

Charter School Program Subgrantee Conflict of Interest Guidelines

Purpose

The purpose of this Technical Assistance Paper is to outline the administrative and fiscal responsibilities of a charter school subgrantee to avoid apparent and actual conflicts of interest when administering grants. Charter schools receiving Federal grants must comply with applicable statutes, regulations, and approved applications and must use Federal funds in accordance with those statutes, regulations, and applications. Subgrantees must directly administer or supervise the administration of the project and must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds. Education Department General Administrative Regulations (EDGAR), 34 CFR 75.700-75.702. The information presented in this document is also consistent with State procurement requirements as specified in Chapter 287, Florida Statutes.

Grant Administration Responsibilities

Subgrantees must avoid apparent and actual conflicts of interest when administering grants. A subgrantee may not take part in or permit a person to take part in an administrative decision regarding a project if:

- The decision is likely to benefit that person or his or her immediate family member;
- The person is a public official; or
- The person has a family or business relationship with the subgrantee.

In addition, a subgrantee or any person participating in the project may not use his or her position for a purpose that is, or gives the appearance of being, motivated by a desire for private financial gain for that person or for others. EDGAR 34 CFR 75.525.

Grant Fiscal Responsibilities

When using Federal funds to enter into a contract for equipment or services, a subgrantee must comply with Federal procurement standards. Those standards require subgrantees to develop written procurement procedures and to conduct all procurement transactions in a manner to provide, to the maximum extent possible, open and free competition. No employee, officer, or agent of the charter school may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists.

Procurement Standards

The following procurement standards are designed to ensure that supplies and other expendable property, equipment, real property and other services purchased with Federal funds are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and State requirements.

1. The recipient is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature.
2. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent

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conflict of interest would be involved. A conflict would arise when the employee, officer, agent, or member of their immediate family has a financial or other interest in the firm selected for an award.

3. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition. Awards must be made to the bidder whose bid is responsive to the solicitation and is most advantageous to the recipient, price, and quality.
4. All recipients shall establish written procurement procedures. Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises whenever possible. The type of procuring instruments used shall be determined by the recipient but must be appropriate for the particular procurement. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
5. Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.
6. Procurement records and files for purchases in excess of the small purchase threshold (currently \$25,000) must include the following: (1) basis for contractor selection; (2) justification for lack of competition when competitive bids are not obtained; and (3) basis for award.
7. A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract. Recipients shall evaluate contractor performance and document whether contractors have met the terms and conditions of the contract.
8. The recipient shall include the following provisions in all contracts and subcontracts: (1) contracts in excess of the small purchase threshold (currently \$25,000) shall contain provisions that allow for remedies when a contractor violates the contract terms; (2) all contracts in excess of the small purchase threshold shall contain provisions for termination by the recipient and describe conditions under which the contract may be terminated for default; (3) an award that requires the contracting for construction of facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees and bonds; and (4) all negotiated contracts awarded by recipients must include a provision that the recipient, or any duly authorized representative, must have access to any records of the contractor which are directly pertinent to the specific program. EDGAR 34 CFR 74.41-74.48.

Contacts for Additional Information

Detailed information on Conflict of Interest Guidelines, Charter Schools Program, Title V, Part B *Non-Regulatory Guidance* can be found at: <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc>

The Florida Department of Education, Office of Independent Education and Parental Choice, website can be found at: <http://www.floridaschoolchoice.org>

For questions and information on charter schools, contact Karen Hines-Henry at 850-245-0502 or karen.hines@fldoe.org