



NASPO staff contact: Lee Ann Pope, NASPO/WSCA Program Manager
lpope@AMRms.com or 859-514-9159

Strength in Numbers: An Introduction to Cooperative Procurements

Introduction

The primary role of public procurement is to obtain quality goods and services to support effective and efficient government ensuring the prudent use of public funds. Public procurement professionals add value to every government program by:

- Providing efficient delivery of products and services;
- Obtaining best value through competition;
- Offering fair and equitable competitive contracting opportunities for suppliers; and
- Maintaining public confidence through ethical and transparent procurement practices.

As contracting workloads increase, purchase requirements become more complex and budgets and resources decline, government procurement officials strain to continue to meet these objectives and seek new and innovative tools to deliver effective and efficient support. More and more, government procurement professionals are turning to various forms of *cooperative contracts* to ease the strain.

Cooperative contracts are becoming increasingly popular at the federal, state, and local levels. A cursory review of the state contracting environment reveals dozens of cooperative contracts covering a wide array of goods and services available at the state and local level. Cooperative purchasing is popular because it can save significant time and money in contract production as well as lower contract prices through the power of aggregation.

As with any other practice, however, cooperative purchasing can be done well - or poorly - and is not without its challenges. It is vital for procurement and public officials to understand best practices and make informed decisions about cooperative purchasing, as they would any other procurement decision.

This issue brief is designed to provide public procurement officials, elected officials, government executives, government suppliers and citizens with an introduction to cooperative purchasing—particularly its definition, purpose, authority, value, and best practices. What are

the different types of cooperative purchasing? What makes for a “good” program? What are some challenges—legal, political, and administrative—to making it work?

As the chief organization representing state procurement since 1947, the National Association of States Procurement Officials (NASPO) is committed to presenting impartial, educational information on procurement issues. We hope this review will help states and their stakeholders use this procurement tool effectively.

DEFINITIONS AND TYPOLOGY

Definitions and Descriptions

In simple terms, cooperative purchasing involves sharing procurement contracts between governments. The Government Contract Reference Book¹ defines cooperative purchasing as two or more governments purchasing under the same contract. The ABA Model Procurement Code for State and Local Governments definition is more expansive²; “Cooperative Purchasing means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in this Code.” Under this definition, one could construe state central procurement programs, many of which date back nearly 100 years, as the first form of cooperative purchasing. In addition to the common conception of two or more governments sharing procurement contracts, cooperative purchasing may also include shared procurement programs and resources, including advice and assistance.

Although this paper will focus primarily on the cooperative use of procurement contracts, governments may benefit from other less common forms of cooperative procurement, such as sharing procurement officers and specification writers, delivering joint training programs, providing advice or assistance on technical evaluation committees, or providing independent administrative hearings for procurement disputes.

Typical Basic Steps in Creating a Cooperative Procurement

- i. The cooperative is formed when one or more parties identify a common requirement suitable for cooperative purchase and sign a written agreement to cooperate.
- ii. Lead party solicits proposals and awards contract(s).
- iii. Contract is available for use.
- iv. Participating entities sign an agreement (NASPO/WSCA calls it a “participating addendum”) in the specific contract(s). This is necessary to get user’s statutory requirements included as well as for lead entity to administer efficiently.

Public sector purchasing cooperatives may be comprised of similar or varied governments with common requirements:

- State procurement cooperative serving multiple local governments;
- Consortium of governments sharing similar requirements;
- State and local government participating in Federal contracts through the E-Government Act or 1122 Program;
- Similar specific government programs (law enforcement or hospitals); and
- Governments located within defined geographic areas.

¹ Ralph C. Nash Jr., Steven L. Schooner, Karen R. O’Brien. Published 1998 by George Washington University

² American Bar Association, 2000, pg. 79

- Higher Education groups have also formed cooperatives such as the Midwest Higher Education Compact ([MHEC](#)), Western Interstate Commission for Higher Education ([WICHE](#)), New England Board of Higher Education ([NEBHE](#)) and the Southern Regional Education Board ([SREB](#)). There is also a New England group and a southern group.

Cooperative procurement contracts are usually based on the common requirements of multiple governments. Most early cooperative purchasing efforts involved bulk commodities with standard specifications, such as cleaning supplies, gasoline and fuel, or services such as the pick-up and disposal of hazardous waste or used oil. Today, more complicated requirements, including information technology services, software and consulting are often targeted for cooperative purchasing contracts.³ Other examples of cooperative contracts include office supplies and furniture, digital copiers and printers, carpeting, computer hardware, industrial lab supplies, infant formula, pharmaceuticals, electronic defibrillators, hazardous incident response equipment, wireless radios and cell phones, paper, and fleet vehicles.

