

TOWN OF EPPING, NH

August 25, 2023

Administration of Federal Grants

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The Town of Epping, NH Selectboard directs the Town Administrator to develop, monitor, and enforce effective administrative procedures and other internal controls over federal awards as necessary to provide reasonable assurances that the Town of Epping, NH, is managing the awards in compliance with all requirements for federal grants and awards. Systems and controls must meet all requirements of federal and/or state law and regulations and shall be based on best practices.

The Grant coordinator (***Grant coordinator will be identified at the beginning of the project***) is directed to assure that all individuals responsible for the administration of a federal grant or award shall be provided sufficient training to carry out their duties in accordance with all applicable requirements for the federal grant or award and this policy.

To the extent not covered by this Policy, the administrative procedures, and internal controls must provide for:

1. identification of all federal funds received and expended and their program source.
2. accurate, current, and complete disclosure of financial data in accordance with federal requirements.
3. records sufficient to track the receipt and use of funds.
4. effective control and accountability over assets to assure they are used only for authorized purposes; and
5. comparison of expenditures against budget.

Chapter 1 ALLOWABILITY

The Grant coordinator is responsible for the efficient and effective administration of grant funds through the application of sound management practices. Such funds shall be administered in a manner consistent with all applicable Federal, State, and local laws, the associated agreements/assurances, program objectives, and the specific terms and conditions of the grant award.

A. Cost Principles: Except whether otherwise authorized by statute, costs shall meet the following general criteria to be allowable under Federal awards:

1. Be “necessary” and “reasonable” for proper and efficient performance and administration of the Federal award and be allocable thereto under these principles.
 - a) To determine whether a cost is “reasonable”, consideration shall be given to:
 - i. whether a cost is a type generally recognized as ordinary and necessary for the operation of the Town or the proper and efficient performance of the Federal award;
 - ii. the restraints or requirements imposed by such factors as sound business. practices, arm’s length bargaining, Federal, State, local, tribal, and other laws and regulations;
 - iii. market prices for comparable goods or services for the geographic area;
 - iv. whether the individuals concerned acted with prudence in the circumstances considering their responsibilities; and

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- v. whether the cost represents any significant deviation from the established practices or Board policy which may increase the expense. While Federal regulations do not provide specific descriptions of what satisfied the “necessary” element beyond its inclusion in the reasonableness analysis above, whether a cost is necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the Town can demonstrate that the cost addresses an existing need and can prove it.
- b) When determining whether a cost is “necessary”, consideration may be given to whether:
- i. the cost is needed for the proper and efficient performance of the grant program;
 - ii. the cost is identified in the approved budget or application;
 - iii. there is an benefit associated with the cost;
 - iv. the cost aligns with identified needs based on results and findings from a needs assessment; and/or
 - v. the cost addresses program goals and objectives and is based on program data.
 - vi. A cost is allocable to the Federal award if the goods or services involved are chargeable or assignable to the Federal award in accordance with the relative benefit received.
2. Conform to any limitations or exclusions set forth as cost principles in Part 200 or in the terms and conditions of the Federal award.
3. Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the Town.
4. Be afforded consistent treatment. A cost cannot be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned as an indirect cost under another award.
5. Be determined in accordance with generally accepted accounting principles.
6. Be representative of the actual cost, net of all applicable credits or offsets.
- The term “applicable credits” refers to those receipts or reductions 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. To the extent that such credits accruing to/or received by the State relate to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate.
7. Be not included as a match or cost-share unless the specific Federal program authorizes Federal costs to be treated as such.

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8. Be adequately documented:

a. in the case of personal services, the Grant coordinator shall implement a system for Town personnel to account for time and efforts expended on grant-funded programs to assure that only permissible personnel expenses are allocated;

b. in the case of other costs, all receipts and other invoice materials shall be retained, along with any documentation identifying the need and purpose for such expenditure if not otherwise clear.

B. Selected Items of Cost: The Town of Epping shall follow the rules for selected items of cost at 2 C.F.R. Part 200, Subpart E when charging these specific expenditures to a Federal grant. When applicable, Town staff shall check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, Town, and program-specific rules, including the terms and conditions of the award, may deem a cost as unallowable and Town personnel shall follow those rules as well.

C. Cost Compliance: The Grant coordinator shall require that grant program funds are expended and accounted for consistent with the requirements of the specific program and as identified in the grant application. Compliance monitoring includes accounting for indirect costs and reporting them as permitted or required by each grant.

