



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF FINANCE AND OPERATIONS
OFFICE OF ACQUISITION, GRANTS, AND RISK MANGEMENT

June 28, 2023

Acting Superintendent Judy Won Pat
Guam Department of Education
500 Mariner Avenue
Barrigada, Guam 96913

Dear Superintendent Won Pat:

Enclosed are Federal Fiscal Year (FFY) 2023 Departmentwide specific conditions for U.S. Department of Education (Department) grants awarded to the Guam Department of Education (GDOE). These specific conditions apply to all grants awarded by the Department to GDOE on or after the date of these specific conditions, including any Coronavirus Aid, Relief, and Economic Security (CARES) Act or Coronavirus Response and Relief Supplemental Appropriations (CRRSA) funds that the Guam Governor awarded to GDOE. Additionally, these specific conditions apply to all grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these specific conditions, including any CARES Act or CRRSA funds that the Guam Governor awarded to GDOE.

The Department acknowledges its March 31, 2023, approval of the Transition Plan that GDOE submitted on March 10, 2023. This approval also initiated the agreed upon 6-month probationary period intended to allow GDOE to demonstrate its “readiness to transition from third-party fiduciary agent (TPFA) oversight” of its Federal education funds. The Department plans to conduct an onsite validation visit prior to the probationary period end date of October 1, 2023, to confirm the degree to which GDOE was able to demonstrate its readiness to fully transition from the TPFA oversight requirement. Based on the Department’s assessment of the information gathered during this visit, a final determination regarding the removal of the TPFA specific condition will be made. The subsequent removal of GDOE’s high-risk designation will also be considered.

In the interim, the attached FFY 2023 specific conditions describe GDOE’s responsibility to continue working with the TPFA to adopt necessary processes that will eventually lead to reassuming all fiscal management responsibilities currently performed by the TPFA in administering the Department’s grant funds. These conditions also require GDOE to complete the implementation of pending items within its Reconsideration Evaluation Plan (REP). The Office of Acquisition, Grants, and Risk Management (OAGRM), Grants Risk Management Services Division (GRMSD) is committed to providing assistance to the GDOE leadership and staff toward the completion of its REP as well as engaging with GDOE on a monthly basis to verify progress with the implementation of its Transition Plan.

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If you have any questions or require further assistance, please contact Christine Jackson, the primary contact for the Grants Risk Management Services Division of the Office of Acquisition, Grants, and Risk Management within the Office of Finance and Operations, at (202) 615-3663 or via e-mail at christine.jackson@ed.gov.

Sincerely,

Kerry Neal
Deputy Assistant Secretary
Office of Acquisition, Grants, and Risk Management

Enclosure

cc: Governor Lou Leon Guerrero
Mary Okada, Chair, Guam Education Board
Mary Gutierrez, Vice Chair, Guam Education Board
Congressman James Moylan

Guam Department of Education
Federal Fiscal Year 2023 Specific Conditions

PREAMBLE: These specific conditions are imposed on all program grants issued by the U.S. Department of Education (Department) to the Guam Department of Education (GDOE) on or after the date of these specific conditions, including any Coronavirus Aid, Relief, and Economic Security Act (CARES Act) or Coronavirus Response and Relief Supplemental Appropriations (CRRSA) funds that the Guam Governor awards to GDOE. Additionally, as described herein, these specific conditions apply to grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these specific conditions, including any CARES Act or CRRSA funds that the Guam Governor awarded to GDOE. These specific conditions are applied to these program grant funds in accordance with regulations governing “high-risk” grantees and specific conditions in 2 CFR §§ 200.207 and 3474.10 in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Pending GDOE’s completion and implementation of measures specified in the Reconsideration Evaluation Plan (REP) discussed below to address deficiencies in GDOE’s financial management and administration of Department funds, these specific conditions are imposed on GDOE’s Department grants to ensure that GDOE implements Department grant awards in accordance with applicable legal requirements and with appropriate fiscal accountability measures, management practices and controls.

I. BACKGROUND

On May 29, 2018, GDOE submitted to the Department a formal request for reconsideration of the specific conditions applicable to Department grant funds. For the past five years, the Department has worked in partnership with GDOE to: (1) develop a process for reconsideration, resulting in a Reconsideration Evaluation Plan (REP); and (2) complete the implementation of the REP as a prerequisite for the Department making a determination to modify the specific conditions. The REP was designed to: 1) provide clear guidance to GDOE on actions that it must take and complete during the reconsideration process; 2) inform the Department as it determines the extent to which specific conditions may be removed and the extent to which financial management responsibilities may be returned incrementally (or otherwise) to GDOE; and 3) inform the Department as it determines whether GDOE has taken all necessary actions to render it capable of performing the financial management responsibilities currently performed by a third-party fiduciary agent (TPFA), ultimately resulting in the removal of the requirement that GDOE have a TPFA in place to assist in managing its Department funds. The REP replaced the Comprehensive Corrective Action Plan as the document against which GDOE’s progress would be measured during the reconsideration process.

