

**Policy DJFA: FEDERAL PROGRAMS AND PROJECTS**

Status: DRAFT

Original Adopted Date: 08/25/2016 | Last Revised Date: 03/12/2020

**EXPLANATION**

In 2020, the Office of Management and Budget (OMB) updated some of its rules for federal programs and made some vocabulary changes. For example, procurement was divided into 1) micro-purchases and small purchases, 2) formal procurements (sealed bids or RFPs), and 3) noncompetitive procurements (sole-source type purchases). The Department of Elementary and Secondary Education (DESE) followed suit with a new edition of the "Fiscal Guidance for Federal Grant Programs" in October 2021. There is no need to repeat the procurement rules in a board policy, but we have made a few adjustments to account for the terminology and the special conflict of interest rules specifically required for this policy. We emphasize in these policy updates that administrators should reference the DESE guidance; however, in any situation like this, where one agency (DESE) is paraphrasing another agency's (OMB) regulations, there is always a chance for errors in translation or further developments in OMB or federal statutory requirements, which the district's attorney may identify as grounds for deviation from the DESE guidance on some matter or another.

The content of this policy reflects federal regulation and should not be changed without consultation with DESE.

The purpose of this policy is to ensure that federally funded programs and projects in the district are administered in accordance with federal laws. Specifically, this policy governs all purchases of goods and services using federal funds and reflects federal conflict of interest rules applicable to board members, employees and agents involved with the selection of contractors and the approval and administration of contracts for federal programs and projects.

## Definitions

*Agent* – A person or entity acting on behalf of the district who is not an employee of the district.

*Contract* – As used in this policy, a legal instrument by which the district purchases property or services needed to carry out a program or project funded by a federal award.

*Contractor* – A person or entity with which the district has an executed contract to carry out a federal program or project. A contractor does not include an entity with which the district contracts that received a federal award or subaward directly from a federal or state agency.

*Gratuity* – A favor, gift or anything of monetary value.

*Immediate Family* – A spouse or dependent child of a board member, employee or agent or any person living in the household of a board member, employee or agent.

*Labor Surplus Area (LSA) Firm* – A business located in a civil jurisdiction, such as a county or city, which is designated as an LSA by the U.S. Department of Labor's Employment and Training Administration.

*Real, Apparent or Potential Conflict of Interest* – A situation in which a board member, employee or agent; any member of a board member's, employee's or agent's immediate family; any business partner of a board member, employee or agent; or any organization that employs or is about to employ a board member, employee or agent has a financial or other interest in a firm the district is considering contracting with or would receive a tangible personal benefit from a firm considered by the district for contracting. ~~A financial interest does not exist if the value of the interest is less than \$25.~~

## Federal Programs Administration

Federal programs administration must be in accordance with fiscal guidance for federal programs issued by the Missouri Department of Elementary and Secondary Education Division of Financial and Administrative Services, guidance from the federal Office of Management and Budget (OMB) and Title 2 of the Code of Federal Regulations unless otherwise advised by the district's attorney.

The superintendent shall be responsible for coordinating and administering federally funded programs and projects. The superintendent will ensure that the various departments operating these programs and projects do so in accordance with the requirements of the federal award and keep accurate and separate records, as required by board policy and in accordance with administrative procedures. The superintendent may delegate one or more ~~of his or her~~

duties to appropriate employees.

If the superintendent is not the purchasing officer for the district, the superintendent will work with the purchasing officer to ensure that goods and services purchased through federal awards comply with state and federal requirements.

## **Procurement**

In addition to following the requirements of state law, board policy and district procedures, the purchasing officer will ensure that all supplies, equipment and services purchased with federal funds are purchased in accordance with federal law. No purchase will be made unless the purchase was authorized in the approved budget for administration of the grant. Every purchase will be identified in district accounts in accordance with the federal program under which the purchase was made.

