

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

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

This Federal Procurement Manual governs the procurement and purchase of property, goods, and services using any federal award<sup>1</sup>, 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 or his or her 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.

### **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 DJE (Bidding/Purchasing) 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 which reflect applicable federal, state, and local laws and regulations 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 or his or her 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.

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<sup>1</sup> 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 § 200.38. 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, review the terms and conditions of the applicable grant agreement or cooperative agreement and the applicability provisions of the Uniform Grant Guidance, codified at 2 CFR § 200.101.

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.

## **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 bids, or requests for proposals must be excluded from competing for such procurements. (2 CFR § 200.319(a).)
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, 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).)
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 will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. To foster greater economy and efficiency, consideration should also be given to: (i) entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, (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. **Geographical Preferences Prohibited.** The school unit must conduct procurements so as to prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except (i) where applicable federal statutes expressly mandate or encourage geographic preference or (ii) when contracting for architectural and engineering (A/E) services, so long as its application leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project. (2 CFR § 200.319(b).)
6. **Clear and Accurate Technical Requirements.** The school unit must have written selection procedures for procurements that incorporate a clear and accurate description of the technical requirements for the goods or services to be procured, identify all requirements which offerors must fulfill, and identify all other factors to be used in evaluating solicitations. Technical descriptions (i) must not, in competitive procurements, contain features which unduly restrict competition; (ii) may include a statement of the qualitative nature of the goods or services to be procured; (iii) when necessary, must set forth those minimum essential characteristics and standards to which goods or services must conform if they are to satisfy their intended use; (iv) should avoid detailed product specifications if possible; and (v) may use a brand name or equivalent description 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 which must be met by offerors must be clearly stated). (2 CFR § 200.319(c).)

## 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: micropurchases, 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. *Micropurchases (less than \$3,500 as of October 1, 2015).*** Micropurchases up to the federal micropurchase threshold (\$3,500 as of October 1, 2015)<sup>2</sup> may be made without soliciting competitive quotations if the Purchasing Agent considers the price to be reasonable.

To the extent practicable, the Purchasing Agent must distribute repurchases equitably among qualified suppliers, vendors, or firms. (2 CFR §§ 200.67, 200.320(a).)

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<sup>2</sup> For procurements utilizing federal funds obtained prior to October 1, 2015, the micropurchase threshold is \$3,000. The threshold is subject to adjustment every five years in the Federal Acquisition Regulations.

**b. Small Purchases (\$150,000 or less as of October 1, 2015).** Small purchases up to the federal simplified acquisition threshold (\$150,000 as of October 1, 2015)<sup>3</sup> 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 vendors or firms (preferably, from at least three qualified vendors or firms). The Purchasing Agent shall document any price or rate quotes received, whether written or oral. (2 CFR §§ 200.88, 200.320(b).)

**c. Sealed Bids (over \$150,000 as of October 1, 2015).** For purchases in excess of the federal simplified acquisition threshold (\$150,000 as of October 1, 2015) where a complete, adequate, and realistic specification or purchase description is available, the Purchasing Agent shall issue a notice of written invitation for sealed bids in a manner reasonably calculated to attract qualified bidders and provide the bidders with sufficient response time. The invitation for bids shall provide a complete specification of the goods or services to be purchased. Bids shall be opened at the time and place prescribed in the invitation for bids. A firm fixed price (lump sum or unit price) contract award shall 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. Any or all bids may be rejected if there is a sound documented reason. (2 CFR §§ 200.88, 200.320(c).)

**d. Requests for Proposals (over \$150,000 as of October 15, 2015).** For purchases in excess of the simplified acquisition threshold (\$150,000 as of October 1, 2015), when conditions are not appropriate for the use of sealed bids because the goods or services sought cannot be defined or specified such that bids will not be comparable, the Purchasing Agent shall issue a request for proposals (“RFP”) to solicit the goods or services. Typically, the 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 be publicized in a manner reasonably calculated to attract qualified vendors or firms, and RFPs must identify all evaluation factors and their relative importance. Proposals shall be reviewed by the Purchasing Agent or a selection committee identified in the RFP. Any response to an RFP must be considered to the maximum extent practical;
- Proposals must be solicited from at least two qualified sources; and

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<sup>3</sup> For procurements utilizing federal funds obtained prior to October 1, 2015, the simplified acquisition threshold is \$100,000. The threshold is subject to adjustment every five years in the Federal Acquisition Regulations.

