



LONDONDERRY SCHOOL DISTRICT

**PENDING ADOPTED, AMENDED AND/OR RESCINDED POLICIES**

**READING SCHEDULE**

1 <sup>st</sup> Reading	February 18, 2020
2 <sup>nd</sup> Reading	March 17, 2020
3 <sup>rd</sup> Reading	TBD

## PURCHASING PROCEDURES

### I. PURPOSE

- A. The primary purpose of this policy is to prescribe the manner in which materials, supplies, equipment and contracted services are obtained for the Londonderry School District. In providing a framework for purchasing activities, the policy also makes clear the District's position that all qualified vendors have an opportunity to do business with the School District. This policy shall also provide direction that, whenever possible, the School District will direct its business to those vendors located in Londonderry.
- B. The policy is intended to provide sufficient flexibility to allow for small individual purchases, purchases of an emergency nature and alternate methods of purchasing as specifically approved by the Superintendent of Schools and/or Business Administrator.

### II. PURCHASING AGENT

- A. The Business Administrator, or designee, subject to the Authority of the Superintendent of Schools, shall serve as the designated Purchasing Agent.
- B. Powers and Duties - The Business Administrator shall have the following powers, duties and responsibilities:
  - 1. To oversee and manage the purchase of materials, supplies and equipment, and the procurement of contracted services requisitioned by any School, Department, Board, or Committee of the School District, subject to the provisions of federal, state and local regulations;
  - 2. To maintain high standards of quality in materials, supplies, equipment and services for the lowest reasonable cost;
  - 3. To take advantage of bulk, seasonal or cooperative purchasing, where possible;
  - 4. To dispose of obsolete or unusable personal property of the School District;
  - 5. To coordinate and assist departments and agencies of the School District in purchasing and contract matters, and otherwise observe practices in the best interests of the School District.

### III. PURCHASING PROCEDURE

- A. In order to achieve the goals of this policy, the following set of procedures is established. These procedures recognize the need for convenience and flexibility in making routine and small individual purchases. This is balanced with the principles of effective budget management at the school level and the interests of the School District in making purchases with consistently high standards of quality at reasonable prices.

B. Exemptions - The following items shall be exempt from the purchasing procedures contained in this policy:

1. Utility bills
2. Expense reimbursement
3. Office equipment maintenance and repairs
4. Vehicle and equipment maintenance and repairs (except major repairs exceeding \$1,000, which shall require a purchase order)
5. Equipment lease payments under an approved original lease agreement. (Lease agreements executed after July 1, 2002 are subject to this policy.)
6. Identical recurring purchases such as uniform rental, cleaning services, etc. (except that the original contract must be authorized prior to any payments)
7. Service or maintenance contracts payments (except that the contract or agreement must be authorized prior to any payments)
8. Professional services (engineers, auditors, etc.)
9. School District Attorney appointed by Superintendent and/or School Board.

C. Purchase Orders

1. Purchase orders shall be required for all individual purchases. Purchase orders must be requested and approved by the Business Office prior to placement of an order. The distribution of copies of the approved completed purchase order is as follows:
  - a. Original copy to vendor, where necessary;
  - b. One copy for requesting department files; and
  - c. One copy for Finance Department files.
2. The following information must be included on the purchase order:
  - a. Date;
  - b. Amount of Purchase, including an estimate for shipping, etc;
  - c. Vendor's name and address;
  - d. Quantity and description of item(s); and
  - e. Department and account to be charged.
3. The Purchasing Agent may require further information regarding the purchase.
4. Approved purchase orders shall either be returned to the department placing the order, or mailed directly to the vendor, as appropriate. Vendor order forms must accompany direct mail purchase orders where necessary.
5. Purchase orders that are not approved by the Business Administrator or designee shall be returned to the department placing the order accompanied by a memorandum explaining why the purchase order was not approved.
6. Purchase orders over \$10,000 and under \$100,000 shall require the signature of the Superintendent or Business Administrator.
7. Purchases \$100,000 and over shall require the approval of the Superintendent *or* Business Administrator and School Board.
8. Purchases over \$25,000 that were not budgeted, or any purchase that commits the District to more than one fiscal year, shall require the approval of the Superintendent or Business Administrator and approval of the School Board.

#### D. Competitive Purchasing

1. In order to represent the interests of the School District, some purchases should be made competitively, but without the more time-intensive formal bid process. The purpose of competitive purchasing is to assure the highest quality goods or services at the lowest cost. As outlined below, competitive purchasing is required only for purchases over \$5,000 but may be used for any purchase as a means of gaining the best value.
2. Verbal Quotations - Verbal quotations from at least three (3) qualified vendors are required for individual purchases from \$1,000 - \$4,999. The amount, source, date and subject of verbal quotations must be noted as proof for this level of competitive purchasing.
3. Written Quotations - Written quotations from at least three (3) qualified vendors are required for individual purchases of \$5,000 - \$9,999. Copies of written quotations must be submitted with the purchase order requisition as proof for this level of competitive purchasing.
4. Exceptions - Quotations may not be required if the department placing the order can demonstrate that competitive purchasing requirements have already been satisfied through other means (i.e. state contract, federal contract). The department requesting an exception on a particular purchase must file a request with the Business Administrator stating the reasons for the exception. The request for an exception must be approved prior to making the purchase.

#### E. Emergency Purchasing

1. Under certain circumstances such as but not limited to a declared emergency, the interests of the School District are best served by quick action. To that end, observance of these purchasing policies may be temporarily suspended as a means of satisfying an immediate need.
2. In the event of an emergency, the Superintendent and/or Business Administrator shall have the authority to make such immediate purchases as deemed necessary. Once the emergency has been resolved, the Superintendent and/or Business Administrator shall submit a detailed report of all emergency expenditures, the circumstances, and justification for all purchases to the School Board.

### IV. ADVERTISED COMPETITIVE SELECTION

- A. Purchasing Specifications - For some equipment, materials or supplies purchases, or contracting for services, advertised competitive selection of the vendor provides a greater level of choice and a better overall value for the School District. While situations and the approach demanded will vary, the following is established for purchases in excess of \$10,000:
  1. Specifications must be reviewed with the Business Administrator prior to the purchasing process.
  2. Specifications must adequately define the operating characteristics, performance and security requirements, or scope of work to be performed. They should not be

so specific as to unnecessarily restrict competition, but complete enough to represent superior value for the School District.

3. Any specifications maintained by individual departments or agencies for particular items or services should be reviewed periodically and revised if necessary.
  4. All specifications for products or services should be placed on file with the Business Administrator.
  5. The Business Administrator will review bid documents prior to advertisement.
  6. Following the development of specifications or the scope of work, as appropriate, the timetable for the competitive selection process is established by the appropriate Administrator and Business Administrator.
- B. Advertising - A notice is placed in the legal classified section of a newspaper of general circulation and posted in at least two (2) public places with the following information:
1. A brief description of the item or service desired;
  2. Identify a contact for questions or copies of specifications, scope of work, request for proposals (RFP) or request for qualifications (RFQ);
  3. The mailing address for response to the notice.
  4. Other applicable information about the form in which submissions should be made (i.e. how packages are to be labeled, specific items to be included);
  5. The deadline for receipt of responses to the notice;
  6. Information about the opening of responses (i.e. date, time and place);
  7. Statement reserving the exclusive right to accept or reject any or all responses to the notice, and to accept the response which is deemed by the Awarding Authority to be in the best interest of the Londonderry School District.
  8. Notices should appear in a newspaper of general circulation at least two (2) times, and be posted in at least two (2) public places, not less than seven (7) days prior to the last date for receipt of responses.
  9. Notices of RFP or RFQ for professional services or other significant items or projects should be advertised at least fourteen (14) days, but usually not more than thirty (30) days prior to the last date for receipt of responses. In all cases, notice to potential vendors should be made early enough to provide reasonable opportunity to participate and prepare responsible proposals.
  10. This method of advertising is generally required for purchases or contracts with a value of at least \$10,000, unless competitive purchasing requirements have already been satisfied (i.e. through purchase on state contract, federal contract, or if there is a lack of qualified bidders.
  11. Following the receipt of bids or proposals, a bid list containing the names and addresses of those submitting bids or proposals, and any prices or other pertinent information shall be sent to all bidders. In some cases, the bid list may also be sent with a letter notifying bidders of the award. The Business Administrator will review the bid summaries prior to the award of the bid.
  12. The Business Administrator may waive advertised competitive selection requirements after consultation with the appropriate Administrator, Superintendent and Board Chair.

## **V. PROPERTY DISPOSITION**

A. Property such as maintenance equipment and vehicles, office equipment and other items purchased by the School District are periodically removed from service and disposed of in light of obsolescence or unusable condition. Items should be made available to other governmental units within the boundary of the Londonderry School District, prior to disposition, in order to assure maximum use of the item for public benefit. Many of these items retain significant value and need to be disposed of to recover their value in a timely and equitable fashion once their usefulness to the School District has ended. If property is to be disposed of, the Business Administrator must give prior approval to the disposal. The method of disposal will be determined by the Business Administrator and may include sealed bid, auction, trade in, or any other method deemed appropriate. Disposal of real estate shall require the approval of the School Board.

