

Charter School Procurement

This non-regulatory guidance addresses questions the Charter School Division has received regarding the procurement of supplies and the hiring of personnel by new charter schools. These guidelines do not contain all of the information that charter schools need to comply with the procurement requirements, but are intended to provide general guidance on how to proceed with procurement and hiring decisions.

What steps should a charter school take to begin the procurement and hiring process?

The charter school must first establish a governing body as set forth in the school's charter and in compliance with New Mexico law before attempting to procure supplies and hiring personnel for the school. The governing body must avoid any conflicts of interest in its efforts to begin the procurement process.

How does the governing body of a charter school comply with procurement process requirements?

The governing body must develop written procurement procedures which maximize fair and open competition for the procurement of goods and services. All procurement processes must allow for advertising of services or contracts, open bidding procedures or request for proposals, arms-length bargaining, and other appropriate steps of the procurement process so that all entities or persons are afforded the same opportunity to provide contracts for goods or services. These procedures should be developed and approved by the governing body before it attempts to procure goods and services or hire personnel. The procurement procedures must satisfy state and federal law.

What are the rules governing “conflicts of interest” in the administration of federal and state funds?

Charter schools must avoid apparent and actual conflicts of interest when administering state and federal funds. The school must comply with conflict of interest provisions identified in the New Mexico Procurement Code, Section 13-1-128 et seq. NMSA 1978 and the Prohibited Sales Act, Section 22-21-1 et seq. NMSA 1978

Federal regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family member; and (b) the person is a public official or has a family or business relationship with the grantee. Section 75.525(b) provides further that a person may not participate in a project to use his or her position for a purpose that is – or gives the appearance of being – motivated by a desire for a private or financial

gain for that person or for others. 34 CFR 75.525. The federal regulations also require grantees and subgrantees to maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts at 34 CFR 80.36.

How does the governing body of a charter school comply with “conflict of interest” requirements?

A governing body must develop written standards of conduct which satisfy state and federal law regarding conflicts of interest. The conflict of interest policy must clearly set forth the method by which a founder, governing body member, or any person serving in an official capacity with the school will be excluded from the hiring or contracting process when he or she is an applicant or a bidder for a contract. The policy must also provide that no governing body member, employee, officer or agent of the charter school shall participate in selection, or in the award or administration of a contract when: (1) the governing body member, employee, officer or agent (2) any member of their immediate family (3) his or her partner, or (4) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award of the contract.

Can the founders of a charter school be employed by the charter school they helped to develop?

The founders of a charter school are often the primary sources of the concepts, methodologies, and philosophies that underlie a charter school application. In this case, it is reasonable to expect that the founders would be involved in the planning, implementation and operation of the school in order to assure that the approved charter is correctly and effectively executed. However, the relationship of an individual to a charter school as its founder does not exempt that person, those persons or the school from compliance with state and federal procurement and conflict of interest requirements or from generally accepted standards of ethical practice in the conduct of public business. Founders may not participate in governing board decisions on hiring or contracts if they are applicants for employment or bidders on a contract.

A pre-existing preference for the hiring of or contracting with a particular individual such as a charter school founder based on his or her particular knowledge, experience and understanding of the charter school’s mission and methods cannot be exercised as a pre-existing prejudice that would exclude other potential applicants or bidders from the procurement process. In every case, including cases involving charter school founders, the complete procurement process must be followed.