### ***Solicitation of Bids and Proposals***

All notices of solicitation of bids and proposals will include notice that the district encourages bids and proposals from minority businesses, women's business enterprises, service-disabled veterans and labor surplus area firms.

### ***Bids and Requests for Proposals***

Bid specifications and requests for proposals will include a clear and accurate description of the technical requirements for the material, product or service desired and will identify all requirements and all other factors that will be used in evaluating bids or proposals.

Bid specifications will not contain features that 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 to define the performance or other requirements. The specific features of the named brand that must be met must be clearly stated.

Contractors who develop or draft specification requirements, statements of work or invitations for bids or requests for proposals for the district must be excluded from bidding on the project.

Pursuant to federal law, the district will not use local or state geographical purchasing preferences when purchasing goods or services related to a federal contract **except when such preferences are mandated or encouraged under the applicable federal statutes**. When making purchases with federal funds, the district will:

1. Take all necessary affirmative steps to ensure that small businesses, minority businesses, women's business enterprises and LSA firms are used when possible. To that end, the district will:
  - Place qualified small businesses, minority businesses and women's business enterprises on solicitation lists.
  - Solicit bids from small businesses, minority businesses and women's business enterprises when they are potential sources.
  - Divide total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by small businesses, minority businesses and women's business enterprises. This provision shall not be used to artificially divide purchases to avoid bidding requirements or design bid specifications to favor a particular provider.
  - Establish performance and delivery schedules that encourage small businesses, minority businesses and women's business enterprises to participate when doing so is conducive with the program or project.
  - **Use 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.**
  - **Require the prime contractor to use the affirmative steps of this policy when selecting subcontractors.**

2. Purchase only items that contain the highest practicable percentage of recovered materials, as defined by the Environmental Protection Agency (EPA), 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.
3. Use solid waste management services in a manner that maximizes energy and resource recovery.
4. Purchase, to the maximum extent practicable, domestic commodities, goods, and products or materials produced in the United States.

The purchasing officer or designee may search state and federal surplus property offerings to determine whether any items the district needs are available at a lower cost without sacrificing quality.

### **Noncompetitive Purchasing**

Noncompetitive purchases can be awarded only if one or more of the following applies:

1. The aggregate cost does not exceed the micro-purchase threshold in DJF-AP1.
2. The item is available only from a single source.
3. A public exigency or emergency will not permit the delay caused by publicizing a competitive solicitation.
4. The state or federal awarding entity expressly authorizes noncompetitive procurement in response to a written request submitted by the district.
5. After solicitation of numerous sources, competition is determined inadequate.

### **Contracts**

The district will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

When making purchases using federal funds, the district will not use a time and materials contract unless there is a determination that no other contract is suitable and the district includes a ceiling price and oversees the project to ensure efficiency.

The district may use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

The purchasing officer or designee will resolve contract and procurement disputes in accordance with good administrative practice and sound business judgment. The purchasing officer is authorized to contact the district's legal counsel for assistance in resolving disputes.

The district will maintain records sufficient to detail the history of procurement.

### **Title I Comparability**

Federal law requires districts to ensure that schools that receive Title I funds receive the same level of services and resources from state and local funds as schools that do not receive Title I funds. If the district has school buildings with more than 100 students and more than one building for each grade span, the district is required to annually conduct a comparability study between buildings that receive Title I funds and have more than 100 students and buildings that do not receive Title I funds and have more than 100 students. If all the district's schools receive Title I funds, the district must determine that services are, taken as a whole, substantially comparable in each school. The district may meet these requirements by comparing either grade spans or schools. The district will establish comparability by ensuring:

1. That it has adopted a districtwide salary schedule;
2. Equivalence among schools in teachers, administrators and other staff; and
3. Equivalence among schools in the provision of curriculum materials and instructional supplies.

Alternatively, the superintendent or designee will complete an annual comparability study using the procedures and forms provided by the Department of Elementary and Secondary Education (DESE). If the superintendent or

designee determines that services and resources are not comparable, the superintendent will notify the board and take steps to rectify the situation.

