

LEANDER INDEPENDENT SCHOOL DISTRICT
Post-award Affirmation of Compliance Guidelines for Federal Procurements
Updated January 1, 2024

FEDERAL COMPLIANCE GUIDELINES FOR THE USE OF FEDERAL FUNDS

The District has elected to utilize the awarded contract referenced at the end of this document and make purchases through the identified vendor under the requirements set forth by the *Code of Federal Regulations* (CFR) Title 2 *Grants and Agreements*, Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. (2 CFR 200). Following these federal requirements will allow for federal funds entrusted to the District to be used to make purchases through the anticipated contract. The CFR is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. The CFR may change during the term of the contract and the supplier may be required to make adjustments as necessary.

An attribute within the solicitation allows for the supplier to certify and agree that they as a company understand and comply with all applicable areas identified below and included in this attachment. Some of the areas may not be applicable to this solicitation and it is the supplier's sole responsibility to identify which areas are appropriate for the solicitation. Failure to affirm and agree to these requirements may, at the District's discretion, disqualify the associated response to this solicitation or limit the use of the awarded contract based on the funding source.

The District reserves the right at any time within the contract term to require an awarded supplier to reaffirm, sign and resubmit proper documentation stating that their company is not debarred, nor have any other circumstances changed related to their original response.

The following items are applicable to all solicitations. Some of the citations include hyperlinks to the actual code and are provided for convenience. All other citations are for reference purposes; however, the vendor will still be required to affirm and certify by response to a solicitation that their company agrees to the terms as written.

1. **GENERAL.** Included for all solicitations regardless of type or specialty.
 - 1.1. *Debarment and Suspension (Executive Orders 12549 and 12689).* A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the government wide *Excluded Parties List System in the System for Award Management* (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Prior to award, the District will verify that the supplier is not currently listed as a debarred by the Federal government. If the supplier is found to be on the Federal debarment list, the District, at its sole option, may elect to not award to the supplier if the funds intended for use with the contract will be federal funds. If awarded and during the contract term the supplier becomes debarred, the supplier must notify the District within five (5) District business days of the debarment. The District, its sole judgment, may elect to cancel the associated contract or limit the contract to non-federal funds. Such judgment will be done in writing within twenty (20) District business days. During this assessment period, no contract orders can be placed by the District using federal funds.
 - 1.2. *Conflict of Interest.* [2 CFR 200.318\(c\)\(1\)](#) states that the District 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 the contract awarded to a specific supplier. The

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officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from suppliers or parties to subcontracts. However, the District 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 District. It is the responsibility for the supplier to identify and make the District aware any potential conflicts of interest that exist between their company and the District. Failure to do so will cause the associated supplier response to be disqualified from further consideration, or if already awarded, the associated contract will be cancelled based on cause.

- 1.3. *Termination for Cause*. All federal contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. As per the District's *General Provisions* (attached to this solicitation), the District does not have a threshold, so therefore, all contracts for any amount may be terminated for cause (Part V, Item 2 – *Contract Agreements*, subitem 2.5 *Termination by Default*).
 - 1.4. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*. The Byrd Amendment applies to all federal contracts, grants, or cooperative agreements, and subcontracts expected to exceed the *Simplified Acquisition Threshold* (SAT). All contractors and subcontractors should comply with the requirements of this Act. Suppliers must certify for orders over the SAT that they have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The supplier must also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award.
 - 1.5. *Small Purchases (2 CFR 200.320(a)(2))*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the *Simplified Acquisition Threshold* (SAT). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Specifically for multiple award catalog-based or no identifiable pricing, the District may be required to submit a request for quotation from the contracted vendors for the purpose of meeting the competitive bidding requirement of this section.
2. **LARGE PURCHASES**. For individual purchases that exceed the *Simplified Acquisition Threshold*.
- 2.1. *Simplified Acquisition Threshold*. Contracts for more than the *Simplified Acquisition Threshold* (SAT) currently set at \$250,000 which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. In any case, contracts in excess of the state's or state agency threshold must address the foregoing. Any purchase that meets or exceeds the SAT threshold will require additional cost/price analysis by the District. The supplier may be required to provide additional documentation to support this requirement based on the federal requirements at the time of the purchase. NOTE: As a State of Texas entity, the District must also follow the requirements set forth in the Texas Education Code Subsection [44.031\(a\)](#).
 - 2.2. *Cost Analysis / Negotiation of Profit (2 CFR 200.324)*. For contracts over the SAT, the District must negotiate profit as a separate element of the price for each contract in which there is no price competition, including solicitations that received only one viable response. In all cases, a cost analysis is to be performed by the District. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - 2.3. *Supplier Violation or Breach of Contract Terms*. For contract awards valued at or greater than the SAT the District must address administrative, contractual, or legal remedies in instances where

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contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Provisions regarding supplier default are included in the District's *General Provisions* (attached to this solicitation), Part V, Item 1 – *General Terms*, subitem 1.16 *Warranties and Remedies*. The remedies under the contract are in addition to any other remedies that may be available under law or in equity.

- 2.4. *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*. Contracts and subgrants of amounts in excess of the SAT must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
3. **CONSTRUCTION** (applies only to solicitations for construction under Texas Government Code [2269](#))
- 3.1. *Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)*. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 3.2. *Equal Employment Opportunity*. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 3.3. *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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4. **SPECIALIZED PROCUREMENTS.** Applies only to solicitations for which specialized requirements are identified.
- 4.1. *Rights to Inventions Made Under a Contract or Agreement.* If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 4.2. *Energy Policy and Conservation Act* (42 U.S.C.6201). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 4.3. *Solid Waste Disposal Act.* A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.