

Procurement Manual

Appendix B of Federal Procurement Standards Specific to School Department



City of Fitchburg
Procurement Department

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OBJECTIVE

The goal of this appendix is to provide a reference tool for school staff to understand specific requirements associated with federally funded purchases and projects, and to ensure that all procurements made by the city, on behalf of the School Department, comply with federal procurement guidelines in addition to existing state law, local ordinances, and best purchasing practices.

PROCUREMENT PROCEDURE

All departments utilizing federal funds will follow the purchasing regulations outlined in this appendix. All projects over \$10,000 are required to attach the federal conditions which can be found in 2 CFR 200 Appendix 200 as well as in the City of Fitchburg Appendix of Federal Procurement Standards section "Contract Provisions". Departments utilizing Federal Funds must follow Federal, State, and Local regulations, whichever is most restrictive, including MGL c. 30B, c. 149, and c. 30, 39m.

FULL AND OPEN COMPETITION

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R §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:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- 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.
- Any arbitrary action in the procurement process.

The district **negotiate profit** as a separate element of the price of each contract in which there is no price competition and, in all cases, where cost-analysis is performed.

GEOGRAPHICAL PREFERENCES

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.

ALLOWABLE COSTS

The District must maintain written procedures for determining Allowability of costs in accordance with UGG 2 CFR 200 Subpart E.

DETERMINING ALLOWABILITY OF COSTS

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval from the state.

When determining how the district will spend its grant funds, the Chief Financial Officer and Grant Liaison will review the proposed cost to determine whether it is an allowable use of federal grant funds *before* obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in 2 CFR Part 200 Subpart E, which are provided in the bulleted list below and be approved in the grant application budget. The Chief Financial Officer/Financial Manager and Grant Liaison will consider these factors when making an allowability determination.

Be Necessary and Reasonable for the performance of the federal award. District staff must consider these elements when determining the reasonableness of a cost. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, reasonable means that sound business practices were followed, and purchases were comparable to market prices.

When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of the District or the proper and efficient performance of the federal award.
- The restraints or requirements imposed by factors, such as: sound business practices; arm's-length bargaining; federal, state, and other laws and regulations; and terms and conditions of the federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the District, its employees, its students, the public at large, and the federal government.
- Whether the district significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the federal award's cost. 2 CFR §200.404

While 2 CFR §200.404 does not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the district can demonstrate that the cost addresses an existing need and can prove it. For example, the district may deem a language skills software program necessary for a limited English proficiency program.

When determining whether a cost is necessary, consideration may be given to

- Whether the cost is needed for the proper and efficient performance of the grant program.
- Whether the cost is identified in the approved budget or application.
- Whether there is an educational benefit associated with the cost.
- Whether the cost aligns with identified needs based on results and findings from a need assessment.
- Whether the cost addresses program goals and objectives and is based on program data.
- Allocable to the federal award: A cost is allocable to the federal award if the goods or services involved are chargeable or assignable to the federal award in accordance with the relative benefit received. This means that the federal grant program derived a benefit in proportion to the funds charged to the program.

2 CFR §200.405. For example, if 50% of a teacher's salary is paid with grant funds, then that teacher must spend at least 50% of his or her time on the grant program.

- Consistent with policies and procedures that apply uniformly to both federally financed and other activities of the District.
- Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the federal award.
- Consistent treatment: A cost cannot be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned as an indirect cost under another award.
- Adequately documented. All expenditures must be properly documented.
- Be determined in accordance with general accepted accounting principles (GAAP), unless provided otherwise in 2 CFR Part 200.
- Not included as a match or cost-share unless the specific federal program authorizes federal costs to be treated as such. Some federal program statutes require the non-federal entity to contribute a certain amount of non-federal resources to be eligible for the federal program.
- Be the net of all applicable credits. The term "applicable credits" refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the state relate to the federal award, they shall be credited to the federal award, either as a cost reduction or a cash refund, as appropriate. 2 C.F.R. §200.406.
- Purchases for goods and services paid for with grant funds shall be net of all applicable credits. To avoid the earning of "credits" where the benefits are not reimbursable or credited to the federal grant, personal reimbursements are subject to the policies of the district. The district will take advantage of all prompt pay discounts. All payments from federal grants shall be processed through the district's accounting system through the invoice payment process.

