

MITCH Charter School

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The following symbol is used on some policies:

\*\* As used in this policy, the term parent includes legal guardian or person in a parental relationship. The status and duties of a legal guardian are defined in ORS 125.005(4) and 125.300-125.325. The determination of whether an individual is acting in a parental relationship, for purposes of determining residency, depends on the evaluation of the factors listed in ORS 419B.373. The determination for other purposes depends on evaluation of those factors and a power of attorney executed pursuant to ORS 109.056. For special education students, parent also includes a surrogate parent, an adult student to whom rights have transferred and foster parent as defined in OAR 581-015-2000.

# MITCH Charter School

Code: DB  
Adopted:

## Budget

The school budget will serve as the financial plan of operation for the public charter school and will include estimates of expenditures for a given period and purpose and the proposed means of financing the estimated expenditures. The public charter school may provide that the budget and budget documents are prepared on an annual or biennial basis.

The budget will be prepared in compliance with Generally Accepted Accounting Principles.

The fiscal year will extend from July 1 to June 30 inclusive.

The executive director will be designated as budget officer and will prepare the budget document.

END OF POLICY

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### Legal Reference(s):

[ORS 338.115\(2\)](#)

OR. DEP'T OF EDUC, PROGRAM BUDGET AND ACCOUNTING MANUAL (2006).

Corrected 4/11/23

# MITCH Charter School

Code: DD  
Adopted:

## Grant Funding Proposals and Applications

The public charter school may pursue federal, state or private grants or other such funds that will assist the public charter school in meeting adopted Board and public charter school goals.

All proposals for external funds will be submitted to the executive director for evaluation and approval.

The executive director may review a proposal with the Board at a Board meeting. The Board reserves the right to reject any grant.

The executive director shall, before an acceptance of such funds, consider the public charter school's obligations, expectations or encumbrances when the grant ceases.

END OF POLICY

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### Legal Reference(s):

[ORS 294.305 to -294.565](#)

[ORS 338.115\(2\)](#)

Corrected 4/11/23

# MITCH Charter School

Code: DE  
Adopted:

## Revenues from Private, State and Federal Sources

The Board may authorize, accept and use private, state or federal funds available to the public charter school to carry out public charter school educational programs. The public charter school will comply with all regulations and procedures required for receiving and using such funds.

END OF POLICY

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### Legal Reference(s):

[ORS 294.305 to -294.565](#)

[ORS 338.115\(2\)](#)

Corrected 4/11/23

# MITCH Charter School

Code: DFA  
Adopted: 7/17  
Orig. Code(s): DFA

## Investment of Funds

The Board may authorize the investment or reinvestment of funds which are not immediately needed for the operation of the public charter school.

The executive director, working with the Finance Committee, will develop criteria for the appropriate investments of public charter school funds.

The Board of Directors of MITCH Charter School (the “Board”) adopts this Investment Policy to set parameters for the investment of operating reserve funds, special project funds and endowment funds held by MITCH Charter School. This policy does not apply to the MITCH Charter School’s checking account or any other funds held in general savings or checking accounts.

Except where legally required to hold separate funds, MITCH will consolidate cash balances from all funds to maximize investment earnings. Investment income will be allocated to the various funds monthly based on their respective cash balances. Until the total of all funds is greater than the amount of federal deposit insurance, currently \$250,000 per entity, all funds will be maintained in an insured account at a safe and sound financial institution.

MITCH will account for separately, to the extent possible, investments of public funds, such as state school funds and grant funds from public agencies, from investments of other funds, such as funds from donors, private foundations, fundraisers, and other entities and organizations.

### I. General Objectives

The primary objectives for this investment policy, in priority order, shall be: preservation of capital; maintenance of a liquid position; and maximum yield.

#### 1. Safety

Safety of principal is the foremost objective of the investment program. Investment decisions shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

- a. Credit Risk: MITCH will minimize credit risk, the risk of loss due to the financial failure of the security issuer or backer, by:
  - Limiting exposure to poor credits and concentrating the investments in the safest types of securities.
  - Diversifying the investment portfolio so that potential losses on individual securities will be minimized.
  - Monitoring the investment portfolio holdings for rating changes, changing economic/market conditions, and other relevant factors.

- b. Interest Rate Risk: MITCH will minimize the price risk, due to changes in general market interest rates, associated with the sale of securities prior to maturity, by:
  - Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations and/or special projects, thereby avoiding the need to sell securities on the open market prior to maturity.
  - Investing operating funds primarily in shorter-term securities.

2. Liquidity

The investment portfolio shall remain sufficiently liquid to meet all operating, and special project requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with anticipated cash needs.

3. Yield

The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of lesser importance compared to the safety and liquidity objectives described above. The portfolio investments are limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed.

Securities shall not be sold prior to maturity with the following exceptions:

- (a) A security with declining credit may be sold early to minimize loss of principal.
- (b) A security swap that would improve the quality, yield, or target duration in the portfolio.
- (c) Liquidity needs of the portfolio require that the security be sold.
- (d) To liquidate a security purchased in error that violates state law or this policy.

## II. Standards of Care

1. Prudence

The standard of prudence to be used by the Board, Finance Committee, executive director, and any investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. Directors, officers, and the executive director acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported to MITCH Board in a timely fashion, and the liquidation and/or sale of securities are carried out in accordance with the terms of this policy.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in similar positions and similar circumstances, not for speculation, but for investment, considering the probable safety of capital as well as the probable income to be derived. The charitable and educational purpose of

MITCH and the purpose of the investment fund, whether for operation, special projects or endowments, must be considered when implementing this policy.

2. Ethics and Conflicts of Interest

Directors, officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees, officers and their families shall not undertake personal investment transactions with the same individual with whom business is conducted on behalf of MITCH. Directors, officers and employees shall, at all times, comply with the Oregon Government Standards and Practices code of ethics set forth in ORS 244, the standards of conduct for managing charitable funds in ORS 128.318, and for officers and directors, the fiduciary duties and conflict of interest requirements in ORS ch 65.

3. Delegation of Authority

The Board delegates authority to its Finance Committee to work with the executive director to manage MITCH's investment program and ensure compliance with the investment policy, designate eligible investment institutions, review periodic investment reports and monitor investment transactions.

The executive director may designate an employee under his/her/their supervision to administer the policy, place investments, maintain accounting records and prepare investment reports.

If authorized by the Board, the Finance Committee may retain one or more investment advisors as well as any administrators, custodians, or other investment service providers required for the proper management of investment funds. If and when delegating investment authority to one or more advisors, the committee will establish and follow appropriate procedures for selecting such advisors and for conveying to each the scope of their authority, MITCH's expectations and the requirement of compliance with these policies.

### III. Authorized Financial Dealers and Institutions

A list will be maintained of financial institutions authorized to provide investment and safekeeping services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness and other factors considered relevant by MITCH. These may include primary dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). Regional brokers and dealers must have an office in Pacific Northwest in order to be considered for doing business with MITCH. The MITCH Charter School will limit all security purchases to institutions on the approved lists.

All financial institutions and broker/dealers who desire to become qualified for investment transactions must supply the following, as appropriate:

1. Audited financial statements
2. Proof of FINRA, Financial Industry Regulatory Authority as per SEC Requirements from 2007

3. Proof of state registration
4. Completed broker/dealer questionnaire
5. Certification of having read and understood the MITCH investment policy
6. References from other nonprofit, Oregon charter schools, or local government clients.

A review of the financial condition and registration of qualified financial institutions and broker/dealers will be conducted by the Finance Committee and executive director at least every five years. Additions and deletions to the list may be made at the discretion of the Finance Committee and executive director.

#### **IV. Internal Controls**

The Finance Committee, executive director, and business ~~director~~ ~~manager~~ in cooperation with the external auditor, will establish and maintain an adequate internal control structure designed to reasonably protect the investments of MITCH from loss, theft or misuse. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by the Finance Committee and ~~Executive Director~~ ~~executive director~~.

1. Audit

MITCH shall establish a process for an annual independent review by an external auditor to assure adequate internal controls, as well as compliance with policies and procedures. In addition, the internal controls may be tested by an external auditor upon any extraordinary event, such as turnover of key personnel.

2. Accounting Method

MITCH shall comply with all required legal provisions and Generally Accepted Accounting Principles (GAAP) relating to investment accounting. The accounting principles are those contained in the pronouncements of authoritative bodies including but not necessarily limited to, the Governmental Accounting Standards Board (GASB); the American Institute of Certified Public Accountants (AICPA); and the Financial Accounting Standards Board (FASB).

#### **V. Investments**

1. Delivery and Safekeeping

Prior to sending funds to a broker/dealer for an investment purchase, the executive director will require a trade ticket listing the details of the transaction. Securities may be held by the broker/dealer in MITCH's name, in the broker/dealer's account, or they may be held by a third-party safekeeping agent.

The purchase and sale of securities, repurchase agreement and guaranteed investment contract transactions shall be settled on a delivery versus payment basis. It is the intent of MITCH that



all purchased securities shall be perfected in the name of MITCH. Sufficient evidence to title shall be consistent with modern investment and commercial practices.

## 2. Collateral

Cash management tools, defined as bank deposits, time deposits, certificates of deposit, and savings accounts, shall be held in qualified depositories and collateralized.

A signed Master Repurchase Agreement must be in place between the MITCH and the securities dealer, prior to entering into any repurchase agreement with that dealer.

At the minimum, the Finance Committee, executive director or Board of Directors will monitor the collateral requirements monthly for guaranteed investment contracts.

## 3. Authorized Investments

The following investments will be permitted by this policy and are authorized for investment:

- a. U.S. Treasury securities and other lawfully issued general obligations of the United States, including general obligations of agencies and instrumentalities of the United States or enterprises sponsored by the United States government.
- b. Debt of the agencies and instrumentalities of the states of Oregon, California, Idaho and Washington and their political subdivisions.
- c. Time deposit open accounts, certificates of deposit, bank deposit, and savings accounts.
- d. Bankers acceptances.
- e. Corporate indebtedness of at least AA rating by Moody's, Standard & Poor's or Fitch.
- f. Repurchase agreements.

## VI. Investment Parameters

### 1. Diversification

The investments shall be diversified by:

- (a) Limiting investments to avoid over-concentration in securities from a specific issuer or business sector (excluding U.S. Treasury securities);
- (b) Investing in securities that have high credit quality;
- (c) Limiting investments in high interest rate risk;
- (d) Investing in securities with varying maturities; and
- (e) Continuously investing a portion of the portfolio in readily available funds.

### 2. Maximum Maturities and Percentage of Investments by Type

The maximum percentages for direct investments of surplus funds are determined periodically by the Finance Committee and set forth in the Addendum to the Policy. Surplus funds are defined as the sum of all investments, cash balances, and deposit balances of all types. The maximum maturity is measured from the settlement date of the investment transaction. Capital project funds are funds specifically dedicated to capital projects, and will typically include proceeds from MITCH Facility Fund. MITCH may designate (upon approval by the Board) other funds as capital project funds.

Operating funds are all surplus funds that are not capital project funds.

