DJ-R - (For School Unit Procurements Using Federal Awards Subject to Uniform Grant Guidance) - Federal Procurement Manual for Maine School Units Administrative Procedure

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This Federal Procurement Manual governs the procurement and purchase of property, goods, and services using any federal award[1], in whole or in part, that is subject to the Uniform Grant Guidance, codified at 2 CFR Part 200.

To the extent necessary or convenient, the Superintendent/designee, shall implement further written measures to ensure compliance with these procedures and any applicable federal laws and rules, including any applicable provisions of the Uniform Grant Guidance and the federal award terms and conditions. Any such written measures shall be made part of this manual. In addition, the Superintendent/designee should review and update this manual at least every five years, on a cycle roughly corresponding with the five-year federal review of the Uniform Grant Guidance as provided in 2 CFR § 200.109.

A. OVERVIEW

The School Board expects all procurements of property, goods, or services made by the school unit using federal awards to be consistent with sound business practices and applicable federal laws and rules, including the Uniform Grant Guidance.

These administrative procedures, in combination with the school unit's written policies—including but not limited to Policy DJ (Bidding Requirements) and Policy DJH (Purchasing and Contracting: Procurement Staff Code of Conduct)—are intended to comply with the federal requirement that the school unit must (1) use its own documented procurement procedures consistent with applicable federal, state, and local laws and regulations and, more specifically, conform to the procurement standards identified in 2 CFR §§ 200.317 through 200.327; and (2) maintain written standards of conduct covering conflicts of interest—real and perceived—for staff engaged in the selection, awarding, or administration of a contract. (2 CFR § 200.318(a), (c).)

The Superintendent/designee, acting singly, (the "Purchasing Agent") shall be responsible for implementing these administrative procedures and shall have direction and control over the purchasing of property, goods, and services for the school unit using federal funds.

Wherever these administrative procedures are inconsistent with applicable federal laws and rules, or the terms and conditions of a federal award, the provisions of the applicable federal laws, rules, or award terms and conditions shall control.

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[1] *A "federal award" is any federal financial assistance (including cost-reimbursement contracts) that a school unit receives either directly from a federal agency or indirectly from a pass-through entity such as the state education department. See 2 CFR § 200.1. Most, but not all, federal awards received by the school unit are subject to the Uniform Grant Guidance. To confirm whether a federal award is subject to the Uniform Grant Guidance, the school unit should review the terms and conditions of the applicable grant agreement and the applicability provisions of the Uniform Grant Guidance, codified at 2 CFR § 200.101.*

B. GENERAL PROCUREMENT PROCEDURES

1. **Full and Open Competition.** All procurements must be conducted in a manner that provides full and open competition. Real or perceived unfair advantages will be avoided. Accordingly, the school unit will not (i) place unreasonable requirements on firms or vendors to qualify for a procurement, (ii) require unnecessary experience or use excessive bonding, (iii) use noncompetitive pricing practices between firms or affiliated companies, (iv) allow organizational conflicts of interest, (v) specify a "brand name" product without allowing firms or vendors to offer an equal alternate product, or (vi) allow any arbitrary action in the procurement process. To ensure objective contractor performance and eliminate unfair competitive advantage, firms or vendors that develop or draft specifications, requirements, statements of work, invitations for bid proposals must be excluded from competing for such procurements. (2 CFR § 200.319(a)(b).)

2. **Responsible Contractors.** The school unit must award contracts only to responsible contractors who are able 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, proper classification of employees (see Fair Labor Standards Act, 29 U.S.C. 291, Ch. 8), record of past performance, and financial and technical resources. (2 CFR § 200.318(h).)
3. **Oversight of Contractors.** The school unit must maintain a contract administration and oversight system to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (2 CFR § 200.318(b); see also § 200.501(h).)
4. **Fostering Economy and Efficiency**. The school unit must avoid purchasing unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase, and to using federal surplus equipment and property. Where appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach. When appropriate for the procurement or use of common or shared goods and services, consideration should also be given to: (i) entering into state and local intergovernmental agreements or inter-entity agreements, (ii) using federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs, and (iii) using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. (2 CFR § 200.318(d)-(g).)
5. **Domestic Preferences for U.S. Goods, Products, or Materials Encouraged**. The school unit should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under federal awards. For purposes of this section, “manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. (2 CFR § 200.322.)
6. **Clear and Accurate Technical Requirements.** The school unit must have written procedures for procurements that incorporate a clear and accurate description of the technical requirements for the property, equipment, or service to be procured, identify all requirements which offerors must fulfill, and identify all other factors to be used in evaluating solicitations. Technical descriptions (i) may include a statement of the qualitative nature of the property, equipment, or service to be procured; (ii) when necessary, must provide those minimum essential characteristics and standards to which goods or services must conform; (iii) should avoid detailed product specifications if possible; and (iv) may use a “brand name or equivalent” description of features to provide procurement requirements as a means to define performance or other salient requirements of procurement when it is impractical or uneconomical to make a clear and accurate description of the technical requirements (the specific features of the named brand must be clearly stated). Such written procedures must ensure that all solicitations of work or invitations for bids from competing on those procurements. (2 CFR §

