NJ BOE Procurement with Federal Funds

The Perils and Pitfalls Of Competing Regulations

Federal Funding Programs

- American Recovery and Reinvestment Act—ARRA
- Educational Jobs Funds—ED JOBS
- Race to the Tops Funds—RTT

Short-term policy based general fund programs

Federal Grant Programs

- Every Student Succeeds Act (ESSA)
  - Title I, Part A — Improving Basic Educational Programs for At-Risk Students
  - Title II, Part A — Supporting Effective Instruction (Educator P3)
  - Title III, Part A — English Language Acquisition, Language Enhancement, and Academic Achievement
  - Title IV, Part A — Student Support and Academic Enrichment Grants (Programs)
Federal Grant Programs

- Other Examples of Federal Funding
- I.D.E.A. Individuals with Disabilities Education Act-- Part B Handicapped
- Perkins Vocational and Technical Education Improvement Act
- National School Lunch Program
- National School Breakfast Program

New Jersey Purchasing

- NJSA 18A:18A et seq.
  - Public School Contracts Law
- NJAC Title 6A:23A
  - Accountability Regulations
- NJSA 40A:11 et seq.
  - Local Public Contracts Law
- NJAC 5:34-1 et seq.

Like your Father always said:

MY HOUSE...

MY RULES
Federal Rules
2 CFR 200.318 et seq.
The Regulations
Formerly Known as
EDGAR

State Guidance
Local Finance Notice—LFN 2010-3—
January 2010
The New Jersey Division of Local
Government Services in January 2010,
issued LFN 2010-3, which provided
guidance to school districts on federal
Education Department General
Administration Regulations, commonly
known as EDGAR.

State Guidance
DLGS in the LFN indicated:
"Given the significant increase in federal funding under the
American Recovery and Reinvestment Act (ARRA) for Title I,
IDEA and SPSF, the State Department of Education
recommends that all districts that receive federal funds re-
review EDGAR Part 80 - uniform Administrative Requirements
for Grants and Cooperative Agreements to State and Local
Governments – as these regulations are applicable to all
grantees." Page 10
State Guidance

DLGS in the LFN stated further:

"All school districts that receive federal grants are required to comply with applicable sections of "EDGAR." Page 10

Districts would now not only be required to comply with PSCL, LPCL and all related codes but also EDGAR and moreover know when to apply one, the other or BOTH.

State Guidance

DLGS in the LFN clarified some aspects:

"Federal regulations require districts to follow the NJ Public School Contracts Law except where the federal standards detailed in EDGAR 80.36 are in conflict or more restrictive." Page 10

Federal Concerns

The LFN alerted us to Federal concerns:

"In fact, the USDE has recently expressed specific concern with the professional services and EUS exemptions in the PSCL. The USDE has also raised questions regarding the procurement of goods and services using New Jersey State contracts and of services from state colleges/universities without any competition or comparable analysis." Page 11
Word to the Wise

The LFN provided sage advice:

"Because of the potential conflict of the federal procurement standards under EDGAR with the PSCL, the Department continues to recommend all districts use open and competitive procedures where at all possible when awarding contracts for all goods and services using federal funds. Districts that use the PSCL bidding or competitive contracting procedures would be in compliance with the federal standards in all circumstances." Page 11

Federal Audits

- Fiscal Monitoring
  - Individual Program or District Practice
- Consolidated Monitoring
  - All Title and IDEA compliance
- USDA Local Agency Procurement Review
  - FSME or Local Operating Food Service Purchasing
  - USDA Monitoring

Audits Findings

- Professional Services
  - NJSA 18A:18A-5 (a) Exemptions (Exceptions) to Bidding—Professional Services
  - "The federal standards do not include all of the exemptions allowed under the Public School Contracts law."
  - The DOE further recommended to bid or use a competitive procurement process for professional services contracts.
Audit Recommendation

- Recommendation—Procurement of Professional Services—Competitive Proposal Process
  - It is recommended that all professional services contracts are to be procured in accordance with the Federal Procurement Regulation—2 CFR 200.320 (d)—Procurement by Competitive Proposals. The request for proposal (RFP) procurement process and the competitive contracting process would satisfy the requirement of 2 CFR 200.320 (d) depending on the aggregate amount of the service required.

