

April 2006 Report No. 06-35

Steps Have Been Taken to Enhance State Acquisition Management, but Further Improvement Is Needed

at a glance

In Fiscal Year 2004-05 state agencies purchased more than \$6.4 billion in goods and services. Of the \$3 billion spent on non-construction related goods and services, slightly over half was exempted from the state's competitive purchasing processes.

The Department of Management Services and state agencies have taken steps to increase the value of goods and services purchased through state-level term contracts and related initiatives. However, further improvements are needed, especially for acquisitions of complex services.

We recommend that the Legislature take steps to

- increase the volume of purchases made through competitive processes;
- require agencies to develop a process to record information on all purchases in the state's Financial Management Information System, which will enhance the state's ability to use strategic sourcing practices; and
- require agencies to develop more complete business cases for major complex acquisitions by mandating analyses of associated procurement and contract management requirements.

Scope -

As requested by the Florida Legislature, OPPAGA examined state agency acquisition management practices. Our review addressed four questions.

- What is the value of purchases that agencies are making using the various processes authorized by law?
- How much state agency purchasing is done through processes exempted from competitive requirements, and what are the reasons for these exemptions?
- What is the status of recent initiatives to improve the procurement process?
- What actions should the Legislature consider to further improve the state procurement process?

Background

State agencies purchase large quantities of goods and services from both private and public entities. These purchases include construction services for public buildings, roads and bridges, as well as goods and services needed to support agency activities, such as office supplies, vehicles, and information technology services.

The Legislature has enacted numerous laws to help ensure that when the state makes such purchases, it obtains the highest overall value; agencies procure goods and services in an accountable, effective, and economical manner; and vendors are afforded fair and open competition. For example, Ch. 337, *Florida Statutes*, governs procurement of transportation related construction projects, while Ch. 255, *Florida Statutes*, specifies the competition and solicitation requirements for acquisitions relating to construction of public property. ¹

Purchases of goods and services that are not related to construction are governed by s. 287.057, *Florida Statutes*. The law authorizes agencies to use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the four discussed below.

- Single Source Contracts are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase.
- Invitation to Bid (ITB) is used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results.
- Request for Proposal (RFP) is used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services.
- Invitation to Negotiate (ITN) is used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, with an agency dealing with a limited number of vendors.

In addition, term contracts are often used when multiple purchases of standard commodities and services are anticipated. These contracts are with vendors selected through a competitive The Department of Management process. Services (DMS) uses available procurement methods to obtain term contracts for goods and services purchased by three or more state agencies with a total value exceeding \$1 million. These contracts help the state achieve volume discounts and best value for commodities and services, and agencies are generally required to use these contracts when they are available. 2,3 DMS currently manages 82 term contracts that may be used by state agencies and local governments, and agencies may also enter into their own term contracts for commodities and services. In Fiscal Year 2004-05, DMS identified \$474 million in state agency purchases made through state-level term contracts.

Statutes exempt certain goods and services from competitive requirements. For example, purchases of health, auditing, and legal services are not required to be competitively procured. Additionally, agencies are not required to use competitive processes when emergency conditions exist that preclude the use of these processes.

Recent reviews by OPPAGA, the Auditor General, and the Governor's chief inspector general have identified systemic weaknesses in the state's acquisition management practices. These have included deficiencies associated with the identification of requirements prior to entering into long-term contracts and the methods used to identify and select vendors and to negotiate and manage the associated contracts. To respond to these deficiencies, the 2005 Legislature passed a bill designed to

¹ In addition, Florida law includes agency-specific provisions and procedures for the purchase of goods and services. For example, Ch. 1013, *F.S.*, provides competitive bidding requirements for educational facilities.

² In addition to state term contracts, DMS also negotiates state purchasing agreements, which are 12-month agreements with a single vendor per item. Each state purchasing agreement is available for use by state agencies, but is not mandatory. Local governments may also use the state term contracts and purchasing agreements, but are not required to do so.

³ Best value means the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship.

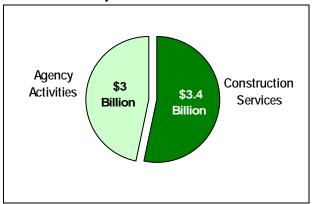
strengthen the state's purchasing practices, but this legislation was vetoed by the Governor. ⁴

Questions and Answers —

What is the value of purchases that agencies are making by using the various processes authorized by law?

In Fiscal Year 2004-05, state agencies purchased nearly \$6.4 billion worth of goods and services. ⁵ As shown in Exhibit 1, slightly over half of this total (\$3.4 billion, or 53%) related to construction projects for roads, bridges and buildings, as well as associated professional architectural and engineering services. Non-construction related acquisitions accounted for the remaining \$3 billion in purchases.