200.319(d).)

7. **Prequalified Contractor Lists.** The school unit must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the school unit must consider objective factors that evaluate price and cost to maximize competition. The school unit must not preclude potential bidders from qualifying during the solicitation period. (2 CFR § 200.319(e).)
8. **Procurement of Recovered Materials**

    a. The school unit and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

    b. The school unit should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. (2 CFR § 200.323; Exec. Order 14057, section 101, Policy.)

9. **Scoring Mechanism.** The school unit may, to the extent consistent with established practices and legal requirements applicable to the school unit, develop written procedures for procurement transactions that incorporate a scoring mechanism that requires bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job training for employees making work products or providing services on a contract, and other worker protections. The school unit may make inquiries of bidders about these subjects and assess the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable federal statutes and regulations, and the terms and conditions of the federal award.

C. PROCUREMENT METHODS AND THRESHOLDS

1. Methods of Procurement. The school unit must use one of the following five methods of procuring goods or services: micro-purchases, small purchases, sealed bids, competitive proposals (a.k.a. requests for proposals), and non-competitive proposals (a.k.a. sole source procurement). (2 CFR § 200.320.)

    a. **Micro-purchases (less than $15,000 as of October 1, 2025)**. Micro-purchases up to the federal micro-purchase threshold ($15,000 as of October 1, 2025)[2] may be made without soliciting competitive quotations if the Purchasing Agent considers the

price to be reasonable based on research, experience, purchase history, or other information and maintains documents to support its conclusion. To the extent practicable, the Purchasing Agent must distribute micro-purchases equitably among qualified suppliers, vendors, or firms. (2 CFR §§ 200.67, 200.320(a)(1).)

On an annual basis, the school unit may establish a micro-purchase threshold higher than the federal micro-purchase threshold, up to $50,000. The school unit must maintain documentation, which must be made available to the federal agency or pass-through entity and auditors in accordance with 2 CFR § 200.334. The self-certification must include justification, clear identification of the threshold, and supporting documentation of any of the following: (i) a qualification as a low-risk auditee, in accordance with the criteria in 2 CFR § 200.520 for the most recent audit; (ii) an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or (iii) for public institutions, a higher threshold consistent with state law. (2 CFR § 320 (a)(1)(iv).)

b. **Small Purchases ($350,000 or less as of October 1, 2025).** Small purchases up to the federal simplified acquisition threshold ($350,000 as of October 1, 2025)3 may be made using simple, informal procurement methods and without requiring sealed bids. For any such purchases, the Purchasing Agent must obtain price or rate quotes from an adequate number of qualified sources (preferably, from at least three qualified vendors or firms). Unless specified by the federal agency, the school unit may exercise its judgment in determining what number is adequate. The Purchasing Agent shall document any price or rate quotes received, whether written or oral. (2 CFR §§ 200.88, 200.320(a)(2).)

c. Sealed Bids (over $350,000 as of October 1, 2025). For purchases in excess of the federal simplified acquisition threshold ($350,000 as of October 1, 2025) sealed bidding is used if (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders have been identified as willing and able to complete effectively for the business; and (iii) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. This is the preferred method for procuring construction. If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the federal agency, the school unit may exercise its judgment in determining what number is adequate;
- The invitation for bids must be publicly advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- All bids will be opened at the time and place prescribed in the
- invitation for bids;

- The bids must be opened publicly;A firm fixed price (lump sum or unit price) contract award will be made in writing to the lowest responsive and responsible bidder whose bid conforms to all material terms and conditions of the invitation to bid. Where specified in bidding documents, factors such as discounts, transportation costs, and life-cycle costs must be considered in determining which bid is lowest. Payment discounts must only be used to determine the low bid when the school unit determines they are a valid factor based on prior experience; and
- The school unit must document and provide a justification for all bids it rejects.

