



February 25, 2019

## **The United States Educational Technology Purchasing Alliance (USETPA) Cooperative Group Purchasing Program**

### **Compliance with State and Local Purchasing Regulations**

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The United States Educational Technology Purchasing Alliance (“USETPA”) is a competitive bidding group purchasing program that provides cooperative purchasing assistance to its public section members in a more effective manner than direct purchases by any single entity or individual.

Any public entity may be a member of the USETPA, including public K12 schools, community colleges, higher education, local government units, special purpose districts, and state agencies. There is no charge to become a member.

The USETPA issued its most recent Request for Proposals (#1812001) on December 18, 2018 (“RFP”). Contracts under the RFP were awarded on February 4, 2019. Terms of the RFP and vendor awards may be found at [www.usetpa.org](http://www.usetpa.org). Contracts were awarded to all responsive and responsible bidders after evaluation by the USETPA’s award committee of sealed bids received by the announced bid due date.

The USETPA purchasing process is intended to comply with state statutes that authorize agencies and local governments to purchase goods and services through competitive bidding group purchasing programs. A member should review applicable law and confer with counsel to verify that it is eligible to use a competitive bidding group purchasing program. The USETPA maintains a file of applicable statutes and will provide the file to any potential member upon request.

The USETPA’s efforts to comply with North Carolina law are summarized below:

Unless an exception applies, North Carolina law requires state and local governments to engage in public advertising and competitive bidding for the purchase of “apparatus, supplies, materials, or equipment” requiring an estimated expenditure of \$90,000 or more. G.S. 143-129(a).

One exception, found in G.S. 143-129(e)(3), allows local government units to purchase apparatus, supplies, materials, or equipment through a “competitive bidding group purchasing program.” G.S. 143-129(e)(3) defines a “competitive bidding group purchasing program” as “a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.”



According to the UNC School of Government Coates' Canons Blog dated July 21, 2010, a valid competitive bidding group purchasing program includes the features described below. <https://canons.sog.unc.edu/all-for-one-and-one-for-all-competitive-bidding-group-purchasing-programs/>. The USETPA describes below how the most recent RFP includes each of the requirements described by UNC's School of Government:

***"Formally Organized Program"***

To qualify as a group purchasing program under G.S. 143-129(e)(3), the entity offering products and services must be "formally organized." The USETPA is incorporated under North Carolina law, and it has an Executive Director, a Board of Advisors, a physical office address, an office phone number, and an email address. The USETPA describes the purchases of its program, the membership of the program, and the procurement process used by the program in its RFP. This level of organization is sufficient to meet the statutory requirement of formality.

***"Competitively Obtained Purchasing Services"***

Under the group purchasing exception, the items and services offered must be "competitively obtained," meaning the organization's contracts were procured through a competitive process. The process does not have to meet all of the competitive bidding requirements of G.S. 143-129, but it must ensure a reasonable opportunity for interested vendors to submit bids with fair evaluation of those bids leading to a contract award.

Contracts were awarded under the RFP after electronic advertising for bid solicitation, submission of sealed bids by a stated bid deadline, objective and transparent evaluation criteria, and a clearly articulated standard of award that includes considerations of responsiveness, responsibility, and discounted prices. (See USETPA RFP #1812001, Sections I-Scope, II-Award, and Part 3-RFP Evaluation). This process meets the statutory requirement for competitively obtained purchasing services.

***"Discount Prices"***

The group purchasing program exception requires that vendors offer prices at a discount from list prices, at least. According to the USETPA RFP, vendors awarded contracts by the USETPA must offer discounted prices to the USETPA members (See USETPA RFP #1812001, Part 3, Section B Evaluation Criteria). The RFP requires bidders to offer prices at a discount which meets the statutory requirement for discount prices.

***"Two or More Public Agencies"***

The final requirement under the group purchasing program exception is that at least one other public entity is participating in the program. The USETPA offers membership to all public K12 schools, public libraries, local governments, and other public entities in North Carolina. Membership is free, and there is no minimum purchase obligation. USETPA currently has other public entity members from North Carolina including public K12 school districts and local governments. Because of its open membership enrollment for a wide array of public entities, and the participation of other public entities, the USETPA



meets the requirement that products offered through this program are available to at least two public agencies.

For the foregoing reasons, it is the USETPA's position that local government units in North Carolina may purchase information technology goods and services as a result of contracts awarded under the RFP, without having to comply with the competitive bidding requirements of Article 8, from vendors through the USETPA under the group purchasing program exception of G.S. 143-129(e)(3).

The USETPA will answer any questions that a potential member may have regarding its compliance with local or state purchasing statutes, but a member should consult with its own legal counsel for specific questions regarding its ability to utilize competitive bidding group purchasing programs.