Latin American Youth Center  
PROCUREMENT POLICY (Federal funds)

RATIONALE

On December 26, 2013, the Federal Office of Management and Budget (OMB) issued final guidance on administrative requirements, cost principles, and audit requirement for Federal awards (Uniform Grant Guidance). This guidance superseded requirements from OMB Circulars A-21, A-87, A-110, and A-122 as well as Circulars A-89, A-102, and A-133. The new Uniform Guidance is effective for fiscal years beginning after December 26, 2014 or for new awards and amendments to existing awards to add incremental funding after December 26, 2014. The thresholds for micro-purchases and small purchases, discussed in more detail below, reflect the increased thresholds referenced in Memo M-18-18, Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance.

The Uniform Guidance requires a high level of formal documentation to meet the procurement standards, beginning with required organizational policies and procedures surrounding the procurement process. All direct procurements made by Latin American Youth Center (LAYC) involving the expenditure of Federal funds will be made in accordance with the following procurement standards. LAYC is not required to follow these specific procurement policies for the procurement of any goods or services that are not directly paid for with Federal funds.

All procurement transactions, regardless of method or dollar value, must maximize open and free competition consistent with the standards of 2 CFR Sections 200.317 through 200.326. LAYC shall not engage in procurement practices that may be considered arbitrary or restrictive.

COMPETITION

Notwithstanding any below guidance to the contrary, all procurement transactions must be conducted in a manner that provides full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements.

Some examples of situations considered to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business with LAYC;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Executing noncompetitive contracts with consultants that are on retainer contracts;
- Specifying only a “brand name” product to be offered; and
- Any arbitrary action in the procurement process.
METHODS FOR PROCUREMENT

General Guidelines
Procurements shall be made using one of the following methods: (a) procurement by micro-purchases, (b) procurement by small purchase procedures, (c) procurement by competitive sealed bids, (d) procurement by competitive proposals, or (e) procurement by non-competitive proposals and shall be made in accordance with procedures set forth at 2 CFR § 200.318, General Procurement Standards.

Regardless of the procurement method being used, bids will be accepted only from those contractors who have a proven record of an ability to successfully complete the scope of work being bid. References should be requested along with the contractor’s bid proposal. Any contractors submitting a bid must produce (along with his/her bid documents) written proof of liability insurance and worker’s compensation coverage. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources in awarding contracts.

In addition, all solicitations must contain a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description must not contain features that unduly restrict competition. All solicitations must identify all requirements that the bidders must fulfill and all other factors that will be used by LAYC in evaluating bids or proposals. Finally, LAYC must ensure that all solicitations include enough qualified sources to ensure maximum open and free competition.

1. Micro-purchases
Procurement by micro-purchases is the acquisition of supplies or services that cost, in aggregate, no more than $10,000. Micro-purchases may be awarded without soliciting competitive bids if LAYC considers the price to be reasonable.

2. Small Purchases
Small Purchases are defined as relatively simple and informal procurement methods for securing services, supplies, or other property that cost no more than $250,000. When making small purchases, price or rate quotations must be obtained from an adequate number of qualified sources. As a general rule, a minimum of three bids should be obtained and documented in conjunction with small purchases.

3. Competitive Sealed Bids
When making acquisitions using competitive sealed bids, bids must be publicly solicited and a firm fixed price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid is the lowest in price while conforming to all material terms and conditions of the solicitation. The competitive sealed bid method is the preferred method of procuring construction, if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made largely on the basis of price.

In addition to the above, the following requirements apply:
- Bids must be solicited from a sufficient number of known suppliers who are given adequate response time prior to the date set for opening the bids;
- The invitations for bids must accurately and comprehensively define the items or services in order for the bidder to properly respond;
- All bids should be opened at the time and place identified in the invitation for bids;
- A firm fixed price contract will be made in writing to the lowest responsive and responsible bidder; and
- Any or all bids may be rejected if there is a sound documented reason for doing so.