(2 CFR §§ 200.88, 200,320(b)(1).)

d. **Requests for Proposals (over $350,000 as of October 1, 2025).** For purchases in excess of the simplified acquisition threshold ($350,000 as of October 1, 2025), this procurement method is used when conditions are not appropriate for the use of sealed bids. Typically, a request for proposals ("RFP") seeks proposals that are evaluated qualitatively such that price is not the primary evaluation criterion. Contracts may be awarded on either a fixed price or cost-reimbursement basis. If this procurement method is used, the following requirements apply:

- RFPs must require public notice and shall identify all evaluation factors and their relative importance. Any response to an RFP must be considered to the maximum extent practicable;
- The RFP must have written procedures for conducting technical evaluations and making selections;
- Proposals must be solicited from an adequate number of qualified offerors; and
- The Purchasing Agent must award a contract to the responsible offeror whose proposal is most advantageous to the school unit, with price and other factors considered; however, any and all proposals may be rejected if there is a sound documented reason.

The Purchasing Agent may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, may only be used in procurement of A/E professional services. It cannot be used to purchase other types of services even if A/E firms are a potential source to perform the proposed effort. (2 CFR § 200.320(b)(2).)

e. **Non-Competitive Proposals (Sole Source); Emergencies.** Procurements may be made through a non-competitive process (i.e., through the solicitation of a proposal

from only one source) only when one or more of the following circumstances apply:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see Section C.1.a, above);
- The procurement transaction can only be fulfilled by a single source;
- An public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
- The federal awarding agency or pass-through entity provides written approval to use a non-competitive procurement method in response to a written request from the school unit; or
- After solicitation of a number of sources, competition is determined inadequate.

The Purchasing Agent must document the basis for the sole source procurement by documenting the basis for any exigency or emergency, obtaining express authorization from the federal awarding agency or pass-through entity, or demonstrating a good faith effort on the part of the school unit to solicit proposals from a number of sources. (2 CFR §§ 200.320(c), 200.118(i).)

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[2] For procurements utilizing federal funds obtained prior to November 12, 2020, the micro-purchase threshold is $3,500. For procurements utilizing federal funds obtained between November 12, 2020 and September 30, 2025, the micro-purchase threshold is $10,000. The threshold is subject to adjustment every five years in the Federal Acquisition Regulations.

[3] For procurements utilizing federal funds obtained prior to November 12, 2020, the simplified acquisition threshold is $150,000. For procurements utilizing federal funds obtained between November 12, 2020 and September 30, 2025, the simplified acquisition threshold is $250,000. The threshold is subject to adjustment every five years in the Federal Acquisition Regulations ("FAR"). The school unit is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its document procurement procedures; however, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. The school unit should determine if local government laws on purchasing apply. (2 CFR § 200.1 - see definition of "simplified acquisition threshold.")

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2. Purchases Over $25,000. For purchases exceeding $25,000, prior to contracting with a vendor, the Purchasing Agent shall use the System for Award Management (SAM) to search for the

vendor by name, tax identification number, or another characteristic to make sure that the vendor has not been suspended or debarred from performing federally funded work. (2 CFR § 200.206(d), 180.220.)

3. Purchases Over the Simplified Acquisition Threshold ($350,000 as of October 1, 2025). The following additional procedures apply to purchases exceeding the simplified acquisition threshold:

a. Cost/Price Analysis.

(i) The school unit must perform a cost or price analysis in connection with every procurement transaction in excess of the simplified acquisition threshold, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement transaction (for example, the school unit should consider potential workforce impacts in its analysis if the procurement transaction will displace public sector employees). However, as a starting point, the Purchasing Agent must make independent estimates before receiving bids or proposals.

(ii) Costs or prices based on estimated costs for contracts under a federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under Subpart E (Cost Principles) of 2 CFR Part 200. The school unit may reference its own cost principles that comply with Subpart E of 2 CFR Part 200.

(iii) The school unit must not use the "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting. (2 CFR § 200.324)

b. Bonding Requirements. For construction or facility improvement contracts or subcontracts in excess of the simplified acquisition threshold: the federal agency or pass-through entity may accept the school unit's policy and requirements for bonding, as long as the federal agency or pass-through entity determines that the federal interest is adequately protected. If such a determination has not been made, the minimum bonding requirements must be as follows:

(i) A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified;

(ii) A performance bond on the part of the contractor for 100% of the contract price. A performance bond is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and

(iii) A payment bond on the part of the contractor for 100% of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the

work provided for in the contract. (2 CFR § 200.326.)