D. Determining Whether a Cost is Direct or Indirect

1. "Direct costs" are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

These costs may include: salaries and fringe benefits of employees working directly on a grant-funded project; purchased services contracted for performance under the grant; travel of employees working directly on a grant-funded project; materials, supplies, and equipment purchased for use on a specific grant; and infrastructure costs directly attributable to the program (such as long-distance telephone calls specific to the program, etc.).

2. "Indirect costs" are those that have been incurred for a common or joint purpose benefitting more than one (1) cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs.

These costs may include: general data processing, human resources, utility costs, maintenance, accounting, etc.

Federal programs with supplement do not supplant provisions and must use a

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restricted indirect cost rate. In a restricted rate, indirect costs are limited to general management costs. General management costs do not include divisional administration that is limited to one (1) component of the Town of Epping, the governing body of the Town of Epping, compensation of the Grant coordinator, compensation of the chief executive officer of any component of the Town of Epping, and operation of the immediate offices of these officers.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if **all** the following conditions are met:

- a) Administrative or clerical services are integral to a project or activity.
- b) Individuals involved can be specifically identified with the project or activity.
- c) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency.
- d) The costs are also not recovered as indirect costs.

Where a Federal program has a specific cap on the percentage of administrative costs that may be charged to a grant, that cap shall include all direct administrative charges as well as any recovered indirect charges.

Effort should be given to identify costs as direct costs whenever practical, but allocation of indirect costs may be used where not prohibited and where indirect cost allocation is approved ahead of time by NHDES or the pass-through entity (Federal funds subject to 2C.F.R Part 200 pertaining to determining indirect cost allocation).

E. Timely Obligation of Funds: Obligations are orders placed for property and services, contracts and sub awards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

The following are examples of when funds are determined to be “obligated” under applicable regulation of the U.S. Department of Education:

When the obligation is for:

- 1. Acquisition of property – on the date which the Town of Epping makes a binding written commitment to acquire the property.
- 2. Personal services by an employee of the Town of Epping – when the services are performed.
- 3. Personal services by a contractor who is not an employee of the Town of Epping – on the date which the Town of Epping makes a binding written commitment to obtain the services.

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4. Public utility services – when the Town of Epping received the services.
5. Travel – when the travel is taken.
6. Rental of property – when the Town of Epping uses the property.
7. A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 C.F.R. Part 200, Subpart E – Cost Principles – on the first day of the project period.

F. Period of Performance: All obligations must occur on or between the beginning and ending dates of the grant project. This period is known as the period of performance. The period of performance is dictated by statute and will be indicated in the Grant Award Notification (“GAN”). As a general rule, State-administered Federal funds are available for obligation within the year that Congress appropriates the funds for. However, given the unique nature of educational institutions, for many Federal education grants, the period of performance is twenty- seven (27) months. This maximum period includes a fifteen (15) month period of initial availability, plus a twelve (12) month period of carry over. For direct grants, the period of performance is generally identified in the GAN.

In the case of a State-administered grant, obligations under a grant may not be made until the grant funding period begins or all necessary materials are submitted to the granting agency, whichever is later. In the case of a direct grant, obligations may begin when the grant is substantially approved, unless an agreement exists with NHDES or the pass-through entity to reimburse for pre-approval expenses.

For both State-administered and direct grants, regardless of the period of availability, the Town of Epping shall liquidate all obligations incurred under the award not later than forty-five (45) days after the end of the funding period unless an extension is authorized. Any funds not obligated within the period of performance or liquidated within the appropriate timeframe are said to lapse and shall be returned to the awarding agency. Consistently, the Town of Epping shall closely monitor grant spending throughout the grant cycle.

Chapter 2 CASH MANAGEMENT AND FUND CONTROL

Payment methods must be established in writing that minimize the time elapsed between the drawdown of federal funds and the disbursement of those funds. Standards for funds control and accountability must be met as required by the Uniform Guidance for advance payments and in accordance with the requirements of NHDES or other applicable pass-through-entity.

To provide reasonable assurance that all assets, including Federal, State, and local funds, are safeguarded against waste, loss, unauthorized use, or misappropriation, the Grant

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coordinator shall implement internal controls in the area of cash management.

The Town of Epping's payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury or the NHDES (pass-through entity) and disbursement by the Town of Epping, regardless of whether the payment is made by electronic fund transfer, or issuance or redemption of checks, warrants, or payment by other means.

