



12007 Research Boulevard · Austin, Texas 78759-2439
PH: 800-695-2919 · FAX: 800-211-5454 · www.vendor.BuyBoard.com

BUYBOARD ADVISORY: PURCHASING WITH FEDERAL FUNDS

Purchasing through a cooperative or "interlocal contract" satisfies the Texas state law requirement of local governments to seek competitive procurement for the purchase of goods or services.ⁱ Therefore, you may purchase goods and services from a vendor through BuyBoard under Texas law without having to conduct your own competitive procurement. If, however, you are procuring goods or services through a BuyBoard contract using federal funds, you may have additional requirements under federal law, as explained in this Advisory. These requirements may include, but are not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or, when related to federal grants administered by the U.S. Department of Education, "EDGAR").

To assist BuyBoard members ("Members") considering making cooperative purchases using federal funds, BuyBoard is providing this Advisory which contains general information on the federal procurement standards in the Uniform Guidance ("Federal Procurement Standards") and general information on BuyBoard's procurement process.

Because of the variety of potentially applicable laws, regulations and local or individual grant requirements and the potential risk of exposure, you are well advised to consult with your entity's legal counsel, advisor or granting agency when making purchases using federal award funds under any procurement method, including a purchasing cooperative.

What are the Uniform Guidance/EDGAR Federal Procurement Standards? In the past, rules affecting federal awards, such as grants, were spread out among numerous federal Office of Management and Budget (OMB) circulars. In an effort to streamline and consolidate these requirements for receiving and using federal awards, the OMB issued regulations under 2 CFR 200 which generally apply to federal grants awarded after December 26, 2014.ⁱⁱ These regulations cover the entire life-cycle of the federal award, from pre-award to post-award, cost principles, and audit requirements. Included within 2 CFR 200 are procurement standards which may apply to federal award recipients making purchases with federal award funds.ⁱⁱⁱ

While the term "EDGAR" refers to U.S. Department of Education general administrative regulations, federal awards from the Department of Education are not the only awards which are subject to the Uniform Guidance regulations. The Uniform Guidance in 2 CFR 200 also applies to other federal agencies that make federal awards to non-federal entities. Generally, the Uniform Guidance will apply to any federal award, including federal grants, to states, local governments (counties, municipalities, school districts, local public authorities, special districts, etc.), Indian tribes, institutions of higher education, or nonprofit organizations that carry out a federal award as a recipient or subrecipient ("non-federal entities").^{iv} For simplicity, we refer to the 2 CFR 200 regulations generally in this Advisory as the "Uniform Guidance" and the procurement standards within the Uniform Guidance as the "Federal Procurement Standards."

Will state or federal procurement laws, rules, and regulations apply when using federal funds? Generally, the stricter requirement will need to be followed. The Federal Procurement Standards state a non-federal entity must use its own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to the applicable federal law and the standards identified in the Uniform Guidance.^v

Whether state or federal procurement rules are more restrictive may depend on the value of the purchase and the type of entity, as different governmental entities may be subject to different procurement rules under state law.

Do the Federal Procurement Standards allow for the use of purchasing cooperatives? Generally, yes. In fact, the Federal Procurement Standards state non-federal entities are *encouraged* to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods or services to foster greater economy and efficiency.^{vi} However, while use of intergovernmental agreements is encouraged, Members must still ensure all procurements using federal grant funds meet any other requirements of the Uniform Guidance. Members should consider and consult with their advisor and/or granting agency regarding applicability of any other requirements in the Uniform Guidance to a Member purchase using federal award funds, whether through a purchasing cooperative or other procurement method.

What about purchases made with FEMA funds? During recent natural disasters, questions arose regarding use of purchasing cooperatives when making purchases with FEMA funds. Members are cautioned to always check with the specific federal granting agency from which the entity is using funds to make purchases for any information, guidance, or requirements they may have in regards to the Federal Procurement Standards and use of purchasing cooperatives. On September 18, 2018, the Federal Emergency Management Agency (FEMA) issued an updated Fact Sheet entitled *Public Assistance: Purchasing Goods or Services Through Cooperative Purchasing Programs*, which provides certain information and cautions on use of purchasing cooperatives using FEMA funds. A copy of this Fact Sheet is attached at the back of this Advisory.^{vii}

How do I know if a purchasing cooperative is compliant with Federal Procurement Standards? Cooperative purchasing is a team effort between the purchasing cooperative and the cooperative participant. While a purchasing cooperative may take certain procurement steps that can assist a participant in complying with the participant's procurement requirements, including the Federal Procurement Standards, ultimately it is the recipient of the federal grant that will be subject to and must comply with the Federal Procurement Standards.

