

The background features a dark blue gradient with a series of curved, glowing lines that create a sense of depth and movement. On the right side, there is a grid-like pattern of light blue lines that recedes into the distance, suggesting a digital or data environment.

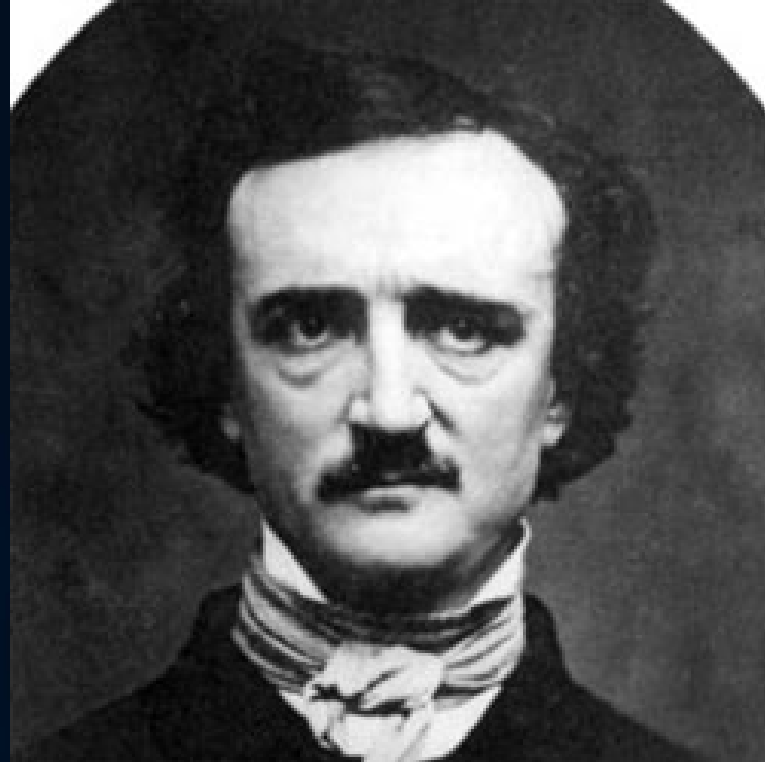
EDGAR and Procurement

CHOICE PARTNERS
OCTOBER 12, 2016

Agenda

- Uniform Guidance Summary (Note: EDGAR for educational entities)
- General Federal Procurement Laws
- Thresholds and Implications
- Sole Source Vendors
- Cooperative Purchasing
- HB 1295

EDGAR? Who is this guy?



← Edgar Allen Pole

**Education Department General
Administrative Regulations**

Uniform Guidance Replaced these 8 Circulars

1. OMB Circular A-89 – Catalog of Federal Domestic Assistance
2. OMB Circular A-110 - Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
3. OMB Circular A-102 - Grants and Cooperative Agreements with State and Local Governments
4. OMB Circular A-21 – Cost Principles for Higher Ed Institutions
5. OMB Circular A-87 – Cost Principles for State and Local Governments
6. OMB Circular A-122 – Cost Principles for NPOs
7. OMB Circular A-133 – Single Audit
8. OMB Circular A-50 Audit Follow Up

Uniform Guidance Summarized Into Three Parts

- **Administrative Requirements**
 - Subpart A, 200.XX – Acronyms and Definitions
 - Subpart B, 200.1XX – General
 - Subpart C, 200.2XX – Pre-award – Federal
 - Subpart D, 200.3XX – Post-award – Recipients
- **Cost Principles**
 - Subpart E, 200.4XX – Cost Principles
- **Audit Requirements**
 - Subpart F, 200.5XX – Audit

OMB and Procurement

- States – use same policies/procedures they use for procurements from non-federal funds (2 CFR 200.317)
- Other Non-federal entities Other than states – 2 CFR 200.318 -.326
 - Meet the requirements of 2 CFR 200.318
 - Oversight of contractors' performance
 - Maintaining written standards of conduct for employees
 - Documentation of procurements in the past
 - Full and Open Competition (2 CFR 200.319)
 - Use the thresholds under 2 CFR 200.320 (a) through (f)
 - Perform a cost or price analysis for every procurement action in excess of simplified acquisition threshold (\$150,000)
 - Each P.O. or other contract includes applicable provisions of 2 CFR section 200.326