Exhibit 1 In Fiscal Year 2004-05, Over Half of the \$6.4 Billion in Agency Purchases Were Associated with Construction Projects



Source: OPPAGA analysis.

Construction services are primarily purchased through ITBs or competitive negotiations, such as ITNs. In Fiscal Year 2004-05, agencies used the ITB process to purchase \$2.85 billion in construction related goods and services. For the remaining \$520 million, agencies used competitive negotiation processes to purchase professional architectural and engineering construction services.

State agencies use a wide array of purchasing methods to procure non-construction related goods and services. As the state's financial systems do not track the procurement methods for all agency purchases, we surveyed agencies to identify the purchasing methods they used for procurements that exceeded \$1 million during Fiscal Year 2004-05. ⁶ We focused our analysis on these acquisitions as they often involve complex purchases that can pose a high risk to the state. ⁷

Agencies made 305 such purchases during the year. As shown in Exhibit 2, agencies used statutorily required methods for 161 of these purchases, with a total value of \$823 million. Eighty-two purchases exceeding \$1 million were made through the RFP and ITN method and totaled approximately \$610 million. Other competitive procurement methods, such as term contracts and ITBs, were used to purchase \$155 million worth of goods and services. In addition, 21 single source contracts were used for \$58 million in purchases. For the remaining 144 purchases, agencies were exempted from using competitive processes.

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⁴ The Legislature passed Senate Bill 1146 on May 5, 2005. The Governor vetoed the bill on June 27, 2005, citing concerns that the provisions of the bill would "create additional bureaucracy and procedures that over-burden and complicate, rather than simplify and strengthen, the procurement process."

⁵ This total excludes expenses associated with grants and reimbursed services such as Medicaid, Temporary Assistance for Needy Families, and Foster Care.

⁶ The agencies surveyed are the Departments of Agriculture and Consumer Services, Children and Families, Citrus, Community Affairs, Corrections, Education, Elder Affairs, Environmental Protection, Financial Services, Health, Juvenile Justice, Law Enforcement, Legal Affairs, Lottery, Management Services, Military Affairs, Highway Safety and Motor Vehicles, Revenue, State, Transportation, Veteran Affairs, and the Agency for Health Care Administration, Agency for Persons with Disabilities, Agency for Workforce Innovation, Fish and Wildlife Conservation Commission, Parole Commission, Public Service Commission, and the State Board of Administration.

⁷ Complex purchases are characterized as requiring some level of design customization to meet agency needs, and include many of the state's recent outsourcing initiatives, such as the outsourcing of state agency human resource functions and purchases to replace existing information technology systems, such as the Department of Revenue's Child Support Automated Management System (CAMS). In Fiscal Year 2004-05, state agencies reported 208 of the 305 purchases for non-construction related goods and services that exceeded \$1 million involved complex services.

Exhibit 2 In Fiscal Year 2004-05 Agencies Used a Wide Array of Methods to Purchase Non-Construction Related Goods and Services



Source: OPPAGA analysis.

How much state agency purchasing is done through processes exempted from competitive requirements, and what are the reasons for these exemptions?

In Fiscal Year 2004-05, over half (\$1.6 billion, or 53%) of the \$3 billion in non-construction related acquisitions by state agencies were exempted from competitive processes. Approximately \$600 million of this total was not required to be competitively bid because the purchases were under the specified cost threshold. Over \$1 billion in purchases exceeded the cost threshold, but were exempted from using competitive processes. While authorized by law, the large value of purchases that are exempt from competitive processes limits assurances that the state is receiving the best value.

Purchases below \$25,000 are not required to be competitively procured

Section 287.017, Florida Statutes, provides cost thresholds relating to competitive bidding requirements. These thresholds establish the value of the purchases below which agencies are not required to use competitive processes. These thresholds are intended to help balance the increased value that can be achieved through competitive bidding with the costs to administer

the competitive processes and time delays to advertise, bid, or negotiate contracts. For purchases of non-construction related goods and services, the cost threshold is generally \$25,000.