Further, because purchases are made by cooperative participants and not purchasing cooperatives, a purchasing cooperative will not know, at the time vendors are awarded cooperative contracts, the value of any individual participant purchase(s), the funding source to be used for any individual participant purchase(s), the requirements of any participant's particular federal grant or award, or the participant's own local procurement procedures. Some requirements may either be difficult to apply at a cooperative level or may be better applied by the purchasing entity at the time of purchase. Therefore, a governmental entity making purchases using federal grants or contracts is well advised to conduct its own procurement process review before relying on any general statement that a purchasing cooperative, contract, or vendor is "compliant" with Federal Procurement Standards and is well-advised to consider all of the factors related to the entity's purchase(s) and consult with its own advisors and/or granting agency.

What is BuyBoard doing to assist Members in complying with the Federal Procurement Standards? In addition to working to provide Members a mechanism for pooling their collective purchasing power, one of the main goals of BuyBoard is to ease administrative burdens for BuyBoard Members. Simply put, BuyBoard does some of the legwork in the procurement process so that our Members won't have to. BuyBoard has long used an open, competitive process intended to provide best value to members in awarding its contracts. This process was specifically formulated to comply with Texas law .

While responsibility for compliance with federal regulations will ultimately fall to the entity receiving the federal award, BuyBoard's proposal invitation documents and processes underwent a complete review for potential modifications that might be implemented at the cooperative level that may assist Members seeking to comply with federal requirements and ease administrative burdens. Appendix A to this Advisory, "Federal Procurement Standards under the Uniform Guidance: A Summary of BuyBoard Processes and Member Requirements," contains a list of some of the Federal Procurement Standards and information on how current BuyBoard procurement processes may assist Members with compliance with such requirements. This information is provided both to assist Members in understanding potentially applicable requirements as well as to provide Members with a document that may help Members seeking to document their purchasing processes under the Federal Procurement Standards.

In addition, BuyBoard developed an EDGAR Vendor Certification Form where vendors may certify their agreement and ability to comply with certain contract provision requirements under the Federal Procurement Standards. This form has been included in all proposal invitations since December 2015. For contracts solicited prior to that time, BuyBoard provided existing vendors an opportunity to complete the form and make the certifications under their existing contract. Completed forms are uploaded for Members to conveniently see on BuyBoard website. Copies of completed vendor forms can also be provided to Members upon request.

Members are also reminded to consider using ancillary agreements, in addition to the BuyBoard contract's general terms and conditions, to address any of the Member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

Finally, it is important to note that these federal rules should not impact Member purchases using state and local funds.

What should BuyBoard Members consider when using BuyBoard for purchases with federal funds? Purchasing goods and services through BuyBoard may satisfy your state legal requirement to competitively procure a good or service and, as discussed herein, BuyBoard's processes may assist Members in complying with many of the requirements under the Federal Procurement Standards. However, because it is the cooperative participant, and not a purchasing cooperative, which may receive federal award funds and make specific purchases of goods and services, many of the requirements under federal regulations may be inapplicable or difficult to address at the cooperative level and will fall to the participant, or the BuyBoard Member, to satisfy. As a general matter, you must keep in mind other legal requirements that may relate to the purchase. See Appendix A for a list of some of Federal Procurement Standards requirements that Members may need or want to consider when making purchases using federal funds.

Legal advice. Because of the variety of laws that relate to purchasing with federal funds and the potential risk of exposure, you are well-advised to consult with your entity's legal counsel before procuring goods and services using federal funds under any procurement method, including a purchasing cooperative.

This Advisory is provided for educational purposes only to facilitate a general understanding of the law. This Advisory is neither an exhaustive treatment on the subject nor is it intended to substitute for the advice of an attorney.

For more information about BuyBoard, contact us at 800-695-2919.

ⁱ See, Tex. Gov't Code §791.025 and Tex. Local Gov't Code §271.102. Members from states other than Texas should consult your state laws.

ⁱⁱ See generally, 2 CFR §200.0 *et seq.* See, 2 CFR §200.110 for effective date. You may wish to consult your grant award documents, granting agency, or legal advisor if you are uncertain whether current or prior regulations will apply to your particular grant award, check with your granting agency.

