

FCMAT

FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

Budget and Purchasing Review

June 9, 2021



Orange County Department of Education

Michael H. Fine
Chief Executive Officer

FCMAT

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ASSISTANCE TEAM

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Al Mijares, Ph.D., Superintendent
Orange County Department of Education
200 Kalmus Drive
Costa Mesa, CA 92626

Dear Superintendent Mijares:

In November 2020, the Orange County Department of Education and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement for FCMAT to conduct a review of the county office's budget development and contracting processes and procedures. The agreement stated that FCMAT would perform the following:

1. Review the Business Services Department's operational processes and procedures for county office budget development during annual budget adoption and interim reporting, and make recommendations for improvements, if any.
2. Review operational processes and procedures for contracting for goods and services and evaluate whether the county follows the adopted policies for contracting and whether the policies meet current legal and professional standards, and make recommendations for improvements, if any. Based on the team's judgment, the team will review a sample of contracts from July 2019 through December 2020.

This report contains the study team's findings and recommendations.

FCMAT appreciates the opportunity to serve the Orange County Department of Education and extends thanks to all the staff for their assistance during this review.

Sincerely,



Michael H. Fine

Chief Executive Officer

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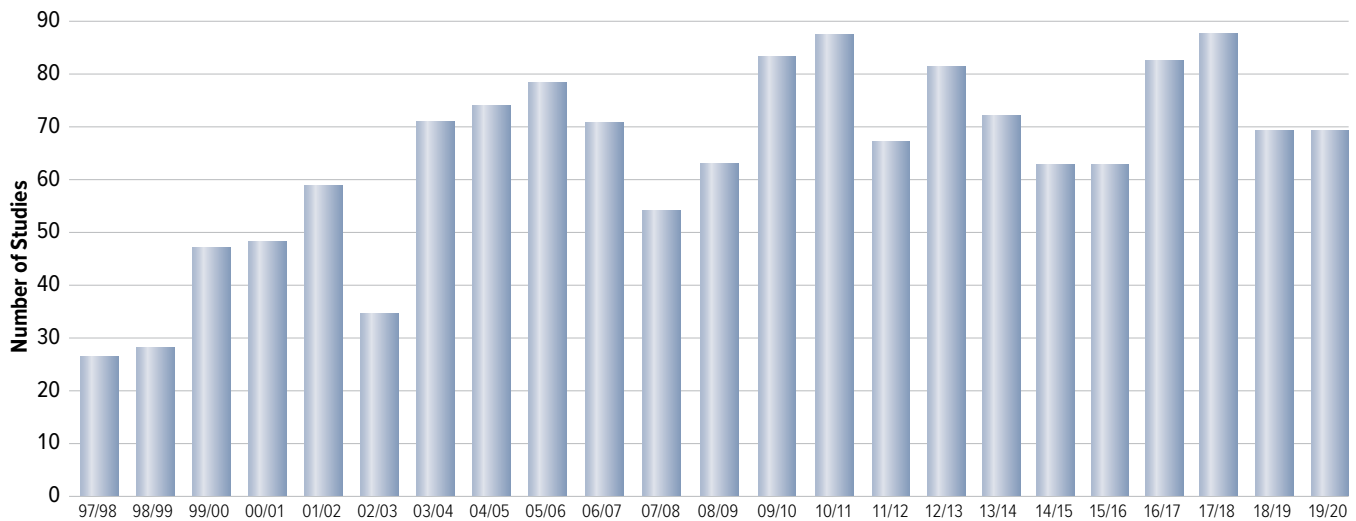
About FCMAT

FCMAT’s primary mission is to assist California’s local K-14 educational agencies to identify, prevent, and resolve financial, human resources and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT’s fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices, support the training and development of chief business officials and help to create efficient organizational operations. FCMAT’s data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and inform instructional program decisions.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state Superintendent of Public Instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the LEA to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

Studies by Fiscal Year



FCMAT has continued to make adjustments in the types of support provided based on the changing dynamics of K-14 LEAs and the implementation of major educational reforms. FCMAT also develops and provides numerous publications, software tools, workshops and professional learning opportunities to help LEAs operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) division of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS). CSIS also hosts and maintains the Ed-Data website (www.ed-data.org) and provides technical expertise to the Ed-Data partnership: the California Department of Education, EdSource and FCMAT.

FCMAT was created by Assembly Bill (AB) 1200 in 1992 to assist LEAs to meet and sustain their financial obligations. AB 107 in 1997 charged FCMAT with responsibility for CSIS and its statewide data management work. AB 1115 in 1999 codified CSIS’ mission.

AB 1200 is also a statewide plan for county offices of education and school districts to work together locally to improve fiscal procedures and accountability standards. AB 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

In January 2006, Senate Bill 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT's services to those types of LEAs.

On September 17, 2018 AB 1840 was signed into law. This legislation changed how fiscally insolvent districts are administered once an emergency appropriation has been made, shifting the former state-centric system to be more consistent with the principles of local control, and providing new responsibilities to FCMAT associated with the process.

Since 1992, FCMAT has been engaged to perform more than 1,000 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Michael H. Fine, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Introduction

Background

The Orange County Department of Education serves approximately 2,774 students in alternative education and special education programs, including one county-operated charter school. The county office also has oversight responsibilities for the 27 school districts located in Orange County. According to data from the California Department of Education (CDE), countywide student enrollment has declined each year since 2011-12.

Study and Report Guidelines

In November 2020, the Orange County Department of Education and FCMAT entered into an agreement for management assistance for FCMAT to conduct a review of the county office's budget development and contracting processes and procedures.

FCMAT collected data, began reviewing documents and conducted interviews by videoconference on January 19-20, 2021. Following fieldwork, FCMAT continued to review and analyze documents. This report is the result of those activities.

FCMAT's reports focus on systems and processes that may need improvement. Those that may be functioning well are generally not commented on in FCMAT's reports. In writing its reports, FCMAT uses the Associated Press Stylebook, a comprehensive guide to usage and accepted style that emphasizes conciseness and clarity. In addition, this guide emphasizes plain language, discourages the use of jargon and capitalizes relatively few terms.

Study Team

The study team was composed of the following members:

Diane Branham
FCMAT Chief Analyst

Robbie Montalbano, CFE
FCMAT Intervention Specialist

Leonel Martínez
FCMAT Technical Writer

Guiselle Carreon
FCMAT Consultant

Each team member reviewed the draft report to confirm accuracy and achieve consensus on the final recommendations.

Executive Summary

Policies and procedures manuals provide an organization with the opportunity to plan and diagram internal controls, provide written standards for staff to follow, and allow readers to see where their duties fit into a process. The Orange County Department of Education (OCDE) has an OCDE Policies and Procedures Manual that could be strengthened by including additional procedures as discussed throughout this report.

Some staff members in the Administrative Services Department have detailed written procedures for various tasks; however, there are no comprehensive desk manuals that include step-by-step procedures for all assigned duties for each position. These manuals should be developed because they are useful for training and cross-training staff, during employee absences and when completing tasks that do not occur frequently. Policies and procedures manuals and desk manuals should be reviewed and revised at least annually and should include the review and/or revision dates.

As required by the state, county office staff completes the Standardized Account Code Structure (SACS) documents at the budget and interim reporting periods. Numerous SACS forms and a budget narrative are included in the board meeting agenda materials at each reporting period, and staff provides a PowerPoint presentation at the board meeting. A best practice is to provide all SACS forms in the board meeting agenda materials at the budget and interim reporting periods since these are the official forms submitted to the state superintendent of public instruction (SPI). To help provide further clarity, the budget narrative should include a summary list of the key assumptions used at each financial reporting period.

To help strengthen and improve operating efficiencies, processes and procedures, the county office should implement various changes such as an expediting process for purchase orders that are more than 60-90 days old. Consideration should also be given to having school sites and departments send receiver documents to the Purchasing and Contracts Unit so the unit can track receipt of items and complete any necessary follow up before the documents are forwarded to accounts payable. The county office should consider using a contract form for services instead of typing individual provisions directly on purchase orders to ensure all requirements are included.

Some purchasing and contracting policies and boilerplate documents should be reviewed and updated. For example, the OCDE Policies and Procedures Manual should be updated to include maximum allowances for travel expenses and federal purchasing regulations, and contract forms used for federal purchases should be revised as necessary to conform with federal requirements. The purchase order terms and conditions should be reviewed and updated to ensure they include all applicable provisions. Instead of typing terms and conditions on individual purchase orders, the county office should consider including a statement on all purchase orders indicating that all orders are governed by the OCDE's standard terms and conditions and directing vendors to the applicable OCDE website. The county office should adopt policies and/or administrative regulations that conform with federal purchasing requirements.

Additional training should be provided to all applicable staff and management personnel on bidding and contracting processes and federal procurement compliance. Written processes and flowcharts that detail the responsibilities of all departments and positions should be developed for bidding and contracting.

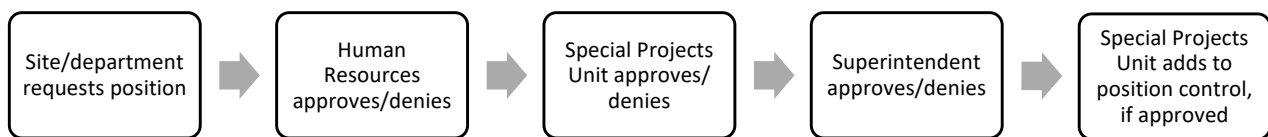
Findings and Recommendations

Policies and Procedures

Policies and procedures manuals provide an organization with the opportunity to plan and diagram internal controls and written standards for its business office, school sites and other departments to follow. They allow readers to see where their duties fit into a process; who provides the information that comes to them and where the information that they generate goes. Policies and procedures also provide standardization of processes and prevent several individual processes from being developed that may or may not be the most accurate or efficient method to accomplish a task.

The Administrative Services Department has both a policies and procedures manual and separate detailed procedures for some tasks. The policies and procedures manual sections provided by staff are part of a larger OCDE Policies and Procedures Manual. It is unclear why some procedures are covered in the manual and others are not. For example, the manual includes clear policies and procedures for using OCDE-issued credit cards in specific circumstances such as travel, but no list of prohibited items or other uses of department-issued credit cards. In addition, some sections of the manual are outdated; for example, the Office Procedures section dated 2002 includes some position titles and processes that are not current.

The Administrative Services section could incorporate excerpts from some of the detailed procedures that staff follow. For example, the section could include the basic steps for processing Personnel Adjustment Notices (PANs) with a flow chart that may look something like the following:



The Orange County Department of Education Disbursements Services - Commercial Checks Audit Process Manual (2021) is used to audit district and county office commercial warrants, according to staff interviews. The Unusual Payments Funded By Grants section of that manual states, "There must be board action accepting the grant" before the payment is processed. Since for the county office's warrants, proof of board acceptance is only necessary when required by the funding source, this should be noted in the manual. The manual provided to FCMAT is dated 2021; however, the manual posted on the OCDE website is dated 2018. A review of the 2021 manual found many pages are dated March 2017, so it is unclear whether they were examined during the update process.

