**STATE OF MAINE**

**Department of Education**

*Education In the Unorganized Territories*



**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

|  |  |
| --- | --- |
| **RFP Coordinator** | *All communication regarding the RFP must be made through the RFP Coordinator identified below*.  **Name:** Gary Lewis **Title:** Building & Fleet Maintenance Manager - EUT  **Contact Information:** [Gary.A.Lewis@maine.gov](mailto:Gary.A.Lewis@maine.gov) |
| **Submitted Questions Due** | *All questions must be received by the RFP Coordinator identified above by:*  **Date:** March 18,2024 no later than 11:59 p.m., local time |
| **Proposal Submission Deadline** | *Proposals must be received by the Division of Procurement Services by:*  **Submission Deadline:** April 1 2024 no later than 11:59 p.m., local time.  *Proposals must be submitted electronically to:* [Proposals@maine.gov](mailto:Proposals@maine.gov) |

TABLE OF CONTENTS

|  |  |
| --- | --- |
|  | **Page** |
|  |  |
| **PUBLIC NOTICE** | **3** |
|  |  |
| **RFP DEFINITIONS/ACRONYMS** | **4** |
|  |  |
| **PART I INTRODUCTION** | **5-6** |
| 1. PURPOSE AND BACKGROUND |  |
| 1. GENERAL PROVISIONS |  |
| 1. CONTRACT TERMS |  |
|  |  |
| **PART II SCOPE OF SERVICES TO BE PROVIDED** | **7** |
|  |  |
| **PART III KEY RFP EVENTS** | **8-9** |
| 1. QUESTIONS |  |
| 1. AMENDMENTS |  |
| 1. SUBMITTING THE PROPOSAL |  |
|  |  |
| **PART IV PROPOSAL SUBMISSION REQUIREMENTS** | **10-12** |
|  |  |
| **PART V PROPOSAL EVALUATION AND SELECTION** | **13-14** |
| 1. EVALUATION PROCESS – GENERAL INFORMATION |  |
| 1. SCORING WEIGHTS AND PROCESS |  |
| 1. SELECTION AND AWARD |  |
| 1. APPEAL OF CONTRACT AWARDS |  |
|  |  |
| **PART VI CONTRACT ADMINISTRATION AND CONDITIONS** | **15** |
| 1. CONTRACT DOCUMENT |  |
| 1. STANDARD STATE CONTRACT PROVISIONS |  |
|  |  |
| **PART VII RFP APPENDICES AND RELATED DOCUMENTS** | **16-22** |
| **APPENDIX A** – PROPOSAL COVER PAGE |  |
| **APPENDIX B** – DEBARMENT, PERFORMANCE, AND  NON-COLLUSION CERTIFICATION |  |
| **APPENDIX C**  - FEDERAL FUNDING REQUIREMENTS AND  ASSURANCES |  |
| **APPENDIX D** – QUALIFICATIONS AND EXPERIENCE FORM |  |
| **APPENDIX E** – COST PROPOSAL FORM |  |
| **APPENDIX F** – SUBMITTED QUESTIONS FORM |  |
| **APPENDIX G** – MAP OF TRAIL |  |
| **APPENDIX H**  - DISPOSITION OF SUPPLIES, EQUIPMENT AND REAL  ESTATE UNDER A FEDERAL AWARD |  |
| **APPENDIX I**  - AGENCY UNIFORM GUIDANCE |  |

PUBLIC NOTICE

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**State of Maine**

**Department of Education - Education In The Unorganized Territories**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

The State of Maine Department of Education - Education In The Unorganized Territory is seeking proposals for work to be done for the creation and improvement of an outdoor learning environment.

A copy of the RFP, as well as the Question & Answer Summary and all amendments related to the RFP, can be obtained at: <https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps>

Proposals must be submitted to the State of Maine Division of Procurement Services, via e-mail, at: [Proposals@maine.gov](mailto:Proposals@maine.gov). Proposal submissions must be received no later than 11:59 p.m., local time, on April 1 2024, Proposals will be opened the following business day. Proposals not submitted to the Division of Procurement Services’ aforementioned e-mail address by the aforementioned deadline will not be considered for contract award.

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

**RFP TERMS/ACRONYMS with DEFINITIONS**

The following terms and acronyms, as referenced in the RFP, shall have the meanings indicated below:

|  |  |
| --- | --- |
| **Term/Acronym** | **Definition** |
| **ARP ESSER** | [American Rescue Plan](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Foese.ed.gov%2Ffiles%2F2021%2F05%2FESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf&data=04%7C01%7CPage.Nichols%40maine.gov%7C88a29e73834d4bc3417108da141fd32f%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637844424156575152%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=DpNOQRvQswm0DDNM1ixxF04F0WHw4JkLzFuxYFeFQRE%3D&reserved=0); [ARP Elementary and Secondary School Emergency Relief funds](https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/stateplans/) |
| **Department** | Department of Education |
| **EUT** | Education In the Unorganized Territory |
| **RFP** | Request for Proposal |
| **State** | State of Maine |

**State of Maine - Department of Education - Education In The Unorganized Territories**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work PART I INTRODUCTION**

1. **Purpose and Background**

The Department of Education - Education in the Unorganized Territory (EUT)is seeking proposals for the construction of an outdoor learning environment and trails as defined in this Request for Proposal (RFP) document. This document provides instructions for submitting proposals, the procedure and criteria by which the awarded Bidder will be selected, and the contractual terms which will govern the relationship between the State of Maine (State) and the awarded Bidder.