In Fiscal Year 2004-05, state agencies purchased approximately \$600 million in goods and services that were not required to be competitively bid because the value was below this cost threshold. ⁸ However, while use of specified competitive processes is not required, many of these purchases were made through term contracts. For the remaining purchases, agencies are to use good purchasing practices, including obtaining written quotations and documenting records of telephone quotations, whenever practical. ⁹

Many services are exempted from competitive bidding requirements

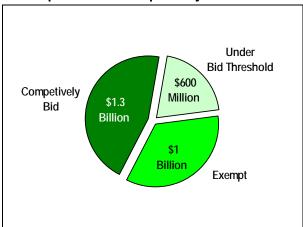
Section 287.057(5)(f), Florida Statutes, provides that 13 types of non-construction services competitive exempted from bidding requirements, regardless of whether the purchase exceeds the applicable cost threshold. 10 As shown in Exhibit 3, in Fiscal Year 2004-05, agencies purchased over \$1 billion of non-construction services that exceeded the competitive cost threshold but were exempted from the competitive process because of the nature of the good or service purchased were specifically exempted in legislation or because an emergency condition precluded the use of competitive processes.

⁸ This information is based on our survey of state agency purchases. Due to agency workload considerations, for purchases of less than \$25,000, we requested that agencies provide only the total value of all of these purchases, not the specific procurement method that was used.

⁹ As specified in Ch. 60A-1, F.A.C.

¹⁰ These services include (1) artistic services, (2) academic program reviews, (3) lectures by individuals, (4) auditing services, (5) legal services, 6) health services, (7) services provided to persons with mental or physical disabilities, (8) Medicaid services, (9) family placement services, (10) prevention services, (11) training and education services, (12) services provided by other governmental agencies, and (13) voter education activities (the voter education exemption expired July 1, 2005).

Exhibit 3 In Fiscal Year 2004-05, More Than Half of Non-Construction Related Purchases Were Not Required to Be Competitively Bid

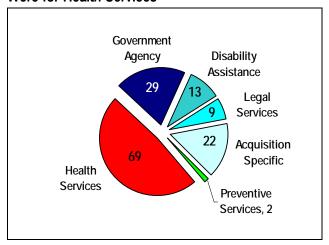


Note: Numbers do not total \$3 billion due to rounding.

Source: OPPAGA analysis.

Exhibit 4 shows a breakdown of exempted purchases that exceeded \$1 million. In Fiscal Year 2004-05, agencies reported that 144 of the 305 purchases exceeding \$1 million were exempted from competitive processes. Of these exempted purchases, most (122) were associated with the purchase of five types of exempted services—health services, assistance to the disabled, prevention services, services from other government agencies, and legal services. Slightly over half (69) of these purchases of exempted services were associated with the provision of health care services. The remaining 22 purchases were specifically exempted in legislation or because emergency conditions precluded the use of competitive processes.

Exhibit 4 In Fiscal Year 2004-05, Nearly Half of the Exempted Purchases Greater Than \$1 Million Were for Health Services



Source: OPPAGA analysis.

What is the status of recent initiatives to improve the procurement process?

The Department of Management Services recently has taken steps to improve the state's acquisition processes. These initiatives have been beneficial, but several factors limit their effectiveness.

Office of Procurement Excellence. In July 2005, DMS created the Office of Procurement Excellence. This office is staffed with four positions and is responsible for assisting agencies develop business to cases acquisitions associated with outsourcing initiatives. The office has provided this aid for nine acquisitions to date. However, the office has not assessed agency capability to manage complex purchases, which recent reviews have identified as a major weakness of state outsourcing initiatives (see discussion on page 2).

MyFloridaMarketPlace statewide purchasing information system. In March 2003, DMS began deploying MyFloridaMarketPlace (MFMP), which is intended to improve the effectiveness of the state acquisition process. MFMP is the purchasing subsystem of the Florida Financial Management Information System, which is intended to be a unified information system providing state-level fiscal, management, and accounting support for decision makers and the primary information source state's accountability of public funds. 11 Currently, MFMP provides purchasing data to the state's existing accounting system, FLAIR. 12 addition, in February 2006, DMS deployed a new vendor performance tracking system within MFMP to help inform agency vendor selection. This system is designed to include measures of compliance vendor with contractual requirements and a mechanism for agencies to rate vendors.

However, the effectiveness of MFMP is limited because it does not contain records of all state agency procurements. Specifically, although MFMP serves as the primary state-level procurement information system, less than 25% of state agency purchases are recorded in the system. In Fiscal Year 2004-05, DMS reported that of the \$6.4 billion in agency purchases, only \$1.5 billion (23.5%) were ordered through MFMP. ¹³

There are several reasons why MFMP is not capturing comprehensive procurement data that can be used to improve state agency purchasing practices. Specifically, some agencies are exempted from using MFMP, while others are required to record information only for certain types of purchases.

¹¹As specified in s. 215.93, *F.S.*, FMIS includes a Planning and Budgeting Subsystem, LAS/PBS; a Florida Accounting Information Resource Subsystem and Cash Management Subsystem, Aspire; a Purchasing Subsystem, MyFloridaMarketPlace; and a Personnel Information System, People First.