- The Purchasing Agent shall award a contract to the responsible vendor or firm 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(d).)

***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 item is available only from a single source;
- An exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request; or
- After solicitation of a number of vendors or firms, 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(e), 200.324(b)(2).)

1. **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 § 200.205.)
2. **Purchases Over the Simplified Acquisition Threshold (\$150,000 as of October 1, 2015).** The following additional procedures apply to purchases exceeding the simplified acquisition threshold:

***a. Cost/Price Analysis.***

(i) The Purchasing Agent must perform a cost or price analysis in connection with every procurement in excess of the simplified acquisition threshold, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular situation, but as a starting point, the Purchasing Agent must make independent estimates before receiving bids or proposals.

(ii) The Purchasing Agent must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be 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.

(iii) 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 the federal cost principles.

(iv) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(2 CFR § 200.323.)

**b. Bonding Requirements.** For construction or facility improvement contracts or subcontracts in excess of the simplified acquisition threshold, the following bonds, or equivalent, are required:

(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 one 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 law of all persons supplying labor and material in the execution of the work provided for in the contract.

(2 CFR § 200.325.)

#### **D. CONTRACTING WITH SMALL & MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The Purchasing Agent must take all necessary affirmative steps to assure that small & minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small & minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small & 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 & minority businesses and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small & 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; and
6. Requiring the prime contractor, if subcontracts are to be allowed, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

(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 shall be responsible for the tasks, technical requirements, service performance, and verification that payments are in compliance with the contract. (2 CFR § 200.319.)
2. **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. (2 CFR § 200.326.)
3. **Subrecipient and Contractor Determinations.** The school unit must make case-by-case determinations whether each agreement it makes for the disbursement of federal funds casts the party receiving the funds in the role of a subrecipient or a contractor. The school unit shall make this classification using its judgment based on the following factors, as well as any additional guidance supplied by the federal awarding agency:
  - a. Contractors.** A contract is for the purpose of obtaining goods and services for the party's own use and creates a procurement relationship with the contractor. (See 2 CFR § 200.22.) Characteristics indicative of a procurement relationship between the school unit and a contractor are 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 operation of the federal program; and (v) is not subject to compliance requirements of the 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 assistance relationship with the subrecipient. (See 2 CFR § 200.92.) Characteristics which support the classification of a party receiving federal funds as a subrecipient include 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) in accordance with its agreement, uses the federal funds to carry out 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 party receiving the funds is classified by the school unit as a subrecipient, the school unit must:

(i) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information:

- Federal Award Identification: (a) Subrecipient name (which must match the name associated with its unique entity identifier); (b) subrecipient's unique entity identifier; (c) Federal Award Identification Number (FAIN); (d) federal award date (see 2 USC § 200.39) of award to the recipient by the federal agency; (e) subaward period of performance start and end date; (f) amount of federal funds obligated by this action by the school unit to the subrecipient; (g) total amount of federal funds obligated to the subrecipient by the school unit including the current obligation; (h) total amount of the federal award committed to the subrecipient by the school unit; (i) federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA); (j) name of federal awarding agency, school unit, and contact information for awarding official of the school unit; (k) CFDA number and name (the school unit must identify the dollar amount made available under each federal award and the CFDA number at time of disbursement); (l) identification of whether the award is R&D; and (m) indirect cost rate for the federal award (including if the *de minimis* rate is charged per 2 USC § 200.414).
- All requirements imposed by the school unit on the subrecipient so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.
- Any additional requirements that the school unit imposes on the subrecipient so as to meet its own responsibility to the federal awarding agency, including identification of any required financial and performance reports.
- An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government or, if no such rate exists, either a rate negotiated between the school unit and the subrecipient or a *de minimis* indirect cost rate as defined in 2 USC § 200.414(f).
- A requirement that the subrecipient permit the school unit and auditors to have access to the subrecipient's records and financial statements as necessary for the school unit to meet the requirements of 2 USC § 331.
- Appropriate terms and conditions concerning closeout of the subaward.

