



FEDERAL FUNDS PROCEDURE MANUAL

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INTRODUCTION

The Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called "Uniform Guidance") was officially implemented in December 2014. The Uniform Guidance – a "government-wide framework for grants management" – is a set of requirements governing Federal awards.

The reforms that comprise the Uniform Guidance aim to reduce the administrative burden on award recipients and, at the same time, guard against the risk of waste and misuse of Federal funds. Among other things, the OMB's Uniform Guidance:

- Removes previous guidance that is conflicting and establishes standard language;
- Directs the focus of audits on areas that have been identified as at risk for waste, fraud and abuse;
- Lays the groundwork for Federal agencies to standardize the processing of data;
- Clarifies and updates cost reporting guidelines for award recipients.

Grant funds, whether from federal or State sources, must be expended on allowable activities in accordance with the approved budget and the applicable cost principles outlined in 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). While 2 CFR 200 governs federal funds, NYSED also applies these same federal cost principles to state-funded grants to allow for consistency and uniformity in the administration of all grants/grant- contracts.

This Federal Funds Procedural Manual memorializes CiTi's practices, roles and responsibilities relative to the guidance, referencing existing policy, in a manner that ensures our compliance with current regulations at the federal and State Level.

DEFINITIONS

BUDGET/ALLOWABLE USE OF FUNDS/COST PRINCIPLES

- **Advance payment:** means a payment that a Federal awarding agency or passthrough entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.
- **Allowable cost:** A cost that complies with all legal requirements that apply to a particular Federal education program including statutes, regulations, guidance, applications and approved grant awards.
- **Education Department General Administrative Regulations (EDGAR):** A compilation of regulations that apply to Federal education programs. These regulations contain important rules governing the administration of Federal education programs, and include rules affecting the allowable use of Federal funds (including rules regarding allowable costs, the period of availability of Federal awards, documentation requirements, and grants management requirements). EDGAR is accessible at <http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>.
- **Omni Circular or 2CFR 200:** Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Federal cost principles that provide standards for determining whether costs may be charged to Federal grants. EDGAR requires all grantees and subgrantees to follow the cost principles set out in 2 CFR 200s at the following: <http://www.ecfr.gov/cgi-bin/text-idx?node=pt2.1.200&rgn=div5>. The Omni Circular, 2CFR 200, and Uniform Grant Guidance are all referring to the same document.

COMPENSATION-PERSONAL SERVICES EXPENSES AND REPORTING

- **Cost Objective:** A particular grant award or other category of costs used to track specific cost information (e.g. earmarks or set-asides that require the BOCES to track expenditure information to ensure it spends a specific amount for a specific purpose).

- **Employee Compensation:** All amounts paid or accrued to an employee for services rendered during the award period. Compensation includes salaries, fringe benefits, stipends, bonuses and payments made under supplemental contracts. The BOCES may require specific groups of employees to complete time sheets as verification of services rendered during an award period.
- **Multiple Cost Objectives Employees:** Employees who work on multiple cost objectives such as:
 - More than one Federal award;
 - A Federal award and a non-Federal award;
 - More than one activity within a Federal award that is separately tracked by the BOCES (such as set-asides, earmarks or match/in-kind contributions).
- **Single Cost Objective Employees:** Employees who work exclusively on one cost objective.

SUBRECIPIENT MONITORING AND MANAGEMENT

- **Contract:** A legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in Part 2 CFR does not include legal instruments, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.
- **Contractor:** An entity that receives a contract, i.e. a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.
- **Pass-through Entity (PTE):** A Non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
- **Subaward:** An award provided by a PTE to a subrecipient for the subrecipient to carry out part of a Federal award received by the PTE. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the PTE considers a contract.
- **Subrecipient:** A Non-Federal entity that receives a subaward from a PTE to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program.

PURCHASING

- **Aggregate** refers to the aggregate amount to be expended during a 12-month period.
- **Purchase Order (PO)** is a document issued by the BOCES that authorizes a purchase transaction. The PO sets forth the descriptions, quantities, prices, discounts, date and other terms and conditions.
- **Requisition** is the initial purchase request that an employee enters into the BOCES financial accounting software. Once the requisition has moved forward through the approval process it is printed out or emailed as a purchase order and the order is processed.
- **Simplified Acquisition Threshold (SAT)** is the abbreviation for the Federal guideline for Simplified Acquisition Threshold which is \$150,000.

CASH MANAGEMENT

- **Advance payment:** means a payment that a Federal awarding agency or passthrough entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

CAPITAL ASSETS

- **Capitalization policy is used by a BOCES to set a threshold, above which qualifying** expenditures are recorded as fixed assets, and below which they are charged to expense as incurred. The policy is typically set by BOCES administration or the board of education. The capitalization policy also governs whether certain expenditures are accounted for as separate assets, or as part of a larger asset.

- **Computing Devices** are machines used to acquire, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. Information technology systems are computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources.
- **Equipment** is tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. High-risk equipment of less than \$5,000 should also be safeguarded and tracked along with an inventory done every two years.
- **High-Risk Assets** are those items identified by the BOCES as easily portable, desirable for personal use or easily marketable. Currently computers, iPad, multi-media and audio assisted equipment, and other portable technology are considered theft-sensitive and high-risk.
- **Purchase Order (PO)** is a document issued by the BOCES that authorizes a purchase transaction. The PO sets forth the descriptions, quantities, prices, discounts, date and other terms and conditions.
- **Safeguarding** is defined as providing a reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the BOCES assets that could have a material effect on the financial statements.

RECORDS RETENTION

- **Permanent Retention Period** means the records should be retained and never destroyed.
- **Records** is defined as information contained in records regardless of its physical form (paper, microfilm, computer disk or tape, or other medium).
- **Retention Period** represents the period of time a document should be kept or “retained”. The BOCES should consult Records Retention Schedule ED-1.

BUDGET/ALLOWABLE USE OF FUNDS/COST PRINCIPLES

Developing grant budgets must be based on the proposed activities planned and described in the grant application to ensure the intent of the federal program is maintained. Budgeted expenditures must conform to that intent and be allowable under the Omni Circular (2CFR 200) as well as Education Department General Administrative Regulations (EDGAR), described under “Definitions.”

In compliance with 2CFR §200.302(b)(7) and EDGAR, procedures outlined in this section will enable management and staff to ensure the District is in compliance with the allowability requirements under the terms and conditions of the grant as well as the 2 CFR 200, Subpart E and EDGAR.

FRAMEWORK FOR ANALYZING ALLOWABLE COSTS

To determine whether a cost is allowable under the program, staff must become familiar with the requirements under 2 CFR 200, Subpart E and EDGAR, as well as objectives of each grant.

Generally, when analyzing whether a particular cost is permissible, it is useful to perform the following analysis:

- Is the cost specifically included in the BOCES’ approved grant budget?
- Is the cost forbidden by Federal laws such as 2 CFR 200, Subpart E or EDGAR? (see allowable costs below)
- Is the cost permissible under the relevant Federal program?
- Is the cost consistent with the Federal cost principles in 2 CFR 200s?
- Is the cost consistent with program specific fiscal rules?
- Is the cost consistent with an approved program plan and budget, as well as any special conditions imposed on the grant?

While there are other important considerations BOCES staff must take into account when analyzing whether a specific proposed cost is permissible, the above questions can provide a useful framework for the analysis.

Federal Cost Principles

The Omni-Circular defines the parameters for the permissible uses of Federal funds. While there are many requirements contained in it, it includes core principles that serve as an important guide for effective grants management. These core principles require all costs to be:

- **Necessary** for the proper and efficient performance or administration of the program.
- **Reasonable.** In other words, it should be clear to an outside observer why a decision to spend money on a specific cost made sense in light of the cost, needs, and requirements of the program and that sound business practices were followed and purchases were comparable to current market prices.
- **Allocable** to the Federal program that paid for the cost. Under 2 CFR §200.405, this means that a program must benefit in proportion to the amount charged to the Federal program—for example, if a teacher is paid 50% with Title I funds, the teacher must work with the Title I program/students at least 50% of the time. This also means that recipients need to be able to track items or services purchased with Federal funds so they can prove they were used for Federal program purposes.
- **Authorized** under state and local rules. This means all actions carried out with Federal funds must be authorized and not prohibited by state and local laws and policies.
- **Adequately documented.** A recipient must maintain proper documentation so as to provide evidence to monitors, auditors, or other oversight entities of how the funds were spend over the lifecycle of the grant.
- **Consistent with policies and procedures.** The same policies and procedures should apply uniformly to both federally-financed and other activities of the District. For example, personnel whose travel is paid with Federal funds is reimbursed at the same rates as personnel whose travel is paid with state or local funds, and the grant is charged accordingly.
- **Not included as a match or cost-share.** An element of cost should not be included as a match or cost-share of another federal program, unless the specific Federal program authorizes Federal costs to be treated as such. Some Federal program statutes require the grantee to contribute a certain amount of non-federal resources to be eligible for the Federal program.
- **Net of all applicable credits.** The term “applicable credits” refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges, such as credits. To the extent that such credits accruing to or received by the District relate to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate.

The Omni-Circular also contains specific rules on selected items of costs. Costs must comply with these rules in order to be paid with Federal funds.

Allowable Costs

Costs that may be Allowable under 2 CFR 200, Subpart E Under Specific Conditions:

FS-10 Budget Item	Citation
Professional and support salaries	§200.430
Purchased services	2 CFR Appendix II Contract provisions
Supplies and materials	§200.453
Travel expenses	§200.474
Employee benefits	§200.431
Equipment	§200.439
Budget Items for Other Grants	
Advisory Councils	§200.422
Audit costs and related services	§200.425
Bonding costs	§200.427
Conferences	§200.432

Depreciation	\$200.436
Employee health and welfare costs	\$200.437
Insurance and indemnification	\$200.447
Maintenance, operations, and repairs	\$200.452
Memberships and subscriptions	\$200.454
Professional service costs	\$200.459
Proposal costs	\$200.460
Publication and printing costs	\$200.461
Rental costs of building and equipment	\$200.465
Training costs	\$200.472

Costs Forbidden by Federal Law

2 CFR 200, Subpart E identifies certain costs that may never be paid with Federal funds. The following list provides examples of such costs. If a cost is on this list, it may not be supported with Federal funds. The fact that a cost is not on this list does not mean it is necessarily permissible. There are other important restrictions that apply to Federal funds, such as those detailed in 2 CFR 200s; thus, this list is not exhaustive.

Unallowable Costs Under 2 CFR 200, Subpart E

- Advertising and public relations costs (with limited exceptions), are prohibited; includes promotional items and memorabilia, including models, gifts, and souvenirs
- Alcoholic beverages
- Bad debts
- Contingency provisions (with limited exceptions)
- Fundraising and investment management costs (with limited exceptions)
- Donations
- Contributions
- Entertainment (amusement, diversion, and social activities and any associated costs)
- Fines and penalties
- General government expenses (with limited exceptions pertaining to Indian tribal governments and Councils of Government (COGs))
- Goods or services for personal use
- Interest, unless specifically stated in §200.441 as allowable

Unallowable Costs Under EDGAR (Part 76)

- The use of funds for religion
- The acquisition of real property (unless specifically permitted by programmatic statute or regulations which is very rare in Federal education programs)
- The use of funds for construction (unless specifically permitted by programmatic statute or regulations which is very rare in Federal education programs)
- Charging tuition or fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program

Program Allowability

Any cost paid with Federal education funds must be permissible under the Federal program that would support the cost.

Many Federal education programs detail specific required and/or allowable uses of funds for that program. Issues such as eligibility, program beneficiaries, caps, or restrictions on certain types of program expenses, other program expenses, and other program specific requirements must be considered when performing the programmatic analysis. Costs must be consistent with the purposes of the program in order to be allowable.

Program Specific Fiscal Rules

All Federal education programs have certain program specific fiscal rules that apply. Determining which rules apply depends on the program; however, rules such as supplement, not supplant, maintenance of effort, comparability, caps on certain uses of funds, etc. have an important impact when analyzing whether a particular cost is permissible.

Many state administered programs require LEAs to use Federal program funds to supplement the amount of state, local (and in some cases other Federal) funds they spend on education costs, and not to supplant – or replace – those funds. Generally, the “supplement, not supplant” provision means that Federal funds must be used to supplement the level of funds from non-Federal sources by providing additional services, staff, programs, or materials. In other words, Federal funds normally cannot be used to pay for things that would otherwise be paid for with state or local funds (and in some cases with other Federal funds).

Auditors generally presume supplanting has occurred in three situations:

- BOCES uses Federal funds to provide services that the BOCES is required to make available under other Federal, state, or local laws.
- BOCES uses Federal funds to provide services that the BOCES provided with state or local funds in the prior year.
- BOCES uses Title I, Part A or Migrant Education Program funds to provide the same services to Title I or Migrant students that the BOCES provides with state or local funds to nonparticipating students.