D. CONTRACTING WITH SMALL & MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, VETERAN-OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS

When possible, the school unit should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered. Such consideration means:

1. Including these business types on solicitation lists;

2. Soliciting these business types whenever they are deemed eligible as potential sources;

3. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

4. Establishing delivery schedules (e.g., the percentage of an order to be delivered by a given date of each month) which encourage participation by these business types;

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; and

6. Requiring a contractor under a federal award to apply paragraphs (1) through (5) of this section to subcontracts.

(2 CFR § 200.321.)

E. CONTRACTS ARISING FROM PROCUREMENTS

1. **Contract Administrator.** Prior to the execution of a contract funded by a federal award, the school unit should name a Contract Administrator. The Contract Administrator is responsible for the tasks, technical requirements, service performance, and verification that payments are in compliance with the contract.
2. **Contract Type.** The school unit may use a time-and-materials type contract (i.e., a contract whose cost to the school unit is the sum of (i) the actual cost of materials and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit) only if the school unit determines that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk. The school unit must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. (2 CFR § 200.318 (j).)
3. **Contract Provisions.** Any contract entered into between the school unit and a firm or vendor who is to be compensated using a federal award or a portion thereof must contain the applicable contract provisions described in Appendix I of this manual. (2 CFR § 200. 327.)

4. **Labor and Employment Practices.** The school unit may use the practices listed below if consistent with the U.S. Constitution, applicable federal statutes and regulations, the objectives and purposes of the applicable federal financial assistance program, and other requirements under the Uniform Grant Guidance.

    a. Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;

    b. Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M-21-28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring preferences or goals should be consistent with the policies and procedures of the school unit, and must not prohibit interstate hiring;

    c. Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 14091;

    d. Using agreements intended to ensure uninterrupted delivery of services;

    e. Using agreements intended to ensure community benefits; or

    f. Offering employees of a predecessor contractor rights of first refusal under a new contract.

(2 CFR § 200.318(1).)

5. **Subrecipient and Contractor Determinations.** The school unit, as a recipient or subrecipient of a federal award, may serve as a pass-through entity by providing a subaward to a subrecipient or lower tier subrecipient. When serving as a pass-through entity, the school unit is responsible for making case-by-case determinations as to whether the entity receiving federal funds is a subrecipient receiving a subaward or a contractor entering into a procurement contract. The school unit must make this determination using its judgement based on the characteristics set forth in (a) and (b) below, as well as any additional guidance supplied by the federal awarding agency. All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. No single factor or any combination of factors is necessarily determinative. In making this determination, the substance of the relationship is more important than the form of the agreement.

    a. Contractors. A contract is for the purpose of obtaining goods and services for the recipient's own use and creates a procurement relationship with the contractor. (See 2 CFR § 200.1) Characteristics that support a procurement relationship between the school unit and a contractor include, but are not limited to, when the contractor (i) provides the goods and services within normal business operations; (ii) provides similar

goods or services to many different purchasers; (iii) normally operates in a competitive environment; (iv) provides goods or services that are ancillary to the implementation of the federal program; and (v) is not subject to compliance requirements of a federal program as a result of the agreement, though similar requirements may apply for other reasons.

b. Subrecipients. A subaward is for the purpose of carrying out a portion of a federal award and creates a federal financial assistance relationship with a subrecipient. (See 2 CFR § 200.1) Characteristics which support the classification of a party receiving federal funds as a subrecipient include, but are not limited to, when the party (i) determines who is eligible to receive what federal assistance; (ii) has its performance measured in relation to whether objectives of a federal program were met; (iii) has responsibility for programmatic decision making; (iv) is responsible for adherence to applicable federal program requirements specified in the federal award; and (v) implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

If the school unit is serving as a pass-through entity, the school unit must:

(i) Verify that the potential subrecipient is not suspended, debarred, or otherwise excluded from receiving federal funds by (a) checking the System for Awards Management (SAM.gov); (b) collecting a certification from the potential subrecipient; or (c) adding a clause or condition to the procurement contract. (2 CFR § 180.300.)

(ii) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information required by 2 CFR § 200.332(b).

(iii) Evaluate each subrecipient's fraud risk and risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described below, which may include consideration of such factors as: (a) the subrecipient's prior experience with the same or similar subawards; (b) the result of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements—of 2 CFR Part 200, and the extent to which the same or similar subaward has been audited as a major program; (c) whether the subrecipient has new personnel or new or substantially changed systems; and (d) the extent and results of federal awarding agency monitoring.