(ii) Evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining 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 USC 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.

(iii) Consider imposing specific subaward conditions upon a subrecipient as described in 2 USC § 200.207.

(iv) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. School unit monitoring of the subrecipient must include: (a) reviewing financial and performance reports required by the school unit; (b) following up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the subrecipient from the school unit detected through audits, on-site reviews, and other means; and (c) issuing a management decision for audit findings as required by 2 USC § 200.521. Depending on the school unit's assessment of risk posed by the subrecipient, the following monitoring tools may be useful to ensure proper accountability and compliance with program requirements and performance goals: (a) providing subrecipients with training and technical assistance; (b) performing on-site reviews of the subrecipient's program operations; and (c) arranging for agreed-upon-procedures engagements as described in 2 USC § 200.425 (audit services).

(v) Verify that each subrecipient is audited as required by Part F (Audit Requirements) of 2 USC Part 200 when it is expected that the subrecipient's federal awards expanded during the respective fiscal year equaled or exceeded the threshold set forth in 2 USC § 200.501.

(vi) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the school unit's own records.

(vii) Consider taking enforcement action against noncompliant subrecipients as described in 2 USC § 200.338.

(2 CFR §§ 200.330, 200.331.)

## **F. RECORDS**

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

**b. 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 expenditure 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, as reported to the federal awarding agency or school unit in the case of a subrecipient. The following exceptions apply:

(i) 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.

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

(iii) Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition.

(iv) When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the school unit.

(v) Records for program income transactions after the period of performance. In some cases, federal fund recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the school unit's fiscal year in which the program income is earned.

(vi) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: 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).

If the proposal, plan, or other computation is required to be submitted to the federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

If the proposal, plan, or other computation is not required to be submitted to the federal government (or to the pass-through entity) for negotiation purposes, 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), 200.333.)

## G. PROTESTS AND CLAIMS

The school unit is solely responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements of goods or services under federal awards. Except as may be otherwise provided in a written request for proposals or other solicitation of the school unit, these procedures are available to proposers for the purpose of handling and resolving disputes relating to such procurements, including evaluation and selection, protests of awards, disputes, and claims relating to the selection process and contract award.<sup>4</sup> A protester must exhaust all of these administrative remedies before pursuing a protest with the federal grant agency or in any court of law. For purposes of this section, the term “proposer” means any person or entity that has submitted a bid or a proposal in response to an RFP or other solicitation to the school unit, or a person or entity that is a prospective bidder or offeror and who has a demonstrated direct economic interest in the results of the procurement.

**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.

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<sup>4</sup> These protest procedures are not available to contractors or third parties for the purpose of handling and resolving disputes, claims or litigation arising in the course of contract formation or contract administration. Any such disputes, claims or litigation will be handled and resolved in accordance with applicable contract terms, if any, and applicable law.

**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 school unit must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding 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. This review generally will 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 awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
2. The school unit must make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, 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, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
  - d. The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; 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. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding 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 § 200.324.)

## **I. EXCEPTIONS TO THESE ADMINISTRATIVE PROCEDURES**

The requirements set forth in these administrative procedures 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 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 Part 200 of Title 2 of the Code of Federal Register.

(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: DJE – Bidding Requirements

DJH – Purchasing and Contracting: Procurement Staff Code of Conduct

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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 \$150,000).** Contracts for more than the simplified acquisition threshold (currently \$150,000) 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 Part 60-1.360-1.3 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, 12935, 3 CFR Part, 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 recipient or subrecipient 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 recipient 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*," 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), 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.

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