These presumptions apply differently in different Federal programs, and in school wide program schools. Staff should be familiar with the supplement, not supplant provisions applicable to their program.

Indirect Cost Rate

The New York State Education Department (NYSED) calculates the restricted and unrestricted cost rates for all school districts within the State of New York. NYSED issues a memo annually to the BOCES stating the restricted and unrestricted costs rates to be used by the BOCES, the period of time the rates are to be used for, and the types of programs/grants that the rates are to be used for.

Applying the Indirect Cost Rate

The Indirect Cost Rate percentage is multiplied against the actual direct costs (excluding distorting items such as equipment, contracts in excess of \$25,000, pass-through funds, etc.) incurred under a particular grant to produce the dollar amount of indirect costs allowable to that award (34 CFR §75.564; 34 CFR §76.569). Once the District applies the approved rate, the funds that may be claimed for indirect costs have no Federal accountability and may be used as if they were non-federal funds. For Direct Grants, reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions (34 CFR §75.564).

Approved Plans, Budgets and Special Conditions

As required by Omni Circular, all costs must be consistent with approved program plans and budgets. This includes the BOCES’ Consolidated Application to the NYSED Department of Public Instruction and school-level plans such as school wide plans.

Costs must also be consistent with all terms and conditions of Federal awards, including any special conditions imposed on the BOCES’ grants.

Revision of Budget and Program Plans

The budget plan is the financial expression of the project or program as approved during the federal grant application process. It shall be related to performance for program evaluation purposes whenever appropriate.

During the year, funding strategies may change for a variety of reasons. If an allowable cost is not in the original budget, a budget amendment must be submitted prior to the submission of the grant claim. Approval shall be obtained whenever any of the following changes are anticipated under a non-construction award:

- Revision which would result in the need for additional funding.
- Cumulative transfers among direct cost categories, or among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget.

The BOCES is required to report deviations from budget and program plans and request prior approvals for budget and program plan revisions to the New York State Education Department (NYSED), in accordance with this section.

The BOCES shall request prior approvals from NYSED for one or more of the following program or budget related reasons:

- Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
- Change in a key person specified in the application or award document.
- The need for additional funding.
- The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by NYSED.
- The inclusion of costs that require prior approval in accordance with the Omni Circular.
- The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.
- Unless described in the application and funded in the approved awards, transfer, or contracting out of any work under an award.

When requesting approval for budget and program plan revisions, BOCES shall use NYSED provided grant modules that were used in the application process. District personnel should be aware of NYSED imposed time frames and other restrictions (if any) for budget revisions.

TRAINING

BOCES will provide training on the allowable use of federal funds to all staff involved in federal programs through activities such as:

- Distributing federal guidance documents
- Distributing BOCES policies and procedures
- Developing templates, checklists and other guidance documents as appropriate
- Internal training sessions
- Routine staff meetings
- Informal technical assistance

BOCES will promote coordination between all staff involved in federal programs through activities such as:

- Routine staff meetings
- Joint training sessions
- Policies and procedures that address all aspects of Federal grants management
- Sharing information that has cross-cutting impact such as single audits, monitoring reports, letters from oversight entities, etc.

SANCTIONS

Any BOCES employee who violates this Procedure will be subject to appropriate discipline as reflected by comments to be placed in their personnel file.

PROCEDURES

Before Developing the Grant Budget and Submitting the Application

The grant budget must be based on the proposed activities planned and described in the grant application. Prior to developing the budget, the Grant Administrator must know the intent of the federal program and the activities that are allowable to be conducted with grant funds. The Grant Administrator must coordinate with other BOCES staff as appropriate to conduct the appropriate needs analysis using the appropriate data to determine the goals and objectives for the program and the activities that will be implemented to accomplish the goals and objectives. Once the goals, objectives, strategies, and activities are outlined, then the budget to carry out the identified strategies and activities should be developed.

Prior to completing the application, the Grant Administrator and the Grants Clerk develop a detailed budget in a document (such as in an Excel spreadsheet) separate from the application, although it is advisable to use the FS-10 Budget Form as a template to make the submission process more efficient. The Grant Administrator and the Grants Clerk coordinate with the Assistant Superintendent for Administrative Services in preparing the budget to ensure budgeted items are categorized according to the proper account codes. This detailed budget, which serves as the guide for expenditures and becomes part of the “working papers” maintained by the Grant Administrator and the Grants Clerk, is used to complete the application. In most instances, particularly for formula grants, the budget entered into the grant application will not be as detailed. The detailed budget is to be modified or revised as necessary to accommodate changes, which may result in an amendment to the application prior to incurring certain expenditures.

In addition, the Grant Administrator will work with stakeholder advisory groups to develop needs assessments before grant activities are budgeted. Collaboration with other BOCES programs, for some grant funds, is a part of this process so that there is efficient use of resources.

Reviewing and Approving the Budget Prior to Submitting the Application

Prior to submitting the grant application, the budget is reviewed by the Grant Administrator, the Grants Clerk, and the Coordinator of Business Administration. Once they have verified that planned expenditures are properly coded and the total grant amount is correct, the grant application is signed by the District Superintendent and submitted by the business office.

At least two weeks prior to the grant due date the Grant Administrator and the Grants Clerk review the items in the proposed budget to ensure budgeted items are listed in the correct account codes according to grant guidance and the BOCES’ classification chart and to ensure the items are allowable. The budget is also reviewed to ensure that any costs requiring specific or prior approval are specifically identified and listed. If the Grant Administrator and the Grants Clerk determine that a cost is not allowable, then a change is made to either reduce the grant amount or re-direct the unallowable cost to an allowable cost before submission to the District Superintendent.

If a specific item of cost is determined to be unallowable the Grant Administrator and the Grants Clerk would inform the Assistant Superintendent of Administrative Services and remove the cost from the application and/or budget. If the expense has already occurred and then determined to be unallowable. The Treasurer would make a journal entry removing that expense from the budget and reclassifying it to a more appropriate location.

Once the Grant Administrator determines that all budgeted items are allowable and are budgeted in the proper account codes, the budget is sent to the Business Office. Generally, the budget receives final approval one week prior to the submission of the grant.

Negotiating the Submitted Application

Once the grant application is submitted to the awarding agency, the designated program contact, usually the Grant Administrator assigned to the grant program, is available via phone and/or e-mail in the event that the awarding agency needs to contact the BOCES to negotiate the application or to ask questions or seek clarification related to the proposed program and/or budget. The Grant Administrator will seek guidance, if needed, from appropriate BOCES personnel and will respond to any inquiries from the awarding agency as soon as possible but no later than

three days. A delay in contacting the awarding agency delays final approval of the grant application, which delays grant program implementation and providing services to intended beneficiaries of the grant.

After Receiving the Approved Application

Within a short time of receiving the approved application from the awarding agency, a complete copy of the application will be provided to the Grant Administrator, the Grants Clerk, and the Coordinator of Business Administration.

If the grant application is approved as submitted, the Business Office takes the necessary steps (detailed below) to enter the detailed budget into the BOCES financial system. If the award is for a different amount, the Grant Administrator will adjust the detailed budget to reflect the change and then coordinate the budget changes with the Grants Clerk.

All grant budgets are entered into the financial system of the BOCES in the general ledger as approved in the application. Once entered, the Treasurer and the Grants Clerk approve the budget, and the budget is ready for activity.

In addition, the following steps are taken to ensure BOCES is prepared to implement the grant on the beginning date of the grant to maximize the effectiveness of the grants.

- Staff hired to work at BOCES are expected to be highly qualified and well prepared for the position. Grant Administrators manage their programs and budgets according to all Federal, state and local rules. Staff is trained on local policies and procedures in order to ensure timely and effective grant implementation. The Grant Administrator must approve all grant-related expenditures.
- Grant Administrators review their budgets at least monthly to determine if the program expenditures are being effectively managed. Both program implementation and budgets are reviewed at that time. Grant Administrators review their budgets quarterly with the Grants Clerk and additional appropriate staff to ensure program and budget implementation is aligned with current BOCES needs and initiatives.

As Grant Administrators review their budgets and determine changes are needed, they will work with the Grants Clerk to request budget changes and/or amendments to the grant or contract. The Grant Administrator and the Grants Clerk will determine if budget changes need to occur. If there are changes to the budget, the Grant Administrator will submit the budget changes for the District Superintendent's approval, if it is determined that an amendment is needed.

Grant Administrators will complete any program or compliance reports required by the awarding agency. If the report is due the authorized official must submit a copy to the business office. All financial reports will be generated and submitted by the business office when required. Grant Administrators will coordinate with BOCES authorized officials prior to the submission date to ensure all deadlines are met.

Amending the Application

BOCES consults and complies with the guidelines and procedures provided by the awarding agency as it pertains to when and how to submit an amendment to an approved application. Procedures are in place to ensure BOCES does not exceed any maximum allowable variation in the budget.

Monitoring and Amending the Budget and Program Description

Each Grant Administrator monitors their budgets monthly. Each month the Grant Administrator reviews the expenses to ensure that all funds will be expended in the allowable time frame. If the expenditures or program changes needed require an amendment the Grant Administrator completes the amendment and reviews budget changes with the Grants Clerk, who forwards the document to the District Superintendent for signature before submission. Each awarding agency, and/or fund, has a different process for amending the program and budget. The Grant Administrator is responsible for understanding the requirements and submitting amendments in the appropriate manner. Grant Administrators review each budget and make determinations regarding the expenses.

They discuss both budget and program performance to ensure all funds are spent in an allowable manner that is approved in the application by the awarding agency.

Important Sections of the Federal Register Rules and Regulations-Omni-Circular See Appendix for relevant sections of CFR 200.

LEGAL REFERENCES:

Education Department General Administrative Regulations; Federal Education Program Statutes; General Education Provisions Act; Omni-Circular

SUBRECIPIENT MONITORING AND MANAGEMENT

The District may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities (PTEs). Therefore, a PTE must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor.

SUBRECIPIENT / CONTRACTOR DETERMINATION

A non-federal entity may concurrently receive Federal awards as a:

- Recipient
- Subrecipient
- Contractor

PTE must make case-by-case determination whether each agreement it makes for the disbursement of federal program funds casts the party receiving the funds in the role of a Subrecipient, or Contractor.

The differences between Subrecipient and Contractor are as follows:

SUBRECIPIENT	CONTRACTOR
Creates a Federal assistance relationship	Purpose is to obtain goods and services for the District’s own use and creates a procurement relationship
Determines who is eligible to receive what Federal assistance	Provides the goods and services within normal business operations
Has its performance measured in relation to whether objectives of a Federal program were met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision making	Normally operates in a competitive environment
Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and	Provides goods or services that are ancillary to the operations of the Federal program; and
In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing stature, as opposed to providing goods or services for the benefit of the PTE	Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons

SUBRECIPIENT REQUIREMENTS

The following information must be provided to all subrecipients:

- Federal award identification
- All requirements imposed by the PTE
- Any additional requirements that the PTE imposes on the subrecipient for the PTE to meet its own responsibility to the federal awarding agency including identification of any required financial or performance reports

- An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government or, if no such rate exists, either a rate negotiated between the PTE and the subrecipient or a de minimis indirect cost rate
- A requirement that the subrecipient permit the PTE and auditors to have access to the subrecipient's records and financial statements, as necessary for the PTE to meet its requirements
- Appropriate terms and conditions concerning the closeout of the subaward

SUBRECIPIENT RISK OF NONCOMPLIANCE

Audits will evaluate subrecipient risk of noncompliance for purposes of determining appropriate subrecipient monitoring including consideration of such factors as:

- Subrecipient experience with the same or similar subawards
- Results of previous audits, including whether the subrecipient receives a single audit and the extent to which the subaward has been audited as major
- Whether subrecipient has new personnel or substantially changed systems
- Extent and results of Federal awarding agency monitoring

REQUIRED SUBRECIPIENT MONITORING ACTIVITIES

The PTE must monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. PTE monitoring of the subrecipient must include:

- Clearly identify necessary activities and responsible parties
- Review financial and programmatic reports
- Follow-up and ensure that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award through audits, on-site reviews, and other means
- Issue management decisions for audit findings pertaining to the federal award provided to the subrecipient

PTE monitoring of the subrecipient plan should be:

- Clearly identify necessary activities and responsible parties
- Review debarment lists
- Allow for consistency throughout monitoring activities
- Characteristics include data quality reviews, required progress reporting, site and desk reviews, potentially critical for large-scale projects, compliance auditing and develop corrective action plans
- Once the process has concluded, develop and implement an internal action plan to revise policies and procedures, enforce compliance with the internal requirements and execute ongoing monitoring
- Utilize your internal auditors to conduct regular, detailed reviews
- Document the execution of monitoring activities and corrective action taken

The remedies for non-compliance are as follows:

- a) If non-federal entities fail to comply with requirements, the PTE may impose additional conditions as described in statute §200.207
- b) If noncompliance cannot be remedied with additional conditions, the PTE may take one or more of the following actions, as appropriate:
 - Temporarily withhold cash payments
 - Disallow all or part of cost of the activity not in compliance
 - Wholly or partly suspend or terminate the federal award
 - Recommend that the federal agency initiate suspension and debarment proceedings
 - Withhold further federal awards
 - Take other remedies that may be legally available

COMPENSATION-PERSONAL SERVICES EXPENSES AND REPORTING

Costs of personal service compensation are allowable for a federal award to the extent that they satisfy the specific requirements of federal statute §200.430 Compensation—personal services. Charges to Federal awards must be based on records that accurately reflect the work performed. These records must:

- Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated
- Be incorporated into the official records of the subrecipient

Compensation for employees engaged in work on federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the District.