### 3. Liquidity of Funds

Because of inherent difficulties in accurately forecasting cash flow requirements, a portion of the portfolio should be continuously invested in readily available funds, or overnight repurchase agreements, or held in bank balances to ensure that appropriate liquidity is maintained to meet on-going obligations.

Maturity limitations will depend upon whether the funds being invested are considered short-term or long-term funds. All funds will be considered short-term except those reserved for capital projects. Except for special situations, as directed by the Finance Committee, investments will be limited to maturities not exceeding thirty-six (36) months.

Short-term portfolio – Investment maturities for operating funds shall be scheduled to coincide with projected cash flow needs.

Long-term portfolio – Instruments and diversification for the long-term portfolio shall be as for the short-term portfolio. Long-term portfolio is defined as “maturities over 18 months and maximum of 36 months”. Maturity scheduling shall be timed according to anticipated need. For example, investment of capital project funds shall be timed to meet projected contractor payments.

The investments of grant proceeds may be restricted under grant covenants that may be more restrictive than the investment parameters included in this policy. Grant proceeds shall be invested in accordance with the most restrictive parameters of this policy and the applicable grant covenants.

The length of maturity and percentage of the total portfolio are determined periodically by the Finance Committee and set forth in the Addendum to this Policy.

### 4. Credit Ratings

Although not subject to ORS chapter 294, MITCH adopts by this policy the minimum credit rating levels for the permissible investments as set out in ORS 294.035(3) when applicable. The Board may authorize an investment that is not aligned with ORS 294.035 as long as it is within the parameters of this policy. (ORS 294.035 is included as an Addendum) These credit rating levels apply to the security at the transaction settlement date. If the credit rating of a security is subsequently downgraded below the minimum rating level for a new investment of that security, the Finance Committee and the executive director shall evaluate the downgrade on a case-by-case basis in order to determine if the security should be held or sold. The Finance Committee and executive director will notify MITCH Board about the credit rating downgrade and whether the decision was made to sell or hold the security.

5. Securities Lending and Reverse Repurchase Agreements

MITCH will not lend securities nor directly participate in a securities lending or reverse repurchase program.

6. Competitively Priced Securities

Before any security purchase or sale is initiated by the Finance Committee, the executive director shall gather information about current market interest rate levels from various sources, including investment counselors, internet financial web sites, financial publications, and other sources and present it to the Finance Committee. Each security purchase shall be made at competitive market interest rate levels. The Finance Committee shall use its discretion in determining whether to seek competitive bids or offers.

## VII. Reporting

1. Methods

The executive director or ~~his/her~~ designee will prepare an investment report monthly including a management summary that provides an analysis of the status of the current investment portfolio and transactions made over the previous month. The report will be submitted to the Finance Committee for review. This management summary will be prepared in a manner that will allow the Finance Committee to ascertain whether investment activities during the reporting period have conformed to the investment policy.

In addition, the executive director or ~~his/her~~ designee will prepare a regular board report. At a minimum, this report will include the following:

- a. Listing of individual securities held at the end of the reporting period.
- b. Average weighted yield to maturity of portfolio on investments as compared to applicable benchmark(s).
- c. Listing of investments by maturity date, call date, cost and current fair value (d) Percentage of the total portfolio that each type of investment represents along with the percentages authorized in this policy.

2. Performance Standards

The investment portfolio will be managed in accordance with the parameters specified within this policy. The appropriate benchmark for cash equivalents will be the 90 day U.S. Treasury Bill Index. For fixed income assets over time, the average return should meet or exceed the Barclays Capital Aggregate Bond Index, or its equivalent, and for equity investments over time, the investment should meet or exceed the Standard and Poor's 500 Index or its equivalent.

Because bond proceeds are expected to be invested at the time they are received, and are therefore invested in an interest rate environment that exists at that point in time, that portion of the portfolio will be excluded from ongoing benchmark performance measurement.

3. Marking to Market

The market value of the portfolio shall be calculated at least annually and a statement of the market value of the portfolio issued at fiscal year-end.

END OF POLICY

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**Legal Reference(s):**

[ORS 128.305 – 128.336](#)

[ORS 338.115\(2\)](#)

Corrected 4/11/23

# MITCH Charter School

Code: DFA-AR  
Adopted: 7/17  
Orig. Code(s): DFA

## Addendums A and B to Investment Policy

### Addendum A to Investment Policy

**ORS Chapter 294.035 is not applicable to Oregon public charter schools by its terms.**

**For purposes of determining credit ratings by its investment policy, the Board has decided to follow the guidelines of ORS 294.035(3), as applicable.**

### **294.035 Investment of surplus funds of political subdivisions; approved investments.**

- (3) Investments authorized by this section are:
- (a) Lawfully issued general obligations of the United States, the agencies and instrumentalities of the United States or enterprises sponsored by the United States Government and obligations whose payment is guaranteed by the United States, the agencies and instrumentalities of the United States or enterprises sponsored by the United States Government.
  - (b) Lawfully issued debt obligations of the agencies and instrumentalities of the State of Oregon and its political subdivisions that have a long-term rating of A or an equivalent rating or better or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization.
  - (c) Lawfully issued debt obligations of the States of California, Idaho and Washington and political subdivisions of those states if the obligations have a long-term rating of AA or an equivalent rating or better or are rated on the settlement date in the highest category for short-term municipal debt by a nationally recognized statistical rating organization.
  - (d) Time deposit open accounts, certificates of deposit and savings accounts in insured institutions as defined in ORS 706.008, in credit unions as defined in ORS 723.006 or in federal credit unions, if the institution or credit union maintains a head office or a branch in this state.
  - (e) Share accounts and savings accounts in credit unions in the name of, or for the benefit of, a member of the credit union pursuant to a plan of deferred compensation.
  - (f) Fixed or variable life insurance or annuity contracts as defined by ORS 731.170 and guaranteed investment contracts issued by life insurance companies authorized to do business in this state.
  - (g) Trusts in which deferred compensation funds from other public employers are pooled, if:
    - (i) The purpose is to establish a deferred compensation plan;
    - (ii) The trust is a public instrumentality of such public employers and described in section (2)(b) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(b), as

amended, in effect on September 20, 1985, or the trust is a common trust fund described in ORS 709.170;

- (iii) Under the terms of the plan the net income from or gain or loss due to fluctuation in value of the underlying assets of the trust, or other change in such assets, is reflected in an equal increase or decrease in the amount distributable to the employee or the beneficiary thereof and, therefore, does not ultimately result in a net increase or decrease in the worth of the public employer or the state; and
- (iv) The fidelity of the trustees and others with access to such assets, other than a trust company, as defined in ORS 706.008, is insured by a surety bond that is satisfactory to the public employer, issued by a company authorized to do a surety business in this state and in an amount that is not less than 10 percent of the value of such assets.

(h) (A) Banker's acceptances, if the banker's acceptances are:

- (i) Guaranteed by, and carried on the books of, a qualified financial institution;
- (ii) Eligible for discount by the Federal Reserve System; and
- (iii) Issued by a qualified financial institution whose short-term letter of credit rating is rated in the highest category by one or more nationally recognized statistical rating organizations.

(B) For the purposes of this paragraph, "qualified financial institution" means:

- (i) A financial institution that is located and licensed to do banking business in the State of Oregon; or
- (ii) A financial institution that is wholly owned by a financial holding company or a bank holding company that owns a financial institution that is located and licensed to do banking business in the State of Oregon.

(C) A custodial officer shall not permit more than 25 percent of the moneys of a local government that are available for investment, as determined on the settlement date, to be invested in banker's acceptances of any qualified financial institution.

(i) (A) Corporate indebtedness subject to a valid registration statement on file with the Securities and Exchange Commission or issued under the authority of section 3(a)(2) or 3(a)(3) of the Securities Act of 1933, as amended. Corporate indebtedness described in this paragraph does not include banker's acceptances. The corporate indebtedness must be issued by a commercial, industrial or utility business enterprise, or by or on behalf of a financial institution, including a holding company owning a majority interest in a qualified financial institution.

B) Corporate indebtedness must be rated on the settlement date P-1 or Aa or better by Moody's Investors Service or A-1 or AA or better by Standard & Poor's Corporation or equivalent rating by any nationally recognized statistical rating organization.

C) Notwithstanding subparagraph (B) of this paragraph, the corporate indebtedness must be rated on the settlement date P-2 or A or better by Moody's Investors Service or A-2 or A or better by Standard & Poor's Corporation or equivalent rating by any nationally recognized statistical rating organization when the corporate indebtedness is:

- (i) Issued by a business enterprise that has its headquarters in Oregon, employs more than 50 percent of its permanent workforce in Oregon or has more than 50 percent of its tangible assets in Oregon; or
  - (ii) Issued by a holding company owning not less than a majority interest in a qualified financial institution, as defined in paragraph (h) of this subsection, located and licensed to do banking business in Oregon or by a holding company owning not less than a majority interest in a business enterprise described in sub-subparagraph (i) of this subparagraph.
- (D) A custodial officer may not permit more than 35 percent of the moneys of a local government that are available for investment, as determined on the settlement date, to be invested in corporate indebtedness, and may not permit more than five percent of the moneys of a local government that are available for investment to be invested in corporate indebtedness of any single corporate entity and its affiliates or subsidiaries.
- (j) Repurchase agreements whereby the custodial officer purchases securities from a financial institution or securities dealer subject to an agreement by the seller to repurchase the securities. The repurchase agreement must be in writing and executed in advance of the initial purchase of the securities that are the subject of the repurchase agreement. Only securities described in paragraph (a) of this subsection may be used in conjunction with a repurchase agreement and such securities shall have a maturity of not longer than three years. The price paid by the custodial officer for such securities may not exceed amounts or percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short Term Fund Board created by ORS 294.885.
- (k) Shares of stock of any company, association or corporation, including but not limited to shares of a mutual fund, but only if the moneys being invested are funds set aside pursuant to a local government deferred compensation plan and are held in trust for the exclusive benefit of participants and their beneficiaries.

**294.040 Restriction on investments under ORS 294.035.** The bonds listed in ORS 294.035

(3)(a) to (c) may be purchased only if there has been no default in payment of either the principal of or the interest on the obligations of the issuing county, port, MITCH or city, for a period of five years next preceding the date of the investment.

**END of Addendum A**

## Addendum B to Investment Policy

Addendum B includes investment parameters that may be changed periodically by the Finance Committee in consult with its investment advisor.

### Maximum Maturities and Percentage of Investments by Type (Investment Parameters #2.)

Security	Maximum % of Total Portfolio	Maximum Maturity
US Treasury Bills, Notes		18 months for operating funds
and Bonds, and Obligations Secured by the US		3 years for special project funds
Treasury	100%	
US Government Agencies		18 months for operating funds
And Instrumentalities, Including Government		3 years for special project funds
Sponsored Enterprises	100%	
State and Local Government Securities	30%	18 months for operating funds 3 years for special project funds
Time Certificates of Deposit	50%**	18 months
Repurchase Agreements	25%	30 days
Banker's Acceptances	25%	6 months
Corporate Indebtedness	35%	18 months
Time Deposit Open Accounts Bank Deposit and Savings Accounts	100%	N/A

\*\* Time Certificates of Deposits may be increased to 100% of the portfolio if the amount to be invested is not significant so that fees of other investments would greatly reduce earnings (typically an investment of less than \$100,000 may be 100 % invested in CDs)



In order to achieve issuer diversification, this policy sets limits on the maximum holdings by issuer for certain investment types.