2 CFR Part 200 Cost Principles in Subpart E must be considered when federal grant funds are expended. As provided above, federal rules require state- and District-level requirements and policies regarding expenditures to be followed as well. For example, state and/or District policies relating to travel or equipment may be narrower than the federal rules, and the stricter State and/or District policies must be followed. Further, certain types of incentives are allowable under federal law, but are not allowable under State law.

SELECTED ITEMS OF COST

2 CFR Part 200 examines the allowability of 55 specific cost items (commonly referred to as Selected Items of Cost) at 2 CFR §§ 200.420-200.475. These cost items are listed in the chart below along with the citation where it is discussed whether the item is allowable. No assumption should be made that an item is allowable because it is specifically listed in the regulation as it may be unallowable despite its inclusion in the selected items of cost section. The expenditure may be unallowable for a number of reasons, including: the express language of the regulation states the item is unallowable; the terms and conditions of the grant deem the item unallowable; or State/local restrictions dictate that the item is unallowable. The item may also be unallowable because it does not meet one of the cost principles, such as being reasonable because it is considered too expensive. If an item is unallowable for any of these reasons, federal funds cannot be used to purchase it.

District personnel responsible for spending federal grant funds and for determining allowability must be familiar with the Part 200 selected items of cost section. The District must follow these rules when charging these specific expenditures to a federal grant. When applicable, District staff must check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, District, and program-specific rules may deem a cost as unallowable and District personnel must follow those non-federal rules as well.

Selected item of cost addressed in Part 200 includes the following (in alphabetical order):

Item of Cost	Citation of Allowability Rule
Advertising and public relations costs	2 CFR § 200.421
Advisory councils	2 CFR § 200.422
Alcoholic beverages	2 CFR § 200.423
Alumni/ae activities	2 CFR § 200.424
Audit services	2 CFR § 200.425
Bad debts	2 CFR § 200.426
Bonding costs	2 CFR § 200.427
Collection of improper payments	2 CFR § 200.428
Commencement and convocation costs	2 CFR § 200.429
Compensation — personal services	2 CFR § 200.430
Compensation — fringe benefits	2 CFR § 200.431
Conferences	2 CFR § 200.432
Contingency provisions	2 CFR § 200.433
Contributions and donations	2 CFR § 200.434
Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements	2 CFR § 200.435
Depreciation	2 CFR § 200.436
Employee health and welfare costs	2 CFR § 200.437
Entertainment costs	2 CFR § 200.438
Equipment and other capital expenditures	2 CFR § 200.439
Exchange rates	2 CFR § 200.440
Fines, penalties, damages, and other settlements	2 CFR § 200.441
Fund raising and investment management costs	2 CFR § 200.442
Gains and losses on disposition of depreciable assets	2 CFR § 200.443
General costs of government	2 CFR § 200.444
Goods and services for personal use	2 CFR § 200.445
Idle facilities and idle capacity	2 CFR § 200.446
Insurance and indemnification	2 CFR § 200.447
Intellectual property	2 CFR § 200.448
Interest	2 CFR § 200.449
Lobbying	2 CFR § 200.450
Losses on other awards or contracts	2 CFR § 200.451
Maintenance and repair costs	2 CFR § 200.452
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453
Memberships, subscriptions, and professional activity costs	2 CFR § 200.454
Organization costs	2 CFR § 200.455
Participant support costs	2 CFR § 200.456
Plant and security costs	2 CFR § 200.457
Pre-award costs	2 CFR § 200.458
Professional services costs	2 CFR § 200.459
Proposal costs	2 CFR § 200.460
Publication and printing costs	2 CFR § 200.461