EUT is looking to construct an outdoor learning environment and to make trail improvements at the Edmunds Consolidated School, in Edmunds Township. The outdoor learning environment will include a 12 foot X 24 foot pressure treated wood platform and the installation of wood chips and benches along the existing trail. 100% of funding for this RFP is from the U.S. Department of Education’s American Rescue Plan (ARP) Elementary and Secondary School Emergency Relief (ESSER) grant awarded to the Maine Department of Education in 2021.

The Awarded Bidder needs to have the work completed by **August 16, 2024.**

1. **General Provisions**
   1. From the time the RFP is issued until award notification is made, all contact with the State regarding the RFP must be made through the RFP Coordinator. No other person/State employee is empowered to make binding statements regarding the RFP. Violation of this provision may lead to disqualification from the bidding process, at the State’s discretion.
   2. Issuance of the RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to the RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
   3. All proposals must adhere to the instructions and format requirements outlined in the RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the “Proposal Submission Requirements” section of the RFP.
   4. Bidders will take careful note that in evaluating a proposal submitted in response to the RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder’s experience and capabilities.
   5. The proposal must be signed by a person authorized to legally bind the Bidder and must contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.
   6. The RFP and the awarded Bidder’s proposal, including all appendices or attachments, will be the basis for the final contract, as determined by the Department.
   7. Following announcement of an award decision, all submissions in response to this RFP will be public records, available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) ([1 M.R.S. § 401](http://www.mainelegislature.org/legis/statutes/1/title1sec401.html) et seq.).
   8. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to the RFP.
   9. All applicable laws, whether or not herein contained, are included by this reference. It is the Bidder’s responsibility to determine the applicability and requirements of any such laws and to abide by them.
2. **Contract Term**

The Department is seeking a cost-efficient proposal to provide services, as defined in the RFP, for the anticipated contract period defined in the table below. Please note, the dates below are estimated and may be adjusted, as necessary, in order to comply with all procedural requirements associated with the RFP and the contracting process. The actual contract start date will be established by a completed and approved contract.

The term of the anticipated contract, resulting from the RFP, is defined as follows:

|  |  |  |
| --- | --- | --- |
| **Period** | **Start Date** | **End Date** |
| Initial Period of Performance | 05/01/2024 | 08/16/2024 |

The Department anticipates making one (1) award as a result of the RFP process.

**PART II SCOPE OF SERVICES TO BE PROVIDED**

EUT is looking to improve an outdoor learning environment at the Edmunds Consolidated School. See **Appendix G** for map of the location. The work includes the follow:

1. The construction of a 12 foot X 24 foot pressure treated wood platform;
2. Installation of wood chips along the existing trail system. The trail is 780 ft long by 5 ft wide and EUT is looking for at least 4in depth of wood chips.
   1. The awarded bidder will be responsible for making any necessary grade improvements.
3. Install and anchor 4 to 5 benches along the existing trail. EUT will provide the benches.
4. Obtain all needed permits.

In addition, the Award Bidder will be required to comply with:

1. Local, state and federal regulations regarding construction safety and all other aspects of the work.
2. The Maine Code of Fair Practices and Affirmative Action, 5 M.R.S. §784 (2).
3. The Cost Principles in 2 CFR Part 200, subpart E. The cost must be "necessary and reasonable" as stated in 2 CFR § § 200.403 and 200.404.
4. Appropriate documentation that supports expenditures for the proposed Construction Project including Davis-Bacon prevailing wage requirements. (34 CFR § § 76.600 and 75.600-75.618)

**PART III KEY RFP EVENTS**

1. **Questions**
   1. **General Instructions:** It is the responsibility of all Bidders and other interested parties to examine the entire RFP and to seek clarification, in writing, if they do not understand any information or instructions.
      1. Bidders and other interested parties should use **Appendix F** (Submitted Questions Form) for submission of questions. The form is to be submitted as a WORD document.
      2. The Submitted Questions Form must be submitted, by e-mail, and received by the RFP Coordinator identified on the cover page of the RFP as soon as possible but no later than the date and time specified on the RFP cover page.
      3. Submitted Questions must include the RFP Number and Title in the subject line of the e-mail. The Department assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt.
   2. **Question & Answer Summary:** Responses to all questions will be compiled in writing and posted on the following website no later than seven (7) calendar days prior to the proposal due date: [Division of Procurement Services RFP Page](https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps). It is the responsibility of all interested parties to go to this website to obtain a copy of the Question & Answer Summary. Only those answers issued in writing on this website will be considered binding.
2. **Amendments**

All amendments released in regard to the RFP will also be posted on the following website: [Division of Procurement Services RFP Page](https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps). It is the responsibility of all interested parties to go to this website to obtain amendments. Only those amendments posted on this website are considered binding.

1. **Submitting the Proposal**
   1. **Proposals Due:** Proposals must be received no later than 11:59 p.m. local time, on the date listed on the cover page of the RFP.
      1. Any e-mails containing original proposal submissions or any additional or revised proposal files, received after the 11:59 p.m. deadline, will be rejected without exception.
   2. **Delivery Instructions:** E-mail proposal submissions are to be submitted to the State of Maine Division of Procurement Services at [Proposals@maine.gov](mailto:Proposals@maine.gov).
      1. Only proposal submissions received by e-mail will be considered. The Department assumes no liability for assuring accurate/complete e-mail transmission and receipt.
         1. Proposal submission e-mails that are successfully received by the [proposals@maine.gov](mailto:proposals@maine.gov) inbox will receive an automatic reply stating as such.
      2. E-mails containing links to file sharing sites or online file repositories will not be accepted as submissions. Only e-mail proposal submissions that have the actual requested files attached will be accepted.
      3. Encrypted e-mails received which require opening attachments and logging into a proprietary system will not be accepted as submissions. Please check with your organization’s Information Technology team to ensure that your security settings will not encrypt your proposal submission.
      4. File size limits are 25MB per e-mail. Bidders may submit files separately across multiple e-mails, as necessary, due to file size concerns. All e-mails and files must be received by the due date and time listed above.
      5. Bidders are to insert the following into the subject line of their e-mail proposal submission: **“RFP# 202402050 Proposal Submission – [Bidder’s Name]”**
      6. Bidder’s proposal submissions are to be broken down into multiple files, with each file named as it is titled in bold below, and include:

* **File 1 [Bidder’s Name] – Preliminary Information:**

*PDF format preferred*

**Appendix A** (Proposal Cover Page)

**Appendix B** (Debarment, Performance and Non-Collusion Certification)

**Appendix C** (Federal Funding Requirements and Assurances)  
All required eligibility documentation stated in PART IV, Section I.

* **File 2 [Bidder’s Name] – Organization Qualifications and Experience:**

*PDF format preferred*

**Appendix D** (Organization Qualifications and Experience Form) and all required information and attachments stated in PART IV, Section II.

* **File 3 [Bidder’s Name] – Proposed Services:**

*PDF format preferred*

All required information and attachments stated in PART IV, Section III.

* **File 4 [Bidder’s Name] – Cost Proposal:**

*PDF format preferred*

**Appendix E** (Cost Proposal Form) and all required information and attachments stated in PART IV, Section IV.

**PART IV PROPOSAL SUBMISSION REQUIREMENTS**

This section contains instructions for Bidders to use in preparing their proposals. The Department seeks detailed yet succinct responses that demonstrate the Bidder’s qualifications, experience, and ability to perform the requirements specified throughout the RFP.

The Bidder’s proposal must follow the outline used below, including the numbering, section, and sub-section headings. Failure to use the outline specified in PART IV, or failure to respond to all questions and instructions throughout the RFP, may result in the proposal being disqualified as non-responsive or receiving a reduced score. The Department, and its evaluation team, has sole discretion to determine whether a variance from the RFP specifications will result either in disqualification or reduction in scoring of a proposal. Rephrasing of the content provided in the RFP will, at best, be considered minimally responsive.

Bidders are not to provide additional attachments beyond those specified in the RFP for the purpose of extending their response. Additional materials not requested will not be considered part of the proposal and will not be evaluated. Include any forms provided in the submission package or reproduce those forms as closely as possible. All information must be presented in the same order and format as described in the RFP.

**Proposal Format and Contents**

**Section I Preliminary Information** (File #1)

* 1. **Proposal Cover Page**

Bidders must complete **Appendix A** (Proposal Cover Page). It is critical that the cover page show the specific information requested, including Bidder address(es) and other details listed. The Proposal Cover Page must be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.

* 1. **Debarment, Performance and Non-Collusion Certification**

Bidders must complete **Appendix B** (Debarment, Performance and Non-Collusion Certification Form). The Debarment, Performance and Non-Collusion Certification Form must be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.

* 1. **Federal Funding Requirements and Assurances**Bidders must complete **Appendix C** (Federal Funding Requirements and Assurances) form. The Federal Funding Requirements and Assurances form must be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.

**Section II Organization Qualifications and Experience** (File #2)

* 1. **Overview of the Organization**

Bidders must complete **Appendix D** (Qualifications and Experience Form) describing their qualifications and skills to provide the requested services in the RFP. Bidders must include three examples of projects which demonstrate their experience and expertise in performing these services as well as highlighting the Bidder’s stated qualifications and skills.

* 1. **Subcontractors**

If subcontractors are to be used, Bidders must provide a list that specifies the name, address, phone number, contact person, and a brief description of the subcontractors’ organizational capacity and qualifications.

* 1. **Organizational Chart**

Bidders must provide an organizational chart.  The organizational chart must include the project being proposed.  Each position must be identified by position title and corresponding to the personnel job descriptions.



Bidders must attach a list of all current litigation in which the Bidder is named and a list of all closed cases that have closed within the past five (5) years in which the Bidder paid the claimant either as part of a settlement or by decree.  For each, list the entity bringing suit, the complaint, the accusation, amount, and outcome.

* 1. **Licensure/Certification**

Bidders may provide documentation of any applicable licensure/certification or specific credentials that are related to providing the proposed services of the RFP. This documentation may include: Certificate of Insurance

* 1. **Certificate of Insurance**

Bidders must provide a certificate of insurance on a standard ACORD form (or the equivalent) evidencing the Bidder’s general liability, professional liability and any other relevant liability insurance policies that might be associated with the proposed services.

**Section III Proposed Services** (File #3)

* 1. **Services to be Provided**

Discuss the Scope of Services referenced above in Part II of the RFP and what the Bidder will offer. Give particular attention to describing the methods and resources you will use and how you will accomplish the tasks involved. Also, describe how you will ensure expectations and/or desired outcomes as a result of these services will be achieved. If subcontractors are involved, clearly identify the work each will perform.

* 1. **Implementation - Work Plan**

Provide a realistic work plan for the implementation of the program through the first contract period. Display the work plan in a timeline chart. Concisely describe each program development and implementation task, the month it will be carried out and the person or position responsible for each task. If applicable, make note of all tasks to be delegated to subcontractors.

