

9.16 – POST-ISSUANCE COMPLIANCE

FRANKLIN LOCAL SCHOOL DISTRICT POST-ISSUANCE COMPLIANCE POLICY

Purpose:

The Franklin Local School District, Muskingum and Perry Counties, Ohio (the "District") uses bonds as one means of financing capital projects in support of its mission. This Post-Issuance Compliance Policy (the "Policy") outlines the policies and procedures to promote compliance with federal income tax and securities laws, as well as the requirements set forth in the bond documents for each bond issue. The policy is to strictly follow the U.S. Constitution and laws and the Ohio Constitution and laws. For purposes of this policy, the term "bonds" means any obligation of the District incurred for the purpose of borrowing money, including, without limitation, bonds, notes and certificates of participation in capital leases.

I. Monitoring of Post-Issuance Compliance

Monitoring of post-issuance compliance for bonds will be the responsibility of the Treasurer (the "Compliance Officer"). The Compliance Officer may designate employees within its office to carry out their duties under this Policy on their behalf in the same manner and with the same effect as any similar designation for any other purpose permitted by law.

II. Compliance with Covenants in Bond Documents

The Compliance Officer shall ensure compliance with all financial and operational covenants made by the District in the bond documents, including but not limited to financial reporting, insurance requirements, the recording of mortgages, restrictions on incurring additional indebtedness, restrictions on the disposition of property, and restrictions on granting liens or encumbering property.

III. Federal Tax Law Compliance

A. Proper Use of Proceeds

The Compliance Officer shall ensure that bond proceeds are allocated to expenditures in a manner that is consistent with the purpose for which each bond issue is undertaken, as set forth in any tax compliance certificate or agreement related to each bond issue.

B. Investment of Bond Proceeds

The Compliance Officer shall ensure that bond proceeds are invested in investments that are permissible under the terms of the Ohio Revised Code, the bond documents, and any applicable federal tax laws.

C. Arbitrage Rebate Calculations

The Compliance Officer shall ensure the timely completion of arbitrage rebate calculations and filings.

D. Administration of Direct Pay Bonds

The Compliance Officer shall ensure the proper administration of each issue of bonds qualifying for the payment by the Federal government of a credit equal to a percentage of interest on such bonds, including the timely completion and filing of any forms required by the Internal Revenue Service to maintain or establish the applicable status of the bonds for purposes of federal income taxation.

E. Use of Bond-Financed Facilities

The Compliance Officer shall consult with Bond Counsel for the District before entering into any agreement or other arrangement for the sale, lease, or use of bond-financed property, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use bond-financed property, or naming rights agreements. The Compliance Officer, or its designee, shall review such agreements for compliance with federal tax laws and complete a Private Business Use Contract Review Worksheet (attached as Exhibit A) to document that such review has been completed.

F. Post-Issuance Transactions

The Compliance Officer shall consult with Bond Counsel for the District before making any modifications or amendments to the bond documents for a bond issue, including, but not limited to, entering or modifying investment agreements; making any change in security for the bonds; engaging in post-issuance credit enhancement transactions (*e.g.*, bond insurance, letter of credit) or hedging transactions (*e.g.*, interest rate swap, cap); terminating or appointing successor trustees; releasing any liens; or reissuing the bonds.

G. Remedial Action

In the event that it is determined that any use of bond proceeds or bond-financed facilities is inconsistent with the character of the status for federal income tax purposes of the bonds, the Compliance Officer shall consult with the District's Bond Counsel for the purpose of determining the nature and extent of any remedial action necessary or proper for the District to take with respect to such bonds or bond-financed facilities according to Treasury Regulations Section 1.141-12 or other remedial actions authorized by the Commissioner of Internal Revenue under 1.141-12(h).

IV. Federal Securities Law Compliance

- A. The Compliance Officer shall ensure compliance with all applicable federal securities laws and regulations, including the continuing disclosure requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934.
- B. To the extent required by any continuing disclosure agreement, the Compliance Officer shall:

1. On an annual basis, submit an annual financial report, including audited financial statements and any other information required by the continuing disclosure agreement, to the entities required by the bond documents.
2. Make a timely report of any significant material events (as defined by the continuing disclosure agreement) related to the District's outstanding bond issues to the entities required by the bond documents.