4. Competitive Proposals
This procurement technique is generally used when more than one source submits an offer and either a fixed price or cost-reimbursement contract is awarded. When the competitive proposal method is used, the following requirements apply:

- Requests for proposals (RFP) must be publicized and identify all evaluation factors and their relative importance;
- Proposals must be solicited from an adequate number of qualified sources; for purposes of this policy, three proposals is generally deemed to be adequate;
- LAYC must have a documented method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- In the event that LAYC is procuring architectural/engineering professional services, the most qualified competitor would be selected subject to negotiation of fair and reasonable compensation.

5. Noncompetitive Proposals
Noncompetitive negotiations may be used when one or more of the following circumstances apply:

- The item being procured is available only from a single source;
- The public need or emergency nature of the procurement will not permit a delay resulting from a competitive solicitation;
- The Federal awarding agency expressly authorizes noncompetitive proposals in response to a written request from LAYC; or
- After solicitation of a number of sources, competition is determined to be inadequate.

In instances where a contract is awarded using noncompetitive negotiations, LAYC must clearly document its position and rationale for doing so.

UNNECESSARY OR DUPLICATIVE ITEMS

LAYC must avoid the acquisition of unnecessary or duplicative items. When appropriate, an analysis of lease vs. purchase alternatives should be made.
CONTRACTS

Generally, all procurement transactions in excess of $10,000 will be memorialized and supported by a written contract. Where it is not feasible, or it is impractical to prepare a contract, a written finding to this effect will be prepared and some form of documentation regarding the transaction will also be prepared. All contracts will contain language, which allows LAYC the opportunity to cancel any contract for cause. Examples of cause include (but are not limited to) demonstrated lack of ability to perform the work specified, unwillingness to complete the work in a timely fashion, cancellation of liability insurance or worker’s compensation by the contractor, failure to pay suppliers or workers, unsafe working conditions caused by the contractor, failure to comply with Davis-Bacon wage laws (where applicable), failure to keep accurate and timely records of the job, or failure to make those records available to LAYC (on request) or any other documented matter which could cause a hardship for LAYC if a claim should arise or the work not be completed on schedule at the specified cost.

In addition to other provisions that may be required by the Federal awarding agency, all contracts made by LAYC under any Federal award must contain the following provisions, as applicable:

- Contracts for more than $250,000 (the current threshold for small purchases) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate;
- Contracts for more than $10,000 must address termination for cause and for convenience by LAYC, including the manner in which the termination will be affected and the basis for settlement;
- All contracts that meet the definition of “federally assisted construction contract” must include the equal opportunity clause provided under 41 CFR 60-1.4(b).
- In the unlikely event that LAYC awards a prime construction contract in excess of $2,000, the contract must include a provision for compliance with the Davis-Bacon Act;
- All contracts in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704. In short, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours; work in excess of the standard work week is permissible only if the worker is compensated at a rate of at least one and half times the basic rate of pay for all hours worked in excess of 40. In addition, no laborer or mechanic may be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous;
- Contracts and subgrants in excess of $150,000 must contain a provision that requires the awardee to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act, as amended. Violations must be reported to the Federal awarding agency and to the EPA;
- Contractors that apply or bid for an award exceeding $100,000 must certify that it has not and will not used Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or other award; and, finally,
- The contractor or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements,” as applicable.
Debarment and Suspension
A contract or subgrant must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by Federal agencies, as well as parties declared ineligible under statutory or regulatory authority. LAYC must confirm that all new contractors, consultants, and subrecipients are not listed in SAM Exclusions. In addition, the contractor must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

DOCUMENTATION
All source documents supporting any given transaction (receipts, purchase orders, invoices, RFP/RFQ data and bid materials) will be retained and filed in an appropriate manner. Where feasible, source documents pertinent to each individual procurement action shall be separately filed and maintained. Where it is not feasible to maintain individual procurement files, source documents will be filed and maintained in a reasonable manner (examples include chronologically, by vendor, by type of procurement, etc.). Whatever form of documentation and filing is employed, the purpose of this section is to ensure that a clear and consistent audit trail is established. At a minimum, source document data must be sufficient to establish the basis for selection or rejection, basis for cost (including the establishment of reasonableness of cost), rationale for method of procurement and contract type, and basis for payment.

