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All purchases of equipment, materials and supplies will be made in accordance with all applicable laws and regulations, including [Chapter 143 Article 8 of the North Carolina General Statutes](#), CFR §200.318(a), Board policy and any school purchasing procedures. All employees involved in purchasing are expected to be familiar with these requirements.

The School Director or Designee will ensure that written specifications for desired products are descriptive, clear and incorporate the quality requirements and service needs of Brevard Academy: A Challenge Foundation Academy (BA-CFA). There is no minimum number of bids, proposals or quotes required for the purchase of apparatus, goods, supplies and equipment (whether formally or informally bid); however, the Board encourages the School Director or Designee to obtain at least two (2) bids, proposals or quotes when feasible.

Except as otherwise required by law or specified by the Board, the Board delegates to the director the authority to award contracts for the purchase of equipment, material and supplies, involving amounts up to \$1,500. Any purchases or contracts involving expenditures greater than this amount must be approved by the Board. The School Director or Designee and any additional staff deemed appropriate by the director will review submissions of bids, proposals or quotes to determine if they are responsive to the BA-CFA specifications, and will make recommendations to the director. The director will award the contract based upon such recommendations or will make a recommendation to the Board for award of the contract by the Board.

Because BA-CFA is a small charter school only an authorized purchaser may purchase on behalf of the school. The School Director or Designee must approve all purchases. The School Director or Designee may approve small local and state purchases up to \$1,500 per the school's budget.

Equipment, materials and supplies are purchased in accordance with the following requirements

**A.FORMAL BIDS (\$90,000 OR MORE)**

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The purchase of apparatus, supplies, materials or equipment for expenditures of \$90,000 or more must be secured through the competitive bid process governed by [G.S. 143-129](#). The School Director or Designee, in consultation with the Board of Directors is authorized to determine the best method for formally bidding a product or, as appropriate, utilizing one of the exceptions to formal bidding as provided below in section E. The Board of Directors will oversee the use of any purchasing method and will ensure that all state requirements are met, including advertisement, sealed bids, maintaining records and public opening of bids. The Board of Directors authorizes the use of newspaper advertisement, electronic advertisement or both for formal bids; however, the School Director or Designee has the authority to determine which method will be used for a specific purchase or categories of purchases.

Awards will be made to the lowest responsible bidder(s) whose bid/proposal meets the requirements and criteria set forth by BA-CFA, taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.

To be eligible for an award of a contract subject to [G.S. 143-129](#), the contractor and its subcontractors, if any, must demonstrate compliance with all applicable provisions of [G.S. Chapter 64, Article 2](#), including the responsibility to use E-Verify. All contracts awarded must be in writing.

The Board of Directors permits the use of the following processes for contracts that require formal bidding.

1. Competitive Sealed Bids – A competitive sealed bid (or invitation to bid) may be used to request the cost of particular goods by providing detailed specifications in advance.
2. Reverse Auction - Pursuant to [G.S. 143-129.9\(a\)\(1\)](#), BA-CFA may use reverse auctions as an alternative to sealed bid procedures.

For purposes of this policy, reverse auction means a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The School Director or Designee, in consultation with the Board of Directors, will determine whether reverse auctions are appropriate for a specific purchase or category of

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purchases. To conduct a reverse auction, the School Director or Designee may use a third party, may use the state's electronic procurement system or, if appropriate equipment is available, may conduct the auction via school equipment.

3. Exceptions to Formal Bids – Any of the processes outlined below in section E can be used in lieu of formal bidding, as long as all requirements of state law are met.

### **B. INFORMAL BIDS (\$5,000 TO \$90,000)**

The purchase of apparatus, supplies, materials or equipment for expenditures of \$5,000 to \$90,000 must be secured through the informal bidding process governed by [G.S. 143-131](#). The School Director or Designee, in consultation with the Board of Directors, is authorized to determine the best method for informally bidding a product. The School Director or Designee will oversee the use of any purchasing method and will ensure that all state requirements are met, including maintaining records of all bids submitted. Awards will be made to the lowest responsible bidder(s) whose bid or proposal meets the requirements and criteria set forth by BA-CFA, taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.

