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POSITION PAPER

TOPIC:

Cooperative Procurement

Great Value (Great Confusion)

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COOPERATIVE PROCUREMENT:

GREAT VALUE (GREAT CONFUSION)

A position paper from NIGP: The Institute for Public Procurement, on the use of cooperative procurement practice in public procurement.

INTRODUCTION

"Cooperative procurement" is defined by NIGP: The Institute for Public Procurement as "the combining of requirements of two or more public procurement entities to leverage the benefits of volume purchases, delivery and supply chain advantages, best practices and the reduction of administrative time and expenses."[1]

Cooperative procurement solutions offer resource challenged agencies the opportunity to gain needed operating efficiencies as well as hard dollar savings. The demonstrated effectiveness of cooperative procurement to save taxpayer dollars makes it a viable alternative to conventional, independent procurement processes.[2]

As with any versatile tool, cooperative solutions may be appropriate for many circumstances. Yet they should not be seen as the solution for all purchases at all times. Cooperative procurements are developed to meet specific needs and realize their full value when applied with an understanding of their appropriate use and their limitations.

This position paper, while describing NIGP's view of cooperative practices and programs, also examines the nature of, and changes in, the cooperative procurement landscape. It recommends best practices in the evaluation and use of cooperative solutions, and emphasizes the responsibility of the procurement professional to ensure that cooperative solutions are employed consistent with local legislation and due regard for preference groups.

POSITION STATEMENT

NIGP supports the use of cooperative procurement. It is a valuable tool to obtain necessary goods and services by aggregating volume, securing best pricing, and reducing administrative overhead. Practitioners should engage in cooperative procurement in a manner: consistent with

[1] National Institute of Governmental Purchasing, Public Procurement Practice, Use of Cooperative Contracts for Public Procurement

[2] Cooperative Purchasing, A Guide for Local Official (Fifth Edition), Dept. Of Community Affairs, State of New Jersey, September 2006

their enabling legislation; that ensures a legal basis of competition; considers the broadest possible participation of all vendor types; and that aligns local requirements with the cooperative solution under consideration.

TRENDS

Cooperative procurement has become a well-established practice in the past decade with increasing representation and participation by public entities. New forms of collaboration to support cooperative procurement are evolving, including national consortiums, regional cooperative programs, and cooperative contracts of like institutions.[3] The continued growth in cooperative procurement opportunities results from the success of predecessors in this contracting form and the need to address dwindling internal agency resources. Public purchasers seek the best value for their constituents by optimizing pricing, transactions costs, and processing time through the strategic use of cooperative procurement vehicles. As the internet has enabled sellers to reach wider markets, more commodities (and some services) have become available in standard forms, ordering methods, and delivery timelines facilitating the use of cooperative contracts by public purchasers in disparate locations.

There are now numerous national and regional cooperative programs across the United States, and with them, a variety of contract choices for the same products or services. For example, office products and maintenance repair and operations (MRO) products are available on several different cooperative contracts. As a result, the analysis has become more complicated as public purchasers attempt to determine the "best" cooperative contract to use.

COOPERATIVE PROCUREMENT MODELS

Joint Solicitation Model: A procurement conducted by, or on behalf of, one or more public entities that have combined and standardized their requirements. The participating organizations make an advance commitment to use the resultant contract.

"Piggyback" Model: One or more public entities solicit their requirements and include an option for other organizations to access, or "piggyback," the contract as awarded.[4] This method may include a state or national cooperative affiliate. The use of this form of cooperative procurement is elective.

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[3] Fredo Schotanus et al., Public Procurement: International Cases and Commentary, (Routledge 2007), p. 578
[4] National Association of State Procurement Officials, Issue Brief, Strength in Numbers: An Introduction to Cooperative Procurements

Third Party Aggregator or Broker Model[5]**:** An external organization that establishes a cooperative program, working with one or more public entities to establish one or more contracts designed to appeal to a broad base of potential user agencies and provides the portal through which the contracts will be accessed. Aggregators facilitate identification of the competitor pool, consolidation of the buyer market and promotion of the contracts under their program auspices. The use of this form of cooperative procurement is elective.