- (a) A limit of 35% of the portfolio held in securities issued by any single US government agency.
- (b) Time certificates of deposit and banker's acceptances can all be issued by a single banking institution. In order to avoid over-concentration in a single banking institution, a limit of 10% for overall holdings of one institution or for insured deposits up to the federal deposit insurance limit.

Recommended to limit investment in a single corporate entity to no more than 5% of total surplus funds.

Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer or investment type may be exceeded at a point in time subsequent to the purchase of a particular security. Securities need not be liquidated to realign the portfolio, but consideration should be given to this matter when future liquidations are made or when reinvestment occurs. Portfolio percentage limits are in place to ensure diversification in the investment portfolio; a small, temporary imbalance will not significantly impair that strategy.

### **Liquidity of Funds**

(Investment Parameters #3)

The following maturity limits are designed to ensure liquidity in the portfolio:

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<b>Length of Maturity</b>	<b>Minimum % of Total Portfolio\</b>
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Under 30 days	10%
Under 90 days	25%
Under 180 days	50%
Under 360 days	90%
Under 18 months	100%

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If these maturity limits are inadvertently exceeded at the time of a specific investment, the purchase does not need to be liquidated. The Finance Committee may alter the length of maturity and percentage of the portfolio based on anticipated timing of need and in accordance with this policy.

**End of Addendum B**

# MITCH Charter School

Code: DFAA  
Adopted: 7/17  
Orig. Code(s): EBBA

## Designated Funds

The Board “”adopts this policy to designate certain funds to support the financial sustainability and growth of MITCH Charter School and to determine contributions to and spending from these funds. The guidelines for investment of these funds are in the Investment Policy adopted by the Board.

### Board Designated Funds

The Board will establish the MITCH Charter School Operating Reserve Fund, Special Projects Fund and the Board-Designated Endowment Fund by board resolution.

#### A. MITCH Charter School Operating Reserve Fund

The purpose of the Operating Reserve is to fund short-term operating needs of MITCH Pursuant to Board action establishing the fund. The Operating Reserve has an initial funding goal of the Target Reserve Amount to support cash needs for expenses approved in MITCH’s annual operating budget. Any distribution from the Operating Reserve for expenses not approved in MITCH’s annual operating budget, including expenses related to program expansion, must be approved by the Board of Directors.

Transfers of funds from the Operating Reserve to the MITCH’s general operating account may be made as follows:

1. Transfers of funds in the amount of \$10,000 or less may be made to fund normal operating expenses with the approval of the executive director. Any such transfers will total no more than \$50,000 per calendar year in the aggregate and will be reported to the Board of Directors at the next board meeting following such transfer.
2. Transfers of funds in amounts more than \$10,000 may be made to fund normal operating expenses with the approval of both the executive director and Board chair. Any such transfers will total no more than \$50,000 per calendar quarter in the aggregate and will be reported to the Board of Directors at the next board meeting following such transfer.
3. Any distribution in excess of \$50,000 per calendar quarter requires approval of the Board of Directors.

#### B. MITCH Charter School Special Projects Fund

The purpose of the Special Projects Fund is to accumulate funds for projects approved by the Board that are not part of normal operations but are aligned with the mission and purpose of MITCH. Donor funds and funds raised through the fundraising program may be included in the Special Projects Fund. Funding requests for special projects or strategic initiatives not contemplated in the annual operating budget must be approved by the Board of Directors. To obtain such approval, the executive director will submit a request to the Board which will include the following information: a description of the project or initiative,

the anticipated duration of the project or initiative, the expected return on investment from the project or initiative, and a plan for monitoring and reporting to the Board regarding the performance of the project or initiative.

### **C. MITCH Charter School Endowment Fund**

The purpose of the Endowment Fund is to maintain financial viability of MITCH both in current operations and into the future. At the time the Board designates an Endowment Fund, the Board may set an initial funding goal for the fund. If a donor or donors want to contribute toward an endowment for the benefit of MITCH, the executive director will consult with legal counsel to establish such endowment so that the accumulation and spending of such donor-designated endowment complies with the specific requirements of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) (ORS 128.322).

The following general policies apply to the Endowment Fund (with specific policies considered at the time the endowment fund is established):

1. No withdrawals of principal or earnings (except as provided in 4 below) may be made from the Endowment Fund until the Endowment Fund reaches the initial goal set by the Board unless such withdrawal is approved by a vote of no less than two-thirds of the members of the Board of Directors.
2. Any allocation of public funds to the Endowment Fund will be accounted for and permitted by the terms of the Endowment Policy to be distributed on dissolution of MITCH or termination of the charter to the State Board of Education.
3. The Board will determine the allocation of funds to the Endowment Fund.
4. All designated bequests will be allocated as per the donor's intent.
5. There will be an annual payout from the Endowment Fund equal to an appropriate percentage of the fair market value of the fund as determined by the Board in consultation with its investment advisor at the end of each fiscal year (June 30) (the "Annual Distribution Amount"). The Annual Distribution Amount will be distributed in two equal installments in July and December of the following fiscal year. Each installment of the Annual Distribution Amount will be used for the purposes as the Board shall determine by policy or resolution.
6. Donor-restricted endowment funds and board-designated endowment funds are appropriately classified and disclosed according to Financial Accounting Standards Board standards and positions.
7. The Board of Directors will be responsible for defining strategies for the Board and staff to grow the Endowment Fund to its initial goal.
8. When the initial Endowment Fund goal is achieved, the Board of Directors will reassess this policy, including the purposes, adequacy and appropriate uses of the Operating Reserve and the Endowment Fund, and will make any revisions to this policy as the Board deems appropriate.

#### **D. Criteria for Distribution of Excess Cash and Process for Unplanned Cash Deficit**

If MITCH has a surplus at the end of a fiscal year (defined as revenues in excess of expenses, excluding unrealized gains/losses on investments and any future restricted commitments), such surplus will be allocated in accordance with the following criteria:

- First, to repay any outstanding amounts owed under any line of credit.
- Second, so long as the Operating Reserve is less than the Target Reserve Amount, then amounts are allocated to the Operating Reserve.
- Third, to fund Board designated special projects to the Special Project Fund and
- Fourth, when established, to the Board Designated Endowment Fund.

If MITCH has an unbudgeted deficit at the end of a fiscal year (defined as expenses in excess of revenue, excluding unrealized gains/losses on investments and any future restricted commitments) and the Operating Reserve is less than the Target Reserve Amount, the executive director will assess whether a plan is needed to replenish the Operating Reserve other than in accordance with this policy and will submit any such plan to the Board of Directors for approval.

END OF POLICY

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#### **Legal Reference(s):**

[ORS 128.305 – 128.336](#)

[ORS 338.105\(6\)](#)

[ORS 338.115\(2\)](#)

FASB FSP NO. FAS 117-1, Endowments of Not-for-Profit Organizations

Corrected 4/11/23

# MITCH Charter School

Code: DGA  
Adopted:

## Authorized Signatures

The Board will, at its annual organizational meeting, or at other times deemed necessary by the Board, authorize the executive director and the Board chair or Board treasurer to sign public charter school checks.

END OF POLICY

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### Legal Reference(s):

[ORS 338.115\(2\)](#)

Corrected 4/11/23

# MITCH Charter School

Code: DH  
Adopted:

## Loss Coverage

The Board and designated school employees are responsible to safeguard the school against loss regarding funds, fees, cash collections and inventory. The Board shall designate the school employees responsible as custodians of such items. The school shall purchase bond coverage or equivalent crime coverage in an amount determined by the Board, in consultation with the school's agent of record. The school will pay the cost of such coverage.

END OF POLICY

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### Legal Reference(s):

[ORS 328.441](#)

[ORS 332.525](#)

[ORS 338.115\(2\),\(13\)](#)

Corrected 4/11/23

# MITCH Charter School

Code: DIC  
Adopted:

## Financial Reports and Statements

The Board will receive monthly financial reports that include estimates of expenditures for the general fund in comparison to budget appropriations, actual receipts in comparison to budget estimates and the public charter school's overall cash condition. Supplementary reports on other funds or accounts will be furnished upon request of the Board or executive director.

The Board will receive a preaudit report from the public charter school's auditor recapping the year-end closure of financial statements prior to the annual audit.

Appropriate staff will be available at any Board meeting, upon the Board's request, to respond to questions and to present current financial information. The executive director will notify the Board at any time of substantial deviations in the anticipated revenues and/or expenditures.

END OF POLICY

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### Legal Reference(s):

[ORS 294.155](#)

[ORS 294.311](#)

[ORS Chapter 297](#)

[ORS 328.465](#)

[ORS 338.095\(2\)](#)

[OAR 162-010-0000 to -0330](#)

[OAR 162-040-0000 to -0160](#)

[OAR 581-023-0037](#)

OR. DEP'T OF EDUC, PROGRAM BUDGET AND ACCOUNTING MANUAL.

Corrected 4/11/23

# MITCH Charter School

Code: DID  
Adopted:

## Property Inventories

The public charter school will maintain a property inventory. This inventory will be updated regularly.

To update these records, the public charter school will keep current records of equipment disposed of and purchased.

END OF POLICY

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### Legal Reference(s):

[ORS 338.115\(2\)](#)

OR. DEP'T OF EDUC, PROGRAM BUDGET AND ACCOUNTING MANUAL.

Corrected 4/11/23



# MITCH Charter School

Code: DIE  
Adopted:

## Audits

An audit of all public charter school accounts will be made annually by an accountant selected by the Board from the roster of authorized municipal accountants maintained by the Oregon Board of Accountancy. The audit examination will be conducted in accordance with minimum auditing standards established by the Secretary of State.

A copy of the audit report will be presented to the Board. The executive director will submit a copy of the audit report to the school's sponsor and the Oregon Department of Education.

END OF POLICY

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### Legal Reference(s):

[ORS 294.155](#)

[ORS Chapter 297](#)

[ORS 327.137](#)

[ORS 328.465](#)

[ORS 338.095\(2\)](#)

[OAR 581-023-0037](#)

[OAR 581-026-0210](#)

Corrected 4/11/23

# MITCH Charter School

Code: DJ

Adopted:

## Purchasing

The function of school purchasing is to serve the educational program by providing the necessary supplies, equipment and services. Items commonly used will be standardized and be consistent with educational goals and in the interest of efficiency or economy.

The executive director or designee is appointed by the Board to serve as purchasing agent. The business manager will be responsible for developing and administering the public charter school's purchasing program.

No obligation may be incurred by any officer or employee of the Board unless that expenditure has been authorized in the budget, by Board action and/or Board policy. In all cases calling for the expenditure of public charter school money, except payroll, a designated form will be completed and submitted to the business manager, who will submit it to the executive director for approval.

No purchase will be authorized unless approved by the executive director. No bills will be approved for payment unless purchases were made with approval from the executive director.