The Town of Epping shall use forms and procedures required by the NHDES, grantor agency or other pass-through entity to request payment. The Town of Epping shall request grant fund payments in accordance with the provisions of the grant. Additionally, the Town of Epping's financial management systems shall meet the standards for fund control and accountability as established by the awarding agency.

The Grant coordinator and/or designees are authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as deemed appropriate when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

When the Town of Epping uses a cash advance payment method, the following standards shall apply:

- A. The timing and amount of the advance payment requested will be as close as is administratively feasible to the actual disbursement for direct program or project costs and the proportionate share of any allowable indirect costs.
- B. The Town of Epping shall make timely payment to contractors in accordance with contract provisions.
- C. To the extent available, the Town of Epping shall 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.
- D. The Town of Epping shall account for the receipt, obligation, and expenditure of funds.
- E. Advance payments shall be deposited and maintained in insured accounts whenever possible.
- F. Advance payments will be maintained in interest bearing accounts unless the following apply:
 - 1. The Town of Epping receives less than \$120,000 in Federal awards per year.
 - 2. The best reasonably available interest-bearing account would not be expected to earn interest more than \$500 per year on Federal cash balances.

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3. 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.
 4. A foreign government or banking system prohibits or precludes interest bearing accounts.
- G. Pursuant to Federal law and regulations, the Town of Epping may retain interest earned in an amount up to \$500 per year for administrative costs. 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 shall 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 interest earned on Federal funds.

Chapter 3 PROCUREMENT

All purchases for property and services made using federal funds must be conducted in accordance with all applicable Federal, State, and local laws and regulations, the Uniform Guidance, and the Town of Epping's written policies and procedures.

Procurement of all supplies, materials equipment, and services paid for from Federal funds or Town matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Town policies and procedures.

The Grant coordinator shall maintain a procurement and contract administration system in accordance with the USDOE requirements (2 CFR 200.317-.326) for the administration and management of Federal grants and federally funded programs. The Town of Epping shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall also conform to the provisions of the Town of Epping's documented policy.

The Town of Epping avoids situations that unnecessarily restrict competition and avoids acquisition of unnecessary or duplicative items. Individuals or organizations that develop or draft specifications, requirements, statements of work, and/or invitations for bids, requests for proposals, or invitations to negotiate, are excluded from competing for such purchases. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis shall be made to lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

Contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration is

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given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. No contract is awarded to a contractor who is suspended or debarred from eligibility for participation in federal assistance programs or activities.

Purchasing records are sufficiently maintained to detail the history of all procurements and must include at least the rationale for the method of procurement, selection of contract type, and contractor selection or rejection; the basis for the contract price; and verification that the contractor is not suspended or debarred.

To foster greater economy and efficiency, the Town of Epping may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

A. **Competition**: All procurement transactions shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgement. To promote objective contractor performance and eliminate unfair competitive advantage, the Town of Epping shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

1. unreasonable requirements on firms for them to qualify to do business;
2. unnecessary experience and excessive bonding requirements;
3. noncompetitive contracts to consultants that are on retainer contracts;
4. organizational conflicts of interest;
5. specification of only a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement; and/or
6. any arbitrary action in the procurement process.

Further, the Town of Epping does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; (2) the Town of Epping is contracting for architectural and engineering services, in which case 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.

To the extent that the Town of Epping uses a pre-qualified list of persons, firms, or

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products to acquire goods and services, the pre-qualified list must include enough qualified sources to ensure maximum open and free competition. The Town of Epping allows vendors to apply for consideration to be placed on the list as requested.

- B. Solicitation Language:** The Town of Epping shall require that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications should be avoided if 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 salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

- C. Procurement Methods:** The Town of Epping shall utilize the following methods of procurement:

1. Micro-purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,500. To the extent practicable, the Town of Epping shall distribute micro-purchase equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if the Grant coordinator considers the price to be reasonable. The Town of Epping maintains evidence of this reasonableness in the records of all purchases made by this method.

2. Small Purchases (Simplified Acquisition)

Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property that does not exceed the competitive bid threshold of \$250,000. Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources.

3. Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to \$250,000 and when the Board determines to build, repair, enlarge, improve, or demolish a

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building/facility the cost of which will exceed \$250,000.

a. For sealed bidding to be feasible, the following conditions shall be present:

- i. a complete, adequate, and realistic specification or purchase description is available;
- ii. two (2) 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 based on price.

b. When sealed bids are used, the following requirements apply:

- i. Bids shall be solicited in accordance with the provisions of State law and Town policy. Bids shall be solicited from an adequate number of qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
- ii. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required for the bidder to properly respond.
- iii. All bids will be opened at the time and place prescribed in the invitation for bids; bids will 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 shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.
- v. The Board reserves the right to reject any and all bids for sound documented reason.
- vi. Bid protests shall be handled pursuant to the process set forth in -3, I.

4. Competitive Proposals

Procurement by competitive proposal, normally conducted with more than one sources submitting an offer, is generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method.

If this method is used, the following requirements apply:

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- a. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- b. Proposals shall be solicited from an adequate number of sources.
- c. The Town of Epping shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
- d. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The Town of Epping 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.

5. Noncompetitive Proposals

Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. the item is available only for a single source;
- b. the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Town of Epping; and/or
- d. after solicitation from several sources, competition is determined to be inadequate.

D. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms: The Town of Epping must take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business

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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.

- E. **Contract/Price Analysis:** The Town of Epping shall perform a cost or price analysis in connection with every procurement action of more than \$250,000 (i.e., the Simplified Acquisition/Small Purchase limit), including contract modifications. (See 2 CFR 200.323(a).) A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the procurement situation; however, the Town of Epping shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the Town of Epping shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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.

- F. **Time and Materials Contracts:** The Town of Epping shall use a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) 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 the Town of Epping is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 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 efficiently. Therefore, the Town of Epping sets a ceiling price for each contract that the contractor

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exceeds at its own risk. Further, the Town of Epping shall assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls and otherwise performs in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

G. Suspension and Disbarment: The Town of Epping will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the Town of Epping and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the Town of Epping shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance/ and (4) financial and technical resources.

- The Grant coordinator shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The Town of Epping is subject to and shall abide by the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 1
- Suspension is an action taken by the Town of Epping that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (See 2 CFR Part 180 Subpart G.)
- Debarment is an action taken by the Grant coordinator to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (See 2 CFR Part 180 Subpart H.)

The Town of Epping shall not subcontract with or award sub-grants to any person or company who is debarred or suspended. For contracts over \$25,000 the Town of Epping shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management ("SAM"), which maintains a list of such debarred or suspended vendors at www.sam.gov (which replaced the former Excluded Parties List System or EPLS); or collecting a certification from the vendor. (See 2 CFR Part 180 Sub part C.)

Documentation that debarment/suspension was queried must be retained for each covered transaction as part of the documentation required under -3, paragraph J. This documentation should include the date(s) queried and copy(ies) of the SAM result report/screen shot, or a copy of the or certification from the vendor. It should be attached to the payment backup and retained for future audit review.

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H. Additional Requirements for Procurement Contracts Using Federal Funds:

1. **Clause for Remedies Arising from Breach:** For any contract using Federal funds under which the contract amount exceeds the upper limit for Simplified Acquisition/Small Purchases (see -3. C.2), the contract must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and must provide for sanctions and penalties. (See 2 CFR 200, Appendix II(A)).
2. **Termination clause:** For any contract using Federal funds under which the contract amount exceeds \$10,000, it must address the Town of Epping's authority to terminate the contract for cause and for convenience, including how termination will be affected and the basis for settlement. (See 2 CFR 200, Appendix II(B)).
3. **Anti-pollution clause:** For any contract using Federal funds under which the contract amount exceeds \$150,000, the contract must include clauses addressing the Clean Air Act and the Federal Water Pollution Control Act. (See 2 CFR 200, Appendix II(G)).
4. **Anti-lobbying clause:** For any contract using Federal funds under which the contract exceeds \$100,000, the contract must include an anti-lobbying clause, and require bidders to submit Anti-Lobbying Certification as required under 2 CFR 200, Appendix II (J).
5. **Negotiation of profit:** For each contract using Federal funds and for which there is no price competition, and for each Federal fund contract in which a cost analysis is performed, the Town of Epping shall negotiate profit as a separate element of the price. 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 the contractor's past performance, and industry profit rates in the surrounding geographical area for similar work. (See 2 CFR 200.323(b)).
6. **"Domestic Preference" Requirement:** The Town of Epping must provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, to the greatest extent practicable. This requirement applies whether the Town of Epping is purchasing the products directly or when the products are purchased by third parties on the Town of Epping's behalf (e.g. subcontractor, food service management companies, etc.). It also generally applies to all purchases, even those below the micro-purchase threshold, unless otherwise stipulated by the Federal awarding agency. See also additional "Buy American" provisions in -4.C regarding food service procurement.

