

# Uniform Guidance Implementation Guide: Procurement

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*April 2018*



**COMMONWEALTH OF PENNSYLVANIA**  
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## Cover Letter

**SUBJECT: Implementation of Uniform Guidance Procurement Standards**

**DATE: April 2018**

**This guide applies to entities receiving federal funding through the Pennsylvania Department of Education.**

### Overview

The Pennsylvania Department of Education (PDE) has created this implementation guide to serve as a resource for its funding recipients as they effectively implement the Federal Government's Uniform Guidance (UG) procurement rules within the Commonwealth of Pennsylvania (Commonwealth).

Many of these elements were already in place under prior OMB guidance and in general are good practice. However, UG requires some additional written policies/procedures and clarifies prior elements.

In order to provide background and explanation of UG and how it relates to Commonwealth rules and regulations, the guide is laid out as follows:

- An implementation checklist identifies the key elements of the UG and provides guidance to the entity for each piece.
- Procurement procedures are a requirement of UG. Provided in this guide are three examples based on the type of entity (Sections B-D)
- Procurement thresholds differ pertaining to the entity and whether a good or service is being procured. Therefore, the guide includes thresholds pertaining to Local Education Agencies (LEA) and Non-profits. (Sections E and F)
- All entities receiving federal funds must have a conflict of interest policy. This guide provides samples of what a policy should contain. (Sections G and H)
- Required contract clauses are identified in Section I
- Section K includes a sample form that could be used to document the requirements under the small purchase threshold.
- UG requires that organizations perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. Therefore, Section L provides guidance to the entity on performing the analysis.
- Section M identifies the difference between a contractor and subrecipient of federal funds.

PDE has many different types of grantees, including school districts and intermediate units, libraries, non-profits, and for profit enterprises; with each organization and grant having its own unique characteristics and requirements. **It is also important to understand that PDE grants**

**out federal money from a variety of different federal agencies, each with their own specific program terms that must be considered together with the UG in assessing appropriate procurement standards.** Understanding there is not really a “one size fits all” approach, it is important that each organization evaluates the utilization of this guide considering their unique characteristics, emerging information, and guidance, along with consultations with legal counsel. This guide has provided information recognizing the diversity of the group of grantees.

Questions regarding these Procurement Standards may be addressed to the program area within the department that granted the funds. Section N includes contact information for most of the federal program areas in PDE.

## **Executive Summary**

### **Goal of the Implementation Guide**

The goal of this implementation guide is to provide a resource for Pennsylvania Department of Education (PDE) funding recipients as they effectively implement the Federal Government's Uniform Guidance (UG) procurement rules within the Commonwealth of Pennsylvania. It provides background and explanation of UG and commonwealth rules and regulations, as well as tools necessary to properly implement the UG.

### **Background**

#### ***Goals of UG & Procurement Regulations***

The UG significantly reforms the federal grant-making process to focus resources on improving performance and outcomes. The intent is to reduce administrative burdens for grant applicants, recipients, and reduce the risk of waste, fraud, and abuse. The procurement guidelines focus on increased competition and transparency in the procurement process. Procurement standards are in 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, §§200.317 – 200.326.

#### ***Implementation Effective Dates***

The U.S. Office of Management and Budget (OMB) extended the original implementation date of July 1, 2017, for an additional year for the new procurement requirements under the federal UG for purchases made with federal funds. Thus, the effective date for implementation of the UG procurement standards for Pennsylvania Local Education Agencies (LEA) will start for the fiscal year beginning on or after July 1, 2018. Please note that, pursuant to the terms of this extension, if an LEA chooses to use the previous procurement standards before adopting the UG procurement standards, the LEA must document this decision in its internal procurement policies.

PDE recommends that grantees consult with their legal counsel in their efforts to approve and implement updated policies and procedures in light of the extension. In particular, LEAs should be aware that with few exceptions, such as updated pricing thresholds and new micro-purchase procedure, the procurement requirements of the UG are not new, and actually add some flexibility. Nearly all UG requirements have applied under previous OMB guidance applicable to LEAs (see 34 CFR Part 80), and will continue to apply throughout the extension period. Regarding the exceptions, for example, the \$3,500 micro-purchase provision allows LEAs to purchase under that threshold without competitive bidding, something that is not allowable under 34 CFR Part 80. This flexibility will be lost if an LEA chooses to take the procurement extension.

Further, PDE guidance concerning the use of Intergovernmental Agreements (“Updated PDE Guidance Concerning Use of Intergovernmental Agreements in Procurements Involving Federal Funds, Effective July 1, 2017”) will continue to apply. PDE recommends LEAs use this opportunity to review their procurement policies and procedures to ensure they conform to best practices and encourage competition.

## **UG Procurement Overview**

UG procurement rules focus on process requirements for three levels of purchases<sup>1</sup>:

1. \$3,500 and below
2. Greater than \$3,500 but less than or equal to \$150,000
3. Greater than \$150,000

*\$3,500 and below* - Purchases of supplies or services at this level are referred to as **micro-purchases**. UG requires program operators to distribute micro-purchases equitably among qualified suppliers to the extent practicable, but notes that awards may be made without soliciting competitive quotations if the operator considers the price to be reasonable.

*Greater than \$3,500 but less than or equal to \$150,000* - Purchases of supplies or services at this level are referred to as **small purchase**. For these purchases (valued at or below the simplified acquisition threshold of \$150,000), price or rate quotations must be obtained from an adequate number of qualified sources.

*Greater than \$150,000* - At this level of purchases, UG provides for three potential processes, depending on the circumstances that best fit the procurement details.

**Sealed bids** – Purchases subject to sealed bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for construction.

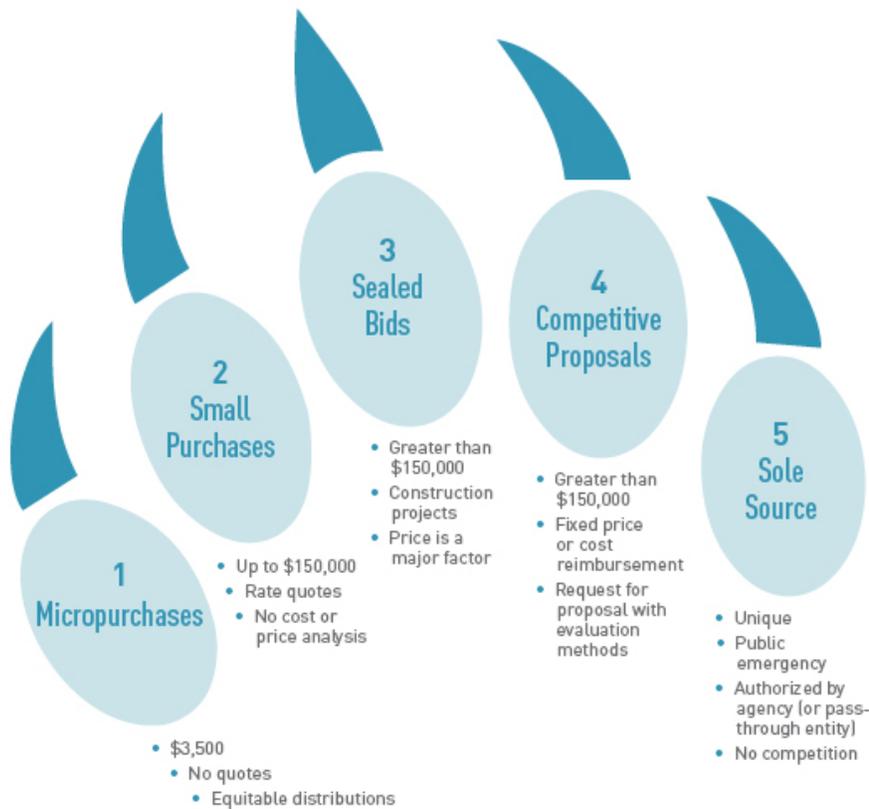
**Competitive proposals** – Purchases may be made through fixed price or cost-reimbursement type contracts after considering proposals from an adequate number of sources. This procurement process will be used when the procurement is not appropriate for sealed bid conditions.

**Noncompetitive proposals** – This purchase process may be used through solicitation of a proposal from **only one source** and may be utilized only in the limited circumstances set forth in UG; specifically when goods are available from only one source, inadequate competition, or in emergency situations. It is important that entities document the basis and justification for using this method.

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<sup>1</sup> These thresholds are correct as of the date of this publication; however, the micro-purchase threshold and simplified acquisition threshold may be periodically adjusted for inflation. See 2 CFR §200.67 (defining micro-purchase and 2 CFR §200.88 (defining simplified acquisition threshold). Changes in these thresholds are required to be published in the Federal Register.

See figure below for summary of procurement methods:



Source: "Frequently Asked Questions for the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR 200," published by the Council on Financial Assistance Reform (COFAR).

## Interaction between UG and Pennsylvania Procurement Laws

When procuring goods and services with federal funds, grant recipients that are Pennsylvania governmental entities are required to comply with the terms of Pennsylvania laws that govern those entities. In considering the appropriate method of procurement the UG requires local entities to comply with the most restrictive rule (state or federal) governing the type of procurement.

State law and its local government codes, including the County Code, Municipal Authorities Code and Public School Code of 1949 (the School Code), are generally aligned and govern the procurement processes which must be followed by each local entity as appropriate. For example, Section 807.1 of the School Code (24. P.S. §8-807.1) generally governs purchases of equipment and supplies by public schools. Under this provision the bidding thresholds are currently set as follows:<sup>2</sup>

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<sup>2</sup> The Pennsylvania Department of Labor and Industry publishes a Consumer Price Index Adjustment of Base Amounts on Bids on an annual basis and adjusts the three levels based on inflation.

1. **Below \$10,900** – Contracts and purchases require no formal bids or written/telephonic quotations.
2. **Between \$10,900 and \$20,100** – Contracts require three informal quotations, which may be received over the telephone or by written/electronic means. If bids are informal, appropriate records must be maintained to assure that the price quotation provisions are followed.
3. **Bids equal to or greater than \$20,100** – Contracts require a formal, advertised bidding process, and must be awarded to the lowest responsible and responsive bidder. A responsible and responsive bid is one that properly answers the specifications and that gives proper assurance that the contract specifics will be fulfilled.

Each entity should carefully consider the particulars of any Pennsylvania law governing the entity. Please note that the School Code currently does not cover bidding for the purchases of services other than construction, maintenance or repairs on school facilities regardless of total cost. Purchased services are, however, covered under UG. Organizations should determine and adhere to the most restrictive requirements. When contracting under any of the exceptions, the local governments should still encourage a full and open negotiation process, including securing competitive quotes. Entities should also take into consideration specific grant requirements when procuring goods and services.

### **General Competitive Provisions**

Regardless of the applicable competitive threshold, UG requires that all procurement transactions must be conducted in a manner providing full and open competition. The UG also specifies eliminating unfair competitive advantage by eliminating restrictions on competition, such as:

contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

Some of the additional situations considered to be restrictive of competition include, but are not limited to: organizational conflicts of interest and specifying only a “brand name” product, instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.

### **Road to Implementation: Education first, Policy next, then Process implementation**

Generally, organizations should implement UG procurement standards beginning with their first fiscal year beginning on or after December 26, 2017. Organizations should ask a few basic questions as they implement UG:

1. Has your organization designated knowledgeable personnel to lead UG procurement implementation?
2. Are there written procedures and implementation processes for purchasing or procuring property or services? Do those policies provide for compliance with both federal and commonwealth law?

3. Have your internal controls over purchasing processes been updated and evaluated to ensure compliance with the written policies?
4. Does your organization have conflict-of-interest policies in place? Are there written standards of conduct governing the performance of its employees engaged in the selection of awards and the administration of contracts? If your organization has a parent, affiliate, or subsidiary organization that is not a state or local government or indian tribe, does your conflict-of-interest policy also include organizational conflicts of interest?

From providing knowledge of UG to obtaining basis for and samples of procedures, this guide provides steps to help you ensure your organizational compliance.