The executive director is authorized to enter into and approve payment on contracts obligating public charter school funds not to exceed \$5,000 for products, materials, supplies, capital outlay and services that are within current budget appropriations. The Board shall approve all contracts that are service contracts that include the provision of labor performed by public charter school employees, such as custodial, food service and transportation services.

The executive director and business manager will review bills due and payable for the purchase of supplies and services to determine if they are within current budget appropriations. After review, the executive director will direct payment of the just claims against the public charter school. The executive director and business manager are responsible for the accuracy of all bills and vouchers.

No Board member, officer, employee or agent of this public charter school shall use or attempt to use their official position to obtain financial gain or for avoidance of financial detriment for themselves, a relative or a member of their household, or for any business with which the Board member, relative or member of household is associated. Acceptance of any gratuities, financial or otherwise, from any supplier of materials or services to the public charter school by any Board member, officer or employee of the public charter school is prohibited.

END OF POLICY

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### Legal Reference(s):

[ORS 244.040](#)

[ORS Chapters 279, 279A, 279B, 279C](#)

[ORS 294.311](#)

[ORS 328.441 - 328.470](#)

[ORS 338.115\(2\)](#)

[OAR 125-025-0040](#)

Corrected 4/11/23

# MITCH Charter School

Code: DJC

Adopted:

## Bidding Requirements

The Board is the Local Contract Review Board (LCRB) for the public charter school. All public contracts shall be invited in accordance with applicable competitive procurement provisions of the Oregon Revised Statutes and the adopted public contracting rules.

The Board, acting as its own LCRB, adopts the *Oregon Attorney General's Model Public Contract Rules*, Oregon Administrative Rule (OAR) Chapter 137, Divisions 046 through 049 in effect at the time this policy is adopted.

The public charter school shall procure the construction manager/general contractor services in accordance with model rules the Attorney General adopts under Oregon Revised Statute (ORS) 279A.065(3).

Additionally, the Board may include as part of its rules portions of the Oregon Department of Administrative Services rules governing Public Contract Exemptions, OAR Chapter 125, Divisions 246-249 in effect at the time this policy is adopted.

The Board may make the written findings required by law for exemptions from competitive bidding. Such findings shall be maintained by the public charter school and made available on request.

The public charter school shall review its rules each time the Attorney General adopts a modification of the model rules, as required by ORS 279A.065(6)(b), to determine whether any modifications need to be made to public charter school rules to ensure compliance with statutory changes. New rules, as necessary, shall be adopted by the Board. In the event it is unnecessary to adopt new rules, Board minutes will reflect that the review process was completed as required.

The Board, acting as the LCRB, may enact a resolution that authorizes the public charter school to designate a public improvement as a community benefit contract per the requirements included in ORS 279C.300 to 279C.470.

Procurements for services estimated to be in excess of \$250,000 shall go through the cost analysis and feasibility process described in ORS 279B.

END OF POLICY

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### Legal Reference(s):

ORS Chapters [279](#), [279A](#), [279B](#) and [ORS 338.115](#)

[OAR Chapter 125](#), Divisions 246-249

OR. DEP'T OF JUSTICE, OR. ATT'Y GENERAL'S MODEL PUBLIC CONTRACT RULES MANUAL.

Corrected 4/11/23

# MITCH Charter School

Code: DJC-AR  
Revised/Reviewed:

## Special Procurements and Exemptions from Competitive Bidding

### *SPECIAL PROCUREMENTS*

The public charter school shall submit a written request to the Board, acting as the Local Contract Review Board (LCRB), that describes the contracting procedure, the goods and services or class of goods and services that are the subject of the special procurement and circumstances that justify the use of a special procurement under the standards as follows: the special procurement is unlikely to encourage favoritism in the awarding of a public contract or to substantially diminish competition for public contracts and, (A) is reasonably expected to result in substantial cost savings to the public charter school or to the public, or (B) otherwise substantially promote the public interest in a matter that could not practicably be realized by complying with requirements that are applicable under Oregon Revised Statute (ORS) 279B.055, 279B.060, 279B.065, 279B.070 or under any related rules. Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055(4). If the public charter school intends to award a contract through special procurements that calls for competition among prospective contractors, the public charter school shall award the contract to the contractor it determines to be most advantageous to the public charter school. When the LCRB approves a class special procurement the public charter school may award contracts to acquire goods and services within the class of goods and services in accordance with the terms of the approval without making a subsequent request for a special procurement.

1. Brand Names or Products, “Or Equal,” Single Seller and Sole Source
  - a. The public charter school may purchase brand names or products from a single seller or sole source without competitive bidding subject to the limitations of this rule.
  - b. Solicitation specifications for public contracts of the public charter school shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections c. and d. of this rule.
  - c. The public charter school may specify a particular brand name or equal specification when the use of a brand name or equal specification is advantageous to the public charter school, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the public charter school.
    - (1) The public charter school is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final;
    - (2) The public charter school is not prohibited from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the public charter school;
    - (3) A brand name specification may be prepared and used only if the public charter school determines for a solicitation or class of solicitations that only the identified brand name specification will meet the needs of the public charter school based on one or more of the following written determinations:

- (a) The use of a brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; or
  - (b) Specification of the brand name, mark or product would result in cost savings to the public charter school; or
  - (c) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
  - (d) The efficient utilization of existing goods requires the acquisition of compatible goods and services.
- d. The public charter school may award a contract for goods or services without competition when the LCRB determines in writing that the goods or services, or the class of goods or services, are available from only one source. The determination of the source must be based upon written findings that shall include:
- (1) A brief description of the contract or contracts to be covered, including contemplated future purchases;
  - (2) Description of the product or service to be purchased; and
  - (2) The reasons the public charter school is seeking this procurement method, which shall include any of the following:
    - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services; or
    - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; or
    - (c) That the goods or services are for use in a pilot or an experimental project; or
    - (d) To the extent reasonably practical, the contracting agency shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.
- e. The public charter school may specify a product or service available from only one manufacturer but available through multiple sellers after complying with subsection c. above documenting the procurement file with the following information:
- (1) If the total purchase is over \$10,000 but does not exceed \$150,000, and a comparable product or service is not available under an existing Mandatory Use Contract, the public charter school must obtain informal competitive quotes, bids or proposals and document this process in the procurement file;
  - (2) If the purchase does not exceed \$150,000, and the supplies or services are not available under an existing price agreement for information technology with competing products or Mandatory Use Contract, the public charter school must first request and obtain prior written authorization from the LCRB to proceed with the acquisition.
- f. If the public charter school intends to make several purchases of brand name-specific supplies and services from a particular manufacturer or seller for a period not to exceed five years, the public charter school must so state this in the procurement file and in the solicitation document, if any, or a public notice of a solicitation. If the total purchase amount is estimated to exceed \$150,000, this shall be stated in the advertisement for bids or proposals.

## **Findings of Fact/Conclusion of Compliance with Law (OAR 125-247-0275)**

The public charter school shall submit a written request to the local contract review board that describes the contracting procedure, goods and services subject of the special procurement and the circumstances that justify the use of the special procurement.

- a. It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts and is reasonably expected to result in substantial cost savings to the public charter school which could not be realized under ORS 279B.055, 279B.060, 279B.065 or 279B.070 as required by ORS 279B.085(4).
- b. Public notice of the approval must be given in the same manner as provided in ORS 279B.055(4).
- c. This rule requires the public charter schools to make a good faith effort to determine that no other sources are available for the specified products.
- d. The public charter school maintains open lists from which vendors are contacted for quotations and utilizes electronic means of determining new vendors on an ongoing basis.
- e. The awarding of a contract as described in this special procurement should result in substantial cost savings by virtue of the ability to reduce solicitation costs when it is known that comparable products are not available, or when specifying another product solely to meet a competition requirement might lead to lower initial cost but longer lifetime cost.
- f. When the local review board approves a class special procurement the public charter school may award contracts to acquire goods and services within the class of goods and services in accordance with the terms of the approval without making a subsequent request for procurement.

### **2. Advertising Contracts, Purchase of**

- a. The public charter school may purchase advertising in any media, regardless of a dollar amount, without competitive bidding.
- b. The Board acting as the LCRB of the public charter school must use competitive methods whenever possible to achieve best value and must document in the procurement file the reasons why a competitive process was deemed impractical and the resulting contract must be in writing.
- c. If the anticipated purchase exceeds \$10,000 and a competitive method is used, the public charter school must post notice on the OregonBuys.gov.

## **Findings of Fact**

The public charter school traditionally purchases advertising in newspapers. The following findings relate primarily to newspapers and written publications; however, the public charter school may also purchase advertising for student activities or educational programs in other media, such as radio or television, where these findings apply:

- a. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves;
- b. Competition to furnish advertising space in daily newspapers of general, trade or business circulation in the vicinity of the public charter school is limited;
- c. Cost savings are difficult to quantify where the sources are unique and not interchangeable;
- d. Advertisements may be placed to satisfy legal notice or Board policy requirements;

- e. Other published advertisements or notices, such as routine public notices, personnel recruitment information, etc., are placed in one or more of the publications of general circulation in the local area and other publications, as appropriate;
- f. The communities served by the public charter school rely upon its use of the local daily newspaper as a central source of news and information regarding public charter school activities;
- g. It is unknown whether contracts for advertisements placed with radio, television or other broadcast media are going to result in cost savings if not placed for competitive bid or request for proposal (RFP). If possible savings could be obtained through competitive means, the public charter school would attempt to obtain competitive quotes or bids, as appropriate.

### **Conclusion of Compliance with Law**

Due to limited competition and unique nature of sources, it is unlikely that this class special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. Further, any contracts awarded under this class special procurement would result in a cost savings available to the public charter school where the public charter school can achieve volume savings through contracts for advertising with a particular media source, or otherwise substantially promote the public interest.

### 3. Advertising Contracts, Sale of

The public charter school may sell advertising for public charter school publications and activities, regardless of a dollar amount, without competitive bidding, including school newspapers, yearbooks, athletic programs, drama or music programs and the like.

### **Findings of Fact**

Sales of advertising for student activities are generally other fund revenues, where student groups solicit advertisements from local businesses to help with the cost of the activity itself. A common example is the sale of advertising in school newspapers and yearbooks. The circulation of the newspaper and yearbook is limited to the students, teachers, parents and interested members of the community associated with the activities of that particular school. Due to the limited circulation and audience, the businesses that participate by purchasing advertising do so partly in the spirit of good will. Any business is welcome to place an advertisement in the school newspaper or yearbook; all it needs to do is to contact any public charter school department which publishes one. The public charter school itself would not achieve any increased revenue to the General Fund by seeking competitive bids or proposals for such advertising. This holds true for other student activities, such as athletics, drama or music events and the like.

### **Conclusion of Compliance with Law**

These findings indicate that it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. Any business or individual who wishes to advertise in this manner may do so by simply contacting the student group responsible for the activity.

The sale of advertising for student activities such as school newspapers, yearbooks, athletic, drama or music programs would not benefit from competitive procurement. Such a requirement would place an unnecessary burden on the student group's activity and there is no financial advantage to the public charter school in doing so. Consequently, the cost savings test is not an issue.

