




Cooperative Purchasing Opportunities: an overview



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- Some models
 - NASPO/WSCA
 - Federal
 - MMCAP
- Issues and drivers that create the need for cooperatives
- Who can participate and how - Authority to participate
- Responding to cooperative solicitations
- Expectations and Errors

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Creating a Cooperative

- Two (at least) governmental entities decide that working together on a purchase(s) is better than doing it alone
- Some statutory or ordinance based authority to work together exists
- Some kind of structure is defined and formalized

[Some states (for example) can "lead" a procurement but cannot participate in one.]

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Cooperative Structures

- Not a science, but things seem to have settled into maybe three buckets
- By the very nature of the beast, they may not remain stable
- Lots of "groups" of like minded things work together on something
 - And, in this case things may only "come together" once



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Cooperative Structures

- Third Party Aggregators
- Piggyback
- Pure Cooperatives



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Third Party Aggregators

- The "thing" gathers interest, perhaps intentions or commitments, from others, then turns around and buys for the whole group
- The level of "participation" may be very loose
- The "thing" may not even be a governmental entity or even a non-profit - its fee structure may be for profit



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 **Piggyback** 

- A statutory authority that permits a governmental entity to use "any contract issued by ANY other governmental entity" (on the loose end)
 - Some tighter variations exist
 - Key is that it is issued by a single entity (usually without any other participation)
 - Relationship of other users to either the contractor or the establishing entity DO NOT exist
 - ANY relationship between a contractor and a user SHOULD be based on a separate contract, since there is no other legal relationship involved



The Federal Government uses this structure

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 **GSA and Federal Schedules** 



- GSA and other federal schedules
 - GSA schedules are NOT available directly to other governmental entities
 - Many states have "piggy back" or "pricing" statutes, but the vendors may need to sign a separate, state-based contract using the GSA pricing as a basis
- GSA Schedule 70
 - The ONLY federal schedule available to other governmental entities
 - HOWEVER, neither acceptance nor use are automatic - separate contracting requirements still exist
 - The "ceiling" nature of the Schedule 70 pricing is a complication many do not want to deal with

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 **1122 Program** 

- Section 1122 of the Fiscal Year 1994 National Defense Authorization Act established the authority for state and local governments to purchase law enforcement equipment through federal procurement channels, provided that the equipment is **used in the performance of counterdrug activities**. The authority for the "1122 Program" resides with the Department of Defense. The U.S. Army, as the Executive Agent of the program, has formed a steering committee consisting of representatives from the General Services Administration (GSA), the Defense Logistics Agency (DLA), and the Department of Justice (DOJ). Under the provisions of the statute, GSA is responsible for the development of a catalog, which not only explains the 1122 Program, but also delineates those products which may be procured under the program.
- Each state participating in the 1122 Program designates a State Point Of Contact (SPOC) to administer the state's activities under the program, by validating the counterdrug mission of each procurement request, and ensuring the availability of funds.
- With the approval of the Executive Agent, GSA has approved ten (10) Federal Supply Schedules and the purchase of motor vehicles under the program.



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Pure Cooperatives

- Some kind of agreement or authority to work together
 - Based on statutory or regulatory authority
- Relationship between issuer and user based on this legal agreement or authority
- User's are bound by issuer's terms and conditions, unless they take exception in a separate document

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Lead State (WCSA/NASPO model)

- "Lead State" issues solicitation and contract for the group
 - Participation by other "states" from the beginning
 - Participation in creation of solicitation, evaluation, award, and on-going contract management
- Other entities can "join" with the permission of the lead state
 - Contractors are not required to accept additional terms or conditions imposed by entities joining after RFP was closed

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NASPO PROCUREMENT COOPERATIVE

Enabling Cooperative Procurements Among NASPO Member States

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NASPO
National Association of State Procurement Officials

Overview

- The NASPO Procurement Cooperative was established through a Memorandum of Agreement among the member states.
- There are currently 35 members of the NASPO Procurement Cooperative.
- Processes for conducting cooperative solicitations and establishing contracts have been established consistent with WSCA and other NASPO cooperative contracts.
- Provide a vehicle for all NASPO states to participate in cooperative purchasing, but does not commit states to expenditure of any funds.