**Important note: Each grant has its own unique requirements which warrant a careful review of the grant provisions. Additionally, organizations should always work with their contacts at PDE for their program areas to receive additional assistance and guidance on their grants.**

## Implementation Checklist

### Organizational Controls

*Establishing the “Tone at the Top” and having a person designated to drive the changes required by the implementation is important to organization compliance.*

| Criteria  | Yes/No |
|---|--------|
| 1. Has your organization designated personnel who have knowledge of UG to lead UG procurement implementation? |        |

**Action Item:** Appoint a UG implementation lead within your organization.

### Conflict of Interest Controls

*UG requires all organizations to have appropriate conflict-of-interest policies in place to protect itself and to prevent fraud, waste, and abuse.*

| Criteria  | Yes/No |
|---|--------|
| 1. Are there written standards of conduct governing the performance of its employees engaged in the selection of awards and the administration of contracts?  |        |
| 2. Does your organization have a conflict of interest policy in place? If your organization has a parent, affiliate, or subsidiary organization that is not a state or local government or Indian tribe, does your conflict of interest policy also include organizational conflicts of interest? |        |

**Action Item:** Evaluate sample conflict of interest policy in **Section G or H** for use by your organization.

### Procurement Procedures and Controls

*UG requires all organizations to implement, and follow, their own documented procurement procedures that reflect applicable federal and Commonwealth laws and regulations to better mitigate the risk of waste, fraud, and abuse. An organization’s procurement procedures must document, in writing, thresholds and appropriate processes for each procurement.*

| Criteria  | Yes/No |
|---|--------|
| 1. Are there written procedures and implementing processes for purchasing or procuring property (supplies and/or equipment) or services? Do those policies provide for compliance with both federal and commonwealth law? |        |
| 2. Does your organization have written procurement procedures and policies in place to meet requirements? Do the policies and procedures:   |        |
| a. Ensure that the acquisition of duplicate or unnecessary items is avoided?  |        |

| Criteria  | Yes/No |
|---|--------|
| b. Ensure that state and local government intergovernmental agreements are considered where appropriate?  |        |
| c. Ensure contracts are awarded only to responsible contractors with the ability to perform contract terms successfully?  |        |
| d. Ensure all procurement transactions are conducted in a manner providing full and open competition? Situations considered to be restrictive of open competition include:  |        |
| <ul style="list-style-type: none"> <li>▪ Placing unreasonable requirements on firms in order for them to qualify to do business;</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Requiring unnecessary experience and excessive bonding;</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Noncompetitive pricing practices between firms or between affiliated companies;</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Noncompetitive contracts to consultants that are on retainer contracts;</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Organizational conflicts of interest;</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Specifying only a "brand name" product instead of allowing "an equal" product to be offered;</li> </ul>  |        |
| <ul style="list-style-type: none"> <li>▪ Any arbitrary action in the procurement process; and</li> </ul>  |        |
| <ul style="list-style-type: none"> <li>▪ Not including state or local geographical preferences (except where federal statutes mandate or encourage geographic preference).</li> </ul>   |        |
| e. Ensure all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured?  |        |
| f. Require cost or price analysis, including independent estimates, for all purchases over \$150,000?   |        |
| g. Include affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible?   |        |
| h. Placing qualified small and minority businesses and women's business enterprises on solicitation lists?  |        |
| <ul style="list-style-type: none"> <li>▪ Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.</li> </ul>  |        |
| <ul style="list-style-type: none"> <li>▪ Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.</li> </ul> |        |
| <ul style="list-style-type: none"> <li>▪ Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.</li> </ul>                           |        |
| <ul style="list-style-type: none"> <li>▪ 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.</li> </ul>   |        |

| Criteria   | Yes/No |
|--|--------|
| <ul style="list-style-type: none"> <li>▪ Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed here.</li> </ul>  |        |
| <p>3. Do your procurement policies include guidelines for the following purchase thresholds?</p>   |        |
| <p>a. Micro-purchase (\$3,500 and below, no quotations, equitable distributions)</p>   |        |
| <p>b. Small purchase, (greater than \$3,500 but less than or equal to \$150,000, rate quotations, no cost or price analysis)</p>   |        |
| <p>c. Sealed bids (greater than \$150,000, formal advertising, price is a major factor). Requirements for sealed bids:</p>   |        |
| <ul style="list-style-type: none"> <li>▪ The invitation for bids will be publicly advertised and bids must be selected from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.</li> </ul>                      |        |
| <ul style="list-style-type: none"> <li>▪ The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ All bids will be publicly opened at the time and place prescribed in the invitation for bid.</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Any or all bids may be rejected if there is a sound documented reason.</li> </ul>   |        |
| <p>d. Competitive proposal (greater than \$150,000, fixed price or cost reimbursement, request for proposal (RFP) with evaluation methods). Requirement for competitive proposal procedures:</p>   |        |
| <ul style="list-style-type: none"> <li>▪ RFPs must be publicized requests and identify all evaluation factors and their relative importance.</li> </ul>  |        |
| <ul style="list-style-type: none"> <li>▪ Proposals must be solicited from an adequate number of qualified sources.</li> </ul>  |        |
| <ul style="list-style-type: none"> <li>▪ The organization must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program.</li> </ul>  |        |
| <ul style="list-style-type: none"> <li>▪ The organization may only use qualification-based methods, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, in the procurement of architectural/engineering professional services.</li> </ul> |        |
| <p>e. Noncompetitive proposal (solicitation of a proposal from only one source, unique product/service). Non-competitive proposals can be utilized only in one or more of the following situations:</p>  |        |
| <ul style="list-style-type: none"> <li>▪ The item is available only from a single source.</li> </ul>   |        |

| Criteria   | Yes/No |
|--|--------|
| <ul style="list-style-type: none"> <li>▪ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitations.</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity.</li> </ul>   |        |
| <ul style="list-style-type: none"> <li>▪ After the solicitation of several sources, competition is determined inadequate.</li> </ul>   |        |
| <p>4. If time and material type contracts are used, has your organization used these only after determination that no other contract is suitable and does the contract include a ceiling price that the contractor exceeds at its own risk?</p>  |        |
| <p>5. Are all prequalified lists of persons, vendors, or products current and include enough qualified sources to ensure maximum free and open competition, and is there a process to ensure this list is kept up to date?</p>   |        |
| <p>6. Do your procurement processes include keeping records that detail history of ALL procurements and at the minimum include the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract?</p>   |        |
| <p>7. Do procurement policies for construction or facility improvement contracts, or subcontracts exceeding \$150,000, include a bid guarantee equivalent to 5% of the bid price from each bidder (such as bid bond or certified check), a performance bond on the part of the contractor for 100% of the contract price, and a payment bond on the part of the contractor for 100% of the contract price?</p>   |        |
| <p>8. When procuring goods and services, entities must comply with the most restrictive rules, requiring them to integrate the federal, state, and local guidelines.</p>   |        |
| <p>a. Do your procurement policies incorporate PA Procurement Thresholds (adjusted annually based on Consumer Price Index – published in PA Bulletin 24 P.S. Sec. 120)?</p> <ul style="list-style-type: none"> <li>▪ Quotation Threshold – equal to or greater than \$10,900 – requires three informal quotations, which may be received over the telephone or by written/electronic means.</li> <li>▪ Bid Threshold – equal to or greater than \$20,100 – require a formal, advertised bidding process, and must be awarded to the lowest responsible and responsive bidder.</li> <li>▪ State law does not require bidding for the purchase of services other than construction, maintenance, or repairs on school facilities, regardless of cost.</li> </ul> |        |

**Action Items:**

1. Evaluate your procurement procedures for inclusion of the above items or consider utilization of the sample procurement procedures in **Section B, C, or D** for use by your organization. “No” answers above should be remedied.
2. Familiarize yourself with the PDE Guidance Concerning Use of Intergovernmental Agreements in Procurements Involving Federal Funds in **Section J** (Item 2b above).

3. Evaluate procedures for documenting small purchases and consider using a form similar to **Section K** (Item 6 above).
4. Evaluate procedures for documenting the procurements over the simplified acquisition threshold, consistent with the documentation guide requirements in Section L (Items 2f and 6 above).

## Required Contract Updates

*Organizations that receive federal funding must include additional language and requirements in their contracts.*

| Criteria  | Yes/No |
|---|--------|
| 1. Have your contract templates been reviewed and updated for inclusion of the contract clauses and requirements of UG? |        |

**Action Item:** Evaluate your organizations contract templates for inclusion of the applicable contract clauses and stipulations as detailed at **Section I**.

## General Procurement Controls

*Organizations that receive federal funding should maintain the highest internal control standards to ensure that federal funds are properly utilized, accounted for, and reported upon. The following items should be considered for a strong system of internal controls over purchasing.*

| Criteria  | Yes/No |
|---|--------|
| 1. Is there a designated person, or administrative unit, assigned for purchasing or procurement responsibilities?     |        |
| 2. Have your internal controls over purchasing processes been updated to ensure compliance with the written policies? |        |
| 3. Is the current Office of Management and Budget (OMB) UG available in print or electronic form?                     |        |
| 4. Have the following been documented in writing:   |        |
| a. How do staff request the purchase/procurement of property and/or services?   |        |
| b. Who reviews and approves the purchase/procurement requests, and what criteria is used to approve the requests?     |        |
| c. Are purchase orders (POs) used?  |        |
| d. Are all POs pre-numbered and accounted for?  |        |
| e. How is the requestor informed that a PO has been issued?   |        |
| f. What procedures are followed to determine that property received match the type and quantity of what was ordered?  |        |
| g. How are invoices reviewed before payment is made?  |        |
| 5. Are proposed contracts reviewed by legal counsel before being fully executed?                                      |        |

| Criteria  | Yes/No |
|---|--------|
| <p>6. Have UG and PA procurement thresholds been reviewed and updated in accordance with new information and guidance?</p> <ul style="list-style-type: none"> <li>a. UG see Federal Acquisition Regulation at 48 CFR Subpart 2.1 and 41 U.S.C. 1908</li> <li>b. PA see Pennsylvania Department of Labor and Industry Bulletin 46 Pa.B. 7772, Consumer Price Index Adjustment of Base Amounts on Bids</li> <li>c. Are these reviews and updates performed annually?</li> </ul> |        |

**Action Item:** For any “NO” items in the above list, consider the potential risks associated with those items and consider procedure updates to mitigate those risks.

## Key Definitions

**Allocable** - Assignable or chargeable for a specific purpose or objective.

**Bundling** - Consolidation of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract.

**Competitive proposal procurement** - Purchases valued above the simplified acquisition threshold may be obtained by more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This procurement is generally used when conditions are not appropriate for the use of sealed bids. The requests for proposals must be publicized and identify all evaluation factors and their relative importance.

**Contract** - A legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward.

**Contractor** - An entity that receives a **contract** as defined above.

**Equitable services** - Local education agencies receiving financial assistance under ESSA programs are required to provide services and benefits to eligible private school children, teachers, and other educational personnel that are to be comparable to those provided to public school children and teachers participating in the program. [Additional guidance on equitable services](#)

**Internal controls** - Processes and procedures implemented by an organization which are designed to provide reasonable assurance regarding the reliability of: financial reporting, effectiveness, and efficiency of operations, safeguarding of assets, compliance with applicable laws and regulations, and detection or prevention of fraud and abuse.

**Micro-purchase** - A purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The non-federal entity uses these procedures to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. Micro-purchases may be awarded without soliciting competitive quotations if the non-federal entity considers the price to be reasonable. The non-federal entity must simply distribute micro-purchases equitably among qualified suppliers. The micro-purchase threshold is generally set by the federal Acquisition Regulation at 48 CFR Subpart 2.1 at \$3,500.

**Noncompetitive proposals procurement (sole source)** - Purchases valued above the simplified acquisition threshold may be procured through solicitation of a proposal from only one source and may be used only when one or more of the following apply: 1) the item is available only from a single source; 2) the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; 3) the federal awarding agency or state agency expressly authorizes noncompetitive proposals in response to a written request from the

program operator; or 4) after solicitation of a number of sources, competition is determined inadequate.

**Policy** - Guiding principles that express the organizational culture, goals, and philosophy. Policies promote consistency and operational efficiency, enhance the organization's mission, and mitigate significant organizational risks. Policies typically require extensive review and governance-level approval.

**Procedure** – Step-by-step descriptions of the tasks required to support and carry out organizational policies. Procedures articulate the process for accomplishing controls. Procedures might also document a course of action accomplished in a defined order, ensuring the consistent and repetitive approach to accomplish control activities. Staff typically develops the procedures.

**Sealed bids procurement** - Purchases valued above the simplified acquisition threshold are subject to bids that are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

**Simplified Acquisition Threshold** - the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities adopt small purchase procedures to expedite the purchase of items costing less than the Simplified Acquisition Threshold. Federal Acquisition Regulation sets the Simplified Acquisition Threshold at 48 CFR Subpart 2.1 and in accordance with 41 U.S.C. 1908. The Simplified Acquisition Threshold is \$150,000, but this threshold is periodically adjusted for inflation.

**Small purchase procedures** - Purchases valued below the simplified acquisition threshold (\$150,000), price or rate quotations must be obtained from an adequate number of qualified sources.

**Subaward** - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Subrecipient** - A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

## Frequently Asked Questions

### Methods of Procurement

**Q:** How are procurements of micro-purchase and small purchases under the simplified acquisition threshold less burdensome than those above it?

**A:** In summary, all purchases under the simplified acquisition threshold (including micro-purchases) require fewer terms and conditions, have a lesser competition standard than purchases over the simplified acquisition threshold, can be solicited informally, and do not require a cost or price analysis.

Under UG, purchases of supplies or services of \$3,500 or less are treated as “micro-purchases.” The purchase orders may be awarded without soliciting any competitive quotations if the non-federal entity considers the costs to be reasonable. The non-federal entity must, to the extent practicable, distribute these purchases equitable among qualified suppliers. For example, a purchase of computer paper in the amount of \$2,000 can be treated as “a micro-purchase.” No rate competitive quotations are necessary for the purchase. A cost or price analysis is not required. However, in accordance with the non-federal entity’s written policies, which may include strategic sourcing or bulk purchase arrangements, the non-federal entity must consider whether to make the purchase from any one of a number of office supply stores. Such policies may dictate the purchase of computer paper to rotate among qualified suppliers if they offer the same rates.

Purchases under the simplified acquisition threshold are purchases for goods or services meeting the small purchase threshold (currently at \$150,000). Therefore, all purchases greater than \$3,500, but less than or equal to \$150,000, can use the “small purchase procedures” stated in 2 CFR §200.320(b) which describes the procedures as “relatively simple and informal.” It states that “price or rate quotations must be obtained from an adequate number of qualified sources.” It leaves the discretion of the non-federal entity written policy to determine the “adequate” number of qualified sources (i.e., any number greater than one) and the methods of obtaining the price or rate quotations (e.g., it can be in writing, orally, vendor price list on a website, or generated via online search engine.) 2 CFR §200.323 also excludes the small purchases from any requirements for cost or price analysis.

For example, a purchase order for chlorine supplies in the amount of \$10,000 can be treated as a small purchase order. This purchase order requires a rate quote from at least two sources, which can be obtained in writing from two suppliers or research done on a public website. A cost or price analysis is not required. In addition, if the chlorine is of special quality that is offered by only one company or only one company can deliver in the period required for the project, the purchase order can be made under the sole source purchase provision in 2 CFR §200.320(f).

## **Number of Qualified Sources**

**Q:** What is an adequate number of qualified sources?

**A:** Generally, at least two qualified sources would be considered adequate. However, once you cross the \$10,900 threshold in the Commonwealth of Pennsylvania, those rules require three quotations, subject to the various exemptions.