**Section IV Cost Proposal** (File #4)

* 1. **General Instructions**
     1. Bidders must submit a cost proposal that covers the period starting 5/01/2024 and ending on 8/16/2024.
     2. The cost proposal must include the costs necessary for the Bidder to fully comply with the contract terms, conditions, and RFP requirements.
     3. No costs related to the preparation of the proposal for the RFP, or to the negotiation of the contract with the Department, may be included in the proposal. Only costs to be incurred after the contract effective date that are specifically related to the implementation or operation of contracted services may be included.
  2. **Cost Proposal Form Instructions**

Bidders must fill out **Appendix E** (Cost Proposal Form), following the instructions detailed here and in the form. Failure to provide the requested information, and to follow the required cost proposal format provided, may result in the exclusion of the proposal from consideration, at the discretion of the Department.

**PART V PROPOSAL EVALUATION AND SELECTION**

Evaluation of the submitted proposals will be accomplished as follows:

1. **Evaluation Process – General Information**
   1. An evaluation team, composed of qualified reviewers, will judge the merits of the proposals received in accordance with the criteria defined in the RFP.
   2. Officials responsible for making decisions on the award selection will ensure that the selection process accords equal opportunity and appropriate consideration to all who are capable of meeting the specifications. The goals of the evaluation process are to ensure fairness and objectivity in review of the proposals and to ensure that the contract is awarded to the Bidder whose proposal provides the best value to the State of Maine.
   3. The Department reserves the right to communicate and/or schedule interviews/presentations with Bidders, if needed, to obtain clarification of information contained in the proposals received. The Department may revise the scores assigned in the initial evaluation to reflect those communications and/or interviews/presentations. Changes to proposals, including updating or adding information, will not be permitted during any interview/presentation process and, therefore, Bidders must submit proposals that present their rates and other requested information as clearly and completely as possible.
2. **Scoring Weights and Process**
   1. **Scoring Weights:** The score will be based on a 100-point scale and will measure the degree to which each proposal meets the following criteria.

**Section I. Preliminary Information (No Points – Eligibility Requirements)**

Includes all elements addressed above in Part IV, Section I.

**Section II. Organization Qualifications and Experience (30 points)**

Includes all elements addressed above in Part IV, Section II.

**Section III. Proposed Services (30 points)**

Includes all elements addressed above in Part IV, Section III.

**Section IV. Cost Proposal (40 points)**

Includes all elements addressed above in Part IV, Section IV.

* 1. **Scoring Process:** For proposals that demonstrate meeting the eligibility requirements in Section I, the evaluation team will use a consensus approach to evaluate and score Sections II & III above. Members of the evaluation team will not score those sections individually but, instead, will arrive at a consensus as to assignment of points for each of those sections. Sections IV, the Cost Proposal, will be scored as described below.
  2. **Scoring the Cost Proposal:** The total cost proposed for conducting all the functions specified in the RFP will be assigned a score according to a mathematical formula. The lowest bid will be awarded 40 points. Proposals with higher bids values will be awarded proportionately fewer points calculated in comparison with the lowest bid.

The scoring formula is:

(Lowest submitted cost proposal / Cost of proposal being scored) x 40 = pro-rated score

No Best and Final Offers: The State of Maine will not seek or accept a best and final offer (BAFO) from any Bidder in this procurement process.  All Bidders are expected to provide their best value pricing with the submission of their proposal.

* 1. **Negotiations:** The Department reserves the right to negotiate with the awarded Bidder to finalize a contract. Such negotiations may not significantly vary the content, nature or requirements of the proposal or the Department’s Request for Proposal to an extent that may affect the price of goods or services requested. The Department reserves the right to terminate contract negotiations with an awarded Bidder who submits a proposed contract significantly different from the proposal they submitted in response to the advertised RFP. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder, and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

1. **Selection and Award**
   1. The final decision regarding the award of the contract will be made by representatives of the Department subject to approval by the State Procurement Review Committee.
   2. Notification of conditional award selection or non-selection will be made in writing by the Department.
   3. Issuance of the RFP in no way constitutes a commitment by the State of Maine to award a contract, to pay costs incurred in the preparation of a response to the RFP, or to pay costs incurred in procuring or contracting for services, supplies, physical space, personnel or any other costs incurred by the Bidder.
   4. The Department reserves the right to reject any and all proposals or to make multiple awards.
2. **Appeal of Contract Awards**

Any person aggrieved by the award decision that results from the RFP may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in [5 M.R.S.A. § 1825-E](http://www.mainelegislature.org/legis/statutes/5/title5sec1825-E.html) and [18-554 Code of Maine Rules Chapter 120](https://www.maine.gov/dafs/bbm/procurementservices/policies-procedures/chapter-120).  The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine, 04333-0009 within 15 calendar days of receipt of notification of conditional contract award.

**PART VI CONTRACT ADMINISTRATION AND CONDITIONS**

1. **Contract Document**
   1. The awarded Bidder will be required to execute a State of Maine Service Contract with appropriate riders as determined by the issuing department.

The complete set of standard State of Maine Service Contract documents, along with other forms and contract documents commonly used by the State, may be found on the Division of Procurement Services’ website at the following link: [Division of Procurement Services Forms Page](https://www.maine.gov/dafs/bbm/procurementservices/forms)

* 1. Allocation of funds is final upon successful negotiation and execution of the contract, subject to the review and approval of the State Procurement Review Committee. Contracts are not considered fully executed and valid until approved by the State Procurement Review Committee and funds are encumbered. No contract will be approved based on an RFP which has an effective date less than fourteen (14) calendar days after award notification to Bidders. (Referenced in the regulations of the Department of Administrative and Financial Services, [Chapter 110, § 3(B)(i)](https://www.maine.gov/dafs/bbm/procurementservices/policies-procedures/chapter-110).)

This provision means that a contract cannot be effective until at least 14 calendar days after award notification.