1. Sealed Bid - Notice should be placed in a newspaper of general circulation with the following information:
  - a. A brief description of the item to be sold;
  - b. Information for bidders with questions;
  - c. The deadline for submission of sealed bids;
  - d. Information regarding the opening of bids received; and
  - e. A statement reserving the right to accept or reject any or all bids.
2. Auction - In situations where a large number of items are to be disposed, an auction may be held in which prospective bidders view and make bids at a specific time and place. Notice of auction shall be posted in at least two (2) public places and advertised in a newspaper not less than seven (7) days prior to the date of the auction, which notice shall include:
  - a. The time and place at which the auction will be held;
  - b. A brief description of the items offered at auction; and
  - c. Payment requirements.

B. Payment - The Londonderry School District will accept payment for items awarded by sealed bid or auction in the following forms:

1. Cash;
2. Certified treasurer's or cashier's check; or
3. Money order.
4. Payment by personal check may be accepted. However, a minimum ten- (10) day waiting period is recommended before the bidder takes possession of any item to allow checks to clear.

## **VI. AWARD**

A. The award of a contract, or purchase, or sale of School District property follows the competitive selection process. Consistent with the other provisions of these guidelines, the criteria for award are flexible enough to allow consideration of all factors involved, yet still provide a clear sense of public policy intent.

- B. After bids or proposals have been received through the competitive selection process, the bids or proposals must be reviewed for completeness, including the submission of any such security established within the RFP. The bids or proposals must be reviewed to determine how well they meet the specifications or scope of work, the input from references, or other aspects indicating the overall ability of the prospective vendor to provide the good or service desired.
1. In all cases, the goal of the award shall be to select the vendor offering the best overall value to the School District; the “lowest, best” bidder. Price, quality, service, and experience, either demonstrated through other clients or with the Londonderry School District, should be included in the determination of award.
  2. Bids for property being sold by the School District should be awarded to the bidder making the highest responsible bid. In making this determination, bidders *will* be requested to supply proof of their ability to meet their bid before the final award is made.

## **VII. PROCUREMENT METHODS FOR FEDERALLY FUNDED PROJECTS**

*The Superintendent or his or her designee shall be responsible for developing, updating as necessary, and implementing a written administrative procedures manual (hereafter, the “Administration of Federal Awards Manual”) to govern the procurement and purchase of property, goods, and services using any federal award<sup>1</sup> that is subject to the Uniform Grant Guidance, codified at 2 CFR Part 200 (“UGG Federal Award”). The Administration of Federal Awards Manual shall be consistent with all applicable federal laws and rules.*

*Notwithstanding any policy provision to the contrary, the procurement and purchase of property, goods, and services using a UGG Federal Award, in whole or in part, must comply with the Administration of Federal Awards Manual. Wherever this policy or any of the school unit’s administrative procedures are inconsistent with federal laws or rules, the provisions of the federal laws or rules shall control.*

LONDONDERRY SCHOOL BOARD

1<sup>st</sup> Reading to Amend: February 18, 2020

---

<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 a 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.

**LONDONDERRY SCHOOL DISTRICT SAU #12  
ADMINISTRATION OF FEDERAL AWARDS MANUAL**

*Related Policies: DI, DID, DJ, DJC, DJE, DJF, DJH & DK  
See also: ADB, BCB, EFAA, EHB, JICI & JRA*

This Administration of Federal Grant Funds Manual governs the procurement and purchase of property, goods, and services using any Federal award, as well as other requirements applicable to the administration of Federal grant funds as set forth in the Uniform Administrative Requirements for Federal Awards issued by the U.S. Office of Management and Budget (“OMB”). Those requirements, which are commonly known as Uniform Grant Guidance (“UGG”), are found in Title 2 of the Code of Federal Regulations (“CFR”) part 200. This manual consists of the following sections:

	<b>OVERVIEW .....</b>	<b>2</b>
<b>A-1</b>	<b>ALLOWABILITY .....</b>	<b>3</b>
<b>A-2</b>	<b>CASH MANAGEMENT AND FUND CONTROL .....</b>	<b>8</b>
<b>A-3</b>	<b>PROCUREMENT .....</b>	<b>11</b>
<b>A-4</b>	<b>PROCUREMENT – ADDITIONAL PROVISIONS PERTINENT TO FOOD SERVICE PROGRAM.....</b>	<b>19</b>
<b>A-5</b>	<b>CONFLICT OF INTEREST AND MANDATORY DISCLOSURES.....</b>	<b>20</b>
<b>A-6</b>	<b>INVENTORY MANAGEMENT - EQUIPMENT AND SUPPLIES PURCHASED WITH FEDERAL FUNDS .....</b>	<b>21</b>
<b>A-7</b>	<b>TRAVEL REIMBURSEMENT – FEDERAL FUNDS .....</b>	<b>22</b>
<b>A-8</b>	<b>ACCOUNTABILITY AND CERTIFICATIONS .....</b>	<b>22</b>
<b>A-9</b>	<b>TIME AND EFFORT REPORTING / OVERSIGHT .....</b>	<b>23</b>
<b>A-10</b>	<b>GRANT BUDGET RECONCILIATION.....</b>	<b>25</b>
<b>A-11</b>	<b>CONTRACTOR AND SUB-RECIPIENT CLASSIFICATION, MONITORING AND MANAGEMENT .....</b>	<b>25</b>
<b>A-12</b>	<b>CLOSEOUT AND RECORD RETENTION.....</b>	<b>30</b>

**NOTICE: Notwithstanding any other policy of the Londonderry School District, all funds awarded directly or indirectly through any Federal grant or subsidy programs shall be administered in accordance with this manual.**



## **OVERVIEW**

The School Board (“Board”) of the Londonderry School District (the “District”) accepts available federal funds when there is a specific need for them and if required matching funds are available. The Board intends to administer federal grant awards efficiently, effectively and in compliance with all requirements imposed by law, the awarding agency and the New Hampshire Department of Education (NHDOE) or other applicable pass-through entity.

This manual establishes the minimum standards regarding internal controls to be used by the District in the administration of any Federal awards<sup>1</sup> received by the District as required by applicable NH and Federal laws or regulations, including, without limitation, the UGG. This manual, in combination with the District’s other written internal controls and policies is intended to comply with all applicable Federal requirements including, without limitation, the requirement that the District 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).

Wherever this manual, as amended or supplemented, and the District’s other written internal controls are inconsistent with applicable Federal laws or 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.

### **A. Designation of Purchasing Agent**

The Board designates the Superintendent or his/her designee, acting singly, as the “Purchasing Agent.” The Purchasing Agent shall be responsible for developing, updating and supplementing as needed, and implementing this manual and other internal controls over Federal awards as necessary in order to provide reasonable assurances that the District is managing the awards in compliance with all applicable requirements, including Federal statutes, regulations, and the terms and conditions of the Federal award. 2 CFR § 200.303.

The Purchasing Agent shall ensure that all individuals responsible for the administration of any Federal award received by the District shall be provided sufficient training to carry out their duties in accordance with all applicable requirements and this manual.

### **B. Performance Standards**

Systems and controls shall be based on best practices and must meet all requirements of federal law and regulation and local policy, including but not limited to the following. The District’s systems and internal controls must:

1. Provide for identification, in its accounts, of all Federal awards received and expended and their program source. Federal program and award identification must include, as applicable, the CDFR title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

---

<sup>1</sup> A “Federal award” is any federal financial assistance (including cost-reimbursement contracts) that the District receives either directly from a federal agency or indirectly from a pass-through entity such as the New Hampshire Department of Education (NHDOE). 2 CFR § 200.38. Most, but not all, federal awards received by the District are subject to the UGG. To confirm whether a federal award is subject to the UGG, review the terms and conditions of the applicable grant agreement or cooperative agreement and the applicability provisions of the UGG, codified at 2 CFR § 200.101.

2. Maintain accurate, current, and complete financial data in accordance with OMB-approved standard information collections and disclosure of the financial results of the Federal award or program in accordance with UGG reporting requirements.
3. Provide for records sufficient to track the receipt and use of Federal awards, as required by general and program-specific terms and conditions and that identify adequately the source and application of funds for Federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
4. Trace funds to a level of expenditures adequate to establish that such funds have been used according to applicable Federal statutes, regulations, and the terms and conditions of the Federal award.
5. Provide effective control over, and accountability for, all funds, property, and other assets to ensure they are adequately safeguarded and used only for authorized purposes.
6. Provide for comparisons of expenditures with budget amounts for each Federal award.
7. Report deviations from budget or project scope or objective, and request prior approvals from the Federal awarding agency for budget and program revisions in accordance with 2 CFR § 200.308, unless such prior approvals are waived by the Federal awarding agency.
8. Maintain written procedures to implement Federal payment requirements and for determining the allowability of costs in accordance with the UGG and the terms and conditions of the Federal Award.
9. Provide for effective mechanisms to (i) evaluate and monitor the District's compliance with statutes, regulations, and the terms and conditions of Federal awards; (ii) take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings; and (iii) take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the District considers sensitive consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.
10. Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.
11. Maintain written standards of conduct covering conflicts of interest and governing the actions of the District's employees engaged in the selection, award, and administration of contracts.

