Procuring Goods and Services
When Using Federal Funds

Uniform Grant Guidance
2CFR Part 200

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Revised February 2016
Procuring Goods and Services When Using Federal Funds
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Mr. James Shoop

A. **EDGAR 80.36—Procuring Goods and Services Using Federal Funds—LFN 2010-3**
   Many public and charter school districts were introduced to the proper procedures of procuring goods and services when using federal funds through Local Finance Notice 2010-3, pages 9-11, Letter K, issued on January 15, 2010, by the NJ Division of Local Government Services.

   **The More Restrictive Clause—Still the Guiding Force**
   The main focus of the notice was that federal standards outlined in EDGAR 80.36 had to be used. The following guidance was clearly stated in the notice:

   "Federal regulations require districts to follow the NJ Public School Contracts Law except where the federal standards detailed in EDGAR 80.36 are in conflict or more restrictive."

   It was further recommended that all districts use open and competitive procedures where at all possible when awarding contracts for all goods and services when using federal funds. The “more restrictive” clause is still the guiding principle when procuring goods and services using federal funds. *Navigating The Uniform Grant Guidance; A Guide for NJ School Districts (NJDOE) October 27, 2015—page 2*

B. **Changes in Federal Guidelines (NJASBO Presentation—November 2014)**
   At the November 2014 NJASBO Professional Development session presented by Mr. Anthony Hearn, CPA of the NJDOE, school business officials were advised of upcoming federal changes.

   1. **Phasing Out of EDGAR 80.36—July 1, 2015**
      The federal procurement rules under EDGAR 80.36 as we know it would be phased out effective July 1, 2015. On that date, all school districts procuring goods and services when using federal funds are obliged to adhere to 2 CFR Part 200—Uniform Administrative Requirements.

   2. **Uniform Administrative Requirements—2 CFR Part 200—Effective July 1, 2015**
      Effective July 1, 2015, school districts, when procuring goods and services using federal funds, are to comply with the Uniform Administrative Requirements—2 CFR Part 200. An introduction to the Uniform Administrative Requirements will follow.

C. **Monitoring Reporting of Federal Grant Programs—NJDOE—Past 4 to 5 Years**
   The NJDOE over the past 4-5 years issued monitoring reports of federal grant programs which noted deficiencies by school districts as it pertained to compliance with federal rules and regulations. The following reports were very informative and are on the NJDOE website:

   1. ARRA Funding
   2. ED JOBS
   3. Consolidated Monitoring Reporting
D. Monitoring Reporting Findings—Procurement
The monitoring reports issued by NJDOE highlighted many findings in the application of federal grants. The focus of the findings in this presentation will pertain to the procurement process.

1. Finding—Exemptions (Exceptions) to Bidding—Professional Services
A number of school districts received findings because they procured professional services contracts without competition. The school districts cited the exception to bidding for professional services as noted in N.J.S.A. 18A:18A-5 (a). It is prudent to note the response to this finding by the NJDOE.

NJDOE response—Exemptions (Exceptions) to Bidding—Professional Services
“The federal standards do not include all of the exemptions allowed under the Public School Contracts law.” The DOE further recommended to bid or use a competitive procurement process for professional services contracts.

Recommendation—James Shoop—Professional Services
If the NJDOE and the federal government continue to use the “more restrictive” clause in procuring goods and services when using federal funds, then it is apparent that professional services contracts will have to be procured in accordance with the Uniform Administrative Requirement-- 2 CFR 200.320 (d)—Procurement by Competitive Proposals. The request for proposal (RFP) procurement process and the competitive contracting process would satisfy the requirement of 2 CFR 200.320 (d) depending on the aggregate amount of the service required.

2. Finding—Using NJ State Contract Vendors
A very large number of school districts received findings in the reports for using NJ State Contract vendors for the procurement of goods and services when using federal funds. It is prudent to note the response of the NJDOE.

NJDOE Response—Use of State Contract Vendors
“The federal procurement regulations under this section do not include all of the exemptions allowed under the Public School Contracts Law. The NJDOE has requested clarification from the federal government regarding vendors on the state contract list and we are still waiting for a definitive response.”

