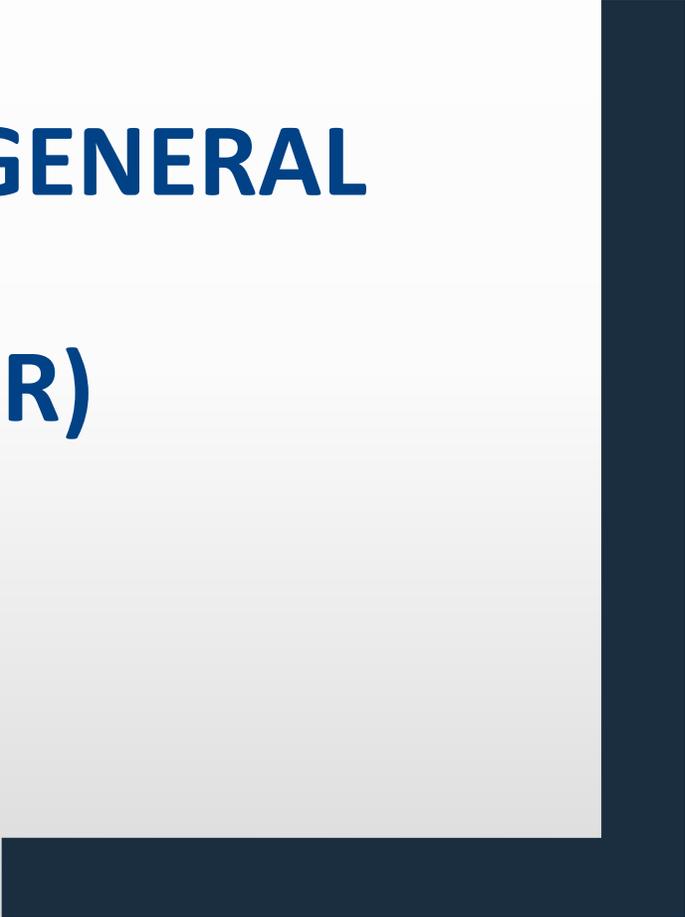




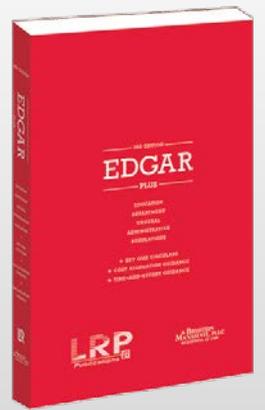
EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR)

Presented for the North County Educational Purchasing Consortium by:
Guiselle Carreon, SDCOE
Luke Boughen, Fagen Freidman & Fulfrost



WHAT IS EDGAR?

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014 to local districts (LEAs) and charters including State-administered programs. The regulations impact time and effort certifications, indirect cost reimbursement, timely obligation of funds and carryover, financial management rules, program income, record retention, property/ equipment/supplies inventory controls, procurement, monitoring, conflicts, travel policies, and allowable costs. All recipients of federal grant dollars must comply with these new rules to avoid audit exposure. Effective date of July 1, 2015.



EDGAR - PURPOSE

- Emphasizes internal controls to strengthen oversight over federal funds to reduce risks of waste, fraud, and abuse.
- Auditors will look for significant written policies and procedures that provide for effective internal controls and will ensure grantees are monitoring employees for compliance with the written policies and procedures.
- Grantees must have written procedures for determining the allowability of costs charged to federal grants. (200.302(b)(7))
- All costs must be documented as reasonable, necessary, allocable, and allowable.

OVERVIEW

EDGAR Requirements for Purchasing

- State & Federal Rules for Purchases
- Formal Purchase Process
- Contract Provisions & Certifications
- P-Card / Credit Card Purchases
- Non-competitive Award
- Travel Policies
- Approval of Expenditures

Inventory Control

Retention of Records

Written Policies and Procedures

PROCUREMENT LIMITS

- Districts and Charter Schools must follow the most restrictive rule or regulation.
- Micro-purchases below \$3,500, the federal rules apply.
- Purchases between \$3,501 and \$88,300, the federal rules require price or rate quotations from an adequate number of qualified sources. In this case, the federal rules are more restrictive than the state rules and must be followed.
- However, at \$150,000 and above, the federal rule for the cost or price analysis is more restrictive and must also be followed in conjunction with the state rules.

Note: Although there are conflicting opinions on whether state bid limits apply to charter schools; when using federal funds, charters must comply with federal regulations.

WHEN DOES EDGAR APPLY?