2 CFR §§ 200.301, 200.302, 200.303, 200.308, 200.318.

## **A-1 ALLOWABILITY**

The Purchasing Agent is responsible for the efficient and effective administration of federal awards through the application of sound management practices. Federal awards shall be administered in a manner consistent with all applicable Federal, State and local laws, the associated agreements/assurances, program objectives, and the specific terms and conditions of the federal award. 2 CFR § 200.400(a), (b).

### **A. Cost Principles**

The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs, less any applicable credits. 2 CFR § 200.402. Except whether otherwise authorized by statute, costs shall meet the following general criteria in order to be allowable under Federal awards:

1. Be "necessary" and "reasonable" for the performance of the federal award and be allocable thereto under the cost principles set forth herein. 2 CFR § 200.403(a).

- a. Reasonable Costs. A cost is “reasonable” if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. To determine whether a cost is “reasonable”, consideration must be given to:
- i. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the District or the proper and efficient performance of the federal award;
  - ii. The restraints or requirements imposed by such factors as: sound business practices, arm’s-length bargaining, Federal, State, local, and other laws and regulations, and terms and conditions of the federal award;
  - iii. Market prices for comparable goods or services for the geographic area;
  - iv. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the District, its employees, its students, the public at large, and the federal government; and
  - v. Whether the cost represents a significant deviation from the District’s established practices or Board policies regarding the incurrence of costs, which may unjustifiably increase the federal award’s cost.
- 2 CFR § 200.404.
- b. Necessary Costs. Federal regulations do not provide specific descriptions of what satisfies the “necessary” element beyond its inclusion in the reasonableness analysis above. Whether a cost is necessary is usually determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the District can demonstrate that the cost addresses an existing need and can prove it. When determining whether a cost is “necessary,” consideration should be given to whether:
- i. The cost is needed for the proper and efficient performance of the federal award;
  - ii. The cost is identified in the approved budget or application;
  - iii. There is an educational benefit associated with the cost;
  - iv. The cost aligns with identified needs based on results and findings from a needs assessment; and
  - v. The cost addresses program goals and objectives and is based on program data.
- c. Allocable Costs. A cost is allocable to the federal award if the goods or services involved are chargeable or assignable to the federal award in accordance with the relative benefit received. This standard is met if the cost (i) is incurred specifically for the federal award; (ii) benefits both the federal award and other work of the District and can be distributed in proportions that may be approximated using reasonable methods; and (iii) is necessary to the overall operation of the District and is assignable in part to the federal award in accordance with the cost principles herein. 2 CFR § 200.405(a).

*Note: Special cost-allocation rules apply if services (such as motor pools, computer centers, purchasing, accounting, etc.) are provided to operating agencies on a centralized basis and for interagency services. See 2 CFR §§ 200.416, 200.417.*

*Note: Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the District may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability, as set forth in 2 CFR § 200.407.*

2. Conform to any limitations or exclusions set forth in these cost principles or in the terms and conditions of the federal award as to types or amount of cost items. 2 CFR § 200.403(b).
3. Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the District. 2 CFR § 200.403(c).
4. Be accorded consistent treatment. A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal award as an indirect cost. 2 CFR § 200.403(d).
5. Be determined in accordance with generally accepted accounting principles (GAAP), except as otherwise provided herein or in 2 CFR part 200. 2 CFR § 200.403(e).
6. Be representative of actual cost, net of all applicable credits or offsets.
  - a. Applicable Credits. The term “applicable credits” refers to those receipts or reductions of expenditures that offset or reduce expense items allocable to the Federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; insurance refunds or rebates; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the District relate to the allowable costs, they shall be credited to the Federal award either as a cost reduction or a cash refund, as appropriate. 2 CFR § 200.406(a).
7. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federally-financed program in either the current or a prior period. 2 CFR § 200.403(f).
8. Be adequately documented. 2 CFR § 200.403(g).
  - a. In the case of personal services, the Purchasing Agent shall implement a system for District personnel to account for time and efforts expended on grant funded programs to assure that only permissible personnel expenses are allocated.
  - b. In the case of other costs, all receipts and other invoice materials shall be retained, along with any documentation identifying the need and purpose for such expenditure if not otherwise clear.

## **B. Selected Items of Cost**

The District shall follow the rules for selected items of cost in Subpart E of the UGG when charging these specific expenditures to a Federal grant. When applicable, District staff shall check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, District and program-specific rules, including the terms and conditions of the Federal award, may deem a cost as unallowable and District personnel shall follow those rules as well.

1. Compensation – personal services. Compensation for employment services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits, which are addressed in 2 CFR § 200.431 Compensation – fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of the UGG, and that the total compensation for individual employees:
  - a. Is reasonable for the services rendered, conforms to the District’s established written policy, and is consistently applied to both Federal and non-Federal activities;
  - b. Follows an appointment made in accordance with the District’s written policies and meets the requirements of Federal statute, where applicable.
  - c. Is determined and supported as provided in the Standards for Documentation of Personnel Expenses, in subpart DJF-A-9.2 CFR § 200.430(a).

### C. Cost Compliance

The Purchasing Agent shall ensure that federal awards are expended and are accounted for consistent with the requirements of the specific program and as identified in the grant application. Compliance monitoring includes accounting for direct or indirect costs and reporting them as permitted or required by each grant.

### D. Determining Whether A Cost is Direct or Indirect

*Note: There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect cost in order to avoid possible double-charging of Federal awards. 2 CFR § 200.412.*

1. Direct Costs. “Direct costs” are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. 2 CFR § 200.413(a).
  - a. Typical Examples of Direct Costs. Direct costs may include: salaries and fringe benefit costs of employees working directly on the federal award; purchased services contracted for performance under the grant; travel of employees working directly on a grant-funded project; materials, supplies, and equipment purchased for use on a specific federal award; and infrastructure costs directly attributable to the program (such as long distance telephone calls specific to the program).
2. Indirect Costs. “Indirect costs” (also known as facilities & administrative (F&A) costs) are those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. 2 CFR § 200.56.
  - a. Typical Examples of Indirect Costs. Indirect costs may include: general data processing, human resources, utility costs, maintenance, and accounting costs.

- b. Federal education programs with supplement not supplant provisions must use a restricted indirect cost rate. In a restricted rate, indirect costs are limited to general management costs. General management costs do not include divisional administration that is limited to one (1) component of the District, the governing body of the District, compensation of the Superintendent, compensation of the chief executive officer of any component of the District, and operation of the immediate offices of these officers.
  - c. The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if **all** the following conditions are met:
    - i. Administrative or clerical services are integral to a project or activity;
    - ii. Individuals involved can be specifically identified with the project or activity;
    - iii. Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
    - iv. The costs are not also recovered as indirect costs.

2 CFR § 200.413(c).
  - d. Where a Federal program has a specific cap on the percentage of administrative costs that may be charged to a grant, that cap shall include all direct administrative charges as well as any recovered indirect charges.
  - e. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived. 2 CFR § 200.56.
3. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. 2 CFR § 200.413(a).
  4. Identification with the federal award (rather than the nature of the goods and services involved) is the determining factor distinguishing direct from indirect costs of federal awards. 2 CFR § 200.413(b).
  5. Effort should be given to identify costs as direct costs whenever practical, but allocation of indirect costs may be used where not prohibited and where indirect cost allocation is approved ahead of time by NHDOE or the Federal awarding agency.

#### **E. Timely Obligation of Funds**

“Obligations” are orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the District during the same or a future period. 2 CFR § 200.71.

1. Typical Examples of Obligations. The following are examples of when funds are determined to be “obligated” under applicable regulation of the U.S. Department of Education:

When the obligation is for:

- a. Acquisition of property – on the date which the District makes a binding written commitment to acquire the property.
- b. Personal services by an employee of the District – when the services are performed.
- c. Personal services by a contractor who is not an employee of the District – on the date which the District makes a binding written commitment to obtain the services.

- d. Public utility services – when the District received the services.
- e. Travel – when the travel is taken.
- f. Rental of property – when the District uses the property.
- g. A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 C.F.R. Part 200, Subpart E – Cost Principles – on the first day of the project period.

## **F. Period of Performance**

All obligations must occur on or between the beginning and ending dates of the federal award. This period of time is known as the period of performance. 2 CFR § 200.77.

The District may charge to the federal award only allowable costs incurred during the period of performance (except as described in 2 CFR § 200.461 – publication and printing costs) and any costs incurred before the federal awarding agency made the award that were authorized by the agency. 2 CFR § 200.309.