Recommendation—James Shoop—Use of State Contract Vendors
The use of state contract vendors for the procurement of goods and services when using federal funds should be limited as follows: (Effective July 1, 2015)

a. Micro Purchases—less than $3,500
State contract vendors may be used as the only price (cost) source for micro purchases which are less than $3,500.00. (Effective October 1, 2015)

b. Purchases More than $3,500.00
State contract vendors may not be used as the only price (cost) source for purchases that exceed $3,500.00. State contract pricing may be used as part of the quotation process. State contract vendors may also participate in the bid, competitive contracting and RFP process when so advertised.
3. Findings—Others Worth Noting
The NJDOE also issued a number of other findings in their monitoring reports. Worth noting are the following:

a. **Disbarred Vendors Policy/Procedure**
A number of school districts failed to provide evidence of any policy or procedures as it pertains to disbarred vendors.

**Recommendation—James Shoop—Disbarred Vendors**
It is recommended that all school districts prepare and enforce a policy or procedure on disbarred vendors as noted in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is further supported by 2 CFR 200.212.

The policy and/or procedures should be made present in all procurement documents issued by the school district and placed as well in the school district purchasing manual.

b. **Purchasing Manual; Lack of**
It was noted in some reports that school districts could not produce a district purchasing manual that outlines the purchasing procedures to be followed.

**Recommendation—James Shoop—Purchasing Manual**
It is recommended that all school districts prepare and adopt annually a district wide purchasing manual that outlines the purchasing procedures for the school district.

c. **Purchasing Manual—Outdated**
The NJDOE was careful to note in their reports school districts that had outdated purchasing manuals.

**Recommendation—James Shoop—Outdated Purchasing Manual**
See Letter (b) recommendation.

d. **Unauthorized Purchases**
Many school districts were cited for receiving goods or services prior to issuing a purchase order. The federal government calls this an “unauthorized commitment.”

**Recommendation—James Shoop—Unauthorized Purchases**
The school business administrator (SBA) shall provide to all district administrative personnel, annual training on proper purchasing procedures. The SBA further shall develop strategies to limit unauthorized purchases in the district. (N.J.A.C. 5:34-1.1 (b))
E. Highlights—Procuring Goods and Services Using Federal Funds—2 CFR Part 200
(See 2 CFR Part 200 Regulations—Handout #1)

1. Procurement Thresholds—Using Federal Funds
Using the “more restrictive” clause and the QPA bid threshold, the following thresholds are recommended (Effective July 1, 2015)

<table>
<thead>
<tr>
<th>More Restrictive Threshold</th>
<th>Procurement Activity</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $3500</td>
<td>Micro-purchase; sound business practices</td>
<td>200.320 (a); 200.67</td>
</tr>
<tr>
<td>$3500-$39,999</td>
<td>Use of Quotations; Use of RFP’s</td>
<td>18A:18A-37 (a)</td>
</tr>
<tr>
<td>$40,000 or more</td>
<td>Use of Bids; Use of Competitive Contracting Formal advertising</td>
<td>18A:18A-4 (a) 18A:18A-4.1 et seq.</td>
</tr>
</tbody>
</table>

A more expansive Procurement Threshold Chart is attached. (See Handout #2)

$150,000 Threshold—James Shoop—Does Not Apply!
The federal government pursuant to 2 CFR 200.88 recognizes the Simplified Acquisition Threshold amount as $150,000. Procuring goods and services less than the $150,000 threshold may be made using the “small purchase procedures” where formal bidding is not required by the federal government.

The State of New Jersey recognizes the threshold of $40,000 (QPA) as the amount where formal bidding (Competitive Contracting) is required.

It is my belief when using the “more restrictive” clause that the Simple Acquisition Threshold of $150,000 which permits the Small Purchases process (200.320 (b) and 200.88) does not apply to NJ school districts. School districts have to be guided by the board adopted bid threshold. (More restrictive).