All employees paid with Federal funds must adhere to the procedures to complete the appropriate personnel records. These procedures also apply to employees paid with non-Federal funds that are used as a match (or in-kind contribution) in a Federal program. The personal service compensation must reasonably reflect the total activity for which the employee is compensated by the subrecipient and cannot exceed 100% of compensated activities.

DETERMINING COST OBJECTIVES

A cost objective is defined as a Federal grant award or other category of costs the BOCES used to track specific cost information. In certain circumstances, the BOCES may track the time employees spend on particular activities within a single Federal grant in order to demonstrate compliance with Federal requirements such as earmarks, set-asides or match/in-kind contributions. When BOCES uses employee compensation costs to meet these requirements they are known as “cost objectives.” In such a circumstance, an individual grant program may have more than one cost objective.

The Grant Administrator will determine the cost objective for each employee and the Payroll Office will provide appropriate means of documenting time spent on activities to satisfy the Federal grant requirements.

STANDARDS FOR DOCUMENTATION

Charges for federal awards for salaries and wages must be based on records that accurately reflect the work performed. In accordance with §200.430, these records must:

- Be supported by a system of internal controls which provides reasonable assurance that the charges are accurate, allowable, and properly allocated. Be incorporated into official records
- Reasonably reflect total activity for which the employee is compensated, not exceeding 100% of compensated activities
- Encompass both federally assisted and all other activities compensated by BOCES on an integrated basis
- Comply with the established accounting policies and practices for the BOCES, and
- Support the distribution of the employee’s salary or wages among specific activities or cost objectives if the employee works on:
 - More than one federal award
 - A federal award and non-federal award
 - An indirect cost activity and direct cost activity
 - An unallowable activity and a direct or indirect activity

All employees who are paid in full or part with federal funds must keep specific documents to demonstrate the amount of time they spend on grant activities. This includes an employee whose salary is paid with state or local funds but is used to meet a required match or cost share for a federal program. These documents, known as time-and-effort records or Personnel Activity Reports), are maintained in order to charge personnel costs to federal grants. Time and effort records must be maintained contemporaneously (as work occurs) and must contain:

- The activity (a brief description of what the employee did)
- Time frame (the amount of time it took the employee to do the work), and
- Funding source/program or other cost objective

Time-and-effort records (PARS) must also:

- Be executed after the work is completed, and not before
- Account for the total activities of the employee (100% of their time) including employees working part time or overtime
- Specify the reporting period
- Be signed and dated by the employee and supervisor who has direct knowledge of the activity
- Time and Effort records (PARS) will be filed in the payroll office and will be retained as per Record Retention Schedule ED-1.

MULTIPLE COST OBJECTIVE EMPLOYEES

Employees working on multiple cost objectives need to support the distribution of the compensation among cost objectives if the employee works on multiple, unrelated activities per grant guidelines. The federal grant subrecipient determines process to determine what amount gets charged to the grant.

RECONCILIATION

It is the BOCES' practice to charge employee compensation costs to Federal programs based on budget estimates that reasonably approximate how an employee will work during the year. Documentation records should be adjusted in a timely manner if there are significant changes in the employee's work activity. BOCES will reconcile payroll charges reflected in employee records at least annually, however it is recommended that the reconciliation occur quarterly or semi-annually. BOCES needs to determine if the time necessary maintaining supporting documentation is worth charging as a direct cost onto a Federal grant.

If BOCES identifies a variance between how an employee's salary was charged and how the employee actually worked, BOCES will adjust its payroll charges so that the amount charged to Federal funds reflects the employee's actual time and effort. BOCES will perform the adjustment at least annually, however it is recommended that the reconciliation occur quarterly or semi-annually. The final claim form should reflect actual (reconciled) amounts, not budget estimates.

All necessary adjustments must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

DOCUMENT RETENTION

Time and Effort records (PARS) must be maintained for a period of five (5) years.

LEGAL REFERENCES:

2 CFR, Part 225; Federal Statutes §200.430 Compensation—Personal Services; General Education Provisions Act Omni-Circular

PURCHASING

The purpose of a purchasing procedure is to ensure that the Oswego County Board of Cooperative Services (hereafter referred to as the BOCES) funds are appropriately spent in the most cost-effective manner and that the purchase has been approved by the required administrative hierarchy. The procedure will also assist District employees in understanding the purchasing process.

The WinCap financial system is the financial accounting software that BOCES uses for all business accounting.

BOCES' policies for Purchasing and Regulations, Purchasing Authority, Contracting for Professional Services and Authorized Signatures, supersedes the procurement methods identified as per §200.381(a) of federal law.

OSWEGO BOCES PURCHASING POLICY 4310

7 CFR 210.21, 215.14(a) and 220.16

20 USC § 1474(e)(3)(B)

Education Law §§ 305(14), 409-I, 701, 751(2)(b), 1604, 1709, 1950, 2503, 2554 and 3602

General Municipal Law Articles 5-A, 18 and § 103

State Finance Law §§ 162 and 163-b

8 NYCRR §§ 155, 170.2, 200.2(b)(10), 200.2(c)(2) and 200.2(i)

Adopted: 5/12/10

Revised: 2/12/14; 4/4/18; 10/17/18

The BOCES' purchasing activities will be part of the responsibilities of the Business Person(s) or, under the general supervision of the Purchasing Agent designated by the Board of Education. The purchasing process should enhance school operations and educational programs through the procurement of goods and services deemed necessary to meet BOCES needs.

Competitive Bids and Quotations

As required by law, the District Superintendent will follow normal bidding procedures in all cases where needed quantities of like items will total the maximum level allowed by law during the fiscal year, (similarly for public works-construction, repair, etc.) and in such other cases that seem to be to the financial advantage of the BOCES.

A bid bond may be required if considered advisable.

No bid for supplies shall be accepted that does not conform to specifications furnished unless specifications are waived by Board action. Contracts shall be awarded to the lowest responsible bidder who meets specifications. However, the Board may choose to reject any bid.

Rules shall be developed by the administration for the competitive purchasing of goods and services.

The District Superintendent may authorize purchases within the approved budget without bidding if required by emergencies and are legally permitted.

The District Superintendent is authorized to enter into cooperative bidding for various needs of the BOCES.

Request for Proposal Process for the Independent Auditor

In accordance with law, no audit engagement shall be for a term longer than five consecutive years. The BOCES may, however, permit an independent auditor engaged under an existing contract for such services to submit a proposal for such services in response to a request for competitive proposals or be awarded a contract to provide such services under a request for proposal process.

Procurement of Goods and Services

The Board recognizes its responsibility to ensure the development of procedures for the procurement of goods and services not required by law to be made in accordance with competitive bidding requirements. These goods and services must be procured in a manner so as to:

- a) Assure the prudent and economical use of public moneys in the best interest of the taxpayer;*
- b) Facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances; and*
- c) Guard against favoritism, improvidence, extravagance, fraud and corruption.*

These procedures shall contain, at a minimum, provisions which:

- a) Prescribe a process for determining whether a procurement of goods and services is subject to competitive bidding and if it is not, documenting the basis for such determination;*
- b) With certain exceptions (purchases in accordance with General Municipal Law, Section 186; State Finance Law, Sections 175-a and 175-b; State Correction Law, Section 184; or those circumstances or types of procurements set forth in (f) of this section), provide that alternative proposals or quotations for goods and services shall be secured by use of written request for proposals, written quotations, verbal quotations or any other method of procurement which furthers the purposes of Section 104-b of General Municipal Law;*
- c) Set forth when each method of procurement will be utilized;*
- d) Require adequate documentation of actions taken with each method of procurement;*
- e) Require justification and documentation of any contract awarded to other than the lowest responsible dollar offer, stating the reasons;*
- f) Set forth any circumstances when, or the types of procurement for which, the solicitation of alternative proposals or quotations will not be in the best interest of the BOCES; and*

- g) Identify the individual or individuals responsible for purchasing and their respective titles. Such information shall be updated biennially.

Any unintentional failure to fully comply with these provisions shall not be grounds to void action taken or give rise to a cause of action against the BOCES or any BOCES employee.

The Board shall solicit comments concerning the BOCES' policies and procedures BOCES The Board shall solicit comments concerning the from those employees involved in the procurement process. All policies and procedures regarding the procurement of goods and services shall be reviewed annually by the Board.

Professional services are generally those services that require specialized skills, training, professional judgment, expertise, and creativity. Examples include attorneys, architects, and engineers. The procurement of professional services falls within an exception to competitive bidding. In order to procure professional services, the BOCES will use the request for proposals (RFP) process as set forth in General Municipal Law in order to protect the BOCES' interests and to avoid the appearance of favoritism or impropriety. Although not necessarily bound to select the lowest bidder in response to its RFP, the BOCES will adequately document its selection process to demonstrate its economical and prudent use of public monies and to ensure fair competition.

"Piggybacking" Law - Exception to Competitive Bidding

On August 1, 2012, General Municipal Law (GML) Section 103 was amended to allow school districts and BOCES to purchase certain goods and services (apparatus, materials, BOCES equipment and supplies) through the use of contracts let by the United States or any agency thereof, any state, and any county, political subdivision or district of any state. The amendment authorizes school districts and BOCES to "piggyback" on contracts let by outside governmental agencies in a manner that constitutes competitive bidding "consistent with state law."

This "piggybacking" is permitted on contracts issued by other governmental entities, provided that the original contract:

- a) Has been let by the United States or any agency thereof, any state (including New York State) or any other political subdivision or district therein;
- b) Was made available for use by other governmental entities and agreeable with the contract holder; and
- c) Was let in a manner that constitutes competitive bidding consistent with New York State law and is not in conflict with other New York State laws.

BOCES may authorize the award of service contracts and purchase contracts on the basis of "best value".

Alternative Formats for Instructional Materials

Preference in the purchase of instructional materials will be given to vendors who agree to provide materials in a usable alternative format (i.e., any medium or format, other than a traditional print textbook, for presentation of instructional materials that is needed as an accommodation for each student with a disability, including students requiring Section 504 Accommodation Plans, enrolled in the BOCES). Alternative formats include, but are not limited to, Braille, large print, open and closed captioned, audio, or an electronic file in an approved format as defined in Commissioner's regulations.

BOCES Plan

As required by federal law and New York State Regulations, each student who requires instructional materials in an alternate format will receive it in a timely manner and in a format that meets BOCES, the NIMAC). Whether a district does or does not participate in NIMAC) to ensure that curriculum materials are available in a usable alternative format for students with disabilities. Each school district has the option of participating in the National Instructional Materials Access Center (NIMAS has adopted the National Instructional Materials Accessibility Standard (BOCES will be responsible ensure NIMAC, because this national effort to centralize the distribution of instructional materials in alternate formats will help guarantee timely provision of such materials to students.in to

For school districts, Boards of Cooperative Educational Services (BOCES), State-operated schools, State-supported schools and approved private schools that choose to participate in NIMAC, **contracts with publishers executed on and after December 3, 2006** for textbooks and other printed core materials must include a provision that requires the publisher to produce NIMAS files and send them to the NIMAC (this will not add any cost to the contract).

For more information regarding NIMAC including model contract language, Steps for Coordinating with NIMAC and an IDEA Part B Assurances Application, see website: <http://www.vesid.nysed.gov/specialed/publications/persprep/NIMAS.pdf>

Geographic Preference in Procuring Local Agricultural Products

Schools participating in Child Nutrition Programs such as the National School Lunch Program, School Breakfast Program and/or Special Milk Program are encouraged to purchase unprocessed locally grown and locally raised agricultural products. BOCES may apply an optional geographic preference in the procurement of such products by defining the local

area where this option will be applied. The intent of this preference is to supply wholesome unprocessed agricultural products that are fresh and delivered close to the source.

A geographic preference established for a specific area adds additional points or credits to bids received in response to a solicitation, but does not provide a set-aside for bidders located in a specific area, nor does it preclude a bidder from outside a specified geographic area from competing for and possibly being awarded a specific contract.