The period of performance is dictated by statute and will be indicated in the Grant Award Notification (“GAN”). As a general rule, State-administered Federal funds are available for obligation within the year that Congress appropriates the funds for. However, given the unique nature of educational institutions, for many Federal education grants, the period of performance is twenty-seven (27) months. This maximum period includes a fifteen (15) month period of initial availability, plus a twelve (12) month period of carry over. For direct grants, the period of performance is generally identified in the GAN.

In the case of a State-administered grant, obligations under a grant may not be made until the grant funding period begins or all necessary materials are submitted to the granting agency, whichever is later. In the case of a direct grant, obligations may begin when the grant is substantially approved, unless an agreement exists with NHDOE or the pass-through entity to reimburse for pre-approval expenses.

For both State-administered and direct grants, regardless of the period of availability, the District shall liquidate all obligations incurred under the award not later than forty-five (45) days after the end of the funding period unless an extension is authorized. Any funds not obligated within the period of performance or liquidated within the appropriate timeframe are said to lapse and shall be returned to the awarding agency. Consistently, the District shall closely monitor grant spending throughout the grant cycle.

## **A-2 CASH MANAGEMENT AND FUND CONTROL**

Payment methods must minimize the time elapsed between the drawdown of federal funds and the disbursement of those funds by the District, whether the payment is made by electronic fund transfer, or issuance or redemption of checks, warrants, or payment by other means. 2 CFR § 200.305.

In order to provide reasonable assurance that all assets, including Federal, State, and local funds, are safeguarded against waste, loss, unauthorized use, or misappropriation, the Purchasing Agent shall implement internal controls in the area of cash management, consistent with the requirements of the UGG and the awarding agency or pass-through entity, including without limitation the following requirements.

### **A. Forms and Procedures**

The District shall use forms and procedures required by the NHDOE, the Federal awarding agency, or other pass-through entity to request payment.

**B. Payments**

The District shall request grant fund payments in accordance with the provisions of the Federal award. Unless otherwise required in the Federal award, the Purchasing Agent is authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as deemed appropriate by the Purchasing Agent when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r). 2 CFR § 200.305(b)(2)(ii).

When the District uses a cash advance payment method,<sup>2</sup> the following standards shall apply:

1. The timing and amount of the advance payment requested will be as close as is administratively feasible to the actual disbursement by the District for direct program or project costs and the proportionate share of any allowable indirect costs. 2 CFR § 200.305(b)(1).
2. The District shall make timely payment to contractors in accordance with contract provisions. 2 CFR § 200.305(b)(1).
3. To the extent available, the District shall disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. 2 CFR § 200.305(b)(5).
4. The District must be able to account for the receipt, obligation and expenditure of funds. 2 CFR § 200.305(7)(i).
5. Advance payments must be deposited and maintained in insured accounts whenever possible. 2 CFR § 200.305(7)(ii).
6. Advance payments must be maintained in interest bearing accounts unless the following apply:
  - a. The District receives less than \$120,000 in Federal awards per year.
  - b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
  - c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
  - d. A foreign government or banking system prohibits or precludes interest bearing accounts.2 CFR § 200.305(b)(8).
7. The District may retain interest earned in an amount up to \$500 per year for administrative costs. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (“PMS”) through an electronic medium using either Automated Clearing House (“ACH”) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interest earned on Federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:
  - a. For ACH Returns:

---

<sup>2</sup> Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.



Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

b. For Fedwire Returns\*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

(\* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

c. For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency

Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492-5065

d. If the District does not have electronic remittance capability, please make check\*\* payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

(\*\* Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

e. Additional information/instructions may be found on the PMS Web site at [www.dpm.psc.gov](http://www.dpm.psc.gov).

2 CFR § 200.305(9).

### C. Program Income

The District may earn income to defray program costs where appropriate. 2 CFR § 200.307(a). Unless otherwise specified in the Federal awarding agency's regulations or the terms and conditions of the Federal award, ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the District did not anticipate at the time of the Federal award must be used to reduce the Federal award and the District's contributions rather than to increase the funds committed to the project. 2 CFR § 200.307(e).

## A-3 PROCUREMENT

### A. General Procurement Principles

1. Compliance with Applicable Law. Procurement of all supplies, materials, equipment, and services paid for from Federal awards or District matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal award, and District policies and procedures. *See* 2 CFR § 200.318(a). Specifically, except as otherwise noted, procurement transactions shall also conform to the provisions of the District's written general purchase Policy DJF ("Purchasing Procedures"). The Board will not approve any expenditure for an unauthorized purchase or contract.
2. Procurement and Contract Administration System. The Purchasing Agent shall maintain a procurement and contract administration system in accordance with the UGG requirements (2 CFR § 200.318-.326, as applicable) for the administration and management of Federal awards and Federally-funded programs. The contract administration system shall require contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. 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 District 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).
4. Responsible Contractors. The District 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).
5. Fostering Economy and Efficiency. The District 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).
6. Geographical Preferences Prohibited. The District 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).

7. Clear and Accurate Technical Requirements. The District 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).
8. Prequalified Lists. The District must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the District must not preclude potential bidders from qualifying during the solicitation period. 2 CFR § 200.319(d).

## B. Procurement Methods and Thresholds

The District must use one of the following methods of procuring goods or services:

1. Micro-purchases (less than \$10,000)<sup>3</sup>

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. To the extent practicable, the Purchasing Agent must distribute micro-purchase equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if the Purchasing Agent considers the price to be reasonable. 2 CFR §§ 200.67, 200.320(a).

2. Small Purchases (\$250,000 or less)<sup>4</sup>

Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property that do not cost more than the federal simplified acquisition threshold. Such small purchases may be made using simple, informal procurement methods and without requiring sealed bids. If small purchase procedures are used, the Purchasing Agent must obtain price or rate quotations from an adequate number of qualified sources. The Purchasing Agent must document any price or rate quotes received, whether written or oral. 2 CFR §§ 200.88, 200.320(b).

3. Sealed Bids (over \$250,000)

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which exceed the simplified acquisition threshold or for procuring construction (including when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility), the cost of which will exceed the simplified acquisition threshold.

a. In order for sealed bidding to be feasible, the following conditions should be present:

- i. A complete, adequate, and realistic specification or purchase description is available;

---

<sup>3</sup> The micro-purchase threshold is periodically adjusted for inflation.

<sup>4</sup> The simplified acquisition threshold is periodically adjusted for inflation.

- ii. Two (2) or more responsible bidders are willing and able to compete 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.
- b. If sealed bids are used, the following requirements apply:
- i. Bids must be solicited in accordance with the provisions of State law and Policy DJF. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for the opening of bids. The invitation to bid must be publicly advertised.
  - ii. The invitation for bids must include product/contract specifications and pertinent attachments and must define the items and/or services required in order for the bidder to properly respond.
  - iii. All bids will be opened at the time and place prescribed in the invitation for bids. Bids must be opened publicly.
  - iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is best. Payment discounts may only be used to determine the best bid when prior experience indicates that such discounts are usually taken advantage of.
  - v. The Board reserves the right to reject any and all bids if there is a sound documented reason.
  - vi. Bid protests shall be handled pursuant to the process set forth in DJF-A-3.

2 CFR §§ 200.88, 200.320(c).

4. Competitive Proposals (a.k.a. Requests for Proposals; over \$250,000)

For purchases in excess of the simplified acquisition threshold, 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 must 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.

If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- b. Proposals must be solicited from an adequate number of sources.
- c. The District must use a written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The District 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, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. 2 CFR §§ 200.88, 200.320(d).

5. Noncompetitive Proposals (Sole Source); Emergencies.

Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; and/or
- d. After solicitation of a number of sources, competition is determined to be 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 District to solicit proposals from a number of sources. 2 CFR §§ 200.320(f), 200.324(b)(2).

### C. Additional Procurement Requirements

1. Purchases Over \$25,000

efirm or vendor, the Purchasing Agent shall use the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) to search for the firm or vendor by name, tax identification number, or another characteristic to make sure that the firm or vendor has not been suspended or debarred from performing federally funded work. 2 CFR § 200.300; 2 CFR § 180.220.

Documentation that debarment/suspension was queried must be retained for each covered transaction as part of the documentation required under DJF-A-3. This documentation should include the date(s) queried and copy(ies) of the SAM result report/screen shot, or a copy of the or certification from the vendor. It should be attached to the payment backup and retained for future audit review.

2. Purchases Over the Simplified Acquisition Threshold

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 the UGG (*see* DJF-A-1). The District 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 must not be used.

2 CFR § 200.323.

b. Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding 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.
- 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.

c. 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 minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- i. Placing qualified small & minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small & minority businesses and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small & minority businesses and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small & minority businesses and women's business enterprises;

- v. 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
- vi. Requiring the prime contractor, if subcontracts are to be allowed, to take the affirmative steps listed in paragraphs i through v of this section.