2. Other Items of Concern

a. Noncompetitive Proposals—Sole Source
The federal guideline (200.320 (f)) permits single source purchasing through noncompetitive proposals. NJ Public School Contracts Law does not recognize sole (single) source* vendors and therefore using the “more restrictive” clause, districts must use bidding or the competitive contracting process even if only one vendor can provide the goods and services.

*Local Finance Notice LFN 2010-3 page 9.

b. Vendors or Products Named in Grant Application
From time to time, grant writers have named certain vendors or brand names in their grant application e.g. Smart Boards. It has to be emphasized that even though the grant may be approved with vendor names or brand names, the procurement official still must go through a competitive process for the goods and services.
c. **Federal Contracts Requirements Addenda — Procurement and Contract Documents**

The federal government, pursuant to 2CFR Part 200.326 and to 2 CFR Appendix II to Part 200, requires all contracts made by the non-Federal entity (school district) contain certain provisions.

**Recommendation—James Shoop—2 CFR Appendix II to Part 200**

It is my recommendation that all contract and procurement documents contain language as noted in the Appendix II to Part 200 to include at the minimum the following:

1. Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms and provide for sanctions and penalties as appropriate;
2. Termination for causes and for convenience;
3. Equal Employment Opportunity language;
4. Davis-Bacon Act language;
5. Copeland Anti-Kickback Act language;
6. Contract Work Hours and Safety Standards Act language;
7. Rights to Inventions Made Under Contract or Agreement language;
8. Clean Air Act language;
9. Debarment and Suspension language with reference to SAM; and

**Handout**—I have provided as a courtesy a sample *Federal Contract Requirements* section that may be used in all contract and procurement documents. It is my belief that this document will satisfy the requirements of 2 CFR Appendix II to Part 200.

d. **Stevens Amendment**

It is recommended that the following language be included in all bid; contract and procurement documents:

**Stevens Amendment**

Section 8136 of the Department of Defense Appropriations Act (P.L. 104-134, Sec. 507) states:

When issuing statements, press releases, requests for proposals, bid solicitations and other documents or announcements describing this project the recipient shall state clearly:

1. The percentage of the total cost of the project that will be financed with federal money;
2. The dollar amount of federal funds for the project; and
3. The percentage and dollar amount of the total cost of the project that will be financed by non-government sources.

James Shoop—February 20
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1. EDGAR 80.36—Phased Out—Effective July 1, 2015

Highlights of Federal Procurement Standards

A. Procurement procedures must be in writing and documented.-- 200.318 (i), 200.319 (c)

Recommendation—it is recommended that all school districts have all federal procurement procedures written in the following documents:
   1. Board Policy
   2. SOP Manual

B. Ethics and Standards of Conduct for Conflict of Interests-- 200.318 (c)

Recommendation—it is recommended that the district’s ethics in purchasing and vendor relations policy be included in the following documents:
   1. Board Policy
   2. SOP Manual
   4. All Procurement Documents
C. **Methods of Procurement—Federal Funds—More Restrictive**

School districts are to follow the Public School Contracts Law except where the federal standards are in conflict or more restrictive.

**Recommendation**—it is recommended that SBA’s seek the opinion of legal counsel as potential conflicts and determination of the more restrictive avenue of approach.

Examples of conflicts/more restrictive

1. Micro-purchase Threshold—$3,500.00*
2. Small Purchases Threshold—$150,000.00
3. Use of NJ State Contract Vendors; Use of Cooperatives
4. Exceptions to Advertising—Awarding Professional Services contract without competition
5. Sole or Single Source Vendors

D. **Methods of Procurement—Outlined in Federal Standards**

All procurement transactions must be conducted in a manner providing full and open competition. (200.319)

1. **Procurement by Micro-purchases—$3,500.00***

   **Recommendation**—it is recommended for all purchases in the aggregate that do not exceed $3,500, that sound business practices are used. 200.320 (a) and 200.67