ⁱⁱⁱ See, 2 CFR §§200.317-200.326

^{iv} See, 2 CFR §§ 200.101, 200.38, 200.64, and 200.69

^v See, 2 CFR. §200.318(a)

^{vi} See, 2 CFR §200.318(e).

^{vii} Current as of the date of issuance of this Advisory. Members should check with FEMA for the latest information.

BUYBOARD ADVISORY: PURCHASING WITH FEDERAL FUNDS
APPENDIX A

FEDERAL PROCUREMENT STANDARDS UNDER THE UNIFORM GUIDANCE
A Summary of BuyBoard Processes and Member Requirements

Set out below is a chart containing information on some of the Federal Procurement Standards under the Uniform Guidance, 2 CFR §§200.317-200.326, that may apply to certain purchases made with federal funds. Also included is information on processes utilized by The Local Government Purchasing Cooperative (Cooperative), d/b/a BuyBoard®. BuyBoard Members ("Members") may use the information in the chart to determine whether the BuyBoard process satisfies the Federal Procurement Standards applicable to the Member's purchase or whether further action is required by the Member. This Appendix should be read in conjunction with the BuyBoard Advisory: Purchasing with Federal Funds. Applicability of various Federal Procurement Standards requirements may depend on the nature and value of purchases. While certain monetary thresholds current as of the date of this Advisory are listed herein for reference, Members are cautioned to confirm all requirements and applicable thresholds at the time of purchase, as the threshold amounts may change. Members are also cautioned to check with their specific granting agency for any additional requirements which may apply, whether in regards to use of a purchasing cooperative or otherwise.

Because of the variety of potentially applicable laws, regulations and local or individual grant requirements and the potential risk of exposure, you are well advised to consult with your entity's legal counsel, advisor or granting agency when making purchases using federal award funds under any procurement method, including a purchasing cooperative.

