** All purchases of goods and services over \$5,000 must be overseen by the Procurement Officer and approved by the Procurement Oversight Committee. Purchases for the renewal of software/subscriptions and curriculum that have previously been approved and included in the budget may be approved by the Director without going to the Procurement Oversight Committee. Documentation of the solicitation of at least two quotes (preferably 3) or reference to the exemption of those requirements must be attached. For small purchases defined in Utah Administrative Code R33-3-3, which will typically include purchases over \$1,000 up to \$50,000 of items other than professional services. Procedures set forth in the rule to purchase from the responsible vendor offering the lowest quote meeting the specifications.
4. **Purchases over \$50,000:** For all purchases of goods and services over \$50,000, the school shall first identify anyone on the state’s preferred vendor list to contract with. If a preferred vendor is not available, the school will put out a competitive bid, with the Procurement Officer overseeing the RFP from start to finish. The Procurement Oversight Committee shall review and score bids. Unless an exception applies, for purchases of items other than professional services over \$50,000, an appropriate procurement process, such as Request for Bids or a Request for Proposals will be conducted.
5. **Avoidance of approval:** Purchases will not be artificially divided or other steps taken to avoid the approval process required by this policy.
  - a. It may be determined after an order is placed or received that a large enough quantity was not ordered, or the correct sizes were not obtained, and additional items must be ordered. If this occurs, the employee initiating the purchase must include a written explanation of the purpose of the purchase and justification as to why it is not considered splitting a purchase. This should be retained with the vendor invoice
  - b. Penalties for dividing purchases range from a class B misdemeanor to a second degree felony, depending on the total value of the divided procurement.

## 6. Competitive Bids - When Required

- a. All procurements of goods which are reasonably anticipated to exceed \$50,000 shall be obtained by the Procurement Officer, by first, checking the state approved vendor list for a vendor that can meet the requirements of the purchase. If Vanguard seeks to award a contract to a good or service that is not offered on the state approved vendor list, Vanguard's Procurement Officer will procure the services through a competitive sealed bidding process that will be reviewed by the Procurement Oversight Committee. The Board of Directors may also require competitive bidding for the procurement of goods and services for any amount.
- b. In the event that bids exceed available funds and the lowest responsive and responsible bid does not exceed funds available by more than five percent, the Board may, where time or economic considerations preclude re-solicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- c. Content of Invitation for Bids. An invitation for bids shall:
  - i. State that the Vanguard Academy is seeking bids for a procurement;
  - ii. Contain information on how to contact the person with the most knowledge about the procurement;
  - iii. State the period of time during which bids will be accepted;
  - iv. Describe the manner in which a bid shall be submitted;
  - v. State the address at which a bid may be submitted, and the person to whom the bid should be submitted;
  - vi. Describe the goods or services sought to be procured;
  - vii. List or refer to the objective criteria that will be used to evaluate the bids.

- viii. To the extent possible, include or reference significant contractual terms and conditions.
  - ix. State the date, time and place for the public opening of all bids.
  - x. An invitation to bid may require attendance at a pre-bid meeting for the purpose of obtaining additional information relevant to the bid. The invitation shall list the time, date and place of any pre-bid meeting that will take place.
  - xi. An invitation to bid may require that a bidder obtain additional specifications and objective criteria too lengthy to publish in the invitation for bids. The invitation to bid shall indicate where such information may be obtained.
- d. All invitations for bids shall be published on the state procurement website at least 15 days prior to the deadline for submission of a bid.
  - e. Vanguard Academy shall reject bids from further evaluation that are: incomplete, illegible, conditional, modify bid requirements, contain additional terms or conditions, divide bid into parts, failed to attend required pre-bid meetings, fail to confirm requirements or specifications, the bidder has a pending dispute with the Vanguard Academy on a previous project or where the Vanguard Academy reasonably concludes that the bidder is unable to satisfactorily fulfill the bid requirements or has engaged in unlawful or unethical conduct in attempting to secure the bid. Any bidder whose bid has been rejected may obtain from the Vanguard Academy a written finding stating the specific reason the bid was rejected.
  - f. Vanguard Academy shall award the bid/contract to the lowest bidder who best satisfies the objective criteria described in the invitation for bids which may include: Experience, performance ratings, inspection of workmanship, suitability, quality, likely compatibility with existing assets or practices, availability, warrantee, references, licensure, proximity or other criteria reasonably specified in the invitation to bid.
  - g. Tied bids may be resolved using any reasonable criteria and at the sole discretion of Vanguard Academy.
  - h. Vanguard Academy may cancel the bid process or reject all bids in whole or in part if it determines that; no bids met bid requirements, there are insufficient funds, the item is no longer needed or the specifications or timing does not meet Vanguard Academy's current needs or long term plans. In the event of a

bid cancellation Vanguard Academy shall publicly state the reason for the cancellation and make that information available for public inspection.

- i. Exemptions from competitive bid requirements may include the following: Sole source providers, service contracts with professionals or specialists, emergency purchases. The Purchasing Agent shall sufficiently document the reason for not competitively bidding the procurement and have it approved by the Finance Committee.
- j. Protests to the bidding process shall be submitted to the Vanguard Academy in writing within 5 days. The Purchasing Agent will respond to the protest within 5 days of receiving the complaint. The Purchasing Agent's decision may be appealed to the Finance Committee in writing within 5 days. The Finance Committee may address the appeal at its next regularly scheduled meeting or hold a special meeting to evaluate the merits of the protest appeal.



## **Vanguard Academy**

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Procurement Code requirements connected with any contract term longer than five (5) years, including any automatic renewals or extensions will be followed. Any construction or real property improvements undertaken by Vanguard will be done in compliance with the requirements of the Procurement Code. All purchases made with restricted program funds should be identified and tracked as such.

Any alleged violations of this policy or applicable law should be reported in writing to the Vanguard Academy director and board of directors.