At the request of the GDOE leadership, the Office of Acquisition, Grants, and Risk Management, Grants Risk Management Services Division led a team of Department staff, including representatives from the Consolidated Grant program within the Office of Elementary and Secondary Education, Rural, Insular, and Native Achievement Programs, Insular Areas Team; Monitoring and State Improvement Planning Division within the Office of Special Education Programs; Regional Inspector General for Audit, New York/ Dallas Region within the Office of

Inspector General; and the Office of the Secretary to conduct an onsite REP validation visit in May 2022, for the purpose of verifying GDOE's progress under the REP. The intended outcome of the visit was to determine the readiness to transition responsibilities currently performed by the TPFA back to GDOE. Progress towards addressing the items identified in the REP was evident during the Department's visit.

As a result of the noted progress, the FY 2022 Departmentwide specific conditions reflected that the Department had removed 13 of the 21 requirements previously included in Attachment A of these conditions, as well as 18 of the 22 responsibilities and requirements previously included in Attachment B.

As of the date of these conditions, 108 of the 138 REP requirements (78%) have been deemed complete, representing documentation submissions in each of the following REP sections: Employee Time Tracking (77%); Financial Management Improvement System (76%); Internal Controls (77%); Procurement (77%); and Property Management (93%). In the interim, the GRMSD staff will continue to work with the GDOE Internal Audit Office to review and validate pending REP items.

On March 10, 2023, GDOE submitted its Transition Plan to the Department for review as a prerequisite to initiate an agreed upon 6-month probationary period intended for GDOE to demonstrate its "readiness to transition from third-party fiduciary agent (TPFA) oversight" of Department funds. The probationary period began on April 1, 2023 and is scheduled to conclude on October 1, 2023.

It was understood that as GDOE commenced the implementation of its Transition Plan during this 6-month probationary period, it must also complete any pending items within its Reconsideration Evaluation Plan (REP). Prior to the October 1 end date for the probationary period, the Department plans to conduct an onsite validation visit to confirm the degree to which GDOE was able to demonstrate its readiness to permanently transition from the requirement of TPFA oversight and management of Department funds. Based on the Department's assessment of the information gathered during this visit, the Department will make a final determination as to whether the specific condition imposing the requirement for a TPFA should be permanently removed. The Department will also consider whether the high-risk designation should be removed.

In the interim, GDOE is encouraged to continue working with the TPFA to adopt all necessary processes that will eventually lead to GDOE reassuming all fiscal management responsibilities currently performed by the TPFA. The Department also understands that GDOE will be working with its High-Risk Consultant, Brustein and Manesevit, to implement the Transition Plan.

II. SPECIFIC CONDITIONS

GDOE currently has an active contract with a TPFA, Alvarez & Marsal (A&M), that expires October 31, 2023. GDOE understands and agrees that should a TPFA still be required after October 31, 2023, it must either extend its contract with A&M or procure the services of a new TPFA, acceptable to the Department.

The responsibilities and requirements of GDOE in working with the Agent are set forth in Attachment A to these specific conditions. The responsibilities and requirements of the Agent in carrying out the financial management duties for GDOE’s Department grants are set forth in Attachment B to these specific conditions.

In addition to working with the TPFA as required, GDOE must continue to work toward completion of its REP and the implementation of its Transition Plan. The GDOE Transition Plan will serve as the primary mechanism for GDOE to demonstrate its “readiness to transition from third-party fiduciary agent (TPFA) oversight” of Department funds during the agreed upon 6-month probationary period. The probationary period began on April 1, 2023 and is scheduled to conclude on October 1, 2023.

III. ADDITIONAL PROVISIONS

A. Failure to Comply with Conditions

Failure to comply with any of these specific conditions will negatively impact GDOE’s ability to continue to receive grant funds from the Department. These terms and conditions do not preclude the Department from taking any authorized enforcement or other actions at any time, including, but not limited to, withholding of Department funds.

