

BUYBOARD TECHNOLOGY AND SOFTWARE-RELATED PRODUCTS AND SERVICES ADVISORY FOR TEXAS MEMBERS

Why make purchases using BuyBoard? Purchasing through a cooperative or “interlocal contract” satisfies the Texas law requirement that local governments seek competitive procurement for the purchase of goods or services.¹ Therefore, you may purchase products and services from a vendor under Texas law through BuyBoard without having to conduct your own competitive procurement. If, however, you are procuring technology or software-related products and services, such as licensed software or software as a service (SaaS) products, you may need to address requirements and risks specific to your entity’s purchase that may not be addressed in the BuyBoard General Terms and Conditions. As explained in this Advisory, you should consult your procurement officer and/or legal advisor for specific advice.

What is BuyBoard’s Procurement Process? The BuyBoard uses a competitive procurement process to award contracts to vendors for goods and services that the BuyBoard determines, based on an evaluation of multiple criteria, represent the best value for its members.

How does BuyBoard award a contract to a vendor? As a condition of being awarded a BuyBoard contract, a vendor is bound by and must agree to comply with the terms of the BuyBoard’s proposal invitation (or specifications), the vendor’s proposal response, and any additional contract terms negotiated with the BuyBoard member. Among other things, the vendor must honor the pricing submitted in the vendor’s proposal. **THE PRICE YOU PAY FOR THE GOODS AND SERVICES COVERED BY THE BUYBOARD CONTRACT MAY BE LESS THAN THE AWARDED PRICING BUT CANNOT BE MORE.**

How does a BuyBoard member make purchases through the BuyBoard contract? You utilize the awarded BuyBoard contract by issuing a signed purchase order through the BuyBoard online application to procure the selected goods or services. Although BuyBoard must receive a copy of the signed purchase order, BuyBoard does not review or approve the purchase order or other supplemental agreement that you obtain – this is a matter between you and the vendor. If technology or software-related services are procured through the BuyBoard, additional ancillary contracts with the vendor may be required, including license and subscription agreements, depending on the nature and scope of the services. As stated above, you should consult your procurement officer and/or legal advisor for specific advice.

What should BuyBoard members consider when using BuyBoard for software-related purchases? While purchasing goods and services through BuyBoard satisfies your Texas legal requirement to competitively procure a good or service, as a general matter you must keep in mind legal and other requirements and needs your entity has that may relate to the purchase, especially when using BuyBoard for procurement of technology and software-related products and services.

When making technology and software-related purchases through a BuyBoard contract, BuyBoard members may wish to consider the following:

- **Configuration, Compatibility, and Integration.** Unless your entity is procuring an “out of the box” product, you may have detailed requirements that need to be addressed regarding how the technology and software-related products are configured, as well as compatibility and integration with existing systems and deadlines for implementation.

- **Data Storage, Access, Use, and Security.** With cloud-based and other hosted services, your entity may have particular concerns and requirements that need to be addressed in terms of where and how your data is stored, who has access to that data (including any third party access), and vendor use of data. Certain student information may require clarification concerning who will obtain necessary parental consent as required by law. Also, your entity may have detailed requirements regarding data ownership and procedures for data return, retention, or destruction upon termination that need to be addressed. Data security is also an important consideration, including virus protection and your entity's rights and vendor's obligations in the event of a breach or loss or destruction of data. In the event data includes information subject to specific privacy laws, such as student records subject to the Family Education Rights and Privacy Act (FERPA), additional terms may be required.
- **Accessibility.** You may need to consider any legal or other requirements your entity has in relation to the technology and software-related products and accessibility for individuals with disabilities.
- **Warranties.** You may need to consider the warranties offered by the vendor in relation to the technology and software-related products and whether such warranties meet your needs and requirements.
- **Insurance.** As with any procurement, your entity may have specific insurance coverage requirements that need to be addressed with the vendor. With technology and software-related products, this may include additional insurance coverages such as cyber-insurance.
- **Testing, Updates, Maintenance, Training and Support Services.** All software and hosted services will require updating, maintenance and support at some point. Also, you may have expectations regarding testing of products and training for staff after installation. Overall, your entity may wish to set terms for your service level expectations and requirements (including uptime and downtime) with the vendor.
- **Vendor License Agreements, Subscription Agreements, Terms of Use, and Related Terms.** As a condition of use of software-related products, vendors may seek to impose terms through ancillary agreements such as license agreements, subscription agreements, terms of use, privacy policies, and more. Prior to committing to any technology or software-related purchase with any vendor, you are well advised to ensure that you have received all such documents from the vendor and that you have thoroughly reviewed, consulted with your entity's legal counsel, and negotiated with the vendor in regards to any ancillary terms, including any potential conflict with your entity's legal or other requirements and/or the BuyBoard Terms and Conditions under the applicable BuyBoard contract.
- **Intellectual Property Rights.** As between your entity and the vendor, you may wish to address ownership and licensing of rights, title, and interest regarding technology and software-related products, as well as your entity's data. (The BuyBoard General Terms and Conditions do include a provision regarding intellectual property infringement, but your entity may wish to consider whether you have any additional needs or requirements for your specific purchase beyond those contained in the BuyBoard General Terms and Conditions.)
- **Escrow.** For software-related products and services, your entity might require escrow of source code and other items needed to provide for continued use of the software in the event of a vendor bankruptcy or other issues which might cause the functionality of the software to cease.
- **Products or services not covered by the BuyBoard contract.** The BuyBoard contract covers only the specific products and services awarded by the BuyBoard. If you want to purchase products or services from a BuyBoard vendor that are not covered by the vendor's BuyBoard contract, you must procure them separately in accordance with state law and local policy. If you have any questions regarding the scope of a particular vendor's BuyBoard contract award, please reach out to BuyBoard staff for assistance.

- **Procurement with Federal Funds.** Products purchased with federal funds may have additional requirements. Some general information on federal procurement standards is available in the BuyBoard Advisory: [Purchasing with Federal Funds](#).
- **Legal advice.** Because of the variety of laws and requirements that relate to technology and software-related purchasing and the potential risk of high exposure, you are well-advised to consult with your entity's legal counsel before procuring technology and software-related products and services under any procurement method, including a purchasing cooperative.

How do I know that my entity has made a purchase through the BuyBoard?

BuyBoard must have a copy of the purchase order in order for the purchase to be considered a BuyBoard procurement. To ensure that your entity has satisfied state law requirements for competitive procurement, make sure that the BuyBoard has your purchase order. Do not rely on the vendor to submit the purchase order on your behalf; it is your responsibility to make sure that the BuyBoard has the signed purchase order. You may log in to www.buyboard.com using your member I.D. and password to view the Purchase Order Status Report to confirm that the purchase order is in the BuyBoard system.

This Advisory is provided for educational purposes only to facilitate a general understanding of the law. This Advisory is neither an exhaustive treatment on the subject nor is it intended to substitute for the advice of an attorney.

For more information about BuyBoard, contact us at 800-695-2919.

ⁱ Tex. Gov't Code §791.025 and Tex. Local Gov't Code §271.102.