



980 Jolly Road
Suite 110
Blue Bell, PA 19422
Tel (610) 397-6500 Fax (610) 397-0450
www.foxrothschild.com

ELLEN M. ENTERS
Direct No: 610.397.6505
Email: EEnters@FoxRothschild.com

December 10, 2024

Amber R. Lind
Cooperative Purchasing Programs Manager
PEPPM
Central Susquehanna Intermediate Unit
90 Lawton Lane
Milton, PA 17647

Re: PEPPM's Cooperative Purchasing Agreements and Compliance with the Uniform Guidance

Dear Ms. Lind,

This letter is intended to address your request for written confirmation that PEPPM's various cooperative purchasing agreements comply with the Uniform Guidance, 2 CFR § 200, *et seq.* (the "UG"). As will be discussed below, PEPPM has taken affirmative steps to ensure that its cooperative purchasing agreements (1) comply with the UG's competitive procurement requirements, and (2) provide the framework for public procurement units to comply with the UG's other required terms and conditions.

A. PEPPM Satisfies the UG's Competitive Procurement Requirement in Each of its Cooperative Purchasing Agreements.

A non-federal entity seeking to make a purchase using federal funds or grant money must make such a purchase using one of the procurement methods set forth in 2 CFR § 200.320. These procurement methods include, *inter alia*, obtaining competitive quotes from responsible vendors or engaging in a sealed competitive bidding process. For *all* of its cooperative purchasing agreements, PEPPM publicly solicits sealed bids through formal advertising, and undertakes an analysis to award the contract to the lowest responsive and responsible bidder. Accordingly, this method of procurement satisfies Section 200.320(b)(1) of the UG, and it also obviates the need

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for any public procurement unit utilizing one of PEPPM's cooperative purchasing agreements to perform any such method on its own. Specifically, public procurement units utilizing PEPPM's contracts need not (1) publicly solicit its own bids, (2) obtain additional quotes/proposals, or (3) perform an analysis regarding whether the vendor is "responsible."

B. PEPPM's Product Line Contracts, Catalog Contracts, and Managed Print Solutions Contracts Cooperative Purchasing Agreements Generally Require Awarded Vendors To Comply With Additional UG Requirements.

In addition to the competitive procurement method set forth above, the UG also requires non-federal entities to include specific provisions in their bidding documents. *See, e.g.*, 2 CFR §§ 200.213; 200.231; 200.326. PEPPM includes the applicable requirements in its terms and conditions. In order to ensure compliance with these various requirements by the awarded vendor, PEPPM has included the following provision in the terms and conditions of each of its awarded Product Line Contracts, Catalog Contracts, and Managed Print Solutions Contracts:

When a [public procurement unit] seeks to procure goods and services through an Agency Contract using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is 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 Grant Guidance," "UG" or new "EDGAR"), and Elementary and Secondary School Emergency Relief Fund (sometimes referred to as "ESSER I" or "ESSER II" funds). All Awarded Vendors must agree to comply with certain requirements which may apply to specific purchases using federal grant funds. [Public procurement unit] must advise Awarded Vendor if an order will utilize funds under a federal grant or contract, in which case Sections XI.1 through XI.18 shall apply.

Stated differently, if any vendor is notified by a public procurement unit that a purchase from one of these contracts is being made using federal funds, the vendor *must* comply with the UG and those sections mandating such compliance. This includes, for example, a commitment by the vendor to comply with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and Byrd Anti-Lobbying Amendment, as well as provisions authorizing the termination of a purchase order for cause or convenience and a clause disqualifying any vendor that has been debarred or suspended. Moreover, if notified by the public procurement unit that it shall be using federal funds, the vendor *must* also agree to "make a good-faith effort to work with the [public procurement unit] to provide such information and to satisfy such requirements as may apply to the [public procurement unit's] purchase or purchases including, but not limited to, applicable



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recordkeeping and record retention requirements and contract cost and price analyses required under the Uniform Guidance.”

Thus, any public procurement unit using such contracts may be assured that, so long as they provide the requisite notice described above, the awarded vendors holding PEPPM Product Line Contracts, Catalog Contracts, and Managed Print Solutions Contracts are required to comply with the UG. Of course, the public procurement unit must also ensure that it is complying with the UG provisions which must be performed by itself, and which cannot be performed by the awarded vendor or by the cooperative agency.

C. PEPPM’s Marketplace Contract Facilitates Compliance With the UG’s Requirements.

For the Marketplace Contract, there are specific structures in place that would allow a public procurement unit to comply with the procurement standards set forth in the UG. Specifically, Section XI of the Marketplace Contract states that if a public procurement unit—referred to as an “Eligible Entity” in the contract—notifies the Awarded Vendor or the Awarded Vendor’s Authorized Reseller that it intends to make a purchase using federal funds, then the public procurement unit and awarded vendor may apply Section XI.1 through XI.14 to the applicable purchase order if both parties so agree. Accordingly, so long as both the public procurement unit and Awarded Vendor/Authorized Reseller agree, the framework exists to facilitate UG compliance. Such provisions include, *inter alia*, authorizing the termination of a purchase order for cause or convenience (Section XI.3), a clause disqualifying any vendor that has been debarred or suspended (Section XI.6), and more.

Similarly, the terms of the Marketplace Contract specifically require that the Awarded Vendor and its Authorized Resellers “comply with any and all laws, whether local, state, federal or otherwise, applicable to them in their provision of any of the Products to be provided under the Contract.” As such, while it is incumbent upon public procurement units using federal funds to actively “opt” into Section XI of the Marketplace Contract, the framework is in place to allow for UG compliance. Of course, the public procurement unit must also ensure that it is complying with the UG provisions which must be performed by itself, and which cannot be performed by the awarded vendor or by the cooperative agency.

D. Conclusion

Based upon all of the foregoing, each of PEPPM’s cooperative purchasing agreements (1) comply with the UG’s competitive procurement requirements, and (2) provide the framework for public procurement units to comply with the UG’s other required terms and conditions. However,



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please note that this letter does not offer a legal opinion on the availability of PEPPM contracts to any specific public procurement unit and each such entity must determine for itself whether or not it may avail itself of PEPPM's cooperative purchasing agreements, and whether such agreements comply with the UG. Public procurement units should consult with their solicitor for guidance on specific purchases and on what additional UG requirements are to be performed by the public procurement unit or the awarded vendor in utilizing the contract.

Very truly yours,

A handwritten signature in cursive script that reads "Ellen M. Enters".

Ellen M. Enters