3003.1
Bidding for Public Improvements Financed with Federal Funds

I. Applicability of the Policy

This policy applies only to construction and contracts undertaken with federal funds which are subject to the federal Uniform Grant Guidance (UGG) and other applicable federal law, including but not limited to the Education Department and General Administration Regulations (EDGAR) and the United States Department of Agriculture (USDA) regulations governing school food service programs. In the event this policy conflicts or is otherwise inconsistent with mandatory provisions of the UGG, EDGAR or other applicable federal law, the mandatory provisions of the laws shall control. Teachwell will also comply with the requirements of South Dakota public bidding law. In addition, all procurement and construction shall comply with the rules and requirements of 2 CFR part 200.317 through 200.327 and 34 CFR sections 75.601 through 75.615. In the event of a conflict between state and federal law, the more stringent requirement shall apply.

II. All projects undertaken pursuant to this policy will be subject to the following bond requirements:

A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

B. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

C. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

III. Construction Projects with an Anticipated Cost of Under

$350,000

A. Methods of Bidding/Soliciting Quotations or Estimates

The type of procedures required depends on the anticipated cost of the project.

1. Construction with an Anticipated Cost of up to $15,000 (Micro-Purchases)

Micro-purchase means an individual procurement transaction for supplies or services using simplified acquisition procedures, the annual aggregate amount of which does not exceed $15,000. Micro-purchases may be made or awarded without soliciting competitive quotations, to the extent Teachwell staff determine that the cost of the purchase is reasonable. For purposes of this policy "reasonable" means the purchase is comparable to market prices for the geographic area.

To the extent practicable, Teachwell distributes micro-purchases equitably among qualified suppliers. Teachwell will follow its standard policy on purchasing.

2. Construction with an Anticipated Cost of between $15,000 and $350,000 (Simplified Acquisition Procedures)

For construction projects subject to this policy, simplified acquisitions are purchases that, in the aggregate amount, is more than $15,000 and less than $350,000 annually. For simplified acquisitions, price or rate quotes shall be obtained in advance from a reasonable number of qualified sources as detailed in Teachwell's standard policies on purchasing and on bid letting and contracts.

B. Construction Projects with an estimated cost of between $100,000 and $249,999 will be made pursuant to Teachwell's Policy on Bid Letting and Contracts

Pursuant to South Dakota law, construction projects which have an anticipated aggregate cost of $100,000 or more are subject to state public bidding requirements. The board will follow its standard policy on bidding and contracts for construction projects financed with federal funds which have an anticipated aggregate cost of between $100,000

and $250,000.

IV. Construction Projects with an Anticipated Cost Over $350,000

A. Sealed Bids: All constructions projects subject to this policy with an anticipated cost of $350,000 or more will be publicly solicited using the sealed bid method

1. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publicly advertised;

2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

3. Sealed bids will be publicly opened in a place and at the specific time stated in the bid solicitation. Bidders shall be notified of the opening and invited to be present.

4. The contract will be awarded to the lowest responsive and responsible bidder.
    a) Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
    b) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
    c) Any or all bids may be rejected if there is a sound documented reason.

5. The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid meets the bid specifications. This means that the board will select the bid that offers the best value and award a contract based upon the amount of the bid and the bidder's ability and capacity to carry on the work, its equipment and facilities, honesty, integrity, skills, business judgment, experience, equipment, facilities, financial stability, past

performance, and other relevant factors.

6. The board will generally complete its review of bids and select a vendor within 30 days of bid submission.

B. Advertising for Bids

1. The director or designee will arrange to advertise for bids by publishing notice in any newspaper of general circulation within Teachwell at least ten calendar days prior to the date on which bids are due.

2. Nothing shall prevent the director or designee from advertising in additional media outlets or for a longer period of time.

C. Bid Documents

1. The bid documents shall identify the day upon which the bids shall be returned, received, or opened and shall identify the hour at which the bids will close or be received or opened.

2. The bid documents shall also provide that such bids shall be opened simultaneously in the presence of the bidders or their representatives.

