

## MEMORANDUM

August 14, 2017

TO: Federal Procurement Policy Group

FROM: Aga Dixon and Bill Stockmeyer  
Drummond Woodsum & MacMahon

RE: Updates to Federal Procurement Policies and Procedures Guidance

---

On May 1, 2017, we provided you with a memorandum and related policy/procedures documents describing the steps that school units should take in order to be in compliance with the Uniform Grant Guidance. Since then, the Office of Management and Budget (OMB) extended the grace period for recipients of federal awards to implement changes to their procurement policies and procedures. Specifically, the deadline extends through December 25, 2017, and the implementation date for the procurement standards will start for fiscal years beginning on or after December 26, 2017.

This means that school units may continue to comply with the procurement standards based on prior federal guidance until **July 1, 2018**. Remember that, if you choose to use the pre-Uniform Guidance procurement standards until July 1, 2018, you must document this decision in your internal procurement policies. OMB has stated that this will be the final grace period, and recommends that non-federal entities should begin preparing for implementation well before the extended implementation date. Accordingly, we recommend that you continue to work on bringing your school unit into compliance with the Uniform Grant Guidance sooner than later.

Since May, we have also fielded questions regarding the adoption procedure for the federal procurement manual and local geographic preference. We share our answers below, in the “Frequently Asked Questions” section, for the benefit of everyone in the group.

Finally, we have been asked to review the procurement staff code of conduct against Policy BCB, a commonly adopted conflict-of-interest policy applicable to school boards. As a result of this review, we are proposing an additional action item to harmonize these two policies. Below, we have reprinted our May 1 memorandum, with the additional action item shown in red text so that you can easily identify the new information.

Please contact us if you have any questions or concerns, or if we can be of help at any point in the process.

---

## **FEDERAL PROCUREMENT POLICY GROUP FREQUENTLY ASKED QUESTIONS**

Updated: August 14, 2017

---

**Q: Must the Federal Procurement Manual (Administrative Procedure DJ-R) be adopted by the school board?**

**A:** No. The Federal Procurement Manual may, but does not need to, be formally adopted by the school board. The manual is intended to exist as a procedure so that it may be updated by a designated person to remain consistent with changes to federal procurement law without going through a policy review. Either way, it should be distributed to anyone in the school unit who purchases goods or services, takes part in the selection of vendors, and/or signs contracts on behalf of the school unit. This will likely include the Superintendent, the Business Manager, and other business office personnel that procure goods and services.

**Q: May school units give preference to local vendors when soliciting or contracting for goods or services?**

**A:** The federal Uniform Grant Guidance prohibits local geographic preferences in any solicitations and contract awards using federal funds. In other words, when using federal award money subject to the Uniform Grant Guidance, and even if all other factors are equal, you cannot give preference to a local vendor and you cannot use geographical preferences at all in the evaluation of proposals or bids—except in certain instances where federal law explicitly permits it. (For example, federal law allows geographic preferences when contracting for architect/engineer services, with certain USDA funds, or when doing businesses in “labor surplus areas”—i.e., areas qualified due to particularly high unemployment.)

Apparently, at least some school units permit or require local preferences when all other factors are equal. Nothing in our recommended road map would prevent a school unit from considering this limited use of local preferences when federal funds are not involved.

**Q: Does Policy DJH (Purchasing and Contracting: Procurement Staff Code of Conduct) apply to school board members?**

**A:** Yes. The Uniform Guidance specifies that no “employee, officer, or agent” may participate in the selection, award, or administration of a contract supported by federal funds if that person has a real or apparent conflict of interest. To clarify this obligation, we are now recommending that you also amend your existing Policy BCB (Board Member Conflicts of Interest), as set forth in the August 14, 2017 memorandum to the Federal Procurement Policy Group.

---

## **ACTIONS TO TAKE BEFORE JULY 1, 2017-2018**

---

### **Action Item #1: Board to Amend Existing Policy DJ (*Bidding/Purchasing*) or Comparable Existing Policy (*Cape Elizabeth has policy DJE*)**

School units should already have in place *Policy DJ (Bidding/Purchasing)*. To comply with the Uniform Grant Guidance, the School Board should adopt an amendment to its existing Policy DJ (or to its comparable existing policy) in form attached to this memorandum as [Exhibit A](#).