EDGAR regulations apply to all federally funded programs including grants including, but not limited to the following:

- Title I – Title II – Title III – Title IV – Title V – Title VI – Title VII – Title VIII
- Every Student Succeeds Act (ESSA)
- ESEA Flexibility
- Workforce Innovation and Opportunity
- CTE / ROP / Carl Perkins
- National School Lunch Program
- Department of Defense Construction Grants

For a comprehensive list: <https://www.ed.gov/programs-search/local-education-agencies>

EDGAR REQUIREMENTS FOR PURCHASING



STATE RULES V. FEDERAL RULES

Micro Purchase: \$3,500 (2 CFR § 200.320)

State Regulations

- There are no state rules for micro purchases; however a district or charter school may have stricter regulations within board policy or administrative regulation.

Federal Regulations

- Solicitation, evaluation of quotations, and award.
- To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.
- Micro-purchases may be awarded without soliciting competitive quotations if the price is determined to be reasonable.
- Certifications are not required.

STATE RULES V. FEDERAL RULES

Federal Regulations - Micro Purchase (Cont'd)

- Verification of price reasonableness is only required when:
 - The contracting officer suspects or has information to indicate that the price may not be reasonable; or
 - Purchasing a supply or service for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).
 - Documentation. If competitive quotations were solicited and award was made to other than the lowest price, documentation to support the purchase may be limited to identification of the deficiencies in other products or services and an explanation for the award decision.

STATE RULES V. FEDERAL RULES

Small Purchase Threshold (aka Simplified Acquisition Threshold):
\$150,000 (2 CFR § 200.320)

State Regulations

There are no state rules for small purchases; however a district or charter school may have stricter regulations within board policy or administrative regulation.

Federal Regulations

- Written specifications/scope of work
- Price quotes from an adequate number of qualified sources (at least two vendors).

STATE RULES V. FEDERAL RULES

Federal Regulations – Small Purchase (cont'd)

- Evaluate bidders' responses to your specifications.
- Determine most responsive and responsible bidder at lowest price and award contract.
- County and/or District's may have more restrictive limits.
- Managing the contract is a requirement.
- Some certifications are required.

STATE RULES V. FEDERAL RULES

FORMAL PURCHASE THRESHOLD: >\$150,000 (2 CFR 200.320)

STATE REQUIREMENTS

- California's formal bid limit is currently \$88,300. This amount adjusts annually.

FEDERAL REQUIREMENTS

- Agency must adhere to state and federal requirements.
- Agency must follow the stricter of the two codes.
- Cost or Price Analysis is required.

MICRO PURCHASE PROCEDURES

- Agency determines the item and quantity to be purchased based on the grant award.
- Agency identifies and contacts the vendor/supplier to complete the purchase.
- Agency may also obtain quotes (orally or written), but it is not required.
- Agency must determine the price paid is reasonable. Price reasonableness normally will be based on a comparison with historical prices paid for the item, commercial catalog prices, or other offers.
- Agency must keep documentation to support the method of purchase, basis for vendor selection and reasonableness of price.
- If competitive quotations were solicited and award was made to other than the low quote, documentation should include identification of solicited vendors and the reason for award decision.

MICRO PURCHASE PROCEDURES

- The district should develop a local policy to determine how to equitably distribute micro purchases, to the extent practicable, among qualified vendors.

Procedure for Purchase Orders

- The issuance of a Purchase Order (PO) by the district and its acceptance by the vendor (either through performance or signature on the PO) constitute a contract. For this reason it is crucial the PO clearly specify the item(s) or service(s) being purchased and the terms and conditions of the purchase.
- Micro-purchases do not require provisions or clauses.

SMALL PURCHASE PROCEDURES

- Before completing a small purchase, a district must determine price reasonableness by performing a price or cost analysis.
- The independent cost estimate should be used as a benchmark for evaluating the reasonableness of the contractor's proposal. Other methods to determine price reasonableness include:
 - A. Comparison of catalog or market prices;
 - B. Comparison of regulated prices, such as the purchase of utilities; or
 - C. Comparison with recent prices paid for similar goods or services.
- A cost analysis may be needed if:
 - A. Price competition is insufficient;
 - B. Only one bid is received;
 - C. The good or service is available from only one source;
 - D. The price is the result of a contract modification; or
 - E. The solicitation called for specific cost elements, such as labor hours, overhead, materials, etc.

SMALL PURCHASE PROCEDURES

- Written specifications/scope of work that include a description of the goods or services needed, including quantity, required certification, licensing, etc.
 - *Descriptions/ specifications must be communicated equally among vendors, and should include unit size (case, package) , measurement unit, brand name equivalent.*
- Price quotes from an adequate number of qualified sources.
- Requires you source from at least two vendors (adequate number of sources).
- Evaluate bidders responses to your specifications.
- Determine most responsive and responsible bidder at lowest price and award contract.
- County and/or District's may have more restrictive limits.
- Managing the contract is a requirement.
- Certifications are required for small purchases.

