

## **EXECUTIVE SUMMARY**

The National Association of State Procurement Officials is pleased to provide government officials, academicians and the business community with the 2009 edition of the *NASPO Survey of State Government Purchasing Practices*. The information contained within this CD-ROM is an invaluable tool provided to assist our partners and constituents in better understanding the nature of the buying behavior of state purchasing organizations. State budget crises, the recent economic downturn, and the federal stimulus have continued to elevate procurement's role in state government enterprise decisions. Where state procurement officials were often relegated to a tactical role of buying what the customer wanted, state procurement is now involved in and often leads the strategic procurement planning process for major initiatives such as strategic sourcing, cross-organization projects and major IT purchases.

States are increasingly looking to eProcurement strategies, new commodities, expanded markets and innovative purchasing practices to meet their needs. This edition of the *NASPO Survey of State Government Purchasing Practices* examines the current landscape of these procurement practices among the states and offers insight on the various initiatives the respondents have implemented or plan to implement in the near future.

In total, forty-five states responded to the survey. Results from the survey indicate that while procurement practices may vary, the main objectives of the state purchasing offices remain the same: 1) ensure best pricing, 2) provide for open and fair competition, and 3) promote ethical, efficient, and effective public procurement.

### **Section 1: Procurement Authority**

All states have procurement laws, supporting rules and policies. This combination of directives is generally referred to as the procurement regulatory environment. The degree to which the regulatory environment is codified in law (statute, regulation or code) varies among the states. Some states embody all procurement requirements in law. Other states' procurement codes are fairly basic and place most of the regulation and direction of the process in the administrative code. There is a significant difference in these approaches. Laws, although they can be changed and amended over time, take acts of the state legislature to alter. Generally, state legislatures only meet for a period of time each year, and in some cases only every two years. This makes it difficult to modify the procurement regulatory environment when market conditions or other matters make it necessary to do so. On the other hand, if regulations are contained in administrative code, action by state legislatures is not necessary. Rather, most administration regulations can be modified via a public meeting or period of public inspection and comment on the recommended change. This process can often be completed in 30-60 days.

Changes can be made much more rapidly at the policy level. Normally, after a period of internal discussion and review, the Chief Procurement Official or the State Procurement Agent can simply implement the new policy modifying or superseding the previous one. Due to the

increasing need for flexibility within the procurement environment, the trend in government over the past several years has been to move much of the regulatory environment into a more flexible format; such as moving former statutory requirements to the administrative regulation or to the policy level.

Of the respondents, nine states have wholly centralized procurement authority, four have decentralized procurement authority, and the remaining thirty-one states have some mixture of the two. All of the responding states establish centralized contracts for commodities. Most states also establish centralized contracts for professional, technology and consulting services, although only about half of states establish contracts for human or travel services. All but four respondents indicated that central procurement establishes all or some major IT purchases. Roughly two-thirds of states contract for building construction and building leases outside of central procurement. Only four respondent states have centralized contracts for highway construction.

For most services and commodities, customer agencies are required to use central procurement contracts. Sixty percent of respondent states indicated that there has been a greater move to mandatory use of central procurement contracts in the past two years.

## **Section 2: Delegation of Procurement Authority**

All but one respondent state allow for the delegation of procurement functions. Dollar levels for delegated authority in commodity and service categories range from \$500.00 to an unlimited amount. Twenty-six states indicated that delegated purchasing authority has increased over the past two years.

## **Section 3: Central Procurement Official**

All but three respondents indicated that their state has a Chief Procurement Officer (“CPO”). Of those CPOs, all but seven prescribe procurement rules and regulations. Twenty-six states’ CPO reports to a Cabinet-level official. When asked if the role of the central procurement officer in strategic planning for the state, including interfacing with the state's governor has increased, decreased, or stayed the same in the past five years, no respondents indicated that it had decreased, with over half indicating that it has increased.

## **Section 4: Managerial Roles and Professional Affiliations**

As the role of procurement continues to take on a more strategic role in government operations, there has been a trend over the past several years to professionalize the procurement workforce. Certifications and professional affiliations are becoming more common. In twenty of the responding states, the personnel office places special weight on professional purchasing certification in recruiting announcements, up from thirteen in 2007. In addition, nearly all states’ central purchasing programs participate in both NASPO and the National Institute of Governmental Purchasing (NIGP). NASPO believes that training and certification will become

more critical as state procurement continues to evolve and procurement requirements and contracts become more complex.

