



Texas Association of School Boards

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Purchasing Cooperatives

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Purchasing cooperatives are a popular purchasing option for Texas school districts. This article answers frequently asked questions about this option.

What is a purchasing cooperative?

For Texas school districts, a purchasing cooperative is created through an interlocal agreement among several school districts or governmental entities that have joined together to take advantage of economies of scale that may increase the members' purchasing power, result in better pricing, and simplify the purchasing process.

Under the Interlocal Cooperation Act discussed below, a *purchasing cooperative* is a group purchasing organization that governmental entities, such as school districts, join as members and the managing entity of which receives fees from members or vendors. Tex. Gov't Code § 791.011(j). Entities that may enter an interlocal agreement include not only school districts, but also counties, municipalities, special districts, junior college districts, other political subdivisions of Texas or another state, or a combination of such entities. Tex. Gov't Code § 791.003(4). A party to an interlocal contract may also contract with a state agency or similar agency of another state. Tex. Gov't Code § 791.011(b).

The Texas Local Government Code defines a *local cooperative organization* as "an organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment." Tex. Loc. Gov't § 271.101(2).

Can school districts purchase goods and services from purchasing cooperatives under state law?

An interlocal contract is listed in Texas Education Code section 44.031(a) as a method by which a school district may procure goods and services valued at \$50,000 or more in the aggregate for each 12-month period.

Interlocal contracts (sometimes referred to as interlocal participation agreements) are governed by the Interlocal Cooperation Act, Texas Government Code chapter 791, which serves to increase the efficiency and effectiveness of local governments by authorizing them to contract with other local governments or state agencies to perform governmental services or functions, including *administrative functions* such as purchasing. Tex. Gov't Code §§ 791.001, .003(1), (3), .011, .025.

Texas Local Government Code chapter 271, subchapter F, also allows a local government to participate in a cooperative purchasing program with another local government or with a local cooperative organization. Tex. Loc. Gov't Code §§ 271.101-.102.

A local government that purchases goods or services under an interlocal contract satisfies the requirement to seek competitive bids for the purchase. Tex. Gov't Code § 791.025(c); Tex. Loc. Gov't Code § 271.102(c).

Can school districts purchase construction-related goods and services from a purchasing cooperative under state law?

Under Texas Education Code section 44.031(a)(4), school districts may procure construction services using a method in Texas Government Code chapter 2269 or an interlocal contract (including a purchasing cooperative), depending on which method will provide the best value to the district. Purchasing cooperatives often offer items such as roofing systems, HVAC units, gym floors, and modular buildings; however, under the Interlocal Cooperation Act, a local government may not contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a designated person certifies in writing as follows:

1. the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications by an engineer or an architect; or
2. the required plans and specifications have been prepared.

Further, a governmental entity may not purchase engineering or architectural services from a purchasing cooperative. Tex. Gov't Code §§ 791.011, 2254.004.

For more information, see BuyBoard's [Construction-Related Goods and Services Advisory](#) and TASB Legal Services' [Architect or Engineer? Which One Your District Needs Depend on Project's Nature, Cost](#).

How does a district enter into an interlocal agreement?

Under the Interlocal Cooperation Act, an interlocal contract must be authorized by the governing body of each party to the contract; state the purpose, terms, rights, and duties of the contracting parties; and specify that payments under the contract will be made from current revenues. Tex. Gov't Code § 791.011(d).

Are there any reporting requirements associated with purchases from a purchasing cooperative?

A district that enters into a purchasing contract valued at \$25,000 or more under an authorized cooperative purchasing program must document the amount, purpose, and disposition of a contract-related fee, including a management fee, paid by or to the district in a written report submitted annually in an open board meeting. The written report must appear as an agenda item, and the commissioner of education may audit the report. Tex. Educ. Code § 44.0331.

Can school districts purchase goods and services from purchasing cooperatives with federal funds?

Generally, procurement with federal funds is governed by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 C.F.R. section 200 (often referred to as the Uniform Guidance). Section 200.318(e) encourages recipients of federal funds to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services to foster greater economy and efficiency.

The provisions of the Uniform Guidance are implemented and interpreted by the federal agency awarding funds to a school district, such as the U.S. Department of Education (ED), the U.S. Department of Agriculture (USDA), or the Federal Emergency Management Agency (FEMA). The provisions are further applied and enforced by the state agency that administers the funding (often called the pass-through entity), such as the Texas Education Agency (TEA), the Texas Department of Agriculture (TDA), or the Texas Division of Emergency Management (TDEM).

When contemplating a purchase from a purchasing cooperative with federal funds, a school district must review the terms of its grant and appropriate agency guidance to ensure compliance with all requirements. A district might also consider consulting its legal counsel when making purchases with federal funds.

ED/TEA (EDGAR): The Uniform Guidance as interpreted and applied by ED and TEA is often referred to as EDGAR (Education Department General Administrative Regulations). While purchasing from a cooperative is allowed generally, a district may have to comply with other requirements depending on the type of purchase, the dollar amount involved, and the specific terms of the grant.

Purchasing cooperatives often will post information regarding EDGAR compliance, but the district remains responsible for ensuring that its purchases comply with all applicable requirements. For examples of federal compliance information, see BuyBoard's [Purchasing with Federal Funds](#) Advisory and the Texas Comptroller's Texas SmartBuy Program [EDGAR Fact Sheet](#). For more on EDGAR generally, see TEA's [EDGAR Materials and Resources website](#).

USDA/TDA: TDA’s Food and Nutrition Division administers several federal child nutrition programs, including the School Breakfast Program and the National School Lunch Program. The Uniform Guidance as interpreted and applied by USDA and TDA is set out in TDA’s [Administrator’s Reference Manual](#) (ARM) Sections 17 (Procurement), 17a (Procurement Procedures), 17b (Buy American), and 17c (Cooperative Purchasing). Guidance regarding cooperative purchasing is based on USDA Memo SP 05-2017, [Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services](#). These requirements are also summarized in TDA’s [Purchasing Cooperative Guidelines](#) brochure.

FEMA: According to FEMA’s [Public Assistance: Buying Through Cooperative Purchasing Programs](#), an applicant for public assistance from FEMA should use caution when using a cooperative purchasing program and “must document and explain how its use of the program complied with all federal procurement standards and applicable state, tribal, and local procurement rules and policies.”

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-esource/business/documents/purchasing-cooperatives.pdf. For more information on school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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