For example, the Department of Agriculture and Consumer Services is exempted by statute from using MFMP to record its purchases and the agency uses its own purchasing system to acquisitions. 14 manage In addition, construction-related purchases, including professional architectural and engineering services, are not required to be documented in Moreover, state agencies are the system. required to record only non-construction related goods and services through MFMP if made through a purchase order. 15 Consequently, purchases non-construction related through purchasing cards or agency-specific two-party contracts were not recorded in the system. 16

As a result, the state's ability to use strategic sourcing practices has been limited. Strategic sourcing includes collecting information on all procurement activities and using these data to ensure that the best value is received from acquisitions. Such information can be used to identify situations in which agencies are using numerous suppliers that are providing similar goods and services—often at varying prices—and where purchasing costs can be reduced and performance improved through state-level agreements. The data also can be used to monitor compliance with state-level agreements and state procurement laws.

Strategic sourcing practices are currently being implemented by several other states. For example, Pennsylvania began implementing the principles of strategic sourcing into its procurement system in 2003, and reports that it expects to achieve more than \$200 million a year in savings through this effort. Similarly, California implemented strategic sourcing practices in 2004 and anticipates \$170 million in savings from contracted purchases.

¹² The Department of Financial Services is developing the state's replacement accounting system, Aspire, which will have a similar interface with MFMP.

¹³ The \$1.5 billion in orders for Fiscal Year 2004-05 represents the value through both MFMP and the system it is replacing (SPURS). Agencies continued to migrate from the old system to MFMP until May 2005.

¹⁴ As specified in s. 570.07(41), F.S.

¹⁵ As defined in Ch. 60A-1, F.A.C., a purchase order is a written agreement formalizing a transaction between an agency and a vendor. Purchase card transactions are made through the state's procurement card.

¹⁶ As defined in Ch. 60A-1, F.A.C., a two-party contract is an agreement executed between an agency and a vendor.

Professional Development Programs. January 2004, DMS initiated a statewide procurement certification program. certification program provides training in both general purchasing principles and processes, as well as specific training on statutes, rules, and policies that govern purchasing in Florida. In January 2006, DMS reported that 108 of the estimated 700 state agency procurement staff had received this certification. While beneficial, the certification training covers procurement skills that are most applicable to the acquisition of standard goods and services, but may not adequately prepare staff to manage highly procurements complex such as major outsourcing initiatives or technology projects.

What actions should the Legislature consider to improve the state procurement process?

Increase the amount of state agency purchases that use competitive processes

Many of the current statutory exemptions from competitive procurement were enacted when the state's competitive bidding requirements did not provide for consideration of the quality of services and market conditions were different. These exemptions may no longer be warranted.

In recent years, the state's competitive processes have evolved to allow for consideration of service quality in the vendor selection process. The 2002 Legislature authorized the use of the Invitation-to-Negotiate (ITN) bidding process, which allows state agencies to evaluate the quality of services proposed by various vendors. 17 The Department of Transportation successfully has used ITNs for professional construction architectural and engineering Department services. and the of Enforcement used the process to acquire its Integrated Criminal History Information System.

Changing market conditions also support limiting the use of some statutory exemptions. These statutory exemptions were established more than eight years ago; since then, the number of vendors who provide some of these services has increased. Thus, agencies may now be able to obtain a better value through use of competitive processes for these services.

Accordingly, we recommend that the Legislature direct the Department of Management Services to assess the current statutory exemptions and identify strategies to increase the volume of state purchases made through competitive processes. This analysis should include an evaluation of any associated changes in agency staffing or funding levels.

Improve statewide purchasing information

To help ensure that the state receives the best value from its purchases, we recommend that the Legislature direct the functional owners of the FMIS subsystems to evaluate the feasibility of recording state agency purchase information in a consolidated, state-level system. ¹⁸ This information should include, at a minimum, the nature and method of each procurement, as well as vendors providing the associated good or service.

Currently, the owners of the functional subsystems (MyFloridaMarketPlace, LAS/PBS, and Aspire) are in agreement on the value of capturing this information in an enterprise-wide system, but have not reached agreement regarding what data elements are required to provide the necessary information and which subsystem(s) should be used to collect the required data elements. Reaching an agreement at this time is critical as the state is in the process of developing a new financial management system.

Require that business cases include an analysis of associated procurement and contract management requirements

While agencies are currently required to include business cases for outsourcing services and major information technology procurements in

¹⁷ Chapter 2002-207, Laws of Florida.