Because outdated policies and procedures can cause errors and confusion, these documents should be reviewed routinely. Even if no changes are made, the date of review should be documented to help confirm the review has been completed and the policies and procedures are up to date. While the format of the OCDE Policies and Procedures Manual is consistent across its various sections, the placement and usage of terminology is inconsistent regarding the effective, reviewed or revised dates. For example, an effective, revised or updated date is sometimes included at the top of the policy or procedure, other times at the end, and in yet other cases, the date is missing.

Interviews with staff indicated that while some positions have detailed written procedures for some functions, there are no comprehensive desk manuals, which are used to provide step-by-step instructions for tasks that are performed by individual employees. These manuals become especially important during

employee absences and for new staff, are useful for cross-training employees, and are a means of documenting the department's segregation of duties to its external auditors. Desk manuals can also be a helpful resource when completing tasks that do not occur frequently.

Staff provided detailed instructions on how to create budget worksheets and budget entries in the financial system as well as interviewing, hiring and employee onboarding procedures. The department has a robust process for position control and provided FCMAT with detailed instructions for processing PANs. However, individuals in the department maintain these detailed instructions, and they are not part of any larger desk or department manual. The county office's Special Projects Internal Guidelines Manual is a comprehensive document that could be used as a starting point and template for written procedures within the Administrative Services Department.

Recommendations

The county office should:

1. Augment the current OCDE Policies and Procedures Manual to include more procedures for the Administrative Services section.
2. Revise the Orange County Department of Education Disbursements Services - Commercial Checks Audit Process Manual to include any differences between the audit processes for districts and the county office. Ensure the current version of the manual is posted on the OCDE website.
3. Develop desk manuals of employee duties and ensure that each employee includes step-by-step procedures for all assigned duties in their desk manual.
4. Review and revise policies and procedures manuals and desk manuals periodically, but not less than once a year. During this process, ensure that dates in all sections are correct and correspond with changes.

Budget Development and Monitoring

Budget development is a detailed process where position control is revised and updated, revenues and expenses are estimated, and local educational agencies (LEAs) align their budget with the Local Control and Accountability Plan (LCAP), which prioritizes each LEA’s goals and the actions to achieve those goals. Effective budget development includes the use of a budget calendar so that each staff member knows the deadlines and meets them.

The county office’s associate superintendent of administrative services and administrator of fiscal services lead the budget development process. OCDE’s budget development calendar indicates that budget development begins in March with the distribution of program and site budget packets. In interviews, staff described a budget process that includes a download and review of position control data for the budget year, which is then added to documents that include the prior year’s activity, the current year’s budget and activity to date, and space for adjustments for the budget development cycle. Budget packets with confirmation of costs and changes are due back to the Administrative Services Department in approximately 10 days.

OCDE’s budget development calendar contains descriptions of the major budget deliverables and cites the deadlines for these tasks. The county office could benefit from a more detailed annual calendar. Specifically, a detailed calendar would notify all parties of state and local deadlines. If it is widely distributed, an annual calendar can also clarify each staff member’s role in the process. The calendar should include tasks and benchmarks such as LCAP timelines, interim reporting tasks and due dates, purchasing cutoff dates, updated enrollment and attendance projections and the staff member responsible. Below is an example of how OCDE’s current budget calendar could be expanded with the addition of the two highlighted columns:

Orange County Department of Education Budget Development Calendar				date		
2021-22 -draft				DRAFT:		The Board and Master Calendars are not available
Budget Cycle	Department/Unit	Name or Position	Due Dates		Description	
Preliminary 1/1	Fiscal Services	fiscal services administrator	Mon-Fri	5	March 1-5, 2021	HR download of salary & benefits-Budget Pro Database
Adopted Budget	Fiscal Services	manager, accounting and budget	Mon	10	March 8, 2021	Budget packets sent out to programs & sites
B1/AB	All student programs	attendance coordinator	Mon-Fri		Mar 15-Mar 19 2021	Site Attendance Audit-Tentative
EA ending 6-30-21	All		Fri		March 19, 2021	Budget packets due back from programs & sites
AB/B1 ending 6-30-22	Fiscal Services	managers/accountants	Mon-Fri	35	March 22-May 7 2021	Budget input, analysis, & reports

After the Fiscal Services Unit has completed budget development, the state’s Standardized Account Code Structure (SACS) forms are prepared. Some SACS forms and a budget narrative are included in the board meeting agenda materials, and the associate superintendent of administrative services provides a Power-Point presentation at the board meeting. The process is repeated at each interim reporting period. A best practice is to provide all SACS forms to the board when presenting the budget and interim reports since these are the official forms submitted to the state superintendent of public instruction (SPI).

In its review of the OCDE 2020-21 adopted budget and first interim documents, FCMAT found that the county office used budget assumptions that are reasonable and are aligned with the California Department of Finance, the Business and Administration Steering Committee (BASC) Common Message recommendations and the School Services of California Financial Projection Dartboard. Most budget assumptions were integrated throughout the budget narrative. For further clarity, the county office should consider adding a summary list of the key assumptions used for each financial reporting period in a way that distinguishes assumptions that only affect the unrestricted general fund from those that only affect the restricted budgets.

Budgets are not static: the estimated revenues, expenses and ending balance of each fund change throughout the year due to changes in items such as the state budget, enrollment and average daily attendance (ADA), personnel, and negotiated settlements of employee bargaining agreements. A best practice is to monitor budgets regularly during the fiscal year to ensure appropriations are not overspent and revenues received and expenditures made are not materially different than budgeted.

The county office makes many budget updates during the fiscal year as information develops, typically because of increases or decreases in estimated income and expenditures, and when final unearned revenue amounts and carryover balances are known. The Fiscal Services Unit meets with sites and departments throughout the year to ensure that budgets are adjusted as needed and financial activity is properly coded. This type of assistance is an important part of ongoing budget monitoring. However, documents provided by the county office showed several account lines with negative balances. County office staff indicated that budgets are monitored and balanced by resource; however, the best practice is to monitor and adjust each account line.

Recommendations

The county office should:

1. Expand the current budget development calendar to include more deliverables and deadlines in the budget development process and the position(s) responsible.
2. Provide all SACS forms in the board meeting agenda materials when presenting the budget and interim reports.
3. Include a summary list of the key assumptions used for each financial reporting period for unrestricted and restricted budgets in each budget book produced.
4. Ensure account lines do not exceed budgeted amounts.

Purchasing

Requisitioning and Purchase Orders

The county office's purchase requisition process is outlined in the Administrative Services section of the OCDE Policies and Procedures Manual. The procedures indicate that requisitions are entered in the BusinessPlus financial software system, except on occasion when a paper requisition is allowable. However, the reasons for using the paper process are not defined. The requisition then moves through the approval process and is assigned to a buyer who processes, prints and distributes the purchase order.

The manual states that price comparisons are required at \$2,500 or more for individual items, but the county office has no quote requirements for aggregate quantities in excess of a specified dollar amount. To ensure the best price is obtained, a best practice is to specify a quote threshold for aggregate quantity purchases.

Interviews and various county office documents indicate that purchases of \$5,000 or more require the superintendent's approval. Delegation of this task and/or raising the threshold for superintendent approval may provide for greater efficiency.

The purchase order terms and conditions provided to FCMAT appear to be insufficient, particularly for purchases that do not include a formal contract. Terms for cancellation of orders and public works are not included. Appendix II of Title 2 Code of Federal Regulations (CFR) Part 200 requires a termination for convenience and a termination for cause. Purchase orders are contracts and must comply with this requirement. Per Labor Code Section 1770 et al., an LEA must include certain statutory language in each public works or maintenance contract, including statements that the project is subject to prevailing wage laws, notice of wage classifications, and notice that the work is subject to monitoring by the Department of Industrial Relations (DIR). (Sample Purchase Order Terms & Conditions are provided in the appendix of this report.)

Interviews indicated that supplies are shipped directly to school sites and departments, which then forward packing slips and/or receiver documentation to accounts payable. A common practice is for school sites and departments to send these documents to the Purchasing and Contracts Unit so the unit can track receipt of items before the receiver documentation is provided to accounts payable.

FCMAT's review of the accounts payable process was limited since it was not included in the scope of the study. However, some possible opportunities for increased efficiency were identified. Interviews indicated that the purchasing staff sends a copy of all purchase orders to accounts payable. Accounts payable staff match invoices to purchase orders and receiving documents, which are then placed in batches and forwarded to the accounting supervisor for review. The accounting supervisor reviews every invoice, verifies the match, and approves the payment. This is a cumbersome and time-consuming process; county office staff indicated this process is being completed because the accounting supervisor is new to the position.

Although an open purchase order report can be generated in the county office's financial software system, there is no expediting process. Neither purchasing nor accounts payable staff track overaged purchase orders, which can result in a cumbersome accrual process at year end. To increase efficiency, a month-end expediting process should be utilized for orders more than 60-90 days old. For example, at the end of each month, the Purchasing and Contracts Unit should do the following:

- a. Download an open purchase order report and follow up on purchase orders that remain in open status more than 60 days after issuance.
- b. Determine whether the vendor received the purchase order, has placed the order on back order, has discontinued/canceled items, etc. Take action as applicable to expedite the order by resending the purchase order to the vendor, canceling items in the system

(partial closing), contacting sites for replacement of discontinued items, or closing purchase orders that are not going to be fulfilled.

- c. If purchase orders have been fulfilled by the vendor, but not received in the financial system, follow up with the receiving department so payment can be processed.
- d. Share the open purchase order report with accounts payable staff so they can follow up on orders for which goods or services have been received, but do not have an invoice or have a residual amount on the purchase order balance that needs to be released in the financial system.

Collaboration between departments should be encouraged to improve efficiency and avoid duplication of efforts and delays in processing payments.

Travel and Conference

The Administrative Services section of the OCDE Policies and Procedures Manual contains a detailed travel policy. The policy states that meals will be reimbursed at actual cost with itemized receipts, and staff indicated that the county office uses an accountable plan for travel expenses. Although an accountable plan provides for full reimbursement if specified criteria are met, it is a best practice to also include maximum reimbursement limits (e.g., the federal per diem rate) in a travel policy. Internal Revenue Service (IRS) Publication 463 and CFR 200.475 provide further information regarding travel guidelines and when reimbursement must be treated as reportable income. (A sample Travel Policy is provided in the appendix of this report.)

Recommendations

The county office should:

1. Define in its OCDE Policies and Procedures Manual the allowable reasons for using a paper purchase requisition form.
2. Periodically review the dollar threshold requirement for quotes on individual items and consider implementing a dollar threshold requirement for quotes on aggregate quantity purchases.
3. Revisit the requirement that the superintendent approve all purchases of \$5,000 or more and consider delegating this task and/or raising the dollar threshold for superintendent approval.
4. Review and strengthen purchase order terms and conditions.
5. Consider sending receiver documentation to the Purchasing and Contracts Unit for any necessary follow up before it is sent to accounts payable.
6. Evaluate the time and effort spent by the accounting supervisor on reviewing all invoices and consider implementing a random audit of invoices using the automated financial system.
7. Implement an expediting process for purchase orders that remain in open status more than 60-90 days after issuance.
8. Update the OCDE Policies and Procedures Manual to include maximum allowances for travel expenses.