2. **Procurement by Small Purchase Procedures—$150,000.00**

   **Recommendation**—it is recommended that SBA’s do not use the federal threshold of $150,000. SBA’s are to use the competitive bid or the competitive contracting process for all contracts that exceed the district’s bid threshold. 200.320 (b) and 200.88

*Effective October 1, 2015
3. **Procurement by Sealed Bids**

   **Recommendation**—it is recommended that SBA’s use the competitive bid process when awarding the contract to the vendor who submits a firm fixed contract price—lump sum or unit cost. 200.320 (c)

4. **Procurement by Competitive Proposals (RFP/CC)**

   **Recommendation**—it is recommended that SBA’s use an RFP or competitive contracting process when procuring services that are be awarded by an evaluative process, rather than a firm fixed contract price. 200.320 (d)

5. **Procurement by Non-competitive Proposals (Sole Source)**

   **Recommendation**—although the federal government recognizes contracts may be awarded to sole source vendors through non-competitive proposals, it is recommended that SBA’s use the competitive proprietary bid process or the competitive contracting process for sole or single source contracts. 200.320 (f)
E. Debarment and Suspension (200.212) (Appendix II to Part 200)

**Recommendation**—it is recommended that all districts have and execute policies and procedures on debarment and suspensions of vendors. Language on debarment and suspension should be included in the following documents:
1. Board Policy
2. SOP Manual
4. All Procurement Documents

F. Federal Contract Addenda

**Recommendation**—it is recommended to be in compliance with Appendix II to Part 200, that all contracts documents as well as all procurement documents, include a Federal Contract Addenda documentation that explains all required provisions.

G. Navigating the Uniform Grant Guidance—A Guide for New Jersey School Districts

**Recommendation**—it is recommended that all SBA’s download from the NJDOE website the publication—*Navigating the Uniform Grant Guidance—A Guide for New Jersey School Districts.*

H. Thresholds—Methods of Procurement

**Recommendation**—it is recommended that SBA’s consider using as guidance the following thresholds and methods of procurement when purchasing goods and services when using federal funds:
Methods of Procurement – Using Federal Funds--Guidance

Revised October 1, 2015

<table>
<thead>
<tr>
<th>Description of Goods/Services</th>
<th>Amount</th>
<th>Procurement Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods and Services</td>
<td>Less than $3,500</td>
<td>Sound Business Practice</td>
</tr>
<tr>
<td>Goods and Services</td>
<td>$3,500-$39,999</td>
<td>Quotation or Bid</td>
</tr>
<tr>
<td>Goods and Services</td>
<td>$40,000 or more</td>
<td>Bid</td>
</tr>
<tr>
<td>Professional Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$3,500-$39,999</td>
<td>Request for Proposals (RFP)*</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$40,000 or more</td>
<td>Competitive Contracting</td>
</tr>
<tr>
<td>Educational Consultant Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Educational Consultant Services</td>
<td>$3,500 - $39,999</td>
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<tr>
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<td>$40,000 or more</td>
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</tr>
<tr>
<td>Instructional Improvement Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
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<td>Request for Proposals (RFP)*</td>
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</tr>
<tr>
<td>Sole Source (Proprietary)</td>
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<td>Simple Proposal</td>
</tr>
<tr>
<td>Sole Source (Proprietary)</td>
<td>$3,500 - $39,999</td>
<td>Proprietary Quotation</td>
</tr>
<tr>
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<td>$40,000 or more</td>
<td>Proprietary Bid</td>
</tr>
<tr>
<td>Services Provided by Government Units/School Districts/State Colleges</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
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<td>$40,000 or more</td>
<td>Competitive Contracting</td>
</tr>
</tbody>
</table>

*RFP’s must be publicized when federal funds are being used.

This chart reflects the new QPA bid threshold of $40,000 effective July 1, 2015

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HANDOUT #1

www.ecfr.gov

Federal Procurement Regulations

2 CFR Part 200—Procurement Standards
HANDOUT #1

THIS DOCUMENT IS PROVIDED FOR INFORMATION PURPOSES ONLY. IT IS THE OBLIGATION OF THE PROCUREMENT OFFICIAL TO VIEW THE LATEST FEDERAL REGULATIONS PERTAINING TO PROCUREMENT—SEE www.ecfr.gov

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) 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. 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.