3. Bids received after the date and time specified in the bid documents shall be returned to the bidder unopened.

4. If bids are being opened on more than one contract, the board, in its discretion, may award each contract as the bids are opened.

5. Sealed bids will be opened in a place and at the specific time stated in the bid solicitation. Bidders shall be notified of the opening and invited to be present.

6. Bids will be reviewed by the director and/or designee and submitted to the board for approval.

7. The board shall have discretion in determining which bidders are responsible and responsive and shall award the contract to the lowest, responsible, and responsive bidder whose bid

meets the bid specifications. This means that the board will select the bid that offers the best value and award a contract based upon the amount of the bid and the bidder's ability and capacity to carry on the work, its equipment and facilities, honesty, integrity, skills, business judgment, experience, equipment, facilities, financial stability, past performance, and other relevant factors.

8. The board will generally complete its review of bids and select a vendor within 30 days of bid submission.

D. The terms of any construction project undertaken pursuant to this policy will be memorialized in a written contract which has been reviewed by Teachwell's legal counsel and approved by the board.

V. Other Contract Matters

A. Required Terms

The non-Federal entity's contracts must contain the applicable provisions required by section 200.327 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. This includes a "Buy American" provision that provides that as appropriate and to the extent consistent with law, Teachwell and contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of the Buy American provision must be included in all subawards including all contracts and purchase orders for work or products under this award.

B. Contracting with Certain Vendors

Pursuant to the standards contained in 2 C.F.R. § 200.321, Teachwell will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in US or processed in US substantially using agricultural commodities produced in US.

C. Full and Open Competition

Teachwell's procurement transactions will be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319.

D. Debarment and Suspension

Teachwell awards 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, public policy, compliance, proper classification of employees (See the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), record of past performance, and financial and technical resources when conducting a procurement transaction.

Teachwell may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over $25,000 Teachwell verifies that the vendor with whom Teachwell intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

Teachwell will verify debarment or suspension by reviewing the excluded parties list on SAM.gov, collecting a certification through the bidding process, and/or by including a debarment and suspension provision in the bid and contract documents. The director or his/her designee shall be responsible for such verification.

E. Settlements of Issues Arising Out of Contract

Teachwell alone is 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 Teachwell of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

F. Record Keeping

1. Record Retention

    a) Teachwell maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how

the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. Teachwell also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

b) The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). South Dakota law requires retention of successful bids for five past the expiration of the contract's term. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.334.

c) Records will be destroyed in compliance with the state law and the South Dakota Local School Records Retention and Destruction Schedule.

2. Maintenance of Construction Records for Projects Financed with Federal Funds

a) Teachwell must maintain records sufficient to detail the history of all construction projects financed with federal funds. These records will include, but are not necessarily limited to the following: rationale for the method of construction, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

b) Retention of construction records shall be in accordance with applicable law and Board policy.

VI. Conflict of Interest and Code of Conduct

A. Board and staff member conflicts of interest are governed by Teachwell's conflict of interest policies.

B. Contracts covered by this policy are subject to the following additional provisions:

1. Employees, officers, and agents engaged in the selection, award, and/or administration of Teachwell contracts which are prohibited from engaging in such actions if a real or apparent conflict of interest is present.

2. 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.

3. The board may determine at its discretion that a financial interest is not substantial enough to give rise to a conflict of interest.

C. Favors and Gifts

An employee, officer, agent, and board member of Teachwell may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except that this provision does not prohibit the receipt of unsolicited items of nominal value. For purposes of this policy, "nominal value" means a fair market value of $25 or less.

D. Enforcement

Disciplinary Actions including, but not limited to, counseling, oral reprimand, written reprimand, suspensions without pay, or termination of employment, will be applied for violations of such standards by officers, employees, or agents of Teachwell.

VII. Financial Management

A. Identification

Teachwell will identify, in its accounts, all federal awards received and expended and the federal programs under which they were received. Federal program and award identification include, as applicable, the CFDA title and number, federal award identification number and year, name of the federal agency, and, if applicable, name of the pass-through entity.