Bidding and Contracting

The Purchasing and Contracts Unit handles all competitive bids and processes all contracts, usually at the request of another department. Interviews with personnel in other departments indicated a lack of clarity about how the bidding and contracting process flows, especially for federal purchases. Additionally, there is some confusion about the difference between procurement compliance and program compliance. Several interviewees indicated they are not involved in the contracting process other than to generate a contract request; however, Purchasing and Contracts staff indicated these departments are responsible for federal compliance. Purchasing and Contracts staff seem to be under the impression that the requesting departments ensure the desired purchase complies with all federal regulations, while the departments indicated they only need to ensure funds are expended in accordance with program requirements.

The county office would benefit from developing written processes and flowcharts for bidding and contracting that detail the responsibilities of all applicable departments and/or individuals. The guide should explain each step in the process; for example, the Contract Request Form and its purpose, what the Purchasing and Contracts Unit does with that information, the timeline for processing a contract, the administration of the contract and who is responsible to ensure compliance with the contract terms and conditions and grant language if applicable, closing a contract, records retention for each type of contract and who is responsible for retention of the documents.

The OCDE follows the provisions of Public Contract Code (PCC) Section 20111 for its procurements. PCC Section 20111 bid limits are based on contract value, not fiscal year; therefore, applicable goods or services procured on a multiyear basis should be bid if the contract total will exceed the bid limit.

The Administrative Services section of the OCDE Policies and Procedures Manual addresses the bid thresholds and policies followed by the county office. The policies set the competitive bid limit at \$95,200 as of November 2020 with reference to the annual SPI adjustment (effective January 1, 2021 the SPI adjusted the bid limit to \$96,700). Because the most restrictive law applies – local, state or federal – the use of generic language such as the following is preferred to prevent conflicts with local law (policies and procedures) and state and federal law.

Competitive bids shall be sought through advertisement for contracts exceeding \$50,000 as adjusted annually by the State Superintendent of Public Instruction (Public Contract Code 20111). The amount by which contracts shall be competitively bid shall escalate automatically based upon the annual adjustment by the Superintendent of Public Instruction.

A review of sample competitive bids, requests for proposals, and contracts found that there is a lapse in adhering to the U.S. Education Department General Administrative Regulations (EDGAR) when federal funds are used. For example, several contracts reviewed by FCMAT lacked compliant termination language, legal remedies provisions, a suspension and debarment clause or certification, etc. EDGAR requirements are further discussed later in this report.

In addition, the public works bid documents provided to FCMAT did not include the Iran Contracting Act certification. This certification is required for public works contracts of \$1 million or more pursuant to PCC Section 2204, which states the following:

(a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable.

(Sample Checklists for Reviewing Procurements by Federal Grant Recipients and Subrecipients, information regarding debarment and suspension, and certification documents are provided in the appendix of this report.)

FCMAT's review of various policies, procedures, forms and boilerplate documents provided by the county office found clarity and efficiency could be increased in some areas as discussed in the following paragraphs.

The Administrative Services section of the OCDE Policies and Procedures Manual references change orders for purchase orders. However, there is no mention of the restriction contained in PCC Section 20118.4, which limits change orders for contracts formed under the authority of Education Code Sections 17595-17606 to the greater of the bid limit as outlined in PCC Section 20111 or 10% of the original contract amount.

The basic process for contracting is included in the Administrative Services section of the OCDE Policies and Procedures Manual. The authorization to sign contracts is included in item VIII. Contracts, Independent Contractor and Service Agreements, Memorandums of Understanding, and Leases; however, the information is located below the heading "Government Code Section 53060 Contracts for Special Services." Placing the delegated signatory authority under this heading appears to indicate that the listed positions may only sign contracts that pertain to this code section. Additionally, the positions listed in the manual differ from those listed on the Authorization of Signatures document, dated February 1, 2017.

The policy also seems to conflate Government Code Section 53060 contracts – limited to "special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required," and which do not require competitive bidding – with general independent contractor procedures. General independent contractor services may require competitive bidding, and any time a service other than one listed in Section 53060 is to be contracted on a noncompetitive basis it should first be reviewed by legal counsel.

The policy states, "Once a determination has been made by the Contract Unit, the Contracts Unit may issue a Purchase Order only for contracts for services valued up to \$50,000.00 or execute a formal contract." Unless a method is developed to ensure all required terms and conditions are included with the purchase order, a purchase order alone should not be used for contracted services because issues such as liability, indemnity, and workers' compensation are too complex to leave out of the process, and typing this information on a purchase order is time-consuming and inefficient.

The policies provided to FCMAT do not contain references to the federal purchasing regulations as required in CFR 200.318 through 200.327; CFR 200.318(a) states:

The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

CFR 200.318(c)(1) states:

The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its 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.

(The California School Boards Association's GAMUT policy service includes a sample policy and administrative regulation regarding federal grant funds. Conflict of interest and code of conduct information is provided in the appendix of this report.)

Staff indicated that a checklist is used for federal contracts, and a document entitled Legal Requirements with a Federal Funds section was provided to FCMAT. The list includes a variety of legal codes, but it is not all encompassing. There is no reference to the micro purchase, simplified acquisition or formal purchase thresholds. The document also has a State and Local Funds section, which includes some requirements for public works contracts; however, provisions such as bid security and bonds are not listed. Written procedures regarding the purpose of this document or how it is used were not provided. The Administrator's Handbook on EDGAR (5th Edition), used by the county office in training districts, and the Orange County Department of Education's Competitive Bidding and Public Contracting Workbook (April 2016) are more complete resources.

The county office's Contract Request Form is efficient in collecting data before forming a contract; however, it contains a box for the full Social Security number. Although the county office's system encrypts the Social Security number when the form is sent via email, for privacy and security purposes these documents should not include full Social Security numbers.

Interviews indicated that language related to public works projects is inserted on an as-needed basis on the face of the purchase order and is not detailed in the purchase order terms and conditions. This practice increases the risk of required or important information being inadvertently excluded. Additionally, the terms and conditions attached to one of the purchase orders provided to FCMAT were incomplete and did not match the ones published on the OCDE website. The purchase order lists terms 1-16 while the website includes 1-19.

The sample Income Agreement provided by the county office is a standard independent contractor agreement form. However, the Orange County Superintendent of Schools (one of the parties named in the agreement) is not an independent contractor as defined by the IRS. The IRS website states the following:

People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors.

In addition, Government Code Section 53060 does not apply to interagency agreements. Although standard interagency agreements contain a provision for independent contractor, it usually pertains to independent performance of services and each agency's role. The usual form of agreement between public entities is an interagency agreement or memorandum of understanding (MOU).

The county office's Independent Contractor Agreement boilerplate document does not include fingerprinting provisions, and based on the documents provided, it appears that the OCDE modifies contracts individually. This process poses a risk of leaving out necessary provisions when issuing a new contract. When clauses are not applicable to an agreement, elimination of these articles by reference is typically outlined on an attachment or exhibit to the contract. The sample Independent Contractor Agreement provided to FCMAT does not include professional liability insurance, general liability insurance, fingerprinting, or employment with public agency provisions, which are common to this form of agreement. The OCDE may collect this information separately; however, exhibits referenced in the agreement were not included in the documentation provided to FCMAT.

Recommendations

The county office should:

1. Develop written processes and flowcharts for bidding and contracting duties.
2. Review all commodities/categories of goods and services annually to ensure the amount spent does not exceed the bid limit. Reviewing a three-year history should help determine whether bidding may be necessary.
3. Revise the OCDE Policies and Procedures Manual to include the use of generic language (as indicated above) for bid limits.
4. Review the contract forms used for federally funded purchases and revise them to conform with federal requirements.
5. Add the Iran Contracting Act certification to public works bid documents with a qualifying statement that it only pertains to contracts of \$1 million or more.
6. Include the change order limit, as specified in PCC Section 20118.4, in the OCDE Policies and Procedures Manual.
7. To avoid the implication that delegated signature authority only applies to special services contracts, move the applicable reference in the OCDE Policies and Procedures Manual to a general section on contracts. Review the delegated positions listed in the manual and the Authorization of Signatures document to ensure they are correct.
8. Ensure the contracts portion of the OCDE Policies and Procedures Manual distinguishes special services (Government Code Section 53060) from other professional services contracts.
9. Review and consider discontinuing the purchase-order-only policy for services contracts.
10. Adopt policies and/or administrative regulations that include the language required by EDGAR and conform with federal purchasing requirements.
11. Revise the Legal Requirements Checklist to ensure all applicable legal codes are included by type, and once revised, incorporate the checklist in the contracts training document and/or the OCDE Policies and Procedures Manual.
12. Change the Contract Request Form to include only the last four digits of Social Security numbers.
13. Consider eliminating the terms and conditions on each individual purchase order and instead conspicuously state on each purchase order that all orders are governed by the OCDE's standard terms and conditions located at: [https://ocde.us/Administrative/Documents/TERMS%20AND%20CONDITIONS%20\(002\).pdf](https://ocde.us/Administrative/Documents/TERMS%20AND%20CONDITIONS%20(002).pdf). Also, state on the purchase order that such online terms and conditions are incorporated by reference, are subject to change, and that it is the responsibility of the seller/contractor to review them for each order processed.
14. Review the Income Agreement used for income services between public entities and instead consider using an Interagency Agreement or MOU.

15. Modify the boilerplate Independent Contractor Agreement language to include fingerprint provisions. Rather than modify contracts individually, consider eliminating nonapplicable clauses by reference as an attachment or exhibit to the contract.

Delegation of Authority and Expenditures Policies

The documents provided by the county office detailing the superintendent's delegation of authority need to be updated. A letter dated March 18, 2015 designated two staff members to sign orders and contracts, but it contains outdated titles for these individuals. The Authorization of Signatures document dated February 1, 2017 contains employee names rather than position titles. Delegating by name can create a lapse in authority should an employee leave the OCDE.

The Policies section of the OCDE Policies and Procedures Manual includes information on the service of refreshments. However, a review of the information found it to be brief and limited in scope. The policy does not address the public scrutiny topic regarding whether taxpayers would view the expenditure as necessary to support public education nor does it reference expending funds for a public purpose. Additionally, the Policies section of the manual does not include information regarding awards and incentives to employees. Article 16 of the California Constitution prohibits the gift of public funds; therefore, these types of expenditures should be carefully addressed in county office policy. (A sample Expenditures Policy is provided in the appendix of this report.)

Recommendations

The county office should:

1. Delegate authority by title and renew the delegation annually to ensure titles are current.
2. Include information in the OCDE Policies and Procedures Manual on expending funds for a public purpose and awards and incentives for employees.

Contract Sampling

FCMAT requested lists of income contracts and accounts payable transactions for July 1, 2019 through December 31, 2020. From these lists, 20 items were selected and reviewed for compliance with federal and state regulations, local policies, and best business practices. Based on the documents provided, the review indicated the following discrepancies and opportunities for improvement.

Income Contracts

One packet included the original contract but did not include all the amendments and associated Contract Request Forms. The best practice is to maintain one file that contains the original contract, all amendments and all Contract Request Forms.

One packet included a contract that requires proof of OCDE's compliance program, code of conduct and any compliance related policies and procedures. Since this income agreement is funded in whole or in part with federal funds and since the OCDE does not have the code of conduct and purchasing policies referencing the requirements of CFR 200.320 in place as of this writing, the county office may be out of compliance with the provisions of this agreement.