Computer Software Purchases

Software programs designated for use by students in conjunction with computers of the BOCES shall meet the following criteria:

- a) A computer program which a student is required to use as a learning aid in a particular class; and
- b) Any content-based instructional materials in an electronic format that are aligned with State Standards which are accessed or delivered through the Internet and based on a subscription model. Such electronic format materials may include a variety of media assets and learning tools including video, audio, images, teacher guides, and student access capabilities as such terms are defined in Commissioner's Regulations.

Environmentally Sensitive Cleaning and Maintenance Products

In accordance with Commissioner's regulations, State Finance Law and Education Law, effective with the 2006-2010 school year, the BOCES shall follow guidelines, specifications and sample lists when purchasing cleaning and maintenance products for use in its facilities. Such facilities include any building or facility used for instructional purposes and the surrounding grounds or other sites used for playgrounds, athletics or other instruction.

BOCES shall identify and procure environmentally sensitive cleaning and maintenance products which are available in the form, environmentally sensitive cleaning and maintenance products are those which minimize adverse impacts on health and the environment. Such products reduce as much as possible exposures of children and school staff to potentially harmful chemicals and substances used in the cleaning and maintenance of school facilities. The function and utility generally used. Coordinated procurement of such products as specified by the Office of General Services (OGS) may be done through central state purchasing contracts to ensure that the BOCES can procure these products on a competitive basis.

The BOCES shall notify their personnel of the availability of such guidelines, specifications and sample product lists.

Apparel and Sports Equipment Purchases

Competitive Bidding Purchases

The Board of Education will only accept bids from "responsible bidders." A determination that a bidder on a contract for the purchase of apparel or sports equipment, is not a "responsible bidder" shall be based upon either or both of the following considerations:

- a) The labor standards applicable to the manufacture of the apparel or sports equipment including, but not limited to, employee compensation, working conditions, employee rights to form unions, and the use of child labor; or
- b) The bidder's failure to provide information sufficient for the Board of Education to determine the labor standards applicable to the manufacture of the apparel or sports equipment.

Non-Competitive Bidding Purchases

The Board's internal policies and procedures governing procurement of apparel or sports equipment, where such procurement is not required to be made in accordance with competitive bidding requirements, shall prohibit the purchase of apparel or sports equipment, from any vendor based upon either or both of the following considerations:

- a) The labor standards applicable to the manufacture of the apparel or sports equipment including, but not limited to, employee compensation, working conditions, employee rights to form unions, and the use of child labor; or
- b) The bidder's failure to provide information sufficient for the Board of Education to determine the labor standards applicable to the manufacture of the apparel or sports equipment.

Contracts for Goods, Services and Public Works

No contracts for goods and services shall be made by individuals or organizations in the BOCES that involve expenditures without first securing approval for such contract from the Purchasing Agent.

No Board member or employee of the BOCES shall have an interest in any contract entered into by the Board or the BOCES.

Per General Municipal Law Section 103(5), upon the adoption of a resolution by a vote of at least 3/5 of all Board members stating that for reasons of efficiency or economy there is need for standardization, purchase contracts for a particular type or kind of equipment, materials or supplies of more than \$20,000 may be awarded by the Board to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided in law. In addition, the Board is required to award all contracts for public works in excess of \$35,000 to the lowest responsible bidder after advertising for public sealed bids.

PURCHASING PROCEDURES

General Purchasing Procedures

Listed below are the steps involved in the purchasing procedure:

- A. PND OR Purchase Requisition Form (manual entry for those individuals who donot have access to WinCap) is:
1. Completed by the requesting department, listing:
 - description of item(s) requested with corresponding pricing;
 - estimated or known shipping and handling charges;
 - date(s) purchase order will cover¹;
 - appropriate budget code(s) including district code if a bill back will occur;
 - vendor/supplier name/address;
 - state/county or local contract number (if applicable); and
 - total pricing².
 2. PND's are reviewed by program Administrator whose name appears as Supervisor in the PND, and are approved to a level 5 before the Business Office will process it for Purchasing Agent approval.
- B. The PND is reviewed by the Purchasing Agent who will look to find:
- Attached quote(s)³; or
 - contract (duly signed⁴ & original); or
 - copy (text) for any ad requests, as they will be sent to the advertising department of newspapers; or
 - form(s) completed to request items (i.e. on-line registrations, hotel reservations, etc.)
- C. The Purchasing Clerk will:
- review the PND's and supporting documents for accuracy and forward to the Purchasing Agent for review; or
 - advise the requesting department with an e-mail or phone call to indicate what documentation is missing, or needs correction; or
 - forward to the Budget Liaison if funds are unavailable to cover the request⁵.
- D. Purchasing Agent will:
- review PND and approve to issue a PO for appropriate distribution; or
 - review PND and reject the PND. It will be returned to the department for clarification.

¹ Date of service cannot exceed 12 months, nor should it cross over fiscal years, when possible.

² Refer to Board Regulations 4310R, Table of Procurement Thresholds (below), to identify requirements for quotes/bids.

³ Verbal quotes no longer acceptable; print the internet page, copy the catalog page, or obtain an e-mail from the sales person who may be providing a verbal quote. All quotes should be attached in the financial system.

⁴ Only the Purchasing Agent or Designee is authorized sign contracts that will result in a financial transaction. Consultant agreements, initiated by BOCES, should have all signatures, except the Purchasing Agent's, before forwarding original to the Business Office.

⁵ Department purchasers may initiate budget transfer requests in the financial system to avoid any purchasing delays. The Budget Liaison will contact the department Administrator to resolve the issue in a mutually agreeable fashion if a budget transfer has not been initiated and funds are not available to cover the purchase.

Purchasing Notes

Only when a Purchase Order has been approved can any member of BOCES engage the services or products of a vendor. Purchase requisitions submitted for approval after the products/services have been delivered may be rejected. Individuals making such requests may be required to pay for the purchase personally.

Pre-pays are unavoidable in rare instances (poor planning is not one of them). PRIOR APPROVAL from the

Purchasing Agent is required to issue a Confirming Purchase Order. A Confirming Purchase Order is one that is issued after the service(s) has/have been rendered or after the product(s) has/have been delivered. Individuals making such requests without prior approval may be required to pay for the purchase personally.

Blanket Purchase Orders will have limited use and be used only for those situations where many purchases are made throughout the year from the same vendor(s) and the purchase is made to accommodate an immediate need. Examples of the use of blanket purchase orders would be automotive repair parts, custodial supplies, building construction materials, and classroom supplies. Listed below are the procedures to be followed when using blanket purchase orders:

- Administrator determines which staff member(s) is/are authorized to use a blanket purchase order, the time limit, vendor, and dollar amount of the PO;
- Administrator verifies that this information is captured on the PND and subsequent PO.
- All purchases made on the blanket purchase order will be accompanied with the appropriate budget code(s), as determined by the Administrator, and submitted along with receipts and documents necessary to initiate payment.

After the Purchasing Agent establishes the blanket purchase order, all purchases on the blanket purchase order must follow the established procedure for such purchases.

To facilitate timely payment of all invoices, vendors must mail them to the Business Office, attn: Accounts Payable. Payment will be made from original invoices only or PDF originating from the vendor.

BOCES is exempt of NYS tax. Tax-exempt forms should be provided to:

- Hotels when traveling within the state.
- Restaurants/caterers when in groups.
- BOCES will not pay taxes on purchase orders or claim forms unless:
- They are out of State taxes.
- They are part of a per diem allowance for travel purposes.

PURCHASING THRESHOLDS

	E-mail or Internet or Catalog Page Copy	Formal Quote	Formal BID/RFP*
Purchase Contracts			
Up to \$1,000	1		
\$1,000.01 - \$3,000	2		
\$3,000.01 - \$20,000		3	
\$20,000.01+			Required
Contracts for Public Work**			
Up to \$1,000	1		
\$1,000.01 - \$3,000	2		
\$3,000.01 - \$35,000		3	
\$35,000.01+			Required
Emergencies	1		

*NYS OGS contract pricing or State-wide BOCES bid may be used in lieu of a Formal Bid or RFP.

** BEFORE obtaining a quote for a public work contract, a Prevailing Wage Schedule must be obtained from the Department of Labor, and that wage schedule must be shared with each vendor prior to quoting/bidding the work.

Procedure to Purchase Using a Blanket Purchase Order

The Purchasing Agent has issued to your Department a Blanket Purchase order for program-related expenses. In order to correctly manage the purchasing process, the following procedures should be followed:

- The ordering employee should fill the Authorization to Purchase form indicating the vendor name, a list of the items to be purchased, and the approximate expense. The employee should also indicate whether travel is expected as part of the purchasing process.
- The Authorization to Purchase form should then be sent to the appropriate administrator who will review and approve the purchase. The PO number and budget information should be entered on the form.
- Once the Authorization to Purchase form is signed by an administrator, the ordering employee may order or obtain the approved items by shopping at the vendor's retail store, or online outlet. The employee should bring their employee ID with them to the retail store to verify their employment if necessary.
- Once the employee has obtained the merchandise, a third party must verify receipt of the items by the Center for Instruction, Technology & Innovation. This can be done by the Receiving Department or by another CiTi employee. The completed Authorization to Purchase form and itemized receipt should then be returned to the administrator.
- The administrator will review the Authorization to Purchase form for completeness, approve the form and forward it to the Accounts Payable desk for processing.
- No purchase can occur that will exceed the amount of the Blanket Purchase Order. If the PO needs to be increase, a PO change form should be completed and submitted to the Business Office prior to purchasing that would exceed the total of the PO.

Please note that Blanket Purchase Orders should not be used to purchase any item available on a CiTi Bid or NYS OGS Contract including, but not limited to, the following items:

- Computer Supplies and Audio-Visual Equipment
- Copy Paper
- Any item with a cord (appliances)
- Cleaning and Dishwashing Supplies
- Batteries
- Office Supplies
- Furniture & Cabinets

Debarment and Suspension

Non-Federal entities are prohibited from contracting with or making subawards under "covered transactions" to parties that are suspended or debarred, or whose principals are suspended or debarred. "Covered transactions" include procurement contracts for goods and services awarded under a grant or cooperative agreement that are expected to equal or exceed \$25,000.

All non-procurement transactions entered into by a recipient (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions, unless they are exempt as provided in 2 CFR section 180.215.

This verification may be accomplished by:

- Checking the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA). EPLS is no longer a separate system; however, the OMB guidance and agency implementing regulations still refer to it as EPLS and is available at <https://www.sam.gov/portal/public/SAM/>
- Collecting a certification from the entity
- Adding a clause or condition to the covered transaction with that entity

The subrecipient cannot make a contract to parties listed on the EPLS through the System for Award Management (SAM). SAM contains the list of names of parties debarred, suspended, or otherwise excluded by federal agencies.

The Grants Clerk is charged with the responsibility of monitoring and ensuring compliance with the suspension and debarment procedures and documenting that contracts over \$25,000.000 have been verified on the System for Award Management (SAM) site in collaboration with the Purchasing Agent.

This process will be done for all new vendors and existing vendors will be checked annually:

- Responsible Contractors/vendors will sign and notarize the BOCES' certification form that is an addendum to our contract or part of our BID/RFP.
- The Administrator of the grant will be responsible for checking the site for verification.
- The certification form must be signed and notarized prior to any purchase and attached as supporting documentation to the purchase order.
- A copy of the form must be retained.

Documentation should be maintained in the applicable vendor file.

Full and Open Competition (CFR § 200.319)

All procurement transactions must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitation 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:

- Placing unreasonable requirements on firms, in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a "brand name" instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.

To ensure adequate competition:

- **Geographical preferences** are prohibited. The BOCES 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. Geographic location may be a selection criterion provided its applications leaves an appropriate number of qualified vendors given the nature and size of the project to compete for the contract.
- **Prequalified lists** of person, firms or products which are used in acquiring goods and services must be current and included enough qualified sources to ensure maximum open competition. The BOCES must not preclude potential bidders from qualifying during the solicitation period.
- **Solicitation language** must incorporate clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The description must not contain features that will restrict competition. The description may include a statement of qualitative nature of the material, product or service to be procured and must set forth minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided. A "brand name or equivalent" description may be used, as a means to define the performance or other salient requirements of procurement, when it is impractical or uneconomical to make a clear and accurate description of the technical requirements. The specific features of the named brand which must be met by offerors must be clearly stated. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Methods of Procurement (CFR § 200.320)

The following five methods are acceptable methods of procurement per the uniform grant guidance:

- A. **Micro-purchases** of supplies and services for similar like purchases in the aggregate of \$3,000 or less (\$2,000 for purchases subject to Davis-Bacon) do NOT require quotes to be received and effort should be made to distribute evenly these purchases to qualified suppliers.