2 CFR § 200.321.

#### D. Contracts Arising From Procurements

1. Contract Administrator. The Purchasing Agent shall serve as contract administrator for any contract entered into using a Federal award and, in that capacity, shall be responsible for the tasks, technical requirements, service performance, and verification that payments are in compliance with the contract.
2. Responsible Contractors. The District will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the District and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the District shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.
3. Subrecipient and Contractor Determinations. The District 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 District must make this classification using its judgment as set forth in DJF-A-11.
4. Suspension and Debarment.
  - a. Before entering into a contract between the District and a firm or vendor who is to be compensated using a Federal award or a portion thereof, the District must verify that the firm or vendor (including any principals) is not excluded or disqualified from participating in the contract by (i) checking System for Award Management (SAM), or (ii) collecting a certification from that firm or vendor, or (iii) adding a clause or condition to the contract with that firm or vendor. 2 CFR § 180.300, 180.320.
  - b. Before or after entering into a contract between the District and a firm or vendor who is to be compensated using a Federal award or a portion thereof, the District must notify the Federal awarding agency if the District knows or subsequently learns, due to changing circumstances, that any of the principals of the firm or vendor (i) are presently excluded or disqualified, (ii) have been convicted within the preceding three years of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period, (iii) are presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in 2 CFR § 180.800(a); or (iv) have had one or more Federal, State, or local public transactions terminated within the preceding three years for cause or default. 2 CFR §§ 180.335, 180.350.
5. Time and Materials Contracts.

The District may use a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) 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 the District is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this 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, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the District shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls, and otherwise performs in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

2 CFR § 200.318(j).

6. Contract Provisions. In addition to other provisions required by the Federal agency or the District, any contract entered into between the District and a firm or vendor who is to be compensated using a Federal award or a portion thereof must contain the following contract provisions, as applicable:
  - a. Remedies. Contracts for more than the simplified acquisition threshold (currently set at \$250,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  - b. Termination for Cause and Convenience. All contracts in excess of \$10,000 must address termination for cause and for convenience by the District, 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 60-1.3 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, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the District 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 District 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 District 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 District must report all suspected or reported violations to the Federal awarding agency.



- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the District 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. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the vendor to agree to comply 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).
- g. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). 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.
- h. See also 2 CFR § 200.322 (Procurement of recovered materials).

2 CFR § 200.326; Appendix II to the UGG (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards).

## E. Bid Protests

The District alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. 2 CFR § 200.318(k).

Unless otherwise provided for in the solicitation documents, the District will use the following protest procedures to handle and resolve disputes relating to procurements:

1. A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request for Proposals (RFP) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the Purchasing Agent within seventy-two (72) hours of the opening of the bids in protest.
2. Within five (5) days of receipt of a protest, the Purchasing Agent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

3. Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

#### **F. Maintenance of Procurement Records**

The District shall maintain records sufficient to detail the history of all procurements. 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, the basis for the contract price (including a cost or price analysis), and records regarding disbarment/suspension queries or actions. 2 CFR § 200.318(i).

### **A-4 PROCUREMENT – ADDITIONAL PROVISIONS PERTINENT TO FOOD SERVICE PROGRAM**

The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

#### **A. Mandatory Contract Clauses**

The following provisions shall be included in all cost reimbursable contracts for food services purchases, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

1. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority.
2. The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account).
3. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.
4. The contractor's determination of its allowable costs must be made in compliance with the applicable departmental and program regulations and Office of Management and Budget cost circulars.
5. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the state agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually.
6. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
7. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the state agency, or the department.

**B. Contracts with Food Service Management Companies**

Procedures for selecting and contracting with a food service management company shall comply with guidance provided by the NHDOE, including standard forms, procedures and timelines for solicitation, selection and approval of proposals and contracts.

**C. “Buy American” Requirement**

Under the “Buy American” provision of the National School Lunch Act (the “NSLA”), school food authorities (SFAs) are required to purchase, to the maximum extent practicable, *domestic commodity or product*. As an SFA, the District is required to comply with the “Buy American” procurement standards set forth in 7 CFR §210.21(d) when purchasing commercial food products served in the school meals programs. This requirement applies whether the District is purchasing the products directly or when the products are purchased by third parties on the District’s behalf (e.g., food service management companies, group purchasing cooperatives, shared purchasing, etc.).

Under the NSLA, “*domestic commodity or product*” is defined as an agricultural commodity or product that is produced or processed in the United States using “*substantial*” agricultural commodities that are produced in the United States. For purposes of the act, “*substantial*” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowable under this provision as territories of the United States.

1. Exceptions. The two main exceptions to the Buy American requirements are:
  - a. The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
  - b. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.
2. Steps to Comply with Buy American Requirements. In order to help assure that the District remains in compliance with the Buy American requirement, the Food Service Director, shall
  - a. Include a Buy American clause in all procurement documents (product specifications, bid solicitations, requests for proposals, purchase orders, etc.);
  - b. Monitor contractor performance;
  - c. Require suppliers to certify the origin of the product;
  - d. Examine product packaging for identification of the country of origin; and

7 CFR §§ 210.21, 215.14a, 220.16.

**A-5 CONFLICT OF INTEREST AND MANDATORY DISCLOSURES**

The District must comply with the requirements of State law, the UGG, and its own policies and procedures to avoid conflicts of interest and must comply with mandatory disclosures for all procurements with Federal awards. See 2 CFR § 200.318(c) and District Policies BBFA, GBI, and DJH.

The Purchasing Agent shall timely disclose in writing to the Federal awarding agency all violations of federal criminal law involving fraud, bribery, or gratuities potentially effecting any Federal award. The Purchasing Agent shall fully address any such violations promptly and notify the Board with such information as is appropriate under the circumstances.

## **A-6 INVENTORY MANAGEMENT – PROPERTY, EQUIPMENT AND SUPPLIES PURCHASED WITH FEDERAL FUNDS**

Equipment, supplies and any real or personal property acquired (“property” as used in this DJF-A-6) with Federal awards will be used, managed, and disposed of in accordance with applicable state and federal requirements, including but not limited to the requirements in 2 CFR §§ 200.310-200.316 (Property Standards). Property records and inventory systems shall be sufficiently maintained to account for and track equipment that has been acquired with Federal awards. In furtherance thereof, the following minimum standards and controls shall apply to any property acquired in whole or in part under a Federal award until such property is disposed in accordance with applicable laws, regulations and Board policies:

### **A. “Equipment” and “Pilferable Items” Defined**

For purposes of this policy, “equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the District for financial statement purposes. 2 CFR § 200.33. “Pilferable items” are those items, *regardless of cost*, which may be easily lost or stolen, such as cell phones, tablets, graphing calculators, software, projectors, cameras and other video equipment, computer equipment and televisions.

### **B. Records**

The Purchasing Agent shall maintain records that include a description of the property; a serial number or other identification number; the source of the funding for the property (including the federal award identification number (FAIN)); who holds title; the acquisition date; the cost of the property; the percentage of the federal participation in the project costs for the federal award under which the property was acquired; the location, use, and condition of the property; and any ultimate disposition data, including the date of disposition and sale price of the property. 2 CFR § 200.313(d)(1).

### **C. Inventory**

No less than once every two years, the Purchasing Agent shall cause a physical inventory of all property, equipment and pilferable items must be taken and the results reconciled with the property records at least once every two years. Inventories may be conducted more frequently, as necessary. 2 CFR § 200.313(d)(2).

### **D. Management Requirements**

The Purchasing Agent shall develop administrative procedures and internal controls relative to property procured in whole or in part with Federal funds to:

1. Ensure adequate safeguards to prevent loss, damage, or theft of the property; Any loss, damage, or theft must be investigated;
2. Keep the property in good condition; and
3. Ensure the highest possible return through proper sales procedures, in those instances where the District is authorized or required to sell the property.

2 CFR §§ 200.313(d)(3), (4), and (5).

## **E. Reporting**

The District must submit annually an inventory listing of Federally-owned property in its custody to the awarding agency. Upon completion of the Federal award or when the property is no longer needed, the District must report the property to the awarding agency for further Federal agency utilization. 2 CFR § 200.312(a).

## **A-7 TRAVEL REIMBURSEMENT – FEDERAL FUNDS**

The Board shall reimburse administrative, professional and support employees, and school officials for travel costs incurred in the course of performing services related to official business as a federal grant recipient.

For purposes of this manual, “travel costs” shall mean the expenses for transportation, lodging, subsistence, and related items incurred by employees and school officials who are in travel status on official business as a Federal award recipient.

School officials and District employees shall comply with applicable Board policies and administrative regulations established for reimbursement of travel and other expenses.

The validity of payments for travel costs for all District employees and school officials shall be determined by the Purchasing Agent.

Travel costs shall be reimbursed on a mileage basis for travel using an employee’s personal vehicle and on an actual cost basis for meals, lodging and other allowable expenses, consistent with those normally allowed in like circumstances in the district’s non-federally funded activities, and in accordance with the district’s travel reimbursement policies and administrative regulations.