* 1. The State recognizes that the actual contract effective date depends upon completion of the RFP process, date of formal award notification, length of contract negotiation, and preparation and approval by the State Procurement Review Committee. Any appeals to the Department’s award decision(s) may further postpone the actual contract effective date, depending upon the outcome. The contract effective date listed in the RFP may need to be adjusted, if necessary, to comply with mandated requirements.
  2. In providing services and performing under the contract, the awarded Bidder must act as an independent contractor and not as an agent of the State of Maine.

1. **Standard State Contract Provisions**
   1. Contract Administration

Following the award, a Contract Administrator from the Department will be appointed to assist with the development and administration of the contract and to act as administrator during the entire contract period. Department staff will be available after the award to consult with the awarded Bidder in the finalization of the contract.

* 1. Payments and Other Provisions

The State anticipates paying the Contractor on the basis of net 30 payment terms, upon the receipt of an accurate and acceptable invoice. An invoice will be considered accurate and acceptable if it contains a reference to the State of Maine contract number, contains correct pricing information relative to the contract, and provides any required supporting documents, as applicable, and any other specific and agreed-upon requirements listed within the contract that results from the RFP.

**PART VII LIST OF RFP APPENDICES AND RELATED DOCUMENTS**

**Appendix A** – Proposal Cover Page

**Appendix B** – Debarment, Performance, and Non-Collusion Certification

**Appendix C** – Federal Funding Requirements and Assurances

**Appendix D** – Qualifications and Experience Form

**Appendix E** – Cost Proposal Form

**Appendix F** – Submitted Question Form

**Appendix G** – Map of Trail

**Appendix H** – Disposition of Supplies, Equipment and Real Estate under a Federal Award

**APPENDIX A**

**State of Maine**

**Department of Education - Education In The Unorganized Territories PROPOSAL COVER PAGE**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Bidder’s Organization Name:** | |  | | |
| **Chief Executive - Name/Title:** | |  | | |
| **Tel:** |  | | **E-mail:** |  |
| **Headquarters Street Address:** | |  | | |
| **Headquarters City/State/Zip:** | |  | | |
| ***(Provide information requested below if different from above)*** | | | | |
| **Lead Point of Contact for Proposal - Name/Title:** | |  | | |
| **Tel:** |  | | **E-mail:** |  |
| **Headquarters Street Address:** | |  | | |
| **Headquarters City/State/Zip:** | |  | | |

* This proposal and the pricing structure contained herein will remain firm for a period of 180 days from the date and time of the bid opening.
* No personnel currently employed by the Department or any other State agency participated, either directly or indirectly, in any activities relating to the preparation of the Bidder’s proposal.
* No attempt has been made, or will be made, by the Bidder to induce any other person or firm to submit or not to submit a proposal.
* The above-named organization is the legal entity entering into the resulting contract with the Department if they are awarded the contract.
* The undersigned is authorized to enter contractual obligations on behalf of the above-named organization.

*To the best of my knowledge, all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.*

|  |  |
| --- | --- |
| **Name (Print):** | **Title:** |
| **Authorized Signature:** | **Date:** |

**APPENDIX B**

**State of Maine**

**Department of Education - Education In The Unorganized Territories DEBARMENT, PERFORMANCE, and NON-COLLUSION CERTIFICATION**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

|  |  |
| --- | --- |
| **Bidder’s Organization Name:** |  |

*By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this proposal:*

1. *Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
2. *Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
   1. *Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or contract.*
   2. *Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.*
3. *Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification.*
4. *Have not within a three (3) year period preceding this proposal had one or more federal, state, or local government transactions terminated for cause or default*.
5. *Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

|  |  |
| --- | --- |
| **Name (Print):** | **Title:** |
| **Authorized Signature:** | **Date:** |

APPENDIX C

**Department of Education - Education In The Unorganized Territories**

**FEDERAL FUNDING REQUIREMENTS AND ASSURANCES**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

|  |  |
| --- | --- |
| **Bidder’s Organization Name:** |  |

*By signing this document, I certify to the best of my knowledge and belief that the aforementioned bidding organization, its principals and any subcontractors named in this RFP application will:*