Types of Cooperative Purchasing⁴

True Cooperatives

Two or more organizations combine their requirements and solicit bids or offers for goods or services.

Piggyback Options

One or more organizations represent their requirements and include an option for other organizations to “ride” or “bridge” the contract as awarded.

Third Party Aggregators

An organization brings together multiple organizations to represent their requirements and manage the resulting contract or contractor.

Cooperative Purchasing Models

Common approaches to cooperative purchasing contracts include:

1. *Definite Quantity and Delivery* - There is a direct economic relation between risk and price; lower risk means lower price. Definite quantity solicitations and contracts identify all cooperative members and respective requirements. Definite delivery contracts also specify the delivery locations and schedule.

Advantages - Generally produces the lowest possible price because of the guaranteed demand.

Disadvantages - Governments are often unable to predict and commit to specific requirements and delivery schedule or agree on common contract requirements. Fulfilling commitments to contractors may also be a challenge.

2. *Indefinite Quantity and Delivery* - Governments may achieve economies of scale and reduce administrative costs by participating in an indefinite quantity/indefinite delivery cooperative purchasing contract. The participating members are identified and requirements are estimated

³ The Western States Contracting Alliance (WSCA), for example, has recently released a cooperative procurement for strategic sourcing consulting, with the state of Washington being the lead entity.

⁴ National Institute of Government Purchasing (NIGP) webinar “Incorporating Cooperative Purchasing into Your Agency” conducted by Cathy Muse, CPPO, Director, Department of Purchasing and Supply Management, County of Fairfax, Virginia

in the solicitation with no specific purchase commitment. Pricing is often a factor of the confidence of bidders in the estimates.

Advantages - Development of the solicitation may be easier because governments do not need to obtain definite quantity commitments from participating members. Although not as favorable as definite quantity contracts, pricing is still based on the economies of scale of multiple cooperative members. These contracts may also be more flexible for members, allowing for variations in requirements or negotiation of differing terms and conditions.

Disadvantages - Uncertainty usually results in higher prices. If bidders are not confident in the estimated requirements or government participation or if the contract permits wide variation, bidders will not offer their best prices.

3. Piggyback Contracts - Contracts issued by individual governmental entities that allow other jurisdictions to use the contract (i.e., to “piggyback” on the contract terms and prices) they established. The contracting jurisdiction must include piggyback language in the contract and the vendor must agree. Piggyback contracts represent the most immediate cooperative purchasing resource, especially for smaller communities. However, they can be a benefit for larger communities by saving administrative costs and by creating pressure for lower prices. Some entities do not have statutory authority to piggyback.

Advantages - Relatively easy to administer; makes a wide variety of contracts available to a wider variety of jurisdictions; reduces administrative costs; and can result in cost savings, especially for smaller governmental entities.

Disadvantages - Since participation and usage cannot be predicted for the solicitation, cost savings may be minimal. When an entity joins after the fact, contract users don't get the benefits and leverage of the full volume. Contractors may offer minimal discounts and benefit from windfall profits when participation and usage exceed estimates. Local vendors may view piggyback contracts as unfair, when they did not have an opportunity to compete for a piggyback contract that was competed in another community.

The GSA Schedules

The US Government's General Services Administration (GSA) maintains a large list of multiple award purchasing schedules. Contractors are selected for GSA Multiple Award Schedules through an open and continuous qualification process instead of competitive bids or proposals. GSA users seek competition from multiple GSA contractors at the point of sale by obtaining quotations. GSA requires most favored customer pricing, which provides state and local governments with a price advantage based on federal purchasing economies of scale. There is a surcharge associated with GSA purchases. It is called the Industry Funding Fee (IFF).

Section 211 of the E-Government Act of 2002 opened GSA Schedule 70 Contracts (Information Technology and Telecommunications Hardware, Software and Professional Services) for state and local government use (www.gsa.gov). Likewise, the 1122 Program permits use of GSA contracts for state and local government law enforcement and security purchases. Neither acceptance nor use is automatic, and separate contracting arrangements between the state and the vendor are often required. GSA contracts are based on price ceilings and contractors will often offer further discounts for larger aggregated buys. Not all states permit the use of

Schedule 70; however, many states use the GSA pricing as benchmarks in their own negotiations with vendors. Some states cannot use GSA contracts and some choose not to even though they may have statutory authority to do so.