1. Competitive Sealed Bids – Informal bid requirements may be met by the use of sealed bids. The purchasing officer may utilize the methods for formal competitive bids provided in section A or may determine other appropriate methods for soliciting sealed bids. The bid specifications will include the time, date and place for opening bids. No advertisement for bids is necessary (unless the formal bid process is used); however, the purchasing officer may advertise for bids as he/she deems appropriate.
2. Quotations – Informal bid requirements may be met by the solicitation of quotes from prospective vendors. Quotations may be solicited and submitted via telephone, fax, email or website. Telephone quotes must be placed in writing before a final contract will be awarded. Written quotations must be on the vendor's letterhead or an official quotation
3. Reverse Auction – A reverse auction may be used to solicit informal bids, consistent with the process provided in section A.2.
4. Exceptions to Informal Bids – Any of the processes outlined below in section E can be used in lieu of informal bidding, as long as all requirements of state law are met.

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**C. PURCHASES FOR LESS THAN \$5,000**

1. *Micro Purchases* [§ 200.67](#) - Acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). Micro-purchases may be awarded without soliciting competitive quotations but must be distributed equitably among qualified suppliers. Equitability will be ensured through electronic bidding, maintenance and use of various catalogs and requests for good or services via the school website, and solicitation to various vendors, especially small, minority women-owned businesses and labor surplus area firms.
2. Purchases for equipment, materials and supplies costing less than \$5,000, but more than \$3,000, purchases will be made under conditions which foster competition among potential vendors. Purchase decisions should be made after considering price, quality, suitability for specified need and timeliness of delivery and performance.

Records of all informal bids will be kept and will be available for public inspection. Such records will include the date the bid is received, from whom it is received, and for what item.

**D. ELECTRONIC BIDDING**

Pursuant to [G.S. 143-129.9\(a\)\(2\)](#), BA-CFA may receive bids electronically in addition to or instead of paper bids. If electronic bids are used for purchases that must be formally bid, procedures for receipt of electronic bids must be designed to ensure the security, authenticity and confidentiality of the bids to at least the same extent as provided with paper bids. The School Director or Designee, in consultation with the Board of Directors, will determine whether electronic bidding is appropriate for a specific purchase or category of purchases.

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**E. EXCEPTIONS TO THE FORMAL AND INFORMAL BIDDING REQUIREMENT**

BA-CFA may utilize the following purchasing options instead of pursuing competitive bidding for non-federal purchases. Formal or informal bidding is not required if any of these processes are used. The School Director or Designee is responsible for gathering information to document the basis for the use of any exceptions to the competitive bidding requirements. The School Director or Designee, in consultation with the Board of Directors, will determine whether using one of the following exceptions is appropriate for a specific purchase or group of purchases.

1. Purchases from Other Governmental Agencies – Pursuant to [G.S. 143-129\(e\)\(1\)](#), BA-CFA may contract for the purchase, lease or other acquisition of apparatus, supplies, materials, or equipment from any other federal, state or local governmental agency.
2. Special Emergencies – Pursuant to [G.S. 143-129\(e\)\(2\)](#), competitive bidding is not required in cases of special emergencies involving the health and safety of people or their property. For an emergency to exist under the statute, the following factors must exist: (1) the emergency must be present, immediate and existing; (2) the harm cannot be averted through temporary measures; and (3) the emergency must not be self-created by BA-CFA.
3. Competitive Group Purchasing – Pursuant to [G.S. 143-129\(e\)\(3\)](#), BA-CFA may make purchases through a competitive bidding group purchasing program, through which another entity uses a competitive process to establish contracts on behalf of multiple entities at discount prices.
4. State Term Contract – Pursuant to [G.S. 143-129\(e\)\(9\)](#), BA-CFA may purchase products included in state term contracts with the state vendor for the price stipulated in the state contract, if the vendor is willing to extend BA-CFA the same or more favorable prices, terms and conditions as established in the state contract.
5. Sole Source Items – Pursuant to [G.S. 143-129\(e\)\(6\)](#), upon approval of the Board of education, BA-CFA may purchase an item through a single/sole source contract under the following circumstances: (1) when performance or price competition is not available; (2) when a needed product is available from only one source of supply; or (3) when standardization or compatibility is the overriding consideration. When requesting a purchase under the sole source exception, the

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School Director or Designee will provide the Board with documentation that justifies the use of the exception.