1. *Comply with all reporting requirements at such time, in such manner, and containing such information as the Maine Department of Education, the U.S. Department of Education, Inspector General and/or any other agency, commission, or Department may reasonably require.*
2. *Use the federal programming funds for only the activities identified in any agreement with the Department and be able to provide a written documentation of expenses while assuring that all Uniformed Grant Guidance protocols for procurement have been followed.*[*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1*](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1)
3. *Use the program funds for purposes that are reasonable, necessary, and allowable under the American Rescue Plan Act (ARP) Elementary and Secondary School Emergency Relief (ESSER).  Additional information about the allowability of the ARP funds is available on the*[*U.S. Department of Education’s Use of Fund FAQ. https://oese.ed.gov/files/2021/05/ESSER.GEER\_.FAQs\_5.26.21\_745AM\_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf*](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Foese.ed.gov%2Ffiles%2F2021%2F05%2FESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf&data=04%7C01%7CPage.Nichols%40maine.gov%7C88a29e73834d4bc3417108da141fd32f%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637844424156575152%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=DpNOQRvQswm0DDNM1ixxF04F0WHw4JkLzFuxYFeFQRE%3D&reserved=0)*.*
4. *Use funds received under section 2001(d) of the ARP for any activity listed in section 2001(e). Any activity that is an allowable use of Elementary and Secondary Schools Emergency Relief (ESSER I) funds by an applicant under section 18003(d) of the Coronavirus Aid, Recovery and Economic Security (CARES) Act, or ESSER II funds by an applicant under section 313(d) of the CRRSA Act, is also an allowable use of ARP ESSER funds by an applicant under section 2001(d) of the ARP ESSER.*
5. *Acknowledge that ARP ESSER funds may be used for a wide range of activities to address needs arising from the coronavirus pandemic, including any activity authorized by the ESEA, the Individuals with Disabilities Education Act (IDEA), Adult Education and Family Literacy Act (AEFLA), or Carl D. Perkins Career and Technical Education Act of 2006 (Perkins CTE). Specifically, ARP ESSER funds may be used to develop strategies and implement public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention (CDC) on reopening and operating schools to effectively maintain the health and safety of students, educators, and other staff, as well as:*
6. *coordinating preparedness and response efforts with State, local, Tribal, and territorial public health departments to prevent, prepare for, and respond to COVID-19.*
7. *training and professional development on sanitizing and minimizing the spread of infectious diseases.*
8. *purchasing supplies to sanitize and clean the applicant’s facilities.*
9. *repairing and improving school facilities to reduce risk of virus transmission and exposure to environmental health hazards.*
10. *improving indoor air quality.*
11. *addressing the needs of children from low-income families, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth.*
12. *developing and implementing procedures and systems to improve the preparedness and response efforts of the organization.*
13. *planning for or implementing activities during long-term closures, including providing meals to eligible students and providing technology for online learning.*
14. *purchasing educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) for students that aids in regular and substantive educational interaction between students and their classroom instructors, including students from low-income families and children with disabilities.*
15. *providing mental health services and supports, including through the implementation of evidence based full-service community schools and the hiring of counselors.*
16. *planning and implementing activities related to summer learning and supplemental after-school programs.*
17. *addressing learning loss; and*
18. *other activities that are necessary to maintain operation of and continuity of and services, including continuing to employ existing or hiring new staff.*
19. *Maintain and produce records pertaining to the federal funds under* [*2 C.F.R. § 200.334*](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR4acc10e7e3b676f/section-200.334) *and* [*34 C.F.R. § 76.730*](https://www.ecfr.gov/current/title-34/subtitle-A/part-76/subpart-G/subject-group-ECFRceeb2ab4f048d91/section-76.730)*, including financial records related to use of this specific grant program, separately from other grant funds, including funds that an applicant receives under the CARES, CRRSA, or ARP Act. The Department will ensure that it and every subrecipient of ARP ESSER funds will cooperate with any examination of records with respect to such funds by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.*
20. *Sign a set of assurances that meets the requirements of* [*section 427 and 442*](https://crsreports.congress.gov/product/pdf/R/R41119/3) *of the General Education Provisions Act (GEPA) (*[*20 U.S.C. 1232e*](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-section1232e&num=0&edition=prelim#:~:text=%C2%A71232e.%20Single%20local%20educational%20agency%20application%20%28a%29,General%20application%20to%20State%20agency%20or%20board)*) that will be kept on file at the Department.*
21. *To the extent practicable, comply with the requirements of section 427 of GEPA* [*(20 U.AS.C. 1228a)*](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-section1228a&num=0&edition=prelim) *permitting students, teachers, and other program beneficiaries to overcome barriers (including barriers based on gender, race, color, national origin, disability, and age) that impede equal access to, or participation in, the program.*
22. *Acknowledge and agree that failure to comply with all federal funding requirements in this RFP, all relevant provisions and requirements of the ARP ESSER funds under section 2001 of the ARP Act or any other applicable law or regulation, may result in liability under the False Claims Act, 31 U.S.C. § 3729, et seq.*
23. *Comply with: the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 76, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474; 18 U.S.C. § 1001, as appropriate; and other enforcement actions.*
24. *Assure that the RFP application provides detailed project and budgetary information related to preparing for, preventing, and responding to the COVID-19 pandemic and aligns to the allowable uses of the ARP ESSER Fund, original authorized under the ARP Act of 2021. The Department will review applications. The applicant will only request reimbursement for projects and budgets that were deemed allowable, necessary, and reasonable after approval from the Department.*
25. *Comply with Executive Order 11246 of September 24, 1965 entitled “Equal Opportunity,” as amended by Executive Order 11375 of October 13, 1967 and as supplemented by in Department of Labor Regulations (41 CFR Part 60).*
26. *Comply with the provisions of the Copeland “Anti-kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).*
27. *Comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).*
28. *Comply with the Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (ECC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that ECC and NAFTA end products and construction materials are exempted from application of the Buy American Act.*
29. *Ensure that no person is denied benefits of, or otherwise be subjected to discrimination in connection with the applicant’s performance under this agreement, on the grounds of race, religion, color, national origin, sex, and handicap. Accordingly, and to the extent applicable, the applicant covenants and agrees to comply with the following:*

## *Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and DOD regulations 32 CFR Part 300) issued thereunder;*

## *Executive Order 11246 and Department of Labor regulations issued thereunder (41 CFR Part 60);*

## *Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and DOD regulations issued thereunder (32 CFR Part 56); and,*

## *The Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) and regulations issued thereunder (45 CFR Part 90).*

1. *Not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions; the awarding of any Federal contract; the making of any federal grant; the making of any federal loan; the entering into any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement.*
2. *Acknowledge that the Interim Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget to implement the provisions of section 319 of Public Law 101-121 (31 U.S.C., Art 1352) is incorporated by reference.*
3. *Comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free workplace.*
4. *Acknowledge that the Final Rule, Government-wide Requirements for Drug-Free Workplace (Grants), issued by the Office of Management and Budget to implement the provisions of the Drug-Free Workplace Act of 1988 is incorporated by reference and the applicant covenants and agrees to comply with all the provisions thereof.*
5. *If awarded, comply with the* [*Specific Conditions for Disclosing Federal Funding in Public Announcements.*](https://s3.amazonaws.com/4pca/NCLB/FY2017/Public_Funding_Disclosure.pdf) *Department will provide guidance/examples of this disclosure language upon request of the successful applicant,* [*https://s3.amazonaws.com/4pca/NCLB/FY2017/Public\_Funding\_Disclosure.pdf*](https://s3.amazonaws.com/4pca/NCLB/FY2017/Public_Funding_Disclosure.pdf)*.*
6. *Acknowledge and accept that recipients and subrecipients are the first line of defense, and responsible for ensuring the federal funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their federally funded award.*