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NASPO
National Association of State Procurement Officials

Participating States

Western Region Mid-Western Region Eastern Region Southern Region

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NASPO
National Association of State Procurement Officials

- NASPO Regions act as formal workgroups to consider and recommend potential cooperative contract opportunities.
- States may work outside their region to recommend a potential cooperative contract opportunity.
- All members of the cooperative are eligible to participate in any cooperative contract, if practical.
- The NASPO Cooperative Purchasing Committee reviews potential cooperative contracts proposed by the regions, or other member states, and forwards to the NASPO Board of Directors for final approval.



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Managing State model

- a single state, is responsible for the operation of the cooperative
 - An agreement (a Joint Powers Agreement, for instance) individually between managing state and "members"
 - Management structure limited
 - Focus is usually on a single/limited product line(s)
 - Fees collected from vendors pay for operation of program
- The Minnesota Multi-State Contracting Alliance for Pharmacy (or MMCAP) is an example of this kind of "cooperative"



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Cost, a driver 1

- **Hard Costs**
 - Purchase price
 - Delivery/set up price
 - Maintenance/service price
- Hard costs are what the end user pays out of operating or project budgets
- Hard costs are what end users measure when they compare products to make decisions

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Cost, a driver 2

- **Soft costs**
 - creating specifications, shopping for vendors and solicitations
 - awarding/placing the order(s), generating purchase orders
 - resolving issues
 - sorting invoices, reconciling statements, generating checks
- Some soft costs are paid at end user level
- Many soft costs are paid by centralized purchasing authority, not directly related to agency operating or project costs
- These costs are NOT generally included in the cost of goods

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NASPO Budgetary Issues
National Association of State Procurement Officials - State Level **WCSA**

- Appropriations are at a department/program level
 - Limitations on funds and use of funds can be very specifically defined by an appropriations
- By fund - hundreds of separate, distinct funds
 - "General Fund" - supported by sales tax or other general taxes - it is appropriated biennially
 - Federal Funds - is federal money that is being passed through a state's books - state rules generally apply to using this money (in many cases)
 - Special Revenue/Enterprise Funds - are funds that are usually supported by separate, distinct taxes, fees or licenses
- Each fund has its own unique rules
 - What is a year (State Fiscal Year vs Federal Fiscal Year)
 - Funding and funding renewal cycle
 - What kinds of work can be done (tax implications, overhead implications)
 - Special timelines, connectivity or participation requirements

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NASPO "Cooperative" Purchasing **WCSA**
National Association of State Procurement Officials

- One governmental entity using another governmental entity's contract to make purchases
- Can manage soft costs, by sharing those costs
- Can be a pricing tool, using volume for leverage
- However, can be tricky and create problems on both sides
- Rules differ jurisdiction to jurisdiction - T's & C's can be complex
- Not just a "government price" but a legal relationship

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NASPO Governmental Entities? **WCSA**
National Association of State Procurement Officials



County/Parish City/Town/Village Townships
School Districts Others - lots of them

Defined somewhere in each state's statutes/laws

Purchasing in these entities usually controlled separately/differently than "state" purchasing
(in Minnesota controlled by MS 471.345 (Municipal Contracting Act))



- Issue is legal relationship NOT "price" - there is a process that has to be followed, not just a price accepted

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 **Governmental Entities ??** 

- Some common "entities" about which there can be questions:
 - State transportation departments - too complex for any general discussions
 - State corrections departments - generally do not have independent authority
 - Correctional industry programs may have some level of independent authority in some states
 - State universities/colleges - generally, governmental entities, but may have independent authority
 - 501(C)(3) corporations (private, non-profits) - depends on how defined in state statute (some are, some are not)
 - Indian tribes - are sovereign entities, and that is a different thing than a "governmental entity", so generally they cannot