Audit Findings

- Using NJ State Contract Vendors
  - A very large number of school districts received findings in the reports for using NJ State Contract vendors, as the only price source, for the procurement of goods and services when using Federal Funds.
  - NJDOE Response—Use of State Contract Vendors
  - "The federal procurement regulations under this section do not include all of the exemptions allowed under the Public School Contracts Law."

Audit Recommendation

- Recommendation—Use of State Contract Vendors
  - The use of state contract vendors for the procurement of goods and services when using federal funds should be limited as follows:
    - State contract vendors may not be used as the only price (cost) source for purchases that exceed $3,500.00. State contract pricing may be used as part of the quotation process. State contract vendors may also participate in the bid, competitive contracting and RFP process when so advertised. NJ State Contract Vendors shall not be used as the only price source for contracts exceeding $3,500.00. This also may apply to awarding contracts procured through local, state or federal cooperative purchasing groups. Please confer with your board atto
**Quote vs Micro**

- Permitted to Use of State Contract Vendors
- Micro Purchases—less than $3,500
- State contract vendors may be used as the only price (cost) source for micro purchases which are less than $3,500.00.
- NDSA 18A:18A ($5,000 with QPA) does not exempt Federal Fund purchases between $3,500 and $6,000.
- Once again, NJ State Contract Vendors shall not be used as the only price source for contracts exceeding $3,500.00. This also may apply to awarding contracts procured through local, state or federal cooperative purchasing groups. Please confer with your board attorney.

**Other Findings**

- Finding—Disbarred Vendors Policy/Procedure
- Recommendation—Disbarred Vendors
  - It is recommended that all school districts prepare and enforce a policy or procedure on disbarred vendors as noted in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is further supported by 2 CFR 200.212.
- Finding—Purchasing Manual; Lack of
  - Recommendation—Purchasing Manual
  - It is recommended that all school districts prepare and adopt annually a district wide purchasing manual that outlines the purchasing procedures for the school district.

**Other Findings**

- Finding—Purchasing Manual; Lack of
  - Recommendation—Purchasing Manual
  - It is recommended that all school districts prepare and adopt annually a district wide purchasing manual that outlines the purchasing procedures for the school district.
Other Findings

- Finding—Unauthorized Purchases
  Many school districts were cited for receiving goods or services prior to issuing a purchase order. The federal government calls this an “unauthorized commitment.”
- NJ Audits — CONFIRMING ORDERS
- Recommendation—Unauthorized Purchases—Confirming Orders
  The school business administrator (SBA) shall provide to all district administrative personnel, annual training on proper purchasing procedures. The SBA further shall develop strategies to limit unauthorized purchases in the district.
  (N.J.A.C. 5:34-1.1 (b))

Other Findings

- Finding—Disbarred Vendors Policy/Procedure
  A number of school districts failed to provide evidence of any policy or procedures as it pertains to disbarred vendors.
  - NJ Business Registration Certificate
  - Recommendation—Disbarred Vendors
  - It is recommended that all school districts prepare and enforce a policy or procedure on disbarred vendors as noted in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is further supported by 2 CFR 200.212.
  - The policy and/or procedures should be made present in all procurement documents issued by the school district, as well as the SOP manual and Purchasing Manual of the district.