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7. **Huawei Ban:** The Town of Epping may not use Federal funds to procure, obtain, or enter or renew a contract to procure or obtain equipment, services, or systems which substantially use telecommunications equipment or services produced by Huawei Technologies Company or ZTE Corporation, or any of their subsidiaries.
- I. **Bid Protest:** The Town of Epping maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request for Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the Grant coordinator within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Grant coordinator shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.
- J. **Maintenance of Procurement Records:** The Town of Epping shall maintain records sufficient to detail the history of all procurements. 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, the basis for the contract price (including a cost or price analysis) and records regarding disbarment/suspension queries or actions. Such records shall be retained consistent with town policy EHB.

Chapter 4 **CONFLICT OF INTEREST AND MANDATORY DISCLOSURES**

The Town of Epping complies with the requirements of State law and the Uniform Guidance for conflicts of interest and mandatory disclosures for all procurements with federal funds.

- Each employee, board member, or agent of the Town who is engaged in the selection, award or administration of a contract supported by a federal grant or award and who has a potential conflict of interest must disclose that conflict in writing to the Grant coordinator and/or designees, who, in turn, shall disclose in writing any such potential conflict of interest to NHDES or other applicable pass-through-entity.
- A conflict of interest would arise when the covered individual, any member of his/her immediate family, his/her partner, or an organization, which employs or is about to employ any of those parties has a financial or other interest in or received a tangible personal benefit from a firm considered for a contract. A covered individual who is

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required to disclose a conflict shall not participate in the selection, award, or administration of a contract supported by a federal grant or award.

- Covered individuals will not solicit or accept any gratuities, favors, or items from a contractor or a party to a subcontractor for a federal grant or award. Violations of this rule are subject to disciplinary action.
- The Grant coordinator shall timely disclose in writing to NHDES or other applicable pass-through- entity, all violations of federal criminal law involving fraud, bribery, or gratuities potentially affecting any federal award. The Grant coordinator shall fully address any such violations promptly and notify the Board with such information as is appropriate under the circumstances (e.g., considering applicable disciplinary processes).

Chapter 5 INVENTORY MANAGEMENT - EQUIPMENT AND SUPPLIES PURCHASED WITH FEDERAL FUNDS

Equipment and supplies acquired (“property” as used in this policy -6) with federal funds will be used, managed, and disposed of in accordance with applicable state and federal requirements. Property records and inventory systems shall be sufficiently maintained to account for and track equipment that has been acquired with federal funds. In furtherance thereof, the following minimum standards and controls shall apply to any equipment or pilferable items acquired in whole or in part under a Federal award until such property is disposed in accordance with applicable laws, regulations, and Board policies:

- A. **“Equipment” and “Pilferable Items” Defined:** For purposes of this policy, “equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the Town of Epping for financial statement purposes. “Pilferable items” are those items, *regardless of cost*, which may be easily lost or stolen, such as cell phones, tablets, graphing calculators, software, projectors, cameras and other video equipment, computer equipment and televisions.
- B. **Records:** The Grant coordinator and/or designees shall maintain records that include a description of the property; a serial number or other identification number; the source of the funding for the property (including the federal award identification number (FAIN)); who holds title; the acquisition date; the cost of the property; the percentage of the 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 disposition and sale price of the property.
- C. **Inventory:** No less than once every two years, the Grant coordinator and/or designees shall cause a physical inventory of all equipment and pilferable items must be taken and the results reconciled with the property records at least once every two years. Except as otherwise provided in this policy , inventories shall be conducted consistent with Town policy.

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D. Control, Maintenance and Disposition: The Grant coordinator shall develop administrative procedures relative to property procured in whole or in part with Federal funds to:

1. prevent loss, damage, or theft of the property; Any loss, damage, or theft must be investigated;
2. to maintain the property and keep it in good condition; and
3. to ensure the highest possible return through proper sales procedures, in those instances where the Town of Epping is authorized to sell the property.

Chapter 6 TRAVEL REIMBURSEMENT – FEDERAL FUNDS

The Board shall reimburse administrative, professional, and support employees for travel costs incurred while performing services related to official business as a federal grant recipient.