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Micro-Purchase Requirements (purchases under \$10,000). For micro-purchases, currently listed as those valued below \$10,000,ⁱ the Federal Procurement Standards state that such micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.ⁱⁱ To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers.ⁱⁱⁱ</p>	<p>With such a wide variety of goods and services available on BuyBoard from a large number of vendors, we believe Members will find BuyBoard a highly valuable resource to locate and distribute micro-purchases among vendors at a reasonable price. Furthermore, even though competitive quotations may not be required by federal law for micro-purchases, Members making micro-purchases through BuyBoard will still receive all of the benefits and pricing from BuyBoard’s competitive proposal invitation process.</p>	<p>Determine if price considered is reasonable.</p> <p>If practicable, distribute micro-purchases equitably among qualified suppliers.</p> <p>Consult state law and your local policies or regulations to confirm that no further process is required.</p>
<p>Small Purchase Requirements (purchases under \$250,000**): For small purchases, currently those valued under \$250,000,^{iv} the Federal Procurement Standards call for “relatively simple and informal” procurement methods where price or rate quotations must be obtained from an adequate number of qualified sources.^v</p>	<p>Not only does BuyBoard believe Members will find its competitive process exceeds these simple, informal requirements, BuyBoard’s request for quotes (RFQ) feature may also serve as a convenient resource for Members seeking price and rate quotations from BuyBoard vendors.</p>	<p>Solicit adequate number of quotes from qualified sources (whether through BuyBoard or other sources).</p> <p>** While this threshold is listed at \$250,000, remember that state law is more restrictive for Texas school districts for purchases of \$50,000 or more. Other entities should consider if their applicable state or local requirements are more restrictive as well.</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Other Procurement Methods (purchases \$250,000 and above): For purchases that do not qualify for the micro-purchase or small purchase methods (currently purchases \$250,000^{vi} and above), the methods of procurement under the Federal Procurement Standards include procurement by sealed bids, procurement by competitive proposals, and procurement by noncompetitive proposals.^{vii}</p>	<p>As described further herein, BuyBoard utilizes a competitive proposal invitation process for awarding BuyBoard contracts.</p>	<p>The Federal Procurement Standards contain additional requirements for purchases above \$250,000, some of which are discussed below. Members considering purchases using federal funds above this amount are well advised to consult your entity's legal counsel or advisor for specific requirements that may apply to your purchase.</p> <p>Federal Procurement Standards which are specific to procurements by competitive proposals are noted "Procurement by Competitive Proposals" below.</p>
<p>General Procurement Standard: Compliance with non-federal Entity's internal procedures and standards (all purchases).^{viii}</p>	<p>N/A – Member Requirement</p>	<p>Members must confirm they are complying with their own internal procedures and standards.</p>
<p>General Procurement Standard: Contract oversight to ensure contractors perform in accordance with terms, conditions, and specifications of contracts or purchase orders (all purchases).^{ix}</p>	<p>BuyBoard oversees vendor compliance with BuyBoard contract terms and conditions at the cooperative level.</p>	<p>Members oversee performance by contractors for their specific purchase orders.</p>
<p>General Procurement Standard: Written standards of conduct covering conflicts of interest and governing actions of employees engaged in the selection, award and administration of contracts (all purchases).^x</p>	<p>The Cooperative's Board of Trustees has adopted a conflicts of interest policy for its board members and BuyBoard Administrator staff governing the identification, disclosure and management of actual or potential financial or other conflicting interests.</p>	<p>Member will need to comply with and maintain its own written standards of conduct covering conflicts of interest in accordance with the Federal Procurement Standards.</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>General Procurement Standards: Avoidance of acquisition of unnecessary or duplicative items, consider consolidation or breaking out procurements to obtain more economical purchase, analysis of lease versus purchase alternatives and other appropriate analysis to determine most economical approach (all purchases).^{xi}</p>	<p>N/A – Requirement relates to individual purchase considerations and, therefore, a Member requirement</p>	<p>Consider and conduct appropriate analysis as needed and as per requirement.</p>
<p>General Procurement Standards: Award Contracts only to responsible contractors possessing ability to perform successfully under the terms and conditions of 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 (all purchases).^{xii}</p>	<p>The Cooperative’s Board awards contracts on the basis of best value based on the criteria outlined in the proposal invitation. Criteria generally includes factors such as price competitiveness, vendor past performance, vendor reputation for goods and services, financial and technical resources, and capability of servicing Cooperative members.^{xiii} (See a specific proposal invitation for applicable criteria.)</p>	<p>To expand on BuyBoard’s initial review at the time of the proposal invitation, a Member may choose at the time of purchase to further review awarded vendors’ ability to perform successfully under the terms and conditions of the Member’s purchase, including consideration of contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.</p>
<p>General Procurement Standards: Maintenance of records of history of awards sufficient to detail history of procurement, including rationale for method of procurement, selection of contract type, contractor selection or rejection, and basis for contract price (all purchases).^{xiv}</p>	<p>BuyBoard’s Administrator maintains records of proposal invitations and vendor awards in accordance with the Administrator’s internal records retention schedules. (Note: Copy can be provided to Members upon request to maintain with the Member’s records.)</p>	<p>Member will need to maintain purchase records as may be required under both state and federal laws, rules and regulations, including the Federal Procurement Standards and the Member’s own internal policies and procedures.</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Competition: Procurement transactions conducted in manner providing full and open competition.^{xv}</p>	<p>BuyBoard places strong emphasis on using an open, competitive process for the award of vendor goods and services. BuyBoard uses a proposal invitation process to award contracts to vendors for goods and services that BuyBoard determines, based on a review of all vendor-submitted proposals and an evaluation of multiple published criteria, represent the best value. BuyBoard gives broad notice of opportunity to vendors to encourage vendor participation and increase competition. Proposal invitations are publicly advertised in multiple newspapers and on BuyBoard vendor website.</p>	<p>Member can use BuyBoard’s Request for Quotes feature, where appropriate, to add an additional layer of competition among BuyBoard awarded vendors.</p>
<p>Competition: Excluding contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals from competing for such procurements.^{xvi}</p>	<p>BuyBoard does not allow potential vendors to develop or draft specifications for its proposal invitations.</p>	
<p>Competition: No restriction of competition – placing unreasonable requirements on firms in order to qualify to do business, requiring unnecessary experience and excessive bonding, specifying only a “brand name” product, etc.^{xvii}</p>	<p>BuyBoard uses best efforts to avoid any unreasonable requirements on firms in order to qualify to do business or requiring unnecessary experience. Further, with the limited exception of certain vehicle contract specifications, BuyBoard avoids specifying “brand names” in its specifications or, in circumstances where it is deemed advantageous to include “brand names” in order to provide best value to Members, vendors are permitted to propose “equal” products.</p>	