(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. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity’s procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;
(2) Requiring unnecessary experience and excessive bonding;
(3) Noncompetitive pricing practices between firms or between affiliated companies;
(4) Noncompetitive contracts to consultants that are on retainer contracts;
(5) Organizational conflicts of interest;
(6) 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; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.


§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c) (1) of this section apply.
(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;
(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publicly advertised;
(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
(v) Any or all bids may be rejected if there is a sound documented reason.

(d) **Procurement by competitive proposals.** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) **Procurement by noncompetitive proposals.** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
(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; or

(4) After solicitation of a number of sources, competition is determined inadequate.


§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.


A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, 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. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

§200.67 Micro-purchase.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is $3,500 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.
§200.88  Simplified acquisition threshold.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is $150,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)

§200.212  Suspension and debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.


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.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.


(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3,
“Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) 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).

(H) 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 contains 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.


Handout #2

Methods of Procurement Using Federal Funds
Threshold Chart
# Methods of Procurement – Using Federal Funds

<table>
<thead>
<tr>
<th>Description of Goods/Services</th>
<th>Amount</th>
<th>Procurement Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods and Services</td>
<td>Less than $3,500</td>
<td>Sound Business Practice</td>
</tr>
<tr>
<td>Goods and Services</td>
<td>$3,500-$39,999</td>
<td>Quotation or Bid</td>
</tr>
<tr>
<td>Goods and Services</td>
<td>$40,000 or more</td>
<td>Bid</td>
</tr>
<tr>
<td>Professional Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$3,500-$39,999</td>
<td>Request for Proposals (RFP)*</td>
</tr>
<tr>
<td>Professional Services</td>
<td>$40,000 or more</td>
<td>Competitive Contracting</td>
</tr>
<tr>
<td>Educational Consultant Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Educational Consultant Services</td>
<td>$3,500 - $39,999</td>
<td>Request for Proposals (RFP)*</td>
</tr>
<tr>
<td>Educational Consultant Services</td>
<td>$40,000 or more</td>
<td>Competitive Contracting</td>
</tr>
<tr>
<td>Instructional Improvement Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Instructional Improvement Services</td>
<td>$3,500 - $39,999</td>
<td>Request for Proposals (RFP)*</td>
</tr>
<tr>
<td>Instructional Improvement Services</td>
<td>$40,000 or more</td>
<td>Competitive Contracting</td>
</tr>
<tr>
<td>Professional Development Services</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Professional Development Services</td>
<td>$3,500 - $39,999</td>
<td>Request for Proposals (RFP)*</td>
</tr>
<tr>
<td>Professional Development Services</td>
<td>$40,000 or more</td>
<td>Competitive Contracting</td>
</tr>
<tr>
<td>Sole Source (Proprietary)</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Sole Source (Proprietary)</td>
<td>$3,500 - $39,999</td>
<td>Proprietary Quotation</td>
</tr>
<tr>
<td>Sole Source (Proprietary)</td>
<td>$40,000 or more</td>
<td>Proprietary Bid</td>
</tr>
<tr>
<td>Services Provided by Government Units/School Districts/State Colleges</td>
<td>Less than $3,500</td>
<td>Simple Proposal</td>
</tr>
<tr>
<td>Services Provided by Government Units/School Districts/State Colleges</td>
<td>$3,500 - $39,999</td>
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</tr>
</tbody>
</table>

*RFP’s must be publicized when federal funds are being used.*

This chart reflects the new QPA bid threshold of $40,000.
FEDERAL CONTRACT REQUIREMENTS
2 CFR PART 200 et seq.