Failure to provide this certification may result in the disqualification of the Applicant’s application, at the discretion of the Department.

|  |  |
| --- | --- |
| **Name (Print):** Click or tap here to enter text. | **Title:** Click or tap here to enter text. |
| **Authorized Signature:** | **Date:** Click or tap here to enter text. |

**APPENDIX D**

**State of Maine**

## Department of Education - Education In The Unorganized Territories QUALIFICATIONS and EXPERIENCE FORM

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

|  |  |
| --- | --- |
| **Bidder’s Organization Name:** |  |

|  |
| --- |
| **Present a brief statement of qualifications. Describe the history of the Bidder’s organization, especially regarding skills pertinent to the specific work required by the RFP and any special or unique characteristics of the organization which would make it especially qualified to perform the required work activities. You may expand this form and use additional pages to provide this information.** |
|  |

**APPENDIX D (continued)**

|  |
| --- |
| **Provide a description of projects that occurred within the past five years which reflect experience and expertise needed in performing the functions described in Part II – Scope of Services to be Provided of the RFP. Please note that contract history with the State of Maine, whether positive or negative, may be considered in rating proposals even if not provided by the Bidder.**  *If the Bidder has not provided similar services, note this, and describe experience with projects that highlight the Bidder’s general capabilities.* |

|  |  |
| --- | --- |
| **Project One** | |
| **Client Name:** |  |
| **Client Contact Person:** |  |
| **Telephone:** |  |
| **E-Mail:** |  |
| **Brief Description of Project** | |
|  | |

|  |  |
| --- | --- |
| **Project Two** | |
| **Client Name:** |  |
| **Client Contact Person:** |  |
| **Telephone:** |  |
| **E-Mail:** |  |
| **Brief Description of Project** | |
|  | |

|  |  |
| --- | --- |
| **Project Three** | |
| **Client Name:** |  |
| **Client Contact Person:** |  |
| **Telephone:** |  |
| **E-Mail:** |  |
| **Brief Description of Project** | |
|  | |

**APPENDIX E**

**State of Maine**

**Department of Education - Education In The Unorganized Territories** **COST PROPOSAL FORM**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

|  |  |
| --- | --- |
| **Bidder’s Organization Name:** |  |
| **Proposed Total Cost:** | **$** |

**APPENDIX F**

**State of Maine**

**Department of Education - Education In The Unorganized Territories** **SUBMITTED QUESTIONS FORM**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

This form should be used by Bidders when submitting written questions to the RFP Coordinator as defined in Part III of the RFP.

If a question is not related to any section of the RFP, enter “N/A” under the RFP Section & Page Number. Add additional rows as necessary.

|  |  |
| --- | --- |
| **Organization Name:** |  |

|  |  |
| --- | --- |
| **RFP Section & Page Number** | **Question** |
|  |  |
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**APPENDIX G**

**State of Maine**

**Department of Education - Education In The Unorganized Territories**

**Map of Trail**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**



The red line is the existing trail. The green circle is a potential location for the request platform ng located. The green rectangles represent locations for the benches for the outdoor learning space.

**APPENDIX H**

**State of Maine**

**Department of Education - Education In The Unorganized Territories**

**Map of Trail**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

The Maine Department of Education, as the pass-through entity for the Federal funds, has prepared information related to the requirements for the disposition of supplies, equipment and real property purchased, in whole or in part with federal funds. Subrecipients of any federal funds are solely responsible for meeting all applicable Federal regulations.

Disposition is the process of transferring, donating, or selling supplies, equipment, and/or real property that are no longer needed for federally funded project.

\*Please refer to the [*Electronic Code of Federal Regulations, https://www.ecfr.gov/*](https://www.ecfr.gov/), continuously updated CFR, for additional information. The CFR is the official legal print publication containing the codification of the general and permanent rules published in the *Federal Register* by the departments and agencies of the Federal Government.

​​

**​Definition of Supplies, Equipment, and Real Property**

In accordance to [2 CFR § 200.1](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-A/subject-group-ECFR2a6a0087862fd2c/section-200.1); supplies, equipment and real property are defined as:

|  |  |  |
| --- | --- | --- |
| **Supplies** | **Equipment** | **Real Property** |
| Any tangible property that does not fall under the definition of equipment | Any tangible property, including information technology systems, having a:   * useful life of more than one (1) year and; * per-unit acquisition cost that equals or exceeds $5,000 | Land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment |

**Use of Supplies, Equipment, and Real Property**

The following information describes how supplies, equipment and real property purchased, in whole or in part, with federal funds can be used.