The data collected and compiled in the determination of comparability will be retained in accordance with the Public School Records Retention Schedule. The district will provide DESE with the appropriate assurances that the district is in compliance with the federal law.

## Conflict of Interest

In addition to acting in accordance with Missouri laws governing conflicts of interest and financial disclosures, board members, employees and agents participating in the procurement of property and services using federal funds must comply with federal requirements. In cases where federal requirements are more restrictive than state requirements, federal requirements will be followed.

1. Board members, employees and agents who are or may be involved in the selection, award or administration of a contract supported by a federal award will submit, in writing, any real, apparent or potential conflict of interest to the superintendent or designee or the board secretary. The recipient of the report will forward any disclosures to the awarding state or federal agency in accordance with the reporting policy of the agency. No Board members, employees or agents will not participate in the selection, award or administration of a contract supported by a federal award if he or she has they have a real, apparent or potential conflict of interest. Such a conflict of interest would arise when the employee, board member or agent, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
2. The district will disclose any potential conflict of interest in accordance with the policy of the federal awarding agency.
3. Board members, employees and agents will not solicit or accept gratuities, favors or anything of monetary value from contractors, or parties to subcontracts or any vendor who is attempting to be a contractor for a federal program or project, but may accept unsolicited gifts of nominal value. For the purposes of this policy, a gift of nominal value is defined as an unsolicited gift of \$25 or less unless otherwise defined by federal law.
4. If the district has a parent, affiliate or subsidiary organization that is not a governmental entity, the district will develop written standards to avoid conflicts of interest with these related organizations (organizational conflicts of interest). A conflict would exist in situations where the district is unable, or appears to be unable, to be impartial in conducting a procurement action involving the related organization because of the relationship with the organization.

## Consequences

Board members, employees and agents are required to immediately report any violation of this policy to the superintendent or board president. In accordance with federal law, board members, employees and agents will, within five days of the violation, report all violations of federal criminal law the district will disclose to the state or federal agency that awarded the grant all violations of federal and criminal laws involving fraud, bribery or a gratuity violation potentially affecting the federal award, even if no charges have been filed, to the superintendent, designee or board president. The disclosure will be made in writing in a timely manner. The superintendent, designee or board president will submit information about the violation to the state or federal awarding entity and will contact the district's attorney for assistance in making that report. See 2 C.F.R. §§ 200.113 and .318.

Unless excused by the board, board members who violate the provisions of this policy will be prohibited from holding a board office or representing the full board as an official spokesperson or otherwise. Employees who violate this policy will be disciplined or terminated, and the district will reconsider and potentially end business relationships with agents who violate this policy. In addition, violations of this policy or the laws it references may be reported to law enforcement, the Missouri Ethics Commission, the Attorney General's Office or DESE and other applicable funding agencies.

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**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**State References**

§§ 8.675-.687, RSMo.

§§ 105.450-.458, RSMo.

§§ 34.073-.080, .350.359, .375

§§ 432.070-.080, RSMo.

§§ 8.285-.291, RSMo.

§162.301, RSMo

§170.041, RSMo

§171.181, RSMo.

§285.530, RSMo.

§292.675, RSMo.

§393.310, RSMo.

5 C.S.R. 30-4.030

**Federal References**

2 C.F.R. § 180.222, 200.1, .113

2 C.F.R. § 200.206, .208, .211-.212, .214

2 C.F.R. § 200.302, .305, .307, .309

2 C.F.R. § 200.311, .313-.314, .317-.327

2 C.F.R. § 200.331, .334, .338, .403-.406

2 C.F.R. § 200.413-.414, .430-.432

2 C.F.R. § 200.438-.439, .450, .475

2 C.F.R. § 200.501, .509-.511, .520

20 U.S.C. § 6321

20 U.S.C. §§ 1232c, 6321

34 C.F.R. Part 76.500, .707

**Description**

State Statute -

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State Statute -

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State Regulation -

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**Description**

Federal Regulation -

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Federal Regulation -

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Elementary and Secondary Education Act -