Subpart D – Post Federal Award Requirements (continued)

Procurement Standards 2 CFR 200.318

- Documented procurement procedures which reflect applicable state and local regulations as long as they align with federal law
- Use the most restrictive at all times
- Avoid acquisition of unnecessary or duplicative items
- Encouraged to use state and local intergovernmental agreements or inter-entity agreements.
- Encouraged to use Federal excess and surplus property
- Written standards of conduct covering conflict of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

EMPLOYEES

Subpart D – Post Federal Award Requirements (continued)

Procurement Thresholds & Definitions (2 CFR 200.320 (a))

1. Micro Purchase

- Purchase of supplies or services
- Purchase is below \$3,500 (section 200.67) (set by Federal Acquisition Regulations 48 CFR SubPart 2.1)
- Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Subpart D – Post Federal Award Requirements (continued)

Procurement Thresholds & Definitions (2 CFR 200.320(b))

2. Small Purchases

- Simple and informal procurement methods for securing services, supplies, or other property
- Price or rate quotations must be obtained from an adequate number of qualified sources.
- Purchases between \$3,501 and \$149,999 (section 200.88)
- Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

Subpart D – Post Federal Award Requirements (continued)

Procurement Thresholds & Definitions (2 CFR 200.320 (c))

3. Sealed Bids

- Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- Above \$150,000

Subpart D – Post Federal Award Requirements (continued)

Procurement Thresholds & Definitions (2 CFR 200.320 (d))

4. Competitive Proposals \geq \$150,000

- Fixed price or cost-reimbursement type contract is awarded.
- Requests for proposals: identify all evaluation factors and their relative importance
- Request for Qualifications: competitors' qualifications are evaluated and the most qualified competitor is selected
- Method, where price is not used as a selection factor, can only be used of A/E professional services.

Professional Services

- Texas Government Code § 2254.003 – governmental entity cannot provide or award a contract for the services on the basis of competitive bids submitted for the contract or for the services
- Federal Funds and Uniform Guidance
 - 2254.004 Two Step process for Architectural or Engineering
 - Request for proposals, including fee is allowed for all other professional services
 - Must go through a competitive process

Subpart D – Post Federal Award Requirements (continued)

Procurement Thresholds & Definitions (2 CFR 200.320.e)

5. Sole Source

- The item is available only from a single source
 - Unique – how do you prove that you are “unique”?
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- After solicitation of a number of sources, competition is determined inadequate.

An affidavit or sole source letter is not sufficient documentation that the item or service is only available from a single source.

SOLE SOURCE JUSTIFICATION CRITERIA

- Know the criteria that carry weight in a Sole Source Justification -

Friendly Sales Staff

Nice Logo or Website

Personal Recommendations

Unique Expertise,
Background or Education

Need for identical
equipment already in use

Supplier named by
the funding source

Medical / Surgical Decision

One Manufacturer or
OEM Repair or Maintenance

Insignificant

Concrete and Solid

Sole Source Vendors

- Use varies
- “Emergency” is over used
- Subjective language
- Purpose and similar product can produce same result
- Copyright and Patent

Sole Source Vendors (continued)

- Documentation
- Affidavit from vendor is not sufficient
- The World Wide Web
- Competitors

Violations

1. Metro Pays Feds \$4.2 million to Over Alleged Procurement Violation
2. Former Superintendent admits fraud, faces 4 years in prison (May 2016)

“On July 6, 2006, [individual] signed an affidavit stating that her company was the sole-source provider of specialized data-driven materials for boosting student math scores in the state's standardized test. When a company is deemed as the sole provider for materials, it is able to bypass the competitive bid process normally required by school district.”

Example of Unjustified Sole Source Awards

- International Development Agency
 - 1st contract under \$50,000 (right at \$49,000)
 - Paid for usefulness of internet, yet report was plagiarized from internet
 - Billed the Agency for 3 months of work when it took the Agency about a day to download the documents
 - Proceeds were sent to the senior executive's account
 - Total \$4 million over three years

Subpart D – Post Federal Award Requirements (continued)

Contract cost and price (2 CFR 200.323)

- Required for every procurement action in excess of the Simplified Acquisition Threshold (\$150,000)
- Before receiving bids or proposals make independent estimates
- After bids/proposals are received the cost/price analysis is conducted.
- How is your organization defining procurement action?
- Are you taking into account the full obligation to your entity?