Rearrangement and reconversion costs	2 CFR § 200.462
Recruiting costs	2 CFR § 200.463
Relocation costs of employees	2 CFR § 200.464
Rental costs of real property and equipment	2 CFR § 200.465
Scholarships and student aid costs	2 CFR § 200.466
Selling and marketing costs	2 CFR § 200.467
Specialized service facilities	2 CFR § 200.468
Student activity costs	2 CFR § 200.469
Taxes (including Value Added Tax)	2 CFR § 200.470
Termination costs	2 CFR § 200.471
Training and education costs	2 CFR § 200.472
Transportation costs	2 CFR § 200.473
Travel costs	2 CFR § 200.474
Trustees	2 CFR § 200.475

Likewise, it is possible for the State and /or District to put additional requirements on a specific item of cost. Under such circumstances, the stricter requirements must be met for a cost to be allowable. Accordingly, employees must consult federal, State and District requirements when spending federal funds. Massachusetts procurement laws are more restrictive than the federal guidelines; therefore, all purchases must follow state procurement laws but adhere to federal requirements.

In order for a cost to be allowable, the expenditure must also be allowable under the applicable program statute (e.g., Title I of the Elementary and Secondary Education Act (ESEA), or the Carl D. Perkins Career and Technical Education Act (Perkins)), along with accompanying program regulations, non-regulatory guidance and grant award notifications.

The State and/or District rules related to some specific cost items are discussed below:

- Technology purchases (hardware, software, and web-based systems) require the prior approval of the Chief Information Officer. New purchases must be compatible with current operating, storage, and network configurations.
- Furniture (including carpet) purchases require the prior approval of the Chief Operating Officer.
- Professional development (workshops, conferences, and consultants) require prior approval by the Principal/Assistant Superintendent and Chief Financial Officer. All professional development must be in line with the planned district-wide professional development.

District employees must be aware of these State and District rules and ensure they are complying with these requirements.

FREQUENT TYPES OF COSTS

Travel: Travel costs are the expenses for conference/workshop registration, transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of a grant recipient. Such costs may be charged on an actual cost basis in accordance with the District's written travel reimbursement policies. 2 C.F.R §200.474(a).

Costs incurred by employees for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the District in its regular operations as the result of its written travel policy. In addition, if

these costs are charged directly to the federal award, documentation must be maintained that justifies that (1) participation of the individual is necessary to the federal award; and (2) the costs are reasonable and consistent with the District's established policy. 2 C.F.R §200.474(b).

In addition to the federal guidelines regarding travel, employees and officers must adhere to school policy. The travel policy covers single day travel, overnight travel, and out-of-state travel. The policy can be found in the District's Policy manual.

HELPFUL QUESTIONS FOR DETERMINING WHETHER A COST IS ALLOWABLE

In addition to the cost principles and standards described above, the Chief Financial Officer and Grant Liaison can refer to this section for a useful framework when performing an allowability analysis. In order to determine whether federal funds may be used to purchase a specific cost, it is helpful to ask the following questions: Is the proposed cost allowable under the relevant program?

- Is the proposed cost consistent with an approved program plan and budget?
- Is the proposed cost consistent with program specific fiscal rules?
- For example, the District may be required to use federal funds only to supplement the amount of funds available from nonfederal (and possibly other federal) sources.
- Is the proposed cost consistent with EDGAR?
- Is the proposed cost consistent with specific conditions imposed on the grant (if applicable)?

As a practical matter, the Chief Financial Officer and Grant Liaison should also consider whether the proposed cost is consistent with the underlying needs of the program. For example, program funds must benefit the appropriate population of students for which they are allocated. This means that, for instance, funds allocated under Title III of the Elementary and Secondary Education Act (ESEA) governing language instruction programs for limited English proficient (LEP) students must only be spent on LEP students and cannot be used to benefit non-LEP students. Further, under most major elementary and secondary education programs, recipients may use federal funds only to supplement the amount of funds available from nonfederal sources for the education of students participating in the program. The recipients cannot use federal funds to supplant nonfederal funds that would otherwise have been used for the expenditure in question.