## **Cost Price Analysis – Sole Source**

**Q:** If a contract over \$150,000 is sole sourced, will a cost/price analysis still must be performed?

**A:** Yes, as the cost will need to be deemed reasonable.

## **Contract Amendments >\$150,000**

**Q:** What must occur when contracts are amended or extended and the new total exceeds \$150,000?

**A:** If a contract value increases beyond the \$150,000 threshold, a cost/price analysis must be conducted.

## **Methods of Procurement: Strategic Sourcing and Shared Services**

**Q:** Do the requirements for competition in the methods of procurement apply to each individual item I purchase, or may I apply them to broader procurement decisions to leverage strategic sourcing agreements, shared services arrangements, or other practices that result in more efficient use of the funds?

**A:** Yes. The requirements for competition apply to broader procurement decisions. 2 CFR §200.318 General Procurement Standards paragraphs (d) and (e) explicitly encourage non-federal entities to build into their procurement policies practices that consolidate procurements, where appropriate, to make most efficient use of federal funds.

## **Service Purchases**

**Q:** Do UG regulations apply to temporary or substitute services and the methodology to procure them?

**A:** Yes. All service purchases must adhere to UG regulations.

## **Procurement and Charge Cards**

**Q:** Does UG require non-federal entities to limit charge card purchases to a particular threshold amount?

**A:** No. The UG provides requirements for the internal control framework that surround any purchase, but does not provide any guidance around whether the non-federal entity uses cash, charge cards, checks, or any other payment medium for the transaction.

## **Methods of Procurement and Indirect Costs**

**Q:** Do the UG procurement standards apply to procurements made for indirect costs (for example: would a non-federal entity must follow them when hiring a plumber to fix a broken pipe in the headquarters building?)

**A:** No. The UG procurement standards do not apply to procurements made in indirect cost areas. They apply to procurements for goods and services that are directly charged to a federal award.

## **Pricing Transparency**

**Q:** How will pricing transparency increase because of these changes?

**A:** The UG does not appear to have an impact on “pricing transparency.” Pricing transparency refers to the ability for all involved parties to know the prices for a given good or service at any point in time.

## **UG versus FAR**

**Q:** To what extent does UG align with the Federal Acquisition Regulation (FAR)? Can FAR be used as the prevailing guidance where there are questions?

**A:** The FAR establishes the rules and requirements that federal agencies must follow when procuring goods and services. UG, by contrast, establishes requirements that must be followed by grantees when procuring goods and services needed to carry out a federal grant or subgrant. UG, like the FAR, is designed to ensure that procurements involving federal funds are conducted with integrity, fairness, and openness. However, procurement issues that arise in carrying out federal grants must be resolved based on the requirements set out in UG and the recipients’ written procurement policies rather than the FAR.

## **Contract Performance**

- Q:** Will contracts using federal funding require greater emphasis on outcomes and performance than in the past? If so, will you be giving guidance on what "performance" means?
- A:** UG does place increased emphasis on the substantive outcomes and performance of grants than has been the case in the past. See, for example, 2 CFR §200.301. Grantees, in obtaining services from vendors who need to implement their grant, will need to ensure that the timeliness and quality of the work provided by their contractors will allow the grantee to meet performance standards that apply to its grant. Contractors working with grantees, therefore, may see greater emphasis on outcomes and performance than they have in the past.

## **Vendor Ability to Draft Specifications**

- Q:** Does the UG impact vendors' ability to play a role in helping to draft specifications for Requests for Proposals (RFPs)?
- A:** For non-federal entities, including subrecipients, 2 CFR §200.319 specifies the competition requirements for procurements and 2 CFR §200.220 specifies contractor vendor must be excluded from competing for the resulting procurements when:
- contractor was involved in the development or drafting of specifications requirements for an RFP; and
  - has an organizational conflict of interest that would exclude the vendor from competing for the resulting procurements.

Please note that the USDE established new contract competition flexibilities for certain procurements related to projects proposed for funding under the USDE's discretionary grant competitions. See EDGAR §75.135. Under these procedures, an applicant can use the relatively simple small purchase procedures authorized under 2 CFR §200.320(b) to select in a single competition a contractor to both help the applicant prepare its application and provide project services if the grantee is selected for funding. This flexibility is limited to cases where the contractor would provide data collection, data analysis, or evaluation services, or another essential service needed to meet a statutory, regulatory, or priority requirement related to the competition, and the contractor is identified in the application. Also, if the applicant is contracting for sites to conduct proposed project activities, the applicant does not need to run a competition to select the sites.

## **Micro-Purchase “Aggregate Dollar Value”**

**Q:** When using the micro-purchase method, what is meant by “aggregate dollar value” in 2 CFR §200.320(a)?

**A:** A procurement method newly available in 2 CFR §200.320(a) is the micro-purchase method. Micro-purchase is defined in 2 CFR §200.67 as a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The micro-purchase threshold is \$3,500, periodically adjusted for inflation. The micro-purchase threshold was adjusted as of October 1, 2015.

## **Aggregate Dollar Amounts**

**Q:** Does “aggregate” limit competition when soliciting for a prime vendor?

**A:** The aggregate dollar amount as described above and applied to the micro-purchase method may only affect soliciting for a prime vendor if the program operator determines that consolidating or breaking out procurements results in a more economical purchase. (2 CFR §200.318(d))

## **Transaction Definition and Aggregate Cost**

**Q:** What is considered a “transaction” when considering aggregate cost and micro-purchase methods?

**A:** A transaction is an occurrence in which two or more entities exchange goods, services, or money between or among them under an agreement formed for their mutual benefit. The following examples illustrate transactions in the context of micro-purchasing:

A program operator purchases computer paper, ink cartridges, paper towels, and cleaning fluids from the same supplier at the same time. That would be a single transaction. If the aggregate cost of these items (that is, the total bill) does not exceed the micro-purchase threshold, the transaction is a micro-purchase under 2 CFR §200.320(a).

A program operator makes the following purchases on the same day at two separate locations: computer paper and ink cartridges at a retail office supply store, and paper towels and cleaning fluids at a different retail store. The dollar amount spent at each supplier is less than the micro-purchase threshold. Each purchase is a separate transaction made from different suppliers. Neither supplier is involved in the transaction with the other. Therefore, these transactions are micro-purchases and the program operator has distributed purchases among qualified suppliers.

## **Equitable Distribution of Micro-Purchases**

**Q:** What is meant by distributing micro-purchases equitably among qualified suppliers and “spreading the wealth”?

**A:** Program operators using the micro-purchase method may not always purchase from only one source; rather, purchases must regularly be made using available qualified sources. This provides qualified sources the opportunity for business or “spreading the wealth.” For example, a purchase of computer paper valued at \$1,000, qualifies as a micro-purchase. No competitive price quotation is necessary for the purchase and no cost or price analysis applies. However, the program operator’s written procurement procedures, as required in 2 CFR §200.318(a), must include a procedure that such purchases must be rotated among qualified suppliers.

## **Miscellaneous**

**Q:** The LEA receives the federal grant funds directly from PDE and contracts out to a third-party entity. Does this third-party entity have to follow the federal procurement requirements?

**A:** Yes. The third-party entity would have to follow the same procurement requirements. It is the responsibility of the initial recipient of the federal funds from PDE to monitor the third-party entity to ensure that they are following the required procurement standards.

**Q:** Can bid specifications require that the vendor reside in the district or area?

**A:** No, this cannot be a requirement. You can have a geographic preference, but it is just a preference, not a requirement.

**Q:** Are small private schools required to follow procurement standards?

**A:** If you are using federal monies to purchase goods or services, you must follow all applicable procurement regulations.

**Q:** If we use General Fund monies to purchase items, are we required to follow procurement regulations?

**A:** The federal procurement requirements apply when using federal monies to purchase goods or services.

**Q:** Our school or district is in a very rural area, and there is only one vendor that will deliver to us. Must we still follow proper procurement procedures?

**A:** Yes, all procurements must demonstrate free and open competition. Depending on the dollar amount, you will need to either obtain three quotes or advertise for formal bids. The product specifications will include the delivery requirements. If you only receive one quote or bid, document that fact and award the procurement to that vendor.

**Q:** Is an entity required to go out to bid every year for products and supplies?

**A:** Adhering to the proper procurement procedures is required whenever using federal funds. If you obtain quotes for procurement, you can ask the winning vendor to sign an agreement that would be for multiple years. The same would apply for a formal bidding contract; it can be for multiple years. It would require escalation and de-escalation clauses tied to an index.

**Q:** If the entity is part of a cooperative buying group (co-op) is the entity required to follow procurement standards?

**A:** Yes. You are required to have written procurement procedures and code of conduct that meet the requirements of the procurement regulations. You would be responsible for ensuring that the co-op is following all the proper procurement procedures. You would need to follow all the applicable procurement procedures for any goods or services that were procured outside of the co-op using funds from the non-profit school food service account.

**Q:** How long must an Invitation for Bid (IFB) or Request for Proposal (RFP) be advertised?

**A:** When following formal bid procedures, an IFB or RFP must be advertised in two newspapers, one day a week for three weeks.

## **Section A: Procurement Laws for Commonwealth of Pennsylvania Local Governments**

### **Background**

When procuring goods and services, local governmental entities must, in addition to UG, comply with the commonwealth procurement laws related to their entity type. To stay in compliance with both UG and commonwealth requirements, entities must adhere to the most restrictive requirements. They must understand the commonwealth laws to effectively set, and annually update, their procurement procedures so they remain in compliance. Unless required by specific grant contract provisions, local nonprofits and for-profit organizations are not required to follow the below procurement rules.

### **References to Local Government Codes**

The County Code (16 P.S. §§1801—1803, 2317)

Second Class County Code (16 P.S. §§3112, 5001, 5511-A, and 5517)

Public School Code (24 P.S. §§1-120, 7-751, and 8-807.1)

Municipal Authorities (53 Pa.C.S. §5614)

The Borough Code (53 P.S. §§46402 and 46405)

Incorporated Towns (53 P.S. §§53202, 53202.1, 53203, 53203.1, and 53205)

Third Class City Code (11 Pa.C.S. §§11901.1, 11901.2, 11901.4, 11902, 11903.1, and 11909)

First Class Township Code (53 P.S. §§56802, 56803, and 56805)

Second Class Township Code (53 P.S. §§68102 and 68107)

## **Section B: Procurement Procedures – Sample for Entities Subject to PA School Code**

### **Background**

This sample procurement procedure has been adapted from a model written by the Pennsylvania School Boards Association (PSBA) and is used with the PSBA's permission. The sample is intended to integrate standard district purchasing procedures (PA School Code) with additional requirements applicable to procurements that are subject to UG regulations and U.S. Department of Agriculture (USDA) regulations governing school food service programs. It is a great starting point for districts as they shape their purchasing procedures. This procedure should be reviewed annually, as the procurement thresholds will be subject to annual adjustment. Additionally, there are general references to other policies and procedures, which are not a part of this guide—districts should consult their school solicitors or other legal or policy guidance providers for information and assistance in developing or modifying these policies and procedures to incorporate them as applicable. Alternatively, Section C provides sample procedures for entities subject only to UG and Commonwealth Procurement Law and Section D provides sample procedure for entities subject only to UG.

The district maintains the following purchasing procedures, in accordance with federal and state laws, regulations, and Board policies.

### **Responsibility for Purchasing**

The Board has outlined standard district purchasing responsibility, methods of purchasing, price quotations, cooperative purchasing, budget compliance, and bid requirements in adopted Board policies and their accompanying administrative regulations or procedures.

### **Purchase Methods**

When a request for purchase of equipment, supplies, or services has been submitted and approved as outlined below, the procurement method to be used will be determined based on the type of purchase and the total cost of the purchase as further outlined below. This procedure outlines how the cost thresholds for determining when the quote or formal bidding procedures that are required by state law must be modified when making purchases for federally funded purposes to which the Uniform Guidance or USDA regulations apply, so as to comply with both state and federal requirements. At each point where requirements for food service-related procurement under USDA regulations differ, a note will refer to the Food Service Notes at the end of this procedure. Final determination of which purchasing procedures are to be applied is delegated to the

Business Manager

Superintendent

Under the authority of the Board.

## Standard Procurement Documents and Purchase Request Process

The district shall use

purchase orders

requisitions

for purchase requests in accordance with the applicable purchase method.

The district shall use

paper

electronic

purchasing records, which are pre-numbered and are accessible to designated purchasing staff in

the district office.

the Business Office.

Purchasing Agent's office.

Other:

Purchase requests by an employee must be submitted to the building administrator or immediate supervisor. Purchase of all budgeted items or items approved by an administrator or supervisor must be initiated by use of a purchase order or requisition submitted to the

Board Secretary.

Business Manager.

Superintendent.

Purchasing Agent.

Purchase orders and requisitions shall contain information including, but not limited to:

1. Description of the services to be performed or goods to be delivered.
2. Location of where services will be performed or goods to be delivered.
3. Appropriate dates of service or delivery.
4.  Other (describe):

Documentation on purchase orders and requisitions shall be maintained in accordance with the district's Board policy and records retention schedule.

Contract shall be reviewed by the

- Board Secretary
- Business Manager
- Superintendent
- School Solicitor

Prior to submission to the Board for approval.

Contracts to which the Uniform Guidance apply shall contain the clauses specified in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), when applicable.

**[See Food Service Program Notes below for specific clauses required by USDA regulations to be included in cost reimbursable procurement contracts.]**

### **Micro-Purchases Not Requiring Quotes or Bidding**

For purposes of this procedure, micro-purchase means a purchase of equipment, supplies, or services for use in federally funded programs using simplified acquisition procedures, the aggregate amount of which does not exceed a base amount of \$3,500. The micro-purchase dollar threshold is adjusted periodically by the Federal Government, and the threshold most recently established and published in the Federal Register shall apply if other than \$3,500. (48 CFR Subpart 2.1)

**Note: The micro-purchase maximum for federal purposes is lower than the amount below which the School Code allows purchase for non-federal purposes to be made without obtaining at least three (3) written or telephonic quotes or using formal competitive bidding.**

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost. Procurement by micro-purchase is the acquisition of equipment, supplies, or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

To the extent practicable, the district distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices, and other terms. The

- Superintendent
- Business Manager
- Purchasing Agent
- Board Secretary

will be responsible to determine the equitable distribution of micro-purchases.

