



# POLICY DEVELOPMENT NEWS

## PURCHASING AND CONTRACTING USING FEDERAL FUNDS: COMPLYING WITH THE UNIFORM GRANT GUIDANCE

With change comes challenge, and keeping up with federal regulations is no exception.

While school board members are generally cognizant of their responsibilities for stewardship of the school unit's financial resources for and establishing expectations for sound financial management practices, they may not be familiar with the obligations associated with the federal funding that is essential to the operations of the schools.

Superintendents and business managers, however, are acutely aware that the processes for acquiring goods and services through federal funds – received directly or as a “pass through” from the State – are subject to compliance with federal regulations.

In December 2014, the Education Department General Administrative Regulations, more familiarly known as “EDGAR” were replaced by the “Uniform Grant Guidance.” The purpose was to consolidate various federal publications into one uniform set of rules.

The Uniform Grant Guidance (UGG) requires local school administrative units (as well as other nonfederal entities) that receive federal awards to have in place specific written procurement and conflict-of-interest policies and procedures that would apply to any solicitation or contract for goods or services using federal funds.

Originally, the UGG provided for a grace period of two full fiscal years after the end of the school unit's fiscal year to implement these requirements, which would have meant that the implementation date would have been July 1, 2017.

However, the Office of Management and Budget (OMB) later issued a correcting amendment to the UGG in the Federal Register to allow a grace period of one additional fiscal year for non-nonfederal entities to implement changes to their procurement policies and procedures. This means that the implementation date for school units is now extended to July 1, 2018.

The extension enables school units to use the time to develop or refine their federal procurement procedures. Boards may need to adopt or update policies that relate in one way or another to procurement of goods and services using federal funds.

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### TABLE OF CONTENTS

Conflict of  
Interest (BCB) ..... Page 6

Bidding/Purchasing  
Requirements (DJ).... Page 9

Purchasing and  
Contracting:  
Procurement Staff  
Code of Conduct  
(DJH)..... Page 15

To assist boards and superintendents in complying with the UGG, MSMA has revised its sample policies DJ – Bidding/Purchasing Requirements and DJH – Purchasing and Contracting: Procurement Staff Code of Conduct.

We are also providing our member boards and superintendents with a new administrative procedure, DJ-R – Federal Procurement Manual. This manual is for school unit procurements using federal awards subject to the Uniform Grant Guidance. It was developed by Drummond Woodsum attorneys Bill Stockmeyer and Aga (Pinette) Dixon.

Finally, we have updated sample policy BCB – Board Member Conflict of Interest.

The sample policies are printed, in full, following this article, but can be accessed in Word using the links provided below. The Federal Procurement Manual (DJ-R) can be accessed by clicking [here](#).

### **Using the sample policies:**

BCB – Board Member Conflict of Interest (for Word version, click [here](#))

Most school boards already have in place policy BCB, which is based on Maine law and includes the requirement that board members disclose any financial interest in a question or contract under consideration before they involve themselves in the discussion, negotiation or award of a contract. However, additional language is needed for compliance with the regulations that apply to the use of *federal funds*. The new section of sample policy BCB recognizes board members as being “officers” of the school unit who, as such, must comply with the conflict of interest provisions of the procurement staff code of conduct that is required by the Uniform Grant Guidance. This policy is cross referenced to both DJ – Bidding and Purchasing and DJH – Purchasing and Contracting: Procurement Staff Code of Conduct.

DJ – Bidding/Purchasing Requirements (for Word version, click [here](#))

Board members and superintendents will find much of the content familiar, but should pay particular attention to the new additional language under the header “Procurement Methods for Federally Funded Projects” and to the updated legal references. As always, the bolded internal “note” is an explanatory annotation and should be deleted when the policy is adopted.

DJH – Purchasing and Contracting: Procurement Staff Code of Conduct (for Word version, click [here](#))

This sample policy appears more complicated than it actually is because some of the components are required and some are optional (though recommended).

However, boards must make a decision as to how to address disputes that may arise in the procurement process. In the UGG, these disputes are referred to as “protests and claims.”

Federal regulations require school units procuring property, goods or services using federal awards (federal financial assistance received directly from a federal agency or indirectly from a pass-through entity such as a state's department of education) to have a process for dealing with protests and claims, but do not specify any particular procedure.

