

TIPS Information and Guidance on Member Entities Purchasing Goods and Services using Federal Funds

This document is not legal advice and all TIPS' members and vendors are encouraged to seek the advice of counsel when questions arise about the legal use of federal funds when making purchases.

TIPS is often asked if our contracts are compliant with the Code of Federal Regulations procurement requirements (2 CFR Part 200). These regulations are created by the federal government to regulate the procurement processes of federal agencies, the pass-through state agencies, and the individual local government entities receiving federal funds through the agencies responsible for the distribution of those funds for the benefit of the end-user entities. The funds are commonly granted to the local entities by the Cares Act and ESSER, US Dept. of Education, Housing and Urban Development, FEMA, US Dept. of Agriculture (school child nutrition) and other federal agencies. The funds are typically sent to the state agencies that act as pass-through agencies to distribute the funds to local governmental entities such as school districts (EDGAR), cities, counties, etc. and monitor the use of the funds for compliance with the federal regulations. When a school, city, county or other entity purchases goods and services with the respective funds, there are steps, certifications, contract clauses and other accountability issues that go into the proper use of the funds. TIPS can provide documentation of our processes and copies of the awarded vendor's responses to our solicitations that will provide evidence of the scope of the vendor's agreement with the federal requirements included in the TIPS solicitation.

Although TIPS follows extensive practices to ensure federal compliance, because of the circumstances outlined in this document, TIPS will not certify that any TIPS vendor Agreement is fully compliant for a specific purchase by a TIPS Member entity. It is always up to the TIPS Member entity to ensure that TIPS practices meet their needs for any procurement. A few of the reasons for our position are listed below.

Multiple Regulations and Rules

The various federal agencies that grant and distribute funds to entities eligible to use TIPS vendor agreements all interpret the 2 CFR Part 200 differently and the federal agencies distributing the funds have the authority to add additional, more restrictive requirements, as they deem appropriate. Also, the pass-through state agencies that distribute and monitor the use of the funds may add additional, more restrictive rules, on the funds use and the processes that the end-user entity (TIPS Member entity) must follow when expending those funds. Then, the local TIPS Member entity may add their own additional more restrictive procurement rules or policies. Thus the rules for use quite literally, can be different for each end-user entity.

Dollar threshold of the purchases

The next criterion for the purchases includes whether or not the purchase is "allowable" under the specific federal funds grant. Also, depending on the dollar amount of the purchase, different federal requirements apply to the individual purchases.

Micro-Purchase Procedures

Typically, micro purchases are purchases under \$10,000. Depending on the federal or state agency that dollar threshold may include a requirement to "aggregate" the dollar amount of the purchases for the fiscal year of the entity and others do not aggregate those purchases and allow all purchases under \$10,000 to be made according to the regulations so long as the purchases are not divided into small parts for the purpose of not complying with the larger threshold amounts. Purchasing entities must distribute micro-purchases with multiple vendors throughout the year, if multiple vendors are available for the desired goods and services.

Small Purchase Procedures

Small purchase procedures are for amounts from \$10,000 to a maximum of \$250,000 or less if the pass through agency or local entity has a more restrictive rules or regulations. Example: Texas requires formal procurement at the \$50,000 threshold. Typically, the end user, TIPS Member entity can get three quotes from qualified suppliers for

Small Purchases, as defined. They should seek out disadvantaged type businesses for at least one of the quotes, but local or state regulations may require more.

Formal Purchase Procedures

The CFR formal procurement threshold is \$250,000 and it requires a very formal solicitation process with various additional steps required to comply with the CFR. This method requires cost or price analysis before and after the purchase by the TIPS Member entity and other formal processes and permitted types of purchasing models in 2 CFR Part 200.

TIPS Explanation for Federal Funds Use Posted to the Vendor Page

When you click on the link in the vendor's profile page titled "**View Doc**" you will find the following information (in italics). The term "EDGAR" (a US Dept. of Ed acronym) is used to represent federal regulations and because our agency is a Texas Education Service Center, this is the primary regulation in play for many of our Members. The explanation is applicable to all federal funds sources.

