



The Legislature and Department of Management Services Have Taken Steps to Improve Acquisition Management

at a glance

Consistent with our recommendations, the Legislature and Department of Management Services have modified some aspects of state purchasing operations. In particular, the Legislature enacted revised certification requirements for contract negotiators and authorized the department to provide associated training. In addition, the Legislature established the Council on Efficient Government, which will review and issue advisory reports for business plans for state agency outsourcing projects that meet specific cost thresholds.

However, the department has not been directed to review current statutory exemptions from competitive bidding, and problems with collecting complete procurement data remain.

Scope

In accordance with state law, this progress report describes actions taken by the Legislature and Department of Management Services (DMS) to address the findings and recommendations of OPPAGA's 2006 report.^{1,2}

¹ Section 11.51(6), *F.S.*

² *Steps Have Been Taken to Enhance State Acquisition Management, But Further Improvement Is Needed*, [Report No. 06-35](#), April 2006.

Background

State agencies purchase large quantities of goods and services. These purchases include professional and construction services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.

The Department of Management Services is responsible for overseeing state purchasing activity. The department's Division of State Purchasing establishes statewide purchasing rules and negotiates contracts and purchasing agreements that leverage the state's buying power. The division also oversees the state's electronic procurement system, MyFloridaMarketPlace.³

As provided in s. 287.057, *Florida Statutes*, agencies may 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 include

- **single source contracts**, used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;

³ MyFloridaMarketPlace was deployed in March 2003 and is maintained and operated by Accenture, LLP, under contract with the department. The system is designed to enable state agencies to procure commodities and contractual services on-line and electronically communicate information on purchasing activities to the state's accounting system, the Florida Accounting Information Resource Subsystem.

- **invitations to bid**, 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;
- **requests for proposal**, 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; and
- **invitations to negotiate**, used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.

In addition, by using the procurement methods described above, state term contracts and state purchasing agreements are created and used when multiple purchases of standard commodities and services are anticipated, for example, office supplies, uniforms, motor vehicles, and management consulting services; these contracts are with vendors selected through a competitive process, and agencies are generally required to use them when they are available.⁴

Many services that state agencies procure are exempted from competitive bidding requirements. Specifically, s. 287.057(5)(f), *Florida Statutes*, provides that 13 types of non-construction services are exempted from competitive bidding requirements, regardless of whether the purchase exceeds the applicable cost threshold, including health, auditing, and legal services. Additionally, agencies are not required to use competitive processes when emergency conditions exist that preclude the use of these processes.

Prior Findings

Our 2006 report identified weaknesses in state purchasing practices and noted that over half of the state’s purchases of non-construction related goods and services were exempted from the state’s competitive purchasing processes. While the

⁴The Department of Management Services currently manages 105 such contracts that may be used by state agencies and local governments, and agencies may enter into their own term contracts for commodities and services.

Department of Management Services had taken steps to increase the value of goods and services purchased through state-level term contracts and by providing a professional development program for purchasing staff, the state lacked comprehensive data on purchasing and had no mechanism to assess agency capacity to conduct efficient procurement functions. To address these problems, we recommended that the Legislature direct DMS to assess statutory exemptions and identify strategies to increase the volume of state purchases made through competitive processes. We also recommended that the functional owners of the state’s financial management information systems coordinate recording of purchase information; and that agencies include an assessment of their staff’s procurement and contract management expertise in business cases.

Current Status

Consistent with our recommendations, the Legislature and Department of Management Services have taken steps to modify some aspects of state purchasing operations. The Legislature enacted revised certification requirements for contract negotiators and authorized DMS to provide training on project management to state purchasing professionals. In addition, the Legislature established the Council on Efficient Government, which will review and issue advisory reports for business plans for planned state agency acquisitions that meet specific cost thresholds.

However, the Department of Management Services has not been directed to review current statutory exemptions from competitive bidding, and the MyFloridaMarketPlace system still does not capture complete information about agency procurement activities.