The original version of sample policy DJH, which many boards adopted, included language pertaining to dispute resolution.

However, because of the complexities associated with compliance with the Uniform Grant Guidance, Drummond Woodsum suggested that the process for dealing with disputes ("protests and claims") might be more effectively incorporated into a detailed administrative procedure providing UGG-compliant procurement guidance rather than included in a board policy.

This comprehensive procedure would be the school unit's Federal Procurement Manual. The sample administrative procedure, DJ-R/Federal Procurement Manual, addresses protests and claims in section ("G").

As an administrative procedure, the Federal Procurement Manual would not require Board approval.

As a practical matter, MSMA is aware that while many school boards have adopted a policy DJH, Purchasing and Contracting/Procurement Staff Code of Conduct, others have not.

So, what to do?

The easiest course of action for *school units that do not* have a policy DJH, Purchasing and Contracting/Procurement Staff Code of Conduct would be to employ the sample Federal Procurement Manual, DJ-R, in its entirety.

Boards that *already have* a dispute resolution procedure within in their existing policy DJH should either:

- 1) Delete the existing dispute resolution language from the policy and instead rely on the new, more detailed "Protests and Claims" language in the Federal Procurement Manual, DJ-R, or
- 2) Move the provisions of their existing dispute resolution process from their policy DJH into the Federal Procurement Manual, DJ-R, or
- 3) Move the provisions of their existing dispute resolution process into their policy on bidding and purchasing, DJ.

Each of these options would require a Board vote, since it would be an amendment of the Board's existing policy.

In short, there are two decisions to be made by boards that *already have* dispute resolution language in policy:

- 1) Do you prefer the new language in DJH-R or your existing language?
- 2) What document do you want as the one “house” for your dispute resolution process – is it DJ-R (the administrative procedure/Federal Procurement Manual), DJ (policy) or DJH (policy)?

In any event, the process for dealing with protests and claims should be in only one document in order to avoid any potential conflict or misunderstanding.

### **Using the Sample Federal Procurement Manual**

As stated earlier, this Federal Procurement Manual was developed by attorneys at Drummond Woodsum. It is intended as an administrative document that does not require board adoption.

The provisions include citations to the related sections of the Code of Federal Regulations (CFR). These citations should not be deleted as they serve as references to specific portions of the underlying regulations. As with most federal regulations, the content is technical.

*The sample policies begin on the next page.*

\*MSMA SAMPLE POLICY\*

NEPN/NSBA Code: BCB

## CONFLICT OF INTEREST

Board service is a matter of public trust. In making decisions that affect the **[School Unit Name]** schools, Board members have the duty to act in the interest of the common good and for the benefit of the people they represent.

A conflict of interest may arise when there is an incompatibility between a Board member's personal interest and his/her responsibilities as an elected official in a matter proposed or pending before the Board. Board members have a legal and ethical responsibility to avoid not only conflict of interest, but the appearance of conflict of interest as well.

### Financial Interest

A Board member has a financial interest in a question or contract under consideration when he/she or a member of his/her immediate family may derive some financial or other material benefit or loss as a result of the Board action. The vote of the Board is voidable if a Board member has a financial interest and votes on that question or is involved in the discussion, negotiation, or award of a contract or other action in which he/she has a financial interest.

In order to prevent the vote on a question or contract from being voidable, a Board member who has a financial interest must:

- A. Make full disclosure of his/her interest before any action is taken; and
- B. Abstain from voting, from the negotiation or award of the contract and from otherwise attempting to influence the decision.

The Secretary of the Board shall record in the minutes of the meeting the member's disclosure and abstention from taking part in the decision in which he/she has an interest.

It is not the intent of this policy to prevent a Board member from voting or the school unit from contracting with a business because a Board member is an employee of that business or has another, indirect interest but is designed to prevent the placing of Board members in a position where their interest in the schools and their interest in their places of employment may conflict and to avoid appearances of conflict of interest.

**Code of Conduct for Federally Funded Projects**

When a Board member participates in the selection, award or administration of a contract that is supported by a federal award, the Board member shall also comply with the Board's policy DJH – Purchasing and Contracting: Procurement Staff Code of Conduct.

**Appearance of Conflict of Interest**

A Board member should do nothing to give the impression that his/her position or vote on an issue is influenced by anything other than a fair consideration of all sides of a question.