One contract makes references to exhibits which were not provided as part of the contract file. Exhibits should be filed with the contract as they form part of the terms and conditions of the entire agreement.

Bids

One packet did not include all the bid documents (such as the Notice to Bidders and Information for Bidders). Because the bid documents form part of the contract, best practice is for them to be kept as one file. The contract was issued for a one-year period beginning March 1, 2017 and ending February 28, 2018. Although the contract calls for up to four one-year renewals, the contractor refused the option at time of bid. After the beginning date of the contract, the contractor agreed to an extension, and the contract continued to be in force. However, the dollar amount of the extension exceeded the 10% change order limitation, and as a result, this agreement beyond the initial term should be considered void.

Purchase Orders

One purchase order for preventive maintenance included prevailing wage and insurance language on the purchase order instead of attaching a contract. The purchase order did not include provisions for dispute or drug-free and alcohol-free workplace, the terms and conditions were not attached, nor was there a reference to the terms and conditions on the OCDE website. The best practice is to execute a contract that includes all the applicable requirements and provisions and attach it to the purchase order.

Two purchase orders (each over \$30,000) included the use of federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds but made no reference to the EDGAR simplified acquisition/small purchase process. Although the governor waived competitive bidding requirements because of the pandemic, federal laws require more than one quote for purchases within the simplified acquisition threshold, which is between \$30,000 and \$750,000 during the pandemic. (CFR 200.320/Memorandum M-20-18)

One purchase order (over \$10,000) included the use of federal funds but made no reference to the applicable EDGAR purchase process and did not include debarment and suspension language.

One purchase order for supplies did not reference terms and conditions, and none were attached.

Two purchase orders (each over \$50,000) for services had no reference to a contract. One of these purchase orders had no reference to terms and conditions. The other included services where the contractor has direct contact with students, but the purchase order did not include fingerprinting requirements prescribed in Education Code Section 45125.1.

One purchase order (under \$50,000) for services has no reference to a contract or to terms and conditions.

Recommendations

The county office should:

1. Maintain one file for each contract, which includes the original contract, all exhibits and attachments, all amendments, supporting documentation and signature pages.
2. Adopt a Code of Conduct and purchasing policies that conform to federal requirements.
3. Maintain one file for each bid, which includes all the bid documents and the signed contract.
4. Place the renewal option on its Bid Proposal Form closer to the signature line to ensure review upon vetting of bids and to make it less likely for an error to occur and/or void a contract if not executed properly.

5. Use a contract form for services instead of typing language directly on purchase orders to ensure compliance with all legislative requirements, including fingerprinting.
6. Implement the proper purchase threshold processes and include the language required by EDGAR in contract documents for purchases of goods and services that utilize federal funds.
7. Consider eliminating the terms and conditions on each individual purchase order and instead include a reference on the purchase order that directs vendors to the terms and conditions on the OCDE website, as discussed in the Bidding and Contracting section of this report.

Training

Interviews with numerous staff members indicated great support from the county office for outside training through organizations such as the California Association of School Business Officials (CASBO) and the Coalition for Adequate School Housing (CASH). In addition, the county office has various written policies and procedures. However, more internal business training is needed for all staff involved in the bidding and contracting processes.

Various training documents were provided to FCMAT; however, these documents do not address all functions of the Purchasing and Contracts Unit. For example, they do not include training on federal procurement requirements or various forms of contracts, MOUs and leases; informative aspects of contracting such as the importance of various legal requirements and the consequences for not complying with them, sole source purchases, and the ramifications for misawarding a contract, which could result in a void and unenforceable agreement. They also do not include the allowable term of agreements as prescribed in Education Code Section 17596, which limits the terms of contracts to five years for services and capital equipment and three years for materials and supplies.

The contract training documents include a sample contract that does not have a termination for cause provision. As discussed previously, contracts must comply with federal requirements when federal funds are used. The signature approval process outlined in the documents appears to conflict with the internal business requirement that the superintendent sign all orders over \$5,000. The procedure included in the training document indicates that the superintendent or chief academic officer is authorized to sign such orders.

Recommendations

The county office should:

1. Provide annual training on competitive bidding, contracting and purchasing procedures to all staff involved in these processes, including management personnel.
2. Expand the Purchasing and Contracts Unit training documents to include all functions of the unit and topics related to contracting.
3. Ensure training documents include information that aligns with federal and state regulations and local policies.

Appendices

Appendix A – Sample Documents and Additional Information

Purchase Order Terms & Conditions

Travel Policy

Checklists for Reviewing Procurements by Federal Grant Recipients and Subrecipients

Debarment and Suspension

Certifications

Conflict of Interest

Code of Conduct

Expenditures Policy

SAMPLE SCHOOL DISTRICT PURCHASE ORDER TERMS & CONDITIONS

- Ship all merchandise PREPAID to indicated destination. Add freight charges to your bill only if authorized IN WRITING on the purchase order. No C.O.D. charges permitted.
- Enclose packing list showing purchase order number with all deliveries. No charges shall be made for cartons, wrapping, packing, boxing, crating, delivery, drayage or other costs unless expressly authorized on this order.
- Shipments not received by date required may be cancelled by Purchaser without penalty.
- The _____ School District is responsible only for the goods or services ordered on the Purchase Order form and signed by an **authorized agent** of the District. The District is not responsible for orders made without a purchase order.
- All invoices shall have the purchase order number and vendor's name shown clearly thereon. Labor and materials shall be itemized. All discounts, prices, and amounts shall be clearly shown.
- No changes to this order will be allowed unless authorized by the District's Purchasing Department.
- Seller shall neither assign any right nor delegate any duty without the prior written consent of the District's Purchasing Department.
- All delivered goods, services, and charges must be in accordance with the bids or specifications upon which this order is placed. Do not substitute. The District reserves the right to cancel this order or adjust any claim thereunder if merchandise, delivery, services rendered, or charges submitted are not in accordance with the bids or specifications.
- Buyer may cancel the undelivered portion of any purchase order without cause upon written notice of cancellation to Seller. Upon receipt of notice of cancellation, Seller shall immediately stop work on the undelivered portion of the affected Purchase Order and make no further commitments for materials or services to complete such affected Purchase Order.
- All materials shall conform to the provisions set forth in Federal, State, County and City laws for their production, handling and labeling. When using Federal Funds, vendors and contractors will be required to comply with certification requirements as called for in the Code of Federal Regulations.
- Vendor/Contractor must abide by all Federal, State, County and City laws governing services under the bid, contract, or purchase order upon which this order is placed.
- When a discrepancy exists between the bid price and the order price, the bid price is the legally binding price.
- All items are taxable for State, County & City taxes. The _____ School District is exempt from payment of Federal Excise Tax. An exemption certificate will be furnished in lieu of payment of the Excise Tax, and prices listed shall be exclusive of such Excise Tax.
- When applicable, Material Safety Data Sheets (MSDS) must be included with the order. If requested MSDS are not delivered with order, payment will be delayed pending receipt of sheets.
- The _____ School District is an equal opportunity employer. The acceptance of this purchase order by a supplier of goods and services is a certification that such supplier is an equal opportunity employer and does not discriminate against any employee or applicant of employment because of race, religion, color, national origin, ancestry, disability, medical condition, marital status or sex as outlined in the California Government Code Section 12940 and all provisions of Executed Order 11246. In addition, the supplier agrees to require like compliance by all subcontractors employed on the work by him.
- Seller/Contractor warrants that all articles furnished shall be free from defects of material and workmanship, that all articles furnished shall be fit and sufficient for the purpose intended, and shall save, keep, bear harmless and fully indemnify the Buyer and any of its officers, employees or agents from all damages, or claims from damages, costs or expenses in law or equity that may arise from Buyer's normal use.
- The Supplier shall hold harmless and indemnify the District, its officers, agents and employees from every claim, demand, or liability which may be made by reason of: A) Any injury to property or person including death, sustained by the Supplier or by any person, firm or corporation employed by the Supplier directly or indirectly upon or in connection with the service hereunder; however caused; and B) Any injury to property or person, including death, sustained by any firm or corporation, caused by any error, omission, neglect, or torturous act of the Supplier, its officers, agents or employees, upon or in connection with the services hereunder, whether the injury or damage occurs upon or adjacent to the premises whose services hereunder are performed; and C) the Supplier, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings, that may be brought or instituted against the District on any such claim, demand, or liability, and pay or satisfy any judgment that may be rendered against the District, its officers, agents, or employees in any such action suit, or other proceedings as a result thereof.
- Public Works including Facility Maintenance Agreements are subject to the regulations established in SB 854 (2014) and SB 96 (2017) for Public Works Projects greater than \$25,000 and Maintenance Projects greater than \$15,000:
 - No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
 - No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 - This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
 - [To be determined]: The awarding body must post or require the prime contractor to post job site notices prescribed by regulation. (See 8 Calif. Code Reg. §16451(d) for the notice that previously was required for projects monitored by the CMU.)

- The Contractor hereby stipulates that it shall comply with the applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1-5 (“Public Works Labor Code Provisions”), including, but not limited to, the payment of the general prevailing rates for public works projects of more than One Thousand Dollars (\$1,000) (§1771), hiring of Apprentices (§ 1777.5) and Working Hours (§ 1813), and Payroll Records (§ 1776). Prevailing rate of per diem wages are on the website of the Division of Labor Statistics and Research of the Department of Industrial Relations at www.dir.ca.gov/OPRL/. Contractor shall be responsible for all reports and obligations respecting such employees, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, and workers’ compensation insurance.

SUBJECT: Travel, Conference, Convention, or Meeting Expense, Reimbursement

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It is the intention of the County Superintendent of Schools to reimburse staff members for expenses which are incurred as a result of assignment on official business. Reimbursement for actual and necessary expenses incurred must be within limits set by this administrative regulation.

The Accounts Payable Department and the _____ designated travel agent will provide travel coordination in areas of airline ticketing, hotel reservations, and related services to staff members traveling on official business.

Federal programs may use the County's travel policy in lieu of following federal travel requirements in accordance with CFR 200.474.

OUT-OF-COUNTY TRAVEL

1. A Travel Authorization (TA) shall be completed in the _____ systems for all out-of-county activities.
2. Allowable expenses will consist of actual and necessary expenses incurred by any employee required to attend any formal meetings, workshops, professional development training, conference, or convention (authorized activity) as outlined in the General Guidelines.
3. Car rental shall have prior authorization and booked through the State Travelstore's Concur website to obtain government rates and coverage.
4. Advance conference registration may be paid when authorized. Reimbursement to the _____ for nonattendance to a prepaid activity is the responsibility of the staff member.
5. Booking airfare using the designated travel agent is strongly encouraged. If circumstances make it necessary for a staff member to make his/her own travel arrangements and purchase tickets from other than the designated travel agent, prior approval must be obtained from the division assistant superintendent.
6. Hotels are to be booked at the best available rate. State rates are available using Concur. Deposits for hotel accommodations shall be the responsibility of the staff member.
7. When the travel costs relating to state or other agency activity are to be reimbursed by that agency, the staff member shall identify the outside agency/organization to be billed in the comments section of the TA in the The _____ system. The staff member's section/unit shall obtain reimbursement from that agency. The Internal Business Services Section will assist with the billing when requested. Any difference between the actual travel cost and the amount reimbursed by the agency will be paid by the _____.

