

Updated PDE Guidance Concerning Use of Intergovernmental Agreements in Procurements Involving Federal Funds, Effective July 1, 2017

Because of questions from the field, the Pennsylvania Department of Education (PDE) recently consulted with the US Department of Education (USDE) concerning the appropriate process for Local Education Agencies (LEAs) to enter into intergovernmental agreements (IGAs) to procure goods or services from Intermediate Units (IUs) or other LEAs using federal funds.

As we understand it, these IGAs are sometimes entered into without the LEA first having engaged in one of the applicable competitive methods of procurement under 2 CFR §200.320 (a)-(d).¹ Such IGAs are often used by LEAs and IUs, which join together for the procurement of common or shared goods and services. *See* 2 CFR §200.318(e). For example, IGAs may be used for the joint purchase of a commodity or service from a single vendor by several purchasers acting collectively and all entering into one contract with the vendor or for the individual purchase of a service from a LEA or IU by several LEAs.

USDE has advised PDE that while federal regulations permit entities to enter into IGAs as an appropriate alternative contractual arrangement for procurement or use of common or shared goods and services using federal funds, when these agreements foster greater economy and efficiency, the provision for IGAs does not override the basic premise that competitive methods of procurement are preferred. Therefore, when joining together in a joint procurement for goods or services using federal funds, each LEA and/or the IU is responsible for ensuring that the

¹ The methods of procurement under §200.320 are (a) procurement by micropurchase, (b) procurement by small purchase, (c) procurement by sealed bids, or (d) procurement by competitive proposal. PDE notes that generally, procurement by micropurchase may occur for the acquisition of supplies or services where the aggregate amount of the procurement does not exceed \$3,500. Micropurchases may occur without soliciting competitive quotations if the price is reasonable. Procurements by small purchase procedures may apply where purchases do not exceed the Simplified Acquisition Threshold (currently, \$150,000). Small purchase procedures permit simple and informal procurement methods provided price or rate quotations are obtained from an adequate number of qualified sources. If the procurement amount exceeds \$150,000, sealed bids or competitive proposals would be required. Moreover, where more restrictive requirements of state law apply, such as provided by Section 807.1 of the Public School Code of 1949, 24 P.S. §8-807.1, the more restrictive state procedure must be followed.

purchasing organization or collective conducting the joint procurement complies with applicable federal regulations, including the competitive requirements for procurements under §200.320(a)-(d), unless the requirements for a sole source procurement are met under §200.320(f). Similarly, when using federal funds to purchase shared or common services from LEAs or IUs, the IGA used for such purchase must be compliant with §200.320 (a)-(d), unless the requirements for a sole source procurement are met under §200.320(f). In addition, LEAs must examine the suitability of sole source procurement on a case-by-case basis and ensure that costs in all cases can be documented to be reasonable.² LEAs should have in place and adhere to strong internal controls, including the documentation of the procurement procedures they follow when obtaining goods and services with federal funds.

² PDE is aware that there may be circumstances involving special education services where a LEA may be required to contract with a particular IU or LEA in order to ensure that a child receives a free appropriate public education, and therefore, a sole source is appropriate under §200.320(f). The purchase of a service from an IU or LEA, which is not available from any other provider within a reasonable distance from the site at which the service will be provided may be an appropriate basis of a sole source procurement under §200.320(f). Finally, it may in some instances be appropriate or necessary to bundle services and, as a result, there may be only one vendor that is capable of providing all the requested services. In such case, a sole source procurement under §200.320(f) might be justified as well. In all cases, however, LEAs must maintain records sufficient to detail the history of the procurement process. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. See 2 CFR §200.318(i).