- B. Small purchases** of supplies or other property and services in excess of the yearly aggregate of \$3,000 and do not exceed the yearly aggregate of \$150,000 do require quotes but NO pricing analysis. If used, price or rate quotations must be obtained from an adequate number of qualified sources. The yearly aggregate threshold of \$150,000 is inflation adjusted periodically and could change in the future.
- C. Sealed bids** are required for purchases for similar like items in excess of the aggregate of \$150,000. Firm fixed price is awarded and must include at least two responsible bidders. Bids will be opened publicly, and award is usually to lowest bidder (based on fixed price). Sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest price. If the BOCES chooses a bid that was not the lowest, the BOCES documents its selection as described in its procurement procedures.
- D. Competitive proposals** used for projects over the yearly aggregate of \$150,000 and may be fixed price or cost reimbursement
1. This method is typical for architectural/engineering professional services and price is not used. Instead contract is awarded to most qualified competitor with compensation subject to negotiation.
 2. Section 200.320(d) Specific requirements for competitive proposals are as follows:
 - Requests for Proposals must be publicized and identify evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - Proposals must be solicited from an adequate number of qualified sources;
 - The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- E. Noncompetitive proposals** (sole source) 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. Item is only available 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. Follow Appendix II to Part 200 which has specific information for Equal Employment Opportunity, Davis Bacon Act, contract work hours, safety standards, and debarment and suspension.

NOTE: Local thresholds apply if more stringent. Please refer to Purchasing Policy and Regulations.

Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms (CFR § 200.321)

BOCES will take all necessary affirmative steps to assure that minority businesses, women’s business enterprises and labor area surplus firms are used when possible.

Affirmative steps include:

- Placing qualified small and minority businesses and women’s business enterprises on solicitations lists and assuring they are solicited whenever they are potential sources.
- Divide total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises.
- Using the services and assistance of such organizations as the Small Business Administration and the Minority Business Development agency of the Department of Commerce
- Requiring the prime contractor, if subcontracts are to be let, to take affirmative steps listed above.

The BOCES will also procure recovered materials and comply with section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act.

Procurement of Recovered Materials (CFR § 200.322)

Procurement of recovered materials must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. BOCES will procure only items designated in guidelines of the EPA that contain the highest % of recovered materials practicable and where the purchase price of the items exceeds \$10,000.00 or the value of what was purchased the previous year exceeded \$10,000.00.

Contract Cost and Price Analysis (CFR § 200.323)

BOCES must perform a cost or price analysis with every procurement action more than the SAT \$150,000, or lower state or local threshold (refer to BOCES Policy), including contract modifications. Before receiving bids or proposals, an independent estimate must be made by the BOCES. In all cases where a cost analysis is performed, BOCES must negotiate profit as a separate element of the price for each contract in which there is no price competition. Costs or prices based on estimated costs for contracts are allowable only when costs incurred, or cost estimates are included in negotiated prices. The cost plus % of cost and % of construction cost methods MUST NOT be used. The method and degree of analysis is dependent on the facts surrounding the procurement situation and documentation should be maintained in procurement files.

To establish a fair and reasonable profit, consideration must be given to:

- Complexity of work to be performed
- Risk borne by the Contractor and the Contractor's investment
- Amount of subcontracting
- Quality of its record of past performance
- Industry profit rates for similar work in geographical area

Federal Awarding Agency and Passthrough Agency (CFR §200.324)

BOCES must make available, upon request to the federal awarding agency or pass-through entity, technical specifications on proposed procurement where the federal awarding agency or passthrough entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review will generally take place prior to the time the specification is incorporated into a solicitation document. However, they may request to review the specifications after the solicitation has been developed. BOCES must also make available upon request all procurement documents during the procurement review.

Bonding Requirements (CFR §200.325)

For construction or facility improvement contracts or subcontracts exceeding the SAT, 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 determinations have not been made the minimum requirements must be as follows:

- Bid guarantee (Bid Bonds) equivalent to 5% of the bid price
- Performance bond for 100% of the contract price
- Payment bond for 100% of the contract price

Contract Provisions (CFR § 200.326)

The District's contracts must contain the applicable provisions described in Appendix II to Part 200 - Contract provisions for Non-Federal Entity Contracts Under Federal Awards. All contracts made under federal awards must contain provisions covering the following as applicable:

- Contracts for more than the SAT (\$150,000) 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
- All contracts more than \$10,000 must address termination for cause and convenience including the manner by which it will be affected and the basis for settlement
- Equal Employment Opportunity
- Davis Bacon Act
- Contract Work Hours and Safety Standards
- Right to Inventions Made Under a Contract or Agreement

- Clean Air Act
- Debarment and Suspension
- Byrd- Anti Lobbying Amendment
- Procurement of Recovered Materials

Settlement of Issues Arising Out of Procurements

The BOCES alone is 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 BOCES of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Protest Procedures to Resolve Disputes

The BOCES maintains protest procedures to handle and resolve disputes relating to procurements and in all instances, discloses information regarding the protest to the awarding agency. The Purchasing Agent is responsible for evaluation and award of the contract. The Coordinator of Business Administration is responsible for completing protest procedures in accordance with state and local law. The position and/or office that reviews the protest should be different than the one that awarded the contract.

Protest procedures should include:

- How potential vendors receive notice of ability to protest;
- What position/office receives the protest;
- What position/office reviews the protest;
- Whether a report of the review is provided to the complainant, and;
- Timeframes for both making the protest and reviewing the protest.

Applicable Federal laws include:

- §200.318 General procurement standards
- §200.319 Competition
- §200.320 Methods of procurement to be followed
- §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms
- §200.322 Procurement of recovered materials
- §200.323 Contract cost and price
- §200.325 Bonding requirements
- §200.326 Contract provisions

CLAIMS AUDITING

In accordance with Internal Claims Auditor Policy, the claims auditor is responsible for formally examining, allowing or rejecting all accounts, charges, claims or demands against the school district.

The Internal Claims Auditor provides the school board with the internal claims audit report, along with the BOCES' corrective action plan.

All documents and records retained by the BOCES are in accordance with the New York State ED-1 schedule.

The Business Office maintains and distributes to all purchasers, a comprehensive purchasing procedure manual.

The Purchasing Agent is available to conduct purchasing and policy meetings to offer professional development to all staff on compliance to procurement procedures and policies.

OSWEGO BOCES CLAIMS AUDITING POLICY 1315

Education Law §§ 1604(35), 1709(20-a), 2526 and 2554(2-a)

8 NYCRR § 170.12(c)

Adopted: 5/12/10

Revised: 2/12/14; 4/4/18

APPOINTMENT AND DUTIES OF THE CLAIMS AUDITOR

The Board will appoint a Claims Auditor to examine all claims. This auditor will determine whether the amounts claimed are actual and necessary expenditures, if the goods or services were actually received, whether the BOCES official or employee was authorized to incur the obligation, and if the claims are supported with adequate evidence. Support may include itemized documentation, a thorough description of the goods or services, and detailed receipts and invoices. The Claims Auditor will ensure that each claim is legitimate, mathematically correct, does not exceed any available appropriation within the applicable budget code, and is made in accordance with BOCES policy, purchasing order, or contract before authorizing payment. This auditor will certify that he or she audited each claim listed on the claims warrant to authorize the Treasurer to pay. The Treasurer should compare the signed checks to the certified warrant to verify accuracy and consistency before issuing payment.

The Claims Auditor will report directly to the Board on a monthly basis. The Board may also require that the Claims Auditor report to the Clerk of the BOCES, Clerk of the Board, or to the District Superintendent for administrative matters such as workspace, time, and attendance.

The Board may adopt a resolution establishing the office of Deputy Claims Auditor to act as the Claims Auditor in the absence of the Claims Auditor. The Board may, by resolution, abolish the position of Deputy Claims Auditor at any time. The same eligibility requirements and qualifications that apply to a Claims Auditor apply to the Deputy Claims Auditor.

Qualifications

The Claims Auditor must have the necessary knowledge and skills to effectively audit claims including experience with purchasing, bidding and claims. The Claims Auditor must be bonded or included in the BOCES blanket undertaking, before assuming duty.

The Claims Auditor should not be:

- *A member of the Board*
- *The Clerk or Treasurer of the Board*
- *The District Superintendent or official of the BOCES responsible for business management*
- *The Purchasing Agent*
- *Clerical or professional personnel directly involved in BOCES accounting and purchasing functions or under the direct supervision of the District Superintendent*
- *The individual or entity responsible for the internal audit function (the Internal Auditor)*
- *The External (Independent) Auditor responsible for the external audit of the financial statements*
- *A close or immediate family member of an employee, officer, or contractor providing services to the BOCES*
- *A close family member is a parent, sibling or nondependent child; an immediate family member is a spouse, spouse equivalent, or dependent (whether or not related)*

The Claims Auditor is not required to be a resident of the District and will be classified in the civil service exempt class.

Delegation of the Claims Audit Function

The Board may delegate this claims audit function by using inter-municipal cooperative agreements, shared services through a Board of Cooperative Educational Services, or independent contractors, providing that the individual, organization, or entity:

- *Has no other responsibilities related to the business operations of the BOCES*
- *Has no interest in any other contracts with, and does not provide any goods or services to, the BOCES operations of the BOCES, or has an interest in any other contracts with the BOCES*
- *The BOCES remains ultimately responsible for auditing all claims*

Duties of the Claims Auditor

Valid claims against the BOCES will be paid by the Treasurer only upon the approval of the Claims Auditor. The Claims Auditor is responsible for formally examining, allowing, or rejecting all accounts, charges, claims, or demands against the BOCES, and in doing so, will certify that each claim listed on the warrant was audited and payment was authorized, and provide periodic written reports as may be requested by the Board. The Claims Auditor will examine all claim forms to verify:

- *The availability of funds within the appropriate codes and adequacy of evidence to support the BOCES expenditure*
- *The proposed payment is for a valid and legal purpose*
- *The obligation was incurred by an authorized BOCES official*
- *The items for which payment is claimed were in fact received or, in the case of services, that they were actually rendered*
- *The submitted voucher is in proper form, mathematically correct, does not include previously paid charges, and is in agreement with the purchase order or contract upon which it is based*
- *The claim meets such other requirements as may be established by the regulations of the Commissioner of Education or the Comptroller of the State of New York*

During the course of claims review, the Claims Auditor shall also be alert to any indications of fraud, abuse, or illegal acts. If the Claims Auditor detects apparent violations of law or apparent instances of abuse by an employee or vendor or discovers information to suggest that such behavior may occur, the Claims Auditor shall consult with the District Superintendent. In the event that the alleged acts appear to involve the District Superintendent, the Claims Auditor shall consult with the Board President.

CONFLICT OF INTEREST

In accordance with § 200.318(c) of General Procurement Standards:

1. The Non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.
2. If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.

EMPLOYEE CONFLICT OF INTEREST

(See Education Law § 410, General Municipal Law Article 18 and §§ 800-809, 2 CFR § 200.318(c)(1))

The Omni Circular includes the following provisions and must be addressed in BOCES policy:

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 BOCES may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the BOCES 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 BOCES.

Substantial state and federal requirements exist pertaining to standards of conduct and conflict of interest. In accordance with the District's Policy, the BOCES maintains written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of these policies may be fined, suspended, or removed from office or employment, as the case may be, in the manner provided by law.

OSWEGO BOCES CODE OF ETHICS FOR BOARD MEMBERS AND ALL BOCES PERSONEL POLICY 5110

Education Law § 410

General Municipal Law Article 18 and §§ 800-809

2 CFR § 200.318(c)(1)

Adopted: 5/12/10

Revised: 2/15/17; 4/4/18

General Provisions

Officers and employees of the BOCES hold their positions to serve and benefit the public, and not to obtain unwarranted personal or private gain in the exercise of their official powers and duties. The Board recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This policy establishes those standards.

The provisions of this policy are intended to supplement Article 18 of General Municipal Law Sections and any other law relating to ethical conduct of BOCES officers and employees, and should not be construed to conflict with those authorities.

Standards of Conduct

The following rules and standards of conduct apply to all officers, including Board members, and employees of the BOCES:

Gifts

No person may directly or indirectly solicit, accept, or receive any gift having a value of \$75 or more under circumstances in which it could reasonably be inferred that the gift was intended or expected to influence the individual in the performance of his or her official duties or was intended as a reward for any official action on the part of the individual. This prohibition applies to any gift, including money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form.

Confidential Information

No person may disclose confidential information acquired by him or her in the course of his or her official duties or use this information to further his or her personal interests.

Conflicts of Interest

Except as permitted by law, no person may have an interest in any contract with the BOCES when he or she, individually, or as a member of the Board, has the power or duty to: negotiate, prepare, authorize, or approve the contract or authorize or approve payment under the contract; audit bills or claims under the contract; or appoint an officer or employee who has any of these powers or duties.