Independent Estimate (Before)

INDEPENDENT ESTIMATE DETERMINATION FORM

Purpose: Federal regulations require documentation of cost analysis or price analysis for every procurement action at or above \$150,000, and as part of the analysis, the regulations require (1) documentation of an independent estimate reached before receiving bids or proposals (see 2 C.F.R. § 200.323) from RFPs or inter local agencies or purchasing cooperatives (see 2 C.F.R. § 200.318 (e)). The **Independent Estimate Determination** is a form used to document HCDE's estimated range of fair and reasonable costs for the goods and/or services to be acquired and to document the analysis **PRIOR** to seeking bids, proposals or quotes. The form is kept as part of the procurement file along with other procurements documents.

Instructions:

1. Complete one (1) Independent Estimate Determination form prior either (1) to advertising for bids or proposals or (2) seeking proposals from interlocal agencies or purchasing cooperatives, complete all sections.
2. Provide a detailed discussion of your independent estimate and attach the required supporting information.
3. Sign in blue ink and date the form.
4. Maintain a copy in the procurement/contract file along with other procurement files, subject to retention schedules.

Independent Estimate (Before) (continued)

PART II INDEPENDENT ESTIMATE GUIDE

Below is a guide for the completion of the Independent Estimate Determination. Instructions: Please attach the documents requested under "items to include with independent estimate" to this Determination.

Estimate Type	Items to Include with Independent Estimate	Where to Find Supporting Information
Goods/Equipment	<ol style="list-style-type: none"> 1. Product needed 2. Estimated quantity 3. Unit price 4. Markups – overheads – profit 5. Desired delivery schedule 6. Warranty 	<ol style="list-style-type: none"> 1. Vendor survey/market survey 2. Current or past contracts for the same or similar product 3. Historical price and costs data
Services (other than professional services, as defined by Tex. Educ. Code § 44.031(f) and/or Tex. Gov't Code Ch. 2254)	<ol style="list-style-type: none"> 1. Tasks you want performed 2. Types of people needed (i.e. qualifications) 3. Number of Positions required 4. Estimated hours by position 5. Salary/billing rates applied 6. Prevailing wage rate category applied (if applicable) 7. Profit/applied fee 8. Direct expenses 9. Completion schedule 	<ol style="list-style-type: none"> 1. Current or past contracts for similar services 2. Other departments doing similar work 3. Historical price and cost data

Cost /Price Analysis

I. **This expenditure is being made under one or more of the following (check those that apply and attach supporting documentation):**

- A. Sole source (as defined under TEC 44.031(j))
- B. Emergency procurement (as defined under TEC 44.031(h))
- C. Inter-local agreement or purchasing cooperative (TEC 44.031(a)(4) / Ch. 791 of the Tex. Gov't Code)
- D. Request for Quotations for goods or services at or above \$150,000 (School district has procedure of procuring and securing quotes for items under \$50,000 and above \$2,500)
- E. Request for Proposals for goods or services at or above \$150,000 (School district has a policy of procuring goods and services valued at \$50,000 or above in accordance with TEC 44.031(a))
- F. Request for Quotations or Requests for Proposals (where the solicitation is publically posted) where only one (1) quote/proposal is received.
- G. Professional services (as defined under TEC 44.031(f) and/or Ch. 2254 of the Tex. Gov't Code).
- H. Price adjustment to Purchase Order No. _____ or Contract No. _____ and already procured under item A – G).
- I. Extension of an existing contract past its initial term. Contract extension is allowed under procurement method or contract. Extension must adhere to CH Local requirements for board approval and rationale is beneficial to school district

Cost /Price Analysis

II. Cost or price offered or fee negotiated is considered fair and reasonable for the following reason(s), and if applicable, is supported by attached documentation and/or a detailed discussion of the cost or price analysis *(select at least one applicable situation)*:

- Comparison of previous school district purchase order and contract prices with current proposed price, for the same or similar items. Both the validity of the comparison and the reasonableness of the previous price(s) have been established *Attach the referenced school district purchase orders/contracts, amounts, issuance dates, and how they are similar to the current purchase.*
- Comparison with Vendor's published price lists, market prices, pricing indexes, and discount or rebate arrangements. *Attach published price list or other published pricing information used (a vendor's quotation or correspondence does not qualify as a published price list).*
- Comparison of proposed price with independent cost estimates. *Attach estimates used.*
- Comparison of proposed price with prices obtained through market research for the same or similar items. *Attach documentation of research conducted.*
- Analysis of Offeror's cost information. *Attach cost information.*
- The order is priced in accordance with existing school district Purchase Order No. _____ and/or school district Contract No. _____, which was competitively established.