Micro-purchases may be awarded without soliciting competitive quotations if the district considers the price to be reasonable. The district will maintain evidence of this reasonableness in the records of all micro-purchases. Reasonable means that sound business practices were followed and the purchase is comparable to market prices for the geographic area. Such determinations of reasonableness may include comparison of the price to previous purchases of the same item or comparison of the price of items similar to the item being purchased.

Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

### **Small Purchase Procedures**

For purposes of this procedure, **small purchase procedures** are those relatively simple and informal procurement methods for securing equipment or supplies that cost more than the amount qualifying as a micro-purchase and do not cost \$20,100 or more, **or in the case of services other than construction, maintenance, or repair on school facilities, where the total cost does not exceed the \$150,000 federal Simplified Acquisition Threshold at which formal competitive bidding or competitive proposals are required.** Small purchase procedures cannot be used for purchases of equipment or supplies or for construction, repair, or maintenance services costing \$20,100 or more because the School Code requires formal competitive bidding at that level of cost.

The base amount at which bidding is required under state law **for purchases of equipment, supplies and construction, maintenance, or repair services on school facilities** is adjusted for inflation annually, and the amount most recently established and published in the Pennsylvania Bulletin shall apply if other than \$20,100. (24 P.S. Sec. 120)

**The federal simplified acquisition threshold at which competitive bidding or competitive proposals are required is adjusted periodically by the Federal Government, and the threshold most recently established and published in the Federal Register shall apply if other than \$150,000. (48 CFR Subpart 2.1).**

State law does not require **competitive** bidding for the purchase of services other than construction, maintenance, or repairs on school facilities. Regardless of total cost, small purchase procedures, including a request for proposal (RFP) procedure, may be used for procurement of such other services except when the estimated total cost will be at or over the federal threshold at which formal **competitive bidding or competitive proposals** are required (\$150,000).

**[See Food Service Program Notes below for exemption from bidding for purchases of perishable food items costing less than \$150,000.]**

If small purchase procedures are used, written or telephonic price or rate quotations are obtained from at least three qualified sources and records of quotes are maintained.

## Formal Competitive Bidding

### Publicly Solicited Sealed Competitive Bids:

For purchases of equipment or supplies, or of services for construction, maintenance, or repairs of school facilities, sealed competitive bids are publicly solicited and awarded to the lowest responsive and responsible bidder as provided in Board policies when the total cost is estimated to be \$20,100 or more.

**Note: The amount at which formal competitive bidding or competitive proposals are required by federal regulations is much higher than the base amount at which the School Code requires competitive bidding. Therefore, the lower base amount specified by the School Code, as annually adjusted, is used to determine when bidding will be used for purchases of equipment or supplies, or for obtaining services for construction, maintenance, or repairs on school facilities. (24 P.S. Sec. 120)**

State law does not require bidding for the purchase of services other than construction, maintenance, or repairs on school facilities regardless of total cost. For procurement of such other services for federally funded purposes to which the UG applies, formal competitive bidding **or competitive proposals** will be used when the estimated total cost will be at or over the federal threshold of \$150,000.

The federal **simplified acquisition threshold** at which competitive bidding **or competitive proposals are required** is adjusted periodically by the Federal Government, and the threshold most recently established and published in the Federal Register shall apply if other than \$150,000. (48 CFR Subpart 2.1)

**For procurement of services costing at or over the \$150,000 federal threshold other than for construction, maintenance, or repairs on school facilities, the use of competitive sealed bidding is considered feasible and appropriate when:**

- 1. A complete, adequate, and realistic specification or purchase description is available;**
- 2. Two or more responsible bidders are willing and able to compete effectively for the business; and**
- 3. 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.**

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

**[See Food Service Notes below for reference to state requirements regarding contracts with food service management companies and contractors of pre-plated meals.]**

## **Competitive Proposals**

State law does not require public school entities to solicit competitive bids for services other than construction, repairs or maintenance of school facilities, for which competitive bidding is required if the cost will be a base amount of \$20,100 or more. State law allows competitive proposals relating to work on facilities in lieu of bidding only in the context of guaranteed energy savings contracts.

Federal regulations allow the use of competitive proposals as an alternative **to formal competitive bidding when conditions are not appropriate for the use of sealed bids.**

In the case of services other than for construction, repairs, or maintenance of school facilities costing less than that threshold, the district may use small purchase procedures or micro-purchase procedures as applicable based on total cost. An RFP process can also meet or exceed the small purchase competition requirements under state law for the acquisition of services other than for construction, repairs, or maintenance of school facilities, and can be used if the total cost will be less than \$150,000.

When permitted, the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair, and reasonable compensation. The district shall comply with other applicable state and federal law and regulations, Board policy, and administrative regulations regarding purchasing; the district may consult with the school solicitor or other qualified counsel in determining the required process for purchasing through competitive proposals when necessary.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

**An alternative form of competitive proposal is permitted only for qualifications-based procurement of architectural and engineering services, in which price is not a selection factor and reasonable compensation is negotiated after source selection. This alternative is not permitted for procurement of other types of services.**

Competitive proposals shall be evaluated by the

- Superintendent
- Business Manager
- Federal Programs Coordinator

based on factors including but not limited to:

- Cost.
- Experience of contractor.
- Availability.
- Personnel qualifications.
- Financial stability.
- Minority business, women's business enterprise, or labor surplus area firm status.
- Project management expertise.
- Understanding of district needs.
- Other:

Evaluations shall be completed in a timely manner, documented, and shall be reviewed by the

- Board.
- Superintendent.
- Business Manager.
- Federal Programs Coordinator.
- school solicitor.

### **Contract/Price Analysis**

The district performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. (2 CFR §200.323(a)).

A **cost analysis** generally means evaluating the separate cost elements that make up the total price, while a **price analysis** means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the

- Superintendent

Business Manager

Federal Programs Coordinator

must come to an independent estimate prior to receiving bids or proposals (2 CFR §200.323(a)). As part of the analysis, the \_\_\_\_\_ will enact established business practices which may include evaluation of similar prior procurements and a review process.

## **Negotiated Profit**

**In any procurement in which there has been no price competition, or in which a cost-analysis is performed, profit must be negotiated separately as an element of price. Accordingly, solicitations of bids, proposals or quotes shall require that bids, proposals, or quotes be limited to costs other than profit, and exclude profit.**

To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (2 CFR §200.323(b))

**When profit must be negotiated as a separate element of the total price, it shall be negotiated by the**

Superintendent

Business Manager

Federal Programs Coordinator

## **Noncompetitive Proposals (Sole Sourcing)**

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

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An **emergency** exists whenever the time required for the Board to act in accordance with regular procedures would endanger life or property or threaten continuance of existing school classes.
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the district.

4. After solicitation of a number of sources, the district determines the competition is inadequate.

In addition to standard procurement procedures, the district will document the grounds for using the noncompetitive method in lieu of an otherwise required competitive method of procurement, which may include written confirmation from the contractor as the sole source of the item. Documentation must be submitted to and maintained by the Business Office.

All noncompetitive proposals will ultimately be approved by the Board. The district may utilize legal advice from the solicitor regarding noncompetitive proposals.

Profit must be negotiated separately for noncompetitive proposals, and a cost or price analysis will also be performed for noncompetitive proposals when the price exceeds \$150,000.

## **Purchase Cards**

The district approves the use of procurement cards for permissible purchases by designated employees to improve the efficiency of purchasing activities, reduce processing expenses, improve controls for small-dollar purchases, and streamline contractor payment.

Procurement cards may be used for purchases under federal programs. The use of procurement cards is governed by Board policy and established administrative regulations.

## **Full and Open Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

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

7. Any arbitrary action in the procurement process.

## **Minority Businesses, Women's Business Enterprises, Labor Surplus Area Firms**

The district 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: (2 CFR §200.321)

1. Placing qualified small and minority business, and women's business enterprises, on solicitation lists.
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises.
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

## **Geographical Preferences Prohibited**

The district must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.

When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**[See Food Service Notes below for permissibility of geographic preferences and "Buy American" practices in purchasing certain food products]**

## **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.

**[See Food Service Notes below for reference to state requirements regarding contracts with food service management companies and contractors of pre-plated meals.]**

## **Solicitation Language**

The district must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

## **Avoiding Acquisition of Unnecessary or Duplicative Items**

The district must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

## **Use of Intergovernmental Agreements and Cooperative Purchasing**

To foster greater economy and efficiency, the district enters into state and local intergovernmental agreements where appropriate for cooperative purchasing or use of common or shared goods Commonwealth Procurement Code. (53 Pa. C.S. Ch. 23; 24 P.S. 521; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the UG applies, the district shall verify that the organization conducting the procurement pursuant to such agreements complies with the applicable **procurement methods**, requirements, and standards of the UG as outlined in this procedure.

## **Use of Federal Excess and Surplus Property**

The district considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

## **Debarment and Suspension**

The district awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**[See Food Service Program Notes below for reference to state requirements regarding contracts with food service management companies and contractors of pre-plated meals.]**

The district may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000, the district verifies that the contractor with whom the district intends to do business is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR §180.220 and 180.300)

All successful contractors must provide written certification that they have not been suspended or debarred from federal projects. The

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[  ] Federal Programs Coordinator

will be responsible for verification. Such verification may include accessing the online federal System for Award Management (SAM) to determine whether any relevant party is subject to any suspension or debarment restrictions.

## **Maintenance of Procurement Records**

The district must 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 verification that the contractor is not suspended or debarred.

Maintenance of records of procurement will be governed by Board policy and **the district's established records retention schedule.**

## **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, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the district must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

## **Settlement of Issues Arising Out of Procurements**

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. These standards do not relieve the district of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

## **Protest Procedures to Resolve Dispute**

The district maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established district administrative regulations, and the advice of the solicitor.

### **Food Service Notes:**

#### *Exemption from Bidding for Perishable Food Items -*

The School Code exempts purchases of perishable food items from bidding requirements. Bidding for perishable food items is required only if the cost would be at or over the federal threshold at which formal competitive bidding is required (\$150,000). Small purchase procedures may be used for purchases below \$150,000, or micro-purchase procedures for purchases below \$3,500. Use of bidding should be considered as an option if it is feasible and likely to result in cost savings. (24 P.S. Sec. 504(d))

#### *Geographic Preferences -*

The district is permitted to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When a geographic preference is applied, the district has discretion to determine the local area to which the geographic preference option will be applied.

**Unprocessed locally grown or locally raised agricultural products** means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons); vacuum packing and bagging (such as placing vegetables in bags or combining two (2) or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk. (7 CFR Sec. 210.21, 215.14a, 220.16)

*Buy American -*

The district shall purchase, to the maximum extent practicable, domestic commodities or products for food service purposes. The term **domestic commodity or product** means: (7 CFR Sec. 210.21, 220.16)

1. An agricultural commodity that is produced in the United States; and
2. A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

*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: (7 CFR Sec. 210.21, 215.14a, 220.16)

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;
  - a. 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); or
  - b. 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;

2. 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;
3. 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;
4. 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; and
5. 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.

*Contracts with Food Service Management Companies -*

Procedures for selecting and contracting with a food service management company (FSMC) shall comply with guidance provided by the Pennsylvania Department of Education, Division of Food and Nutrition, including standard forms, procedures, and timelines for solicitation, selection and approval of proposals and contracts. (7 CFR Sec. 210.16, 210.19, 210.21, 215.14a, 220.16)

*Pre-Plated Meals -*

Procedures for selecting and contracting with contractors of pre-plated meals shall comply with guidance provided by the Pennsylvania Department of Education, Division of Food and Nutrition, including standard forms, procedures, and timelines for solicitation, selection and approval of proposals and contracts. (7 CFR Sec. 210.16, 210.19, 210.21, 220.16)

## **Section C: Procurement Procedures – Sample for Entities Subject to Commonwealth of Pennsylvania Procurement Laws**

### **Background**

As described in Section A, some local governments, such as counties, townships, and boroughs, are subject to different procurement laws than entities that are subject to the PA School Code. This sample procurement procedure is intended to integrate standard organization purchasing procedures (PA procurement laws) with additional requirements applicable to procurements that are subject to UG regulations governing the organization. It is a great starting point for organizations, as they shape their purchasing procedures. Since PA procurement laws establish procurement thresholds, this sample can serve as a starting point in drafting procedures that adhere to both UG and commonwealth requirements. These procedures should be reviewed annually, as the procurement thresholds will be subject to annual adjustment.

The organization maintains the following purchasing procedures, in accordance with federal and state laws, regulations, and Board policies.

### **Responsibility for Purchasing**

The Board has outlined standard purchasing responsibility, methods of purchasing, price quotations, and bid requirements below (or in other board policies as applicable).

### **Purchase Methods**

When a request for purchase of equipment, supplies, or services has been submitted and approved as outlined below, the procurement method to be used will be determined based on the type of purchase and the total cost of the purchase as further outlined below. This procedure outlines how the cost thresholds for determining when the quote or formal bidding procedures that are required by state law must be modified when making purchases for federally funded purposes to which the Uniform Guidance regulations apply, so as to comply with both state and federal requirements. Final determination of which purchasing procedures are to be applied is delegated to the

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under the authority of the Board.

### **Standard Procurement Documents and Purchase Request Process**

The organization shall use

[    ] purchase orders

[    ] requisitions

for purchase requests in accordance with the applicable purchase method.

The organization shall use

paper

electronic

purchasing records, which are pre-numbered and are accessible to designated purchasing staff in

the organization's office.