*You have clicked on a link or otherwise sought to determine whether a specific TIPS Vendor on a specific TIPS Contract is EDGAR compliant. If the website states "No" to EDGAR compliance for that specific Vendor Contract, then the specific TIPS Vendor on that specific TIPS Contract is **not EDGAR (Federal Funds) compliant**. If the website states "View Doc" to EDGAR compliance and you are linked to this letter, then TIPS has ensured the specific TIPS Vendor's compliance with 2 CFR 200 on the specified contract **to the extent a cooperative can do so**, as described below.*

*Region 8 Education Service Center (Region 8 ESC) is a Texas Education Service Center which operates The Interlocal Purchasing System (TIPS), a purchasing cooperative and department of Region 8 ESC. This document certifies that Region 8 ESC and TIPS made every effort to comply with the most restrictive requirements of 2 CFR 200, identified for educational purposes as the Education Department General Administrative Regulations ("EDGAR"). Please note that federal funds not sourced from the US Department of Education are likely regulated by 2 CFR 200 but are not technically "EDGAR." Each federal agency and its corresponding state "pass-through" agency may interpret 2 CFR 200 differently. TIPS certifies that it procures all awarded contracts pursuant to § 44.031 of the Texas Education Code, or Texas Government Code § 2269, as applicable, the most restrictive procurement method, and performs the most restrictive procurement method required by law and regulation, including all of the necessary steps outlined in 2 CFR 200, except the Price or Cost Analysis for purchases of \$250,000 and greater. (See below). **This letter certifies that the Vendor agreed to those 2 CFR 200 contract provisions for the specified contract.***

However, this TIPS certification cannot relieve Members of federal requirements that cannot reasonably be performed by cooperatives. For example, 2 CFR 200 requires a cost or price analysis for purchases over \$250,000.00, a threshold adopted by TEA and the US Dept. of Education. TIPS does not perform a formal cost or price analysis because TIPS is not the entity making the actual purchase of goods or services. If a Vendor is awarded then TIPS has determined that the pricing is within the competitive range for the Vendor's offering. However, when required by law, the TIPS Member must perform the required analysis on the specific goods or services before seeking TIPS pricing/purchasing from the TIPS Vendor and then upon completion of the purchase process.

*Additionally, due to the Texas Department of Agriculture Guidance ARM Section 17 ("ARM Section 17"), relating to Federal Child Nutrition Program Funds (Primarily Texas Public School Fund 240), requirement that all solicitations include specific quantities of goods or services purchased, TIPS Contracts are not in compliance with ARM Section 17 as a **stand-alone** purchase contract. This is because TIPS has no way of predicting which Members will purchase specific quantities of goods and services. However, for Federal Child Nutrition Fund purchases*

*in which the ARM Section 17 required cost or price analysis has been performed by the Member, TIPS contracts may be used in conjunction with the Member's three quote process for Micro and Small Purchase procedures **unless labeled with "No" as to EDGAR compliance**. Whether or not the purchase is "Allowable" is outside the scope of TIPS operations.*

If this letter was linked or provided in relation to a specific Vendor Contract, then the Vendor has agreed to the 2 CFR 200 Contract provisions. For our Members' benefit, we encourage you, when expending federal funds, to make certain that you understand and comply with any other 2 CFR 200 requirements that cannot necessarily be met on your behalf by a cooperative. We also encourage you to incorporate all 2 CFR 200 TIPS Contract provisions agreed to by the Vendor into all supplemental agreements you enter into with the TIPS Vendor, if any. While TIPS works very hard to ensure legal purchasing compliance on Members' behalf TIPS does not provide legal counsel to its Members. TIPS recommends that you consult your legal counsel when executing specific contracts with TIPS Vendors. TIPS reserves the right to change its process as necessary in relation to updated guidance. Thank you for being a Member of TIPS and for letting us assist with your procurement needs.

General Information & Cares Act and ESSER Funding

Because the guidance on CARES act funds is new and States are interpreting the use in different ways, rather than say that we are "CARES Act" compliant, we prefer to explain to Member/End-Users what we have done as far as Federal certifications, and let them determine whether it meets their CARES Act requirements. TIPS confirms that public entities are spending Cares Act and ESSER Act funds with TIPS vendors, but TIPS cannot provide you a "yes" or "no" answer because the requirements also vary depending on the amount of the spend and potentially what is being purchased as well as other factors.