What is the financing model for cooperative procurements?

Developing and administering a cooperative procurement usually involves an added increment of time, staff and other resources for the lead state or entity. The lead entity may charge the vendor or vendors some type of administrative fee collected on all sales made from the contract to cover these extraordinary expenses. This will be negotiated in the final contract. Similarly, participating states may also require a fee from vendors on sales in their state, negotiated in the participating addenda that states create to the master contract. Such fees vary widely, from 1/20 of one percent to three or more percent. Note that higher fees can negatively impact the final pricing, reducing the benefit of the cooperative purchase.

Authority

Not all states or jurisdictions allow participation in cooperative purchasing, either as a user or as a lead. Other states restrict or regulate the scope of cooperatives.

NASPO's 2009 Survey of the States indicates that:

- 40 states have the authority to do cooperative purchasing with local governments within the state.
- 44 states have the authority to do cooperative purchasing with other states
- 37 states have the authority to do cooperative purchasing with the federal government
- 6 states have the authority to do cooperative purchasing with other countries
- 14 states have the authority to do cooperative purchasing with not for profit associations
- 1 state does not have the authority
- 44 states currently participate in multi-state contracts.

Parts B and C of Article 10 of the 2000 ABA Model Procurement Code state:⁵

Part B - Cooperative Purchasing

§10-201 Cooperative Purchasing Authorized

- (1) Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units.
- (2) All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 3 (Source Selection and Contract Formation) of this Code.

§ 10-202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit

⁵ The 2000 ABA Model Procurement Code for State and Local Governments, American Bar Association

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article 3 (Source Selections and Contract Formations) and Article 8 (Supply Management) of this Code.

§ 10-203 Cooperative Use of Supplies or Services.

Any Public Procurement Unit may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 8 (Supply Management) of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

Commentary:

Jurisdictions are increasingly joining together through cooperative purchasing arrangements to acquire common goods from single vendors. One practical effect of the success of such arrangements is that the number of public entities seeking to participate in a particular Cooperative Purchasing arrangement increases after the vendor is awarded a contract by the awarding Public Procurement Unit. The vendor may calculate its price on the basis of a specific or reasonable "guess" of the number of transactions and the volume of goods to be sold. To ensure fairness to vendors and to protect the viability of cooperative purchasing arrangements, awarding jurisdictions should give vendors the option to accept or reject purchase orders from purchasing entities not identified during the competition. Conversely, to maximize economies of scale, jurisdictions are encouraged to identify as many participants in a particular cooperative purchase on the outset.

Part C - Contract Controversies

§ 10-301 Contract Controversies.

- (1) Under a Cooperative Purchasing agreement, controversies arising between an administering Public Procurement Unit and its bidders, offerors, or contractors shall be resolved between the ordering Public Procurement Unit and the supplying bidders, offerors, or contractors in accordance with [Article 9 (Legal and Contractual Remedies)] [the [administering] [ordering] Public Procurement Unit's existing procedures].

Statute language allowing participation in cooperatives varies from state to state. Some states do not allow participation in any cooperatives. Following is a list of the statutes that individual states use for cooperative purchasing:

http://www.peppm.org/services/Cooperative_Purchasing_State_Statutes_v03.pdf

Value

How state and local governments save time and money using cooperative contracts

- Cooperative purchasing contracts produce lower prices. By standardizing products and services and aggregating requirements, governments benefit from the combined economies of scale of multiple organizations. Cooperative contracts are especially advantageous for small governments because they benefit from the market share leveraged by larger government consumers.
- Cooperative purchasing contracts provide higher quality products and services. By using specialized specification writers, procurement professionals and technical evaluation committee members, governments are able to produce better contracts for higher

quality products and services. Again, smaller governments benefit from the combined resources of other larger government agencies.

- The ability to use/share procurement professionals from another entity allows for reallocation of internal resources.
- With one procurement process and one contract serving multiple governments, cooperative contracts reduce administrative costs because the preliminary work has been done. Administrative efforts and costs are spread across multiple governments.
- Cooperative procurement contracts are convenient. Instead of seeking quotes, bids or proposals, customers simply select products and services from the cooperative contract catalog, saving considerable time and effort.
- When contracted by a lead state or local government, cooperative procurement contract customers can be assured that the contract has been done in accordance with state's regulations.
- Cooperative procurement contracts allow governments to better utilize procurement resources for other contracts and tasks.
- Cooperative procurement can help realize supplier diversity initiatives.
- Ultimately, citizens benefit from cooperative procurement through lower total cost of government, better application of resources and more efficient government operations.