Other:

Purchase requests by an employee must be submitted to the organization's

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or immediate supervisor. Purchase of all budgeted items or items approved by

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or supervisor must be initiated by use of a purchase order or requisition submitted to the

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Purchase orders and requisitions shall contain information including, but not limited to:

1. Description of the services to be performed or goods to be delivered.
2. Location where services will be performed or goods will be delivered.
3. Appropriate dates of service or delivery.
4.  Other (describe):

Documentation on purchase orders and requisitions shall be maintained in accordance with the organization's Board policy and records retention schedule.

Contracts shall be reviewed by the

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prior to submission to the Board for approval.

Contracts to which the UG apply shall contain the clauses specified in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), when applicable.

## **Micro-Purchases Not Requiring Quotes or Bidding**

For purposes of this procedure, **micro-purchase** means a purchase of equipment, supplies, or services for use in federally-funded programs using simplified acquisition procedures, the aggregate amount of which does not exceed a base amount of \$3,500. The micro-purchase dollar threshold is adjusted periodically by the Federal Government, and the threshold most recently established and published in the Federal Register shall apply if other than \$3,500.(48 CFR Subpart 2.1)

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost.

Procurement by micro-purchase is the acquisition of equipment, supplies, or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

**Note: The micro-purchase maximum for federal purposes is lower than the amount below which the PA Procurement Law allows purchase for non-federal purposes to be made without obtaining at least three written or telephonic quotes or using formal competitive bidding.**

To the extent practicable, the organization distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices, and other terms. The

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will be responsible to determine the equitable distribution of micro-purchases.

Micro-purchases may be awarded without soliciting competitive quotations if the organization considers the price to be reasonable. The organization will maintain evidence of this reasonableness in the records of all micro-purchases. **Reasonable** means that sound business practices were followed, and the purchase is comparable to market prices for the geographic area. Such determinations of reasonableness may include comparison of the price to previous purchases of the same item, or comparison of the price of items similar to the item being purchased.

Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

## **Small Purchase Procedures**

For purposes of this procedure, **small purchase procedures** are those relatively simple and informal procurement methods for securing equipment or supplies that cost more than the amount qualifying as a micro-purchase, and do not cost \$20,100 or more. Small purchase

procedures cannot be used for purchases of equipment or supplies or for construction, repair, or maintenance services costing \$20,100, or more because the PA Procurement Laws require formal competitive bidding at that level of cost.

The base amount at which bidding is required under state law **for purchases of equipment, supplies, and construction, maintenance, or repair services on facilities** is adjusted for inflation annually, and the amount most recently established and published in the Pennsylvania Bulletin shall apply if other than \$20,100. (24 P.S. Sec. 120)

**The federal simplified acquisition threshold at which competitive bidding or competitive proposals are required is adjusted periodically by the Federal Government, and the threshold most recently established and published in the Federal Register shall apply if other than \$150,000. (48 CFR Subpart 2.1)**

State law does not require **competitive** bidding for the purchase of services other than construction, maintenance, or repairs on facilities. Regardless of total cost, small purchase procedures, including a request for proposal (RFP) procedure, may be used for procurement of such other services except when the estimated total cost will be at or over the federal threshold at which formal competitive bidding **or competitive proposals** are required (\$150,000).

If small purchase procedures are used, written or telephonic price or rate quotations are obtained from at least three qualified sources and records of quotes are maintained as provided in Board policies.

## **Formal Competitive Bidding**

### **Publicly Solicited Sealed Competitive Bids:**

For purchases of equipment or supplies, or of services for construction, maintenance, or repairs of facilities, sealed competitive bids are publicly solicited and awarded to the lowest responsive and responsible bidder as provided in Board policies when the total cost is estimated to be \$20,100 or more.

**Note: The amount at which formal competitive bidding or competitive proposals are required by federal regulations is much higher than the base amount at which the PA Procurement Laws require competitive bidding. Therefore, the lower base amount specified by the PA Procurement Laws, as annually adjusted, is used to determine when bidding will be used for purchases of equipment or supplies, or for obtaining services for construction, maintenance, or repairs on facilities. (24 P.S. Sec. 120)**

State law does not require bidding for the purchase of services other than construction, maintenance, or repairs on facilities, regardless of total cost. For procurement of such other services for federally funded purposes to which the UG applies, formal competitive bidding or competitive proposals will be used when the estimated total cost will be at or over the federal threshold of \$150,000.

The federal **simplified acquisition threshold at which competitive bidding or competitive proposals are required** is adjusted periodically by the Federal Government, and the threshold most recently established and published in the Federal Register shall apply if other than \$150,000. (48 CFR Subpart 2.1)

**For procurement of services costing at or over the \$150,000 federal threshold other than for construction, maintenance, or repairs on facilities, the use of competitive sealed bidding is considered feasible and appropriate when:**

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

Where specified in bidding documents, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

## **Competitive Proposals**

State law does not require entities to solicit competitive bids for services other than construction, repairs, or maintenance of facilities, for which competitive bidding is required if the cost will be a base amount of \$20,100 or more. State law allows competitive proposals relating to work on facilities in lieu of bidding only in the context of guaranteed energy savings contracts.

Federal regulations allow the use of competitive proposals as an alternative **to formal competitive bidding when conditions are not appropriate for the use of sealed bids.**

In the case of services other than for construction, repairs, or maintenance of facilities costing less than that threshold, the organization may use small purchase procedures or micro-purchase procedures as applicable based on total cost. A request for proposal (RFP) process can also meet or exceed the small purchase competition requirements under state law for the acquisition of services other than for construction, repairs, or maintenance of facilities, and can be used if the total cost will be less than \$150,000.

When permitted, the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The organization shall comply with other applicable state and federal law and regulations, Board policy, and administrative regulations regarding purchasing; the organization may consult with the solicitor

or other qualified counsel in determining the required process for purchasing through competitive proposals when necessary.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

**An alternative form of competitive proposal is permitted only for qualifications-based procurement of architectural and engineering services, in which price is not a selection factor and reasonable compensation is negotiated after source selection. This alternative is not permitted for procurement of other types of services.**

Competitive proposals shall be evaluated by the

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based on factors including, but not limited to

Cost.

Experience of contractor.

Availability.

Personnel qualifications.

Financial stability.

Minority business, women's business enterprise, or labor surplus area firm status.

Project management expertise.

Understanding of organization needs.

Other:

Evaluations shall be completed in a timely manner, documented and shall be reviewed by the

Board and

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### **Contract/Price Analysis**

The organization performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. (2 CFR §200.323(a))

A **cost analysis** generally means evaluating the separate cost elements that make up the total price, while a **price analysis** means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the...

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must come to an independent estimate prior to receiving bids or proposals (2 CFR §200.323(a)). As part of the analysis, the \_\_\_\_\_ will enact established business practices which may include evaluation of similar prior procurements and a review process.

## **Negotiated Profit**

**In any procurement in which there has been no price competition, or in which a cost-analysis is performed, profit must be negotiated separately as an element of price. Accordingly, solicitations of bids, proposals or quotes shall require that bids, proposals, or quotes be limited to costs other than profit, and exclude profit.**

To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (2 CFR §200.323(b))

**When profit must be negotiated as a separate element of the total price, it shall be negotiated by the**

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## **Noncompetitive Proposals (Sole Sourcing)**

**Procurement by noncompetitive proposals** means procurement through solicitation of a proposal from only one (1) source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An **emergency** exists whenever the time required for the Board to act in accordance with regular procedures would endanger life or property or threaten continuance of existing programs.

3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the organization.
4. After solicitation of a number of sources, the organization determines the competition is inadequate.

In addition to standard procurement procedures, the organization will document the grounds for using the noncompetitive method in lieu of an otherwise required competitive method of procurement, which may include written confirmation from the contractor as the sole source of the item. Documentation must be submitted to and maintained by the organization.

All noncompetitive proposals will ultimately be approved by the Board. The organization may utilize legal advice from the solicitor regarding noncompetitive proposals.

Profit must be negotiated separately for noncompetitive proposals, and a cost or price analysis will also be performed for noncompetitive proposals when the price exceeds \$150,000.

## **Purchase Cards**

The organization approves the use of procurement cards for permissible purchases by designated employees to improve the efficiency of purchasing activities, reduce processing expenses, improve controls for small-dollar purchases, and streamline contractor payment.

Procurement cards may be used for purchases under federal programs. The use of procurement cards is governed by Board policy and established administrative regulations.

## **Full and Open Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids, or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.
5. Organizational conflicts of interest.

6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary action in the procurement process.

## **Minority Businesses, Women’s Business Enterprises, Labor Surplus Area Firms**

The organization must take 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: (2 CFR §200.321)

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises.
4. Establishing delivery schedules, where the requirement permits, to encourage participation by small and minority businesses and women’s business enterprises.
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

## **Geographical Preferences Prohibited**

The organization must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals; except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

## **Prequalified Lists**

The organization 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 organization must not preclude potential bidders from qualifying during the solicitation period.

## **Solicitation Language**

The organization must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance, or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

## **Avoiding Acquisition of Unnecessary or Duplicative Items**

The organization must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

## **Use of Intergovernmental Agreements and Cooperative Purchasing**

To foster greater economy and efficiency, the organization enters into state and local intergovernmental agreements where appropriate for cooperative purchasing or use of common or shared goods and services, as permitted by the Intergovernmental Cooperation Act and the Commonwealth Procurement Code. (53 Pa. C.S. Ch. 23; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the UG applies, the organization shall verify that the organization conducting the procurement pursuant to such agreements complies with the applicable **procurement methods**, requirements, and standards of the UG as outlined in this procedure.

## Use of Federal Excess and Surplus Property

The organization considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

## Debarment and Suspension

The organization awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The organization may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000, the organization verifies that the contractor with whom the organization intends to do business is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR §§180.220 and 180.300). All successful contractors must provide written certification that they have not been suspended or debarred from federal projects. The...

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will be responsible for verification. Such verification may include accessing the online federal System for Award Management (SAM) to determine whether any relevant party is subject to any suspension or debarment restrictions.

## Maintenance of Procurement Records

The organization must 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 verification that the contractor is not suspended or debarred. Maintenance of records of procurement will be governed by Board policy and **the organization's established records retention schedule**.

## Time and Materials Contracts

The organization 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 organization is the sum of: the actual costs of materials, 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, each contract must set a ceiling price that the contractor exceeds at its own risk.

Further, the organization must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

### **Settlement of Issues Arising Out of Procurements**

The organization 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. These standards do not relieve the organization of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **Protest Procedures to Resolve Dispute**

The organization maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established organization administrative regulations, and the advice of the solicitor.

## **Section D – Procurement Procedures – Sample for Organizations That Are Not Commonwealth of Pennsylvania Governmental Entities**

### **Background**

Nonprofit and for-profit organizations can become subject to the provisions of UG procurement rules through grants and contracts received or entered into. These sample procurement procedures are a starting point for organizations as they seek to comply with grant and contract provisions. These procedures are simplistic and should be adapted and integrated with existing purchasing procedures and controls that are currently in place to address critical elements of internal controls over purchasing. These procedures should be reviewed annually, as the procurement thresholds will be subject to annual adjustment.

### **Purpose**

The purpose of these procedures is to establish standards and controls for the purchase of goods and services for the **ORGANIZATION NAME** (hereafter known as the Organization) when federal funds are being used. These procedures are intended to facilitate full and open competition and cost-effective purchases, as well as to ensure proper accountability.

### **Expenditure Authorization**

All expenditures must be authorized in the Organization's approved budget. New budget appropriations must be approved by the Organization board concurrently with contract approval, and will be reflected in any periodic budget updates.

### **Purchase Method<sup>3</sup>**

When using federal funds, the Organization is generally expected to engage in competitive procurements compliant with applicable federal regulations unless the requirements for a sole source procurement are met under federal regulation.

The methods of competitive procurement under federal regulation are (a) procurement by micro-purchase, (b) procurement by small purchase, (c) procurement by sealed bids, and (d) procurement by competitive proposal.

1. Generally, procurement by micro-purchase may occur for the acquisition of supplies or services where the aggregate amount does not exceed \$3,500. Micro-purchases may occur without soliciting competitive quotations if the price is reasonable. To the extent

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<sup>3</sup> The following describes the five procurement methods currently allowed under the federal UG. Each entity must have documented procurement policies which provide detail on the process by which all purchases are made and which are tailored to state law or other restrictions applicable to the specific type of Organization. Note applicable dollar thresholds for purchases using federal funds that are stated in these draft procedures may change periodically and should be regularly reviewed. Where more restrictive requirements of state law may be applicable, the more restrictive state procedure must be followed.

practicable, the Organization shall distribute micro-purchases equitably among qualified suppliers.

2. Procurements by small purchase procedures may apply where purchases do not exceed the simplified acquisition threshold (currently, \$150,000). Small purchase procedures permit simple and informal procurement methods, provided price or rate quotations are obtained from an adequate number of qualified sources.
3. For purchases over \$150,000, sealed bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price<sup>4</sup>.
4. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price, or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. 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 publicized requests for proposals must be considered to the maximum extent practical;
  - b. Proposals must be solicited from an adequate number of qualified sources; and
  - c. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

## **Noncompetitive Proposals**

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

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An emergency exists whenever the time required for the Board to act in accordance with regular procedures would endanger life or property or threaten continuance of existing school classes.

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<sup>4</sup>The sealed bid method is the preferred method for procuring construction, and is feasible if the following conditions apply:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the district.
4. After solicitation of a number of sources, the district determines the competition is inadequate.

## **Full and Fair Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR § 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids, or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

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

## **Cost Analysis**

The Organization performs a cost or price analysis in connection with every procurement action involving federal funds in excess of \$150,000, including contract modifications (2 CFR §200.323(a)). A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

When performing a cost analysis, the Organization negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the following aspects:

- Complexity of the work to be performed.
- The risk that is borne by the contractor.

- The contractor's investment.
- The amount of subcontracting
- The quality of its record of past performance
- Industry profit rates in the surrounding geographical area for similar work (2 CFR §200.323(b)).