- For purposes of this policy, “travel costs” shall mean the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business as a federal grant recipient.
- Town employees shall comply with applicable Board policies and administrative regulations established for reimbursement of travel and other expenses.
- The validity of payments for travel costs for all town employees shall be determined by the Grant coordinator and/or designees.
- Travel costs shall be reimbursed on a mileage basis for travel using an employee’s personal vehicle and on an actual cost basis for meals, lodging and other allowable expenses, consistent with those normally allowed in like circumstances in the Town of Epping’s non-federally funded activities, and in accordance with the Town of Epping’s travel reimbursement policies and administrative regulations.
- Mileage reimbursements shall be at the rate approved by the Board or Board policy for other town travel reimbursements. Actual costs for meals, lodging and other allowable expenses shall be reimbursed only to the extent they are reasonable and do not exceed the per diem limits established by Board policy, or, in the absence of such policy, the federal General Services Administration for federal employees for locale where incurred.
- All travel costs must be presented with an itemized, verified statement prior to reimbursement.

In addition, for any costs that are charged directly to the federal award, the Grant

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coordinator and/or designees shall maintain sufficient records to justify that:

- A. Participation of the individual is necessary to the federal award.
- B. The costs are reasonable and consistent with Board policy.

Chapter 7 ACCOUNTABILITY AND CERTIFICATIONS

All fiscal transactions must be approved by the Grant coordinator and/or designees who can attest that the expenditure is allowable and approved under the federal program. The Grant coordinator and/or designees submit all required certifications.

Chapter 8 TIME-EFFORT REPORTING / OVERSIGHT

The Grant coordinator will establish sufficient oversight of the operations of federally supported activities to assure compliance with applicable federal requirements and to ensure that program objectives established by the awarding agency are being achieved. The Town of Epping will submit all reports as required by federal or state authorities.

As a recipient of Federal funds, the Town of Epping shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Section 200.430 of the Code of Federal Regulations requires certification of effort to document salary expenses charged directly or indirectly against Federally-sponsored projects. This process is intended to verify the compensation for employment services, including salaries and wages, is allocable and properly expended, and that any variances from the budget are reconciled.

A. **Compensation:** Compensation for employment 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 2 CFR 200.431 Compensation – fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of these regulations, and that the total compensation for individual employees:

- 1. is reasonable for the services rendered, conforms to the Town of Epping's established written policy, and is consistently applied to both Federal and non-Federal activities; and
- 2. follows an appointment made in accordance with the Town of Epping's written policies and meets the requirements of Federal statute, where applicable.

B. **Time and Effort Reports:** Time and effort reports shall:

- 3. be supported by a system of internal controls which provide reasonable assurance that the charges are accurate, allowable, and properly allocated;

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4. be incorporated into the official records of the Town of Epping;
5. reasonably reflect the total activity for which the employee is compensated by the Town of Epping, not exceeding 100% of the compensated activities;
6. encompass both Federally assisted and other activities compensated by the Town of Epping on an integrated basis;
7. comply with the Town of Epping's established accounting policies and practices.
8. support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one (1) Federal award, a Federal award and non-Federal award, an indirect cost activity and a direct cost activity, two (2) or more indirect activities which are allocated using different allocation bases, or an unallowable activity and a direct or indirect cost activity.

The Town of Epping will also follow any time and effort requirements imposed by NHDES or other pass-through entity as appropriate to the extent that they are more restrictive than the Federal requirements. The Grant coordinator and/or designees are responsible for the collection and retention of employee time and effort reports. Individually reported data will be made available only to authorized auditors or as required by law.

Chapter 9 GRANT BUDGET RECONCILIATION

- A. **Budget Reconciliation:** Budget estimates are not used as support for charges to Federal awards. However, the Town of Epping may use budget estimates for interim accounting purposes. The system used by the Town of Epping to establish budget estimates produces reasonable approximations of the activity performed. Any significant changes in the corresponding work activity are identified by the Town of Epping and entered into the Town of Epping's records in a timely manner.

The Town of Epping's internal controls include a process to review after-the-fact interim charges made to a federal award based on budget estimates and ensure that all necessary adjustments are made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

- B. **Grant Closeout Requirements:** At the end of the period of performance or when the Federal awarding agency determines the Town of Epping has completed all applicable administrative actions and all required work under the grant, the agency will close out the Federal award. If the award passed-through the State, the Town of Epping will have 90 days from the end of the period of performance to submit to the State all financial, performance, and other reports as required by the terms and conditions of the award.

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Failure to submit all required reports within the required timeframe will necessarily result in the Federal awarding agency reporting the Town of Epping's material failure to comply with the terms of the grant to the Office of Management and Budget (OMB) and may pursue other enforcement actions.