Mileage reimbursements shall be at the rate approved by the Board or Board policy for other district travel reimbursements. Actual costs for meals, lodging and other allowable expenses shall be reimbursed only to the extent they are reasonable and do not exceed the per diem limits established by Board policy, or, in the absence of such policy, the Federal General Services Administration reimbursement rate for Federal employees for locale where incurred.

All travel costs must be presented with an itemized, verified statement prior to reimbursement.

In addition, for any costs that are charged directly to a Federal award, the Purchasing Agent shall maintain sufficient records to justify that (i) participation of the individual is necessary to the Federal award; and (b) the costs are reasonable and consistent with Board policy.

## **A-8 ACCOUNTABILITY AND CERTIFICATIONS**

All fiscal transactions must be approved by the Purchasing Agent who can attest that the expenditure is allowable and approved under the Federal award. The Purchasing Agent shall submit all required certifications. Required certifications include:

### **A. General Certification**

To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the District, which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

## **B. Certification of Cost Allocation Plan or Indirect Cost Rate Proposal**

Each cost allocation plan or indirect cost rate proposal must comply with the following:

1. A proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the District, must be certified by the District using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX of the UGG. The certificate must be signed on behalf of the District by the Superintendent.
2. Unless the District has elected the option under 2 CFR § 200.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the District fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the District failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

See also 2 CFR § 200.450 (Lobbying) for another required certification.

2 CFR § 415.

## **A-9 TIME AND EFFORT REPORTING / OVERSIGHT**

The Purchasing Agent will establish sufficient oversight of the operations of federally supported activities to assure compliance with applicable federal requirements and to ensure that program objectives established by the awarding agency are being achieved.

### **A. Reporting Requirements**

The District will submit all reports as required by federal or state authorities. 2 CFR § 200.328(a). Specifically, unless the Federal awarding agency grants a waiver to these requirements, the following performance reports are required:

1. Non-Construction Performance Reports. The District must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity, using OMB-approved governmentwide standard information collections. For each Federal award, performance reports will contain brief information on the following (unless other collections are approved by OMB):

- a. A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
  - b. The reasons why established goals were not met, if appropriate.
  - c. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
2. Construction Performance Reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
  3. Significant Developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the District must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
    - a. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
    - b. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
  4. Reporting on Real Property. The District must submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the District to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

2 CFR §§ 200.328(b)-(f), 200.329

## **B. Standards for Documentation of Personnel Expenses**

(Previously known as “time and effort reporting.”) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

1. Be supported by a system of internal controls which provide reasonable assurance that the charges are accurate, allowable, and properly allocated;
2. Be incorporated into the official records of the District;
3. Reasonably reflect the total activity for which the employee is compensated by the District, not exceeding 100% of the compensated activities;
4. Encompass both Federally assisted and other activities compensated by the District on an integrated basis;
5. Comply with the District’s established accounting policies and practices; and

6. Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award, a Federal award and non-Federal award, an indirect cost activity and a direct cost activity, two or more indirect activities which are allocated using different allocation bases, or an unallowable activity and a direct or indirect cost activity.

2 CFR § 200.430(i).

In accordance with the Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day. 2 CFR § 200.430(i).

Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards. 2 CFR § 200.430(i).

The District will also follow any time and effort requirements imposed by NHDOE or other pass-through entity as appropriate to the extent that they are more restrictive than the Federal requirements. The Purchasing Agent is responsible for the collection and retention of employee time and effort reports. Individually reported data will be made available only to authorized auditors or as required by law.

## **A-10 GRANT BUDGET RECONCILIATION**

Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes provided that: (a) the system for establishing the estimates produces reasonable approximations of the activity actually performed; (b) significant changes in the corresponding work activity (as defined by the District's written policies) are identified and entered into the records in a timely manner (short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term); and (c) the District's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates.

The District's internal controls include a process to review after-the-fact interim charges made to a Federal award based on budget estimates and ensure that all necessary adjustments are made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

2 CFR § 200.430(i).

## **A-11 CONTRACTOR AND SUB-RECIPIENT CLASSIFICATION, MONITORING AND MANAGEMENT**

When entering agreements involving the expenditure or disbursements of Federal awards, the District must make a case-by-case determination whether the recipient of such federal funds is a "contractor" or "subrecipient", as those terms are defined in 2 CFR §200.23 and §200.93, respectively. Generally, "subrecipients" are instrumental in implementing the applicable work program whereas a "contractor" provides goods and services for the District's own use. The District must 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 District 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. 2 CFR § 200.330(b).

Contractors will be subject to the District's procurement and purchasing policies (e.g., DJF-A-3 relative to federal grant funds, DJF relative to bidding requirements for non-federal money projects, etc.).

## 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.

Under the UGG, the District is considered a "pass-through entity" in relation to its subrecipients, and as such requires that subrecipients comply with applicable terms and conditions (flow-down provisions). All subrecipients of Federal or State funds received through the District are subject to the same Federal and State statutes, regulations, and award terms and conditions as the District.

If the party receiving the funds is classified by the District as a subrecipient, the District must follow these procedures:

1. Sub-award Contents and Communication. In the execution of every sub-award, the District must ensure that (i) every subaward is clearly identified to the subrecipient as a subaward and (ii) includes the following information in the sub-award agreement:
  - a. Federal award identification:
    - i. Subrecipient name (which must match the name associated with its unique entity identifier)
    - ii. Subrecipient's unique ID number (DUNS)
    - iii. Federal Award ID Number (FAIN)
    - iv. Federal award date (*see* 2 USC § 200.39)
    - v. Period of performance start and end date
    - vi. Amount of federal funds obligated
    - vii. Amount of federal funds obligated to the subrecipient
    - viii. Total amount of the Federal award
    - ix. Total approved cost sharing or match required where applicable

- x. Project description responsive to the Federal Funding Accountability and Transparency (FFATA)
  - xi. Name of Federal awarding agency, District, and contact information for awarding official of the District
  - xii. CFDA number and name (the District must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement)
  - xiii. Identification of the award is R&D
  - xiv. Indirect cost rate for the Federal award (including if the *de minimis* rate is charged per 2 CFR § 200.414)
- b. All requirements imposed by the District 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.
  - c. Any additional requirements that the District 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.
  - d. 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 District and the subrecipient or a *de minimis* indirect cost rate as defined in 2 CFR § 200.414(f).
  - e. A requirement that the subrecipient permit the District and auditors to have access to the subrecipient's records and financial statements as necessary for the District to meet the requirements of 2 CFR § 200.331.
  - f. Appropriate terms and conditions concerning closeout of the subaward. 2 CFR § 200.331(a)(6).
2. Subrecipient Monitoring Procedures. The Purchasing Agent is responsible for having all the District project managers monitor subrecipients. The District will monitor the activities of the subrecipient as necessary to ensure the sub-award 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. 2 CFR § 200.331(c). The frequency of monitoring review will be specified in the sub-award and conducted concurrently with all invoice submission. Subrecipient monitoring procedures include:
- a. At the time of the proposal, assess the potential of the subrecipient for programmatic, financial, and administrative suitability.
  - b. 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, prior to executing a sub-award. In doing so, the District will assess:
    - i. The subrecipient's prior experience with the same or similar sub-awards.
    - ii. Results of previous audits and single audit (if applicable), including whether or not the subrecipient receives a Single Audit in accordance with Subpart F (Audit Requirements) of the UGG, and the extent to which the same or similar subaward has been audited as a major program.
    - iii. The subrecipient's new personnel or new or new or substantially changed systems.
    - iv. The extent and results of Federal awarding agency monitoring.
- 2 CFR § 200.331(b).

- c. Depending on the District's assessment of risk posed by the subrecipient (as described in paragraph 2.b, above), the District may apply monitoring tools to ensure proper accountability and compliance with program requirements and achievement of performance goals, including:
  - i. Providing subrecipients with training and technical assistance on program-related matters.
  - ii. Performing on-site reviews of the subrecipient's program operations;
  - iii. Arranging for agreed upon procedures engagements as described in 2 CFR § 200.425 (Audit services).2 CFR § 200.331(e).
- d. Confirm the statement of work and review any non-standard terms and conditions of the sub-award during the negotiation process.
- e. Monitor financial and programmatic progress and ability of the subrecipient to meet objectives of the sub-award. To facilitate this review, subrecipients are required to submit sufficient invoice detail and a progress report. The District project managers will encourage subrecipients to submit regular invoices.
- f. Invoices and progress reports will be date stamped upon receipt if received in hard copy. A record of the date of receipt will be maintained for those invoices sent electronically.
- g. In conducting regular oversight and monitoring, the District will review financial and performance reports required by the District. Specifically, for each sub-award, the District's project manager(s) will:
  - i. Verify invoices that include progress reports.
  - ii. Review progress reports to ensure project is progressing appropriately and on schedule.
  - iii. Compare invoice to agreement budget to ensure eligibility of costs and that costs do not exceed budget.
  - iv. Review invoice to ensure supporting documentation is included and invoices costs are within the scope of work for the projects being invoiced.
  - v. Obtain report, certification and supporting documentation of local (non-federal)/in-kind match work from the subrecipient.
  - vi. Review subrecipient match tasks for eligibility.
  - vii. Initial the progress report and invoice confirming review and approval prior to payment.
  - viii. Raise any concerns to the Purchasing Agent.2 CFR § 200.331(d)(1).
- h. The Purchasing Agent, upon recommendation from the project's manager, will approve the invoice payment and will initial invoices confirming review and approval prior to payment.
- i. Payments will be withheld from subrecipients for the following reasons:
  - i. Insufficient detail to support the costs billed;
  - ii. Unallowable costs;
  - iii. Ineligible costs; and/or
  - iv. Incomplete work or work not completed in accordance with required specifications.