V. Recordkeeping

A. Responsibility for Records Maintenance

- a. The Compliance Officer shall be responsible for maintaining records related to bonds of the District.
- b. The Compliance Officer shall maintain a central list of records related to each issue of bonds of the District. The list shall identify:
 - a. The name and date of the document related to the issue,
 - b. The person or office responsible for the document, and
 - c. The physical or electronic location of the document.

B. Bond Records to be Maintained

1. The following records shall be maintained for each outstanding bond issue for the term of the outstanding bond issue plus three years:
 - a. Basic records relating to the bond transaction, including the trust indenture, loan, lease, or other financing agreement, the relevant IRS Form 8038 (including Forms 8038-G, 8038-B, or 8038-TC, as applicable) with proof of filing, and bond counsel opinion shall be maintained by the Treasurer's Office;
 - b. Documentation evidencing the expenditure of bond proceeds, such as construction or contractor invoices and receipts for equipment and furnishings, as well as records of any special allocation made for tax purposes shall be maintained by the Treasurer's Office;
 - c. Documentation evidencing the lease or use of bond-financed property by public and private sources, including, but not limited to, service, vendor, and management contracts, research agreements, licenses to use bond-financed property, or naming rights agreements shall be maintained by the District office executing such agreement for use of bond-financed property; and
 - d. Documentation pertaining to investment of bond proceeds, including the yield calculations for each class of investments, actual investment income received from the investment of proceeds, and rebate calculations shall be maintained by the Treasurer's Office.
2. The Compliance Officer shall maintain the District's audited financial statements for not less than seven years.

VI. Bond Counsel Review

The Compliance Officer may engage Bond Counsel to assist in implementing this policy, including, but not limited to, assistance in the following areas:

- A. Rebate calculations and compliance;
- B. Records retention;
- C. Periodic review of the central list of records related to bonds for compliance with federal tax laws regarding private business use;
- D. Other federal tax law compliance, including any annual reporting requirements that may be imposed by the Internal Revenue Service; and
- E. Federal securities law compliance.

VII. Training Requirements

Within six months of becoming a Compliance Officer, and on an annual basis thereafter, the Compliance Officer and its designees shall undergo training regarding basic federal tax concepts relating to bonds and records required to be maintained under this policy.

VIII. Annual Policy Review

On an annual basis, or sooner if deemed necessary by the Compliance Officer, the Compliance Officer shall review this policy and assess the District's compliance with this policy. The Compliance Officer shall make changes to this Policy as appropriate to ensure compliance with any covenants in the bond documents or the requirements of federal tax and securities laws and any other applicable law.

**FRANKLIN LOCAL SCHOOL DISTRICT
PRIVATE BUSINESS USE CONTRACT REVIEW WORKSHEET**

District Department: _____

Contracting Parties: _____

Type/Title of Agreement: _____

Agreement Not Subject to Private Use Limitation

- _____ Relates solely to construction of bond-financed facility
- _____ Relates to property that was not financed with proceeds of a bond issue
- _____ Does not relate to use or function of property
- _____ Includes incidental services only (janitorial, office equipment repair, or similar services)
- _____ Compensation consists solely of reimbursement of actual and direct expenses incurred by the service provider while providing services under the agreement

Agreement Satisfies Safe Harbors for Management/Service Contracts (See definitions on page 2.)

- _____ Service provider is not an agent or *related party* and
- _____ Payments are reasonable in amount and are not based in whole or in part on share of *net profits* and
- _____ Compensation meets one of the following sets of criteria:
 - _____ at least 95% *Periodic Fixed Fee*; maximum term of 15 years
 - _____ at least 80% *Periodic Fixed Fee*; maximum term of 10 years
 - _____ at least 50% *Periodic Fixed Fee*, 100% *Capitation Fee*, or combination; maximum term of 5 years; terminable without *penalty* or cause after 3 years
 - _____ *Per Unit Fee* or combination *Periodic Fixed Fee* and *Per Unit Fee*; maximum term of 3 years; terminable without *penalty* or cause after 2 years
 - _____ percentage of fees charged or combination of *Per Unit Fee* and percentage of gross revenues or expenses (but not both); maximum term of 2 years; terminable without *penalty* or cause after 1 year; and one of the following must apply:
 - _____ service provider primarily provides services to third parties
 - _____ agreement involves a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (*e.g.* contract for general management services for the first year of operations)