Procurement Grace Period

- Per COFAR FAQ (September 2015) .110-6

Yes, for two full fiscal years after the effective date of the Uniform Guidance. In general non-Federal entities must comply with the terms and conditions of their Federal award, which will specify whether the Uniform Guidance applies. However, in light of the new procurement standards, for procurement policies and procedures, for the non-Federal entity's first full fiscal year that begins on or after December 26, 2014, **the non-Federal entity must document whether it is in compliance with the old or new standard, and must meet the documented standard.** For example, the second full fiscal year for a non-Federal entity with a June 30th year end would be the year ending June 30, 2017. The Single Audit Compliance Supplement will instruct auditors to review procurement policies and procedures based on the documented standard. For future fiscal years, all non-Federal entities will be required to comply fully with the uniform guidance.

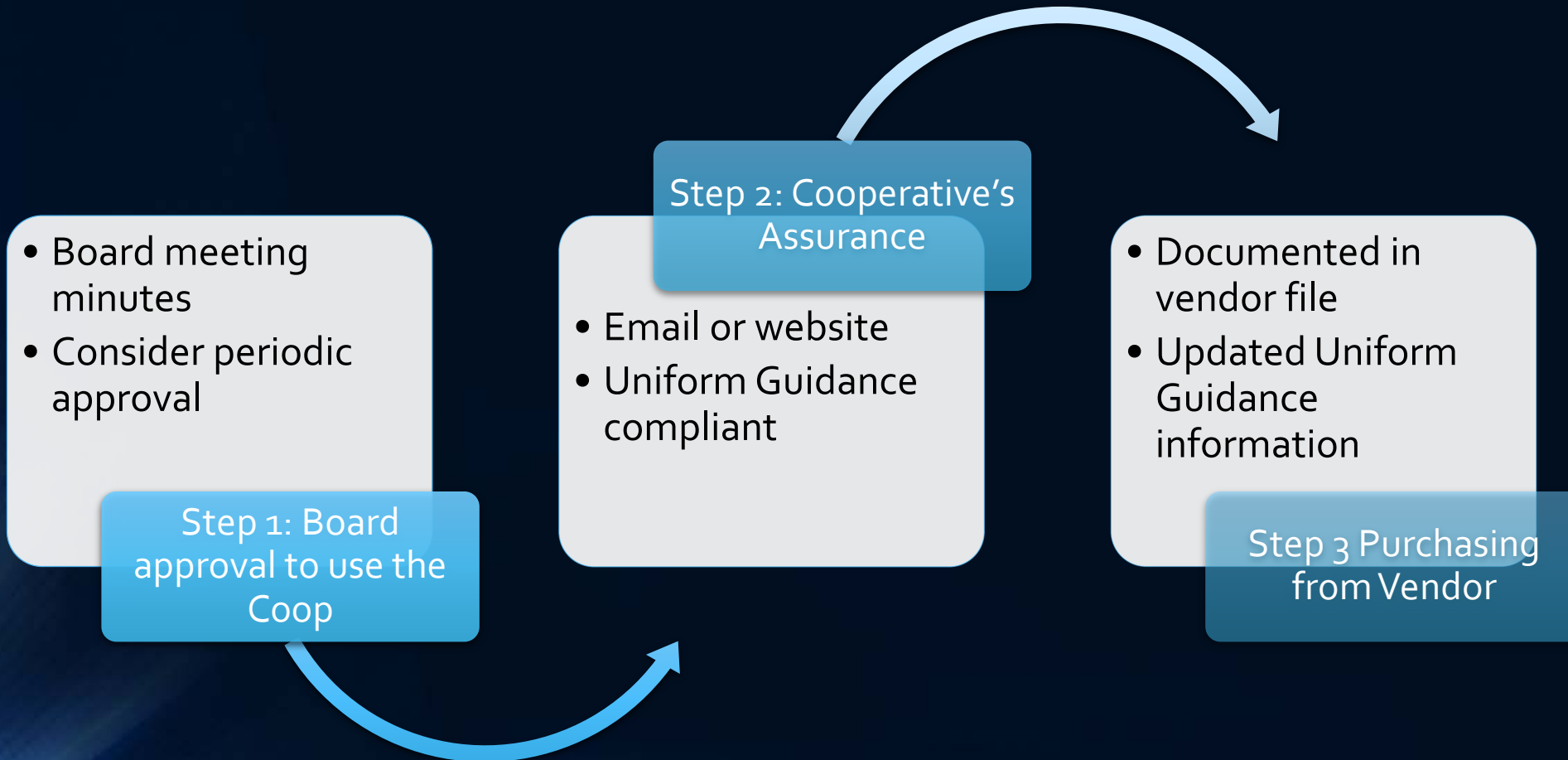
Procurement Grace Period Per TEA

- FAQ 9.7: Subgrantees may choose to implement the new EDGAR procurement rules in 2015–2016 or may take the two-year grace period and implement the new rules in the 2017–2018 school year. The subgrantee’s local procurement policy must specify if the subgrantee is implementing the old rules in the 2015–2016 and/or 2016-2017 school year(s) or implementing the new EDGAR procurement rules in the 2015–2016 and/or 2016-2017 school year(s). If the subgrantee takes the two-year grace period, its procurement policies and procedures must be updated to the new rules by July 1, 2017.