The Town of Epping must maintain all financial records and other documents pertinent to the grant for a period of three years from the date of submission of the final expenditure report, barring other circumstances detailed in 2 CFR 200.344.

Chapter 10 SUB-RECIPIENT MONITORING AND MANAGEMENT

When entering agreements involving the expenditure or disbursements of federal grant funds, the Town of Epping shall determine whether the recipient of such federal funds is a "contractor" or "subrecipient", as those terms are defined in 2 CFR §200.23 and §200.93, respectively. See also guidance at 2 CFR

§200.330 "Subrecipient and contractor determinations". Generally, "subrecipients" are instrumental in implementing the applicable work program whereas a "contractor" provides goods and services for the Town of Epping's own use. Contractors will be subject to the Town of Eppings's procurement and purchasing policies (e.g., -3 relative to federal grant funds, DJE relative to bidding requirements for non- federal money projects, etc.). Subrecipients are subject to this Policy.

Under the UGG, the Town of Epping is considered a "pass-through entity" in relation to its subrecipients, and as such requires that subrecipients comply with applicable terms and conditions (flow-down provisions). All subrecipients of Federal or State funds received through the Town of Epping are subject to the same Federal and State statutes, regulations, and award terms and conditions as the Town of Epping.

A. Sub-award Contents and Communication.

In the execution of every sub-award, the Town of Epping will communicate the following information to the subrecipient and include the same information in the sub-award agreement.

1. Every sub-award will be clearly identified and include the following Federal award identification:
 - a) Subrecipient name
 - b) Subrecipient's unique ID number (DUNS)
 - c) Federal Award ID Number (FAIN)
 - d) Federal award date
 - e) Period of performance start and end date
 - f) Amount of federal funds obligated
 - g) Amount of federal funds obligated to the subrecipient
 - h) Total amount of the Federal award
 - i) Total approved cost sharing or match required where applicable
 - j) Project description responsive to FFATA
 - k) Name of Federal awarding agency, pass through entity and contact information

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- l) CFDA number and name
 - m) Identification of the award is R&D
 - n) Indirect cost rate for the Federal award
2. Requirements imposed by the Town of Epping including statutes, regulations, and the terms and conditions of the Federal award.
 3. Any additional requirements the Town of Epping deems necessary for financial or performance reporting of subrecipients as necessary.
 4. An approved indirect cost rate negotiated between subrecipient and the Federal government or between the pass-through entity and subrecipient.
 5. Requirements that the Town of Epping and its auditors have access to the subrecipient records and financial statements.
 6. Terms and conditions for closeout of the sub-award.

B. Subrecipient Monitoring Procedures.

The Grant coordinator is responsible for having all the Town of Epping project managers monitor subrecipients. The Town of Epping will monitor the activities of the subrecipient to ensure the sub-award is used for authorized purposes. The frequency of monitoring review will be specified in the sub- award and conducted concurrently with all invoice submission.

Subrecipient monitoring procedures include:

1. At the time of proposal, assess the potential of the subrecipient for programmatic, financial, and administrative suitability.
2. Evaluate each subrecipient's risk of noncompliance prior to executing a sub-award. In doing so, the Town of Epping will assess the subrecipient's:
 - a) Prior experience with the same or similar sub-awards.
 - b) Results of previous audits and single audit (if applicable).
 - c) New personnel or new or substantially changed systems.
 - d) The extent and results of Federal awarding agency monitoring.
3. Confirm the statement of work and review any non-standard terms and conditions of the sub- award during the negotiation process.
4. Monitor financial and programmatic progress and ability of the subrecipient to meet objectives of the sub-award. To facilitate this review, subrecipients are required to submit sufficient invoice detail and a progress report. The Town of Epping project managers will encourage subrecipients to submit regular invoices.