ADDENDA

Public Works, Goods and Services; Food Services Contracts

REVIEW AND SIGN:

Attachment A  (Page 10)
Attachment B  (Page 11)
Attachment C  (Page 12)

SUBMIT FORMS WITH BID PACKAGE

_____________________
School Business Administrator

Board Secretary

Effective Date July 1, 2015
Federal Contract Requirements Addendum

The Board of Education and the Contractor acknowledge that this Contract is funded in part or entirely by the Federal Government and the parties agree to comply with all sections of the Federal Uniform Administrative Requirements, 2 CFR Part 200 et seq., including, but not limited to, the following:

Please Note: Food Services Contracts

The Board of Education also procures goods and services paid from federal funds received by the school district as it pertains to the Food Services Department.

Contractors shall comply with the Board’s Specifications and General Requirements for Food Services contracts and the following Federal Regulations:

- National School Lunch Program 7 CFR 210.21
- School Breakfast Program 7 CFR 220.16
- Special Milk Program 7 CFR 215.14(a)
- Summer Food Service Program 7 CFR 225.17
- Buy American 7 CFR 210.21(d)

Specific Contract Requirements

1. The Contractor shall comply with all aspects of the Board’s Specifications and General Requirements for Public Works Contracts or Bid Specifications and General Requirements for Goods and Services Contracts as pertain to this Contract. In the event of a conflict between the said Specifications and General Requirements, the Public School Contracts Law at N.J.S.A. 18A:18A-1 et seq. and Federal Procurement Regulations, the stricter requirements shall govern.

2. The Department of Education has the authority to require changes to this Contract and include remedies, changed conditions, access in records retention, suspension of work and other clauses approved by the Office of Federal Procurement Policy.

3. ALL CONTRACTS, AWARDED BY A RECIPIENT, INCLUDING SMALL PURCHASES, SHALL CONTAIN THE FOLLOWING PROVISIONS AS APPLICABLE:


Notice of Requirement for Affirmative Action to Ensure Equal Opportunity (Executive Order 11246)

1. The Offeror’s or Bidder’s attention is called to the “Equal Opportunity Clause” and the “Standard of Federal Equal Employment Specifications” set forth herein.

2. The goals and timetables for minority and female participation expressed in percentage terms for the Contractor’s aggregate work force in each trade on all construction work in the covered area, are as follows:

   (See Attachment A to this Addendum for goals and timetables for minorities and women.)

Contractor’s compliance with Executive Order 11246 shall be based upon its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the Standard Federal Equal Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female
employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor’s goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer Identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).


(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to §60-46 of this part and in construction subcontracts in excess of $10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive order.

Standard Federal Equal Employment opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;


   d. "Minority" includes
(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification)

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the US Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor’s obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and
the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of
these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling anyone or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall
not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).


These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted/ performed in the covered area). If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

**Small Minority and Women's Businesses.**

If the Contractor intends to let any subcontracts for a portion of the work, Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall consist of: (1) including qualified small, minority, and women's businesses on solicitation lists; (2) assuring that small, minority, and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce; and (7) Contractor is encouraged to procure goods and services from labor surplus area firms.

**B. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)** -- All contracts and sub-grants in excess of $2,000 for construction or repairs awarded by recipients and sub-recipients must include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3 -- Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that each contractor or sub-recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

**C. Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a-7)** -- When required by Federal program legislation, all construction contracts awarded by the recipients and sub-recipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5 -- Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

**D. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** -- Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week...
is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

E. **Rights to Inventions Made Under a Contract or Agreement** -- Contracts or agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401 -- Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations promulgated by the awarding agency.

F. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** -- Contracts and sub-grants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to ED and the Regional Office of the Environmental Protection Agency (EPA).

G. **Byrd Anti-Lobbying Amendment (31 U.S. C. 1352)** -- Contractors who apply or bid for an award of $100,000 or more shall file the attached certification. ([See Attachment B to this Addendum](#)). 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 shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient.