#### 4. Equipment Repair and Overhaul

- a. The public charter school may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:
  - (1) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
  - (2) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and
  - (3) The purchase is made within the limits and pursuant to the methods in subsection b. of this rule.
- b. The following limitations apply to this rule:
  - (1) If the contract is less than or equal to \$150,000, the school or department shall submit in writing to the executive director the reasons why competitive bids or quotes are deemed to be impractical. The executive director will accordingly document in its procurement file and may enter directly into the contract;
  - (2) If the school or department official thinks the contract may exceed \$150,000, they shall submit in writing to the executive director the reasons why competitive bidding is deemed to be impractical and a description of the cost savings to be obtained by a special procurement. The executive director may prepare a specific request for the anticipated contract to be obtained through special procurement procedures to submit to the LCRB for approval.

#### **Findings of Fact**

- a. The need for equipment repair or overhaul cannot be anticipated by public charter school staff. If a piece of equipment is broken or not working properly, the public charter school incurs cost of downtime, possible replacement equipment rental fees, staff time and other inconveniences or liabilities to its programs.
- b. Generally, there are a limited number of vendors who are able to perform repair or overhaul on a particular piece of equipment because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source. Often, a piece of equipment will have a partial warranty in place which will guarantee some savings to the public charter school in the parts and/or labor needed to do the repair or overhaul. This warranty savings may only be achieved if the original manufacturer or provider of the equipment performs the necessary repair or overhaul.
- c. The dollar limits on the use of this special procurement procedure ensure that when the cost of the equipment repair or overhaul is expected to exceed \$150,000, the public charter school will either seek formal competitive bids or, if that is not practical or cost effective, obtain a specific special procurement procedure from the LCRB to proceed with the purchase of the needed repair or overhaul.



## **Conclusion of Compliance with Law**

It is unlikely that this special procurement procedure will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts because the dollar limits incorporated into this special procurement when the anticipated costs exceed \$150,000, insure the public charter school will seek formal competitive bids and proposals. If the formal process is not practical, the public charter school will obtain a specific exemption from the LCRB to proceed with the purchase of the needed repair or overhaul.

The awarding of public contracts under this special procurement will result in a cost savings to the public charter school, as required by ORS 279B.085, because the public charter school incurs direct and indirect costs from the moment equipment breaks down or becomes unusable. This special procurement only applies to equipment already owned by the public charter school and does not provide for the purchase of new equipment. The public charter school must be able to purchase necessary services and parts as quickly as possible in order to minimize equipment downtime and potential costs during that downtime.

### **5. Copyrighted Materials**

The public charter school may, without competitive bidding and regardless of a dollar amount, purchase copyrighted materials where there is only one known supplier available for such goods. Examples of copyrighted materials covered by this special procurement procedure may include, but are not necessarily limited to, newly adopted textbooks/instructional materials, workbooks, curriculum kits, reference materials, audio and visual media and non-mass-marketed software from a particular publisher or their designated distributor.

## **Findings of Fact**

- a. By their nature, copyrighted materials are protected for the use of a single owner. Copyrighted materials may not be duplicated by others without the copyright owner's permission or license. Copyrights are established and regulated under federal law.
- b. Often, copyrighted materials are produced by only one supplier who may be the owner of the copyright or their licensee. Textbooks/Instructional materials are examples of copyrighted materials that the public charter school purchases through a sole source. Textbooks/Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education. A textbook/instructional material adoption defines the various materials which the public charter school will purchase for use in its educational programs.

The public charter school purchases its textbooks/instructional materials through the Northwest Textbook Depository. This practice enables the regional textbook depository to purchase and warehouse textbooks/instructional materials in conformance with adoptions made in the states of their region. The result is that savings are achieved through the depository's combined purchases on behalf of members. Freight costs for individual public charter schools are reduced by the bulk purchases of the depository and the depository takes on the cost of stocking and warehousing enough to meet each members' needs.

The system of textbook/instructional materials distribution enables the public charter school to participate in the largest possible bulk purchasing activity of adopted textbooks/instructional materials in the region. This ensures a cost savings to the public charter school. A savings that would be jeopardized if the public charter school was to act as an individual purchaser.

### **Conclusion of Compliance with Law**

This special procurement will not encourage favoritism or substantially diminish competition in the awarding of public contracts. The production and distribution of copyrighted materials is controlled by the owner of the copyright and may only be permitted through a sole source. The public charter school has no control over this.

The awarding of contracts pursuant to this special procurement will result in a cost savings to the public charter school when it needs to purchase copyrighted materials and there is only one known supplier for such goods, or otherwise substantially promote the public interest.

#### **6. Product Prequalification**

- a. When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of product to be purchased, the public charter school may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or vendors in accordance with the following product prequalification procedure:
  - (1) The public charter school will make reasonable efforts to notify all known manufacturers and vendors of competing products of the public charter school's intent to compile a list of prequalified products. The notice will explain the opportunity manufacturers and vendors of competing products will have to apply to have their product(s) included on the public charter school's list of prequalified products. At its discretion, the public charter school may provide notice by advertisement in a trade paper of general statewide circulation or other appropriate trade publication; or instead of advertising, the public charter school may provide written notice to those manufacturers and vendors appearing on the appropriate list maintained by the public charter school; and
  - (2) The public charter school will accept manufacturer and vendor applications to include products in the public charter school's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or proposals for the type of product to be purchased, unless otherwise specified in the advertisement or in the public charter school's written notice.
- b. If the public charter school denies an application for including a product on a list of prequalified products, the public charter school shall promptly provide the applicant with a written notice of the denial and include the reason for denial. The applicant may submit a written appeal within seven calendar days to the executive director to request review and reconsideration of the denial.

### **Findings of Fact**

- a. There are occasions when the public charter school needs to establish a list of prequalified products before it invites bids or proposals to furnish the products. The public charter school

may have a specific performance or design need, but it is impractical for the public charter school to create a specification for the type of products to be purchased. An example is audiovisual equipment. There is a tremendous variety of audiovisual products offered in the market. The equipment technology is complex and constantly changing. It would be very burdensome and time consuming for the public charter school to generate nonbrand name, generic performance specifications for such equipment every time it wants to make a purchase.

Also, competition would be poorly served because bidders and proposers would not know in advance whether their offered product would meet the general specification substantially enough to be considered a responsive offer. The decision to make an award would be slow, because each product offered would have to be analyzed against the public charter school's specification. Slowdown in the award process affects both bidders, who are asked to hold their bids open until award is made, and public charter school programs, because staff are not able to order the equipment they need until the contract is awarded.

In this case, it might be more cost effective and efficient for the public charter school to prequalify products and establish a list of approved products before invitations to bid are sent out. The prequalification process can be done some time before the need for a new contract. Once the prequalified product list is established, the bidding and contract award process can go quickly and smoothly.

- b. A second occasion when prequalification of products will be useful is when the specific design or performance specifications for a product are so exacting that the public charter school must have time to carefully consider what is offered in the market that may or may not meet the specifications and, if necessary, reconsider its options before issuing an invitation to bid.
- c. This rule sets out a process of prequalification which requires the use of advertisement or other appropriate means to notify vendors of competing products of their opportunity to submit items for prequalification. The public charter school maintains vendor mailing lists which are open to all interested vendors. The public charter school uses these lists routinely to notify vendors of its intentions to prequalify products or to invite bids on products.
- d. This includes a 15-day time limit between the closure of a prequalification list and a related invitation to bid. This time factor ensures that vendors have a reasonable time to apply to include their products on a prequalified product list.
- e. Subsection b., of this rule provides vendors with an appeal process to follow if their application for prequalification is denied.

### **Conclusion of Compliance with Law**

Where prequalification of products is appropriate, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or diminish competition for such contracts. There are several safeguards in the rule to prevent this, including notice, advertising, time and appeal process requirements to ensure that vendors are given a fair and open opportunity to participate in the prequalification process.

The prequalification of products process is a time-consuming effort for the public charter school. It is not a shortcut procurement method. The public charter school would use this method only after balancing cost-saving considerations, such as the ability of the public charter school to create or generate nonbrand name generic specifications for types of products or the need for lengthy product

evaluation prior to a contract award. If the prequalification method is chosen, it will result in a cost savings to the public charter school because the normal method of product selection is too cumbersome and costly to pursue, or otherwise substantially promote the public interest.

7. Requirements Contracts (Blanket Purchase Orders, Price Agreements)<sup>1</sup>

- a. The executive director or designee, on behalf of the public charter school, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining public charter school requirements for volume discounts, standardization among school and departments and reducing lead time for ordering.
- b. The public charter school may enter into a requirements contract (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the contract is led by a competitive procurement process pursuant to the requirements of the public contracting code and these rules.
- c. Once a requirements contract is established, schools and departments may purchase the goods and services from the awarded contractor without first undertaking additional competitive solicitation.
- d. School and departments shall use requirements contracts established by the public charter school, unless otherwise specified in the contract, allowed by law or these rules or specifically authorized by the executive director.
- e. Under the authority of ORS 279A.025 and 279B.085, the public charter school may use the requirements contracts entered into by another Oregon public agency when:
  - (1) The original contract met the requirements of public contracting code; and
  - (2) The original contract allows other public agency usage of the contract; and
  - (3) The original public contracting agency concurs and this is documented by a written interagency agreement between the public charter school and the agency.
- f. The term of any public charter school requirements contract, including renewals, shall not exceed five years unless otherwise permitted under the public contracting code.

**Findings of Fact**

- a. This rule permits the public charter school to enter into a requirements contract, in which the vendor agrees to provide specified goods and services over the term of the contract at the bid price or discount rate. A requirements contract is useful when the purchase of the goods or services are routine and repetitive. For example, school, office, custodial and facilities maintenance supplies are customarily purchased through requirements contracts.
- b. Requirements contracts are a common method of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, obtaining volume discounts, standardizing usage among schools and departments and reducing lead time for ordering.

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<sup>1</sup> The OregonBuys.gov allows authorized members to utilize the state's price agreement/contracts to purchase goods and services. Authorized Oregon Cooperative Procurement Program (ORCPP) members can legally attach to a state price agreement and forego the competitive bid process. Access to hundreds of competitive price contracts for a wide variety of goods and services: vehicles, computers, furniture, copiers, fax machines, travel, pharmaceuticals, office products, etc., is available. Counties, cities, schools, municipalities or their public corporate entities having local governing authority, a United States governmental agency or American Indian tribe or agency are eligible to participate.

- c. The public charter school establishes a requirements contract as a result of open competitive bidding or RFP processes, unless otherwise permitted under the public contracting code.
- d. The public charter school limits the term of a requirements contract, including all renewal options, to a maximum of five years before competitive rebidding must be done, unless otherwise permitted under the public contracting code.
- e. The public charter school may use the requirements contracts established by other public agencies, subject to certain conditions of state law, Board policy and administrative regulation.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will result in favoritism in the awarding of public contracts or diminish competition for such contracts. The public charter school will only enter into requirements contracts which result from open competitive bidding processes. This condition applies also to the use of requirements contracts established by other public contracting agencies.