The Legislature and DMS have taken steps to improve procurement staff expertise and outsourcing oversight

Consistent with our recommendations, the Legislature and the Department of Management Services have taken steps to ensure that agencies have the purchasing and contract management resources necessary to effectively manage complex procurements.

The Legislature enhanced procurement staff qualification requirements and DMS has provided associated training.

Consistent with our recommendations, the 2006 Legislature established more rigorous certification requirements for staff that negotiate complex procurements. Previously, the law required agency heads to appoint at least three persons to conduct negotiations that have experience and knowledge in negotiating contracts, contract procurement and the program areas and service requirements for which commodities or contractual services are sought.⁵ The new law strengthened these criteria by requiring that for contracts exceeding \$1 million, at least one of the persons conducting negotiations must be a certified negotiator.^{6,7} The law further provides that if the value of a contract exceeds \$10 million in any fiscal year, at least one negotiator must be a certified project management professional.⁸

In response to these legislative changes, the Department of Management Services improved agency purchasing staff's access to professional development opportunities. Notably, the department enhanced its existing public purchasing training and certification program, and established a state term contract for purchasing professional training from the National Association of State Procurement Officials. Through this contract, agency staff can access contract negotiation and project management training. From June 2006 to September 2007, 39 state employees received negotiator certifications, and 77 obtained project management professional certifications.

The Legislature established the Council of Efficient Government, but the council's functions could be strengthened. The Legislature also passed the Florida Efficient Government Act, which established the Council on Efficient Government in the Department of Management Services.⁹ The act requires the council to review, evaluate, and issue advisory reports on business cases to outsource,

providing an additional layer of oversight for these large acquisitions. The department reports that these reviews generally assess whether agencies have the capability to manage complex purchases, including appropriate project management, procurement, and contract management resources.

The intent of council reviews is to reduce risk to the state by requiring agencies to carefully specify the services to be provided, establish effective cost controls, and create strong systems to monitor contractor performance. These steps can help avoid service quality problems, higher long-term costs, and disruptions to essential state services.

Over the past year, the council has engaged in a variety of activities to meet its statutory mandates and address outsourcing accountability issues. It has

- developed criteria for evaluating outsourcing projects;
- developed a standard process for reviewing business cases;
- reviewed 36 business cases with a cumulative value of \$90 million (individual project values ranged from \$787,699 to \$8.4 million); and
- issued two reports: one on the status of outsourced projects and another on lessons learned from previous outsourcing efforts.

In addition, the council has strengthened its effectiveness by requiring agencies to include in business cases an assessment of their capability to manage major outsourcing and information technology procurements. In particular, the council assesses purchasing staff expertise in developing bid specifications and agency staff capacity to oversee the work of private contractors.

The department is planning to assess the council's effectiveness by establishing formal performance measures for its activities. Appropriate measures could include the number and timeliness of council reviews, as well as the number of council recommendations implemented by agencies or other entities.

⁵ Section 287.0574(17)(b), *F.S.*

⁶ Chapter 2006-224, *Laws of Florida*. This law also provides funding for DMS to do the related certification training.

⁷ "Negotiator" certification is obtained by participating in a range of related training and experience in complex procurements.

⁸ A national accreditation in project management, involving a number of years of experience and a certification exam.

⁹ Sections 287.0571-287.0574, *F.S.*

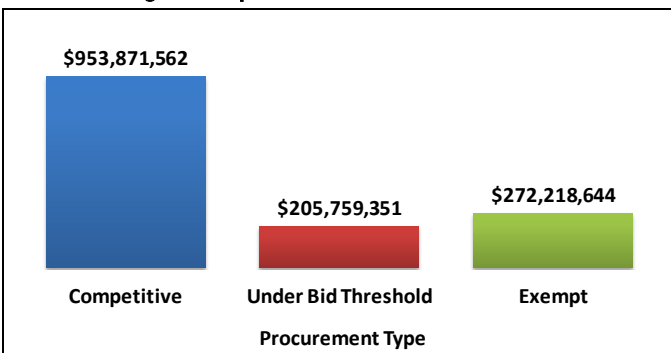
Review of purchasing exemptions has not taken place

The Department of Management Services has not been directed to review current exemptions from competition. Although a greater proportion of procurements have been competitively bid since our last report, most state agency purchases are still exempt from competitive bidding requirements.