H. **Debarment and Suspension (E.O. 12549 and E.O. 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** contains 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. ([Ref. 2 CFR 200.212](#)) ([See Attachment C to this Addendum](#))

I. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees. (Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110)

J. The Contractor and the Board shall comply with environmental standards and policies related to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (PUB.L.94-163, 89 STAT.871).
4. CODES OF CONDUCT CONFLICTS OF INTERESTS/GRATUITIES

A. The Board, Contractor and its Subcontractors will follow, maintain and comply with a written code of standards of conduct that govern the performance of their employees engaged in the award and administration of contracts including, but not limited to, compliance with the School Ethics Act at N.J.S.A.18A:12-21 et seq. In addition no employee, officer or agent of the grantee or sub-grantee shall participate in the selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when (i.) the employee, officer or agent, (ii.) any member of his immediate family, (iii.) his or her partner, or (iv), an organization which employs, or is about to employ any of the above has a financial or other interest in the firm selected for award.

B. The Board of Education, its officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements. Grantee and sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value, if not in violation of the School Ethics Act. To the extent permitted by State or Local Law, applicable Rules or Regulations, and as prescribed by the School Ethics Act, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee’s and sub-grantee’s, officers, employees, or agents, or by contractors or their agents. Additional prohibitions relative to real, apparent, or potential conflicts of interest shall be governed by the School Ethics Act at N.J.S.A. 18A:12-21. (Ref. 2 CFR 200.318 (c) (1))
ATTACHMENT A

Goals and Timetables for Minorities and Women

Construction Projects ONLY

Please complete and sign:

☐ Applicable – Please provide goals and timetables; complete below
☐ Not Applicable – Check off and complete below

Name of Company: _____________________________________________________

Address: ______________________________________________________________

City, State, Zip: _______________________________________________________

Signature: ____________________________________________________________

Complete, Sign & Return

Complete, Sign & Return
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

2. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) 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.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, US. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR 200.212, for all lower tier transactions meeting the threshold and tier requirements stated at Section 200.212.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
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SUPPLEMENT TO STANDARD SPECIFICATIONS FOR PUBLIC WORKS

The Construction Contract with the Board shall contain the following provisions:

b. The Contractor shall post a maintenance bond with a term of two (2) years to protect the Board against faulty materials or defective work that shall appear within a period of two (2) years from the date of final payment or acceptance of the work by the Board, whichever is later.

c. If the Contractor shall fail to perform any aspect of the work in accordance with the requirements of the Contract, the Board may, upon five (5) days written notice to the Contractor and without prejudice to its other rights and remedies under the Contract, the Public School Contracts Law, and applicable rules and regulations, correct the defective work and deduct the cost thereof from payment due or to become due the Contractor.

d. The Board may withhold all or part of a payment to the Contractor for defective work not remedied.

e. The Board has the right to terminate the Contract if the Contractor repeatedly refuses to perform the terms and conditions of the Contract or if the Contractor violates or disregards federal, state and local laws or, the directives of the Board or its Contract Administrator. The Board, upon the written recommendation of its Contract Administrator that sufficient cause exists to justify such termination, shall provide the Contractor with seven (7) days written notice of termination of the Contract containing the reasons for the termination, the effective date and may finish the work with another Contractor or take other remedies that may be legally available and the Contractor shall not be entitled to any further payment.

f. If the expense of completing the work exceeds the unpaid balance of the Contract, the Contractor shall pay the difference to the Board.

g. The Board may upon seven (7) days written notice to the Contractor and at any time after the execution of this Contract, terminate or reduce the services of the Contractor to be undertaken hereunder for any reason, including but not limited to, the Board’s convenience, abandonment of the project, or the unavailability of funds to complete the work. In the event of such termination, the Contractor shall be compensated for its approved services performed hereunder up to the date of termination, and for all reasonable costs of termination as agreed to by the parties, except for lost profits, and damages of any kind, including claims of interference with lost business advantage.

h. All claims or disputes under the Contract between the Parties shall be submitted to the alternative dispute resolution process in Exhibit B of the Construction Contract at the selection of either party to the dispute as attached hereto and made a part hereof.
Navigating the Uniform Grant Guidance

A Guide for New Jersey School Districts

Source--New Jersey Department of Education
http://www.state.nj.us/education/grants/ugg/