B. Submission of Reports

All reports or other submissions that GDOE or the Agent are required to submit to the Department under these specific conditions must be submitted electronically to:

Christine Jackson
Senior Risk Consultant
Grants Risk Management Services Division
Office of Acquisition, Grants, and Risk Management
Office of Finance and Operations
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20212
ATTN: Grants Risk Management Services Division
christine.jackson@ed.gov

C. Reconsideration and Modifications

At any time, GDOE may request reconsideration of the above specific conditions by contacting the Department staff named above in paragraph III.B of these conditions and stating in writing the reasons why GDOE believes any particular condition should be amended or removed. The Department may impose additional specific conditions or modify these specific conditions, as appropriate. The Department will remove the specific conditions in total at such time as GDOE fully demonstrates, to the Department’s satisfaction, the ability to manage Department funds, and property acquired with

Department funds, in a manner that complies with applicable Federal requirements concerning accountability and grants management.

Dated: June 27, 2023

Attachment A to the GDOE FFY 2023 Specific Conditions
Responsibilities and Requirements of GDOE

The responsibilities and requirements of GDOE in working with the Agent under these GDOE FFY 2023 specific conditions are as follows:

1. GDOE must notify the Department when any dispute arises and remains unresolved between the Agent and GDOE concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. GDOE agrees that the Department may assist in the resolution of any such unresolved dispute and agrees to cooperate with any requests from the Department for additional information related to the dispute and to participate in conference calls with the Agent and the Department. This does not preclude GDOE and the Agent from including formal dispute resolution mechanisms in their contract.
2. GDOE must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, GDOE must expend Federal and matching funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. GDOE acknowledges that the Agent has the responsibility to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.327. Where there is a question as to whether a cost is allowable, the Agent must raise this question with GDOE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
3. GDOE must coordinate the timing of drawdowns and disbursements with the Agent to ensure that payments to staff, vendors and providers are prompt and timely. To the extent feasible, GDOE must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants. GDOE, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.
4. GDOE must charge its grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, GDOE must provide the Agent with the amount and nature of all obligations in a timely manner to ensure that obligations are liquidated no later than 120 days after the end of the funding period, or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).

5. GDOE must establish and maintain an effective process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, making timely and accurate adjustments to time and effort information entered into the payroll system, and properly allocating salary costs among Department grants based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. GDOE must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
6. GDOE must ensure that within 24 hours of receipt of a vendor's invoice from the Agent, GDOE staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account maintained by the Agent.
7. GDOE must work with the Agent to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property.
8. GDOE may include any other terms in the contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds; timely payment to staff, providers and vendors; and general financial management consistent with applicable Federal regulations and Department grant awards.

Attachment B to the GDOE FFY 2023 Specific Conditions
Responsibilities and Requirements of the Third-Party Fiduciary Agent

The responsibilities and requirements of the Agent under these GDOE FFY 2023 specific conditions are as follows:

1. The Agent must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, the Agent must expend funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with GDOE. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
2. The Agent may seek approval from the Department to charge allowable pre-award costs incurred by GDOE against grant awards to which these specific conditions apply. The Agent must submit any request for pre-award costs to the Department in writing and may not reimburse any pre-award costs unless it receives written approval from the Department 120 days after the end of the funding period, or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).
3. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, timely and accurate adjustments to time and effort information in the payroll system, and proper allocation of salary costs among Department grants based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. To carry out the responsibilities under this paragraph, the Agent must conduct an assessment of GDOE's internal controls over payroll operations to ensure that the payroll process is functioning as intended and calculations of gross earnings from all work performed during the pay period are correct; an assessment to determine that there are proper controls and procedures for identifying employees who are paid in whole or in part from Department grant awards; an assessment to determine whether employees are being compensated at their approved salaries/pay rates and from appropriate funding sources; and other tests to ensure that payroll earnings, deductions, and withholdings are made in accordance with the law and correspond to information contained in the employee master file. The Agent must carry out the responsibilities under this paragraph consistent with Federal requirements in 2 CFR Part 200, Subpart E.
4. The Agent must pay vendors for the delivered goods or services and must, to the extent possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account maintained by the Agent as required by 2

CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §200.327. The Agent must make payments by electronic funds transfer (EFT) or by paper draft if EFT is not available or possible for a particular vendor.

5. The Agent will work with GDOE to return all Purchase Order (PO) functions performed within GDOE's procurement process back to GDOE control within the GDOE MUNIS Procurement Module. This includes the generation and workflow approval of all POs and PO modifications, as well as the printing, signing and scanning of POs. The TPFA will continue to have the role as a reviewer within the PO workflow approval process in the GDOE MUNIS and will maintain authority to return POs that do not meet requirements for approval.