### **Section 5: State Purchasing Fees**

Fewer states indicated that they are charging state agencies for procurement services (fourteen) compared to 2007 (sixteen). Fees charged to state agencies vary by payment period and cost; some states charge per transaction, while others assign a flat rate per month or per year. The same number of respondents indicated that central purchasing is funded through appropriation (eighteen), although the number of states that indicated that central purchasing is self-funding has increased from eight to eleven since 2007. Fifteen states indicated that central purchasing is funded through a combination of self-funding and appropriation. Only nine (compared to thirteen states in 2007) charge political subdivisions for value-added services provided by the central procurement office such as electronic access to state contracts, staff expertise and conducting procurement on their behalf. Eleven states charge vendors for procurement-related services such as training, access to bidder lists, and technical assistance. As competition for budget dollars continues among government agencies, NASPO believes that the demand for alternative funding sources will continue as state agencies will continue to be pressured to do more with less.

### **Section 6: Management of Specifications**

Two-thirds of respondents indicate that central procurement manages standard specifications. Nearly one-third of respondents maintain qualified products lists. Just over two-third of respondents (thirty-three) do not have statutory or regulatory requirements related to the use of performance-based specifications in contracts.

### **Section 7: Bidders' List Practices**

Bidders' lists, sometimes called vendor lists, are a common method that state and local government procurement officials use to notify vendors of contracting opportunities and to maintain certain data about vendors doing business with that public entity. Thirty-three states maintain a centralized bidders' list. Of those, thirteen states maintain lists by geographic area and twenty-five states' lists identify disadvantaged businesses according to any of their applicable definitions. Just over half (twenty-three states) maintain a list of suspended or debarred bidders posted on a website.

### **Section 8: Solicitation Practices**

Thirty-six states use life-cycle costing, e.g. taking into account costs of owning and operating the product (such as costs of supplies, energy, parts, warranties, and maintenance) in determining awarded vendor(s). Thirty-three respondents use solicitations that permit award to manufacturers require that sales and services will be rendered through local dealers. Thirty-nine states have a statutory or regulatory procedure for handling mistakes in bids. Of those, just over

half (20) have that procedure as a result of rule or regulation as opposed to statute or operating procedure. Thirty-eight states have statutory or regulatory requirements for determining bidder responsibility and bid responsiveness. All but three states are authorized by statute or implementing regulation to reject any and all bids in whole or in part. Twenty-seven states have developed alternative competitive procurement practices other than competitive sealed bidding (IFBs) and competitive sealed proposals (RFPs) for other than small purchases. Thirty-eight states have the authority to conduct reverse auctions.

### **Section 10: Contracting Procedures**

Eighty-nine percent of central purchasing offices have final authority to execute any contracts without review, approval or pre-audit. In fourteen states, an independent agency performs a pre-audit or review before the contract is awarded. Just under half (22) of respondents have specific statutory limitations on contract types (other than multi-year contracting), such as prohibitions on use of cost-plus-a-percentage-of-cost contracts.

### **Section 11: Electronic Purchasing**

Thirty-three responding states (73%) reported that they have an e-Procurement system in place. Most of these systems can process requisitions/purchase orders, solicitation development, distribution of solicitations, vendor registration, receiving of bids and proposals, and contract award. Several of these systems have even more advanced capabilities. Only seven states indicated that they process all procurements through their e-Procurement systems at this time. Equal numbers of e-Procurement systems are integrated into their states' financial systems; ten states had no response. Fourteen states' e-Procurement system use digital signatures.

### **Section 12: Vendor Registration**

Only twelve states charge vendors a fee for vendor registration. Those fees range from \$10 to \$125 per year.

### **Section 13: Solicitation Development**

Twenty-three states' e-Procurement systems have the ability to provide templates for preparation of solicitations as well as to recall previous solicitations for preparation of the new solicitations. Twenty-one states' e-Procurement systems provide a catalog of standard solicitation instructions and contract clauses for preparation of the solicitation.

