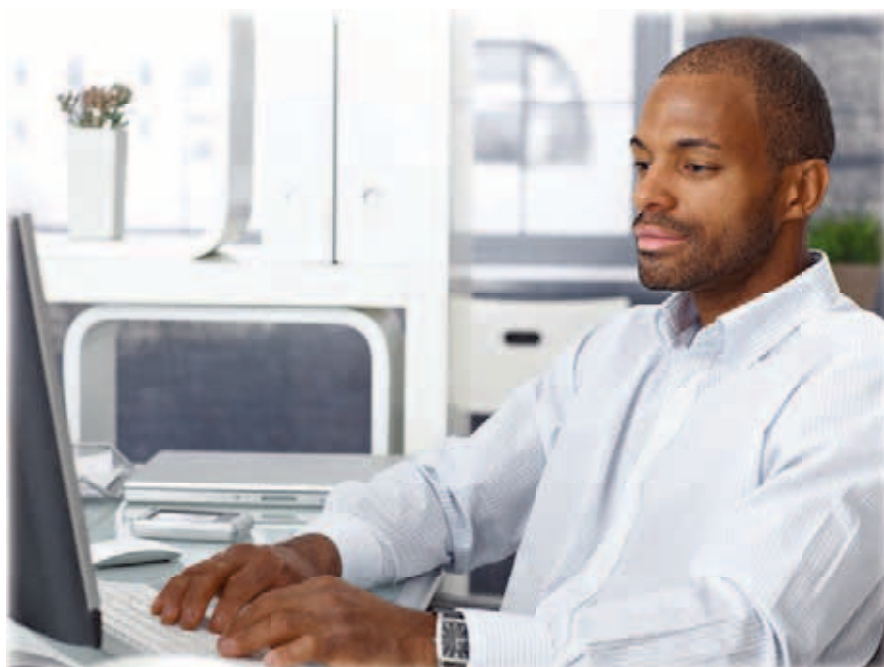


EDGAR's Strict Competition Rules: What You Need to Know

Key guidance regarding the new regulations for federal purchasing.

By Nicole Neal



The Rules Require Competition, Not “Competition”

EDGAR directs educators to expand their options, with a mandate to foster competition for federal funds. The *Code of Federal Regulations* (CFR § 200.319) states, “All procurement transactions must be conducted in a manner providing full and open competition” (OMB 2014, 2016). That means unbiased and thorough planning and review of solicitations, which are awarded only to bidders that offer the best price and quality. Getting just one or two vendor responses on a request for proposals (RFP) for hundreds of thousands of dollars can trigger new requirements or even mandate an audit.

This task seems daunting because so many local, state, and national options exist when it comes to K–12 providers, especially as technology brings us all closer together. Even though it can be time-consuming, K–12 purchasers must seek multiple qualified bidders for their solicitations, even if the incumbent has been a long-standing provider and partner.

Looking Beyond Local

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Every K–12 purchaser knows that it’s essential to cover all bases—especially when purchases trigger formal procurement processes. In December 2014, updates to the Education Department’s General Administrative Regulations (EDGAR) clarified and strengthened levels of regulation for all purchases using federal awards.

Though the changes are complicated enough to cause a few headaches, they are meant to increase competition for K–12 businesses, save districts money, and help schools get the most appropriate products and services.

Because “new EDGAR” rules already affect most purchases, school business officials should monitor their own implementation procedures through the entire life cycle of federal awards—including pre- and post-award procedures, cost principles, and even audit requirements. Many of the new rules reiterate previous statutes, but others significantly raise standards on oversight and accountability. Throughout the process, the rules make it clear that districts need to exercise due diligence to ensure that their purchases are sufficiently competitive.

Here are some key takeaways and pointers for navigating the rules.

the Every Student Succeeds Act go as far as to encourage schools to prioritize local, community-based solutions to their problems (Neal 2016). This trend toward local prioritization may also draw on state funding dollars. But as it relates to using federal award dollars, EDGAR rules specifically prohibit undue preference to local recipients.

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That doesn't apply only to purchases that are traditionally geographically ambivalent, such as assessment platforms and other software; those are the easy categories where K–12 purchasers tend to do a nationwide search. Now, even infrastructure and construction purchases may be required to be widened competitively, regardless of state, local, or tribal preferences (OMB 2016). Educators should leverage technology and professional networks to publicize their opportunities more broadly.

Letting Vendors Write Their Own RFPs

Under EDGAR, the all-too-common practice of vendors assisting schools with drafting RFPs is forbidden. The rules explicitly state that “contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals” are barred from competing for those solicitations. To be clear, you can hire vendors to write your RFPs; however, the vendor that helps you write the RFP is prohibited from responding to that same solicitation.

For many educators and vendors, this has been an unspoken facet of K–12 purchasing, especially among large contracts for “cutting-edge” products and services. I've heard stories of earnest salespeople amending—or in some cases actually drafting—a district's solicitation before it goes out, meaning that the company is heavily favored when it comes time to award the contract. They word the solicitation in such a way that they're the most qualified to meet the district's needs.