The awarding of public charter school requirements contracts will result in a cost savings to the public charter school, or otherwise substantially promote the public interest. It would be costly and inefficient to make routine, repetitive purchases of goods and services through individual transactions. Also, the guaranteed volume of a requirements contract allows the public charter school to get better prices from bidders.

#### **8. Used Personal Property or Equipment, Purchase<sup>2</sup>**

- a. Subject to the provisions of this rule, the public charter school may purchase used property or equipment without obtaining competitive bids or quotes, if the public charter school has determined that the purchase will result in cost savings to the public charter school and will not diminish competition or encourage favoritism. “Used personal property or equipment” is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as “used” at the time of public charter school purchase. Used personal property or equipment generally does not include property or equipment if the public charter school was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.
- b. For purchases of used personal property or equipment costing less than or equal to \$150,000, the public charter school shall, where feasible, obtain three competitive quotes unless the public charter school has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the public charter school and will not diminish competition or encourage favoritism.
- c. For purchases of used personal property or equipment totaling \$150,000 or more, the public charter school shall attempt to obtain three competitive quotes. The public charter school will keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

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<sup>2</sup> When contracting with another governmental entity, a public charter school has a statutory exception under ORS 279A.025. The public charter school may purchase state/federal surplus property through the Department of Administrative Services (DAS), State Services Division for Surplus Property. For more information on this program, contact DAS at 503-378-3014.

## Findings of Fact

- a. The public charter school is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the procurement of used property and equipment. The public charter school purchases used property and equipment when it meets the public charter school's needs and is cost effective. Considerations include type, quality, quantity and estimated useful life of the used item.
- b. Used equipment and property becomes available sporadically and without notice. Used equipment and property is generally sold on a first-come, first-served basis. When used property or equipment does become available, the public charter school must be able to respond immediately in order to obtain the property or equipment.
- c. Some types of property or equipment may not be readily available in the new goods market. The public charter school may have to look for used items to fill the need.
- d. Competition to provide used property and equipment may be very limited and inconsistent, depending on the type of product.
- e. The public charter school maintains vendor lists which include information on whether a vendor provides used property or equipment. These lists are open to all vendors.

## Conclusion of Compliance with Law

It is unlikely that this special procurement will encourage favoritism in the award of public contracts or substantially diminish competition for such contracts. The purchase of used property or equipment depends on an inconsistent, sporadic market. When a used item is available, there is often little competition available. Sources for used items of the type, quality and quantity required by the public charter school are inconsistent. This rule requires the public charter school to attempt to obtain and document quotes as appropriate to the dollar amount of the purchase. If the anticipated purchase is over \$150,000, the public charter school will advertise its need.

The use of this special procurement will result in a cost savings to the public charter school, or otherwise substantially promote the public interest. The cost of used equipment or property is generally substantially less than that of new. Savings of 20 percent to 50 percent are not uncommon. Used equipment can provide good value to the public charter school and help ensure the continuation of public charter school services and programs.

## 9. Information Technology Contracts

The public charter school may enter into a contract to acquire information technology hardware and software without competitive bidding subject to the following conditions:

- a. If the contract amount does not exceed \$150,000, the public charter school shall attempt to obtain three competitive quotes pursuant to the rules governing Intermediate Procurements. The public charter school shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the public charter school shall make a written record of the effort made to obtain the quotes or proposals.
- b. If the contract amount exceeds \$150,000, the public charter school shall determine and use the best procurement method, pursuant to the public contracting code and these rules, and shall solicit written proposals in accordance with the requirements of the *Attorney General's Model*

- Public Contract Rules.* The public charter school shall document the evaluation and award process, which will be part of the public record justifying the award;
- c. If the amount of the contract is estimated to exceed \$150,000, the public charter school shall provide proposers an opportunity to review the evaluation of their proposals before final selection is made.

### **Findings of Fact**

- a. Rapid changes in technology make it necessary for the public charter school to be able to purchase needed computer equipment quickly.
- b. Pricing for high-technology equipment also changes rapidly. It is frequently possible to take advantage of frequent price changes in the marketplace in the purchase of computer equipment.
- c. There is generally sufficient competition among vendors of information technology hardware and software for public charter school business.
- d. The public charter school will follow rules governing special procurements and obtain at least three informally solicited quotes for purchases less than or equal to \$150,000.
- e. If the public charter school requires a brand name or sole source product, the public charter school will follow its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements, to procure it.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the award of public charter school contracts or substantially diminish competition for public charter school contracts. The purchase of information technology hardware and software will be made in accordance with other competitive bidding rules contained in this administrative regulation. If the anticipated purchase is over \$150,000, the public charter school will advertise its need.

The use of this special procurement will result in a cost savings to the public charter school, or otherwise substantially promote the public interest. Competition will be encouraged at all dollar levels of purchase of information technology hardware and software. This rule gives the public charter school some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur.

## 10. Telecommunications Systems - Hardware and Software Contracts

- a. The public charter school may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:
  - (1) If the contract amount does not exceed \$150,000, the public charter school shall attempt to obtain three competitive quotes pursuant to the rules governing Intermediate Procurements. The public charter school shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the public charter school shall make a written record of the effort made to obtain the quotes or proposals.
  - (2) If the contract amount exceeds \$150,000, the public charter school shall determine and use the best procurement method, pursuant to the public contracting code and these rules and shall solicit written proposals in accordance with the requirements of Chapter 137,

Divisions 047 and 049 of the *Attorney General's Model Public Contract Rules*. The public charter school shall document the evaluation and award process, which will be part of the public record justifying the award.

- b. The telecommunications solicitation authorized in subsection 10.a.(1) of these rules shall:
  - (1) State the contractual requirements in the solicitation document;
  - (2) State the evaluation criteria to be applied in awarding the contract and the role of any evaluation committee. Criteria that would be used to identify the proposal that best meets the public charter school's needs may include, but are not limited to, cost, quality, service and support, compatibility, product or system reliability, vendor viability and financial stability, operating efficiency and expansion potential;
  - (3) State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition; and
  - (4) Be advertised in accordance with applicable provisions of the public contracting code.

### **Findings of Fact**

- a. Rapid changes in technology make it necessary for the public charter school to be able to purchase needed telecommunications hardware and software quickly.
- b. Since deregulation, there is generally adequate competition among vendors of telecommunication hardware and software to allow the public charter school to make competitive purchases.
- c. Pricing for telecommunications hardware and software also changes frequently. It is important for the public charter school to take advantage of price competition in the marketplace.
- d. The public charter school will follow procedures governing special procurements and document reasonable efforts to obtain at least three informally solicited quotes for purchases over \$10,000 but less than or equal to \$150,000.
- e. If a purchase of telecommunications hardware or software is expected to cost more than \$150,000, the public charter school will use a formal competitive bidding or proposal process in accordance with these rules and the *Attorney General's Model Public Contract Rules*.
- f. There are also times when the public charter school needs to purchase specific items that are compatible with current equipment. On these occasions, the public charter school will follow its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements, to make the purchase.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. The purchase of telecommunications hardware and software will be made in accordance with other competitive bidding rules herein. If the anticipated purchase is over \$150,000, the public charter school will advertise its need.

The use of this special procurement will result in a cost savings to the public charter school, or otherwise substantially promote the public interest. Competition will be encouraged at all dollar levels of purchase of telecommunications hardware and software. This rule gives the public charter school some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur.



## 11. Telecommunications Services

- a. The public charter school shall secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service performance requirements while minimizing administrative and service delivery costs. The public charter school will use routine purchasing procedures whenever possible, but if necessary, the public charter school can consider alternative procurement methods in accordance with this rule.

The public charter school will generally follow the normal competitive procurement processes in obtaining telecommunications services. This process will only be used if necessary where there is a lack of sufficient competition to furnish needed services.

- b. In determining the appropriate procurement method for telecommunications services, the public charter school shall comply with the requirements of ORS 291.038 and determine whether competition exists. In determining whether competition exists, the public charter school may consider the following factors:
  - (1) The extent to which alternative providers exist in the relevant geographic and service market; the greater area of Washington County;
  - (2) The extent to which alternative services offered are comparable or substitutable in technology, service provided and performance. For example, if the public charter school requires digital services, analog services are not comparable or substitutable. If the public charter school requires fiber optic technology, then copper, microwave or satellite transmission technology may not be comparable or substitutable;
  - (3) The extent to which alternative providers can respond to the public charter school's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting public charter school liability. For example, to be considered as the public charter school's long-distance service provider, any long-distance service vendor must be able to meet, support and interface with the public charter school's centralized automated billing requirements. The public charter school must document for the record, its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the public charter school may solicit the information either through informal telephone or written contacts or through a formal solicitation such as a RFP.
- c. If the public charter school determines that competition does not exist in the area for the relevant service, the public charter school may proceed to secure the service on a sole source basis, as described in the public charter school's rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements.

### **Findings of Fact**

- a. Since deregulation, there is generally adequate competition among vendors of telecommunication services to allow the public charter school to make competitive procurements.
- b. Since there is competition, price competition exists in the marketplace. It is important for the public charter school to take advantage of existing competition.
- c. The public charter school will follow its rules governing special procurements and document reasonable efforts to obtain at least three informally solicited quotes for purchases less than or

equal to \$150,000. The public charter school shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the public charter school shall make a written record of the effort made to obtain the quotes or proposals.

- d. If a purchase of service is expected to cost more than \$150,000, the public charter school will use a formal competitive bidding or proposal process in accordance with these rules and the *Attorney General's Model Public Contract Rules*.
- e. There may be occasions where there is limited competition that can furnish telecommunications services of the quality and extent required by public charter school operations. In such instances, the public charter school will follow this rule and also its rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 1. under Special Procurements, to procure needed services from the sole source.

### **Conclusion of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts. Routinely, the purchase of telecommunications services will be made in accordance with other competitive bidding rules contained in this administrative regulation. If the anticipated purchase is over \$150,000, the public charter school will advertise its need, issue a written solicitation document and invite written bids or proposals to be furnished in response.

There may be circumstances, however, where sufficient competition does not exist in the relevant geographic and service market area. In such cases, the public charter school will follow this rule in determining whether sufficient competition exists to make a competitive procurement.

The use of this special procurement will result in a cost savings to the public charter school, or otherwise substantially promote the public interest. Competition will be encouraged at all dollar levels of purchase of telecommunications hardware and software. This rule gives the public charter school some flexibility in selecting the method of competitive procurement but requires adherence to the rule on brand name or sole source acquisitions if those situations occur. The rule also states the steps to be taken to document situations where sufficient competition may not exist and a sole source purchase needs to be made.

#### 12. Hazardous Material Removal; Oil Cleanup

- a. The public charter school may enter into public contracts without competitive bidding, regardless of a dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted to the Oregon Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680. In exercising its authority under this exemption, the public charter school shall:
  - (1) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods and services;
  - (2) Make written findings describing the circumstances that require the cleanup or maintain a copy of the DEQ order for the cleanup;

- (3) Record the measures taken under a.1. of this rule to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor to whom award is made.
- b. The public charter school shall not contract pursuant to this special procurement in the absence of an order from the DEQ to clean up a site which includes a time limit that would not allow the public charter school to hire a contractor under normal competitive bidding procedures. Goods and services to perform other hazardous material removal or cleanup will be purchased in accordance with normal competitive bidding procedures as described in Board policy with this administrative regulation.