To facilitate this documentation requirement, a Vendor Selection Form is attached to this Policy and Procedure as an Appendix. This form should be completed for all acquisitions/procurement actions in excess of $3,000 and should be filed along with the relevant procurement documents mentioned above.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
All necessary affirmative steps must be taken to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. These affirmative steps include, but are not limited to, the following:

- Placing qualified small and minority businesses and women’s business enterprises on LAYC’S solicitation lists;
- Ensuring that LAYC solicits small and minority businesses and women’s business enterprises whenever they are potential sources;
- When economically feasible, dividing total project requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;
- Using the services and assistance, when practical, of organizations such as the Small Business Administration and the Minority Business Development Agency; and
- Requiring contractors, if subcontracts are to be let, to take the above affirmative steps.
CODE OF CONDUCT

Conflict of Interest
No employee, officer, or agent of LAYC may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. A conflict of interest occurs when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties identified above, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. In the event such a conflict of interest, real or apparent, exists, the LAYC employee, officer, or agent must recuse him- or herself from the decision-making process.

Acceptance of Gratuities
No LAYC employee, officer, or agent shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, subcontractors or potential subcontractors.

Disciplinary Actions
Any LAYC employee, officer, or agent who knowingly and deliberately violates the provisions of this Code of Conduct will be open to civil suit by LAYC without the legal protection of LAYC. Furthermore, such a violation of these procurement standards by an LAYC employee is grounds for dismissal.

Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with LAYC.

Adopted by the LAYC this ___ day of ________________ , 2019.

__________________________________________  ________________________________
(NAME)                                           (TITLE)
APPENDIX

LAYC VENDOR SELECTION FORM

- This form must be used to document the selection of vendors for all purchases of $10,000 or more.
- Section I must always be completed in entirety.
- Procurements of $10,000 and over require a price or rate quotation from at least three qualified sources.
- If procurement is made through a noncompetitive process, Section III below must be completed and additional documentation and rationale must be attached to this Form.

Section I. Basic Information: Complete for all procurements of $10,000 and over:

Source of Funds (Federal, Unrestricted, etc.): __________________________________________

Purpose of Procurement and Brief Description of Goods or Services Procured:

___________________________________________________________________________________

Vendor Selected: ________________________ Price: ________________________

Vendors Rejected: ________________________________________________________________

Section II. Competitive Selection: Record quotations below, and attach copies of any RFQs/RFPs and bids/quotations to this Vendor Selection Form:

Vendor A: ___________________________________________ Price: ________________________

Vendor B: ___________________________________________ Price: ________________________

Vendor C: ___________________________________________ Price: ________________________

Section III: Sole Source Procurement: Choose one or more reasons below and attach a written explanation supporting the reason(s) chosen.

☐ At least three quotations/proposals were requested and only one response was received

☐ Unique or prior experience, expertise, or key personnel; only source capable of meeting requirements

☐ Extreme Urgency – Insufficient time to conduct a competitive source selection due to the extreme urgency of the requirement (nature of urgency must be fully documented in file)
Expressly authorized by Federal awarding agency in response to LAYC’s written request (attach request and authorization to this Form)

Section IV: Signatures: Program Director is responsible for obtaining signatures.

Program Director (required):

________________________________________________________________________
Printed Name/Signature/Date

Chief Financial Officer (required for ≥ $10,000):

________________________________________________________________________
Printed Name/Signature/Date

CEO (required for ≥ $250,000):

________________________________________________________________________
Printed Name/Signature/Date