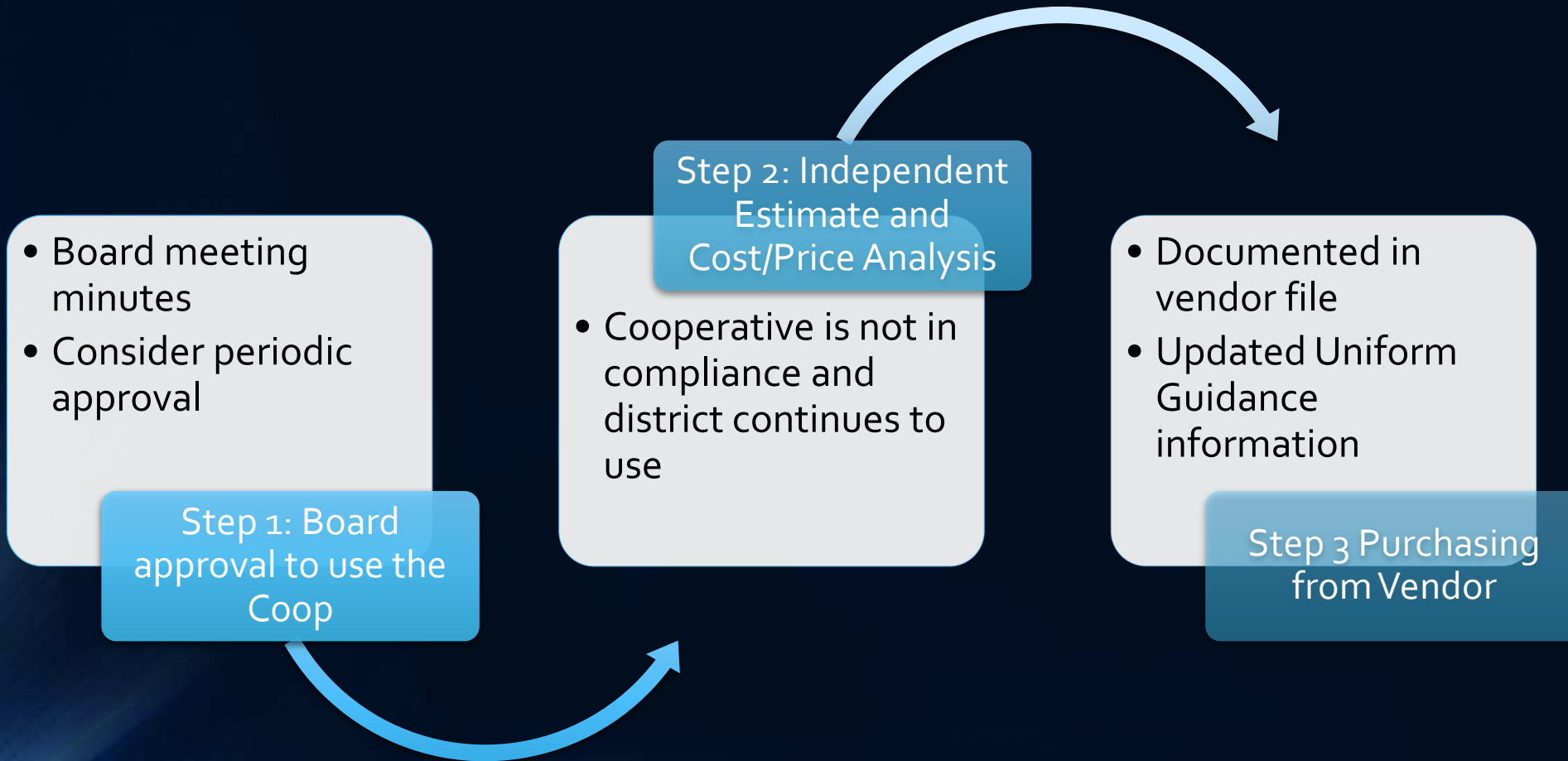
No Shame in the Grace Period

- Cooperatives may not be ready
- Gives you time to implement the most efficient way
- Get your ducks in row
- Sole Source – Over Used?

Procurement – Cooperative IS Compliant



Procurement – Cooperative is NOT Compliant



Federal Agency or Pass-through Entity (PTE) Review (2 CFR 200.324)

- Where there's smoke there's fire
 - Pre-procurement review, procurement documents, RFPs, bids or independent cost estimates are required when the federal agency or PTE thinks that:
 - Procurement procedures or operation fails to comply with procurement standards
 - Procurement is expected to exceed Simplified Acquisition Threshold (SAT) with no competition or only one offer received
 - Brand name is specified when amount is above SAT
 - Awarded to other than the apparent low bidder under sealed bid
 - Contract modification increases the contract amount by more than the SAT
 - Non-federal entity must self-certify its procurement system

Suspension and Debarment

- 200.213 - Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.
- \$1 dollar of federal funding

Note: This is not part of the Grace Period



Most Common Procurement Fraud Schemes and Their Primary Red Flags

- Bribes and Kickbacks
- Collusive Bidding by Contractors
- Change Order Abuse
- Co-Mingling of Contracts
- Conflict of Interest
- Excluding Qualified Bidders
- Split Purchases
- Unjustified Sole Source Awards

Contract Provisions (2 CFR 200.326)

Appendix II to Part 200 Contracts :

- must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- In excess of \$10,000 must address termination for cause and for convenience
- Must meet definition federal assisted construction contract. Equal Employment Opportunity