Although it has been said that this practice is necessary for new products and services to reach the market, it actually does a disservice to other vendors, often the smaller ones with less robust market penetration. It also means that educators are responding to vendors, rather than the other way around.

The new rules suggest an immediate need for correction in the market. While rethinking the scope of their sales processes, some vendors will even amend their sales materials to make sure that their documents

and correspondence cannot be misconstrued as overly prescriptive.

Dollar Amounts That Trigger Procurement Procedures Are Changing

K–12 purchasers have long adapted their buying procedures to the amount of the individual purchase. When administrators have access to sizable chunks of money for discretionary purchases—say, under \$5,000—if those purchases use federal funds, EDGAR has new rules to govern how those funds are spent.

First, EDGAR applies a \$3,000 threshold for “micro-purchases.” Under that amount, districts have discretion to award vendors without competitive solicitation, so long as they distribute equitably among qualified suppliers. The new rules, however, call for streamlined, “relatively simple” procurement methods for “small purchases” between \$3,000 and \$150,000, the simplified acquisition threshold. That means quotes must be obtained from a sufficient number of qualified sources to be valid. For amounts above \$150,000, educators should expect to initiate traditional sealed competitive bidding (OMB 2016). Keep in mind that some of these numbers are periodically adjusted for inflation, and it's always better to be safe than sorry.

Be Prepared for More Oversight

Purchasers have always known that their work is susceptible to audit and freedom of information requests, and new EDGAR rules almost guarantee that oversight will increase, both pre-award and post-award.

Review procedures dictate that K–12 purchasers make technical specifications on proposed requirements available, upon request. Enhanced oversight may be triggered when a purchase exceeds an acquisition threshold and (a) has only one bidder, (b) specifies a “brand name” product, (c) is awarded to a company other than the apparent low bidder, or (d) includes a contract modification that changes the project's scope.

EDGAR rules also include expressed reporting requirements for programs with performance expectations, like curriculum and attendance tools. Educators should select vendors whose products and services can accommodate regular performance reporting. EDGAR details the contents of those reports and makes annual reporting within 90 calendar days of termination of the award at a minimum.

Whom You Buy from Matters

EDGAR encourages educators to give preference and due attention to companies with special designations, including energy-efficient and environmentally conscious products and services, small businesses, minority-owned firms, and women's business enterprises. In the contract process, educators are even required to consider whether firms that subcontract will also give preference to such businesses.

This commitment to traditionally disadvantaged companies shouldn't be taken lightly. EDGAR language requires educators to publicize within timeframes to specifically encourage and facilitate participation by such companies. The educator also has a responsibility to promote contracting with consortia of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one firm to handle alone.

RFIs: Your New Best Friend

Most educators who are committed to following EDGAR to the letter of the law would agree that they need to at least shift their practices. One of the easiest and most obvious ways to do so would be to increase requests for information (RFIs). Digital Promise's landmark study "Improving Ed-Tech Purchasing" also made this recommendation in 2014, maintaining that increasing RFIs is a way to simplify "the discovery process to help all educators and school administrators find products that meet their needs" (DP and EIA 2014, p. 13).

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RFIs help fulfill a number of EDGAR's mandates. RFIs not only give more diverse vendors the chance to compete for a potential award, but also put power into the hands of the educators. Schools are encouraged to think more about their needs than about a specific product or service they may want to acquire. By publicizing an RFI, schools and districts may connect with unexpected vendors that will have the incentive to offer competitive pricing—knowing that others are up for the same award.

And practically speaking, a targeted RFI or other request for quotation can help fulfill EDGAR's expressed contract cost and price analysis requirements, which suggest market/comparison prices and documented analysis for most procurement actions. Educators are expected to review and evaluate cost elements to determine allowability, using their own cost principles and compliance with federal cost principles.

In the end, vendors also may see the benefits of responding to more RFIs, having to rely less on direct marketing like email campaigns and sales calls. At best, that time could be better spent on product development, innovation, and customer satisfaction. At worst, aggressive marketing practices could be misconstrued as improper request writing. Although it is highly unlikely that any company's sales efforts will decrease, most would agree that it's best when the educator initiates the contact.

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The shift to more RFIs could even have a trickle-down effect, with implications beyond EDGAR-regulated federal purchases. Educators with traditionally nonprocurement positions, like principals, librarians, and tech leaders, can be empowered do more vendor research and evaluation, helping to outline their needs to their K–12 purchasing liaisons. This aspect can help procurement officers explore options and requirements for an eventual purchase. And it is a good-faith paper trail to show the district's thinking and motivation behind a purchase.

As your district explores how the new EDGAR requirements will affect your purchasing, consider increasing informal requests for quotation and RFIs as part of your plan to increase competition and ensure compliance.

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