Likewise, unless permitted by law, no chief fiscal officer, treasurer, or his or her deputy or employee, may have an interest in a bank or trust company designated as a depository, paying agent, registration agent, or for investment of funds of the BOCES.

No employee, officer, or agent will participate in selecting, awarding, or administering a contract supported by a federal award if he or she has a real or apparent conflict of interest. These conflicts could arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of these parties has a financial or other interest in or a tangible personal interest benefit from a firm considered for a contract. Employees, officers, and agents will not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The BOCES may, however, set standards for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value.

"Interest," as used in this policy, means a direct or indirect pecuniary or material benefit accruing to a BOCES officer or employee as the result of a contract with the BOCES. A BOCES officer or employee will be considered to have an interest in the contract of: his or her spouse, minor children and dependents, except a contract of employment with the BOCES; a firm, partnership or association of which he or she is a member or employee; a corporation of which he or she is an officer, director or employee; and a corporation any stock of which is owned or controlled directly or indirectly by him or her.

The provisions of the preceding four paragraphs should not be construed to preclude the payment of lawful compensation and necessary expenses of any BOCES officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

Representing Others in Matters Before the BOCES

No person may receive, or enter into any agreement, express or implied, for compensation for services rendered in relation to any matter before the BOCES. Likewise, no one may receive, or enter into any agreement, express or implied, for compensation for services rendered in relation to any matter before the BOCES, where the individual's compensation is contingent upon any action by the BOCES with respect to the matter.

Disclosure of Interest in Contracts and Resolutions

Any BOCES officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement, or other agreement, including oral agreements, with the BOCES must publicly disclose the nature and extent of that interest in writing. The disclosure must be made when the officer or employee first acquires knowledge of the actual or prospective interest and must be filed with the person's immediate supervisor and the Board. Any written disclosure will be made part of and included in the official minutes of the relevant Board meeting.

Investments in Conflict with Official Duties

No person may invest or hold any investment directly or indirectly in any financial, business, commercial, or other private transaction, that creates a conflict with his or her official duties, or that would otherwise impair his or her independence of judgment in the exercise or performance of his or her official powers or duties.

Private Employment

No person may engage in, solicit, negotiate for, or promise to accept private employment or render services for private interests when that employment or service creates a conflict with or impairs the proper discharge of his or her official duties.

Future Employment

No person may, after the termination of service or employment with the BOCES, appear before the BOCES on behalf of his or her employer in relation to any case, proceeding, or application in which he or she personally participated during the period of his or her service or employment with the BOCES or which was under his or her active consideration while he or she was with the BOCES.

Notice of Code of Ethics and General Municipal Law Sections 800-809

The Superintendent will ensure that a copy of this code of ethics is distributed to every BOCES officer and employee, and that a copy of General Municipal Law Sections 800-809 is posted conspicuously in each BOCES building. The failure to distribute this code of ethics or to post General Municipal Law Sections 800-809 will have no effect on either the duty of BOCES officers and employees to comply with their provisions, or the ability of the BOCES or other relevant authorities to enforce them.

Penalties

Any person who knowingly or intentionally violates any of the provisions of this policy may be fined, suspended, removed from office or employment, or subject to additional or other penalties as provided by law.

ORGANIZATIONAL CONFLICT OF INTEREST

(See Education Law § 410, 3016 General Municipal Law Article 18, and §§ 801-813 Labor Law § 201-d)

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

The BOCES has adopted Code of Ethics and Conflict of Interest policies (5110, Education Law § 410, General Municipal Law Article 18 and §§ 800-809, 2 CFR § 200.318(c)(1), setting forth the standards of conduct required of all Board members, district officers and employees under the provisions of the General Municipal Law. In accordance with policy, no Board member, officer or employee shall have an "interest" (i.e., receive a direct or indirect benefit as the result of a contract with the district) in:

- a firm, partnership or association in which he/she is a member or employee
- a corporation in which he/she is an officer, director or employee
- a corporation in which he/she, directly or indirectly, owns or controls 5% or more of the stock
- a contract between the district and his/her spouse, minor child or dependents, except for an employment contract with the BOCES
- Board member authorized by §800(3) of the General Municipal Law or §3016 of the Education Law

In addition to the above, a Board member, officer or employee may be involved as a volunteer, officer or employee in a charitable organization which has a relationship with the district. If a Board member is a board member, officer or employee of the charitable organization the Board member must disclose such relationship in writing to the BOCES, and the Board member must recuse himself or herself from any discussions or votes relating to the charitable organization which may come before the Board. When participating in the activities of the charitable organization, the Board member, officer or employee shall not disclose any confidential information

learned in the course of his or her official duties or use such information to further personal interests. Additionally, the Board member, officer or employee shall not make representations on behalf of the district unless specifically authorized to do so by the Board.

OSWEGO BOCES CONFLICT OF INTEREST POLICY 5111

Education Law Sections 410, 3016

General Municipal Law Article 18, Sections 801-813

Labor Law Section 201-d

Adopted: 5/12/10

The Board of Education is committed to avoiding any situation in which the existence of simultaneous, conflicting interests in any officer or employee may call into question the integrity of the management or operation of the BOCES. Therefore:

- a) No person employed by the BOCES shall hire, supervise, evaluate, promote, review or discipline any other employee who is a member of the same family. In the event that marriage, promotion, or reorganization results in a situation not in compliance with this policy, reassignment or transfer will be affected, in accordance with the applicable provisions of any collective bargaining agreement, to correct the situation.*
- b) No person employed by the BOCES shall negotiate or execute any contract on behalf of the BOCES for the purchase, sale or lease of real or personal property, services of any nature, nor for insurance without first having determined the common price for such property, services or insurance, or requesting bids from all potential providers of such property, services or insurance.*
- c) No person employed by the BOCES shall allow any matter, concern or interest, personal, financial or otherwise, to influence or interfere with the performance of their duties. Should such a matter, concern or interest arise, the employee shall bring the matter to the attention of their supervisor to seek ways to reduce or eliminate the influence or interference.*
- d) The Board affirms its commitment to adhere scrupulously to all applicable provisions of law regarding material conflicts of interest.*
- e) Knowing or willful violation of this policy by any employee may result in disciplinary action up to and including dismissal.*
- f) Any officer, employee or member of the public noting or suspecting a violation of this policy is encouraged to bring the matter, either in confidence or in public, to the Board or the District Superintendent of Schools.*

DISCLOSING CONFLICTS OF INTEREST

The BOCES must disclose in writing any potential conflict of interest to NYSED in accordance with applicable Federal awarding agency policy.

In accordance with the policies, any Board member, officer or employee of the BOCES, whether paid or unpaid, must publicly disclose the nature and extent of any interest they or their spouse have, will have or later acquire in any actual or proposed contract, purchase agreement, lease agreement or other agreement involving the school district (including oral agreements), to the governing body and his/her immediate supervisor (where applicable) even if it is not a prohibited interest under applicable law. Such disclosure must be in writing and made part of the official record of the school district. Disclosure is not required in the case of an interest that is exempted under Section 803(2) of the General Municipal Law. The term "interest" means a pecuniary or material benefit accruing to an officer or employee.

The Board of Education for the BOCES affirms its commitment to adhere scrupulously to all applicable provisions of law regarding material conflicts of interest. Knowing or willful violation of the District's policies (5110/51111, Education Law § 410, General Municipal Law Article 18 and §§ 800-809 & §§ 801-813, 2 CFR § 200.318(c)(1), and Labor Law §201(d)) by any employee may result in disciplinary action up to and including dismissal. Any officer, employee or member of the public noting or suspecting a violation of these policies is encouraged to bring the matter, either in confidence or in public, to the Board of Education or the Superintendent of Schools.

CASH MANAGEMENT

OSWEGO BOCES FISCAL ACCOUNTING AND REPORTING POLICY 4484

Education Law Sections 1610, 1721, 2116-a, 2117, 2528, 2577, 2590-i

General Municipal Law Sections 5-9,33,34

8 New York Code of Rules and Regulations (NYCRR) Sections 155.1, 170.1, 170.2

Adopted: 5/10/10

Revised: 8/15/12

The Board of Education insists on clear, complete, and detailed accounting of all financial transactions for which the Board is held accountable.

The system of accounts will conform to the Uniform System of Accounts for School Districts. The accounting system will yield information necessary for the Board to make policy decisions.

Proposed expenditures will be budgeted under and the actual expenditures will be charged to categories that most accurately describe the purpose for which monies are to be spent.

In an effort to maintain control of the expenditures, the District Superintendent shall require the Chief Fiscal Officer to render a summary report by program or major function at least quarterly within regulations of the Commissioner of Education.

Program supervisors are responsible for operation of the programs within budgetary limits.

Funds expended for all budgets shall be subject to approval by the Oswego County BOCES Purchasing Agent and ultimately the Internal Claims Auditor.

The Board directs the District Superintendent to keep it informed of the financial status of the BOCES through monthly and annual reports. The District Superintendent should highlight any deviation in actual fiscal conditions from planned fiscal conditions and offer recommendations to the Board to remedy the situation. The Chief Fiscal Officer will prepare and submit, through the Superintendent, to the Board and the Commissioner of Education, such reports as are prescribed by law. These shall be filed with appropriate governmental bodies as required under law or regulation. The BOCES will cooperate with governmental agencies and research organizations as required by law for data concerning the fiscal operations of the BOCES.

The BOCES shall be audited annually by an independent certified public accountant or a public accountant. The auditor's report shall be adopted by resolution and a copy shall be filed with the Commissioner of Education.

The District Superintendent is hereby directed to respond to all audit findings and recommendations. Such response is to include a statement of the corrective actions taken or proposed to be taken, or if action is not taken or proposed, an explanation of reasons, as well as a statement on the status of corrective actions taken on findings or recommendations contained in any previous report of examination or external audit, or any management letter for which a response was required.

The District Superintendent shall also ensure that the provisions contained in the General Municipal Law in regard to audit reports are followed.

Accounting of Funds

Accounting and reporting procedures shall be developed to facilitate analysis and evaluation of the BOCES' financial status and fixed assets. The BOCES will use the Uniform System of Accounts for School Districts.

Books and records of the BOCES shall be maintained in accordance with statutory requirements.

Provision shall be made for the adequate storage, security, and disposition of all financial and inventory records.

Electronic Banking

The Board of Education recognizes the use of various electronic banking transactions as a faster, easier, and more efficient substitute for paper transactions and authorizes the use of same in accordance with all applicable laws and regulations including General Municipal Law Section 5-a. Electronic banking uses computer and electronic technology to streamline the processing and recording of receipts and disbursements, while reducing the cost of processing these transactions. Receipts, disbursements and transfers in proper circumstances can be processed via electronic funds transfer (EFT) services, whether transferring funds from a savings to a checking account at the same bank or making a payment to a vendor's bank across the country. Internal controls, such as written policies and procedures, authorizations segregation of duties and monitoring, however, are still important in the new technological world.

The Board also recognizes that most banking institutions no longer provide cancelled paper checks to their customers but instead offer an electronic image obtained online or on a CD. As such, the Board of Education authorizes the acceptance of these electronic images in lieu of cancelled checks as required by statute.

Scope

Electronic banking activities will be used for, but not limited, to the following:

- a) Online banking services (reviewing account balances, retrieving bank statements, downloading copies of cancelled checks, making stop payment orders, etc.)
- b) Check fraud prevention services (Positive Pay-Payables Web Services)
- c) Electronic depositing of checks received
- d) ACH vendor payments (payroll and/or accounts payable)
- e) EFT or wire transfers
- f) Electronic Federal Tax Payment System
- g) Electronic State Tax Payment System (prompt Tax)

Online Banking Services

Online banking services are recognized as standard practice and procedure for maintaining an effective cash management program. Access to any of the BOCES' online bank accounts will be managed by the Coordinator of Business Administration and the Treasurer to allow other users restricted access as necessary for banking functions as needed. (Examples of various online banking functions include monitoring account balances, issuing stop payment orders, retrieving copies of cancelled checks, ordering deposit slips, etc.)

Check Fraud Prevention Services

To help protect against the threat of check fraud, a file of all cash disbursement payments made by paper checks will be uploaded to the bank's web payables check fraud prevention system. This process provides details about the checks the BOCES has written and compares that information to checks being processed to the bank for payment. The benefits include reducing the risk of check fraud by providing the BOCES with the ability to monitor and control checks presented against any BOCES account so only authorized items are paid.

Electronic Funds Transfers

Electronic funds transfers and wire payments can only be initiated by the Treasurer/Deputy Treasurer. All bank transfers and wire payments must be reviewed by the Coordinator of Business Administration. The recording of such transactions will be captured manually by the Treasurer through the use of journal entries, which are approved in the financial software by the Coordinator of Business Administration. Bank call back features will be utilized when available.

