



DAVID BACKUS
Phone: 806.793.1711
Fax: 806.793.1723
www.uwlaw.com
David.Backus@uwlaw.com

PHYSICAL ADDRESS:
1111 West Loop 289
Lubbock, TX 79416
MAILING ADDRESS:
P.O. Box 16197
Lubbock, TX 79490

March 22, 2016

Katie Chenoweth
Assistant Deputy Executive Director
Region 7 Education Service Center
1909 North Longview Street
Kilgore, Texas 75662

Re: Region 7 ESC Purchasing Cooperative EDGAR Compliance Opinion

Dear Ms. Chenoweth;

Thank you for taking the time to provide me with a candid and thorough explanation of the procedures that Region 7 ESC follows in procuring vendors for its purchasing cooperative (the "Coop").

It is my opinion following our discussion of the Coop's procedures, my exploration of the Coop website, and my examination of the documents that you sent to me, including Region 7 ESC's written administrative procurement policies and procedures, that the Coop is intentionally operating in such a manner as to comply with the regulatory framework of both the U.S. Department of Education's General Administrative Regulations ("EDGAR") and the Texas Education Agency's Financial Accountability System Resource Guide ("FASRG").

Specifically, I find the following important factors exist:

1. Relevant ESC staff understand that, in accordance with Section 7.1 of TEA's November 23, 2015, New EDGAR Regulations FAQ document, the Coop is required to follow the most restrictive procurement rules currently effect whether they be federal or state as follows:
 - a. For micro-purchases below \$3,000, the ESC follows the applicable EDGAR rules in 2 CFR §200.67 (this threshold was increased to \$3,500 in Fed. Reg. Vol. 80, No. 127, Pg 38295, July 2, 2015);
 - b. For purchases between \$3,001 and \$49,999, EDGAR requires price or rate quotations from an adequate number of qualified sources, which make the federal rules more restrictive than state procurement law required by the Texas Education Code (see TEA 11/23/2015 New EDGAR Regulations FAQ at §7.1);

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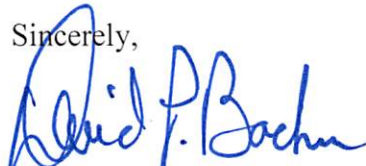
- c. For purchases of \$50,000 and above, the state procurement laws in Texas Education Code §44.031 are more restrictive than the federal rules, and must be followed (see TEA 11/23/2015 New EDGAR Regulations FAQ at §7.1); and
 - d. For purchases of \$150,000 and above, EDGAR is more restrictive than state law in regard to the cost or price analysis that must be followed; however, because the exact purchase amounts are only determined by each individual Coop member and not be Region 7 ESC, the cost or price analysis required in 2 CFR §200. 323 must be conducted by that Coop member when this threshold is reached and not by the Coop;
2. The Coop administrators recognize that it is a best practice for the ESC to have a local policy or procedure identifying a threshold below \$50,000 for which they do not require a competitive process, and the ESC has implemented such a practice by requiring that all purchases between \$3,000 and \$49,999 use a multi-vendor quote procedure documented on a “Best Value Documentation” form (ESC-415), and the Coop makes the ESC-415 form available to Coop members as well;
3. At 2 CFR 200.318(e), EDGAR encourages non-federal entities, including school districts, to enter into state and local intergovernmental or inter-entity agreements, such as the Coop, where appropriate for procurement, or use of common or shared goods and services to foster greater economy and efficiency;
4. EDGAR does not prohibit multiple awards under the same procurement process, which the Coop often does (see TEA 11/23/2015 New EDGAR Regulations FAQ at §7.22);
5. The Coop administrators understand that it must follow the same state and federal procurement rules that would apply if a local education agency (LEA) made the procurement themselves along with an appeals process, full and open competition, and ensuring adequate competition, which the Coop accomplishes as follows:
 - a. For each procurement, the Coop advertises once per week for a minimum of two weeks in each of the 41 counties in which a Coop member’s central office is located in compliance with Texas Education Code §44.031(g);
 - b. The 41 advertisements for bids are followed up by a reasonable period of time for vendor responses;
 - c. Appropriate criteria and weights consistent with Texas Education Code §44.031 are published in each procurement so that cost and price analyses may be conducted;
 - d. The publishing of criteria and weights appear to be consistent with the procedural requirements set forth in EDGAR (2 CFR §200.320) for competitive sealed bids and competitive proposals;
 - e. The published criteria and weights appear to account for the Coop’s commitment to Historically Underutilized Businesses in accordance with EDGAR (2 CFR §200.321) and Texas law;
 - f. The Coop’s administrative purchasing regulations specifically and clearly address the Coop’s dedication to Fair Value/Fair Competition and to resolving disputes and are generally in compliance with EDGAR (2 CFR §200.319);
6. Due to the Coop’s inability to predetermine whether a member is using state or federal funds to consummate its purchases through the Coop, the Coop competitively procures every contract in accordance with Texas Education Code §44.031 and/or FASRG;
7. The Coop’s cost or price analysis includes making an independent estimate of the value of goods or services in the current market before receiving bids or proposals that function as a benchmark for evaluating the reasonableness of future bids and proposals, and

ensures that due diligence is completed to determine a fair and reasonable price range for goods and services before procurement begins, and, regardless of the complexity, the estimate is an independent assessment of what the Coop's members expect to pay for a particular good and/or service based on a reliable source (historical payment, industry standard, market survey);

8. If a member discovers that the Coop's compliance with EDGAR does not include the lump-sum price for goods or services on which it could not perform a cost or price analysis, the Coop recommends that member(s) are best served by conducting such analysis independently on their own;
9. In all cases wherein member(s) are using federal or state grant funds at or above \$150,000 to purchase goods or services through the Coop, the Coop recommends that members conduct their own independent price or cost analysis in compliance with EDGAR (2 CFR §200.323) before issuing a purchase order or entering into a contract with an awarded vendor.

Based on the findings set forth above, it is my opinion that the Coop is intentionally operating in such a manner as to comply with the regulatory framework of both the U.S. Department of Education's EDGAR and the Texas Education Agency's FASRG.

Sincerely,



David P. Backus