<https://simbli.eboardsolutions.com/SU/plusSLEkiEKYG9tr1Va3O8c8g==>

Federal Statute -

<https://simbli.eboardsolutions.com/SU/plusSLEkiEKYG9tr1Va3O8c8g==>

Federal Regulation -

<https://simbli.eboardsolutions.com/SU/b4bcAesbO1cVV9hUkuekqQ==>

40 C.F.R. Part 247	Federal Regulation - <a href="https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==">https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==</a>
40 U.S.C. 576A-276A-5	Federal Statute - <a href="https://simbli.eboardsolutions.com/SU/plusSLEkiEKYG9tr1Va3O8c8g==">https://simbli.eboardsolutions.com/SU/plusSLEkiEKYG9tr1Va3O8c8g==</a>
47 C.F.R. § 54.503	Federal Regulation - <a href="https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==">https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==</a>
7 C.F.R. § 210.16	Federal Regulation - <a href="https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==">https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==</a>
7 C.F.R. § 210.21	Federal Regulation - <a href="https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==">https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==</a>
7 C.F.R. § 220.16	Federal Regulation - <a href="https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==">https://simbli.eboardsolutions.com/SU/aJX5mfZD1pluss1btjfsIshfEmXA==</a>

### Cross References

### Description

BBFA-1	BOARD MEMBER CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE - <a href="https://simbli.eboardsolutions.com/SU/iCVeeRrglNeBf4mgvwwBptw==">https://simbli.eboardsolutions.com/SU/iCVeeRrglNeBf4mgvwwBptw==</a>
BCC-1	APPOINTED BOARD OFFICIALS - <a href="https://simbli.eboardsolutions.com/SU/GmsQCCpOWbdJddfVDvXVJw==">https://simbli.eboardsolutions.com/SU/GmsQCCpOWbdJddfVDvXVJw==</a>
FEF-1	CONSTRUCTION CONTRACTS BIDDING AND AWARDS - <a href="https://simbli.eboardsolutions.com/SU/0hCzAgbDboRz4A5hBh2Y5A==">https://simbli.eboardsolutions.com/SU/0hCzAgbDboRz4A5hBh2Y5A==</a>
FEF-1-AP(1)	CONSTRUCTION CONTRACTS BIDDING AND AWARDS - (Soliciting Bids) - <a href="https://simbli.eboardsolutions.com/SU/slshVPyUD53hmCQvE2VjplusxbRw==">https://simbli.eboardsolutions.com/SU/slshVPyUD53hmCQvE2VjplusxbRw==</a>
GBCA	STAFF CONFLICT OF INTEREST - <a href="https://simbli.eboardsolutions.com/SU/vCm41pluspoRpY8bbvlrr11Pw==">https://simbli.eboardsolutions.com/SU/vCm41pluspoRpY8bbvlrr11Pw==</a>
IGBCB	PROGRAMS FOR MIGRATORY STUDENTS - <a href="https://simbli.eboardsolutions.com/SU/0lkG3hKhSslshurJVcMF5iOvQ==">https://simbli.eboardsolutions.com/SU/0lkG3hKhSslshurJVcMF5iOvQ==</a>
IGBCB-AP(1)	PROGRAMS FOR MIGRATORY STUDENTS - (K-12 Districts) - <a href="https://simbli.eboardsolutions.com/SU/Xdg6KYGog5ZSDBslshAYnqEHw==">https://simbli.eboardsolutions.com/SU/Xdg6KYGog5ZSDBslshAYnqEHw==</a>
IGBH	PROGRAMS FOR ENGLISH LEARNERS - <a href="https://simbli.eboardsolutions.com/SU/apGBNslshwRBtnis0pei23LPw==">https://simbli.eboardsolutions.com/SU/apGBNslshwRBtnis0pei23LPw==</a>