Most agency spending was on competitive purchases. In Fiscal Year 2006-07, the Department of Management Services reports that agencies ordered nearly \$1.4 billion worth of non-construction goods and services in the MyFloridaMarketPlace system. Agencies set up 235,454 purchase orders for these goods and services during the year.

As shown in Exhibit 1, the bulk of the dollar value of these purchases was made using competitive processes (\$954 million). State agencies made most of these competitive purchases through state term contracts or similar agreements, spending \$742 million. However, some agencies conducted their own competitive solicitations, spending over \$212 million on these purchases.

Exhibit 1
In Fiscal Year 2006-07, Most State Agency Spending Went Through Competitive Processes



Source: OPPAGA analysis.

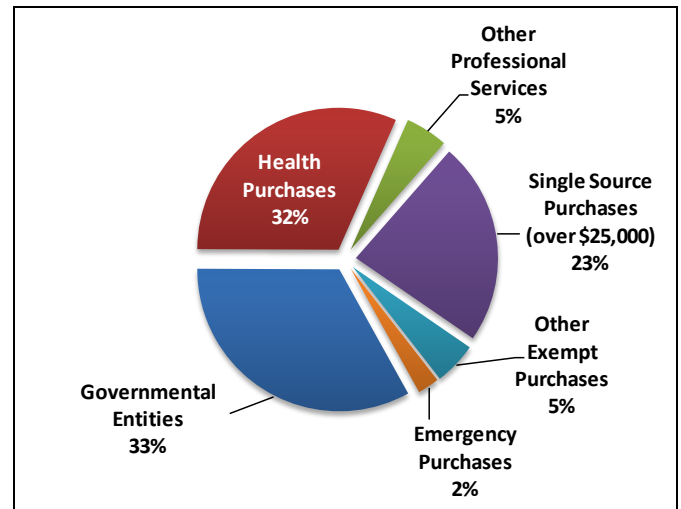
Many services are still exempted from competitive bidding requirements. However, while the bulk of the dollar value of procurements is subject to competitive processes, most purchases are not made through such processes because the state makes many purchases that cost less than the statutory thresholds for competition (\$25,000) or are statutorily exempt. In Fiscal Year 2006-07, over half (51%) of non-construction related acquisitions by

state agencies were exempted from competitive processes. Specifically, \$205 million in goods and services (45% of all purchases), were not required to be competitively bid because their value was below the cost threshold of \$25,000.¹⁰

In addition, during the same period, agencies purchased over \$272 million in non-construction goods and services which exceeded the competitive cost threshold but were exempt from the competitive process because the nature of the good or service purchased was statutorily exempted in legislation or because an emergency condition precluded the use of competitive processes.

Exhibit 2 shows a breakdown of these exempted purchases. Of the \$272 million in exempt purchases made in Fiscal Year 2006-07, over half of money spent was for services from other governmental entities (33%) such as universities and for the provision of health care (32%).

Exhibit 2
In Fiscal Year 2006--07, Over Half of Exempted Services Were for Services from Other Government Entities and Health Services



Source: OPPAGA analysis.

Though authorized by law, the large value of purchases that are exempt from competitive processes continues to limit assurances that the state is receiving the best value. As such, we continue to recommend that the Legislature consider directing Department of Management

¹⁰ Agencies may have used informal competitive processes, such as soliciting telephone quotes, for purchases that are below the cost threshold for competition.

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 necessary changes in statutory requirements and associated changes in agency purchasing staffing.