## **Minority Businesses, Women's Business Enterprises, Labor Surplus Area Firms**

The Organization must take 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: (2 CFR §200.321)

1. Placing qualified small, minority, and women's business enterprises on solicitation lists.
2. Assuring that small, minority, and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
4. Establishing delivery schedules, where the requirement permits, to encourage participation by small and minority businesses and women's business enterprises.
5. Using the services and assistance, as appropriate, of such Organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

## **Geographical Preferences Prohibited**

The Organization must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

## **Prequalified Lists**

The Organization 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 Organization must not preclude potential bidders from qualifying during the solicitation period.

## **Solicitation Language**

The Organization must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

## **Avoiding Acquisition of Unnecessary or Duplicative Items**

The Organization must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

## **Use of Intergovernmental Agreements and Cooperative Purchasing**

To foster greater economy and efficiency, the Organization enters into state and local intergovernmental agreements, where appropriate for cooperative purchasing or use of common or shared goods and services; as permitted by the Intergovernmental Cooperation Act and the Commonwealth Procurement Code. (53 Pa. C.S. Ch. 23; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the UG applies, the Organization shall verify that the Organization conducting the procurement pursuant to such agreements complies with the applicable procurement methods, requirements, and standards of the UG as outlined in this procedure.

## **Use of Federal Excess and Surplus Property**

The Organization considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

## **Debarment and Suspension**

The Organization awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The Organization may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000, the Organization verifies that the contractor with whom the Organization intends to do business is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR §§180.220 and 180.300)

## **Maintenance of Procurement Records**

The Organization must 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 verification that the contractor is not suspended or debarred. Maintenance of records of procurement will be governed by policy and the Organization's established records retention schedule.

## **Time and Materials Contracts**

The Organization 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 Organization 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, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the Organization must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

## **Settlement of Issues Arising Out of Procurements**

The Organization 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. These standards do not relieve the Organization of any contractual

responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **Protest Procedures to Resolve Dispute**

The Organization maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established Organization administrative regulations, and the advice of the solicitor.

## Section E – Procurement Threshold Chart – For Local Education Agencies

### Background

In accordance with UG, competitive methods of procurement are the preferred method for all procurement transactions. Under UG, non-federal entities must comply with the more restrictive of federal, state, and entity-level requirements. The following table outlines the procurement methods to be used by Local Education Agencies for the acquisition of goods and services. (NOTE: Federal and state acquisition thresholds are adjusted for inflation periodically).

| Procurement Method §200.320                                   | Goods/Supplies   | Services and Exempt Items | Requirements   |
|---|--|---------------------------|--|
| Micro-purchase<br>(Informal; No quotes required)              | ≤ \$3,500  | ≤ \$3,500                 | <ul style="list-style-type: none"> <li>Consider price to be reasonable</li> <li>Distribute equitably among suppliers to the extent practical</li> </ul>  |
| Small Purchase Procedures<br>(Relatively simple and Informal) | > \$3,500 but < \$20,100   | > \$3,500 but ≤ \$150,000 | <ul style="list-style-type: none"> <li>Obtain and document price or rate quotations from a reasonable number of qualified sources (goods: at least three per 24 PS 8.807.1; services: at least two)</li> <li>Written or documented quotes</li> </ul>   |
| Sealed Bids<br>(Formal advertising)                           | \$20,100 or more   | > \$150,000               | <ul style="list-style-type: none"> <li>Bids are publicly solicited</li> <li>Firm fixed price contract awarded to the responsible bidder with the lowest price</li> <li>Cost or price analysis for purchases in excess of the simplified acquisition threshold (\$150,000)</li> </ul>   |
| Competitive Proposals<br>(Formal RFPs)                        | \$20,100 or more   | > \$150,000               | <ul style="list-style-type: none"> <li>Conducted with more than one source submitting an offer</li> <li>Price is not used as sole selection factor</li> <li>Fixed price or cost-reimbursement type contract is awarded</li> <li>Written method for conducting evaluations</li> <li>Cost or price analysis for purchases in excess of the simplified acquisition threshold (\$150,000)</li> </ul> |
| Noncompetitive proposals<br>(Sole Source)                     | Appropriate only when these circumstances apply: <ul style="list-style-type: none"> <li>Available only from a single source (sole source)</li> <li>Public exigency or emergency</li> <li>Expressly authorized by awarding or pass-through agency in response to a written request from the non-federal entity</li> <li>After soliciting a number of sources, competition is deemed inadequate</li> </ul> |                           | <ul style="list-style-type: none"> <li>Solicitation from only one source</li> <li>Must maintain records sufficient to detail the history of the procurement process used</li> <li>Used only when qualifying circumstances apply</li> <li>Fixed price or cost-reimbursement type contract is awarded</li> </ul>   |

### Additional Considerations:

- **Program Requirements** – Always check with grantor or pass-through entity’s program manager about other requirements for the procurement of services that may be specific to the funding source.
- **Procurement of Exempt Items** – PA School Code exempts maps, music, globes, charts, educational films, filmstrips, prepared transparencies and slides, pre-recorded magnetic tapes and disc recordings, textbooks, games, toys, prepared kits, flannel board materials, flash cards, models, projectuals, and teacher demonstration devices necessary for school use from the competitive procurement process outlined under 24 PS 8.807.1.

## Section F – Procurement Threshold Chart – For Non-Profit Organizations

### Background

In accordance with UG, competitive methods of procurement are the preferred method for all procurement transactions. Under UG, non-federal entities must comply with the more restrictive of federal, state, and entity-level requirements. The following table outlines the procurement methods to be used by Non-Profit Organizations for the acquisition of goods and services.

(NOTE: Federal acquisition thresholds are adjusted for inflation periodically).

| Procurement Method §200.320                                   | Services and Exempt Items  | Requirements   |
|---|--|--|
| Micro-purchase<br>(Informal; No quotes required)              | ≤ \$3,500  | <ul style="list-style-type: none"> <li>Consider price to be reasonable</li> <li>Distribute equitably among suppliers to the extent practical</li> </ul>  |
| Small Purchase Procedures<br>(Relatively simple and Informal) | > \$3,500 but ≤ \$150,000  | <ul style="list-style-type: none"> <li>Obtain and document price or rate quotations from a reasonable number of qualified sources</li> <li>Written or documented quotes</li> </ul>   |
| Sealed Bids<br>(Formal advertising)                           | > \$150,000  | <ul style="list-style-type: none"> <li>Bids are publicly solicited</li> <li>Firm fixed price contract awarded to the responsible bidder with the lowest price</li> <li>Cost or price analysis for purchases in excess of the simplified acquisition threshold (\$150,000)</li> </ul>   |
| Competitive Proposals<br>(Formal RFPs)                        | > \$150,000  | <ul style="list-style-type: none"> <li>Conducted with more than one source submitting an offer</li> <li>Price is not used as sole selection factor</li> <li>Fixed price or cost-reimbursement type contract is awarded</li> <li>Written method for conducting evaluations</li> <li>Cost or price analysis for purchases in excess of the simplified acquisition threshold (\$150,000)</li> </ul> |
| Noncompetitive proposals<br>(Sole Source)                     | Appropriate only when these circumstances apply: <ul style="list-style-type: none"> <li>Available only from a single source (sole source)</li> <li>Public exigency or emergency</li> <li>Expressly authorized by awarding or pass-through agency in response to a written request from the non-federal entity</li> <li>After soliciting a number of sources, competition is deemed inadequate</li> </ul> | <ul style="list-style-type: none"> <li>Solicitation from only one source</li> <li>Must maintain records sufficient to detail the history of the procurement process used</li> <li>Used only when qualifying circumstances apply</li> <li>Fixed price or cost-reimbursement type contract is awarded</li> </ul>   |

### Additional Considerations:

- Program Requirements** – Always check with grantor/pass-through entity's program manager about other requirements for the procurement of services that may be specific to the funding source.

# Section G – Conflict of Interest Policy – Sample for Local Education Agencies

## Background

UG requires organizations to adopt strong policies preventing organizational and individual conflicts of interest, which are used to protect the integrity of procurements under federal awards and subawards. The conflict of interest guidance was expanded from the existing language in OMB Circular A-102 to include a provision for organizational conflict of interest. Some of the required provisions include:

1. Entity must maintain written standards of conduct covering conflicts of interest.
2. It must govern the actions of its employees engaged in the selection, award, and administration of contracts.
3. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real, or apparent conflict of interest.
4. Generally, the officers, employees, and agents of the organization may not solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
5. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
6. If the organization has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the organization must also maintain written standards of conduct covering organizational conflicts of interest.

This sample policy has been adapted from a model written by the Pennsylvania School Boards Association (PSBA) and is used with the PSBA's permission. The sample is intended to address all the critical elements of 2 CFR § 200.318 of UG, which describes mandatory conflict of interest language each non-federal entity must have.

|   |  |
|---|--|
| 1. Purpose  | This policy shall affirm standards of conduct established to ensure that Board members and employees avoid potential and actual conflicts of interest, as well as the perception of a conflict of interest.  |
| 2. Definitions<br>65 Pa. C.S.A.<br>Sec. 1101 et seq | <b>Confidential information</b> shall mean information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.   |
| 65 Pa. C.S.A.<br>Sec. 1101 et seq                   | <b>Conflict or Conflict of interest</b> shall mean use of authority of office or employment by a Board member or district employee, or use of any confidential information received through his or her holding public office or employment, to obtain: |

- The private pecuniary benefit of him or herself, a member of his/her immediate family.
- Business with which she or he or a member of his/her immediate family is associated.

The term does not include an action having a de minimis economic impact. Which can also affect to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation, or other group which includes the Board member, district employee, a member of his or her immediate family, or a business with which she or he or a member of his or her immediate family is associated.

65 Pa. C.S.A.  
Sec. 1101 et seq

**De minimis economic impact** shall mean an economic consequence which has an insignificant effect.

65 Pa. C.S.A.  
Sec. 1101 et seq

**Financial interest** shall mean any financial interest in a legal entity engaged in business for profit which comprises more than five percent (5%) of the equity of the business, or more than five percent (5%) of the assets of the economic interest in indebtedness.

65 Pa. C.S.A.  
Sec. 1101 et seq

**Honorarium** shall mean payment made in recognition of published works, appearances, speeches and presentations, and which is not intended as consideration for the value of such services; which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of de minimis economic impact.

65 Pa. C.S.A.  
Sec. 1101 et seq

**Immediate family** shall mean: a parent, parent-in-law, spouse, child, spouse of a child, brother, brother-in-law, sister, sister-in-law, or the domestic partner of a parent, child, brother, or sister.

3. Delegation of  
Responsibility

**Business partner** shall mean a person who, along with another person, plays a significant role in owning, managing, or creating a company in which both individuals have a financial interest in the company.

4. Guidelines

Each employee and Board member shall be responsible to maintain standards of conduct that avoid conflicts of interest. The Board prohibits members of the Board and district employees from engaging in conduct that constitutes a conflict of interest as outlined in this policy.

All Board members and employees shall be provided with a copy of this policy and acknowledge in writing that they have been made aware of it. Additional training shall be provided to designated individuals.

65 Pa. C.S.A.  
Sec. 1104  
Title 51  
Sec. 15.2

**Disclosure of Financial Interests**

No Board member shall be allowed to take the oath of office or enter or continue upon his or her duties, nor shall she or he receive compensation from public funds, unless she or he has filed a statement of financial interests as required by law.

The district solicitor and designated district employees shall file a statement of financial interests as required by law and regulations.

2 CFR  
§200.318

**Standards of Conduct**

|  |  |
|--|--|
|  | The district maintains the following standards of conduct covering conflicts of interest and governing the actions of its employees and Board members engaged in the selection, award, and administration of contracts.  |
| 2 CFR<br>§200.318                                      | No employee or Board member may participate in the selection, award, or administration of a contract supported by a federal award. If she or he has a real or apparent conflict of interest as defined above, as well as any other circumstance in which the employee, Board member, any member of his or her immediate family, his or her business partner, or an organization which employs or is about to employ any of them, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.  |
| 65 Pa. C.S.A.<br>Sec. 1101 et seq                      | The district shall not enter into any contract valued at \$500 or more with a Board member or employee, or his or her spouse or child, or any business in which the person, or his or her spouse or child is associated, nor in which the person or spouse, or child, or business with which associated is a subcontractor, unless the Board has determined it is in the best interests of the district to do so. The contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the Board member or employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.<br><br>When advertised formal bidding is not required or used, an open and public process shall include at a minimum: <ol style="list-style-type: none"> <li>1. Public notice of the intent to contract for goods or services;</li> <li>2. A reasonable amount of time for potential contractors to consider whether to offer quotes; and</li> <li>3. Post-award public disclosure of who made bids or quotes and who was chosen.</li> </ol> |
| 65 Pa. C.S.A.<br>Sec. 1101 et seq                      | Prior to the vote being taken, any board member or employee, who in the discharge of his or her official duties would be required to vote on a matter that would result in a conflict of interest shall publicly announce and disclose the nature of his or her interest as a public record.   |
| 65 Pa. C.S.A.<br>Sec. 1101 et seq<br>2 CFR<br>§200.318 | No public official or public employee shall accept an honorarium.<br><br>Board members and employees may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value. Gifts of a nominal value may be accepted in accordance with Board policy.  |
| 65 Pa. C.S.A.<br>Sec. 1101 et seq                      | <b>Improper Influence</b><br><br>No person shall offer or give to a Board member, employee, or nominee or candidate for the Board, or a member of his or her immediate family or a business with which she or he is associated, anything of monetary value, including: a gift, loan, political contribution, reward, or promise of future employment based, on the offeror's or donor's understanding that the vote, official action, or judgment of the Board member, employee, or nominee or candidate for the Board would be influenced thereby.  |
| 65 Pa. C.S.A.<br>Sec. 1101 et seq                      | No Board member, employee, or nominee or candidate for the Board shall: solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that Board   |

member, employee, or nominee or candidate that the vote, official action, or judgment of the Board member, employee, or nominee or candidate for the Board would be influenced thereby.