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5. Invoices and progress reports will be date stamped upon receipt if received in hard copy. A record of the date of receipt will be maintained for those invoices sent electronically.
 6. In conducting regular oversight and monitoring, the Town of Epping project managers will:
 - a) Verify invoices that include progress reports.
 - b) Review progress reports to ensure project is progressing appropriately and on schedule.
 - c) Compare invoice to agreement budget to ensure eligibility of costs and that costs do not exceed budget.
 - d) Review invoice to ensure supporting documentation is included and invoices costs are within the scope of work for the projects being invoiced.
 - e) Obtain report, certification and supporting documentation of local (non- federal)/in-kind match work from the subrecipient.
 - f) Review subrecipient match tasks for eligibility.
 - g) Initial the progress report and invoice confirming review and approval prior to payment.
 - h) Raise any concerns to the Grant coordinator and or designee.
 7. The Grant coordinator and or designee, upon recommendation from the project's manager, will approve the invoice payment and will initial invoices confirming review and approval prior to payment.
 8. Payments will be withheld from subrecipients for the following reasons:
 - a) Insufficient detail to support the costs billed;
 - b) Unallowable costs;
 - c) Ineligible costs; and/or
 - d) Incomplete work or work not completed in accordance with required specifications.
 9. Verify every subrecipient is audited in accordance with 2 CFR §200 Subpart – Audit Requirements.
- C. **Subrecipient Project Files**. Subrecipient project files will contain, at a minimum, the following:
- a) Project proposal;
 - b) Project scope;
 - c) Progress reports;
 - d) Interim and final products; and
 - e) Copies of other applicable project documents as required, such as copies of contracts or MOUs.

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D. Audit Requirements.

All subrecipients are required to annually submit their audit and Single Audit report to the Town of Epping for review to ensure the subrecipient has complied with good accounting practices and federal regulations. If a deficiency is identified, the Town of Epping will:

1. Issue a management decision on audit findings pertaining to the Federal award.
2. Consider whether the results of audits or reviews indicate conditions that necessitate adjustments to pass through entity's own records.

E. Methodology for Resolving Findings.

The Town of Epping will work with subrecipients to resolve any findings and deficiencies. To do so, the Town of Epping may follow up on deficiencies identified through on-site reviews, provision of basic technical assistance, and other means of assistance as appropriate.

The Town of Epping will only consider taking enforcement action against non-compliant subrecipients in accordance with 2 CFR 200.339 when noncompliance cannot be remedied. Enforcement may include taking any of the following actions as appropriate:

- a) Temporarily withhold cash payments pending correction of the deficiency;
- b) Disallow all or part of the cost of the activity or action not in compliance.
- c) Wholly or partly suspend or terminate the sub-award;
- d) Initiate suspension or debarment proceedings;
- e) Withhold further Federal awards for the project or program; and/or
- f) Take other remedies that may be legally available

APPENDIX

Code of Federal Regulations-Specifically Addressing Auditors Comments Regarding Uniform Guidance for Non-Federal Entities that receive Federal Awards included in the various 's.

CFR-200.313 Equipment. See also [§ 200.439](#).

(a) **Title.** Subject to the requirements 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 responsibility 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) **General.** 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 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. The Federal awarding agency may require the submission of the applicable common form for equipment. 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

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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](#) 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:

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- (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 responsibility to the Federal awarding agency.
- (2) Except as provided in [§ 200.312\(b\)](#), 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.

CFR 200.318 General procurement standards.

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

(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

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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. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(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 [§ 200.214](#).

(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

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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 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.

CFR 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).

(b) 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 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;

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(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.

(c) 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.

(d) 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 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 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.

(e) 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.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

CFR 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

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(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in [§ 200.1](#), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) **Micro-purchases** —

(1) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](#)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(2) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(3) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\)](#) and [\(v\)](#) of this section.

(4) **Non-Federal entity increases to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

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(5) ***Non-Federal entity increases to the micro-purchase threshold over \$50,000.*** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases*** —

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which 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 bids method is the preferred method for procuring construction if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

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

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(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond.

(C) 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;

(D) 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

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The Non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

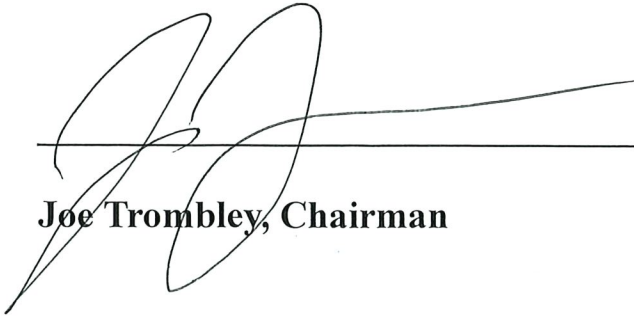
(iv) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. 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 through A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

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- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of several sources, competition is determined inadequate



Joe Trombley, Chairman




Tom Gauthier, Vice-Chairman

Bob Jordan, Selectman



John Cody, Selectman



Pamela Tibbetts, Selectman

Dated: September 18, 2023