- Must be in compliance with the Davis Bacon Act
- In excess of \$100,000 that involve the employment of mechanics must comply with Contract Work Hours and Safety Standards
- In excess of \$150,000 must comply with Clean Air Act
- Meet suspension and debarment requirements
- In which contractor apply or bid for an award exceeding \$100,000 must file certification for compliance with Byrd Anti-Lobbying Amendment

House Bill 1295 – State Compliance

- Added Section 2252.908 to the Government Code
- Effective January 1, 2016
- A government cannot enter into contracts with a business entity unless the business submits a disclosure of interested parties.
- Has been amended since its passing 2015
- <https://www.ethics.state.tx.us/tec/1295-Info.htm>
- Chapter 46, Ethics Commission Rules updated (in effect as of June 22, 2016)

Disclosure of Interested Parties

- Contract of a governmental entity or state agency after 12/31/15 and meets either condition:
 - Contract requires an action or vote by the governing body of the entity or agency
 - Value of the contract is at least \$1 million
- Business Entity
- Controlling Interest
- Interest Party
- Intermediary

Disclosure of Interested Parties

- Doesn't replace conflict of interest disclosures under Chapter 176 of Local Government Code
- Form 1295 must be printed with unique certificate number generated by the Commission
- Must be signed by vendor and notarized
- Governmental entity/state agency must notify the Commission of receipt of the Form 1295 not later than the 30th day after the date the governmental entity or state agency receives the disclosure.

Contact Info



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