Board members shall attempt to avoid the appearance of conflict of interest by disclosure and/or by abstention.

**Appointment to Office and Other Employment**

A Board member may not, during the time the member serves on the Board and for one year after the member ceases to serve on the Board, be appointed to any civil office of profit or employment position which has been created or the compensation of which has been increased by action of the Board during the time the member served on the Board.

**Employment**

A member of the Board or spouse of a member may not be an employee in a public school within the jurisdiction of the Board to which the member is elected or in a contract high school or academy located within a supervisory union in which the member is a representative on the union committee.

**Board Members as Volunteers**

A member of the Board, or spouse of a member, may not serve as a volunteer when that volunteer has primary responsibility for a curricular, co-curricular or extracurricular program or activity and reports directly to the Superintendent, principal, athletic director or other school administrator in a public school within the jurisdiction of the Board to which the member is elected, or in a contract high school or academy located within a supervisory union in which the member is a representative on the school committee.

Volunteer activities of a member of the Board or member's spouse other than in roles that are prohibited by this section may be prescribed by policies developed and approved by the Board.

## **Definitions**

For the purposes of this policy, the following statutory definitions apply:

- A. "Employee" means a person who receives monetary payment or benefits, no matter the amount paid or hours worked, for personal services performed for a school administrative unit.
- B. "Volunteer" means a person who performs personal services for a school administrative unit without monetary payments or benefits of any kind or amount.

Legal Reference: 20-A M.R.S.A. § 1002-1004  
20-A M.R.S.A. § 1315 (SADS's)  
30-A M.R.S.A. § 2604-2606

Cross Reference: BCA – Board Member Code of Ethics  
DJH – Purchasing and Contracting: Procurement Staff Code of Conduct

Adopted: \_\_\_\_\_

\*MSMA SAMPLE POLICY\*

NEPN/NSBA Code: DJ

## **BIDDING/PURCHASING REQUIREMENTS**

The [**School Unit Name**] Board (hereafter, the “school unit”) expects all purchases made by the school unit to be consistent with applicable laws and sound business practices. The Superintendent shall be responsible for developing and implementing administrative procedures for bidding and purchasing consistent with this policy.

This policy is intended solely as an internal guide to purchasing by the school unit. It does not afford any vendor any property or contractual rights against the school unit. No vendor shall have any enforceable rights against the school unit based upon this policy or alleged violations of this policy. No vendor shall have any rights against the school unit until such time as a written contract between the vendor and the school unit is executed by the vendor and an authorized representative of the school unit.

### **I. Bidding/Purchasing Required by Law**

#### **A. Maine Law**

Maine law requires the Board to competitively bid property and casualty insurance; school bus and transportation contracts in excess of \$4,000; certain school building construction, alterations and repairs over \$250,000 (except contracts for professional architectural and engineering services); bond anticipation notes for state-subsidized school construction projects; and lease purchase financings of buildings whose lease purchase costs qualify for state subsidy.

#### **B. Procurement Methods for Federally Funded Contracts**

The Superintendent or his/her designee shall be responsible for developing, updating as necessary, and implementing written administrative procedures (hereafter, the “Federal Procurement Manual”) to govern the procurement and purchase of property, goods, and services using any federal award that is subject to the Uniform Grant Guidance, codified at 2 CFR Part 200 (“UGG Federal Award”). The Federal Procurement Manual shall be consistent with all applicable federal laws and rules.



A “federal award” is any federal financial assistance (including cost-reimbursement contracts) that a school unit receives either directly from a federal agency or indirectly from a pass-through entity such as the State education department (2 CFR § 200.38). Most, but not all, federal awards received by a school unit are subject to the Uniform Grant Guidance. To confirm whether a federal award is subject to the Uniform Grant Guidance, it will be necessary to review the terms and conditions of the applicable grant agreement or cooperative agreement and the applicability provisions of the Uniform Grant Guidance, codified at 2 CFR § 200.101.

Notwithstanding any policy provision to the contrary, the procurement and purchase of property, goods, and services using a UGG Federal Award, in whole or in part, must comply with the Federal Procurement Manual. Wherever this policy or any of the school unit’s administrative procedures are inconsistent with federal laws or rules, the provisions of the federal laws or rules shall control.