SUBJECT: Travel, Conference, Convention, or Meeting Expense, Reimbursement

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8. Staff members shall submit claims using the Expense Report (ER) module in the _____ system for approval and payment within sixty (60) days following the date of completion of the activity. With the exception of meals, copies of expense receipts must be attached to the ER.

IN-COUNTY TRAVEL

1. A TA shall be completed in the _____ system for an in-county authorized activity for which costs will be incurred. For in-county travel with only mileage and parking, submit a mileage expense claim using the Expense Report module in the _____ system and a Miscellaneous Expense Reimbursement Claim or Petty Cash request for parking.
2. Reasonable expenses, including registration fees, mileage, and parking may be claimed for prior authorized activities requiring registration and held within _____ County.
3. Meals included in the cost of registration are allowable. Meal reimbursement not included in the cost of registration is prohibited by IRS regulations for travel not requiring an overnight stay.
4. Reasonable hotel expenses may be claimed for prior authorized activities when the situation merits accommodation and lodging is approved in advance by the Division Superintendent. Deposits for hotel accommodations shall be the responsibility of the staff member unless use of a district purchasing/credit card is authorized.
5. Staff members shall submit claims using the ER module in the _____ system for approval and payment within sixty (60) days following the date of completion of the activity. Copies of expense receipts must be attached to the ER.
6. Release time may be authorized for activities for which an employee provides services to an outside organization.

SUBJECT: Travel, Conference, Convention, or Meeting Expense, Reimbursement

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GENERAL GUIDELINES

1. Travel is normally approved by the division assistant superintendent. The County Superintendent of Schools shall approve all out-of-state travel and division assistant superintendents' travel.
2. Time authorized for out-of-county travel should be the shortest possible to complete the authorized activity.
3. Expenses are expected to be necessary and reasonable with the provision that accommodations may be in the conference headquarters hotel.
4. Airline tickets should be purchased at the lowest available fare. Reimbursement for upgrades, expedited boarding, or changes to flight times for convenience will not be reimbursed.
5. Meal reimbursement is provided for out-of-county travel determined by the State of California's allowable per diem rates. For current rates see: <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>
6. The cost of gratuities or tips for meals are included in the per diem rate.
7. The maximum meal cost reimbursement rates shall be the same as the rates approved for staff members of the California Department of Education.
_____ rates will be adjusted to correspond with California Department of Education rates within thirty (30) days of official notice of any change in California Department of Education rates.

For travel that requires an overnight stay the cost of meals will be reimbursed provided the approved travel time meets the following requirements:

Breakfast: Reimbursement may be claimed if travel begins by 6:00 a.m. and ends after 9:00 a.m.

Lunch: Reimbursement may be claimed if travel begins by 11:00 a.m. and ends after 2:00 p.m.

Dinner: Reimbursement may be claimed if travel begins by 4:00 p.m. and ends after 7:00 p.m.

8. The cost of meals served in connection with special events or programs that exceed maximum meal cost reimbursement rates shall be reimbursed with an actual detailed receipt. Meals included in a registration fee are not reimbursed separately.
9. No public funds may be expended on the purchase of alcoholic beverages.

SUBJECT: Travel, Conference, Convention, or Meeting Expense, Reimbursement

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10. For in-county travel or travel to areas where air transportation is not feasible, the use of a county-owned fleet vehicle is preferred. If a staff member is authorized to use a personal vehicle in lieu of a fleet vehicle, mileage will be reimbursed at the current IRS rate.
 11. If transportation using a staff member's vehicle is authorized in lieu of airfare, the reimbursement rate will be the cost of the lowest available airfare or fifty percent (50%) of the total mileage reimbursement, whichever is less.
 12. Ground travel should be arranged so that the greatest number of staff members can be accommodated with the fewest number of cars.
 13. For travel to areas with or near an airport, air transportation is generally preferred.
 14. The actual cost of airport parking shall be reimbursed for the days the staff member is on official business with the following limits:

First Day: Not to exceed \$16 per day for off-site airport parking.
 15. The actual cost of bus/taxi/limousine/shuttle service used to access the _____ International Airport shall be reimbursed round-trip not to exceed the total amount allowed for parking in General Guidelines, Item 16.
 16. The actual cost of all airport bus/taxi/limousine/shuttle service used while out-of- county shall be reimbursed.
 17. Receipts are required for reimbursement of the following expenses: car rental, parking, excess meal costs, lodging, plane fare, registration, and all taxi/bus/limousine/shuttle service.

Derivation: Former Administrative Regulation No. 3100, Adopted 9/1/85. Amended 11/1/89, 10/1/90, 6/24/94. Amended, Renamed, and Renumbered 3542, 9/13/95. Amended 5/23/01.

Board Policy No.: 3540

**Legal Reference: Education Code
1081, 32435**

IRS Tax Code

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

PROCEDURES REVIEW CHECKLIST:

	YES	NO
Does the procurement comply with the non-federal entities' (NFE) own procurement laws, rules, and procedures? §200.318(a)		
Does the NFE maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? §200.318(b)		
Does the NFE have - §200.318(c)(1): <ol style="list-style-type: none"> 1. Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts? 2. Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an actual or apparent conflict of interest? 3. Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. 4. Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. 		
Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322. (work does not involve the use of materials (e.g., debris removal or other services).		
Does the contract include the following clauses? (2 CFR Appendix II to Part 200)		
If the contract amount exceeds \$250,000, does it address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties?		
If the contract amount exceeds \$10,000, does it address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement?		
If the contract or subgrant amount exceeds \$250,000, does the contract include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act? If the vendor is not in the business of manufacturing, or applying technological advances to current products, the Clean Air Act is not applicable. If the vendor is not in business of construction, manufacturing or waste storage/disposal, the FWPC is not applicable.		
Rights to Inventions Made Under a Contract or Agreement. (Science & Technology) Applies to a governmental entity entering into a funding agreement with a small business form or non-profit organization who will perform experimental, developmental or research work.		
Does the contract include mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201)?		
Does the contract include a Suspension and Debarment clause? (Contracts in equal to or in excess of \$25,000.)		
Does the contract include an Anti-Lobbying clause? (Contracts exceeding \$100,000.)		

Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials? If the vendor's business is not engaged in the generating, treating, storing, or disposing of solid or hazardous waste, this provision is not applicable. (Trash services for CNS).		
GENERAL REQUIREMENTS:		
The NFE must avoid acquisition of unnecessary or duplicative items. Has the NFE considered consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE considered lease versus purchase alternatives? § 200.318(d)		
Is the contract being awarded to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h)		
Is the NFE keeping records sufficient to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price? § 200.318(i)		
Is the contract a time-and-materials contract? § 200.318(j)		
If so, has the NFE documented why no other contract is suitable?		
Does the contract include a ceiling price that the contractor exceeds at its own risk?		
Is the NFE alone responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k)		
COMPETITION		
Note: A Yes answer to any of these is not in line with federal regulations.		
All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Does the procurement involve any of the following: (§ 200.319(a): 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?		
Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a)		
Does the contract include a state or local geographic preference for local contractors? § 200.319(b)		
Were any potential bidders precluded from qualifying during the solicitation period?		

See Purchases Checklist for Micro, Simplified, and Formal Requirements.

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

PUBLIC WORKS CHECKLIST:

	YES	NO
If the contract is for construction, does it include the required Equal Employment Opportunity clause?		
For construction contracts exceeding \$2,000 awarded under a Federal grant, does the contract include a Davis-Bacon Act clause and Copeland “Anti- Kickback” Act clause addressing prevailing wage rates? [Note that Public Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.]		
If the contract amount exceeds \$100,000 and involves the employment of mechanics or laborers, does the contract include a Contract Work Hours and Safety Standards clause?		
Bonding requirements for construction or facility improvement contracts exceeding \$250,000: <p style="color: red; margin-left: 40px;">Note: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e, \$250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.</p> If such a determination (see above) has not been made, does the procurement include the following?		
A bid guarantee from each bidder equivalent to five percent of the bid price?		
A performance bond on the part of the contractor for 100 percent of the contract price?		
A payment bond on the part of the contractor for 100 percent of the contract price.		

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

PURCHASES CHECKLIST:

	YES	NO
Will there be any federal funds expended on the purchase of goods or services?		
Is the purchase less than \$10,000? (CFR 200.320(a))		
If yes, is this a one-time purchase?		
Is the price for the goods or service reasonable?		
Is the purchase being distributed equitably among eligible vendors?		
Is the purchaser greater than \$10,000 and less than the current state bid limit? CFR (200.320(b))		
If yes, is the price reasonable?		
Is there a complete detailed description of the goods or services being procured? - <i>Descriptions/ specifications must be communicated equally among vendors, and should include unit size (case, package) , measurement unit, brand name equivalent.</i>		
Are there at least two vendors that can provide the goods or services?		
Is the cumulative total of the purchases in excess of the state’s formal bid limit or the federal bid limit, whichever is most restrictive?		
Is there a complete, adequate, and realistic specification for the goods or services to be procured? (CFR 200.320 (c)(1))		
Are there at least two vendors that can provide the goods or services?		
Does the procurement lend itself to a firm fixed price contract?		
Can the award be made principally on the basis of price?		
If the procurement is being made on the basis of non-competitive proposals, does it meet one or more of the following criteria?		
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 pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity		
4. After solicitation of a number of sources, competition is determined inadequate.		

FEDERAL EXECUTIVE ORDER (E.O.) 12549:

"Debarment and Suspension": requires that all contractors receiving individual awards, using federal funds for \$25,000 or more, and all sub recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. Transactions on funds 142 thru 152 (most notably 144) must be cleared of Federal Debarment before an award is made. Delegated agents will maintain debarment status documents in their department for items purchased within the scope of their delegation. No award is to be made before debarment status has been reviewed and approved.

DEFINITIONS:

"Debarment Certification": A statement from a vendor or service provider that their company, and it's principals have not been debarred, suspended, proposed for debarment, declared ineligible, are not in the process of being debarred, or are voluntarily excluded from conducting business with a federal department or agency of the federal government. This certification can take the form of a signed letter, or a signature block within a procurement document or ASSA.

"Checking Debarment Status on the Web": The process by which an agent checks the federal Website <https://www.sam.gov> to see if a vendor is on the government list of debarred vendors. Being on the list means the vendor is debarred, being absent from the list indicates a vendor is in good standing.