FORMAL PURCHASE PROCEDURES

SEALED BIDS

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business;
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price;
- Advertised and solicited from an adequate number of suppliers;
- Publicly opened;
- 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.

FORMAL PURCHASE PROCEDURES

- Requests for Competitive Proposals may be used for purchases supporting the child nutrition program effective January 1, 2018.
- Bids/RPFs must be publicized and identify all evaluation factors and their relative importance. Any response to publicized Bid/RFP must be considered to the maximum extent practical;
- Responses must be solicited from an adequate number of qualified sources;
- The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
- Require negotiating profit levels for contracts above the bid limit (requiring the recipient to perform a cost or price analysis - 2 CFR §§ 200.317 - 200.326).
- State bond requirements may be used in lieu of federal bond requirements. (Public Works - CFR §200.325)

CONTRACT PROVISIONS/CERTIFICATIONS

- Legal Remedies, Penalties, and Liquidated Damages – Contracts above the state and/or federal bid limit.
- Termination for Convenience, Termination for Cause: Must include the manner by which it will be effected and the basis for settlement. - All contracts in excess of \$10,000.
- Equal Employment Opportunity – Public Works contracts using federal funds.
- Davis-Bacon Act (federal prevailing wage provisions) – Public Works contracts in excess of \$2,000 using federal funds.
- Contract Work Hours and Safety Standards Act (no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous) – Public Works contracts in excess of \$100,000.
- Certifications are required.

CONTRACT PROVISIONS/CERTIFICATIONS

- Rights to Inventions Made Under a Contract or Agreement (37 CFR 401.3) – Retaining title rights by federal government.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (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). – Contracts above the state and/or federal bid limit.
- 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 (42 U.S.C. 6201).
- Debarment and Suspension – All contracts above \$25,000
- Byrd Anti-Lobbying Certification – All contracts in excess of \$100,000
- Recovered Materials – All purchases in excess of \$10,000 (CFR § 200.322)

CONTRACT PROVISIONS/CERTIFICATIONS

- Buy American: National School Lunch Program - All purchases of foods using federal funds.
- Food Defense – Food Safety Modernization Act preventing intentional adulteration from acts intended to cause wide-scale harm to public health– Requires. Food facilities must certify compliance with:
 - *Monitoring:* Establishing and implementing procedures, including the frequency with which they are to be performed, for monitoring the mitigation strategies.
 - *Corrective actions:* The response if mitigation strategies are not properly implemented.
 - *Verification:* Verification activities would ensure that monitoring is being conducted and appropriate decisions about corrective actions are being made.

INTERGOVERNMENTAL AGREEMENT

Cooperative Purchasing / Piggyback

- 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. (CFR § 200.318).
- A comparative process is required when using Piggyback contracts.

NON-COMPETITIVE AWARD

- Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - *The item is available only from a single source;*
 - *The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;*
 - *The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or*
 - *After solicitation of a number of sources, competition is determined inadequate.*
- Prior approval is required.

P-CARD / CREDIT CARD PROCEDURES

- Need original itemized receipt for each credit card purchase
- Items must be recorded in proper object code.

TRAVEL

- Written Travel Policy is required.
- Does not allow per diem in lieu of actual cost for meals.
- May not exceed federal allowable rates.
- Requires justification as to why the travel is necessary to accomplish the program objectives for the attendee.

APPROVAL OF EXPENDITURES

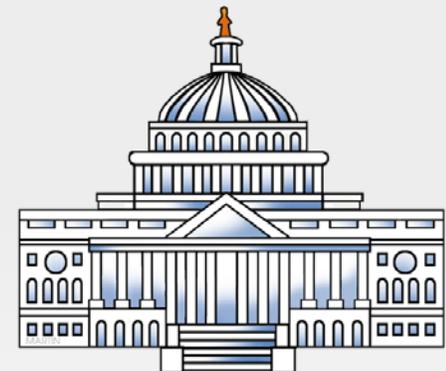
- To assure that **expenditures are proper** and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, **signed by an official who is authorized to legally bind** the non-Federal entity, which reads as follows (CFR §200.415):
 - “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false [claims](#) or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

CONTRACT ADMINISTRATION / OVERSIGHT AND PROCEDURES

Administrative Requirements (CFR §200.318)

- 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.
- Must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.
- Consolidate or separate purchases to achieve maximum cost efficiency.
- Evaluate use of lease-purchase and cooperative contracts for procurement of common goods.
- Use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

INVENTORY CONTROL



EDGAR AND ASSET TRACKING

- 2 CFR 200.302(b)(4) states that a non-Federal entity “must adequately safeguard all assets and assure that they are used solely for authorized purposes.” Under the rule, equipment must be tracked until it is properly disposed and removed from the inventory. This means that even after an item has fully depreciated, it will still need to be tracked if it was paid for using Federal funds.