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 **Some Examples** 

"Joint Powers Act" - Minnesota Statutes 471.59

- Subd. 1. The term "governmental unit" ... includes every city, county, town, school district, other political subdivision of this or another state, another state, the University of Minnesota, nonprofit hospitals licensed under sections 144.50 to 144.56, and any agency of the state of Minnesota or the United States, and includes any instrumentality of a governmental unit.
- Subd. 10. ... may enter into agreements with any other governmental unit to perform on behalf of that unit any service or function which the governmental unit providing the service or function is authorized to provide for itself.



Minnesota Statutes 16C.10 Subd. 3. Federal agency price schedules. Notwithstanding anything in this chapter to the contrary, the commissioner may, instead of soliciting bids, contract for purchases with suppliers who have published schedules of prices effective for sales to any federal agency of the United States. These contracts may be entered into, regardless of the amount of the purchase price, if the commissioner considers them advantageous and if the purchase price of all the commodities purchased under the contract do not exceed the price specified by the schedule.

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 **Some Examples** 

- North Dakota Century Code 54-44.4-02 Allows Office of Management and Budget to agree to cooperatively purchase with political subdivisions who have organized a purchasing group pursuant to a joint powers agreement. (North Dakota Association of Counties Joint Powers Agreement For Purchasing)
- N.D.C.C. 54-44.4-05 Allows Office of Management and Budget to purchase from GSA contracts and enter into cooperative purchasing agreements with a cooperative purchasing group of other state governments.



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 **Some Examples** 

South Dakota CL 5-18-23 Allows units of local government to purchase from state contracts, if the state contract vendor is willing to sell to them. No state contract vendor is required to sell to a unit of local government at the state contract price. This statute also allows units of local government to buy from local vendors if they can provide the state contract item at a price lower than offered on the state contract.



SDCL 5-23-9.1. Federal purchase contracts exempt from bidding requirements. Notwithstanding the provisions of chapter 5-18, the Bureau of Administration may enter into contracts approved by the general service administration of the United States for equipment and supplies for an expenditure not to exceed five thousand dollars per item, without entering into competitive bidding procedures.

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 **Who Can use a Cooperative?** 

- **Are we (the entity) members?**
 - Have we signed up, legally joined the "cooperative"
- **How was the solicitation advertised?**
 - Do we (locally) have any special or unique advertising requirements? Were they met?
 - Was the original solicitation advertised to meet our statutory requirements?
- **Are there any hidden costs?**
 - Are there any additional costs of buy?
- **Have we followed our (local) processes for spending this amount of money?**
 - The central issue for any purchase, the availability of a price is NOT the authority to spend money

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 **Who Can use a Cooperative?** 

- In some narrow sense, these are not a "vendors" problem
- In a broader sense, not understanding some of this will get the entity into lots of trouble - and guess who they will blame?
- Issue is legal relationship NOT "price" - there is a process that has to be followed, not just a price accepted
- Each governmental entity has it's own, possibly unique legal requirements for spending money that have to be followed - and some of them can be months long ("readings and approvals at three separate meetings of the commissioners")

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NASPO Responding To Cooperative RFPs **WSCA**

- Where do we find them?
 - A couple of sort of central locations:
 - www.aboutwsca.org
 - www.naspo.org
 Both of these will tell you what is currently, what may be coming and connect you to actual solicitations in the lead state
 - Many states will always announce any cooperative solicitation, even if we do not intent to participate (at this time)

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NASPO Responding To Cooperative RFPs **WSCA**



- Remember - you are responding in Oregon, so you have to follow Oregon rules (which are available on that website)
 - If it says "registered vendor", then you must register in Oregon
 - If it requires a fee (some states do), pay the fee (or you are not responsive and will not be considered)
 - Remember the USPS/UPS/FEDEX lie - send it early

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NASPO Responding To Cooperative RFPs **WSCA**

