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EXPLANATION: FEDERAL PROGRAMS AND PROJECTS

MSBA created this NEW policy to comply with new regulations governing the receipt of federal funds, currently referred to as the Uniform Grant Guidance (UGG). School districts must adopt written procedures on procurement, conflict of interest and the acceptance of gratuities by July 1, 2016. MSBA has created this policy in order to satisfy this requirement. Because the law sets specific limitations on Board members, MSBA has included this requirement in policy rather than an administrative procedure. MSBA has moved relevant, revised content from policy CGC to the Federal Programs Administration section of this policy. Districts should now rescind policy CGC.

Procurement

Federal rules require that, when procuring property and services under a federal award, the district 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. . . .*" When using federal funds, districts must adhere to the Board's purchasing policy (MSBA policy DJF), administrative procedures (MSBA procedure DJF-AP1), state law and federal law.

DJF and DJF-AP1 already incorporate state law, so MSBA has developed this policy to address the specific federal laws that apply. DJF and DJF-AP1 have been modified as well to include some of the more generic federal requirements. See the explanations on DJF and DJF-AP1 in this update for more information. The district may choose not to apply these changes to purchases other than for federal programs.

This new policy includes the following federal requirements:

1. Pursuant to federal regulations, districts must take steps to use small and minority businesses as well as women's business enterprises. This provision is legally required.
2. Federal regulations also require the district to use firms located in Labor Surplus Areas (LSAs) when possible. An LSA is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period. Only official unemployment estimates provided to the Employment and Training Administration (ETA) by the Bureau of Labor Statistics are used in making these classifications. The average unemployment rate for all states includes data for the Commonwealth of Puerto Rico. The basic LSA classification criteria include a "floor unemployment rate." A civil jurisdiction must have an

unemployment rate of six percent or higher to be classified as an LSA and a "ceiling unemployment rate" (10 percent). Any civil jurisdiction that has an unemployment rate of ten percent or higher is classified as an LSA. The ETA is responsible for annually designating LSAs. The following counties in Missouri are LSAs for the 2016 federal fiscal year: Camden, Carter, Douglas, Dunklin, Hickory, Iron, Jackson, Laclede, Linn, Morgan, Ozark, Pemiscot, Reynolds, Ripley, Shannon, Stone, Taney and Washington.

- 3. The district must adhere to certain environmental rules when using federal funds. These include using a solid waste management service that maximizes resource recovery, purchasing items made with recycled materials and using recovered materials.**
- 4. Bid specifications must be accurate and cannot be written in such a way as to favor one contractor over another.**
- 5. Contractors who assist the district in preparing bid specifications or Request for Proposal (RFP) content are not permitted to bid on the contract.**
- 6. One of the federally required items is about handling "contractual and administrative issues" arising out of procurement. Specifically, the regulation states that the district "alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual administrative issues arising out of procurement." While the federal regulation is not specific, this language may be an attempt to remind districts that the federal or state awarding agency is not responsible for disputes between the district and its contractors.**

The regulations include the following provisions that do not appear to be required. For this reason, MSBA has chosen to make these practices optional. The regulations encourage, but do not require, the district to:

- 1. Include a value engineering clause in construction contracts. Value engineering is a systematic method for analyzing the costs of various contract provisions, with the goal of making sure that each part of a project provides value at the lowest price.**
- 2. Use federal surplus property.**

Conflict of Interest

MSBA currently provides districts with model conflict of interest policies based on Missouri conflict of interest laws—see MSBA policies BBFA and GBCA. The conflict of interest rules adopted by the federal government do not align well with Missouri law. For this reason, MSBA has chosen to address this requirement in a separate policy. Missouri conflict of interest rules are still applicable to all district transactions; however, where the federal rule is more restrictive, the federal rule must be followed.

1. Specifically, federal regulation 2 C.F.R. § 200.112 requires school districts that receive federal grants to disclose any potential conflict of interest to the federal awarding agency or a pass-through entity in accordance with the adopted policies of the federal agency. The source for most federal awards in Missouri is the U.S. Department of Education (ED), and the Missouri Department of Elementary and Secondary Education (DESE) is the pass-through entity; however, districts may receive awards from other federal agencies. For example, many districts have received funding for safe rooms and tornado shelters from the Federal Emergency Management Agency (FEMA). The pass-through entity for those awards was the State Emergency Management Agency (SEMA). ED and FEMA may have adopted different policies governing how conflicts will be reported. Because the federal law requires Board members, employees and agents of the district to report potential conflicts of interest (as defined in this new policy) to these entities, districts need to be familiar with how these agencies want to receive such reports.
2. A second regulation, 2 C.F.R. § 200.318 requires that schools maintain "written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award or administrations of contracts" funded by federal awards. The regulation specifically states that:

. . . 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 must 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.

Please note that § 200.112 does not define what constitutes a conflict of interest, but § 200.318 does. It is not clear how these two sections of the regulations interact. The first addresses "potential conflicts" and the second prohibits participation by anyone with "a real or apparent" conflict. MSBA is taking the position that a "potential conflict" is the same as an "apparent conflict" and is using the same definition for both the reporting requirements in § 200.112 and the exclusion from participation requirements in § 200.318.