MORE Restrictive

- Methods of Procurement—Federal Funds—More Restrictive
  School districts are to follow the Public School Contracts Law except where the federal standards are in conflict or more restrictive.
- Recommendation—it is recommended that the School Business Administrator apply the “more restrictive” clause when procuring goods and services using federal funds.
- *More Restrictive
  Any or all questions pertaining to the “more restrictive” conflicts or concerns are to be referred to the board attorney.
MORE Restrictive

Examples of Conflicts and More Restrictive Concerns

<table>
<thead>
<tr>
<th>Description</th>
<th>New Jersey</th>
<th>Federal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quotation Threshold</td>
<td>$6,000</td>
<td>$3,500*</td>
</tr>
<tr>
<td>Bid Threshold</td>
<td>Yes</td>
<td>No*</td>
</tr>
<tr>
<td>Use of State Contracts as only cost</td>
<td>Yes</td>
<td>No*</td>
</tr>
<tr>
<td>Use of State Contracts under $3,500</td>
<td>Yes**</td>
<td>Yes**</td>
</tr>
<tr>
<td>Use of Co-op Purchasing as only cost</td>
<td>Yes</td>
<td>No*</td>
</tr>
<tr>
<td>Use of Co-op Purchasing under $3,500</td>
<td>Yes**</td>
<td>Yes**</td>
</tr>
<tr>
<td>Use of Professional Services Exception</td>
<td>Yes</td>
<td>No*</td>
</tr>
<tr>
<td>Use of EUS Exception</td>
<td>Yes</td>
<td>NO*</td>
</tr>
<tr>
<td>Sole or Single Source Vendors</td>
<td>No*</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Federal Procurement Chart of Thresholds (Shoop, 2018)

But Wait, There's More

Food Services—Local Agency Procurement Review

The USDA and the NJDOA have instituted a new audit called the Local Agency Procurement Review for those school districts participating in the National School Lunch Program (NSLP). One day the USDA and NJDOA will step in your school district and do an audit on how a school district purchases goods and services just for the Food Services Department.

Both government agencies want the purchases to comply with the New Jersey Public School Contracts Law and the new Federal Procurement Regulations 2 CFR 200.318 et seq.

Districts have the option to enroll in NSLP to avoid complying with regulations.

*Note: Additional requirements and regulations for selecting vendors.
But Wait, There's More

Food Services—Local Agency Procurement Review

Guidance to School Districts

School districts need to comply with the new federal regulations on purchasing. To assist school districts, the USDA and the NFOA have issued seven (7) documents for SBA to read, learn, and utilize. They are as follows:

- Form #125—Code of Conduct and Procurement Procedure Checklist
- Form #126—Sample Procurement Procedures for School Authorities
- Form #127—Sample Code of Conduct for Food Procurement
- Form #131—Informed Procurement Help
- Form #358—Federal Funds Procurement Method Selection Chart
- USDA Intern—Buy American
- August 15, 2017—Webinar of Food Services Procurement
- August 30, 2017—Memo NFOA Federal Procurement Requirements

The onus is on the School Business Administrator to comply with Federal Procurement Regulations 207-320 and 334 and the procurement goals and standards for Food Services Department.

Just When you thought ...

Federal Consolidated Monitoring

- Review of all Federal Grant Programs for Education

- Every Student Succeeds Act (ESSA)
  - Title I, Part A — Improving Basic Educational Programs for At-risk students
  - Title II, Part A — Supporting Effective Instruction (Professional Development)
  - Title III, Part A — English Language Acquisition and Academic Achievement
  - Title IV, Part A — Student Support and Academic Enrichment (Programs)
  - I.D.E.A. Individuals with Disabilities Education Act— Part B Handicapped

Consolidated Monitoring

Three Most Important Things:
Location, Location, Location
(Realtor)

Compliance, Compliance, Compliance
(James Shoop)

Document, Document, Document
(Consolidated Monitor)
**Consolidated Monitoring**

If it isn’t written down... you didn’t do it!

- Approvals with Grant listed on Board Agenda
- Grant indicated on PO
- Justification for Grant (purpose and population)
- Salary and Benefit with time sheets
- SOPs and Manuals support practices

---

**Consolidated Monitoring**

If it isn’t written down... you didn’t do it!

- Example
  - RAZ Kids
  - RAZ Kids (plus)

---

**Consolidated Monitoring**

Applicability
Identification
Eligibility
Compliance and Fidelity

SUPPLEMENT

NOT

SUPPLANT

---
Supplement not Supplant

Questions?