



DEPARTMENT OF MANAGEMENT SERVICES

"We serve those who serve Florida"

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STATE PURCHASING MEMORANDUM

Memorandum No. 02 (2005-06)

FROM: State Purchasing and Enterprise Information Technology Service

DATE: April 12, 2006

RE: Cooperative Purchasing Agreements (Alternate Contract Sources) - Technology

This memorandum replaces Memorandum No. 05 (95-96) re: Use of GSA and Other Public Entities' Contracts, and addresses use of cooperative purchasing agreements, particularly for purchases of information technology.

The memorandum contains both background discussion and practical transactional guidance, organized into the following sections.

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I. Executive Summary

Governments spend a lot of money every year on goods and services.¹ Appropriately, much attention is focused on public procurement processes and results. Over the past decade, governments have gone to great lengths to streamline and rationalize the procurement process. These efforts have included developing and promoting the concept of cooperative purchasing, which seeks to minimize the transactional burden of good public procurement while spreading its resulting value across a number of different government buyers.

In 2002, the federal government significantly advanced the cooperative purchasing concept by making available for use by other governments the U.S. General Services Administration's ("GSA") supply schedule for General Purpose Commercial Information Technology, Equipment, Software and Services, commonly known as "Schedule 70."

In July 2004, State Purchasing adopted new rule 60A-1.047, Alternate Contract Sources of Commodities and Services, which implements section 287.042(16) of the Florida Statutes and authorizes cooperative purchasing from other governments' contracts under certain conditions. Specifically, Florida agencies may purchase from another government's contract when State Purchasing determines that doing so is cost-effective and in the best interest of the State. The rule establishes a process for agencies to follow when they seek approval of a single cooperative purchase. The rule also authorizes State Purchasing to pre-approve other contracts for use by Florida agencies.

State Purchasing hereby pre-approves agencies' use of Schedule 70 in accordance with this memorandum, which sets forth the following important constraints:

- Agencies are not pre-approved to purchase from alternate contract sources any goods or services that are on a state term contract procured by State Purchasing, unless justified under Rule 60A-1.044(3).
- When purchasing from Schedule 70, agencies shall follow the ordering procedures of FAR subparts 8.405-1 and 8.405-2, attached as Exhibit 2, modified as follows:
 - No quotes necessary for purchases up to \$2,500
 - Seek three quotes for purchases up to \$150,000
 - Seek more than three quotes for purchases over \$150,000
 - Schedule 70 may not be used for purchases over \$10 million
- Agencies shall process Schedule 70 purchases in MyFloridaMarketPlace as a non-catalog direct order and further document the transaction as per the attached Exhibit 3.

¹See Ken S. Babich & Carole Pettijohn, *Sourcing in the Public Sector* 13 (2004) (estimated combined spending by federal, state, and local governments for 2001 exceeded \$700 billion); see also Thai, *Public Procurement Re-Examined*, 1 J. Pub. Procurement 9 (2001).

II. Background

A. Guiding Principles

Purchasing in Florida government is guided foremost by section 287.001 of the Florida Statutes, enacted in 1982:

The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.

These principles reflect the importance of maintaining public confidence in the procurement process. Public confidence grows to the extent the process exhibits equity, integrity, and efficiency: *equity*, by providing fair access to those interested in competing for government business; *integrity*, by reducing the chance of corruption; and *efficiency*, by procuring goods or services of the desired quality at the lowest total cost.² The same principles are evident in the federal legislative counterpart from the same era, the Competition in Contracting Act of 1984.

The procurement process includes purchasing, but is not limited to the transaction itself. According to the National Association of State Procurement Officials' (NASPO) strategic plan, the procurement process encompasses numerous steps:

- assessing need and planning the acquisition
- preparing and processing a requisition
- determining the contractor source selection method and drafting and issuing a solicitation
- evaluating bids or proposals and awarding a contract
- administering the contract
- receiving and accepting goods or services
- managing delivery, payment, inventory and property disposition

There are costs associated with each step of the process, *i.e.*, public funds pay not only for the goods or services themselves, but also for the solicitation of them and for the administration of the contract that governs their purchase. Procurement policy must strike the appropriate balance between the costs and benefits associated with each step.

²See Babich & Pettijohn, *Sourcing in the Public Sector* 2.

B. Recent Developments

Between 1975 and 2000, there was a 310% increase in the number of MBA degrees awarded in the United States.³ “Efficient and effective” was the clarion call of successful businesses during the last quarter-century. In the drive to increase productivity, managers recognized the strategic value of procurement. It is no surprise that this trend impacted the public sector as well, both generally and with regard to procurement specifically.