### **Findings of Fact**

- a. When the DEQ orders a public agency to remove or clean up hazardous material or oil, the public agency must respond within a very short time, which is stated in the DEQ order. This time period does not generally allow the agency to take the time necessary to solicit written bids or proposals for the work to be performed. The public charter school would be liable for any delay in responding to DEQ orders to perform hazardous material removal or cleanup.
- b. This exemption will not be used in those situations where there is no DEQ order to remedy the situation. Routine competitive procurement methods will be used where there is no DEQ order to act immediately. The public charter school maintains open lists of vendors who are interested in providing hazardous material removal and cleanup services. Whenever it needs hazardous material removal or disposal, the public charter school makes use of these lists to solicit quotes, bids or proposals as needed, in addition to advertising the procurement as required.
- c. Cost savings are achieved through this exemption because the public charter school can be liable for DEQ penalties and fines if it does not timely remove hazardous materials or oil as ordered. There is also serious risk in these situations, that property damage or personal injury could result if the public charter school is slow to act.

### **Conclusions of Compliance with Law**

It is unlikely that this special procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279B.085 (3)(a). If it is under DEQ order to act immediately, the public charter school will still attempt to obtain competitive quotes for the work to be performed as it has the ability and time to do so. Unless the public charter school is faced with the quasi-emergency situation of a DEQ order to remove or clean up hazardous waste or oil, it will follow normal competitive procedures to obtain these services.

The award of public contracts pursuant to this special procurement will result in a cost savings to the public charter school in these situations, as required by ORS 279B.085 (3)(b), because the public charter school must comply with the law and avoid and minimize risk to persons and property. Where possible, it will seek competitive quotes for the work to be performed and will award the contract to the lowest, responsive and responsible bidder.

### 13. Renegotiation of Existing Contracts with Incumbent Contractors

- a. The public charter school may amend or renegotiate contracts with existing vendors, service providers or other parties subject to the limitations of this rule.
- b. The public charter school has determined that value engineering, specialized expertise required, public safety and technical complexity, generally do not apply to this special procurement procedure.
- c. The renegotiated contract falls within a current special procurement procedure, but if not the LCRB must approve a separate special procurement.
- d. The public charter school may renegotiate certain terms, but they must not unreasonably alter the scope of the original contract.

#### **Findings of Fact**

- a. The LCRB may amend contracts when it is in the best interest of the public charter school. The executive director and/or other designee, acting on behalf of the LCRB, may renegotiate certain provisions, including:
  - (1) Price;
  - (2) Term;
  - (3) Delivery and shipping;
  - (4) Order size;
  - (5) Substitution;
  - (6) Warranties;
  - (7) Online ordering systems;
  - (8) Price adjustments;
  - (9) Product availability;
  - (10) Product quality;
  - (11) Reporting requirements; or
  - (12) Discounts.

Any contract amendment will be supported by legal consideration when necessary to validate the amended provision.

- b. The amended terms must be within a reasonable scope of the original contract, but not fundamentally alter the agreement or nature of goods or services. Public charter schools may, however, request functionally equivalent substitutes for goods or services in the original contract.
- c. The contract as a whole must be more favorable to the individual needs of the public charter school to justify renegotiation. Cost may be a factor in determining what is a favorable change to the original contract, but the public charter school may use factors other than cost that demonstrate that the amended contract is more favorable to the unique needs of the public charter school.

#### **Conclusion of Compliance with Law**

This special procurement will not encourage favoritism or substantially diminish competition in awarding public contracts because it already exists as a contract awarded in compliance with the public charter school's special procurement and public contracting code.

The awarding of contracts under this special procurement will result in cost savings to the public charter school when it needs to renew its original contract with vendors, service providers or other parties, or otherwise substantially promote the public interest.

### ***EXEMPTIONS FROM COMPETITIVE BIDDING***

All public contracts shall be based upon competitive bids or proposals, except the following:

1. Contracts which have been specifically exempted under ORS 279A.025 and 279C.335; and
2. Contracts covered by the class exemptions in the following set of rules developed pursuant to ORS 279C.335(2) and (5) and based on Oregon Administrative Rules, Chapter 137, Divisions 46 through 49.

The Board, acting as the LCRB for the public charter school, has made the findings required by ORS 279C.330, ORS 279C.335 and ORS 279C.345, and determined that awarding a contract under this exemption is unlikely to encourage favoritism or substantially diminish competition for the public contract and will likely result in a substantial cost savings and other substantial benefits to the public charter school.

In approving a finding under this section, the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

1. How many persons are available to bid;
2. The construction budget and the projected operating costs for the completed public improvements;
3. Public benefits that may result from granting the exemption;
4. Whether value engineering techniques may decrease the cost of the public improvement;
5. The cost and availability of specialized expertise that is necessary for the public improvement;
6. Any likely increases in public safety;
7. Whether granting the exemption may reduce risks to the public charter school or the public that are related to the public improvement;
8. Whether granting the exemption will affect the sources of funding for the public improvement;
9. Whether granting the exemption will better enable the public charter school to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
10. Whether granting the exemption will better enable the public charter school to address the size and technical complexity of the public improvement;
11. Whether the public improvements involve new construction or renovates or remodels an existing structure;

12. Whether the public improvement will be occupied or unoccupied during construction;
13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
14. Whether the public charter school has or has retained under contract, and will use public charter school personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the public charter school will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

Only these findings are required for each class or individual contract exemption, unless the LCRB specifically excludes a finding or includes an additional finding.

Promulgation of these exemptions can only occur after public notification and a public hearing to receive testimony pertaining to the draft exemptions and findings, pursuant to ORS 279C.335.

1. Brand Names or Products, “Or Equal,” Single Seller and Sole Source
  - a. The public charter school may purchase brand names or products from a single seller or sole source without competitive bidding subject to the limitations of this rule.
  - b. The public charter school has determined that value engineering, specialized expertise required, public safety and technical complexity, generally do not apply to this exemption.
  - c. Solicitation specifications for public contracts of the public charter school shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections d. and e. of this rule.
  - d. The public charter school may specify a particular brand name, make or product suffixed by “or equal,” “or approved equal,” “or equivalent,” “or approved equivalent” or similar language if there is no other practical method of specification after documenting the procurement file with the following:
    - (1) A brief description of the solicitation(s) to be covered, including contemplated future purchases;
    - (2) Description of the brand name, mark or product to be specified; and
    - (3) A brand name specification may be prepared and used only if the public charter school determines for a solicitation or class of solicitations that only the identified brand name specification will meet the needs of the public charter school based on one or more of the following written determinations:
      - (a) The use of the brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; or
      - (b) Specification of the brand name, mark or product would result in substantial cost savings to the public charter school; or
      - (c) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
      - (d) The efficient utilization of existing goods requires the acquisition of compatible goods and services.

- (4) The public charter school shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals.
- e. The public charter school may purchase a particular product or service available from only one source, after documenting the procurement file with the public charter school's findings of current market research to support the determination that the product is available from only one seller or source. The public charter school's findings shall include:
- (1) A brief description of the contract or contracts to be covered, including contemplated future purchases;
  - (2) Description of the product or service to be purchased; and
  - (3) The reasons the public charter school is seeking this procurement method, which shall include any of the following:
    - (a) That the efficient utilization of existing equipment, supplies or services requires the acquisition of compatible equipment, supplies or services; or
    - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available for only one source; or
    - (c) That the goods or services are for use in a pilot or an experimental project; or
    - (d) Other findings that support the conclusion that the goods or services are available from only one source.
  - (4) To the extent reasonably practical, the contracting agency shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.
- f. The public charter school may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the following information:
- (1) If the total purchase is over \$10,000 but does not exceed \$100,000, and a comparable product or service is not available under an existing state cooperative purchasing contract, competitive quotes shall be obtained by the public charter school and retained in the procurement file; or
  - (2) If the amount of the purchase exceeds \$100,000, the product or service shall be obtained through competitive bidding unless a specific exemption is granted by the LCRB.
- g. If the public charter school intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five years, the public charter school will so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$100,000, this shall be stated in the advertisement for bids or proposals.

### **Findings of Fact/Conclusion of Compliance with Law**

It is unlikely that this process will encourage favoritism in the award of public contracts or substantially diminish competition for such contracts, as required by ORS 279C.335(2)(a).

This class exemption applies only to contracts under a limited dollar amount, and then, only after efforts to obtain competitive quotes are made, or other methods have been employed to ensure that competitive means are used if available. The public charter school maintains open lists from which

vendors are contracted for quotations. In addition, as required by ORS 279C.335(2)(b) award of a public contract subject to the above described exemption should likely result in substantial cost savings or other substantial benefits to the public charter school by virtue of the ability to reduce solicitation costs when it is known that comparable products are not available, or when specifying another product solely to meet a competition requirement might lead to lower initial cost but longer lifetime cost.

## 2. Product Prequalification

- a. When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of product to be purchased, the public charter school may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or vendors in accordance with the following product prequalification procedure:
  - (1) The public charter school will make reasonable efforts to notify all known manufacturers and vendors of competing products of the public charter school's intent to compile a list of prequalified products. The notice will explain the opportunity manufacturers and vendors of competing products will have to apply to have their product(s) included on the public charter school's list of prequalified products. At its discretion, the public charter school may provide notice by advertisement in a trade paper of general statewide circulation or other appropriate trade publication; or instead of advertising, the public charter school may provide written notice to those manufacturers and vendors appearing on the appropriate list maintained by the public charter school; and
  - (2) The public charter school will accept manufacturer and vendor applications to include products in the public charter school's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or proposals for the type of product to be purchased, unless otherwise specified in the advertisement or in the public charter school's written notice.
- b. The public charter school has determined that special expertise required, generally, does not apply to this rule.
- c. If the public charter school denies an application for inclusion of a product on its list of prequalified products, the public charter school shall promptly provide the applicant with a written notice of the denial and include the reason for denial. The applicant may submit a written appeal within seven calendar days to the executive director or business manager to request review and reconsideration of the denial.

### **Findings of Fact**

- a. There are occasions when the public charter school needs to establish a list of prequalified products before it invites bids or proposals to furnish the products. The public charter school may have a specific performance or design need, but it is impractical for the public charter school to create a specification for the type of products to be purchased. An example is audiovisual equipment. There is a tremendous variety of audiovisual products offered in the market. The equipment technology is complex and constantly changing. It would be very burdensome and time consuming for the public charter school to generate nonbrand name, generic performance specifications for such equipment every time it wants to make a purchase.



Also, competition would be poorly served because bidders and proposers would not know in advance whether their offered product would meet the general specification substantially enough to be considered a responsive offer. The decision to make an award would be slow, because each product offered would have to be analyzed against the public charter school's specification. Slowdown in the award process affects both bidders, who are asked to hold their bids open until award is made, and public charter school programs, because staff are not able to order the equipment they need until the contract is awarded.

In this case, it might be more cost effective and efficient for the public charter school to prequalify products and establish a list of approved products before invitations to bid are sent out. The prequalification process can be done some time before the need for a new contract. Once the prequalified product list is established, the bidding and contract award process can go quickly and smoothly.