B. Financial Reporting

Teachwell will make an accurate, current, and complete disclosure of the financial results of each federal award or program in accordance with the financial reporting requirements set forth in the Education Department General Administrative Regulations (EDGAR).

C. Accounting Records

Teachwell maintains records which adequately identify the source and application of funds provided for federally-assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

D. Internal Controls

The director or his/her designee must maintain effective control and accountability for all funds, real and personal property, and other assets through board review and approval of claims, an annual audit of Teachwell's finances pursuant to the applicable federal rules and regulations, and comparison of expenditures and outlays to budgeted amounts. Teachwell adequately safeguards all such property and assures that it is used solely for authorized purposes.

E. Budget Control

Actual expenditures or outlays will be compared with budgeted amounts for each federal award at least annually and more often as required by law or deemed prudent by the board or administrative staff.

F. Payment Methods

Teachwell will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by Teachwell, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, Teachwell receives payment from the South Dakota Department of Education on a reimbursement basis. 2 CFR § 200.305. However, if Teachwell receives an advance in federal grant funds, Teachwell will remit interest earned on the advanced payment quarterly to the federal agency. Teachwell may retain interest amounts up to $500 per year for administrative expenses. 2 CFR § 200.305(b)(9).

Consistent with state and federal requirements, Teachwell will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for the South Dakota Department of Education to review upon request.

G. Allowability of Costs

Expenditures must be aligned with approved budgeted items. Any changes or variations from the state-approved budget and grant application need prior approval.

When determining how Teachwell will spend its grant funds, the director or his/her designee will review the proposed cost to determine whether it is an allowable use of federal grant funds before obligating and spending those funds on the proposed good or service. All costs supported by federal education funds must meet the standards outlined in EDGAR, 2 CFR Part 3474 and 2 CFR Part. The director or his/her designee must consider these factors when making an allowability determination.

The director or his/her designee will consider Part 200's cost guidelines when federal grant funds are expended. The director or his/her designee will also consider whether state and Teachwell's requirements and policies regarding expenditures have been followed.

VIII. Other Contract Matters

Required Terms

The non-Federal entity's contracts must contain the applicable provisions

required by section 200.327 and described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Contracting with Certain Vendors

Pursuant to the standards contained in 2 C.F.R. § 200.321, Teachwell will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible consistent with state law.

To the maximum extent practicable, the school food program shall purchase domestic commodities or products produced in US or processed in US substantially using agricultural commodities produced in US.

Record Keeping

Record Retention

Teachwell maintains all records that fully show (1) the amount of funds under the grant or subgrant; (2) how the subgrantee uses those funds; (3) the total cost of each project; (4) the share of the total cost of each project provided from other sources; (5) other records to facilitate an effective audit; and (6) other records to show compliance with federal program requirements. 34 C.F.R. §§ 76.730-.731 and §§ 75.730-.731. Teachwell also maintains records of significant project experiences and results. 34 C.F.R. § 75.732. These records and accounts must be retained and made available for programmatic or financial audit.

The U.S. Department of Education is authorized to recover any federal funds misspent within 5 years before the receipt of a program determination letter. 34 C.F.R. § 81.31(c). The Records Retention and Destruction Schedule of the South Dakota Bureau of Administration Records Management Program requires Teachwell to maintain records regarding federal awards for a minimum of five (5) years. Consequently, Teachwell shall retain records for a minimum of five (5) years from the date on which the final Close Out Report is submitted, unless otherwise notified in writing to extend the retention period by the awarding agency, cognizant agency for audit, oversight agency for

audit, or cognizant agency for indirect costs. However, if any litigation, claim, or audit is started before the expiration of the record retention period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. 2 C.F.R. § 200.333.

Maintenance of Procurement Records

Teachwell must 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 verification that the contractor is not suspended or debarred.

Retention of procurement records shall be in accordance with applicable law and Board policy.

Teachwell has protections in place to ensure that the personal information of both students and employees is protected. These include the use of passwords that are changed on a regular basis; staff training on the requirements of the Family Educational Rights and Privacy Act (FERPA) and State confidentiality requirements; and training on identifying whether an individual requesting access to records has the right to the documentation.

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