|  |  |  |
| --- | --- | --- |
| **Supplies** | **Equipment** | **Real Property** |
| If the residual inventory of unused supplies is less than $5,000 in total aggregate value, the supplies may be used: | Any tangible property may be used: | Real property can be used:   * for the authorized purpose of the project as long as it is needed, or * obtain written approval by the Federal awarding agency for the use in other federally sponsored projects. |
| * if they are needed whether or not the project continues to be supported by the Federal award, * for activities under another U.S. Department of Education Federal award, or * for activities under a federal award from other Federal awarding agencies. | |
| See [2 CFR § 200.314](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2/section-200.314)(a) | See [2 CFR § 200.313(c)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2/section-200.313#p-200.313(c)) | See [2 CFR § 200.311](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2/section-200.311) |

Disposition of Supplies, Equipment, and Real Property

In accordance with the CFR, when the supplies, equipment or real property acquired with federal funding are no longer needed the steps below should be followed:

Step 1: Request Disposition Instructions

* Request disposition instructions from the United States Department of Education (USED) via the applicable team managing the federal program at the Maine Department of Education.
* If the Department fails to respond with instructions within 120 days, the subrecipient is absolved of the responsibility and can proceed with any action deemed appropriate.

Step 2: Calculate the Fair Market Value

* Subrecipient must calculate the current fair market value of any unused residual supplies to determine the aggregate total.
* Fair market value is either the selling price or the advertised price for a similar item in a competitive market.

Step 3: Disposition Options

Subrecipients may dispose of supplies, equipment, real property by using one of the following options based on the current per-unit fair market value.

  If the current per-unit fair market value is:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Retained** | **Sold** | **Disposed** |
| **Less than $5,000** may be retained, sold, or otherwise disposed of with no further obligation. | Subrecipients may retain or transfer equipment, supplies, or real property to be used for other federally funded programs or projects.    If property is transferred, subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.    If a subrecipient chooses to retain or transfer the equipment, supplies, or real property, they must inform OFERP. | Subrecipients may sell equipment, supplies, or real property but must, **compensate the Federal awarding agency. \*** | Subrecipients may dispose of the equipment, supplies, or real property in any way it sees fit after receiving USED approval via the OFERP. |
| **Greater than $5,000** may be retained or sold. |  |

\* See [§ 200.313 (e)(2)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR8feb98c2e3e5ad2/section-200.313) for the compensation calculation methodology.

*Except as provided in* [*§ 200.312(b)*](https://www.ecfr.gov/current/title-2/section-200.312#p-200.312(b))*, or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of $5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency (USED) may permit the non-Federal entity (LEA) to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.*

The disposition of all supplies, equipment and real property must be recorded in the central record keeping system maintained by the subrecipient.

**APPENDIX I**

**State of Maine**

**Department of Education - Education In The Unorganized Territories**

**Map of Trail**

**RFP# 202402050**

**Edmunds Consolidated School**

**Outdoor Learning Environment Construction and Trail Work**

## Uniform Guidance: [eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1)

## § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/link/plaw/115/public/232), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](https://www.govinfo.gov/link/plaw/115/public/232), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](https://www.govinfo.gov/link/plaw/115/public/232), section 889 for additional information.

(d) See also [§ 200.471](https://www.ecfr.gov/current/title-2/section-200.471).

**§ 200.318 General procurement standards.**

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](https://www.ecfr.gov/current/title-2/section-200.317) through [200.327](https://www.ecfr.gov/current/title-2/section-200.327).

(b) 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.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. 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. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) 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. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use 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.

(h) The non-Federal entity must award 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, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](https://www.ecfr.gov/current/title-2/section-200.214).

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. 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, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be 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 the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[[85 FR 49543](https://www.federalregister.gov/citation/85-FR-49543), Aug. 13, 2020, as amended at [86 FR 10440](https://www.federalregister.gov/citation/86-FR-10440), Feb. 22, 2021]

**§ 200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](https://www.ecfr.gov/current/title-2/section-200.320).

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Non-competitive pricing practices between firms or between affiliated companies;

(4) Non-competitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320(c)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(c)).

**§ 200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](https://www.ecfr.gov/current/title-2/section-200.317), [200.318](https://www.ecfr.gov/current/title-2/section-200.318), and [200.319](https://www.ecfr.gov/current/title-2/section-200.319) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) ***Informal procurement methods.*** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT),* as defined in [§ 200.1](https://www.ecfr.gov/current/title-2/section-200.1), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) ***Micro-purchases*** -

(i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](https://www.ecfr.gov/current/title-2/section-200.1)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) ***Micro-purchase thresholds.*** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs (a)(1)(iv)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(iv)) and [(v)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(v)) of this section.

(iv) ***Non-Federal entity increase to the micro-purchase threshold up to $50,000.*** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](https://www.ecfr.gov/current/title-2/section-200.334). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](https://www.ecfr.gov/current/title-2/section-200.520) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over $50,000.*** Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph (a)(1)(iv)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(iv)) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases*** -

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](https://www.ecfr.gov/current/title-2/section-200.319) or [paragraph (c)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(c)) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) 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.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) 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;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) 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. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) ***Proposals.*** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) ***Non-competitive procurement.*** There are specific circumstances in which non-competitive procurement can be used. Non-competitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph (a)(1)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

**§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs (b)(1)](https://www.ecfr.gov/current/title-2/section-200.321#p-200.321(b)(1)) through [(5)](https://www.ecfr.gov/current/title-2/section-200.321#p-200.321(b)(5)) of this section.

**§ 200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity 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 this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**§ 200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](https://www.ecfr.gov/current/title-40/part-247) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**§ 200.324 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must 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. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](https://www.ecfr.gov/current/title-2/part-200/subpart-E). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**§ 200.325 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in [paragraph (b)](https://www.ecfr.gov/current/title-2/section-200.325#p-200.325(b)) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

**§ 200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (2022 $250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(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 requirements 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.

**§ 200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.