Multiple Award Schedules (MAS): Contracts awarded by a public entity, particularly the federal government and some states, for similar or comparable goods or services with more than one supplier at varying prices. Generally, MAS contracts are considered non-competitive or less than fully competitive. While some of these contracts may be available to local government, public entities considering using an MAS should ensure it complies with applicable competition requirements. The use of this form of cooperative procurement is elective.

ADVANTAGES AND LIMITATIONS OF COOPERATIVE PROCUREMENT

Advantages

Cooperative procurement is a form of strategic sourcing. That is, combining or "aggregating" the spend of several public bodies with competitively sourced suppliers to maximize buying power. Cooperative contracts leverage value-added pricing, vendor service levels, and advantageous contract terms.

Typically, larger entities serve as a lead public body and all participating entities realize reduced transaction and administrative costs, workload, and processing time. With the large, aggregate volume represented by the potential users, cooperative contracts provide the governmental purchaser access to quality products good at competitive, "most favored" prices, while also offering beneficial delivery and contract terms.

Limitations

The limitations of engaging in cooperative procurement include: contract pricing that may not be optimal due to the inability of the public body to accurately predict order quantity and timing; less flexibility in the requirement to conform to the specifications and material terms of the base contract; possible decline in opportunities for local, small or disadvantaged suppliers; and the temptation to "shop" or be influenced by brand familiarity rather than the product's inherent capacity to meet the defined requirements. Finally, purchasers may find that a single large purchase by their own entity can be more aggressively priced than a cooperative contract. For

[5] Cliff McCue and Eric Prier, "Using Agency Theory to Model Cooperative Public Purchasing," Journal of Public Procurement 8 (2008) : 60

these reasons, market research and due diligence should be performed, on a case-to-case basis, before deciding to use a cooperative contract.

LEGAL BASIS FOR COOPERATIVE PROCUREMENT

Specific state, provincial and local law determines public entities' authority to engage in cooperative procurement practices. In the event of a challenge, courts may be called upon to review an entity's legal authority to purchase cooperatively. Purchases made under a cooperative contract cannot differ in specification, quality or price from the terms of the cooperative contract award. Use of a "piggybacked" contract must be consistent with its solicitation and contract parameters and restrictions. Requirements must remain substantially the same as the existing "piggybacked" contract. Any attempt to expand the scope or change the requirements of the established cooperative contract may be deemed a violation of appropriate (legal) cooperative practice. Some amending *may* be acceptable; however, should be done with understanding of legal implications.

LOCAL VENDORS AND COOPERATIVE PROGRAMS

Under the cooperative model, government entities aggregate their requirements to take advantage of macro-market conditions, providing efficiencies such as volume discounts, based on the bidder's ability to serve the participating entities. A popular argument against cooperative practices is that they tend to favor large suppliers. While this may be true at the national level in general, market conditions vary across broad geographies and suppliers of all sizes continue to innovate to adjust to market conditions and the needs of local purchasers.

Local suppliers may realize an advantage when supporting smaller contracts, local regions or unique requirements. Seemingly in response to the success of big-box suppliers at the national cooperative level, smaller suppliers are learning to come together as consortiums in order to compete with a national presence. Ready examples are available in office supplies and food services.

Local vendors may view piggyback contracts as unfair when they are unable to compete due to the large scale of the requirements. However, certain local cooperatives (i.e., at the municipal or political subdivision level) are very successful in including local businesses when service features and capacity are important. In some jurisdictions, local preference laws may limit or prohibit a public entity from utilizing cooperative contracts as a sourcing method.

EVALUATING COOPERATIVE OPTIONS

In situations where two or more government entities have identified a mutual product or service and have resolved to satisfy their need through a joint solicitation model, the agencies retain immediate control throughout the solicitation-evaluation-award-contract management process. Retaining control throughout the process is often seen as a positive nod to joint (as well as independent) solutions over piggyback-based cooperative purchases. However, the decision to engage in a joint procurement and the subsequent process requires a level of advance planning and effort, and a commitment to use the resultant contract that may be impractical or burdensome for one or more of the agencies. In these cases, the ease of accessing a favorable contract that has already been awarded may be most advantageous for the public entity.