Depending on the pass-through entity's assessment of the risk posed by the subrecipient, the pass-through entity may implement the following monitoring tools to ensure proper accountability and compliance with program requirements and achievement of program goals:

a. Providing subrecipients with training and technical assistance on program-related matters;

b. Performing on-site visits to review the subrecipient's program operations; and

c. Arranging for agreed-upon-procedures engagements as described in 2 CFR § 200.425.

(iv) If appropriate, consider imposing specific subaward conditions upon a subrecipient as described in 2 CFR § 200.208.

(v) Monitor the activities of the subrecipient as necessary, and as further provided in 2 CFR § 200.332(c), to ensure that the subrecipient complies with federal statutes, regulations, and the terms and conditions of the subward; and that subaward performance goals and objectives are achieved.

(vi) Verify that each subrecipient is audited as required by Part F (Audit Requirements) of 2 CFR Part 200.

(vii) Consider whether the results of the subrecipient's audits, site visits, or other monitoring necessitate adjustments to the school unit's own records.

(viii) Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR § 200.339.

(2 CFR § 200.332)

F. RECORDS

1. Recordkeeping. The school unit must maintain records sufficient to detail the history of each procurement transaction. Records must include the following: (i) rationale for the procurement, (ii) method of procurement, (iii) selection of contract type, (iv) contract selection or rejection, and (v) the basis for the contract price.

2. Record Retention Requirements. The school unit must maintain records related to each federal procurement for a period of three years from the date of submission of the final financial report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively. The three-year retention requirement does not apply to the school unit when records are transferred to or maintained by the federal agency. Records to be retained include, but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through entities may not impose any other record retention requirements except for the following:

a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

b. When the school unit is notified in writing by the federal agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

c. Records for property and equipment acquired with federal funds must be retained for 3 years after final disposition.

d. When records are transferred to or maintained by the federal agency, the 3-year retention requirement is not applicable to the school unit.

e. Records for program income earned after the period of performance must be retained for three years from the end of the school unit's fiscal year in which the program income is earned. This only applies if the federal agency or pass-through entity requires the school unit to report on program income earned after the period of performance in the terms and conditions of the federal award.

f. Records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) must be retained as follows:

(i) When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation purposes of an indirect cost rate (or other standard rates), then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(2 CFR §§ 200.318(i), 200.334)

G. PROTESTS AND CLAIMS

The school unit is responsible for the settlement of all contractual and administrative issues arising out of procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the school unit of any contractual responsibilities under its contracts. The federal agency will not substitute its judgment for that of the school unit unless the matter is primarily a federal concern. The school unit must report violations of law to the federal, state, or local authority with proper jurisdiction.

1. Protest Submission Requirements. To be considered by the school unit, a protest must be made in writing, supported by sufficient information to enable the protest to be fairly evaluated, and submitted within the time periods set forth herein. At minimum, protests must include (i) the name, phone number, and address of the protester; (ii) identification of the detailed and specific provision(s) of applicable federal or state law which would be allegedly violated by the procurement; (iii) copies of all exhibits, evidence, or documents supporting the protest; and (iv) a concise description of all remedies or relief requested.

2. Pre-Award Protests. Pre-award protests are protests based upon the content of the solicitation documents. Any protest to the terms, conditions, or specifications set forth in a solicitation must be submitted to the Purchasing Agent or the contract administrator, if a

contract administrator is identified in the solicitation, within 5 calendar days after the issuance of the solicitation. All such protests will be considered by the Purchasing Agent, or the contract administrator as appropriate, prior to the solicitation due date, and a written decision will be provided to the protester.

A decision of the Purchasing Agent or contract administrator is final, and no further protest or appeal of the terms, conditions, or specifications of any solicitation will be considered by the School Board.

3. Protests of Proposal Evaluations and Award Decision. Proposers shall be notified of any award decision by a written or oral notice of the award. This notice shall be transmitted to each proposer at the address, email address, or telephone number contained in its proposal. Any proposer whose proposal has not lapsed may protest an award decision on any ground arising from the evaluation of proposals or the award decision, but not on any ground specified in the "Pre-Award Protests" category, above. Any such protest must be submitted to the Purchasing Agent or the contract administrator, if a contract administrator is identified in the solicitation, within 3 calendar days after notice of the award. All such protests will be considered by a Protest Review Subcommittee, composed of members selected by the School Board in its sole discretion. A written decision from the Protest Review Subcommittee stating the grounds for allowing or denying the protest shall be transmitted to the protester before a final contract award is made. A decision of the Protest Review Subcommittee is final, and no further protest or appeal will be considered by the School Board. (2 CFR § 200.318(k).)

H. FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW

1. The federal agency or pass-through entity may review the technical specifications of proposed procurements under the federal award if the federal agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. The school unit must submit the technical specifications of proposed procurements when requested by the federal agency or pass–through entity. This review should take place prior to the time the specification is incorporated into a solicitation document. However, if the school unit desires to have the review accomplished after a solicitation has been developed, the federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.
2. The school unit, upon request, must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) for to the federal agency or pass-through entity for pre-procurement review, The school unit may conduct a pre-procurement review when:

    a. The school unit's procurement procedures or operation fails to comply with the procurement standards in 2 CFR Part 200;

    b. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

c. The procurement is expected to exceed the simplified acquisition threshold and specifies a “brand name” product;

d. The procurement is expected to exceed the simplified acquisition threshold and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or

e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

The school unit is exempt from the pre-procurement review in this paragraph if the federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of 2 CFR Part 200.

3. The school unit may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
4. The school unit may self-certify its procurement system. However, self-certification does not limit the federal agency’s or pass-through entity’s right to survey the system. Under a self-certification procedure, the federal agency may rely on written assurances from the school unit that it is complying with these standards. The school unit must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. (2 CFR § 200.325.)

I. EXCEPTIONS TO THESE ADMINISTRATIVE PROCEDURES

The requirements set forth in these administrative procedures, except for Section E.5 (Subrecipient and Contractor Determinations) and provisions related to covered telecommunications equipment, do not apply to:

1. Block grants awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services);
2. Federal awards to local education agencies under 20 U.S.C. 7702-7703b (portions of the Impact Aid program, including federal payments relating to federal acquisition of school property and federal payments for students residing on military installations or Indian lands);
3. Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended;
4. Classes of federal awards or non-federal entities identified as exceptions by the Office of Management and Budget; or
5. Any circumstance where the provisions of federal statutes or regulations differ from the provisions of 2 CFR Part 200.

(2 C.F.R. §§ 200.101-200.102.)

Legal Reference:

34 CFR Parts 74 and 80 (Education Department General Administrative Regulations ("EDGAR")) (for federal awards made prior to 12/26/2014)

2 CFR Part 200 (Uniform Administrative Requirements) (for federal awards made on or after 12/26/2014)

Cross Reference:

DJ – Bidding Requirements

DJH – Purchasing and Contracting: Procurement Staff Code of Conduct

Policy Adopted: February 28, 2018

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APPENDIX I. REQUIRED CONTRACT PROVISIONS

All contracts made by the school unit for the procurement of property, goods, or services using a federal award must contain provisions covering the following, as applicable:

A. Remedies (over$350,000). Contracts for more than the simplified acquisition threshold (currently $350,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and must provide for such sanctions and penalties as appropriate.

B. Termination for Cause and Convenience (over $10,000). All contracts in excess of $10,000 must address termination for cause and for convenience by the school unit, including the manner by which it will be effected and the basis for settlement.

C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR § 60-1.3 must include the equal opportunity clause provided under 41 CFR § 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 30 FR 12935, 3 CFR 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of

Labor."

D. Davis-Bacon Act, Copeland "Anti-Kickback" Act (construction contracts over $2,000). When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by the school unit must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The school unit must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The school unit must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The school unit must report all suspected or reported violations to the Federal awarding agency.

E. Contract Work Hours and Safety Standards Act (over $100,000). Where applicable, all contracts awarded by the school unit 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, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, 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 provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the school unit wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under that "funding agreement," the school unit 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," and any implementing regulations issued by the awarding agency.

G. Clean Air Act; Federal Water Pollution Control Act (over $150,000). Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. Debarment and Suspension. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM.gov), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

I. Byrd Anti-Lobbying Amendment (over $100,000). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any 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 any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

J. Domestic Preference. As appropriate and to the extent consistent with law, the school unit should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under a federal award. For purposes of this section, "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. For purposes of this section, "manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. See 2 CFR § 200.322.

K. Procurement of Recovered Materials. The contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative

procurement program for procurement of recovered materials identified in the EPA guidelines. See 2 CFR § 200.323.

L. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractors are prohibited from obligating or expending loan or grant funds to (i) procure or obtain; (ii) extend or renew a contract to procure or obtain; or (iii) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, “covered telecommunications equipment” includes telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. See 2 CFR § 200.216.

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