### **Section 14: RFP-IFB Distribution**

All but five states notify vendors of formal procurement opportunities (as opposed to requiring them to monitor the state procurement website for bidding opportunities). This is primarily accomplished via email and legal announcements. Twenty-eight states notify vendors of informal (small purchase) procurement opportunities (as opposed to requiring them to monitor

the state procurement websites for bidding opportunities), primarily via email and fax. Many states do not purge vendors for non-response.

### **Section 15: Contract Administration**

About one-third of state systems maintain a record of contractor performance and provide for reporting contractor performance by client agencies. Twelve states allow vendors to comment on performance reports, and seventeen states allow performance reports to publicly available (e.g., available to persons other than internal system users).

### **Section 16: Purchasing Cards**

All but one respondent state has a purchasing card program. In only eight states is use of that purchasing card not optional. Forty-two states allow purchasing cards to be used for purchasing from established term contracts. Only six states require Level-3 reporting by vendors. Twenty states have cards available for use by an "agency" (meaning they are not assigned to an individual). Forty states receive a rebate or other monetary benefit from the use of the procurement card from the bank. Only ten states' purchasing cards are integrated with an e-Procurement system. Twenty-four states use a different card for travel purchases. Thirty-six states use a different card for fleet management.

### **Section 17: Cooperative Purchasing**

The term "cooperative procurement" covers several different sharing arrangements among any number of governmental relationships. A general description of the process of cooperative purchasing is that two or more governments, such as state/state, city/state, county/county, and city/county together identify a common need, and combine those requirements into a formal solicitation.

Cooperative purchasing has increased greatly in the last few years as states are looking to procure goods and service in more efficient and cost effective ways. To varying degrees, all but one respondent state currently have the authority to participate in cooperative purchasing initiatives. Forty states reported that they may participate in cooperative agreements with local governments within the state. Other cooperative arrangements include with other state governments (44 in 2009, only 35 in 2007), the federal government (37 in 2009, only 30 in 2007), other countries (6 in 2009, only 3 in 2007), and non-profit organizations (down 2 to 14, from 16 in 2007). In order to participate in cooperative agreements, one third of states must be named as a potential participant in the solicitation process and/or publish/advertise the original solicitation. Twenty states reported no requirements to participating in a cooperative contract. The most common method for effectuating a cooperative purchase through a formal agreement or contract is by using conditions from the adopted contract with additional terms and conditions from the participating state added or substituted. Sixteen states indicated that they purchase from a private, non-governmental (e.g., not NASPO or WSCA) purchasing consortium.

### **Section 18: Multi-Award Contract Practices**

Thirty-nine states use multiple award contracts or agreements are indefinite quantity contracts where the state contracts with more than one vendor for delivery of a service or commodity. Forty-two state central procurement offices use multiple award contracts, schedules, or pricing agreements. Sixteen states report the use of a most-favored customer clause, up from fourteen states in 2007, and ten in 2001. Twenty-eight states responded that there were specific statutory provisions which authorize the award of a contract to more than one bidder, as opposed to twenty-three states in 2007. Thirty-four states limit the number of successful bidders or suppliers for a particular item, up from twenty-seven in 2007.

### **Section 19: Preference Policies**

The use and breadth of preference policies seems to be increasing. Twenty-seven states provide a legal preference for in-state bidders, one more than reported that preference in 2007. Thirty-one states (compared to twenty-seven in 2007) reported that they have a reciprocal preference law. These states also reported the following vendor based price preferences: women-owned businesses (11, up from 4 in 2007), minority-owned businesses (13, up from 5 in 2007), small businesses (11, up from 7 in 2007), disabled-owned businesses (11, up from 6 in 2007), sheltered workshops (18, up from 13 in 2007), veteran-owned businesses (2, up from 1 in 2007) and correctional industries (20, up from 14 in 2007). Twenty-one states include women-owned businesses in the definition of minority-owned businesses. Twenty-seven (up from 22 in 2007) states have small business certification programs with various agencies (most outside central procurement) responsible for the process. Twenty-one states have “Buy American” laws that affect public procurement.

### **Section 20: Ethics Code**

Almost all states, by statute, rule or regulation, explicitly prohibit and provide sanctions for vendor payment of any kickbacks, bribes, contingent fees, or anything of value to a state officer or employee. Thirty states have a law, rule or regulation, or procedure that limits a contractor's ability to submit a bid or proposal where the contractor has assisted in preparing a solicitation, statement of work, or specification (sometimes known as an "organizational conflict of interest").