Agreement Requires Further Review by Bond Counsel

- _____ Ownership (including agreement that transfers title at end of the term)
 - _____ Lease, license, or any other agreement which creates exclusive or priority rights to use any portion of a bond-financed property or which creates an economic benefit for the third-party user
 - _____ Agreement with governmental entity or 501(c)(3) organization
 - _____ Research agreement
 - _____ Management or service contract falling outside safe harbors listed above (provide explanation)
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Reviewer: _____

Date: _____

Definitions:

Related Party:

In reference to a governmental unit or a 501(c)(3) organization, any member of the same "controlled group" as defined in §1.150-1(e) of the Treasury Regulations, and in reference to any person that is not a governmental unit or 501(c)(3) organization, a "related person" as defined in §144(a)(3) of the Internal Revenue Code.

Net Profits:

Net profits under generally accepted accounting principles (GAAP). IRS Rev. Proc. 97-13 expressly provides that compensation agreements based on the following are not considered to be compensation based on a share of net profits:

- (a) a percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both;
- (b) a Capitation Fee; or
- (c) a Per Unit Fee is generally not considered to be based on a share of net profits.
- (d) a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract

Periodic Fixed Fee:

A stated dollar amount for services rendered during a specific period of time. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the facility (e.g., the Consumer Price Index). Capitation fees and per-unit fees are not periodic fixed fees.

Capitation Fee:

A fixed periodic amount for each person for whom the service provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a

medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

Per Unit Fee:

A fee based on a unit of services provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements.

Penalty:

Penalties for terminating a contract include a limitation on the 501(c)(3) organization's right to compete with the service provider; a requirement that the 501(c)(3) organization purchase equipment, goods, or services from the service provider; and a requirement that the 501(c)(3) organization pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the 501(c)(3) organization reimburse the service provider for ordinary and necessary expenses or a restriction on the 501(c)(3) organization against hiring key personnel of the service provider is generally not a contract termination penalty.

Board of Education
Policy Manual

FEDERAL PROCUREMENT

When using federal money for procurement, the District shall conform to applicable federal laws, regulations, and standards.

When entering into procurement agreements that will be paid for with federal funds, the District also shall follow local and state laws and regulations, the provisions of Board Policy 9.07 ("Purchasing") and any related administrative guidelines, and the following standards and principles:

1. When appropriate, the District will consider opportunities to use federal excess and surplus property in lieu of purchasing new equipment and property.
2. The District will make procurement awards 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, compliance with public policy, record of past performance, and financial and technical resources.
3. The District alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of its procurements. These issues include but are not limited to source evaluation, protests, disputes, and claims.
4. Additional Requirement for Small Purchases. The District shall seek a minimum of two (2) price quotations for any proposed procurement that will be paid for with federal monies, even if the bidding amount falls below the applicable federal or state competitive bidding thresholds or the District-imposed threshold set forth in Board Policy 9.07, unless the procurement falls under federal requirements for a noncompetitive proposal.
5. Additional Requirements for Micro-Purchases. To the extent possible, the district will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting quotations if the District considers the price to be reasonable. Subject to exceptions listed in 42 C.F.R. 2.101(b), micro-purchases are purchases of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$3,000.
6. Local Preference. The District will not consider geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Licensure requirements, however, are valid. When contracting for architectural and engineering services,

geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The Administration shall develop appropriate administrative guidelines to implement this policy.