6. "Piggybacking" or Previously Bid Contracts – Pursuant to [G.S. 143-129\(g\)](#), upon approval of the Board of education, BA-CFA may purchase from any supplier that, within the previous 12 months, has contracted to furnish the needed item to the federal government, to any state government, or to any agency or political subdivision of the federal government or any state government. Before recommending a purchase using the piggybacking exception, the School Director or Designee will ensure that the following requirements are met: (1) the price and other terms and conditions of the contract are at least as favorable as the prior contract; (2) the contract was entered into following a bid process substantially similar to that required by North Carolina General Statutes; (3) the same vendor is used; and (4) notice of intent to award the contract without bidding is publicly advertised at least 10 days prior to the regularly-scheduled Board meeting at which the contract will be approved. Before approving the contract, the Board must determine that using the contract is in the best interest of BA-CFA.

7. Purchases of Information Technology Goods and Services – Pursuant to [G.S. 143-129\(e\)\(7\)](#), BA-CFA may purchase or lease information technology through contracts established by the State Office of Information Technology Services. The School Director or Designee will work with the information technology department to ensure that any such purchases meet the needs of BA-CFA.

In addition, BA-CFA also may purchase information technology goods and services by using a request for proposal (RFP) pursuant to [G.S. 143-129.8](#), provided that the following requirements are met: (1) notice of the request is provided consistent with the formal bidding notice requirements and (2) contracts are awarded to the person or entity that submits the best overall proposal as determined by the School Director or Designee. The RFP should describe the scope of work, general terms and conditions, specifications of the product needed by BA-CFA, and the application process. The information technology supervisor will assist the purchasing officer in reviewing the responsiveness of any RFP submitted pursuant to this subsection. RFPs will be evaluated using the "best value" method as defined in [G.S. 143-135.9\(a\)\(1\)](#), so that the school can select the most appropriate technological solution to meet BA-CFA's objectives. However, in situations where the purchasing officer considers the purchase to be highly complex or is unable to clearly determine what the optimal solution for BA-CFA is, the "solution-based solicitation" or

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“government-vendor partnership” method may be used. The School Director or Designee may negotiate with the proposer to obtain a final contract that meets the best needs of BA-CFA, as long as the alterations based on such negotiations do not deprive proposers/potential proposers of the opportunity to compete for the contract and do not result in the award of the contract to a different person or entity than it would have been if the alterations had been included in the RFP.

8. Gasoline, Fuel and Oil Purchases – Pursuant to [G.S. 143-129\(e\)\(5\)](#), BA-CFA may purchase gasoline, fuel and oil products without using formal competitive bidding. However, such purchases are subject to the informal bidding requirements provided above.

9. Used Products – Pursuant to [G.S. 143-129\(e\)\(10\)](#), BA-CFA may purchase previously used apparatus, supplies, materials or equipment without using formal competitive bidding. Before purchasing used products, the School Director or Designee will ensure that the products are in good, usable condition and will be sufficient to meet BA-CFA’s needs for a reasonable period of time.

### **Historically Underutilized Businesses [§200.321](#)**

BA-CFA affirms the state’s commitment to encourage the participation of historically underutilized businesses in purchasing functions, especially small, minority, women-owned businesses and labor surplus area firms.

BA-CFA will take the following affirmative steps to assure the use of historically underutilized businesses when possible:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

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4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
  6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in 1 through 5.

**Contract cost and price §200.323** – BA-CFA will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, BA-CFA will make an independent estimate before receiving bids or proposals.

The cost analysis or price analysis, as appropriate for the particular situation, will be documented in the procurement files. Accordingly, BA-CFA performs a cost or price analysis in connection with every federal procurement action in excess of \$150,000 including contract modifications, as follows:

**Cost Analysis Noncompetitive Contracts:** A cost analysis involves a review of proposed costs by expense category, and the federal cost principles apply, which includes an analysis of whether the costs are allowable, allocable, reasonable, and necessary to carry out the contracted services. In general,

- A cost analysis must be used for all noncompetitive contracts, including sole source contracts.
- The federal cost principles apply.



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- All noncompetitive contracts must also be awarded and paid on a cost-reimbursement basis, and not on a fixed-price basis.
- In a cost-reimbursement contract, the contractor is reimbursed for reasonable actual costs incurred to carry out the contract.
- Profit must be negotiated as a separate element of the price in all cases where there is no competition.