Challenges encountered in using or establishing a cooperative contract

Although there are many examples of successful government cooperative purchasing programs, there are several pitfalls and challenges.

- **Legal Compliance** - All governments operate under some form of procurement code intended to achieve best value for citizens, protect against fraud and abuse, ensure fairness, equity and transparency and maintain public trust. Although most procurement laws are similar, there are often subtle and sometimes large differences in government procurement codes. Some governments require strict compliance with its own procurement laws when using cooperative contracts awarded by other governments. Communication and active participation in the procurement process by cooperative members will help the cooperative achieve universal compliance.
- **Buy Local Laws** - Many jurisdictions have laws that favor or give preference to local suppliers. These laws may interfere with the ability of a government to develop and award a cooperative contract or may prevent governments from using a cooperative contract. NASPO has published numerous resolutions opposing local preference laws on the basis that they interfere with free trade and open competition and increase the cost of government.
- **Open Competition** - Many government procurement programs maintain lists of suppliers who register to compete for contracting opportunities and are required to post public advertisements for invitations for bids or proposals. Notifying local suppliers of the cooperative contract solicitation and advertising the solicitation in local publications will ensure that local vendors have an opportunity to compete for the cooperative contract.
- **Small Business Participation** - Some small businesses may be able to handle business for one state or local government but may not be able to handle the combined requirements of multiple governments. Encouraging local delivery and service networks and utilization of small business subcontractors will provide opportunities for small businesses to continue to serve the cooperative members.

- **“Cherry Picking”** - With multiple cooperative contracts for similar products and services, governments have the ability to avoid conducting the competitive process themselves and/or choose the cooperative with its preferred suppliers or brand names. The intent, if not the letter of most procurement laws, is fair and open competition. Also, customers may compare different contracts for the same line item and choose the cheapest from each respective contractor. This can pose a challenge to contractors when customers buy only the ‘bargain’ items in large quantities.
- **Battle of the Forms/Terms** - Although most are similar, governments use unique procurement contract terms and conditions. A cooperative contract awarded by one jurisdiction may not conform to the terms and conditions of another. There are several methods to address contractual differences, including development of standard terms and conditions for cooperative members, inclusion of all government contract variations in the solicitation and negotiation of participation agreements between the government and supplier. Differences in state requirements can be addressed in the participating addendum; as long as you are up front in the solicitation that participants may have their own terms and conditions addressed in it.
- **Pricing** - Although most cooperative contracts generate considerable cost savings for governments, not all cooperative contracts achieve best value.
 - Contractors may offer a higher price because many of the cooperative members are small or located in remote areas.
 - If estimates are inaccurate, price may be based on much lower than actual usage. Pricing is much more likely to be unfavorable in piggyback contracts because usage is difficult to estimate beforehand.
 - Contractor may price the contract high because of high administrative costs associated with the cooperative, including collection of cooperative fees.
- **Time and Resources** - It takes more effort to award a contract that serves multiple governments than it does for a contract that serves one government. In theory, cooperative contract time and resource investments are more than recovered by using cooperative contracts awarded by other jurisdictions. Time and resource requirements can also be reduced by using “volunteers” from other governments to assist with the procurement, draft specifications or participate in the evaluation process. Communication is the key to success. Thoughtful communication leads to vision; further communication turns vision into action. It is this action or contract that leads to savings in time, resources and expense. Good communication assures the contract will be beneficial to all parties.
- **“Piggybacking”** - “Piggybacking” does not always produce best value:
 - In some cases, entities may “piggyback” off of an existing cooperative but do not notify the lead state or complete a participating addendum resulting in undocumented activity and volume.
 - The cooperative procurement intent is not always clear in the solicitation. A solicitation clause that states, “other agencies may use this contract” does not clearly state cooperative intent and is not sufficient for a regional or national cooperative.
 - Contractors may market “piggyback” contracts as regional or national cooperative contracts to state and local governments.
 - Since “piggyback” contracts are not based on aggregated volume, governments do not benefit from true economies of scale.
 - Some governments may use “piggyback” contracts merely for convenience or to avoid competitive bidding laws.
 - Entity may not have statutory authority to piggyback.