Payroll ACH Payments

Payroll ACH payments are restricted to payroll-related deduction payments to authorized third party administrators of the BOCES and are authorized by the Coordinator of Business Administration after standard processing of payroll. Transfers are completed by the Treasurer, with payments taken from the Trust and Agency Fund bank account. Recording of such transactions will be captured manually by the Treasurer through the use of journal entries.

Accounts Payable ACH Payments are authorized by the Treasurer after standard processing and recording through accounts payable transaction cycle and claims auditing process. Recording of ACH vendor payments will be the responsibility of the Treasurer through standard posting of the monthly cash disbursements journal. All payments made through this process are subject to the same claims audit process as exists currently with paper drawn checks. Release of payments is made by the Treasurer only after the completion of the approval and claims audit process.

Revenue Collection

- a) Electronic Deposits of Checks by means of utilizing a secure banking check scanning device for checks received are authorized as delegated by the Coordinator of Business Administration. The use of an electronic scanning device helps improve security, efficiency and cost effectiveness of making deposits. Recording of such deposits will be the responsibility of the Treasurer through standard posting of the cash receipts monthly journal.
- b) Electronic payments received from customers are acceptable and may be recorded via manual journal entries or through the regular cash receipts transaction journal and the discretion of the Coordinator of Business Administration/Treasurer.

Monitoring

The Coordinator of Business Administration is responsible for implementing adequate internal controls for each of the electronic banking methods utilized. An effective internal control system includes, but is not limited to, segregation of duties, proper authorization, and adequate documentation for all electronic transactions.

RECEIVING FUNDS

Cash/Checks Received

The individual (teacher, secretary, etc.) turning in cash/checks records a list of payees and amounts (use of a standard form is encouraged, i.e. class list with checkbox for each student receipt) or a receipt to turn in with the funds that they are depositing with the Purchasing Clerk or Deputy Treasurer.

- The Purchasing Clerk or Deputy Treasurer reconciles the amount, letting the depositor know of any discrepancies. The packet is given to the Deputy Treasurer or Treasurer.
- The Purchasing Clerk or Deputy Treasurer signs over custody of the cash/checks to the Courier who takes all deposits to the bank daily and drops the deposits into the night deposit slot. The bank mails back a stamped deposit receipt. The Business Office never takes deposits to the bank.
- The Business Office verifies all deposits via online banking or through monthly bank statements.
- Deputy Treasurer or Treasurer enters the cash receipt into WinCap and prints a deposit receipt from the system.
- Cash receipts for student activity funds are recorded at the individual school and deposited by the Central Treasurer. The deposit is then given to Courier who takes all deposits to the bank daily and drops the deposits into the night deposit slot. The bank mails back a deposit statement.
- All government aid payments are received via ACH to the BOCES master account. The Business Office completes a receipt for these payments and receipts them into financial accounting software each month.
- The Business Office reconciles all bank accounts on a monthly basis.
- The Business Office transfers funds online between bank accounts as needed.

Federal Grants

- Budget is created and updated by Grant Administrator and approved by Coordinator of Business Administration in addition to the District Superintendent. The budget is submitted to the appropriate grant office using form FS-10.
- Expenditures must be approved by individual Grant Administrator along with the Purchasing Agent. All expenditures must fall within the grant guidelines of the submitted budget.
- Receipts must be turned into Business Office showing items matching the budget and signed off by the grant administrator.

Claims

- Grant Administrator approves expenditures and claims are filed quarterly by Coordinator of Business Administration or designated person(s).
- Claims are monitored and approved by the District Superintendent or Assistant Superintendent for Administrative Services each quarter.
- BOCES will provide funds for grants to cover grant expenditures until they are reimbursed through the claim process.
- Claims not paid in a reasonable amount of time will be investigated by the Coordinator of Business Administration or designated persons.

Receipt of Claims

- The Coordinator of Business Administration verifies funds are received through bank records.
- The deposit records are entered into financial accounting software by the Business Office.
- Receipts will be reconciled with the claim and discrepancies will be investigated.

BOCES utilizes various bank and investment accounts with Bank and a Local Government Investment Pool Account. Accounts include:

- Master
- Accounts Payable Checking
- Payroll
- Investment
- Various other debt, investment and student activity accounts.

The BOCES must minimize the time elapsing between the transfer of funds from NYSED and the disbursement by the BOCES whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means.

EQUIPMENT AND SAFEGUARDING ASSETS

The maintenance of accurate records of BOCES-owned land, buildings, furniture, equipment, intellectual property and materials is essential to any well-managed school.

The School Board, therefore, instructs the administration to establish and maintain an inventory system which will account for these on an annual basis (not less than once every two years - UGG) in accordance with generally accepted accounting principles. The inventory shall be conducted by building staff; departments or third parties using forms/systems made available by the Administrative Services Office. The Procedure itself will need to identify the staff responsible by title for your District and the timing each year the task is expected to occur and be completed by. Inventories are to be taken in the spring of each year, prior to the close of the school year. complete inventory shall be maintained in the Inventory system, and a full copy may be printed as needed.

BOCES are required by state law to safeguard assets of the BOCES. Assets acquired with Federal awards vest with the BOCES subject to authorized use until the property is no longer needed for the project purpose, maintained un-encumbered and ultimate proper disposal. In addition, the terms of some Federal grants and bond covenants require specific identification of assets acquired with those moneys, impose restrictions on disposing of such assets and/or designate allowable uses of the proceeds of the sale of such assets.

OSWEGO BOCES PERSONAL PROPERTY ACCOUNTABILITY AND DISPOSAL POLICY 4320

Education Law Sections 207 and 1950(18)

8 New York Code of Rules and Regulations (NYCRR) Section 170.3

NOTE: Refer also to Policies #4230 - Acceptance of Gifts, Grants and Bequests to BOCES; #4310 - Purchasing; #4431 -Accounting of Fixed Assets; #4481 - Whistle-Blower Policy.

Adopted: 5/12/10

Definition of Personal Property

- a) *Personal property shall mean all tangible personal property of the Board of Cooperative Educational Services (BOCES) that is not consumable and has a useful life of one (1) year or more including, but not limited to equipment, supplies, parts, vehicles and materials, provided that such terms shall not include buildings or other real property or equipment which is permanently affixed to real property, or leases, notes or other written instruments.*
- b) *Valuable personal property shall mean personal property which has a unit resale value of five hundred dollars (\$500) or more, and equipment, supplies, parts of materials which are disposed of in lots having an aggregate resale value of five hundred dollars (\$500) or more.*
- c) *Surplus personal property shall mean personal property which has no known, immediate or currently foreseeable use to the Board of Cooperative Services.*

Disposition of Personal Property

- a) *Building administrators and support staff supervisors are responsible for identifying obsolete and surplus equipment and supplies within their area(s) of responsibility.*
- b) *Periodically, but not less than once each year, a determination shall be made as to what equipment, supplies and/or materials are obsolete and cannot be salvaged or utilized effectively or economically by the BOCES.*
- c) *Procedures for Disposition of Equipment, Supplies or Materials*
- d) *Prior to classifying as disposable, all items should be considered for reassignment to other locations within BOCES as needed or stored in a central location if they may have potential usefulness in the future.*

All surplus or obsolete equipment, supplies or materials on the physical inventory will be declared surplus by the Board and sold using a method of sale which, in the judgment of the Board and based on the recommendation of the Purchasing Agent, will bring the best price.

Personal property items of little or no value may be disposed of based on the recommendation of the District Superintendent, in a manner consistent with law, and which results in the least cost to the BOCES for disposal.

Any personal property whose market value is estimated to be greater than five hundred dollars (\$500), but which is determined not to be marketable because it is damaged or in poor condition and has not been marketable after at least one (1) prior attempt for sale to the public, may be disposed of by BOCES.

All surplus and obsolete personal property shall be advertised in the local newspapers and any other appropriate means to assure public awareness.

Equipment purchased with federal funds may not be disposed of until approval has been granted by the federal agency responsible for the grant.

Any items which are not disposed of in the manner previously described may be donated to a charitable organization or disposed of as trash.

Textbooks

Textbooks and/or supplies that have lost their value to the educational program, may be disposed of by the following process.

If no longer useful or usable, the procedures for disposal shall adhere to the following order of preference:

- a) Sale of textbooks. If reasonable attempts to dispose of surplus textbooks fail to produce monetary return to the BOCES; then*
- b) Donation to charitable organizations; or*
- c) Disposal as trash.*

Procedure for Accountability of Officers and Employees for Violating the Personal Property Policy

- a) Penalty for violation. Any officer or employee who engages in the unauthorized use, theft or conversion of personal property belonging to the BOCES, or who otherwise violates BOCES policies, shall be subject to removal from office and/or such other discipline or penalties as authorized by law or as decided by the District Superintendent.*
- b) Complaints. Any complaint concerning an alleged violation of this policy shall be submitted to the District Superintendent on an appropriate form prescribed by the District Superintendent. The District Superintendent shall cause an investigation to be conducted and a report shall be filed in the District Office at the completion of the investigation. The District Superintendent is responsible for and shall take such action as is necessary for the enforcement of this policy in accordance with Board Policy #4481 -- Whistle-Blower Policy.*
- c) Dissemination of Policy. The District Superintendent shall take such action as is necessary to communicate this policy to all officers and employees of the BOCES including, but not limited to, the publication of this policy in the BOCES Policy Manual, the Personnel Handbook, and teacher and employee handbooks. This policy will be included on the agenda of faculty and administrative meetings at least annually as established in policy.*

REVIEW AND AMENDMENTS OF THE POLICY

Review

The BOCES shall review its policy on Personal Property Accountability annually and make amendments it deems necessary.

Amendments

The BOCES shall submit its amended policy, within 30 days of its adoption, to the Commissioner of Education for approval.

INVENTORY

The BOCES needs to be able to provide information where the item is located. Item should be readily identifiable if purchased with Federal grant.

OSWEGO BOCES INVENTORIES POLICY 4430

(Refer also to Policies #4320 -- BOCES Personal Property Accountability and Disposal; #4431 - Accounting of Fixed Assets. Adopted: 5/12/10

The District Superintendent or designee shall be responsible for maintaining a continuous and accurate inventory of equipment owned by the BOCES in accordance with "The Uniform System of Accounts for School Districts" and Cooperative Board policies.

All supplies and equipment purchased and received by the BOCES shall be checked, logged, and stored through an established procedure, as outlined by regulation.

Uniform System of Accounts for School Districts (Fiscal Section)

OSWEGO BOCES FIXED ASSET INVENTORIES, ACCOUNTING, AND TRACKING POLICY 4432

34 CFR Parts 74-99, 200

SED Finance Pamphlet, The Safeguarding, Accounting, and Auditing of Extra-classroom Activity Funds, 2015

Uniform System of Accounts for School Districts (Fiscal Section)

Adopted: 5/12/10

Revised: 2/15/17

The Superintendent or designee will maintain a continuous and accurate inventory of fixed assets owned by the BOCES in accordance with applicable rules, standards, procedures, and best practices. Fixed assets are, generally, long-term, tangible resources intended to be continuously held or used, and may include land, buildings, improvements, machinery, and equipment.

All fixed assets purchased and received by the BOCES will be checked, logged, and stored through an established procedure.

The School Business Official will account for assets on an annual basis according to applicable rules, standards, procedures, and best practices. These accounts will serve to:

- a) Maintain an inventory of assets;*
- b) Establish accountability;*
- c) Determine replacement costs; and*
- d) Determine and provide appropriate insurance coverage.*

The Board will establish a dollar threshold as a basis for considering which fixed assets are to be depreciated. This threshold will ensure that at least 80% of the value of these assets is reported. The threshold will not be greater than \$5,000. Standard methods and averaging conventions will be used in assessing, capitalizing, and depreciating fixed assets.

Fixed assets will be recorded at initial cost or, if not available, at estimated initial cost; gifts of fixed assets will be recorded at estimated fair value at the time of the gift. A property record will be maintained for each fixed asset and will contain, where possible, the following information:

- a) Date of acquisition;*
- b) Description;*
- c) Serial or other identification number;*
- d) Any funding source and percentage contributed by the source;*
- e) Vendor;*
- f) Cost or value;*
- g) Location and use;*
- h) Asset type;*
- i) Condition and estimated useful life;*
- j) Replacement cost;*
- k) Current value;*
- l) Salvage value;*
- m) Sale price and date and method of disposition; and*
- n) Responsible official.*

All fixed assets will be labeled. Any discrepancies between an inventory and the BOCES's property records should be traced, explained, and documented.

Management of Assets Acquired Under a Federal Government Grant or Subgrant

Inventories will be maintained for assets acquired with funds obtained through federal grant programs. A separate inventory will be maintained for each program. Each inventory will record assets in the same manner as the BOCES's fixed asset inventory. Assets will be labeled to specify the source of funds used to purchase the item. All Title I assets will include "Title I" on the label. These inventories will track assets for at least five years from the date of receipt.