- b. A second occasion when prequalification of products will be useful is when the specific design or performance specifications for a product are so exacting that the public charter school must have time to carefully consider what is offered in the market that may or may not meet the specifications and, if necessary, reconsider its options before issuing an invitation to bid.
- c. This rule sets out a process of prequalification which requires the use of advertisement or other appropriate means to notify vendors of competing products of their opportunity to submit items for prequalification. The public charter school maintains vendor mailing lists which are open to all interested vendors. The public charter school uses these lists routinely to notify vendors of its intentions to prequalify products or to invite bids on products.
- d. This includes a 15-day time limit between the closure of a prequalification list and a related invitation to bid. This time factor ensures that vendors have a reasonable time to apply to include their products on a prequalified product list.
- e. Subsection c. of this rule provides vendors with an appeal process to follow if their application for prequalification is denied.

### **Conclusion of Compliance with Law**

Where prequalification of products is appropriate, it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or diminish competition for such contracts as required by ORS 279C.335(2)(a). There are several safeguards in the rule to prevent this, including notice, advertising, time and appeal process requirements to ensure that vendors are given a fair and open opportunity to participate in the prequalification process.

The prequalification of products process is a time-consuming effort for the public charter school. It is not a shortcut procurement method. The public charter school would use this method only after balancing cost-saving considerations, such as the ability of the public charter school to create or generate nonbrand name generic specifications for types of products or the need for lengthy product evaluation prior to a contract award. If the prequalification method is chosen, it will likely result in a substantial cost savings and other substantial benefits to the public charter school as required by ORS 279C.335(2)(b) because the normal method of product selection is too cumbersome and costly to pursue.

3. Requirements Contracts (Blanket Purchase Orders, Price)<sup>3</sup>
- a. The executive director or designee, on behalf of the public charter school, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining public charter school requirements for volume discounts, standardization among schools and departments and reducing lead time for ordering.
  - b. The public charter school has determined that value engineering, specialized expertise required and technical complexity, generally, do not apply to this rule.
  - c. The public charter school may enter into a requirements contract (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the contract is led by a competitive procurement process pursuant to the requirements of the public contracting code and these rules.
  - d. Once a requirements contract is established, schools and departments may purchase the goods and services from the awarded contractor without first undertaking additional competitive solicitation.
  - e. Schools and departments shall use requirements contracts established by the public charter school, unless otherwise specified in the contract, allowed by law or these rules or specifically authorized by the executive director.
  - f. Under the authority of ORS 279A.025 and 279C.335, the public charter school may use the requirements contracts entered into by another Oregon public agency when:
    - (1) The original contract met the requirements of the public contracting code; and
    - (2) The original contract allows other public agency usage of the contract; and
    - (3) The original public contracting agency concurs and this is documented by a written interagency agreement between the public charter school and the agency.
  - g. The term of any public charter school requirements contract, including renewals, shall not exceed five years unless otherwise exempted pursuant to ORS 279C.335.

### **Findings of Fact**

- a. This rule permits the public charter school to enter into requirements contracts, in which the vendor agrees to provide specified goods and services over the term of the contract at the bid price or discount rate. A requirements contract is useful when the purchase of the goods or services are routine and repetitive. For example, school, building, office, custodial and facilities maintenance supplies are customarily purchased through requirements contracts.
- b. Requirements contracts are a common method of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, obtaining volume discounts, standardizing usage among schools, buildings and departments and reducing lead time for ordering.
- c. The public charter school establishes requirements contracts as a result of open competitive bidding or RFP processes, unless otherwise exempted.

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<sup>3</sup> The OregonBuys.gov allows authorized members to utilize the state's price agreement/contracts to purchase goods and services. Authorized ORCPP members can legally attach to a state price agreement and forego the competitive bid process. Access to hundreds of competitive price contracts for a wide variety of goods and services: vehicles, computers, furniture, copiers, fax machines, travel, pharmaceuticals, office products, etc., is available.

- d. The public charter school limits the term of a requirements contract, including all renewal options, to a maximum of five years before competitive rebidding must be done, unless otherwise exempted.
- e. The public charter school may use the requirements contracts established by other public agencies, subject to certain conditions of state law, Board policy and administrative regulation.

### **Conclusion of Compliance with Law**

It is unlikely that this exemption will result in favoritism in the awarding of public contracts or diminish competition for such contracts, as required by ORS 279C.335(2)(a). The public charter school will only enter into requirements contracts which result from open competitive bidding processes. This condition applies also to the use of requirements contracts established by other public contracting agencies.

The awarding of public charter school requirements contracts will likely result in a substantial cost savings and other substantial benefits to the public charter school, as required by ORS 279C.335 (2)(b). It would be costly and inefficient to make routine, repetitive purchases of goods and services through individual transactions. Also, the guaranteed volume of a requirements contract allows the public charter school to get better prices from bidders.

#### 4. Waiver of Bid Security Requirements (Public Improvement Contracts under \$100,000)

The LCRB may, at its discretion, waive the bid security requirements of ORS 279C.390, if the amount of the contract for the public improvement is less than \$100,000. Although the bid security requirements of ORS 279C.390 are waived for public improvement contracts under \$100,000, the public charter school may impose a bid or quote security requirements for projects under \$100,000, when deemed to be in the best interest of the public charter school.

### **Findings of Fact/Conclusion of Compliance with Law**

This rule allows the LCRB to waive bid security requirements for certain public improvement contracts. Waiver of the bid security is provided for by statute without a requirement for findings.

#### 5. Waiver of Performance and Payment Security Requirements (Public Improvement Contracts under \$100,000)

The LCRB may, at its discretion, waive the performance/payment security requirements of ORS 279C.390 if the amount of the contract for the public improvement is less than \$100,000. Although the performance/payment security requirements of ORS 279C.390 are waived for public improvement contracts less than \$100,000, the public charter school may impose a performance/payment security requirement for projects less than \$100,000 when deemed to be in the best interest of the public charter school.

### **Findings of Fact/Conclusion of Compliance with Law**

This rule allows the LCRB to waive performance/payment security requirements for certain public improvement contracts. Waiver of the performance/payment security is provided for by statute without a requirement for findings.

## 6. Projects with Complex Systems or Components

- a. For contracts for public improvements with significant components that are inherently complex and are also complex to procure through competitive bid, the public charter school may, at its discretion, use RFP competitive procurement methods subject to the conditions described in ORS 279C.400 and conditions enumerated in this exemption.
- b. Definitions. For purposes of this exemption only: “Complex Systems” are defined as those systems which incorporate the procurement of materials or other components which are difficult, if not impossible, to create in an “equal” specifications basis for competitive bid. Examples of such systems include but are not limited to, contracts for supplying and installing computerized controls for building heating, venting, air conditioning systems; and contracts for artificial surface outdoor multipurpose athletic fields. “Significant” is intended to mean something more than de minimis, but not necessarily the majority of the project as determined by cost.

### **Finding of Fact/Conclusion of Compliance with the Law**

It is unlikely that this exemption will encourage favoritism in the awarding of the public contracts or substantially diminish competition for such contracts as required by ORS 279C.335(2)(a). Contracts for public improvements occasionally incorporate the procurement of systems, materials, or other components (complex systems) for which it is extremely difficult to design bid specifications. In these situations, utilization of a RFP process where each of the systems can be evaluated utilizing a number of factors, in addition to price, will likely result in substantial cost savings and other substantial benefits to the public charter school as required by ORS 279C.335(2)(b).

The ORS 279C.400 enumerates how RFP’s are to be used if authorized by the LCRB. This criteria, ensures that competitive means will be used and selection will be fair and impartial. As a result, it is unlikely that this process will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279C.335(2)(a). The awarding of contracts pursuant to this process will result in optimal value to the public charter school based on selection by the public charter school of the best competitive proposal that meets the stated evaluative criteria.

This class exemption is intended to be used for the types of procurements describe in the findings, where the specific system, materials or components represent a significant portion of the project. This class exemption is not intended to be used for construction manager/general contractor (CM/GC) projects or other methods of alternative procurement unless these projects meet the requirements of this class exemption. The CM/GC and others, not meeting the requirements of this class exemption, may still be procured by RFP, provided that a project or contract specific exemption is promulgated by the LCRB.

Corrected 4/11/23

# MITCH Charter School

Code: DLC  
Adopted:

## Expense Reimbursements

The public charter school will reimburse employees for authorized expenses incurred for professional growth and/or job requirements in accordance with administrative regulations developed by the executive director and consistent with Internal Revenue Service requirements.

END OF POLICY

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### Legal Reference(s):

[ORS 294.155](#)

[ORS 338.115\(2\)](#)

[OAR 581-022-2660](#)

I.R.C. § 162 (2006); Business Expenses, 26 C.F.R. 1.162-1.

INTERNAL REVENUE SERVICE, PUBLICATION 463: TRAVEL, ENTERTAINMENT, GIFT AND CAR EXPENSES.

Corrected 4/11/23

# MITCH Charter School

Code: DN  
Adopted: 7/17  
Orig. Code(s): DN

## Disposal of School Property

The executive director will determine when any equipment, material, or other property is no longer useful for the school’s current or future use.

For any equipment, material or other property with a value of \$1,000 (~~one thousand~~) or less, the executive director may dispose of this property in a manner determined by the executive director to be in the best interest of ~~MITCH Charter School~~ the school without ~~Board of directors~~ approval. The executive director will follow ~~MITCH’s Conflict of Interest Policies~~ the school’s ethics policies.

The executive director will report to the ~~Board of Directors~~ any equipment, material or other property valued at \$1,001 (~~one thousand and one~~) or more and no longer useful for ~~MITCH’s~~ the school’s current or future use. The report will include a description of whether property was purchased or acquired with federal grant funds, other grant funds or donor restricted funds.

For any equipment, material or other property that was purchased from federal grant funds with a current per unit value of:

1. Less than \$5,000, such equipment may be disposed of as provided in this policy;
2. More than \$5,000, shall not be disposed of without consulting the federal grant policy to assure proper treatment of disposal.

For any equipment, material or other property subject to donor restrictions, or purchased with funds from a grant, the ~~Board of directors~~ will determine the effects of such restrictions or grant on the disposal of property.

The ~~Board of directors~~ may authorize the executive director to dispose of any equipment no longer useful for ~~MITCH’s~~ the school’s current or future use. Disposal may be by donation to a 501(c)(3) organization, school, school district, government agency or other tax-exempt organization with an educational and/or charitable purpose. Disposal may also be by sale with the proceeds to be used by ~~MITCH~~ the school. Any disposal of property is subject to the ~~Conflict of Interest Policies~~ school’s ethics policies.

END OF POLICY

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### Legal Reference(s):

<a href="#">ORS 279B.055</a>	<a href="#">ORS 332.155</a>	<a href="#">ORS 338.115(2)</a>
<a href="#">ORS Chapters 279A, 279B and 279C</a>	<a href="#">ORS 338.105(6)</a>	

EDUCATION, TITLE 34 C.F.R. PART 80 § 80.32(e).

Corrected 4/11/23