### **Organizational Conflicts**

Organizational conflicts of interest may exist when the district may be unable or appear to be unable to be impartial in conducting a procurement action involving a related organization. An organizational conflict could be due to the district's relationship with a subsidiary, affiliated, or parent organization that is a candidate for award of a contract in connection with federally funded activities,

In the event of a potential organizational conflict, the potential conflict shall be reviewed by the Superintendent or designee to determine whether it is likely that the district would be unable or appear to be unable to be impartial in making the award. If such a likelihood exists, this shall not disqualify the related organization; however, the following measures shall be applied:

1. The organizational relationship shall be disclosed as part of any notices to potential contractors;
2. Any district employees or officials directly involved in the activities of the related organization are excluded from the selection and award process;
3. A competitive bid, quote, or other basis of valuation is considered; and
4. The Board has determined that contracting with the related organization is in the best interests of the program involved.

### **Reporting**

Any perceived conflict of interest that is detected, or suspected by any employee or third party shall be reported to the Superintendent. If the Superintendent is the subject of the perceived conflict of interest, the employee or third party shall report the incident to the Board President.

Any perceived conflict of interest of a Board member that is detected or suspected by any employee or third party shall be reported to the Board President. If the Board President is the subject of the perceived conflict of interest, the employee or third party shall report the incident to the Superintendent, who shall report the incident to the solicitor.

No reprisals or retaliation shall occur as a result of good faith reports of conflicts of interest.

### **Investigation**

Investigations based on reports of perceived violations of this policy shall comply with state and federal laws and regulations. No person sharing in the potential conflict of interest being investigated shall be involved in conducting the investigation or reviewing its results.

In the event an investigation determines that a violation of this policy has occurred, the violation shall be reported to the federal awarding agency in accordance with that agency's policies.

### **Disciplinary Actions**

If an investigation results in a finding that the complaint is factual and constitutes a violation of this policy, the district shall take prompt, corrective action to ensure that such conduct ceases and will not recur. District staff shall document the corrective action taken and, when not prohibited by law, inform the complainant.

Violations of this policy may result in disciplinary action up to and including discharge, fines, and possible imprisonment. Disciplinary actions shall be consistent with Board policies, procedures, applicable collective bargaining agreements, and state and federal laws.

**References:**

State Ethics Commission Regulations - 51 PA Code Sec. 15.2

Public Official and Employee Ethics Act - 65 Pa. C.S.A. Sec. 1101 et seq.

Uniform Administrative Requirements for Federal Awards, Title 2, Code of Federal Regulations - 2 CFR §200.318

## Section H – Conflict of Interest Policy – Sample for Non-Profit Organizations

### Background

UG requires organizations to adopt strong policies preventing organizational and individual conflicts of interest, which are used to protect the integrity of procurements under federal awards and subawards. The conflict of interest guidance was expanded from the existing language in OMB Circular A-102 to include a provision for organizational conflict of interest. Some of the required provisions include the following:

1. Entity must maintain written standards of conduct covering conflicts of interest.
2. Govern the actions of its employees engaged in the selection, award, and administration of contracts.
3. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.
4. Generally, the officers, employees, and agents of the organization may not solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
5. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.
6. If the organization has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the organization must also maintain written standards of conduct covering organizational conflicts of interest.

### Purpose

The purpose of this policy is to protect the [ORGANIZATION NAME]'s (hereafter known as the Organization) interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a board member, officer, member of a committee with governing board-delegated powers, or employee who is considering a proposed transaction or arrangement for the Organization; or might result in a possible excess benefit transaction. This policy is intended to supplement, but not replace any applicable state and federal laws governing conflict of interest applicable to governmental, nonprofit, or charitable organizations.

### Definitions

1. **Contract** — An arrangement for the acquisition or use by the Organization of services, supplies, materials, equipment, land, or any other personal or real property.

2. **Interested Person** — Any board member, officer, or member of a committee with governing board-delegated powers, or Organization employee who is considering a proposed transaction or arrangement who has a direct or indirect financial interest, as defined below, is an interested person.
3. **Financial Interest** — A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
  - a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement;
  - b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement; or
  - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.
4. **Compensation** — Direct and indirect remuneration as well as gifts, gratuities, or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under the instructions below “Determining Whether a Conflict of Interest Exists”, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Ethical Guidelines**

Each board member, officer, or member of a committee with governing board-delegated powers, or Organization employee is expected to perform his or her duties in accordance with the law and the highest ethical standards. As a board member, officer, or member of a committee with governing board-delegated powers, or Organization employee, you, or any member of your family, are prohibited from having a financial interest in any contract with the Organization in which you are employed or influencing, or attempting to influence, the making of any contract in which you have a financial interest.

## **Acceptance of Gifts, Gratuities, or Favors**

No board member, officer, or member of a committee with governing board-delegated powers, or Organization employee, any member of his or her immediate family, or any business in which he or she has a principle interest, shall accept any gift, gratuity, or favor from any source doing or seeking to do business with the Organization or attempting to influence the judgment of such employee or official.

Except, as otherwise prohibited by law, the foregoing shall not prohibit the Organization from accepting any gift, gratuity, or favor of a fair market value (regardless of the donor's cost) of one hundred dollars (\$100.00) or less. Provided the gift, gratuity or favor shall be physically retained by the Organization and made available for the use or enjoyment of all employees of the Organization, and provided further, only one such gift from the same donor may be accepted annually.

Any offer to the Organization of a gift, gratuity, or favor of a fair market value in excess of one hundred dollars (\$100.00) shall be referred to the Organization board which shall determine at a public meeting whether to accept, or reject such gift, gratuity, or favor on behalf of the Organization.

This policy is not intended to prohibit a board member, officer, or member of a committee with governing board-delegated powers, or Organization employee, or members of their families, while in attendance at a conference or gathering of a statewide or regional association of such people, from accepting meals and hospitality from sponsoring entities, provided all persons in attendance at such conference or gathering are invited to attend or participate in the sponsored activity.

## **Procedures**

1. **Duty to Disclose:** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the governing board, or members of committees with governing board-delegated powers who are considering the proposed transaction or arrangement. In the case of an Organization employee, the matter shall be referred to the governing board for decision following the procedures listed below.
2. **Determining Whether a Conflict of Interest Exists:** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he or she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
3. **Procedures for Addressing the Conflict of Interest:** An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
  - a. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. In the case of Organization employees, the matter shall be referred to the governing board for decision.

- b. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- c. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested board members whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and

#### **4. Violations of the Conflicts of Interest Policy:**

- a. If the governing board or committee has reasonable cause to believe an individual has failed to disclose actual, or possible conflicts of interest, it shall inform the individual of the basis for such belief and afford the individual an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the individual's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the individual has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.
- c. Violations of this policy may result in disciplinary action, up to and including discharge, and possible prosecution. Disciplinary actions shall be consistent with board policies, procedures, [applicable collective bargaining agreements], and state and federal laws.
- d. In the event an investigation determines that a violation of this policy has occurred involving a federal award, the violation shall be reported in writing to the federal awarding agency in accordance with that agency's policies.

### **Records of Proceedings**

The minutes of the governing board and all committees with board-delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement; the content of the discussion, including any alternatives to

the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## **Compensation**

1. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

## **Annual Statements**

Each board member, officer, member of a committee with governing board-delegated powers, and Organization employee who considers proposed transactions or arrangements shall annually sign a statement which affirms such person: (Form for annual statement is included below.)

1. Has received a copy of the conflict of interest policy,
2. Has read and understands the policy,
3. Has agreed to comply with the policy, and
4. Understands the Organization is either a government agency or is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **Organizational Conflicts**

Organizational conflicts of interest may exist when, due to the Organization's relationship with a subsidiary, affiliated or parent organization that is a candidate for award of a contract in connection with federally funded activities, the Organization may be unable or appear to be unable to be impartial in conducting a procurement action involving a related organization.

In the event of a potential organizational conflict, the potential conflict shall be reviewed by the Organization board to determine whether it is likely that the Organization would be unable or appear to be unable to be impartial in making the award. If such a likelihood exists, this shall not disqualify the related organization; however, the following measures shall be applied:

1. The organizational relationship shall be disclosed as part of any notices to potential contractors;
2. Any Organization employees or officials directly involved in the activities of the related organization are excluded from the selection and award process;
3. A competitive bid, quote, or other basis of valuation is considered; and
4. The Board has determined that contracting with the related organization is in the best interests of the program involved.

**Conflict of Interest Policy Acknowledgment For the Period:**

**[LIST DATES]**

I have read and understand the [ORGANIZATION NAME]'s Conflict of Interest Policy. As a board member, principal officer, or member of a committee with governing board-delegated powers or an Organization employee who considers transactions or arrangements for the Organization, I understand that this Conflict of Interest Policy applies to me.

I understand that I am expected to conduct business in accordance with the letter, spirit, and intent of all relevant conflict of interest laws and the Conflict of Interest policy and to refrain from any illegal, dishonest, or unethical conduct. I understand that if a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with the board and/or with the chair or his or her designee (such as the Organization director) for advice and consultation. Furthermore, I understand that this document can be amended at any time.

In compliance with the [ORGANIZATION NAME]'s Conflict of Interest Policy, the business and professional activities in which, I or an immediate family member hold as an owner, officer, board member, partner, employee, or other beneficiary position as of the following date [LIST DATE] are as follows:

| Name of Business/Organization | Position Held/By Whom |
|-------------------------------|-----------------------|
| [LIST NAME]                   | [LIST POSITION]       |
| [LIST NAME]                   | [LIST POSITION]       |

(Continue on reverse side as needed)

Other not-for-profit organizations with which I or a family member is associated and which might reasonably expect to do business with the Organization are as follows:

| Name of Business/Organization | Position Held/By Whom |
|-------------------------------|-----------------------|
| [LIST NAME]                   | [LIST POSITION]       |
| [LIST NAME]                   | [LIST POSITION]       |

(Continue on reverse side as needed)

Other activities that may produce a possible conflict of interest:

[LIST OTHER ACTIVITIES THAT MAY PRODUCE A POSSIBLE CONFLICT OF INTEREST]

(Continue on reverse side as needed)

In addition, I recognize the need to maintain confidentiality regarding information I might receive as a board member, officer, member of a committee with governing board-delegated powers, or Organization employee regarding Organization customers, donors, donations, and other activities of the [ORGANIZATION NAME]

| [LIST SIGNATURE] | [LIST PRINTED NAME] | [LIST DATE] |
|------------------|---------------------|-------------|
| Signature        | Printed Name        | Date]       |

## Section I – Required UG Contract Clauses

### Background

Organizations must carefully review their grant agreements and contracts to ensure that any subrecipient contracts or other contracts they enter into related to federal awards include language mandated by the awarding agencies. Additionally, all contracts made by the organizations under the federal award must contain provisions covering the following contract clauses, as applicable. See UG Appendix II to Part 200.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity 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 non-federal entities 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 non-federal entity 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 non-federal entity 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 non-federal entity 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 non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible, provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement: If the federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (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 non-federal award 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).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide

exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (I) Byrd Anti-Lobbying Amendment (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.
  
- (J) Procurement of recovered materials: A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## Section J – PDE Guidance Concerning Use of Intergovernmental Agreements in Procurements Involving Federal Funds

Because of questions from the field, the Pennsylvania Department of Education (PDE) recently consulted with the US Department of Education (USDE) concerning the appropriate process for Local Education Agencies (LEAs) to enter into intergovernmental agreements (IGAs) to procure goods or services from Intermediate Units (IUs) or other LEAs using federal funds.

As we understand it, these IGAs are sometimes entered into without the LEA first having engaged in one of the applicable competitive methods of procurement under 2 CFR §200.320 (a)-(d).<sup>5</sup> Such IGAs are often used by LEAs and IUs, which join together for the procurement of common or shared goods and services. See 2 CFR §200.318(e). For example, IGAs may be used for the joint purchase of a commodity or service from a single vendor by several purchasers acting collectively and all entering into one contract with the vendor or for the individual purchase of a service from an LEA or IU by several LEAs.

USDE has advised PDE that while federal regulations permit entities to enter into IGAs as an appropriate alternative contractual arrangement for procurement or use of common or shared goods and services using federal funds when these agreements foster greater economy and efficiency, the provision for IGAs does not override the basic premise that competitive methods of procurement are preferred. Therefore, when joining together in a joint procurement for goods or services using federal funds, each LEA and/or IU is responsible for ensuring that the purchasing organization or collective conducting the joint procurement complies with applicable federal regulations, including the competitive requirements for procurements under §200.320(a)-(d), unless the requirements for a sole source procurement are met under §200.320(f). Similarly, when using federal funds to purchase shared or common services from LEAs or IUs, the IGA used for such purchase must be compliant with §200.320 (a)-(d), unless the requirements for a sole source procurement are met under §200.320(f). In addition, LEAs must examine the suitability of sole source procurement on a case-by-case basis and ensure that costs in all cases can be documented to be reasonable.<sup>6</sup> LEAs should have in place and adhere to strong

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<sup>5</sup> The methods of procurement under §200.320 are: (a) procurement by micro-purchase, (b) procurement by small purchase, (c) procurement by sealed bids, or (d) procurement by competitive proposal. PDE notes that generally procurement by micro-purchase may occur for the acquisition of supplies or services where the aggregate amount of the procurement does not exceed \$3,500. Micro-purchases may occur without soliciting competitive quotations if the price is reasonable. Procurements by small purchase procedures may apply where purchases do not exceed the simplified acquisition threshold (currently, \$150,000). Small purchase procedures permit simple and informal procurement methods provided price or rate quotations are obtained from an adequate number of qualified sources. If the procurement amount exceeds \$150,000, sealed bids or competitive proposals would be required. Moreover, where more restrictive requirements of state law apply, such as provided by Section 807.1 of the Public School Code of 1949, 24 P.S. §8-807.1, the more restrictive state procedure must be followed.