When original or replacement assets acquired under a federal grant or subgrant are no longer needed for the original project or for other activities currently or previously supported by a federal agency, the BOCES will dispose of the assets as follows:

- a) Assets with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency.*
- b) Assets with a current per-unit fair market value of greater than \$5,000 may be retained or sold and the awarding agency will have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the assets.*

- c) *No federal approval is necessary to dispose of an asset costing over \$5,000 but approval from the New York State Education Department (SED) is necessary. Once SED has determined that it has no other need for the use of the asset, the BOCES may proceed with selling it.*

The BOCES will comply with the U.S. Department of Education regulations governing the use, management, and disposition of all equipment acquired through a federal government grant.

Equipment Purchased with Extra-classroom Funds

Title to all equipment acquired with extra-classroom activity funds will reside with the BOCES and be carried as an insurable asset on its list of insurable values. This equipment will be tagged as BOCES property but is available for exclusive use by the extra-classroom activity club acquiring it.

All employees must adhere to the procedures to ensure the appropriate capitalization and safeguarding of assets with a useful life of more than one year and to ensure goods are maintained in a properly controlled and secured environment.

When the product or services are received, the receiving department (or designated department) checks off the items received on the packing slip and the PO. The packing slip is then attached to the PO. When accounts payable receives the bill, accounts payable matches the documents to the PO to ensure BOCES is only paying for items/services that were received.

The Business Office provides the school board a detailed list of paid checks for approval. The board approves the list at their next meeting.

Federal Uniform Grant Guidance requires the inventory to occur at least once every two years (section 200.313 (d)(2)). Upon completion, inventory will be verified and updated in the BOCES inventory software.

Inventories must contain tag number, if applicable, description of the property, serial number or other I.D. number, source of funding, acquisition date, cost, vendor, and location. (Federal Uniform Grant Guidance section 200.313 (d)(1)). The following steps should be followed:

1. Fixed assets are tagged with a BOCES asset tag number. The O&M department is responsible for maintaining these inventories, including separate inventories for items purchased with federal funds.
2. Inventories include equipment valued over the thresholds set by BOCES Policy 4432. (Federal Uniform Grant Guidance requires a capitalization level of not more than \$5,000 per unit acquisition cost, per section 200.333). An inventory of high-risk assets should also be performed every two years regardless of dollar amount.
3. Adequate maintenance should be performed to keep property in good condition.
4. Prior year inventory listings should be reviewed to assist in identifying assets missing, junked or sold during the current fiscal year.

DISPOSAL

All BOCES property and equipment deemed surplus shall be disposed of at the discretion of the School Board.

When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, BOCES must request disposition instructions from the Federal awarding agency, if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with the Federal awarding agency disposition instructions:

1. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
2. If the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by BOCES or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit BOCES to deduct

and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

3. BOCES may transfer title to the property to the Federal Government or an eligible third party.

LOST OR STOLEN ITEMS

Lost or stolen property should be reported to the building principal or program director as soon as the individual is aware of the missing item. The building principal or program director should then report the lost or stolen item to the superintendent or his/her designee.

Lost or stolen items should include an explanation of what happened to the item as available.

REFERENCES IN UNIFORM GRANT GUIDANCE

Capital Assets §200.12; Equipment (Defined) §200.33; Equipment §200.313 (Title §200.313(a), Management Requirements §200.313(d), Use and Disposition of Equipment §200.313(e))

RECORDS RETENTION

The purpose of a Records Retention procedure is to ensure that necessary records and documents of the BOCES are adequately protected and maintained and to ensure that records that are no longer needed by BOCES or are of no value are discarded at the proper time. The procedure will also assist BOCES employees in understanding their obligations in retaining documents.

OSWEGO BOCES RECORDS MANAGEMENT POLICY 4570

Arts and Cultural Affairs Law § 57.19

8 NYCRR Part 185

NOTE: Refer also to Policy #1318 -- Records Officers: 5/12/10

Revised: 5/12/10; 4/4/18

A Records Management Officer shall be designated by the District Superintendent, subject to the approval of the BOCES Board. Such Records Management Officer shall coordinate the development of and oversee a program for the orderly and efficient management of records, including the legal disposition or destruction of obsolete records, and be given the authority and responsibility to work with other local officials at all levels in the development and maintenance of the records management program.

Records Retention and Disposition Schedule ED-1, issued in accordance with Part 185, Title VIII of the Official Compilation of Codes, Rules and Regulations of the State of New York and Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for the records of elementary and secondary educational institutions, is hereby adopted for use by all officers in disposing of BOCES' and/or Oswego County school districts' records listed therein.

- a) *Only those records will be disposed of that are described in Records Retention and Disposition Schedule ED-1 after they have met the minimum retention period described therein;*
- b) *Only those records will be disposed of that do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond established time periods.*

Special Approvals for Disposition of Records

Records not listed on a records retention and disposition schedule will not be disposed of without the approval of the Commissioner of Education. Similarly, records that have been damaged by natural or manmade disasters, to the extent that the information contained in those records is substantially destroyed, or the records constitute a human health or safety risk, also require the Commissioner's approval before disposition.

Replacing Original Records with Microforms or Electronic Images

Digital images of public records may be stored on electronic media, and these electronic records may replace paper originals or micrographic copies of these records. To ensure accessibility and intelligibility for the life of these records, the BOCES will follow the procedures prescribed by the Commissioner of Education.

Retention and Preservation of Electronic Records

The BOCES will ensure that records retention requirements are incorporated into any plan and process for design, redesign, or substantial enhancement of an information system that stores electronic records. The BOCES will also ensure that

electronic records are not rendered unusable because of changing technology before their retention and preservation requirements are met.

BOCES will comply with the New York State Records Retention and Disposal Schedule ED-1, as updated from time to time. A printed copy of the New York State Records Retention and Disposal Schedule ED-1 can be found obtained from the Records Retention Officer.

If retention requirements under Federal Uniform Guidance requires a longer period BOCES will comply with OMB Part 200, Section 200.333 Retention Requirements for Records. Generally, Section 200.333 requires retention for three years from the date of submission of the final expenditure report or the submission of the quarterly or annual financial report to the Federal awarding agency or pass-through entity. Special conditions extend this period for any litigation, claim or audit started, notification received from awarding, cognizant or oversight agency to extend, records for real property or equipment (three years from disposition) and program income transaction occurring after the period of performance. If records are transferred to the awarding agency the retention period is not applicable. Further specific conditions apply to indirect cost rate proposal and cost allocations plan as to when the three- year period commences.

Attachments to Procedure: An electronic copy of New York State Records Retention and Disposal Schedule ED-1 can be found at: http://www.archives.nysed.gov/records/retention_ed-1

APPENDIX

IMPORTANT SECTIONS OF THE FEDERAL REGISTER RULES AND REGULATIONS

§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.

§200.301 Performance measurement.

The Federal awarding agency must require the recipient to use OMB-approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in §200.210 Information contained in a Federal award. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal

awarding agency's program and performance decisions are made.

§200.302 Financial management.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also §200.450 Lobbying.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§200.327 Financial reporting and 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an

accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See §200.303 Internal controls.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of §200.305 Payment.

(7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

§200.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes,

regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

§200.305 Payment.

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302 Financial management paragraph (b)(6). Except as noted elsewhere in this part,

Federal agencies must require recipients to use only OMB-approved standard governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.207

Specific conditions, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds,

contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.342 Effects of suspension and termination.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.

(i) The non-Federal entity receives less than \$120,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The

remittance must be submitted as follows:

(i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

(* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency Name (abbreviated when possible) and ALC Agency POC: Michelle Haney, (301) 492-5065

(iv) For recipients that do not have electronic remittance capability, please make check** payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved mailbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

(** Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.psc.gov/>.

§200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the

Federal award process. It may include either the Federal and non-Federal share (see §200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.

(5) The transfer of funds budgeted for participant support costs as defined in §200.75 Participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the sub-awarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in §200.332 Fixed amount subawards. This provision does not apply to the

acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§200.102 Exceptions and 200.407 Prior written approval (prior approval).

(8) The need arises for additional Federal funds to complete the project.

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency is authorized, at its option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also §200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent periods of performance.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also §200.407 Prior written approval (prior approval)).

(g) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable

OMB cost principles listed in Subpart E—Cost Principles of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§200.313 Equipment.

See also §200.439 Equipment and other capital expenditures.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) Use. (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

§200.314 Supplies.

See also §200.453 Materials and supplies costs, including costs of computing devices.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313 Equipment, paragraph (e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§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.

§200.322 Procurement of recovered materials.

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.

§200.325 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.

§200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future

collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

§200.330 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program

requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes

in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see §200.39 Federal award date);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any

required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance

with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as

described in §200.338 Remedies for noncompliance of this part and in program regulations.

§200.333 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal

entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§200.343 Closeout.

The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through

entity may approve extensions when requested by the non-Federal entity.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property.

(g) The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.

200.344 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F—Audit Requirements of this part.

(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, §§200.310 Insurance Coverage through 200.316 Property trust relationship.

(5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, §§200.333 Retention requirements for records through 200.337 Restrictions on public access to records.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

§200.430 Compensation—personal services.

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in §200.431 Compensation—fringe benefits. Costs of compensation are

allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

- (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
 - (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
 - (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.
- (b) Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.
- (c) Professional activities outside the non-Federal entity. Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:
- (1) Non-Federal entity activities, and
 - (2) Non-organizational professional activities. If the Federal awarding

agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

- (d) Unallowable costs. (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.
- (2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.
- (e) Special considerations. Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.
- (f) Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.
- (g) Nonprofit organizations. For compensation to members of

nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) Institutions of higher education (IHEs). (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

- (i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.
- (ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the

proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) Intra-Institution of Higher Education (IHE) consulting. Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

- (i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.
- (ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.
- (iii) The supplementation amount paid is commensurate with the IBS rate of

pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) Periods outside the academic year. (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) Part-time faculty. Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) Sabbatical leave costs. Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) Standards for Documentation of Personnel Expenses (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable

approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal

awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the

Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

§200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) Leave. The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave,

military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- (1) They are provided under established written leave policies;
- (2) The costs are equitably allocated to all related activities, including Federal awards; and,
- (3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.
 - (i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.
 - (ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.
- (c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in §200.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.
- (d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits.

When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) Insurance. See also §200.447 Insurance and indemnification, paragraphs (d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) Automobiles. That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) Pension Plan Costs. Pension plan costs which are incurred in accordance with the established policies of the

non-Federal entity are allowable, provided that:

- (1) Such policies meet the test of reasonableness.
- (2) The methods of cost allocation are not discriminatory.
- (3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.
- (4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).
- (5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.
- (6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.
 - (i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.
 - (ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an

appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) Post-Retirement Health. Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year

funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the Federal Government's contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

- (i) An insurer or other benefit provider as current year costs or premiums, or
- (ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) Severance Pay. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established

policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary

for the performance of Federal programs and approved by the Federal awarding agency.

(j)(1) For IHEs only. Fringe benefits in the form of tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate education under IRC Section 117(d) as amended, provided that the benefit does not discriminate in favor of highly compensated employees. Federal reimbursement of tuition or remission of tuition is also limited to the institution for which the employee works. See §200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

- (1) The costs meet the requirements of Basic Considerations in §§200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs of this subpart;
- (2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and
- (3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

§200.434 Contributions and donations.

- (a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.
- (b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see §200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with §200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of §200.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

- (1) The aggregate value of the services is material;
 - (2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;
- (i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.
 - (ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.
- (f) Fair market value of donated services must be computed as described in §200.306 Cost sharing or matching.
- (g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §200.300 Statutory and national policy requirements through 200.309 Period of performance of subpart D of this part. The value of the donations must be determined in accordance with §§200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

§200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§200.439 Equipment and other capital expenditures.

(a) See §§200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the Federal

awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See §200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also §200.465 Rental costs of real property and equipment.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See §200.436 Depreciation.

§200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also §200.435 Defense and prosecution of criminal

and civil proceedings, claims, appeals and patent infringements.

§200.449 Interest.

(a) General. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets is defined as noted in §200.12 Capital assets. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) Conditions for all non-Federal entities. (1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), "Cost of Money as an Element of the Cost of Facilities Capital", and CAS 417 (48 CFR 9904.417), "Cost of Money as an Element of the Cost of Capital Assets Under Construction".

§200.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§200.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§200.474 Travel costs.

(a) General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of §200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges

normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

- (1) Participation of the individual is necessary to the Federal award; and
- (2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

- (i) The costs are a direct result of the individual's travel for the Federal award;
- (ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and
- (iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also §200.432 Conferences.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).

e) Commercial air travel. (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

- (i) Require circuitous routing;
- (ii) Require travel during unreasonable hours;
- (iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) Air travel by other than commercial carrier. Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

§200.501 Audit requirements.

(a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of

the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance

requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.