Also, funds should be targeted to address areas of weakness, as necessary. To make this determination, school personnel should review data when making purchases to ensure that federal funds meet these areas of concern. This should be a collaborative effort of the Grant Liaison and the Chief Financial Officer.

FEDERAL CASH MANAGEMENT POLICY/PROCEDURES

The District will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the District, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the District receives payment from the Massachusetts Department of Elementary and Secondary Education, the Massachusetts Department on a reimbursement basis. 2 CFR § 200.305. However, if the District receives an advance in federal grant funds, the District will remit interest earned on the advanced payment quarterly to the federal agency. The District may retain interest amounts up to \$500 per year for administrative expenses. 2 CFR § 200.305(b) (9).

According to guidance from the U.S. Department of Education (ED), when calculating the interest earned on ED grant funds, regardless of the date of obligation, interest is calculated from the date that the federal funds are drawn down from the G5 system until the date on which those funds are disbursed by the LEA.

Interest will not accrue if the LEA uses nonfederal funds to pay the vendor and/or employees prior to the funds being drawn down from the Edgrants system, commonly known as a reimbursements.

SETTLEMENTS 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 DISPUTES

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. Contract disputes arise from a belief the procurement process was not conducted properly. A vendor has three options to seek a remedy:

1. Contact the local jurisdiction
2. Contact the state agency in charge of enforcing the law (i.e. Inspector General's Office for Chapter 30B contracts), and/or
3. Superior Court

If a vendor contacts the district with a complaint regarding the procurement or award of contract, the complaint should be forwarded to the Chief Financial Officer. The Chief Financial Officer and the individual responsible for the contract will offer to meet with the vendor. The meeting should seek all information as to the complaint of the vendor. Once the meeting has concluded, and the concerns reviewed, the Chief Financial Officer will issue a written report to the complainant with a determination.

If there is a potential error in the way the procurement was conducted, or the district seeks advice on correcting the error, the Chief Financial Officer will ask the advice of the applicable state agency. If the vendor files a complaint in Superior Court, the district will seek the advice of legal counsel.

ORGANIZATIONAL CONFLICTS

Fitchburg Public Schools personnel will comply with Massachusetts General Law, Chapter 268A conflict of interest law and disclosure.

Additionally, the district may not be operated for the benefit of an affiliated or unaffiliated organization or an individual in his or her own private capacity or individuals related to any employee of the Fitchburg Public Schools or members of its management, unless the private benefit is considered merely incidental. The private benefit preclusion will extend to the following:

- The sale, exchange or leasing of property between the district and an affiliated or unaffiliated organization or a private or related individual.
- Lending money or other extension of credit between an agency and an affiliated or unaffiliated organization or a private or related individual.
- Furnishing of goods, services, or facilities between the district and an affiliated or unaffiliated organization or a private or related individual except for the rental of district facilities as specified in the Fitchburg Public Schools Committee policy manual.
- Payment of compensation, unless authorized by the Fitchburg Public Schools - School Committee, by the district to an affiliated or unaffiliated organization or a private or related individual.
- The transfer to, use by, or for the benefit of a private or related individual of the income of assets of Fitchburg Public Schools unless specifically voted by the School Committee.

- The District will be guided by the principle of arms-length standards with all affiliated or unaffiliated organizations or with a private or related individual(s). Related party transactions shall include transactions between a school/district and members of the School Committee, administration, employees, related individuals, and affiliated companies. Related individuals within the scope of this definition include spouses, parents, children, spouses of children, grandchildren, siblings, fathers-in-law, mothers-in-law sisters-in-law and brothers-in-law of a school committee member or school district employee.

Fitchburg Public Schools personnel will also comply with 2 CFR 200.318(c)(1)/7 CFR 3016.36(3)(1-1v) regarding conflicts of interest and actions of employees engaged in the selection, award and administration of contracts.

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. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

END OF APPENDIX