PROCEDURES:

- 1 The Special Conditions of Bid documents contain debarment language so vendors are notified of the debarment requirements, and are provided the format by which they can certify their status. At time of bid, suppliers will be required to certify their debarment status as a mandatory element of the bid or proposal response.
- 2 Purchases in excess of \$25,000 using an existing waiver where no bidding document was involved require that the agent check the federal debarment website <https://www.sam.gov> for a favorable debarment status before an order is issued if federal funds are being used.
- 3 As an element of every Academic Support Services Agreements (ASSA), contracts will include a certification statement and a signature block where the contractor can certify their debarment status.
- 4 For releases over \$25,000 using federal funds against established contracts, waivers, or ASSA's where a certification is already on file, the federal debarment website <https://www.sam.gov> will be checked to verify the vendors continued favorable debarment status before an order will be released. When the web site is checked, staff must print a copy of the one debarment report from the website, and include it in the bid jacket, or file it in the Vendor File in cases where no bid jacket is present.
- 5 Vendors known to be debarred will have their vendor status changed to "inactive" and "ineligible" in the master purchasing services vendor file.
- 6 If the vendor does not provide debarment certification, or if the web site is checked and the vendor is on the list (debarred), the purchasing agent will place a hold on the award process and immediately verify the accuracy of the website report by gathering information pertaining to the reasons for debarment from the vendor, and EPLS <https://www.sam.gov>. Once all information has been gathered, and verified, the agent must summarize and report the findings to the Director of Procurement Services, and await further award instructions. In any case, award will not be made for purchases in excess of \$25,000 that have federal funding until such time as the supplier is no longer debarred or suspended.
- 7 If it is determined that the vendor is to be recorded in University record as being debarred, the agent will request that administrative support staff make the vendor ineligible and inactivate them in the vendor file. A characteristic DB will be used to show debarment ineligibility. With the approval of the Director, the agent may then award to the next lowest responsible vendor in accordance with established procurement rules.

Form E

**SCHOOL DISTRICT
PROPOSER/VENDOR CERTIFICATION FORMS**

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

The following provisions are required and apply when federal funds are expended by for any contract resulting from this procurement process.

The _____ School District is the Subgrantee or Subrecipient by definition.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(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.

Pursuant to Federal Rule (A) above, when federal funds are expended by _____ School District, _____ School District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant 7 CFR 1780.75, when federal funds are expended by _____ School District, _____ School District reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. _____ School District also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if _____ School District believes, in its sole discretion that it is in the best interest of _____ School District to do so. The vendor will be compensated for work performed and accepted and goods accepted by _____ School District as of the termination date if the contract is terminated for convenience of _____ School District. Any award under this procurement process is not exclusive and _____ School District reserves the right to purchase goods and services from other vendors when it is in the best interest of _____ School District.

Does vendor agree to abide by the above? YES _____ Initials of Authorized Representative of Vendor

(C) 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).

Pursuant to Federal Rule (G) above, when federal funds are expended by _____ School District, the vendor certifies that during the term of an award for all contracts by _____ School District resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(D) 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 contain 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.

Pursuant to Federal Rule (H) above, when federal funds are expended by _____ School District, the vendor certifies that during the term of an award for all contracts by _____ School District resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

(E) 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.

Pursuant to Federal Rule (I) above, when federal funds are expended by _____ School District, the vendor certifies that during the term and after the awarded term of an award for all contracts by _____ School District resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant,

the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

Multi-year contracts may equal \$1M

**IRAN CONTRACTING ACT
 CERTIFICATION OF ELIGIBILITY TO BID FOR CONTRACTS OF \$ 1 MILLION OR MORE
 (Public Contract Code sections 2202-2208)**

Pursuant to Public Contract Code 2204. (a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		<i>Date Executed</i>

RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS – 2 CFR § 200.333

When federal funds are expended by _____ School District for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR §200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by _____ School District for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.; 49 C.F.R. Part 18; Pub. L. 94- 163, 89 Stat. 871).

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES _____ Initials of Authorized Representative of Vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Vendor’s Name/Company Name: _____
Company registered on SAM.gov? Yes _____ No _____
Address, City, State, and Zip Code: _____
Phone Number: _____ Fax Number: _____
Printed Name and Title of Authorized Representative: _____
Email Address: _____
Signature of Authorized Representative: _____ Date: _____

Must be completed and returned with Proposal forms.

U.S. DEPARTMENT OF AGRICULTURE (USDA)

CERTIFICATION OF COMPLIANCE WITH FEDERAL REQUIREMENTS/LAWS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certifications included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the United States of America determines to award the covered transaction, grant, or cooperative agreement.

ELIGIBILITY CERTIFICATION

I hereby certify that the below signed applicant is unable to finance the proposed project from its own resources or through commercial credit at reasonable rates and terms.

No outstanding judgment has been obtained and recorded by the United States of America in a Federal Court (other than in the United States Tax Court).

DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS (Form AD-1047)

As required by Executive Order 12549, Debarment and Suspension, for prospective participants in primary covered transactions, as defined at 7 CFR Part 3017, Section 3017.510.

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

DRUG-FREE WORKPLACE REQUIREMENTS (Form AD-1049) (applies to grants)

As required by the Drug-Free Workplace Act of 1988, and implemented at 7 CFR Part 3017, Subpart F, Section 3017.600 for grantees.

A. The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

- (b) Establishing a drug-free awareness program to inform employees about-
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee’s policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, State, zip code):

LOBBYING (Exhibit A-1 to Instruction 1940-O)

As required by 7 CFR Part 3018 for persons entering into a grant, cooperative agreement or contract over \$100,000, or loan or loan guarantee over \$150,000, as defined at 7 CFR Part 3018, the undersigned certifies that to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the

making of any Federal grant, or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.

(b) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts and subgrants, and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EQUAL OPPORTUNITY AGREEMENT (Form RD 400-1)

Pursuant to the rules and regulations of the Secretary of Labor (herein called the ‘Secretary’) issued under the authority of Executive Order 11246, as amended, witnesseth:

In consideration of financial assistance (whether by a loan, grant, loan guaranty, or other form of financial assistance) made or to be made by the United States of America (the Government) to Recipient, Recipient hereby agrees, if the cash cost of construction work performed by Recipient or a construction contract financed with such financial assistance exceeds \$10,000 – unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965.

1. To incorporate or cause to be incorporated into any contract for construction work, or modification thereof, subject to the relevant rules, regulations, and orders of the Secretary or of any prior authority that remain in effect, which is paid for in whole or in part with the aid of such financial assistance, the following “Equal Opportunity Clause”:

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- I The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Government, advising the said labor union or workers’ representative of the contractor’s commitments under this agreement, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of all rules, regulations and relevant orders of the Secretary of Labor.

- (e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, rules, regulations, and orders, or pursuant thereto, and will permit access to his books, records, and accounts by the Government, USDA, Civil Rights Office, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulation, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government Contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as provided by Law.
- (g) The contractor will include the provisions of this paragraph 1 and paragraph (a) through (g) in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each such subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. To be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; Provided, that if the organization so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

3. To notify all prospective contractors to file the required "Compliance Statement", Form RD 400-6, with their bids.

4. Form AD-425, Instructions to Contractors, will accompany the notice of award of the contract. Bid conditions for all nonexempt federal and federally assisted construction contracts require inclusion of the appropriate "Hometown" or "Imposed" plan affirmative action and equal employment opportunity requirements. All bidders must comply with the bid conditions contained in the invitation to be considered responsible bidders and hence eligible for the award.

5. To assist and cooperate actively with the Government and the Secretary in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary that it will furnish to the Government and the Secretary such information such as, but not limited to, Form AD-560, Certification of Nonsegregated Facilities, to submit the Monthly Employment Utilization Report, Form CC-257, as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of its primary responsibility for securing compliance.

6. To refrain from entering into any contract, or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

- (b) That if the recipient fails or refuses to comply with these undertakings, the Government may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the organization under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such organization; and refer the case to the Department of Justice for appropriate legal proceedings.

ASSURANCE AGREEMENT (Form RD 400-4)

The Recipient hereby assures the U.S. Department of Agriculture that Recipient is in compliance with and will continue to comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et. Seq.), 7 CFR Part 15, regulations promulgated

thereunder, 7 C.F.R. § 1901.22. In accordance with that Act and the regulations referred to above, Recipient agrees that in connection with any program or activity for which Recipient receives Federal financial assistance (as such term is defined in 7 C.F.R. § 14.2) no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

1. Recipient agrees that any transfer of any aided facility, other than personal property, by sale, lease or other conveyance of contract, shall be, and shall be made expressly, subject to the obligations of this agreement and transferee's assumption thereof.
2. Recipient shall:
 - (a) Keep such records and submit to the Government such timely, complete, and accurate information as the Government may determine to be necessary to ascertain our/my compliance with this agreement and the regulations.
 - (b) Permit access by authorized employees of the Government or the U.S. Department of Agriculture during normal business hours to such books, records, accounts and other sources of information and its facilities as may be pertinent to ascertaining such compliance.

I Make available to users, participants, beneficiaries and other interested persons such information regarding the provision of this agreement and the regulations, and in such manner as the Government or the U.S. Department of Agriculture finds necessary to inform such persons of the protection assured them against discrimination.
3. The obligations of this agreement shall continue:
 - (a) As to any real property, including any structure, acquired or improved with the aid of the Federal financial assistance, so long as such real property is used for the purpose for which the Federal financial assistance is made or for another purpose which affords similar services or benefits, or for as long as the Recipient retains ownership or possession of the property, whichever is longer.
 - (b) As to any personal property acquired or improved with the aid of the Federal financial assistance, so long as Recipient retains ownership or possession of the property.

I As to any other aided facility or activity, until the last advance of funds under the loan or grant has been made.
4. Upon any breach or violation of this agreement the Government may, at its option:
 - (a) Terminate or refuse to render or continue financial assistance for the aid of the property, facility, project, service or activity.
 - (b) Enforce this agreement by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs.

Rights and remedies provided for under this agreement shall be cumulative.

FEDERAL COLLECTION POLICIES FOR CONSUMER OR COMMERCIAL DEBTS (Form RD 1910-11)

The Federal Government is authorized to check credit information about the applicant(s) including using the federal Credit Alert Interactive Voice Response System (CAIVRS) or its successors to check to see if the applicant(s) are delinquent or in default on a Federal debt.

The Federal Government is authorized by law to take any or all of the following actions in the event your loan payments become delinquent or you default on your loan:

- Report your name and account information to a credit reporting agency, and the Credit Alert Interactive Voice Response System (CAIVRS).

- Assess interest and penalty charges for the period of time that payment is not made.
- Assess charges to cover additional administrative costs incurred by the government to service your account.
- Offset amounts to be paid to you from your Federal income tax refund.
- Offset amounts to be paid to you under other Federal Programs.
- Refer your account to a private collection agency to collect the amount due.
- Foreclosure on any security you have given for the loan.
- Pursue legal action to collect through the courts.
- Report any written off debt to the Internal Revenue Service as taxable income.
- If you are a current or retired Federal employee, take action to offset your salary, or civil service retirement benefits.
- Debar or suspend you from doing business with the Federal Government either as a participant or principal throughout the executive branch of the Federal Government for the period of debarment or suspension.
- Refer any debt that is delinquent to the Treasury Offset Program (TOP) in accordance with the Debt Collection Improvement Act of 1996.
- Refer any eligible debt that is delinquent to Treasury for cross servicing in accordance with the Debt Collection Improvement Act of 1996.
- Garnish your wages as allowed by the Debt Collection Improvement Act of 1996.

Any or all of these actions may be used to recover any debts owed when it is determined to be in the interest of the Government to do so.

CERTIFICATION: As the duly authorized representative of the applicant, I hereby certify the applicant will comply with the above applicable certification(s) and the project is consistent with area wide comprehensive development plans.