- j. Verify that every subrecipient is audited in accordance with 2 CFR part 200, Subpart F – Audit Requirements when it is expected that the subrecipient’s Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501. 2 CFR § 200.331(f)
3. Subrecipient Project Files. Subrecipient project files will contain, at a minimum, the following:
    - a. Project proposal
    - b. Project scope
    - c. Progress reports
    - d. Interim and final products
    - e. Copies of other applicable project documents as required, such as copies of contracts or MOUs
  4. Audit Requirements. All subrecipients are required to annually submit their audit and Single Audit report to the District for review to ensure the subrecipient has complied with good accounting practices and federal regulations. If a deficiency is identified, the District will:
    - a. Issue a management decision on audit findings pertaining to the Federal award. 2 CFR §§ 200.331(d)(3), 200.521.
    - b. Consider whether the results of audits or reviews indicate conditions that necessitate adjustments to the District’s own records. 2 CFR § 200.331(g).
  5. Methodology for Resolving Findings and Deficiencies. The District will work with subrecipients to resolve any findings and deficiencies pertaining to the Federal award. To do so, the District will follow up on deficiencies identified through audits, on-site reviews, provision of basic technical assistance, and other means of assistance as appropriate. 2 CFR § 200.331(c)(2).

If a subrecipient fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the District may impose additional conditions, as described in 2 CFR § 200.207 (Specific conditions). 2 CFR §§ 200.331(c), 200.338.

The District will only consider taking enforcement action against non-compliant subrecipients in accordance with 2 CFR § 200.338 when noncompliance cannot be remedied by imposing additional conditions. 2 CFR §§ 200.331(h), 200.338. Enforcement may include taking any of the following actions, as appropriate in the circumstances:

- a. Temporarily withhold cash payments pending correction of the deficiency
- b. Disallow (that is, deny both use of funds and any matching credit for) all or part of the cost of the activity or action not in compliance.
- c. Wholly or partly suspend or terminate the sub-award.
- d. Recommend to the Federal awarding agency that it initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations.
- e. Withhold further Federal awards for the project or program.
- f. Take other remedies that may be legally available.

2 CFR § 200.338.

## **A-12 CLOSEOUT AND RECORD RETENTION**

### **A. Closeout Requirements**

The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the District. This section specifies the actions District must take to complete this process at the end of the period of performance.

1. The District must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the District.
2. Unless the Federal awarding agency or pass-through entity authorizes an extension, the District must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
3. The District must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the District for use in other projects. *See* OMB Circular A-129; 2 CFR § 200.345 (Collection of amounts due) for requirements regarding unreturned amounts that become delinquent debts.
4. The District must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 CFR §§ 200.310-.316, 200.329.

2 CFR § 200.343.

### **B. Retention Requirements for Records**

Financial records, supporting documents, statistical records, and all other District records pertinent to a Federal award must be retained 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 the District in the case of a subrecipient. The only exceptions are the following:

1. 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.
2. When the District 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.
3. Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
4. 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 District.
5. Records for program income transactions after the period of performance. In some cases, the District 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 District's fiscal year in which the program income is earned.
6. Indirect cost rate proposals and cost allocations plans. This section 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).

- a. 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.
- b. 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 § 200.333.

### **C. Methods for Collection, Transmission and Storage of Information**

Whenever practicable, the District will collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable. 2 CFR § 200.335.

## Wellness Policy

The Child Nutrition and WIC Reauthorization Act of 2004 (PL# 108-265) requires each local educational agency that receives funding for U.S. Department of Agriculture (USDA) Child Nutrition Programs to establish a local school wellness policy by the beginning of the 2006-2007 school year. The US Congress recognizes that schools play a critical role in creating a healthy environment that models the current USDA Guidelines for nutrition and physical activity. The law places the responsibility of developing a wellness policy at the school district level.

Healthy eating and activity patterns are essential for students to achieve their highest level of academic potential, physical well being and mental growth. A balanced diet and regular physical activity also contribute to the reduction of many chronic diseases associated with childhood obesity such as Type 2 diabetes and high blood pressure. Schools are responsible to help students develop and maintain these lifelong habits. Staff wellness also is an integral part of a healthy school environment, since school staff members can be daily role models for healthy behaviors.

### **Goal:**

All students attending the Londonderry Schools shall possess the knowledge and skills necessary to make nutritious food choices and enjoyable physical activity choices for a lifetime. To meet this goal, the Londonderry School District adopts this school wellness policy with a commitment to nutrition, physical activity, comprehensive health education and implementation. This policy is designed to effectively utilize school and community resources and to equitably serve the needs and interests of all students and staff.

### **Commitment to Nutrition:**

- Offer a school lunch program with menus that meet the meal patterns and nutritional standards established by the U.S. Department of Agriculture and the New Hampshire Department of Education, Bureau of Nutrition Programs. This is to include the availability of free and reduced lunches to those whose income falls within the USDA Income Eligibility Guidelines.
- Have available meals for those students who have special diets that are approved by a physician.
- Operate all child Nutrition Programs with school food service staff who are properly qualified according to current professional standards.
- Establish food safety as a key component in all school food operations and ensure that the food service operating license is current for each school location.
- Provide adequate time for students to eat and enjoy school meals; 18-25 minutes is recommended.
- Encourage students to make food choices based on the 2005 Dietary Guidelines for Americans (see MyPyramid.gov), by emphasizing menu options that feature baked rather than fried foods, whole grains, fresh fruits and vegetables and reduced-fat dairy products.
- Establish a well supervised cafeteria environment offering a positive dining experience that is conducive to socializing among students.
- Provide nutritious and appealing snack options wherever foods and beverages are offered at school.

**Commitment to Nutrition (continued):**

- Promote the use of non-food rewards for student accomplishment and healthy snacks for classroom celebrations.
- Encourage all school-based organizations to offer non-food items and/or healthful foods for fundraising programs.
- Student access to vending machines, other than those that sell healthy snacks and beverages, is only available after school.

**Commitment to Physical Activity:**

- Please review Londonderry School District Physical Activity Policy, JHB.

**Commitment to Nutrition Education:**

- Provide students with the knowledge and skills necessary to promote and protect their health through wellness and nutrition education emphasizing the caloric balance between food intake and energy expenditure.
- Staff will be encouraged to attend wellness and nutrition education training.
- Instructional staff will be encouraged to integrate nutritional themes into daily lesson plans when appropriate.
- Nutrition information for foods served will be made available by the Food Service Director.

**Commitments to Implementation:**

- Establish and support a committee that addresses all aspects of the Londonderry School District Wellness Policy. The committee will consist of representation from parents, students, the food service department, the School Board, administration and the public.
- Conduct a review of the progress toward wellness policy goals each year.

LONDONDERRY SCHOOL BOARD

Adopted: July 11, 2006

1<sup>st</sup> Reading to Rescind: February 18, 2020



## WELLNESS POLICY

The Board recognizes the importance of proper nutrition and developmentally appropriate physical activity as ways of promoting healthy lifestyles, minimizing childhood obesity, and preventing other diet-related chronic diseases. The Board also recognizes that health and student success are inter-related. It is, therefore, the goal of the Board that the learning environment positively influences a student's understanding, beliefs, and habits as they relate to good nutrition and physical activity.

### Goals:

1. The District shall teach, encourage, support, and model healthy eating habits for students.
2. The District shall teach, encourage, support, and model age appropriate daily physical activity.
3. The District shall provide opportunities for students, employees, school board, and community members which address the important benefits of a healthy lifestyle.
4. The Schools within the National School Lunch Program shall comply with the nutrition guidelines outlined in this policy in a manner designed to facilitate the adoption of healthier eating habits such that 100% compliance is achieved no later than the 2022/2023 School Year.

### Nutrition Guidelines:

The School District's nutritional standards are based upon standards established by the USDA and New Hampshire Healthy School Coalition/Best Practice. These nutrition guidelines apply to all foods available to students on school grounds during the school day, including but not limited to the school lunch and breakfast program, foods and beverages sold in vending machines/school stores and as part of classroom lessons/activities, parties, celebrations or fundraising efforts. As needed, the Wellness Committee will request that the Superintendent notify each School Board regarding any changes that have occurred in federal and state nutrition guidelines that need to be reflected in this Policy.