## **II. Bidding/Purchasing Not Required by Law**

Where bidding/purchasing is not required by law, it shall be the policy of the school unit to competitively bid purchases of equipment, supplies, materials or services over \$\_\_\_\_\_ provided that it is practical and cost-effective to specify the materials or services with sufficient particularity to allow meaningful comparison of bids.

If competitive bidding is not utilized, the Superintendent may seek Requests for Proposals (RFP) for purchases equal to or over \$ \_\_\_\_\_. An RFP identifies the need the school unit intends to meet, but permits the vendor to propose the manner in which the work is to be performed and the materials to be used.

The Superintendent may forego the competitive bid or RFP process for purchases less than \$\_\_\_\_\_, or when he/she determines that quality, expertise, time factors, or other important considerations outweigh the possible benefits of bidding or requesting proposals. In each such case, the Board shall be informed of the Superintendent’s decision and the reasons for it in advance of entering into a contract.

## **III. Procedures for Bidding and Requesting Proposals**

The method of notification that the school unit uses to solicit bids and proposals shall be reasonably designed to attract qualified vendors. Depending upon the circumstances, such notification may include public advertising, mailing of notices to potential vendors, and/or telephone calls to potential vendors (in the case of RFPs).

## **Competitive Bid Procedures**

Unless other bid procedures are required by law, the school unit shall use the following procedures when soliciting competitive bids:

- A. **Solicitation.** The solicitation shall specify the deadline for submitting bids and the time and place of bid opening. Bid alternates shall be permitted at the discretion of the Superintendent. The solicitation shall reserve the right of the school unit to reject any or all bids, and to waive technical or immaterial non-conformities in bids if in the best interest of the school unit, and to exercise judgment in evaluating bids.
- B. **Written bids.** Bids shall be in writing, sealed with outside envelope or wrapper plainly marked “Bid, not to be opened until (insert appropriate date),” and mailed or filed with the Superintendent of the unit.
- C. **Time of opening.** A School Board member or employee of the school unit may not open a bid until the appointed time.
- D. **Public opening.** At the time and place stated in the public notice, and open to the public, all bids shall be opened by the Superintendent or, in the Superintendent’s absence or disability, by any School Board member designated for the purpose by the Chair of the School Board.
- E. **Reading.** If any members of the public who are not School Board members or employees of the school unit or if any representatives of the press are present, bids shall, at that time, either be made available for examination by them or shall be read aloud in a manner to be heard plainly by those in attendance.
- F. **Awards.** In general, the School Board will award contracts to the lowest bidder which the Superintendent and School Board deem can satisfactorily fulfill the contract.

## **RFP Procedures**

Unless other RFP procedures are required by law, the school unit shall use the following procedures when soliciting requests for proposals:

- A. **Solicitation.** The solicitation shall specify the deadline for submitting responses to the RFP and the time and place of proposal opening. The solicitation shall reserve the right of the school unit to reject any or all proposals, and to waive technical or immaterial non-conformities in proposals if in the best interest of the school unit, and to exercise judgment in evaluating proposals.
- B. **Written Proposals.** Proposals should be submitted in plain envelopes clearly marked “Proposal, not to be opened until (state time and date).” The RFP shall state the time and date that proposals shall be opened, and no proposals shall be opened before that time. Public opening is not required.
- C. **Evaluation and Awards.** Proposals are to be evaluated based on criteria appropriate for the project in question, and the contract will be awarded to the vendor whom the Superintendent and/or School Board deem best able to meet the requirements of the school unit.

Legal Reference: 5 MRSA § 1743-A (ALL)  
 20-A MRSA §§ 1001(14), 5401(13)(D); 5402 (ALL)  
 20-A MRSA § 1314 (MSAD)  
 20-A MRSA § 1492 (RSU)  
 Me. DOE Rule Ch. 61 (Rules for Major Capital School Improvement Projects)  
 Me. DOE Rule Ch. 64 (Rules for Maine School Facilities Program and School Revolving Renovation Fund Program)

34 CFR parts 74 and 80 (Education Department General Administrative Regulations (“EDGAR”) (for federal awards made prior to 12/26/2014)

2 CFR part 200 (Uniform Administrative Requirements) (for federal awards made on or after 12/26/2014)

Cross Reference: DJ-R – Federal Procurement Manual  
 DJH – Purchasing and Contracting: Procurement Staff Code of Conduct

