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FEDERAL AWARDS/FUNDS INTERNAL CONTROLS – CONFLICT OF INTEREST (M)

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (UGG), 2 CFR §200.318 – General Procurement Standards addresses standards of conduct covering conflict of interest and governs the actions of school district employees, officers, and agents in the selection, award, and administration of contracts supported by a Federal award.

The Board of Education must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to the applicable Federal law and the standards identified in 2 CFR §200.

The Board of Education must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The Board of Education must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts supported by a Federal award.

1. No employee, officer, or agent of the Board of Education may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

a. Such a conflict of interest would arise when a Board of Education employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

2. The Board of Education officers, employees, and agents must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

3. However, a Board of Education may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

4. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

The Board of Education's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a

more economical purchase. Where appropriate, 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, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the Board of Education is encouraged to enter into State and local intergovernmental agreements or inter-entity agreements where appropriate for procurement of use of common or shared goods and services.

The Board of Education is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

The Board of Education is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

The Board of Education must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (See also 2 CFR §200.213 – Suspension and Debarment).

The Board of Education must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

The Board of Education may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a Board of Education is the sum of:

1. The actual cost of materials; and
2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since the time and material formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the Board of Education awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

The Board of Education alone must be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Board of Education of any

contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgement for that of the Board of Education unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

The Board of Education and its employees shall be required to comply with all New Jersey statutes and administrative codes regarding school ethics and internal controls.

2 CFR §200.318

Adopted: October 21, 2021