¹⁸ The Office of Policy and Budget is the functional owner of the Planning and Budgeting Subsystem, LAS/PBS; the Department of Financial Services is the functional owner of the planned Florida Accounting Information Resource Subsystem and Cash Management Subsystem, Aspire; and DMS is the functional owner of both the Purchasing Subsystem, MyFloridaMarketPlace, and Personnel Information System, People First.

their legislative budget requests, these business cases do not currently include analyses of agencies' capacities to manage initiatives. 19 Currently, the business cases must include information on the costs and benefits of the acquisition as well as general information on the proposed procurement methods and contract management processes. While these requirements help ensure that adequately plan for these purchases, they do not ensure that agencies have the purchasing and contract management resources necessary to effectively manage these complex procurements.

Accordingly, we recommend that the Legislature amend the legislative budget instructions to require agencies to include in their business cases an assessment of the procurement contract management and expertise and staffing requirements of the planned procurement, their current resources, and what additional expertise would be needed from resources such as the DMS Office of This information Procurement Excellence. would assist the Legislature in its review of these initiatives and help ensure that such complex acquisitions are successful.

Agency Response-

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Management Services for his review and response. The Secretary's written response is included in Appendix A.

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¹⁹ As specified in legislative budget request instructions for Fiscal Year 2006-07, business cases involving outsourcing of activities are required to be included in Schedule XII of the agencies Legislative Budget Request. Business cases relating to the acquisition of information technology are required to be included in Schedule IV of the agencies Legislative Budget Request.

Appendix A



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March 30, 2006

Gary R. VanLandingham, Director Office of Program Policy Analysis And Government Accountability Claude Pepper Building, Room 312 111 West Madison Street Tallahassee, Florida 32399-1475

Re: OPPAGA Draft Audit Report, Steps Have Been Taken to Enhance State Acquisition Management, But Further Improvement Is Needed

Dear Mr. Mandingham:

Thank you for sharing the preliminary findings and recommendations of the referenced multi-agency report. We have devoted considerable attention and effort to agency purchasing practices in the recent past, and we appreciate your review and recommendations, which we support.

With regard to the report's three major recommended next steps for the Legislature:

- We agree that increased competition can help drive greater value for state agencies. Many of the current statutory exemptions from competitive requirements predate recent developments. The Legislature should revisit these exemptions.
- We agree that there is value in capturing all relevant purchasing information in the Florida Financial Management Information System (FFMIS). We will meet with the other FFMIS subsystem owners and report back to you jointly by May 1, 2006, on the optimal methods for doing so.
- We agree that agencies should address procurement, contract management, and project management issues in their business cases for complex initiatives, and where necessary receive sufficient resources or outside assistance to ensure success. Progress in this area will follow from Senate Bill 2518, which we support.

With regard to the report's details:

 In 2002, the Legislature amended chapter 287 to require agencies to announce notice of intent to use the single source award process. The notices are centrally posted on the Internet. This process is now more transparent, which inspires public confidence. (p. 2) Mr. Gary R. VanLandingham March 30, 2006 Page 2

- When you consider other eligible users' purchases from state term contracts, the total exceeds \$1 billion for fiscal year 2004-05. As a result, even a small percentage increase in contract savings results in significant overall value for governmental buyers in Florida. (p. 2)
- When agencies negotiate procurement of construction-related professional services, rather than follow the section 287.057(3) ITN process they typically employ the process of section 287.055 (Consultants' Competitive Negotiation Act, or CCNA). The CCNA process predates and differs significantly from the ITN process. (p. 2)
- Florida was an early adopter of strategic sourcing. We began employing these practices in 2003 as part of the MyFloridaMarketPlace initiative, and as a result we have documented increased savings on state term contracts. Better data will enable us to continue on this path with even greater savings. (p. 6)
- The DMS training and certification program is foundational, and not intended as the only source of professional development necessary or desirable for the employees engaged in the most complex transactions. The program does include training in the use of negotiations in complex acquisitions of non-standard goods and services, and it does contract management techniques applicable to complex contracts. Beyond the core classes offered through the program, many DMS employees attend additional training programs, as do some agency purchasing professionals. These efforts could be improved with modestly better funding. (p. 6)

Thank you again for the opportunity to comment on your preliminary findings.

Sincerely,

Tom Lewis, Jr.

cc: John Holley, Chief of Staff

Department of Management Services

Fred Springer, Deputy Secretary of Operations Support Department of Management Services

Russ Rothman, Interim Director of State Purchasing Department of Management Services

Steve Rumph, Inspector General Department of Management Services

The Florida Legislature

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