For the Members benefit, TIPS confirms that each of our Vendor contracts is procured according to applicable state and federal bid laws to the extent possible. ***Some federal requirements must be completed in certain aspects by the TIPS Member/End-User because they are purchase-specific.*** However, our legal team drafts the solicitations, they are publicly posted and advertised, both locally and nationally. TIPS seeks sealed proposals, and we evaluate and award those sealed proposals according to the published scoring criteria. We also include required 2 CFR 200 and other relevant federal certification clauses in our solicitations which the Member is welcome to review at any time by examining the Vendor Contracts posted to the TIPS website. The certifications are part of the questions answered by the proposing vendors and are incorporated into their TIPS Vendor Agreement/Contract. Sometimes those documents are not posted publically, but if not, they are available for review to all TIPS member entities.

For federal small, disadvantaged, MWBE, etc. certification purposes, TIPS' first standard bid question is whether an entity qualifies as a Disadvantaged/Minority/Women Business enterprise. TIPS second standard bid question is whether an entity is a Historically Underutilized Business (HUB) as defined by the State of Texas Comptroller. If a vendor certifies yes to either of those questions, their public TIPS Profile will publicly reflect that they are a HUB and/or a Disadvantaged/Minority/Woman Business Enterprise. TIPS allows Vendors to upload all HUB Certifications that they wish to include in their contract so that any end-user/Member can see those publicly. For federal certification purposes, TIPS also asks vendors to certify that, if Vendors use subcontractors on one of our sales, they certify that they will take all necessary affirmative steps to assure that minority businesses, women's businesses, and labor surplus are firms are used when possible in accordance with federal law. TIPS recommends that Member entities collect current certifications at the time of purchase to ensure timely documentation. For each solicitation posted, TIPS also notifies the Minority Business Development Agency of the Department of Commerce and asks them to encourage Vendor response, we notify all HUB Vendors found on the Centralized Master Bidder List (CMBL) under the related NIGP Codes and encourage them to respond, and we notify all SBA Vendors found on SBA.gov under related NAICS codes and encourage them to respond. This usually matches or exceeds what most individual entities and other cooperatives do to meet the 2 CFR Part 200 requirements.

To ensure that both the TIPS vendor and the TIPS Member are aware that if at any time you want to evaluate TIPS procurement process for your Contract, vendors or the Member/End-User can visit each vendor's public TIPS profile

at <https://www.tips-usa.com/allvendors.cfm>. Once there, you select the specific vendor and within their profile, you can find all of their general information in the “Overview” tab. There, you will also see, as displayed below, each Vendor Contract will either state, “NO” that it is not EDGAR Compliant, which means the Vendor failed to respond in a way that meets the 2 CFR 200 requirements. *Or, you will see a link to the attached document, which means that TIPS has verified EDGAR compliance to the extent it believes that it can on behalf of a Member, as seen with the sample below.*

CONTRACT: 200301 Furniture, Furnishings and Services
End Date: May-31-2023 EDGAR COMPLIANCE: [View Doc.](#)

The Member/End-User can also freely access a Vendor’s complete response to all federal questions and certifications as follows. If they select the “DUE DILIGENCE” tab on the Vendor’s profile, they will find, for each of the Vendor’s contracts (if more than one): (1) the published/advertised solicitation; (2) a list of all responding Vendors; (3) the advertisements published for that solicitation, and; (4) the Vendor’s Contract which includes their response to the Solicitation other than confidential documents and pricing which is readily available to our Members upon request. Example:

CONTRACT: 200301 Furniture, Furnishings and Services
End Date: May-31-2023
EDGAR COMPLIANCE : [View Doc.](#)

CONTRACT DOCUMENTS

- [Bid Request](#)
- [Bid Advertisement](#)
- [Bid Responders](#)

VENDOR DOCUMENTS

- [Vendor Contract](#)

When requesting a quote from a vendor, Member entities should always inform the vendor that they want a “TIPS” quote and the TIPS contract number should be on all related documents including the purchase order or any supplementary agreement or contract executed by the Member and the Vendor pursuant to a TIPS purchase.

We provide this documentation publicly or upon request, if part of the proposal was deemed confidential from the public view, for each Vendor and for each contract that a Vendor holds. It is always the responsibility of the individual Member entity considering making purchases through a TIPS vendor agreement/contract to determine whether a TIPS cooperative procurement is appropriate when purchasing with federal or other funds of any type or source.