2 C.F.R. 200.317–.326

FEDERAL PROCUREMENT GUIDELINES

Pursuant to Board Policy 9.15 (Federal Procurement), the District shall use the following guidelines when using federal money for procurement:

1. Contract Administration. The Superintendent or designee shall oversee the administration of contracts to help ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Specifically, the District will create and/or maintain records sufficient to detail the significant history of a procurement, and the Superintendent or designee will review these documents as appropriate. These records will include, but are not limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Notes will be kept regarding any deficiencies in performance or otherwise as appropriate.
2. Code of Standards of Conduct. Generally, consistent with Board policies and state and federal law, no employee, officer or agent of the District shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, may be involved. A conflict of interest could arise where an employee, officer or agent; any member of his or her immediate family; his or her partner; or an organization that employs or is about to employ any of the above. District employees shall comply with all applicable federal and state ethics requirements, including the following standards of conduct, when awarding and administering procurement contracts:
 - a. No employee shall solicit anything of value for personal use.
 - b. No employee shall use his/her position to secure or promise anything of value.
 - c. All employees shall avoid business lunches or activities where the intent is to discuss a related procurement or bid evaluation.
 - d. All employees shall avoid any activity that could result in a "perception of impropriety."

Violation of this policy may result in disciplinary action against the employee, including possible suspension and/or termination of employment.

3. When appropriate, the District will consider opportunities to add value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

4. The District will use time and material type contracts only:
 - a. after a determination that no other contract is suitable and
 - b. if the contract includes a ceiling price that the contractor exceeds at its own risk.
5. Cost or Price Analysis. The District shall perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. The District will perform cost or price analyses based on the following rules:
 - a. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost (e.g., under professional, consulting, and architectural engineering services contracts).
 - b. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
 - c. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
6. Specific Negotiations Requirements.
 - a. The District will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
 - b. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles.
 - c. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
7. Written Selection Procedures. The District will follow written selection procedures for procurement transactions set forth in the District's administrative guidelines that:
 - a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured; and
 - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

8. Protest Procedures. The District provides the following protest procedures to handle and resolve disputes relating to procurements and shall in all instances disclose information regarding the protest to the awarding agency. Any relevant person who believes he or she is aggrieved by the procurement-related actions of the District may file a written grievance with the Treasurer. Any grievant will have the opportunity to present evidence at a hearing before the Board's designee within a reasonable time of filing his or her appeal. The designee will provide a written decision to the grievant after considering the information provided during the hearing.

9. Federal Procurement Checklist:

-Review this Checklist for each planned purchase from a Fund that receives Federal money. Once your review is completed, sign the purchase order in the "Requisitioned by" section. This indicates you have taken the steps to comply with the Federal Procurement Board Policy and Guidelines. Keep any notes that would document your process.

1. Is the vendor reputable and have past purchasing experiences with the vendor been positive?
2. Were existing excess of surplus supplies or equipment considered prior to the purchase?
3. Were prices compared to what was available from other vendors or did your experience with past purchases assure the price was the most competitive?
4. Was a cost price analysis performed?
 - If this is a professional service purchase, is the cost comparable to other vendors?
 - If the purchase is data services, is the vendor familiar with the needs of the district and the requirements of the Ohio Department of Education?
 - Were other vendors considered or catalogs reviewed to assure the price was the most competitive?
 - If cost effective, was the purchase made from a consortium or cooperative to which the district is a member to assure the best and most effective price was obtained?
 - If it was a local purchase of a limited quantity, were time and travel expenses considered and did those additional cost make the local purchase the most cost effective?
 - If it was a local purchase of a limited quantity, were the bulk purchase requirements of cooperatives considered and that additional cost made the local purchase the most cost effective?
5. Did you gain assurances there were no conflicts of interest or any possible ethics violations related to the purchase?
6. If purchase of an item over \$5,000, did you follow Board Policy 9.07 in addition to the Federal Procurement Policy?
7. If there were any deficiencies in the vendor's performance, did you make notes of the deficiencies to consider for future purchases?

Note: Small purchase procedures may be used for procurement of \$100,000 or less in the aggregate: (24 CFR 85.36(d)(1) and 84.44(e)(2))

- Small purchases are made through the use of purchase orders. Competition is sought through oral or written price quotations. A local government must document the receipt of an adequate number of price or rate quotations from qualified sources.