When performing a cost analysis, profit is negotiated as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Price Analysis Competitive Contracts: A price analysis determines if the lump sum price is fair and reasonable based on current market value for comparable products or services. In general,

- A price analysis can only be used with competitive contracts and is usually used with fixed-price contracts. It cannot be used with noncompetitive contracts.
- Compliance with the federal cost principles is not required for fixed-price contracts, but total costs must be reasonable in comparison to current market value for comparable products or services.
- A competitive contract may be awarded on a fixed-price basis or on a cost-reimbursement basis. If awarded on a cost-reimbursement basis, the federal cost principles apply and costs are approved by expense category, and not a lump sum.

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A cost analysis will be completed for any noncompetitive contract over \$150,000. A price analysis will be used for all competitive contracts over \$150,000. The analysis will be conducted by the School Director or Designee or the designated staff member for the contract. Analyses should include prior procurements and other market research. The analysis should yield an acceptable price range prior to receiving bids/proposals. Administrative oversight is provided by the Board of Directors.

Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable costs under the federal cost principles.

**Rebates and credits §200.406** - Applicable credits refer to those receipts or reduction-of expenditure type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by BA-CFA relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate .

**Contractor Oversight §200.318(b)** – BA-CFA strives to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and to ensure proper administration of contracts as follows:

**Contractors §200.330(b)** - A contract is for the purpose of obtaining goods and services for the use BA-CFA and creates a procurement relationship with the contractor. Characteristics indicative

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of a procurement relationship between BA-CFA and a contractor are when BA-CFA the recipient of Federal funds:

1. Provides the goods and services within normal business operations
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the Federal program; and
5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

All of the characteristics listed above may not be present in all cases, and therefore best judgment must be used in classifying each agreement as a subaward or a procurement contract.

**Conflicts of interest §200.318(c)(1)** – BA-CFA will maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family (spouse, children, parents), his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. However, BA-CFA may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Minimum policy requirements include the following:

- No employee, officer, or agent must 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.

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- The officers, employees, and agents of BA-CFA must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
  - The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
  - Anyone in a position to make decisions about spending BA-CFA resources (i.e., transactions such as purchases contracts) – who also stands to benefit from that decision has a duty to disclose that conflict as soon as it arises (or becomes apparent). He or she should not participate in any final decisions.

**Mandatory Disclosure §200.112 §200.113** - BA-CFA must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

BA-CFA must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment.

**Avoiding Acquisition of Unnecessary or Duplicative Items §200.318(d)** – BA-CFA will avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, BA-CFA will perform an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

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**Identifying responsible contractors §200.318(h)** – BA-CFA will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. ( Debarment and Suspension §180.220 and §180.300 ) BA-CFA will verify State and Federal debarment and suspension for procurement activities were Federal funds are being used.

The debarment certification is required on all contracts and federal expenditures.

The debarment certification reads as follows:

This contractor is not debarred per State website

(<http://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors>) and Federal Excluded Parties List ([www.sam.gov/portal/public/SAM](http://www.sam.gov/portal/public/SAM)) Initials \_\_\_\_ Date \_\_\_\_

**Recordkeeping §200.318(i)** – BA-CFA will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following:

- Rationale for the method of procurement (i.e., the reason BA-CFA chose procurement by micro-purchase, small purchase procedures, sealed bid, competitive proposals, or noncompetitive proposals),
- selection of contract type (including rationale for using that type),
- contractor selection or rejection (what was the process and what were the factors considered in selecting or rejecting the contractor; this must be in writing), and
- the basis for the contract price (including a cost or price analysis if applicable)

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**Settlements of Issues Arising Out of Procurements §200.318(k)** - BA-CFA alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

**Competition §200.319(a)** - All procurement transactions are conducted in a manner providing 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, or invitations for bids or requests for proposals (RFPs) are excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive contracts to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
7. Any arbitrary action in the procurement process.

The School Director or Designee is responsible for reviewing documentation for each procurement transaction to ensure BA-CFA is in compliance with these requirements and for monitoring the review and determinations.

**Geographical Preferences Prohibited §200.319(b)** The BA-CFA will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal

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geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**Solicitation Language §200.319(c)** - BA-CFA procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.

- Such description must not, in competitive procurements, contain features which unduly restrict competition.
- The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- Detailed product specifications should be avoided if at all possible.
- When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

Solicitation language must also identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**Prequalified Lists §200.319(d)**

BA-CFA will ensure that all prequalified lists of persons, firms, or products which are used in

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acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, BA-CFA will not preclude potential bidders from qualifying during the solicitation period.