_____	_____
(Date)	(Name of Applicant)

(SEAL)	(Signature of Authorized Entity Official)

ATTEST:	(Title of Authorized Entity Official)
_____	_____
(Signature of Attesting Official)	(Address)
_____	_____
(Title of Attesting Official)	(City, State and Zip Code)

(Rev.01/28/2009)

CLARIFICATIONS OF EDGAR CERTIFICATIONS: ADDENDUM FOR CONTRACT FUNDED BY U.S. FEDERAL GRANT

Termination for Cause and for Convenience.

When a school district (“District”) expends federal funds, the District must reserve the right to terminate the agreement should the vendor breach the contract, as well as for convenience.

Equal Employment Opportunity Act and Equal Employment Statement:

This provision applies to all vendors who provide goods and services.

Davis-Bacon Act:

This provision applies only to federally funded construction/public works contracts in excess of \$2000, and requires compliance with Department of Labor rules regarding minimum prevailing wage rates and certified payroll reporting for laborers and mechanics. It does not apply to contracts for goods or non-construction services.

Contract Work Hours and Safety Standards:

This provision applies to contracts in excess of \$100,000 that involves mechanics or laborers. It does not apply to vendors who supply goods or materials, nor does it apply to vendors providing goods or non-construction services.

Rights to Inventions Made under a Contract or Agreement:

This provision, found in 37 CFR Part 401, only applies to a governmental entity entering into a funding agreement with a small business form or non-profit organization who will perform experimental, developmental or research work.

The Clean Air Act and the Federal Water Pollution Control Act.

The Clean Air Act is a federal law that is found in 42 U.S.C. §§7401-7671. The broad purpose of the Clean Air Act is to regulate air emissions from stationary and mobile sources, and to authorize the EPA to establish National Ambient Air Quality Standards

(NAAQS) and to achieve NAAQS in every state in order to address public health and welfare issues posed by air pollutants. The Clean Air Act addresses the emissions standards for motor vehicles, as well as the emissions of harmful pollutants in the manufacturing of products in general. If the vendor is not in the business of manufacturing, or applying technological advances to current products, the Clean Air Act is not applicable.

The Federal Water Pollution Control Act is a federal law that is found in 33 U.S.C. §§1251-1387 and more commonly referred to as the Clean Water Act. The broad purpose of the Clean Water Act is to address water pollution by establishing the basic structure for regulating discharges of pollutants into the waters of the U.S., as well as regulating quality standards for surface waters. The Clean Water Act attempts to reach these goals by regulating research programs, grants for construction of sewage treatment plants, and permits for waste disposal. If the vendor is not in business of construction, manufacturing or waste storage/disposal, this act is not applicable.

Debarment and Suspension Certification (Executive Orders 12549 and 12689):

This provision applies to all vendors who provide goods and services.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352):

This provision applies to all vendors who provide goods and services.

Procurement of Recovered Materials under the Resource Conservation and Recovery Act.

The RCRA is a federal law, found in 42 U.S.C. §§6901-6992 that gives the EPA the authority to control the disposition of solid and hazardous waste. Regulations include the treatment, storage, and disposal of hazardous and non-hazardous solid waste. RCRA has three programs: (1) the solid waste program, (2) the hazardous waste program, and (3) the underground storage tank. If the vendor's business is not engaged in the generating, treating, storing, or disposing of solid or hazardous waste, this provision is not applicable.

Record Retention Requirements and Certification of Access to Records:

This provision applies to all vendors who provide goods and services.

Certification of Compliance with the Energy Policy and Conservation Act.

This portion of the EDGAR Certifications states that the vendor will comply with the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (the “EPCA”) (42 U.S.C. §§6201-6422). The purpose of the EPCA is to increase energy production and supply, reduce energy demand, and provide energy efficiency. This law applies to manufacturers of various products to ensure they are design to function in an energy efficient manner.

Texas adopted the International Energy Conservation Code (IECC) in 2011 through the Texas Health & Safety Code (§388.003) and the Texas Administrative Code (16 TAC §70.100, 34 TAC §19.32). All three of these code sections cover energy efficiency standards in various new construction developments, which will not apply to vendors not engaged in construction services.

Certification of Compliance with Buy American Provisions.

The Buy America Act is one of the four major federal laws that impose requirements on the use of federal procurements, grants, and other funds. The Buy America Act generally requires the procurement of good and materials that are produced or manufactured in the United States and which are comprised of materials produced or manufactured in the United States. The entity may waive this provision if it determines that such American goods or materials are not manufactured or produced in sufficient or reasonably available commercial quantities and are not of a satisfactory quality; the cost of the acquisition is not reasonable; or the acquisition is not consistent with the public interest. This provision is also not applicable to purchases that do not exceed the micro-purchase threshold.

Certification of Applicability to Subcontracts:

This provision applies to all vendors who provide goods and services.

FEDERAL GRANTS **CONFLICT OF INTEREST**

PURPOSE

To ensure compliance with the regulations under the Federal Uniform Grant Guidance (UGG) (2 CFR Part 200), which requires written procedures outlining steps necessary to ensure allowable grant costs and methods.

MANAGED BY

- [Insert names of responsible parties]

APPLICABLE DISTRICT POLICIES

- [Insert applicable policies or administrative regulations]

§ 200.318 GENERAL PROCUREMENT STANDARDS.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.

DEFINITIONS

EMPLOYEE CONFLICT OF INTEREST

No employee, administrator, 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 employees, administrators, and agents of the _____ School District (“District”) may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

All business-related gratuities are specifically prohibited except nominally valued, widely distributed items (calendars, pencils, etc.)

ORGANIZATIONAL CONFLICT OF INTEREST

Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the District is unable or appears to be unable to be impartial in conducting a procurement action involving the related organization (non-profit organizations). Purchasing services from organizations such _____, _____, or other public corporations, shall not be considered organizational conflicts of interest.

DISCLOSING CONFLICT OF INTEREST

§ 1402.112 What are the conflict of interest policies?

This section shall apply to all non-Federal entities. NOFOs and financial assistance awards must include the full text of the conflict of interest provisions in paragraphs (a) through (e) of this section.

(a) *Applicability.*

(1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in [2 CFR 200.318](#) apply.

(b) *Notification.*

(1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with [2 CFR 200.112](#).

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the [Financial Assistance Officer](#) in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

Code of Conduct (USDA Sample Template)

ABC School District Food Service Department

Policy Name: Written Code of Conduct

Regulations: 2 CFR Part 200.318, formerly 7 CFR Part 3016.36(b)(3), State Procurement Code and Regulations, and ABC School District Department of Purchasing.

Procedures: The ABC School District seeks to conduct all procurement procedures:

- in compliance with stated regulations; and
- to prohibit 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, State, or local 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. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, or termination.

For questions and concerns regarding procurement solicitations, contract evaluations, and award, contact:

Purchasing Contacts: Director of Purchasing	123.456.7890
Director of School Food Service	123.456.7880

Sample Policy

ADMINISTRATIVE
REGULATION NO. 3300

CLASSIFICATION: Business and Non-instructional
Operations

ADOPTED:

REVISED:

SUBJECT: Expenditures

PAGE: 1 of 1

The County Superintendent of Schools directs that all expenditures for the _____ County Office of Education be coordinated through the Internal Business Services Section. The County Superintendent of Schools expects the Assistant Superintendent, Business Services Division, to develop and implement expenditure procedures which shall include, but not be limited to:

1. Processing and monitoring payrolls.
2. Maintaining purchasing procedures.
3. Auditing and processing accounts payable.
4. Establishing a petty cash fund.
5. Administering construction contracts, leases, and other agreements.
6. Monitoring multi-year commitments.

Program managers may request expenditures for personnel, goods, and services as long as such expenditures are consistent with the budget and required approvals are obtained. The County Superintendent of Schools will maintain a centralized purchasing function in the Internal Business Services Section. All obligations for the purchase of goods, services, supplies, and equipment shall be reviewed and incurred by the Purchasing/Contracting Unit, Internal Business Services Section, as the official representative of the County Superintendent of Schools. Program managers, in conjunction with the Internal Business Services Section, are expected to make sound purchasing decisions based upon the proper evaluation of options available to obtain goods and/or services. All applicable laws, regulations, and procedures shall be followed when obtaining goods and/or services, and accepted purchasing practices shall be maintained. Expenditure of funds under federal and state programs may be subject to special conditions by the funding source. Expenditures made without proper legal authority or necessary approvals may become the responsibility of the employee.

Public Purpose

District funds are to be expended only for legitimate public purposes and not for private personal gain for which services of comparable value have not been rendered to the District.

All funds received by the District are considered public funds and must be used to support the

educational mission of the District. The best test to use when determining whether the expenditure is appropriate is called the "public scrutiny test." The test is simple and merely asks whether the tax-paying public would view the expenditure as necessary to support public education. If you are already questioning whether the expenditure is appropriate, it may very well not be appropriate.

Expenditures of District funds for District officers, directors, employees, and volunteers **are generally deemed allowable** for the following purposes, as these are commonly granted benefits for employees and volunteers in public and private organizations which aid in recruitment of personnel, promote improvement of staff morale and cooperation, and assist in building a commitment to the District, thus assisting in creating a more productive learning environment:

1. Mementoes for employee recognition for service to the District **not to exceed \$50.00**
2. Retirement appreciation function to recognize retiring employees **not to exceed \$_____**
3. Recognition item upon the retirement of an employee **not to exceed \$100.00**
4. Recognition item upon the end of service by a Board member **not to exceed \$_____**
5. Volunteer appreciation **not to exceed \$50.00**
6. Food items and refreshments for Board members and staff during Board meetings and/or work sessions
7. Food items and refreshments for Board committees or superintendent committees during meeting

Examples of Appropriate and Inappropriate Use of Public Monies:

This section identifies specific practices and procedures to be followed by all District employees when using public funds. The following list is intended to provide examples and may not be all inclusive.

Food and Refreshments

Alcohol

The purchase of alcohol is never an acceptable use of public monies.

Meetings and Conferences

Meals and snacks are normally a personal expense. Any meal or snack paid for with public funds must be a reasonable price and an integral part of employment duties.

Meals and snacks can be paid for with public funds if:

The meeting is four (4) hours or more and separate breaks would be disruptive to the meeting objectives.

The meeting is a breakfast, lunch or dinner meeting where the meeting is shorter than four hours in duration and attendance during meal time(s) is a requirement of an employee's job duties.

The name, date, duration, and purpose of the meeting along with the names and number of District employees in attendance where food is provided must be noted on the claim form. All food receipts must be itemized - this includes catered meals.

Coffee and Beverages

Coffee and other beverages are normally a personal expense. A voluntary collection can be made from those who desire to have coffee and other beverages in the school/department. Except for meetings and conferences (Item B), public areas (Item G), and School Board meetings (Item H), coffee and beverages shall not be purchased with public funds.

Employee Break Room Supplies

Public funds should not be used to stock supplies such as plastic ware and paper products in employee break rooms. A voluntary collection can be made from those who desire to have such supplies. If purchasing supplies for a meeting, the meeting name, date, names and number of attendees must be noted on the claim form.

Individual Receptions

Receptions for individual employees should never be paid from public funds. This includes retirement dinners, staff meals, welcome aboard receptions, and similar gatherings where food and/or refreshments may be served. Voluntary collections can be taken from those attending such gatherings.

Acceptable Occasions

The School Board and/or Superintendent may determine that the service of food or refreshments is appropriate for selected occasions such as the winter holiday event or the all-staff event.