Effectiveness of MyFloridaMarketPlace continues to be impeded by limited data

As we recommended, the Department of Management Services has taken some steps to improve the information agencies gather and input into MyFloridaMarketPlace. However, the system still does not capture complete information about agency procurements, which continues to diminish the state's ability to achieve the best value.

DMS has worked with the Department of Financial Services to improve the quality of procurement data. The Department of Management Services is working with the Department of Financial Services to coordinate the collection of state purchasing information in MyFloridaMarketPlace and FLAIR, the state's accounting system. In 2007, DMS negotiated enhancements to the interface between MyFloridaMarketPlace and FLAIR, which enabled two additional agencies to migrate from the former state purchasing subsystem to MyFloridaMarketPlace; 31 agencies currently use some functions of MyFloridaMarketPlace, and the one remaining user of the former state purchasing subsystem, the Office of Legislative Services, is currently transitioning to using one function of MyFloridaMarketPlace. The department reports that increasing the number of agencies participating in MyFloridaMarketPlace will increase the amount of purchasing information available and, as such, strengthen its capacity to obtain the best value for frequently purchased goods and services.

However, the system's effectiveness is limited because it still does not contain records of all state agency procurements. As we reported previously, only a small portion of state acquisitions are being made through MyFloridaMarketPlace. Specifically, the department reports that in Fiscal Year 2006-07, agencies placed \$1.2 billion in purchase orders in MyFloridaMarketPlace, or 41% of the

\$2.9 billion universe of agency purchases for non-construction goods that have typically been processed through this system.¹¹ The remaining purchases were completed in FLAIR or agency systems.

Numerous factors impede the collection of complete purchasing information. There are several reasons why MyFloridaMarketPlace is not capturing all the procurement data that could be used to improve state agency purchasing practices. Specifically, some agencies are still exempted from using the system, while others are only utilizing a few functions of the system. For example, the Department of Agriculture and Consumer Services is exempted by statute from using MyFloridaMarketPlace to record its purchases and the agency uses its own purchasing system to manage acquisitions.¹²

Furthermore, many purchases made by state agencies are not recorded in MyFloridaMarketPlace. For example, construction-related purchases, including professional architectural and engineering services, are still not required to be documented in the system. Moreover, state agencies are required to record only non-construction related goods and services through MyFloridaMarketPlace if made through a purchase order. As such, non-construction related purchases made through purchasing cards or agency-specific two-party contracts are not required to be recorded in that system. Although some agencies do elect to record these contracts in MyFloridaMarketPlace, agencies record some contracts in FLAIR instead, as it would double agency workload to create purchase orders on contracts.¹³ As a result, the state's ability to strategically purchase goods and services remains limited. More comprehensive purchasing information would help the state identify situations in which agencies are using numerous suppliers that are providing similar goods and services—

¹¹ Source: Department of Management Services. The universe of purchases that have historically been processed through MyFloridaMarketPlace and the previous purchasing system includes all operating expenditure categories but excludes transfers, P-card purchases, expenses by agencies that have their own purchasing systems purchases from vendors not registered with MyFloridaMarketPlace and expenses related to construction services.

¹² Section 570.07(41), F.S.

¹³ Florida Auditor General. *Department of Management Services and Other Selected State Agencies, MyFloridaMarketPlace System, Information Technology Audit*. Report No. 2007-076, January 2007.

often at varying prices—and where purchasing costs can be reduced and performance improved through state-level agreements. This data would help agencies and other entities to monitor compliance with state-level agreements and state procurement laws.

To help ensure that the state receives the best value from its purchases, we continue to believe that agencies should integrate procurement information across the state's purchasing and accounting systems. Other future data coordination improvements to the systems could include, at a minimum,

- adding fields to FLAIR that capture the nature and method of each procurement, as well as the vendors providing these services;
- assuring that the MyFloridaMarketPlace interface with FLAIR is accurate and updated; and
- taking steps to facilitate more extensive use of the contracts function of MyFloridaMarketPlace.

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