<sup>6</sup> PDE is aware that there may be circumstances involving special education services where an LEA may be required to contract with a particular IU or LEA in order to ensure that a child receives a free appropriate public education, and therefore, a sole source is appropriate under §200.320(f). The purchase of a service from an IU or LEA, which is not available from any other provider within a reasonable distance from the site at which the service will be provided, may be an appropriate basis of a sole source procurement under §200.320(f). Finally, it may in some instances be appropriate or necessary to bundle services and, as a result, there may be only one vendor that is capable of providing all the requested services. In such case, a sole source procurement under §200.320(f) might be justified as well. In all cases, however, LEAs must maintain records sufficient to detail the history of the procurement process. These records

internal controls, including the documentation of the procurement procedures they follow when obtaining goods and services with federal funds.

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will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. See 2 CFR §200.318(i).

## Section K – Small Purchase Documentation – Sample

### Background

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Below is a form that could be used as documentation to substantiate purchases.

Name of Individual Soliciting Information:

Instructions: Use this form to document small purchases. Individual or grouped transaction(s) that are greater than \$3,500 but less than \$150,000 must be documented below. Ensure at least two (2) quotes are used between qualified sources, (3) are preferred. Attach additional supporting documentation to this form. Circle or note the vendor selected. Complete bottom section if the lowest cost was not

| Vendor Name, Address, Telephone (Email) | Individual's Name and Position Providing Price Quote | Item Name/Description of the goods or services, including quantity, date of services, and any other pertinent terms or conditions required by the organization | Date of Contact | Method of Contact | Notes on Discussion with Vendor | Price Quote and Duration | Final Negotiated Price |
|---|--|--|-----------------|-------------------|---------------------------------|--------------------------|------------------------|
| Vendor 1                                |  |  |                 |                   |                                 |                          |                        |
| Vendor 2                                |  |  |                 |                   |                                 |                          |                        |
| Vendor 3                                |  |  |                 |                   |                                 |                          |                        |

If the lowest bidder was not selected, document below the reasons the lowest bidder could not meet the specific contract terms sought.

## **Section L – Cost/Price Analysis Guide**

### **Background**

Organizations must perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the organization must make independent estimates before receiving bids or proposals.

Organizations will need to not only ensure they perform an appropriate level of analysis, but also properly document the work that they did. Other requirements include:

1. Negotiating profit as a separate element of price when there is no price competition & in all cases when cost analysis is performed.
2. Costs based on estimated costs are allowable under cost principles.
3. Cost plus a percentage and % of Construction costs contracts are disallowed.

### **Price Analysis**

Involves a comparison of the bottom line price quoted by the offeror with prices paid on other contracts for the same or similar materials or services; a review of trade publications for comparability; a comparison of prices quoted by other respondents to the solicitation (does not apply to sole source contracts); and any other comparison available to the non-federal entity. The purpose of price analysis is to determine that the price quoted is within range of acceptability to the non-federal entity.

### **Cost Analysis**

Involves an analysis of the individual elements of cost (as requested by the solicitation) as stated in the contractor's cost proposal. Examples of individual elements of cost include direct labor, fringe benefits, overhead (indirect costs), materials, travel, subcontracts, etc. Questionable individual elements of cost become negotiation targets for the non-federal entity during the subsequent negotiation with the contractor.

Price or Cost Analysis is required for all proposals submitted by offerors for evaluation and negotiation by the non-federal entity. Non-federal entities should make independent estimates before receiving bids or proposals. Contents of the cost proposal should be in consonance with the contractor's accounting system, which must be operationally capable of segregating costs by contract. Offerors should certify that individual elements of cost are true, correct, and verifiable from the contractor's accounting system.

Non-federal entities should compare graphically each contractor's cost proposal using spreadsheets. However, keep in mind that accounting systems differ between contractors and

exact dollar comparison between individual cost elements may not constitute a valid comparison. For example, one contractor may charge a certain expense item to overhead (indirect costs), whereas another contractor may charge an identical expense item as a "direct" charge to the contract.

Price Analysis and Cost Analysis is normally used in concert with each other. Each should support the other. From an operational standpoint, this important facet of an effective negotiation plan cannot be overlooked or minimized.

- (1) Is the total price determined to be fair and reasonable? Does it compare favorably with the sum total of the individual elements of cost that have been analyzed?

If the answer is "No" (with a limited tolerance allowed), then further effort is required to make these two figures more compatible.

- (2) Was the overhead (indirect cost) rate used in the contractor's proposal determined by audit?

If the answer is "Yes," determine when audit was completed and whether the overhead (indirect cost) rate can be categorized as current.

If the answer is "No," determine on what basis the overhead (indirect cost) rate was calculated and then validate acceptability.

- (3) Was a spreadsheet used to show graphically a comparison of the elements of cost?

Even though a spreadsheet is not mandatory, its use is highly recommended.

- (4) Were individual results from cost analysis used to determine negotiation cost targets?

Remember the proposal is the contractor's. Justification is required for any element of cost questioned by the non-federal entities.

## Section M – Subrecipient and contractor Determinations

### Background

An organization may concurrently receive federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with federal awarding agencies and pass-through entities. Additionally, it can also disburse funds to subrecipients or contractors. Understanding both the organizations' status, as well as those they do business with, matters as it determines many things. For example, whether the amounts should be included in or excluded from the organizations' single audit, whether the procurement rules apply to the transactions, and the level of compliance requirements that are passed through to recipient organizations. Therefore, a pass-through or recipient entity must make case-by-case determinations whether each agreement it makes for the disbursement, or receipt of federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

While the full implications of the subrecipient versus contractor determinations are beyond the scope of this guide (See 2 CFR §200.330-332), the basic criteria and concepts for Subrecipients and Contractors are listed below:

*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. Characteristics which support the classification of the non-federal entity as a subrecipient include when the non-federal entity:

- (1) Determines who is eligible to receive what federal assistance;
- (2) Has its performance measured in relation to whether objectives of a federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable federal program requirements specified in the federal award; and
- (5) 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.

*Contractors:* A contract is for the purpose of obtaining goods and services for the non-federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-federal entity and a contractor are when the non-federal entity receiving the federal funds:

- (1) Provides the goods and services within normal business operations;

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

*Use of judgment in making determination:* In determining whether an agreement between a pass-through entity and another non-federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

## Section N - Program Information and Point of Contact

| FEDERAL PROGRAM NAME  | CFDA  | FEDERAL AGENCY  | DEPUTATE                                       | OFFICE/BUREAU RESPONSIBLE                        | FISCAL CONTACT                      | PROGRAM CONTACT  | E-MAIL ADDRESS   | WEBSITE (if applicable)   |
|---|---|---|--|--|-------------------------------------|--|--|---|
| 21st Century Community Learning Centers                           | 84.287 C  | US Department of Education  | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction | N/A                                 | N/A  | <a href="mailto:RA-21stCCLC@pa.gov">RA-21stCCLC@pa.gov</a>   | N/A   |
| Adult Basic Education   | 84.002  | US Department of Education  | Office of Postsecondary and Higher Education   | Bureau of Postsecondary and Adult Education      | N/A                                 | Agencies must contact an advisor who has been assigned to them | N/A  | N/A   |
| Career and Technical Education                                    | 84.048  | US Department of Education  | Office of Elementary and Secondary Education   | Bureau of Career and Technical Education         | Richard Steinmeier<br>Cynthia Gross | Monique Williams   | <a href="mailto:rsteinmeie@pa.gov">rsteinmeie@pa.gov</a><br><a href="mailto:mowilliams@pa.gov">mowilliams@pa.gov</a><br><a href="mailto:cygross@pa.gov">cygross@pa.gov</a> | <a href="http://www.education.pa.gov/K-12/Career%20and%20Technical%20Education/Pages/Perkins.aspx#tab-1">http://www.education.pa.gov/K-12/Career%20and%20Technical%20Education/Pages/Perkins.aspx#tab-1</a>       |
| Education Leading to Employment and Career Training (ELECT)       | 93.558  | US Department of Health and Human Services Administration for Children and Families | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction | Donna Stewart                       | N/A  | <a href="mailto:RA-edELECT@pa.gov">RA-edELECT@pa.gov</a>   | N/A   |
| Food and Nutrition  | 10.558,<br>10.559,<br>10.560,<br>10.579,<br>10.582,<br>10.547,<br>10.553,<br>10.555,<br>10.556,<br>10.574 | US Department of Agriculture  | Office of Administration                       | Bureau of Budget and Fiscal Management           | N/A                                 | Vonda Cooke  | <a href="mailto:RA-fiscal@pa.gov">RA-fiscal@pa.gov</a>   | <a href="http://www.education.pa.gov/Teachers%20-%20Administrators/Food-Nutrition/Pages/default.aspx#tab-1">http://www.education.pa.gov/Teachers%20-%20Administrators/Food-Nutrition/Pages/default.aspx#tab-1</a> |
| Homeless Assistance   | 84.196  | US Department of Education  | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction | N/A                                 | N/A  | <a href="mailto:ra-edhomeless@pa.gov">ra-edhomeless@pa.gov</a>   | N/A   |
| Individual with Disability Education Act - Part B                 | 84.027 A  | US Department of Education  | Office of Elementary and Secondary Education   | Bureau of Special Education                      | N/A                                 | ED, BSE Uniform Guidance                                       | <a href="mailto:ra-edbseuniformguid@pa.gov">ra-edbseuniformguid@pa.gov</a>   | N/A   |
| Individual with Disability Education Act - Section 619 Pre-School | 84.173 A  | US Department of Education  | Office of Child Development and Early Learning | Bureau of Finance Administration and Planning    | Maria Hegedis                       | Brian Bell   | <a href="mailto:bribell@pa.gov">bribell@pa.gov</a>   | N/A   |
| Library Services Technology Act                                   | 45.310  | Institute for Museum and Library Services   | Office of Commonwealth Libraries               | Bureau of Library Development                    | LSTA Coordinator                    | LSTA Coordinator   | <a href="mailto:Ra-lsta@pa.gov">Ra-lsta@pa.gov</a>   | <a href="http://www.statelibrary.pa.gov/LSTA">www.statelibrary.pa.gov/LSTA</a>  |
| Migrant Education   | 84.011 A  | US Department of Education  | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction | N/A                                 | N/A  | <a href="mailto:ra-migrated@pa.gov">ra-migrated@pa.gov</a>   | N/A   |

| FEDERAL PROGRAM NAME   | CFDA                       | FEDERAL AGENCY                 | DEPUTATE   | OFFICE/BUREAU RESPONSIBLE   | FISCAL CONTACT                 | PROGRAM CONTACT                | E-MAIL ADDRESS   | WEBSITE (if applicable) |
|--|----------------------------|--------------------------------|--|---|--------------------------------|--------------------------------|--|-------------------------|
| Migrant Education Consortium Grant   | 84.144 F                   | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | N/A                            | N/A                            | <a href="mailto:ra-migrated@pa.gov">ra-migrated@pa.gov</a>   | N/A                     |
| Refugee School Impact Grant  | 93.576                     | Office of Refugee Resettlement | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | N/A                            | N/A                            | <a href="mailto:RA-edrefugee@pa.gov">RA-edrefugee@pa.gov</a>   | N/A                     |
| Rural Education Achievement Program  | 84.358                     | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Tucker McKissick               | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:tmckissick@pa.gov">tmckissick@pa.gov</a>   | N/A                     |
| School Health Education Programs   | 93.079                     | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Donna Stewart                  | Nate Slotterback               | <a href="mailto:donnstewart@pa.gov">donnstewart@pa.gov</a><br><a href="mailto:nslotterba@pa.gov">nslotterba@pa.gov</a>   | N/A                     |
| School Improvement Grants  | 84.377 A                   | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Jesse Fry                      | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:jefry@pa.gov">jefry@pa.gov</a>   | N/A                     |
| State Personnel Development Grants   | 84.323 A                   | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Special Education   | Donna Graybill                 | Shatarupa Podder               | <a href="mailto:spodder@pa.gov">spodder@pa.gov</a>   | N/A                     |
| Striving Readers   | 84.371 C                   | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Rebekah Baum-Leaman            | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:rbaumleama@pa.gov">rbaumleama@pa.gov</a>   | N/A                     |
| Student Support and Academic Enrichment Grants   | 84.424                     | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Cindy Rhoads<br>Erin Oberdorf  | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:eoberdorf@pa.gov">eoberdorf@pa.gov</a><br><a href="mailto:crhoads@pa.gov">crhoads@pa.gov</a> | N/A                     |
| Title I Improving Basic Programs   | 84.010, 84.011 A, 84.013 A | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Susan McCrone                  | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:smcrone@pa.gov">smcrone@pa.gov</a>   | N/A                     |
| Title II Improving Teacher Quality   | 84.366, 84.367             | US Department of Education     | 84.366 and 84.367A - Office of Elementary and Secondary Education<br>84.367 - Office of Postsecondary and Higher Education | 84.366 and 84.367A - Bureau of Curriculum, Assessment and Instruction<br>84.67B - Bureau of School Leadership and Teacher Quality | Kelly Gallatin<br>Jamal Wakeem | Kelly Gallatin<br>Jamal Wakeem | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:jwakeem@pa.gov">jwakeem@pa.gov</a>   | N/A                     |
| Title III - Language Instruction for English Learners and Immigrant                                  | 84.365 A                   | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Jesse Fry                      | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:jefry@pa.gov">jefry@pa.gov</a>   | N/A                     |
| Title III, Part A - English Language Acquisition Formula Grants for Unaccompanied Children and Youth | 84.365 B                   | US Department of Education     | Office of Elementary and Secondary Education   | Bureau of Curriculum, Assessment and Instruction  | Kelly Gallatin                 | Jesse Fry                      | <a href="mailto:kgallatin@pa.gov">kgallatin@pa.gov</a><br><a href="mailto:jefry@pa.gov">jefry@pa.gov</a>   | N/A                     |