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Competition: Conducting procurement in a manner that prohibits use of statutorily or administratively imposed state, local, or tribal geographical preferences in evaluation of bids or proposal except where applicable federal statutes expressly mandate or encourage.^{xviii}</p>	<p>BuyBoard does not consider a vendor’s principal place of business or resident status in evaluation of proposals. (Note: BuyBoard may consider a vendor’s ability to serve Member regions and states.)</p> <p>BuyBoard’s proposal invitations require proposing vendors to provide information on whether the vendor is a Texas resident or non-resident business and whether vendor or its ultimate parent/majority owner has in principal place of business in Texas or employs at least 500 persons in Texas. However, this information is not used in the evaluation process and is collected solely for the Member’s information in the event it is relevant to the Member’s federal, state or local procurement laws or requirements.</p>	<p>Member will need to consider if any state, local, or tribal geographical preferences are applicable or prohibited for the Member’s specific purchase(s) and proceed accordingly.</p>
<p>Competition: Solicitation incorporating clear and accurate description of technical requirements for item/service to be procured which do not contain features unduly restricting competition and identifying all requirements which offerors must fulfill.^{xix}</p>	<p>BuyBoard’s proposal invitations incorporate full, detailed descriptions of the contract requirements for vendors, including specifications, requirements vendors must fulfill, and all other factors to be used in evaluating proposals.</p>	
<p>Competition: Ensuring all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition and do not preclude potential bidders for qualifying during solicitation period.^{xx}</p>	<p>BuyBoard has a system for vendors to easily register to receive e-mail notifications of proposal invitations for any of the commodities/services the vendor selects. This system, along with public advertisement of proposal invitations, helps ensure notification of enough qualified sources to ensure robust and open and free competition. All vendors are welcome to register at any time, although they are not required to register. Registration is not a condition for consideration.</p>	