- Read carefully remember it may have taken 5 or 6 people from 4 or 5 states weeks of work to put the RFP together
 - Sounds crazy, but read all the way through the entire document first
 - Then, go back and start all over again
 - You may want to do this several times
 - DO NOT divide up the document and send it to different "teams" and hope to have the mail room clerk "put it together"
 - This almost always fail because the "put together" is not simply putting pages in order
 - Have someone, who HAS NOT had anything to do with putting it together, independently read the RFP and then your answers
 - You need someone (with lots of authority) in charge of putting it, keeping it together

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 **Responding To Cooperative RFPs** 



- Many cooperative RFP's even provide a check list, **use it**
- Many cooperative RFP's are for multiple award contracts
 - This gives states the opportunity to work with small businesses and TG businesses within a larger framework
- Many cooperative RFP's are not "winner take all", so you can respond for "Minnesota only" or for "Minnesota, South Dakota, etc. only"

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 **Responding To Cooperative RFPs** 



- Do not be afraid to work with your manufacturers to create opportunities
 - Most cooperatives are trying to get at "factory" pricing opportunities, so get your suppliers to work with you
- Be especially sensitive to "mandatory requirements" (they are listed that way in most RFPs) and they instantly disqualify you
- Be especially sensitive to legal requirements

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 **Expectations and Errors** 



- They don't really want that much information
 - If we asked for it, we want it, not providing it makes you "non-responsive"
- Single contract, single answer, single payer
 - Yes, no, never - you are dealing with multiple legal entities, some of which are as old as this country, and there may be thousands (literally) of individual operating locations

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 **Expectations and Errors** 



- Ask questions, but don't be surprised with the answers
 - "Yes", "No" and "the State Chooses Not To Respond" are what I teach agencies to use for most answers
 - "Do we have to have insurance?" is not a question we can/should answer
 - "Do the deliveries have to be on time?" deserves a very simple answer
 - "The specification cite (123.234) was declared invalid by xxxx last week?" deserves a careful and thoughtful response

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 **Expectations and Errors** 



- Late submissions
 - "It was only a week late" - Right
 - There are no points deducted for your response arriving early
 - "Just in time" is NOT prudent response management
 - Think about all the "responses" that got caught up in the Denver snow dumps over the holidays
- Expensive bindings and pretty pictures do not get points

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 **Expectations and Errors** 



- Pricing is the core of most RFP's
 - Pay attention to the volumes described
 - Remember, Rhode Island and Alaska are both "states", but what about need and density and penetration of market?
 - Minnesota has 1,000 separate ordering locations (for the State) that does not include 87 counties, 1,000 cities and hundreds of school districts

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 **Expectations and Errors** 



- **Ordering**
 - Contractors want volume
 - Hundreds of potential entities want service
 - That can means thousands of individual orders
 - Governmental entities DO NOT have lots of "single point" "centralized" operations, they have lots of individual ordering/delivery points
 - Understand the underlying structure
 - Governmental entities do not "share" well, so they will order separately

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 **Expectations and Errors** 

- **Reporting**
 - Most cooperative opportunities include the requirement for the contractor to report sales in a fairly detailed manner - read carefully
 - Many states (especially) have additional reporting requirements that are identified in the "special terms and conditions" section of the RFP
 - Read carefully - some of these requirements are mandatory and others are very complex
 - Small business or TG business or Veteran-owned business is especially sensitive

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 **Expectations and Errors** 

- **Fees**
 - Most cooperative opportunities include the requirement for the contractor to pay "a fee" based on (usually) sales - for NASPO/WSCA (for instance) it is $\frac{1}{2}$ of 1%
 - Many states (especially) have requirements for collecting fees (from $\frac{1}{4}$ of 1% to 1% or higher)
 - Read carefully - NASPO/WSCA says you include the NASPO/WSCA fee in your contract price, but may add other entity fees to that "contract price" on an individual situation basis (your choice)
 - Individual participating addenda (for NASPO/WSCA) set these fees

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