- A. School Meals:** School Meals served in the District shall meet or exceed the nutrition requirements established by the USDA, laws, and regulations. Administration of the school meal program will be by qualified school food service staff. School lunches and breakfast programs will offer variety of foods and choices for students. General nutritional information about school meals will be available for students and parent.
- B. Free and Reduced Meals:** Eligibility for and distribution of free and reduced priced meals will be provided with confidentiality in accordance with state and federal requirements.
- C. Breakfast & Lunch:** In order to meet the nutritional needs of children and enhance their ability to learn it is recommended that all schools in the District offer a breakfast program in addition to their already established lunch programs.
- D. Meal Times and Scheduling:** Schools whenever possible:

- Shall ensure students have scheduled time to eat breakfast and lunch in accordance with the federal Child Nutrition and WIC Reauthorization Act of 2004.
- Shall not schedule tutoring, club, or organizational meetings/activities during mealtimes, unless students may eat during such activities.

**E. Food Sales:** All food items available through schools and school functions should meet or exceed nutritional standards established by the NH Healthy School Best Coalition.

**Elementary Schools.** The school food service program will approve and provide all food and beverage sales to students in elementary schools. Foods in elementary schools should be sold as balanced meals.

**Middle/Junior High** Foods and beverages sold individually outside the reimbursable school meal programs (including those sold through a la carte [snack] lines, vending machines, school stores, concessions, fundraising, etc.) to students during the school day, will meet the following nutrition and portion size standards:

**Beverages:** Beverages sold on school property include: plain bottled water, low fat or skim milk, 100% fruit juices, 100% vegetable juice, light juice, low-fat or fat free chocolate milk (trivial amount of caffeine).

Beverages not sold on school property include: soda, caffeinated drinks (coffee, hot chocolate, ice tea, and sodas), sports drinks, lemonade, and punch.

**Foods:** Any item sold individually:

- Shall meet or exceed nutritional guidelines established by the USDA and NH Healthy School Coalition Best Practices Health Snack Coalition.
- Shall have no more than 35% of its calories from fat (excluding nuts, seeds, peanut butter, and other nut butters) and 10% of its calories from saturated and trans fat combined.
- Shall have no more than 35% of its weight from added sugars.
- Shall contain no more than 230 mg of sodium per serving for chips, cereals, crackers, French fries, baked goods, and other snack items; will contain no more than 480 mg of sodium per serving for pastas, meats, and soups.
- Shall contain no more than 600 mg of sodium for pizza, sandwiches, and main dishes.
- A choice of at least two fruits and/or non-fried vegetables shall be offered for sale at any location on the school site where foods are sold. Such items could include, but are not limited to fresh fruits and vegetables; 100% fruit or vegetable juice; fruit-based drinks that are at least 50% fruit juice and that do not contain additional caloric sweeteners; cooked, dried, or canned fruits (canned in fruit juice or light syrup); and cooked, dried, or canned vegetables (that meet the above fat and sodium guidelines).

**Portion Sizes:** Suggest to limit portion sizes of foods and beverages sold individually to those listed below:

- One and one-quarter ounces for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, or jerky.

- One ounce for cookies.
- Two ounces for cereal bars, granola bars, pastries, muffins, doughnuts, bagels, and other bakery items.
- Four fluid ounces for frozen desserts, including, but not limited to, low-fat or fat-free ice cream.
- Eight ounces for non-frozen yogurt.
- Twelve fluid ounces for beverages, excluding water.
- The portion size of a la carte entrees and side dishes, including potatoes, will not be greater than the size of comparable portions offered as part of school meals. (Fruits and non-fried vegetables are exempt from portion-size limits.)

**F. Fundraising Activities:** To support children's health and school nutrition-education efforts, school sponsored fundraising activities (direct school affiliation) will not involve food or will use only foods that meet the above nutrition and portion size standards for foods and beverages sold individually. Schools will encourage fundraising activities that promote physical activity. The school district will make available a list of ideas for acceptable fundraising activities.

**G. Rewards:** Schools will limit use of foods or beverages as rewards for academic performance or good behavior and will not withhold food or beverages (including food served through school meals) as a punishment.

**H. Snacks:** Snacks served during the school day will make a positive contribution to children's diets and health. Schools will assess if and when to offer snacks based on timing of school meals, children's nutritional needs, children's ages, and other considerations. The district will disseminate a list of healthful snack items to the public.

**I. School Store:** Food and beverage items sold in the school store will meet guidelines of this policy. Food items in the school store will not be sold when the school food services program is open for sale. (Food items available after lunch and after school.)

**J. Celebrations:** Schools should limit celebrations that involve food during the school day. The district will make public a list of healthy party ideas to parents and teachers. School staff involved in homeroom, field trips and advisory food related events are encouraged to communicate with school food services managers to assist with cafeteria planning and reducing food waste. Where possible, staff will order foods through food services managers.

**K. Extra-Curricular Meals:** When arrangements can be made through the food service program, food and beverage items that meet the guidelines of this policy will be made available to students. Examples of activities include but are not limited to: Athletic teams and clubs.

**L. Classroom Activities:** Schools shall discourage the use of food items for instructional purposes unless is essential to a curriculum area.

### **Nutrition Guidelines for Reimbursable School Meals:**

In no circumstances will the guidelines for reimbursable school meals be less restrictive than the regulations and guidance issued by the US Secretary of Agriculture as applicable to schools. Foods should be served with consideration toward variety, appeal, taste, safety, and packaging to ensure that students will participate in consuming high quality meals.

### **Plan for Measuring Implementation:**

The School Board instructs the Superintendent to establish procedures for implementation of this policy that include targets in support of the goals set forth in this Policy. Each Building Principal is charged with the operational responsibility for ensuring that their school follows the guidelines set forth in this policy. The Wellness Committee will periodically assess the nutrition and physical activity environment throughout the District. An annual progress report will be provided to the School Board.

### **Community Involvement:**

The Board will establish a Wellness Committee that will periodically assess the nutrition and physical activity environment throughout the District. This group will assess progress on the current goal targets, recommend any new goal targets, and identify strategies for achieving them. The Committee will consist of a group representing parents, students, the school's food service program, the School Board, administrators, faculty and staff as well as members of the public with wellness related expertise. The purpose of this advisory Committee is to provide content area expertise and community input.

### **Legal References:**

*RSA 189:11-a, Food and Nutrition Programs*

*Section 204 of Public Law 108-265, Child Nutrition and WIC Reauthorization Act of 2004*

*Ed 306.04(a)(20), Wellness*

*Ed 306.401, Health and Wellness Education Program*

LONDONDERRY SCHOOL BOARD

1<sup>st</sup> Reading: February 18, 2020

## **BREACH OF CONTRACT**

Teachers will receive their individual contract by April 1st and the signed contract must be returned by **April 15<sup>th</sup>** or it will be deemed a resignation. If a teacher has returned a signed contract by the aforementioned date (**April 15<sup>th</sup>**) and elects to resign their position no later than the close of business on **May 15<sup>th</sup>**, the resignation will be accepted without penalty. The School District may accept a teacher's resignation after **May 15<sup>th</sup>**, if the School Board receives a 45-day advanced notice of intent to accept a non-teaching position and a replacement has been secured or if reasons stated are family health or relocation.

A breach of contract occurs if an employee terminates his/her employment without the consent of the School Board and there are no emergency extenuating circumstances as determined by the Londonderry School Board. The burden shall be on the teacher to demonstrate that a termination to accept another position is not a breach of contract.

If a teacher breaks his/her contract by submitting a letter of resignation after **May 15<sup>th</sup>** or at any time during the year, the School Board may not accept the resignation. If the teacher breaks his/her contract and leaves the District anyway, the District will immediately file a written complaint with the State Department of Education.

The School District may waive its claims for legal remedies for breach of contract in circumstances where the Board has received 45 days advance notice of an intent to accept a non-teaching position and has secured a suitable replacement for the departing teacher, or the reason stated for the breach of employment contract is family health or family relocation out of the immediate area.

The School Board is the only entity that may grant permission to terminate the contract. Administrators are not representatives of the School Board for purposes of granting permission to terminate the contract. A copy of this policy shall be distributed to all new hires and with all renewals. If an employee speaks to his or her supervisor about his/her desire to look for a position elsewhere, the administrator should remind the employee that he/she is under contract, and then direct the employee to the Director of Human Resources for further discussion on the matter.

### **LONDONDERRY SCHOOL BOARD**

Adopted: November 16, 1999

Amended: September 26, 2000

Amended: June 1, 2004

Amended: May 25, 2010

(Amend due to change in Teacher Union Agreement of July 1, 2019 – June 30, 2022)

1<sup>st</sup> Reading to Amend: February 18, 2020