Adopted: \_\_\_\_\_

\*MSMA SAMPLE POLICY\*

NEPN/NSBA Code: DJH

## **PURCHASING AND CONTRACTING: PROCUREMENT STAFF CODE OF CONDUCT**

**[NOTE: This sample policy is intended to assist school units in complying with the requirements of the Uniform Grant Guidance (UGG), a set of rules that requires local school administrative units who receive federal awards to have in place specific written procurement and conflict of interest policies and procedures which would apply to any solicitation or contract for goods or services that uses federal funds.**

**Some of the provisions are specifically required by the UGG. Others are not required, but are recommended. The status of each provision is indicated in brackets to facilitate Board discussion. This information should be deleted before the policy is adopted. Other bolded internal “notes” should be deleted as well.]**

### **Conflict of Interest**

**[The following provision is recommended but not required.]**

All employees of **[School Unit Name]** shall perform their duties in a manner free from conflict of interest to ensure that the school unit’s business transactions are made in compliance with applicable laws and regulations and in a manner that maintains public confidence in the schools.

**[The following provision is required.]**

No employee, officer or agent of **[School Unit Name]** shall participate in the selection, award or administration of a contract supported by a federal award if he/she has a real or apparent conflict of interest.

**[The following provision is required.]**

A conflict of interest would arise when the employee or any member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of these parties has a financial or other interest in the firm selected for the award. For the purpose of this policy, “immediate family” is defined as spouse, brother, sister, parent, son or daughter.

**[The following provision is recommended but not required.]**

For the purpose of this policy, “immediate family” is defined as spouse, brother, sister, parent, son or daughter.

**Conflict of Interest Disclosure****[The following provision is recommended but not required.]**

All employees with real or apparent conflicts of interest as defined above must disclose the conflict of interest to the Superintendent who will investigate the circumstances of the proposed transaction. The Superintendent will exercise due diligence in investigating the circumstances of the transaction and, if necessary, will make reasonable efforts to find alternatives to the proposed transaction or arrangement that would not give rise to a conflict of interest. If the Superintendent determines that the proposed transaction is in the best interest of **[School Unit Name]** and is fair and reasonable, he/she may proceed with the transaction. In the event that the Superintendent may have a conflict of interest, an ad hoc subcommittee of the Board will investigate and make a determination regarding the transaction.

**Staff Gifts and Solicitations****[The following provision is required.]**

Employees, officers and agents of [School Unit Name] may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

**[The following provision is recommended but not required.]**

Employees, officers and agents of the school unit may accept unsolicited items of nominal value such as those that are generally distributed by a company or organization through its public relations program.

**Violations**

**[The policy must provide for disciplinary actions to be applied for violations of the policy by officers, employees or agents of the school unit. The following language is recommended.]**

Employees of [School Unit Name] who violate this code of conduct may be subject to discipline, up to and including termination of employment and, if appropriate, referral to law enforcement.

### **Conflict Resolution/Protests and Claims**

**[The previous version of this sample policy included a section titled “Dispute Resolution.”**

**The Uniform Grant Guidance refers to “protests and claims.”**

**Boards should refer to the article in the August 2017 issue of Policy Development News, titled *Purchasing and Contracting Using Federal Funds: Complying with the Uniform Grant Guidance*, to review their options for a process to address protests and claims that may arise in the procurement of property, goods or services through the use of federal awards/grants. ]**

Legal Reference: 34 CFR Parts 74 and 80 (Education Department General Administrative Regulations (“EDGAR”) (for federal awards made prior to 12/26/2014)  
2 CFR §200.318 (Uniform Administrative Requirements – General Procurement Standards) (for federal awards made on or after 12/26/2014)

Cross Reference: DJ - Bidding/Purchasing Requirements  
DJ-R – Federal Procurement Manual

Adopted: \_\_\_\_\_

**PLEASE NOTE** MSMA sample policies and other resource materials do not necessarily reflect official Association policy. They are not intended for verbatim replication. Sample policies should be used as a starting point for a board’s policy development on specific topics. Rarely does one board’s policy serve exactly to address the concerns and needs of all other school units. MSMA recommends a careful analysis of the need and purpose of any policy and a thorough consideration of the application and suitability to the individual school system. MSMA sample policies and other resource materials may not be considered as legal advice and are not intended as a substitute for the advice of a board’s own legal counsel.

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