School Board Meetings

The School Board meets at a time that is intended to be convenient for the general public. Meetings routinely span the normal dinner hour. Serving meals of reasonable value to Board members and staff required to attend Board meetings is considered an appropriate expense.

Student Incentives

Incentives purchased for qualifying groups of students from public funds as part of an initiative, program, or recognition (e.g., rewards, honor roll) shall be of nominal value **not to exceed** _____ and authorized by the Assistant Superintendent of the department purchasing the rewards.

Gifts

Employee Gifts

Expenditures of public funds for gifts, or gift cards to staff and employees are not authorized. This includes gifts purchased for staff birthdays or other personal occasions. Voluntary collections from staff would be an acceptable way of purchasing employee gifts.

Tokens/Clothing

The purchase of tokens of appreciation, or personal clothing (e.g., coffee mugs, pens, tote bags, T-shirts/apparel, etc.) is not authorized.

Flowers

Flowers may be purchased for retirement events or special recognitions with the approval of the Superintendent or his designee. Flowers for decoration for community events such as graduations are permitted.

Awards and Recognition

District Awards and Recognition

At times, awards or tokens of recognition are appropriate for presentation to District staff in recognition of service. District awards or tokens of recognition shall be determined by the School Board and/or the Superintendent or designee in advance and shall be paid for with "central" District funds under the control of the Superintendent or designee. Public funds should not be used for the purchase of department or building level staff awards or tokens of recognition.

External Awards and Recognition

At times, awards are appropriate for presentation to people (e.g., volunteers) or organizations external to the District. External awards or tokens of recognition shall be determined by the School Board and/or the Superintendent in advance.

Break Room Equipment

Microwaves, refrigerators, coffee pots, toaster ovens and other similar equipment items may be procured with public funds for use in public reception areas and employee break rooms. Otherwise, these items must be purchased with personal funds. In all instances, all fire marshal safety restrictions must be observed. These items are not authorized in classrooms and offices.

Holiday Parties, Decorations and Cards

Holiday Decorations, Cards, Parties

Office holiday decorations shall not be purchased with public funds.

Holiday cards shall not be purchased with public funds.

Staff holiday parties and meals are a personal expense. Voluntary collections may be taken to fund holiday events. Public funds shall not be used for holiday parties.

Student Activity Funds

Student Activity Funds are public funds and are to be used to finance a program of co-curricular school activities supplementing, but not replacing, the activities provided by the District. Student Activity Funds are derived from the student body as a whole and shall be so expended to

benefit the student body as a whole. General principles governing the appropriate use and management of Student Activity Funds is found within the FCMAT Associated Student Body Accounting Manual, Fraud Prevention Guide and Desk Reference found at:
<https://www.fcma.org/2015-asb-accounting-manual-fraud-prevention-guide-and-desk-reference>

Purchasing Card Purchases

All expenditures made with a purchasing card must conform to these requirements and the limitations outlined in the user's Purchasing Card Agreement.

Legal Reference: Education Code 1602, 1604

Appendix B - Study Agreement



FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

**FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM
STUDY AGREEMENT
November 5, 2020**

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as the team, and the Orange County Department of Education, hereinafter referred to as the COE, mutually agree as follows:

1. BASIS OF AGREEMENT

The team provides a variety of services to local educational agencies (LEAs). The COE has requested that the team assign professionals to study specific aspects of the county operations. These professionals may include staff of the team, county offices of education, the California Department of Education, school districts, or private contractors. All work shall be performed in accordance with the terms and conditions of this agreement.

2. SCOPE OF THE WORK

A. Scope and Objectives of the Study

1. Review the Business Services Department’s operational processes and procedures for county office budget development during annual budget adoption and interim reporting, and make recommendations for improvements, if any.
2. Review operational processes and procedures for contracting for goods and services and evaluate whether the county follows the adopted policies for contracting and whether the policies meet current legal and professional standards, and make recommendations for improvements, if any. Based on the team’s judgment, the team will review a sample of contracts from July 2019 through December 2020.

B. Services and Products to be Provided

1. Orientation Meeting - The team will conduct an orientation session at the COE to brief COE management and supervisory personnel on the team’s procedures and the purpose and schedule of the study.
2. On-site Review - The team will conduct an on-site review at the COE office and at school sites if necessary.

3. Exit Meeting - The team will hold an exit meeting at the conclusion of the on-site review to inform the COE of significant findings and recommendations to that point.
4. Exit Letter – Approximately 10 days after the exit meeting, the team will issue an exit letter briefly memorializing the topics discussed in the exit meeting.
5. Draft Report - Electronic copies of a preliminary draft report will be delivered to the COE’s administration for review and comment.
6. Final Report - Electronic copies of the final report will be delivered to the COE’s administration following completion of the review. The final report will be published on the FCMAT website. Printed copies are available from FCMAT upon request.
7. Follow-Up Support – If requested by the COE within six to 12 months after completion of the study, FCMAT will return to the COE at no cost to assess the COE’s progress in implementing the recommendations included in the report. Progress in implementing the recommendations will be documented to the COE in a FCMAT management letter. FCMAT will work with the COE on a mutually convenient time to return for follow-up support that is no sooner than eight months and no later than 18 months after the completion of the study.

3. PROJECT PERSONNEL

The FCMAT study team may include:

- | | | |
|-----------|--------------------------------|--------------------------------|
| A. | <i>To Be Determined</i> | <i>FCMAT Staff</i> |
| B. | <i>To be determined</i> | <i>FCMAT Consultant</i> |

4. PROJECT COSTS

The cost for studies requested pursuant to Education Code (EC) 42127.8(d)(1) shall be as follows:

- A. \$800 per day for each staff team member while on site, conducting fieldwork at other locations, presenting reports, or participating in meetings. The cost of independent FCMAT consultants will be billed at their actual daily rate for all work performed.
- B. All out-of-pocket expenses, including travel, meals, and lodging.

- C. The COE will be invoiced at actual costs, with 50% of the estimated cost due following the completion of the on-site review and the remaining amount due upon COE’s acceptance of the final report.

Based on the elements identified in section 2A, the total not-to-exceed cost of the study will be \$15,600.

- D. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT’s services are payable to Kern County Superintendent of Schools - Administrative Agent located at 1300 17th Street, City Centre, Bakersfield, CA 93301.

5. RESPONSIBILITIES OF THE COE

- A. The COE will provide office and conference room space during on-site reviews.
- B. The COE will provide the following if requested:
 - 1. Policies, regulations and prior reports that address the study scope.
 - 2. Current or proposed organizational charts.
 - 3. Current and two prior years’ audit reports.
 - 4. Any documents requested on a supplemental list. Documents requested on the supplemental list should be provided to FCMAT only in electronic format; if only hard copies are available, they should be scanned by the COE and sent to FCMAT in electronic format.
 - 5. Documents should be provided in advance of fieldwork; any delay in the receipt of the requested documents may affect the start date and/or completion date of the project. Upon approval of the signed study agreement, access will be provided to FCMAT’s online SharePoint document repository, where the COE shall upload all requested documents.
- C. The COE’s administration will review a draft copy of the report resulting from the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the team prior to completion of the final report.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with pupils. The COE shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for different phases of the study and will be established upon the receipt of a signed study agreement:

Orientation:	<i>to be determined</i>
Staff Interviews:	<i>to be determined</i>
Exit Meeting:	<i>to be determined</i>
Preliminary Report Submitted:	<i>to be determined</i>
Final Report Submitted:	<i>to be determined</i>
Board Presentation:	<i>to be determined, if requested</i>
Follow-Up Support:	<i>if requested</i>

7. COMMENCEMENT, TERMINATION AND COMPLETION OF WORK

FCMAT will begin work as soon as it has assembled an available and appropriate study team consisting of FCMAT staff and independent consultants, taking into consideration other jobs FCMAT has previously undertaken and assignments from the state. The team will work expeditiously to complete its work and deliver its report, subject to the cooperation of the COE and any other parties from which, in the team’s judgment, it must obtain information. Once the team has completed its fieldwork, it will proceed to prepare a draft report and a final report. Prior to completion of fieldwork, the COE may terminate its request for service and will be responsible for all costs incurred by FCMAT to the date of termination under Section 4 (Project Costs). If the COE does not provide written notice of termination prior to completion of fieldwork, the team will complete its work and deliver its report and the COE will be responsible for the full costs. The COE understands and agrees that FCMAT is a state agency and all FCMAT reports are published on the FCMAT website and made available to interested parties in state government. In the absence of extraordinary circumstances, FCMAT will not withhold preparation, publication and distribution of a report once fieldwork has been completed, and the COE shall not request that it do so.

8. INDEPENDENT CONTRACTOR

FCMAT is an independent contractor and is not an employee or engaged in any manner with the COE. The manner in which FCMAT’s services are rendered shall be within its sole control and discretion. FCMAT representatives are not authorized to speak for, represent, or obligate the COE in any manner without prior express written authorization from an officer of the COE.

9. INSURANCE

During the term of this agreement, FCMAT shall maintain liability insurance of not less than \$1 million unless otherwise agreed upon in writing by the COE, automobile liability insurance in the amount required under California state law, and workers’ compensation as required under California state law. FCMAT shall provide certificates of insurance, with Orange County Department of Education named as additional insured, indicating applicable insurance coverages upon request.

10. HOLD HARMLESS

FCMAT shall hold the COE, its board, officers, agents and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of its board, officers, agents and employees undertaken under this agreement. Conversely, the COE shall hold FCMAT, its board, officers, agents and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of its board, officers, agents and employees undertaken under this agreement.

11. COVID-19 PANDEMIC

Because of the existence of COVID-19 and the resulting shelter-in-place recommendations, local educational agency closures and other related considerations, at FCMAT's sole discretion, the Scope of Work, Project Costs, Responsibilities of District (Sections 1, 4 and herein) and other provisions herein may be revised. Examples of such revisions may include, but not be limited by, the following:

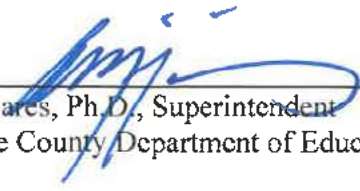
- A. Orientation and exit meetings, interviews and other information-gathering activities may be conducted remotely via telephone, video conferencing, etc. References to site work and fieldwork shall be interpreted appropriately given the circumstances.
- B. Activities performed remotely that are normally performed in the field shall be billed hourly as if performed in the field (excluding out-of-pocket costs).
- C. The district may be relieved of its duty to provide conference and other work area facilities for the team.

12. FORCE MAJEURE

Neither party will be liable for any failure of or delay in the performance of this study agreement due to causes beyond the reasonable control of the party, except for payment obligations by the district.

13. CONTACT PERSON

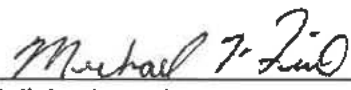
Contact person: Renee Hendrick, Associate Superintendent
Telephone: (714) 966-4000
E-mail: RHendrick@ocde.us



Al Mijares, Ph.D., Superintendent
Orange County Department of Education

11-10-20

Date



Michael H. Fine
Chief Executive Officer
Fiscal Crisis and Management Assistance Team

November 10, 2020

Date