- **Fees** - Many cooperative purchasing programs assess usage and access fees for cooperative contracts. Fees range from one time or annual enrollment fees to transaction fees ranging from less than 1% to 2% of the value of every purchase. These fees may be collected directly by the cooperative or through the contractor. Higher fees result in lower contract price savings.

Best Practices

Using best practices and government sanctioned business processes are important. It is what sets a good cooperative procurement apart from the others. It is the adherence to these policies and guidelines that makes these state-led contracts easy to use. These best practices are suggested to help avoid the pitfalls common with cooperative purchasing contracts. This is not an exhaustive list of procurement best practices.

Before Issuing Solicitation

- Designate a lead government to conduct the procurement, with qualified procurement and technical staff and commitment to perform the cooperative procurement.
- Require that cooperative members sign an agreement that includes the policies and procedures under which the cooperative will work.
- Invite cooperative members, including technical specialists to participate in the development of specifications and contract terms and conditions.
- Provide for delivery, service, maintenance and other value-added services provided by designated local suppliers.
- Utilize the competitive negotiation (RFP) process and best value or life cycle cost analysis tools (as state law allows).
- Survey cooperative members and research history on buying patterns and estimated requirements.
- Circulate draft solicitations among cooperative members and prospective contractors for comments and suggestions.

Issuing the Solicitation

- Use bid lists from all prospective cooperative purchasing members when requesting offers.
- Advertise the procurement in all participating states in accordance with their prevailing laws.
- Designate one point of contact, preferably via e-mail for vendor inquiries.

Evaluating and Negotiating Offers

- Invite participating cooperative members to participate in technical evaluations.
- Negotiate terms and conditions that conform to legal requirements of each participating state or permit negotiation of more specific terms and conditions by each participating community.
- Carefully evaluate the proposed contractor's ability to service all cooperative members.
- Contracts are based on free and open competition, not single source. However, sometimes a single award is the option.

Contract Award and Administration

- Notify all participating members of contract award and provide electronic copies of the entire contract.

- Provide written guidelines for contract administration.
- Permit each state to administer contractor's performance and handle routine administration. Disputes relating to the purchase order should be handled by the cooperative members. Disputes relating to the contract should be handled by the lead governmental entity.
- Establish a contractor performance reporting system for participating members.
- Require that contractor provide periodic contract sales reports.
- Invite participating members to comment on proposed contract extensions.
- Negotiate deeper discounts if actual purchases exceed estimates.
- Provide plenty of time for replacement contracts.

Using Cooperative Contracts

- Review the cooperative contract for conformance with state or local procurement laws and best practices.
- Analyze the product or service specifications, price, terms and conditions and other factors to ensure that the cooperative contract produces best value.
- Contact the cooperative lead government to verify contract application and eligibility.
- Compare contracts if there are multiple contracts available for the required product or service.
- When buying large quantities, verify whether the contract permits negotiation of additional price concessions.
- If a purchase agreement is required, confer with legal counsel to determine whether the agreement is acceptable.

Conclusion

Cooperative purchasing is a very effective tool that procurement managers can use to obtain effective, best-value solutions for the state and the taxpayer. Aggregated volume creates significant price breaks, sometimes in the double-digit figures. Partnering with a lead entity can reduce time, administrative overhead, and other costs, while leveraging the experience and expertise of those with specialized knowledge in a sector.

Cooperative purchasing is not without its challenges, however. They include the need for a careful legal framework outlining the terms of the cooperation, and attention to compliance issues. Local legal and political barriers may need to be overcome, including concerns from small and minority/disadvantaged businesses and in-state vendors or resellers. Key procurement values such as competitive bidding should be maintained. Administrative fees and rebates to lead or participating states and/or to the cooperative itself, need to be reasonable.

Knowing and paying attention to the best practices and challenges will result in a contract that is beneficial for all participants through cost savings and a reduction in time to procure items by aggregating knowledge, spend and technology. Not only are savings achieved by combining requirements into cooperative contracts, but further cost savings are realized through a reduction in administrative expenses. Cooperative contracts also serve as a forum for the exchange and sharing of resources and technical information.

With state and local government budgets being stretched to the limit, it is essential that government leaders look for innovative ways to utilize taxpayer dollars efficiently and effectively, and to do more with less. Cooperative purchasing is a very logical and practical way to do this. By establishing solid cooperative purchasing processes and procedures,

maintaining clear channels of communication , and working together closely, state and local governments can create a “win-win” situation for taxpayers and suppliers.