### **Section 21: Confidentiality and Open Records**

All but one respondent state generally require that state records be available for public viewing and that copies be provided to the public on request. Twenty-three of those states' laws preserve the confidentiality for a period of time of bids submitted in response to a solicitation. Thirty-six states have laws that authorize the non-disclosure of trade secrets or proprietary data in bids or proposals. Thirty-nine states have proposal and bid evaluation committee meetings and proposal and other contract negotiation sessions conducted in private as opposed to in open/public meetings.

### **Section 22: Protests and Claims**

Twenty-four states have a law providing an administrative procedure for a contractor to file a contract claim. In addition, twenty-two states have laws authorizing vendors to appeal a decision on a contract claim.

### **Section 23: Construction**

Twenty-six states have laws authorizing the use of alternative project delivery methods, such as design-build and construction manager-at-risk, when awarding contracts for construction or renovation of state infrastructure, such as buildings, bridges, and highways. Additionally, eleven states have laws authorizing private financing, in whole or part, of operating public infrastructure. Twenty-eight states frequently use Leadership in Energy and Environmental Design (LEED) standards when preparing specifications for some or all of the construction of state infrastructure.

### **Section 24: Emergency Preparedness**

Thirty-one states' central procurement offices have established state term contracts for commodities and services that might be needed in an emergency, while twenty-five have established an off-site facility from which it can perform its functions in an emergency.

### **Section 25: Strategic Sourcing**

Strategic sourcing involves a systematic analysis of the requirements, suppliers, market, environment and other factors to locate and capture, track and document savings. Twenty-four states (up from 22 in 2007) reported that they have implemented a strategic sourcing and spend analysis program. Twelve states plan to implement such a program in the future. Additionally, twelve states contract for strategic sourcing or spend analysis services. Twenty-one states are currently tracking and recording cost savings and cost avoidance metrics from strategic sourcing.

### **Section 26: Contract Management**

Only twelve states require using agency contract administrators to undergo procurement training before accepting contract administration responsibilities. Twenty-five states maintain a record of and track vendor performance. In twenty-two states, unsatisfactory performance will disqualify a bidder from future awards. Finally, seventeen states maintain a materials inspection manual, contract management manual, or similar set of guidelines.

### **Section 27: Purchasing Information Technology**

Thirty-five state central procurement offices are responsible for the procurement of information technology (IT) goods and software, while thirty-one are responsible for the

procurement of IT services. Thirty-one states currently lease IT products. Thirty-eight states reported that the state has established standards to ensure statewide compatibility of IT equipment and software. Thirty-four states have established standards to ensure statewide compatibility of IT equipment and software, twenty-four have separate model terms and conditions used for procurement of IT goods or services, and thirty-one use master agreements for time (and material) acquisition of IT services.

### **Section 28: State Travel Office**

Sixteen states have a state travel office. Of those, eight are within the central state procurement offices and five charge transaction fees. The state travel office administers contracts for travel agency services (15), airfares (13), car rentals (27) and hotel/motel (15).

### **Section 29: Surplus Properties**

Seventeen state central procurement offices have the responsibility for the disposition of agency surplus or excess property. Thirty-three states sell surplus property online and twenty-nine states operate a surplus property store.

### **Section 30: Green Purchasing**

NASPO partnered with the Responsible Purchasing Network (“RPN”) to survey members on green purchasing. Most states’ green purchasing policies were issued by a chief executive or governing body (e.g., governor, agency head, board of directors, governing council, etc.). This section of the survey explores the importance of green purchasing factors, certifications used in specifications, communicating green purchasing goals and policies to staff and stakeholders, and the different types of goods and services on which states are focusing their green purchasing efforts.

### **Conclusion**

NASPO hopes you find the information contained within this survey on state procurement practices beneficial. It is designed to serve you in your efforts to better understand how states buy goods and services. Your suggestions or comments on how we might improve this publication are welcome. Suggestions or comments may be submitted to NASPO Issue Coordinator Nicole Smith at [nsmith@amrms.com](mailto:nsmith@amrms.com).