### **Action Item #2: School Procurement Administrator to Implement *Administrative Procedure DJ-R (Federal Procurement Manual)***

The Uniform Grant Guidance requires that school units maintain *written* procurement procedures that are consistent with federal laws and rules. These procedures must be followed any time a school unit solicits or contracts for goods and services using federal awards which are conditioned on compliance with the Uniform Grant Guidance. *Administrative Procedure DJ-R: Federal Procurement Manual*, attached to this memorandum as [Exhibit B](#) and cross-referenced in [Exhibit A](#), satisfies this requirement.

Because the manual is an administrative procedure, the School Board is not required to formally adopt it. Rather, the Superintendent or his/her designee is responsible for complying with the manual and for keeping it up to date.

Important Note: The Uniform Grant Guidance also requires that school units establish *written internal controls* to safeguard federal funds and properly manage federal awards.<sup>1</sup> Because these internal controls will vary from school unit to school unit, they are not included in the attached Federal Procurement Manual. Superintendents or their designees should confirm that their internal controls are in writing and are consistent with the Uniform Grant Guidance. Please contact us if you would like us to review your internal controls for compliance with federal requirements.

---

<sup>1</sup> The Uniform Grant Guidance requires, among other things, that the school district's financial management system (1) identify all federal awards received and expended; (2) provide for the accurate, current, and complete disclosure of financial results of each federal award; (3) maintain records that identify the source and application of funds; and (4) describe payment and allowability of costs procedures.

**Action Item #3: School Board to Amend Existing Policy DJH (Purchasing and Contracting: Procurement Staff Code of Conduct), As Needed**

School units should already have in place *Policy DJH (Purchasing and Contracting: Procurement Staff Code of Conduct)*, which prevents persons with a conflict of interest from participating in procurements and contracting involving federal awards. This was a requirement under EDGAR.

To comply with the Uniform Grant Guidance:

- If your school unit does not have a *Policy DJH* (or a comparable policy), the School Board should adopt *Policy DJH* in form attached to this memorandum as Exhibit C.
- If your school unit does have a *Policy DJH* (or a comparable policy) in place, confirm that existing policy satisfies the following four requirements:

- (1) Real or apparent conflicts of interest. The policy must include the following two sentences:

No employee, officer, or agent of the school unit may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

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

- (2) Gifts and solicitations. The policy must provide that “no officers, employees, or agents of the school unit may solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.” A school unit may establish its own standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. See Exhibit C for sample language.
- (3) Violations. The policy must provide for disciplinary actions to be applied for violations of the policy by officers, employees, or agents of the school unit. See Exhibit C for sample language.
- (4) Legal Reference. The policy should include a legal reference to the Uniform Grant Guidance, specifically “2 CFR § 200.318.” See Exhibit C for sample language.

If any of these provisions are missing or deviate substantially from the school unit’s existing *Policy DJH* (or its comparable policy), the School Board should amend the policy as necessary to satisfy the above requirements.

**Action Item #4: School Board to Amend Existing *Policy BCB (Conflict of Interest)* or Comparable Existing Policy**

School units should already have in place *Policy BCB (Conflict of Interest)*, which sets out the state law conflict-of-interest rules for school board members, including the requirement that school board members disclose any financial interest in a question or contract under consideration before becoming involved in the discussion, negotiation, or award of a contract. *Policy BCB* applies only to school board members. By comparison, *Policy DJH (Purchasing and Contracting: Procurement Staff Code of Conduct)* applies to all employees, officers, or agents of the school unit and specifies that such entities may not participate in the selection, award, or administration of a contract supported by federal funds if that person has a real or apparent conflict of interest. Because school board members are officers of the school unit, *Policy DJH* applies to them.

To clarify a school board member's conflict-of-interest obligations with respect to federal procurements, the School Board should adopt an amendment to its existing *Policy BCB* (or to its comparable existing policy) in form attached to this memorandum as Exhibit D.