LEGAL MANDATES

- 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.
- May not encumber the property without approval of the Federal awarding agency or pass-through entity.
- A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
- Adequate maintenance procedures must be developed to keep the property in good condition.
- Sales procedures must be developed.

PROPER USE

- The district shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired.
- A district must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
- When acquiring replacement equipment, the district 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, subject to the approval of the awarding agency.

EQUIPMENT INVENTORY THRESHOLDS

■ Equipment

- *EDGAR Section §80.3, for state and local government, “equipment” is tangible, nonexpendable personal property that has a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.*
- *If a state or local government set a lower threshold, such entities, must use that lower number for defining equipment.*
- ***Non-capitalized Equipment*:** Record expenditures for movable personal property of a relatively permanent nature that has an estimated useful life greater than one year and an acquisition cost less than the LEA’s capitalization threshold but greater than the LEA’s inventory threshold pursuant to Education Code Section 35168 or local policy. (>\$500 and < \$5,000)*
- ***Capitalized Equipment*:** movable personal property, including equipment such as vehicles, machinery, computer systems, and playground equipment, that have both an estimated useful life over one year and an acquisition cost equal to or greater than the capitalization threshold established by the LEA. Acquisition cost includes tax, freight or other types of delivery charges, and installation costs including labor.*

INVENTORY AUDITS

- Audits findings applied to equipment ruled that setting the threshold at \$500 was too high for:
 - *Significant Technological Items*
 - *Easily Pilferable Items*
 - *Highly Walkables*

Note: When in doubt, track it.

INVENTORY RECORD

- District must maintain a historical inventory record for each piece of equipment with an acquisition cost of \$500 or more per unit that is purchased with state and/or federal funds. Property records must be maintained that include (EC§ 35168; 5 CCR§ 3946; 34 CFR § 80.32 (d)(I))
 - *Type/description*
 - *Model/name*
 - *Serial number or other identification number*
 - *Title Holder*
 - *Funding source*
 - *Acquisition date*
 - *Cost*
 - *Percentage of Federal participation in the cost of the property*
 - *Location*
 - *Current condition (fair, good,*
 - *Transfer, replacement or disposition of obsolete or unusable equipment*

- The district must conduct a physical check of the inventory of equipment within the past two years and reconcile the result with inventory records. (34 CFR § 80.32 (d)(2).)

INVENTORY TAG

- The label should mark the equipment with the Federal Program name and include the fiscal year of purchase and property of the respective school district.



REAL PROPERTY

- Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.
(§74.2) (§80.3)
- Must be included in the inventory.

DISPOSITION OF PROPERTY

- Disposition of Equipment Section §80.32(e) of EDGAR establishes specific rules for disposing of equipment, depending on what the equipment will be used for and the value of the equipment.
- If there are no federally supported programs that need the equipment, the disposal rules depend on the current fair market value of the equipment. If the equipment has a current fair market value of less than \$5,000, the district may keep the equipment, sell it or otherwise dispose of it with no further obligation to the U.S. Department of Education.
- If the equipment has a current fair market value in excess of \$5,000, the district may keep or sell the equipment but must pay the US Department of Education a share based on the percentage of federal participation in the initial acquisition.
- Districts must take care to accurately value equipment. Ensuring proper valuation is an important part of a sound control system.

RETENTION OF RECORDS



FEDERAL RECORDS

- Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of **three years from the date of submission of the final expenditure report** or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. (CFR 200.333)

EXCEPTIONS TO 3-YEAR REQUIREMENT

- Litigation, claim, or audit: Records must be retained until final resolution.
- Written Notification: When the federal government requests extended retention in writing.
- Real property records and equipment records must be retained for three years after disposition.
- Records transferred to or maintained by federal agency. Retention is not required by non-federal agency.

The above applies to purchasing records. Program requirements may be different.

LOCAL REQUIREMENTS

- When local requirements are stricter, district must comply with the stricter rules.

WRITTEN POLICIES AND PROCEDURES



POLICY UPDATES

The policies and procedures were to be completed by July 1, 2016. Regarding the approval and adoption process for the required policies and/or procedures, the district is to follow its local process and policy for approval of administrative policies and procedures when seeking approval of the required EDGAR policies and procedures. The district's policies and procedures are not official until this approval process has been completed. (CFR § 200.318)

WHAT YOU MUST INCLUDE

Written procedures for the following that include state **and** federal requirements.

- Purchasing Process
- Code of Conduct
- Conflict of Interest
- Inventory Control
- Records Retention

QUESTIONS



Luke Boughen
lboughen@f3law.com

Guiselle Carreon
guiselle.carreon@sdcoe.net