The efficiencies and value available through piggybacking make it an attractive alternative to independent procurement initiatives and may largely explain the rise of third-party aggregators, a.k.a. "cooperative programs," at the national, regional and local level. Given the many programs and contracts available through them, a methodical, diligent process is necessary for procurement professionals to determine the programs that operate in a manner consistent with their entity's requirements, and the contract(s) that deliver best value. The choice between joint cooperative, piggybacking or traditional independent procurement requires a weighing of the benefits, risks and shortcomings associated with each procurement model.

EVALUATING COOPERATIVE PROGRAMS AND CONTRACTS

Step 1: Internal Review

- Assess the impact of using either an independent or aggregator solution for the requirement:
    - identify foreseeable demands on procurement operations;
    - identify human and budgetary resources available to meet those demands;
    - analyze all costs associated with conducting an independent source solicitation;
    - analyze all costs associated with using a cooperative solution; and
    - evaluate the quality, price, and availability of cooperative contract opportunities for the requirement.

Step 2: Cooperative Program Review

- Review a cooperative program's business model, legal business type and business practices for compliance with local cooperative purchasing legislation and policy.
- Assess the cooperative program's ease of use and access; ongoing contract management and administration practices; regular program and/or contract audits.
- Determine whether the cooperative contract was competitively awarded.

Step 3: Cooperative Contract Review

- Evaluate whether the use of a aggregator cooperative contract is appropriate:
    - compare available cooperative contracts for the required product or service; and
    - conduct market research.
- Analyze specifications, price, terms and conditions, and other factors such as:
    - contract utilization fees;
    - shipping terms;
    - distribution availability in your area;
    - minimum quantity or spend requirements; and
    - volume discounts or rebates

- Review the cooperative contract for conformance with all applicable laws and best practices, with sensitivity to local preference and Small, Women or Minority-Owned Business Enterprise programs.
- Determine whether the requirement is consistent with the material terms of the contract and the scope of the contract award.
- If any additional local terms and conditions are required, ensure they do not conflict with the scope of the contract award, and incorporate them through an addendum or purchase order properly approved by both parties.
- Contact the cooperative lead government agency to verify contract application and eligibility.

Step 4: Fiduciary Responsibility and Contract Compliance

- Regularly audit invoices to ensure pricing and specification compliance with the cooperative contract, notifying supplier of any discrepancy.
- Notify lead agency and cooperative program representatives of any ongoing supplier deficiencies or contract discrepancies.

CONCLUSION

Cooperative procurement can be an effective procurement tool when utilized deliberately and with understanding of its strengths and limitations. The benefits of cooperative procurement do not automatically inure to the purchaser. Government entities must have a systematic process for assessing the value of a particular cooperative purchasing program, as well as, the particular cooperative contract. Comparison of specifications, pricing, terms, and conditions should be factored into the decision. Expediency alone is a flawed rationale.

Purchasers should refer to the Public Procurement Practice, *Use of Cooperative Contracts for Public Procurement,* as a *best practice* guide when considering use of a cooperative contract. Due diligence must be performed, taking legal authority, suitability of contract, and compliance with other local requirements into consideration. Further growth in the number and type of cooperative agreements is anticipated. Public purchasers must use this tool in a manner that optimizes its best attributes and not mistakenly assume it is “the right tool for *every* job.”

While there are early signs of support for an accrediting body for cooperative programs, or the formulation of “best practice” standards governing their performance, until such time as these emerge, public procurement professionals must remember their fundamental fiduciary responsibility to their entity. The decision to use a cooperative solution should reflect a deliberate assessment of customer needs, competition, contract pricing and terms, and compliance with all relevant legislation. Such an approach will help agencies realize the full value of cooperative procurement solutions and the savings and efficiencies intrinsic to them.