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Procurement by Competitive Proposals: Public advertisement.^{xxi}</p>	<p>All BuyBoard proposal invitations are advertised in numerous newspapers once a week for two weeks, as well as posted on BuyBoard vendor website.</p>	
<p>Procurement by Competitive Proposals: Identification of evaluation factors and their relative importance.^{xxii}</p>	<p>All BuyBoard proposal invitations set out the evaluation criteria which will be used in evaluating vendor proposals. All proposals are scored based on the published evaluation criteria.</p> <p>(Note: For proposal invitations issued prior to 2017, it was not BuyBoard’s practice to publish the points assigned to the criteria. However, this practice was revised starting in January 2017, and all BuyBoard proposal invitations issued after that time now include the assigned points for each evaluation criteria.)</p>	
<p>Procurement by Competitive Proposals: Consideration of all proposals to maximum extent practical and solicitation from adequate number of qualified sources.^{xxiii}</p>	<p>All BuyBoard proposal invitations are publicly advertised in numerous newspapers and on BuyBoard’s vendor website to help maximize vendor awareness and participation. All responsive vendor proposals (i.e. timely submitted in accordance with instructions and containing required information) are fully considered and evaluated for possible award.</p>	
<p>Procurement by Competitive Proposals: Written method for conducting technical evaluations of proposals received and for selecting recipients.^{xxiv}</p>	<p>Proposals are reviewed, tabulated, and analyzed based on the criteria outlined in the proposal terms and conditions, and a scoring matrix is used to rank the criteria. Recommendations are prepared and presented to the Cooperative Board for consideration of award.</p>	
<p>Procurement by Competitive Proposals: Awarding contracts to responsible firm whose proposal is most advantageous to the program, with price and other factors considered.^{xxv}</p>	<p>The Cooperative Board awards contracts on the basis of best value to BuyBoard Members based on the criteria outlined in the proposal invitation, helping to ensure awards are made that may be most advantageous to members, with price competitiveness and other factors considered.</p>	<p>Where multiple vendors are awarded by BuyBoard, Members may conduct an additional review and consideration of which awarded vendor may be most advantageous to meet Member needs.</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>HUBs: Taking affirmative steps to assure minority businesses, women’s business enterprises, and labor surplus area firms are used when possible (all purchases).^{xxvi}</p>	<p>BuyBoard requests information in every proposal invitation from proposing vendors regarding any Historically Underutilized Business (HUB) certifications. This information is not used by BuyBoard for evaluation purposes, but rather is made available to Members for Member consideration and use in complying with any applicable HUB requirements or goals.</p> <p>BuyBoard’s vendor list is easily accessible and available to all vendors, including HUB businesses, and all are encouraged to register to receive notice of proposal invitations.</p> <p>As an additional outreach, beginning in June 2017, BuyBoard began emailing HUB vendors identified through the Texas Centralized Master Bidders List (CMBL) regarding proposal invitation opportunities.</p>	<p>Member, as the entity making the purchase, will need to determine any requirements applicable to the Member’s purchase(s) and take any affirmative steps to comply, such as dividing total requirements into small tasks or quantities to permit maximum participation, establishing delivery schedules which encourage participation, etc. (See Uniform Guidance regulations for full requirements.)</p>
<p>Recovered Materials: Compliance with any federal procurement of recovered materials requirements for EPA designated items where purchase price exceeds \$10,000 or value of quantity acquired prior fiscal year exceeded \$10,000.^{xxvii}</p>	<p>BuyBoard’s EDGAR Vendor Certificaton Form requires vendors to indicate whether they agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable, and provide such information and certifications as a Member may require to confirm estimates and otherwise comply.</p>	<p>Consider the applicability of and confirm compliance with any federal requirements regarding recovered material content for designated items.</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Cost Analysis: Conducting cost and price analysis for every procurement action in excess of the federal simplified acquisition threshold (currently \$250,000).^{xxviii}</p>	<p>N/A – Member Requirement</p> <p>While BuyBoard reviews proposals for price competitiveness as part of the evaluation process, in regards to conducting cost and price analyses, the Federal Procurement Standards state the method and degree of analysis required is dependent on the facts surrounding the particular procurement situation. Therefore, the Member procuring the goods or services would be in the best position to conduct any cost or price analysis when required for a specific purchase, and this is not done at the cooperative level.</p>	<p>Member should consider whether any cost or price analysis is required and, if so, perform an appropriate analysis prior to purchasing, whether through a cooperative or any other procurement method.</p>
<p>Determining Profit: In cases where cost analysis is performed, negotiating profit as separate element of price.^{xxix}</p>	<p>Most BuyBoard contracts are awarded based on discount off catalog pricing and may contain not-to-exceed hourly labor rates. Profit is <u>not</u> included as a separate element of the price. However, BuyBoard’s General Terms and Conditions allow for Members to negotiate with vendors to obtain lower prices for awarded products or services based on volume or other factors.</p> <p>BuyBoard’s EDGAR Vendor Certification Form asks whether the Vendor will agree, when required by a BuyBoard Member, to provide information and negotiate with the Member regarding profit as a separate element of the price.</p>	<p>Member should consider whether negotiation of profit as a separate element of price is required for the Member’s purchase(s) and negotiate with vendors accordingly, giving consideration to the factors listed in the Federal Procurement Standards. (Note: For purchases made through BuyBoard, the total price, including profit, may be less than, but may not exceed, BuyBoard awarded pricing.)</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Bonding: Compliance with applicable bonding requirements for construction or facility improvement contracts exceeding simplified acquisition threshold (currently \$250,000). xxx</p>	<p>N/A – Member Requirement</p> <p>Because bonding requirements may vary based on particular purchases and particular grant requirements, this is not addressed at the cooperative level but may be addressed by the Member.</p>	<p>In addition to any state law bonding requirements, Members will need to consider and ensure vendor compliance with all bonding requirements as determined by the federal awarding agency or otherwise required by the Federal Procurement Standards. Consider use of ancillary agreements as needed.</p> <p>(Note: If the applicable requirements include bid bonds, Member may wish to check with the granting agency regarding whether required and how to apply requirement when purchasing through a cooperative.)</p>
<p>Appendix II Contract Provisions – Contracts must contain applicable provisions</p> <p>(Note: Different provisions may apply at different purchase value thresholds. See Uniform Guidance regulations.)</p>	<p>BuyBoard has developed an EDGAR Vendor Certification Form where vendors may certify their agreement and ability to comply with certain contract provision requirements under Appendix II in the Uniform Guidance. This has been included in all proposal invitations issued since December 2015. For contracts solicited prior to that time, BuyBoard provided existing vendors an opportunity to complete the form and make the certifications under their existing contract. Completed forms are uploaded for Members to conveniently see on the BuyBoard website. Copies of completed vendor forms can also be provided to Members upon request.</p>	<p>Confirm vendor has completed the EDGAR Certification Form and agreed to the provisions applicable to the Member’s purchase. Consider use of ancillary agreements, including Member Construction Contracts as applicable, for any contract provisions required for the Member but not otherwise included in the BuyBoard contract.</p>