- 3. The conflict of interest definition uses the terms "immediate family" and "partner" without explanation as to what constitutes immediate family or whether the reference to partner is a domestic or business partner. Because MSBA could not find any definitive guidance on whether the rule was intended to impact business or domestic partners, MSBA has taken the conservative position that the intention was to include both. Therefore, the definition of immediate family created by MSBA includes specific family members as well as others living in the household of the employee, officer or agent, which would include domestic partners.**
- 4. The federal definition of conflict of interest allows for exclusions in situations where a financial interest is not "substantial." In addition, the federal law allows for exclusions in situations where a gift is unsolicited and is of "nominal" value. Unfortunately, the federal regulations do not define what constitutes a "nominal" gift, nor do they explain when a financial interest is not substantial. In MSBA's standard policies BBFA and GBCA, MSBA included language that would allow Board members and employees to accept gifts of up to \$100 from vendors. However, DESE has informed MSBA that this amount is too high to satisfy the federal requirements for purchases involving federal funds. Therefore, MSBA has defined \$25 as a nominal or not substantial amount based on the internal policy adopted by DESE.**

The regulations require the district to include a discipline provision for those who violate the provisions of these conflict of interest rules. Actions that violate federal standards may not violate state standards, so MSBA has included a variety of consequences for districts to use.

- 5. Regulation 2 C.F.R § 200.113 requires districts to "disclose, in a timely manner, in writing, to the federal awarding agency or pass-through entity all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the federal award." Failure to make these disclosures may result in a reduction or loss of funding. MSBA has included this requirement in the "Consequences" section.**

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Because the district may be reporting suspected criminal activity, MSBA is recommending the district consult with counsel before making the report.

MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

	Board Secretary	X	Business Office		Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
	Human Resources		Principals		Library/Media Center
	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

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FEDERAL PROGRAMS AND PROJECTS

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

Definitions

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

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

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

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

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

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

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

Federal Programs Administration

The superintendent shall be responsible for coordinating and administering federally funded programs and projects. The superintendent will ensure that the various departments operating these programs and projects do so in accordance with the requirements of the federal award and keep

accurate and separate records, as required by Board policy and in accordance with administrative procedures. The superintendent may delegate one or more of his or her duties to appropriate employees.

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

Procurement

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

Bids and Requests for Proposals

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

Bid specifications will not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used to define the performance or other requirements. The specific features of the named brand that must be met must be clearly stated.

Pursuant to federal law, the district will not use local or state purchasing preferences when purchasing goods or services related to a federal contract.

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

In addition to the purchasing preferences required or permitted pursuant to state law, when making purchases with federal funds the district will:

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1. Take all necessary affirmative steps to ensure that small businesses, minority businesses, women's business enterprises and LSA firms are used when possible. To that end, the district will:
 - ▶ Place qualified small businesses, minority businesses and women's business enterprises on solicitation lists.
 - ▶ Solicit bids from small businesses, minority businesses and women's business enterprises when they are potential sources.
 - ▶ Divide total project requirements into smaller tasks or quantities, when economically feasible, to permit maximum participation by small businesses, minority businesses and women's business enterprises. This provision shall not be used to artificially divide purchases to avoid bidding requirements or design bid specifications to favor a particular provider.
 - ▶ When conducive with the program or project, establish performance and delivery schedules that encourage small businesses, minority businesses and women's business enterprises to participate.
2. Purchase only items that contain the highest practicable percentage of recovered materials, as defined by the Environmental Protection Agency (EPA), consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.
3. Use solid waste management services in a manner that maximizes energy and resource recovery.

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

Contracts

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

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

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

Conflict of Interest

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

1. Board members, employees and agents who are or may be involved in the selection, award or administration of a contract supported by a federal award will submit, in writing, any real, apparent or potential conflict of interest to the superintendent or designee or the Board secretary. The recipient of the report will forward any disclosures to the awarding state or federal agency in accordance with the reporting policy of the agency.
2. No Board member, employee or agent will participate in the selection, award or administration of a contract supported by a federal award if he or she has a real, apparent or potential conflict of interest.
3. Board members, employees and agents will not solicit or accept gratuities, favors or anything of monetary value from contractors, parties to subcontracts or any vendor who is attempting to be a contractor for a federal program or project, but may accept unsolicited gifts of nominal value. For the purposes of this policy, a gift of nominal value is defined as an unsolicited gift of \$25 or less.

Consequences

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

Board members who violate the provisions of this policy will be prohibited from holding a Board office or representing the full Board, as an official spokesperson or otherwise, in the community unless excused by the Board. Employees who violate this policy will be disciplined or terminated,

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and the district will reconsider and potentially end business relationships with agents who violate this policy. In addition, violations of this policy or the laws it references may be reported to law enforcement, the Missouri Ethics Commission, the Attorney General's Office or DESE and other applicable funding agencies.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted:

Cross Refs: BBFA, Board Member Conflict of Interest and Financial Disclosure
GBCA, Staff Conflict of Interest
IGBC, Parent/Family Involvement in Instructional and Other Programs
IGBCB, Programs for Migrant Students
IGBH, Programs for English Language Learners

Legal Refs: §§ 8.285 - .291, .675 - .687, 34.073 - .080, .350 - .359, .375, 105.450 - .458, 162.301, 170.041, 171.181, 177.082 - .086, 285.530, 292.675, 393.310, 432.070 - .080, RSMo.
5 C.S.R. 30-4.030, 680.010
2 C.F.R. § 200.22, .23, .38, .92, 112, .113, .317, .318, .338
7 C.F.R. §§ 210.16, .21, 220.16
40 C.F.R. Part 247
47 C.F.R. § 54.503

Camdenton R-III School District, Camdenton, Missouri