



Fox Rothschild LLP
ATTORNEYS AT LAW

10 Sentry Parkway
Suite 200 P.O. Box 3001
Blue Bell, PA 19422-3001
Tel (610) 397-6500 Fax (610) 397-0450
www.foxrothschild.com

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

May 15, 2020

Jared Lehman
PEPPM
Central Susquehanna Intermediate Unit
90 Lawton Lane
Milton, PA 17647

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

Dear Mr. Lehman,

This letter is intended to address to your request for written confirmation that PEPPM’s various cooperative purchasing agreements comply with the Uniform Grant Guidance, 2 CFR § 200, *et seq.* (the “UGG”). As will be discussed below, PEPPM has taken affirmative steps to ensure that its cooperative purchasing agreements either require compliance with the UGG or, at an absolute minimum, provides public procurement entities the ability to comply with the UGG.

A. PEPPM Satisfies the UGG’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 UGG, and it also obviates the need 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

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Virginia Washington

May 15, 2020

Page 2

contracts need not (1) publically solicit its own bids, (2) obtain additional quotes/proposals, or (3) perform an analysis regarding whether the vendor is “responsible.”

B. PEPPM’s Cooperative Purchasing Agreements Generally Require Awarded Vendors To Comply With Additional UGG Requirements.

In addition to the competitive procurement method set forth above, the UGG 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, 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 an [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,” “UGG” or new “EDGAR”). All Awarded Vendors must agree to comply with certain requirements which may be applicable to specific purchases using federal grant funds. [Public procurement units] have the responsibility to advise Awarded Vendor if an order will utilize funds under a federal grant or contract, in which case Section XI.1 through XI.13 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 UGG 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 Eligible Entity to provide such information and to satisfy such requirements as may apply to the Eligible Entity’s purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements and contract cost and price analyses required under the Uniform Grant 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



May 15, 2020

Page 3

Contracts, Catalog Contracts, and Managed Print Solutions Contracts are required to comply with the UGG.

C. Conclusion

Based upon all of the foregoing, each of PEPPM's cooperative purchasing agreements (1) comply with the UGG's competitive procurement requirements, and (2) provide the framework for public procurement units to comply with the UGG's other required terms and conditions. However, please note that this letter does not offer a legal opinion on the availability of PEPPM contracts to any specific entity and each such entity must determine for itself whether or not it may avail itself of PEPPM's cooperative purchasing agreements and should consult with its solicitor for guidance on specific purchases.

Very truly yours,

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

Ellen M. Enters