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

FEDERAL PROCUREMENT STANDARD	BUYBOARD PROCESS	BUYBOARD MEMBER
<p>Debarment and Suspension.^{xxxii}</p>	<p>Under all BuyBoard proposal invitations, vendors must complete and submit with their proposal a Debarment Certification form certifying that neither the person certifying, their company, or owner or principal of their company has been debarred, suspended or otherwise made ineligible for participation in federal assistance programs.</p> <p>BuyBoard’s EDGAR Vendor Certification Form requests vendors to both certify that they are not currently listed on the government-wide exclusions in SAM or otherwise excluded or declared ineligible and to immediately notify BuyBoard and Members with pending purchases or seeking to purchase if Vendor is later listed, debarred or suspended.</p>	<p>Vendor certifications are made at the time of proposal submission. Members should consider any additional or updated review or certification required or otherwise desirable at the time of any specific purchase.</p>
<p>Specific Terms of Federal Award (all purchases).</p>		<p>In addition to any requirements in the Federal Procurement Standards, Members will need to consider and comply with any specific requirements of the Member’s federal award.</p>

ⁱ The amount listed is the micro-threshold amount listed in Office of Management and Budget Memorandum M-18-18 dated June 20, 2018, raising the micro-purchase threshold from \$3,500 to \$10,000 for fiscal years 2017 and 2018. The amount is current as of the date of this Advisory. Federal rules may adjust this amount in the future. *See*, 2 CFR §200.67, 48 CFR §2.101.

ⁱⁱ *See*, 2 CFR §200.320(a).

ⁱⁱⁱ *Id.*

^{iv} The amount listed is the simplified acquisition threshold amount listed in Office of Management and Budget Memorandum M-18-18 dated June 20, 2018, raising the simplified acquisition threshold from \$150,000 to \$250,000 for fiscal years 2017 and 2018. This amount is current as of the date of this Advisory. Federal rules may adjust this amount in the future. *See*, 2 CFR §200.88, 48 CFR 2.101.

^v *See*, 2 CFR §200.320(b).

^{vi} The amount listed is the simplified acquisition threshold amount listed in Office of Management and Budget Memorandum M-18-18 dated June 20, 2019, raising the simplified acquisition threshold from \$150,000 to \$250,000 for fiscal years 2017 and 2018. This amount is current as of the date of this Advisory. Federal rules may adjust this amount in the future. *See*, 2 CFR §200.88, 48 CFR §2.101.

^{vii} *See*, 2 CFR §200.320(c), (d) and (f).

^{viii} *See*, 2 CFR §200.318(a), (c).

^{ix} *See*, 2 CFR §200.318(b).

^x *See*, 2 CFR §200.318(c)(1).

^{xi} *See*, 2 CFR §200.318(d).

^{xii} *See*, 2 CFR §200.318(h).

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.

-
- xiii BuyBoard's best value criteria were modified beginning with proposal invitations issued in January 2017. Consult the specific proposal invitation for applicable criteria.
- xiv See, 2 CFR §200.318(i).
- xv See, 2 CFR §200.319.
- xvi See, 2 CFR §200.319(a).
- xvii See, 2 CFR §200.319(a).
- xviii See, 2 CFR §200.319(b).
- xix See, 2 CFR §200.319(c).
- xx See, 2 CFR §200.319(d).
- xxi See, 2 CFR §200.320(d)(1).
- xxii See, 2 CFR §200.320(d)(1).
- xxiii See, 2 CFR §200.320(d)(1)-(2).
- xxiv See, 2 CFR §200.320(d)(3).
- xxv See, 2 CFR §200.320(d)(4).
- xxvi See, 2 CFR §200.321.
- xxvii See, 2 CFR §200.322 and Appendix II(J).
- xxviii See, 2 CFR §200.323(a). The amount listed is the simplified acquisition threshold amount listed in Office of Management and Budget Memorandum M-18-18 dated June 20, 2018, raising the simplified acquisition threshold from \$150,000 to \$250,000 for fiscal years 2017 and 2018. This amount is current as of the date of this Advisory. Federal rules may adjust this amount in the future. See, 2 CFR §200.88, 48 CFR §2.101.
- xxix See, 2 CFR §200.323(b).
- xxx See, 2 CFR §200.325. The amount listed is the simplified acquisition threshold amount listed in Office of Management and Budget Memorandum M-18-18 dated June 20, 2018, raising the simplified acquisition threshold from \$150,000 to \$250,000 for fiscal years 2017 and 2018. This amount is current as of the date of this Advisory. Federal rules may adjust this amount in the future. See, 2 CFR §200.88, 48 CFR §2.101.
- xxxi See, 2 CFR 200, Appendix II(H).

This information is provided for educational purposes only to facilitate a general understanding of the law. This list is neither an exhaustive treatment on the subject, nor is it intended to substitute for the advice of an attorney.



PUBLIC ASSISTANCE: PURCHASING GOODS OR SERVICES THROUGH COOPERATIVE PURCHASING PROGRAMS

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants) to assist them with recovering from emergencies and major disasters. FEMA's [Public Assistance Program and Policy Guide](#) provides comprehensive information regarding assistance that FEMA can provide and the requirements that applicants must follow in order to receive the assistance. The purpose of this Fact Sheet is to provide key information regarding the use of cooperative purchasing programs by non-state applicants for procurements above the simplified acquisition threshold. Failure to follow federal contracting requirements may jeopardize FEMA funding for costs associated with that contract.

Understanding Cooperative Purchasing Programs

A “**COOPERATIVE PURCHASING PROGRAM**” is a cooperative arrangement for acquiring goods or services that involves aggregating the demand of two or more entities in an effort to obtain a more economical purchase. Entities typically sign up to use cooperative purchasing programs through a cooperative purchasing agreement. Program membership may provide entities with access to lists of agreements or contracts for goods and services at pre-negotiated rates or prices. Typically, the member then purchases the goods or services by negotiating with participating vendors and placing purchase orders or entering into contracts based on the rates or prices listed in the cooperative purchasing program's agreements or contracts with vendors.

NOTE: Cooperative purchasing programs are distinguishable from joint procurements. A “**JOINT PROCUREMENT**” is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation and enter into a single contract with a vendor for the delivery of goods and/or services. FEMA sees fewer compliance issues with joint procurements. While joint procurements are not the focus of this fact sheet, they still must comply with the federal procurement requirements.

DISCLAIMER: This Fact Sheet is intended to provide general information on procurement compliance and is not inclusive of every rule that an applicant may need to comply with. Additional information regarding the federal procurement standards can be found at the following webpage: www.fema.gov/procurement-disaster-assistance-team.

ATTENTION

- **While the federal procurement standards encourage the use of cooperative purchasing where appropriate, non-state applicants should exercise caution when using such programs and work closely with the procuring entity to ensure compliance with the federal procurement standards found at 2 C.F.R. §§ 200.318- 200.326.**
- **An applicant that decides to use a cooperative purchasing program must document and explain how its use of the program complied with all federal procurement standards and applicable state, tribal and local procurement rules and policies.**

“FEMA's mission is to help people before, during and after disasters.”

**FREQUENT COMPLIANCE ISSUES WITH COOPERATIVE
PURCHASING PROGRAMS FOR PROCUREMENTS ABOVE THE SIMPLIFIED
ACQUISITION THRESHOLD**

Full and Open Competition, 2 C.F.R. § 200.319 (applicable to non-state applicants)

Non-state applicants must ensure that the solicitations used by cooperative purchasing programs include a clear and accurate description of the scope of work or goods actually required by the non-state applicant. Additionally, cooperative purchasing programs that place overly restrictive requirements on solicitations risk noncompliance with the full and open competition requirements.

Procurement Method, 2 C.F.R. § 200.320 (applicable to non-state applicants)

Cooperative purchasing programs must be in compliance with the allowable procurement methods. Some of these methods of procurement require that non-state applicants publicly advertise or publicize the solicitations, solicit bids from an adequate number of known suppliers, and award contracts to the responsible, responsive firm with the lowest price or to the responsive firm whose proposal is most advantageous to the program with price and other factors considered.

Socio-economic Contracting, 2 C.F.R. § 200.321 (applicable to non-state applicants)

Non-state applicants must ensure cooperative purchasing programs take the applicable affirmative steps to encourage participation of small businesses, minority businesses, and women owned enterprises. Failure to take any of the affirmative steps violates 2 C.F.R. § 200.321.

Geographic Preferences, 2 C.F.R. § 200.319(b) (applicable to non-state applicants)

Any geographic preferences that a cooperative purchasing program uses in evaluating bids or proposals and any additional terms and conditions in a cooperative purchasing program's pre-negotiated agreements that favor or give preference to local suppliers would violate 2 C.F.R. § 200.319(b) and be restrictive of competition.

Contract Provisions, 2 C.F.R. § 200.326 (applicable to state and non-state applicants)

Cooperative purchase programs at times do not include the federally required contract provisions in their agreements with vendors. All state and non-state applicant contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards).

Cost or Price Analysis, 2 C.F.R. § 200.323 (applicable to non-state applicants)

Non-state applicants must conduct an independent cost or price analysis when using cooperative purchasing agreements.

“FEMA’s mission is to help people before, during and after disasters.”