In 1993, Vice President Gore’s National Performance Review issued *Reinventing Federal Procurement*,⁴ which recognized that in the private sector, “procurement has risen from a back-office, low-level concern to an increasingly strategic corporate one.” In the public sector, by contrast, an increasingly complex and bureaucratic system yielded a larger, but less productive, workforce. Concluding that the system’s high administrative costs were not justified by superior results, *i.e.*, lower costs or better quality, the report recommended moving toward a system with more customer service and less bureaucracy. To get there, the report advanced five guiding themes:

- Move from rigid rules to guiding principles
- Get bureaucracy out of the way
- Give line managers more authority and accountability
- Give line managers expanded access to competitive sources of supply
- Foster competition, commercial practices, and excellence in vendor performance

A parallel reform effort stemmed from section 800 of the 1991 Defense Authorization Act, which created a panel to recommend improvements to Department of Defense procurement practices. In 1993, the “Section 800 Panel,” as it came to be known, issued its eight-volume report, *Streamlining Defense Acquisition Laws: Report of the Advisory Law Panel*.

Many of the early 1990s recommendations for reform of federal procurement were subsequently enacted in the Federal Acquisition Streamlining Act of 1994⁵ and the Clinger-Cohen Act of 1996.⁶ Statutory changes led to reform of the implementing Federal Acquisition Regulations (FAR). Today, the “vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.” FAR 1.102(a). Toward realizing its vision, in FAR 1.102(b) the federal system commits to:

³National Center for Education Statistics, Table 284 (Aug. 2001) (available at <http://nces.ed.gov>)

⁴Available at <http://govinfo.library.unt.edu/npr/library/index.htm>.

⁵Pub. L. No. 103-355, 108 Stat. 3243 (1994).

⁶Pub. L. No. 104-106, 110 Stat. 186 (1996). This legislation combined the Information Technology Management Reform Act and the Federal Acquisition Reform Act.

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example --

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

The FAR system's vision and commitments were apparent in the 1997 rewrite of FAR Part 15, which governs Contracting by Negotiation.⁷ They are also evident in the recent growth in the number of federal acquisitions using methods other than the traditional, stand-alone, solicitation process.⁸ The three most common streamlined contract vehicles for ordering goods and services are (1) a multiple-award schedule established by the GSA, (2) a multiple-award contract established by one agency but which other agencies may use, and (3) a government-wide agency contract for information technology, established by one agency but which other agencies may use. While all three are streamlined contract alternatives, they have their differences, summarized here:

	Multiple Award Schedules (MAS) per FAR Part 38	Multiple Award Contract (MAC) per FAR Part 16	Government-Wide Agency Contract (GWAC) per FAR Part 17
Multiple Awards	Yes, with continuous open season	Preferred, but not required. When made, limited in number.	Preferred, but not required. When made, limited in number.
Contract Maximums	No	Yes	Yes
Order Maximums	No	Yes	Yes

⁷FAR Part 15 (contracting by negotiation) is a precursor of Florida's Invitation to Negotiate, codified in 2001 at section 287.057(3) of the Florida Statutes.

⁸*E.g.*, the processes now governed by FAR Part 14 (sealed bidding) and Part 15 (contracting by negotiation).

	Multiple Award Schedules (MAS) per FAR Part 38	Multiple Award Contract (MAC) per FAR Part 16	Government-Wide Agency Contract (GWAC) per FAR Part 17
Products/ Services	100% commercial	Commercial and non-commercial	IT only
Open to new vendors	Yes	No	No

These reforms at the federal level influenced practices in the states, particularly with regard to procuring information technology (“IT”) goods and services.⁹ In Florida, the Legislature authorized DMS in 1995 to procure IT services via “competitive negotiation.”¹⁰ This authorization was codified in subsection 287.042 of the Florida Statutes, rather than in 287.057, which, in hindsight, led to confusion about the status and use of the contracts that were negotiated rather than procured under subsection 287.057.

DMS issued memoranda to guide agencies on use of negotiated contracts,¹¹ but these proved insufficient to help users through the rapidly changing environment and to prevent practices later subject to audit criticism.¹² Florida has not been alone in this regard,¹³ which has resulted in continuing efforts to provide the proper level of guidance in the FAR and similar state regulations and to train government procurement professionals in these new methods.¹⁴

⁹See Margaret E. McConnell, *The Process of Procuring Information Technology*, 25 Pub. Cont. L.J. 379 (1996).

¹⁰See Ch. 95-216, Laws of Fla., § 2. This legislation also added what is now section 287.042(16) of the Florida Statutes, which authorizes cooperative purchasing from other government jurisdictions’ contracts (see Background Section C below).

¹¹See *Multiple Award State Term Contracts*, Memo. No. 5 (00/01) (Oct. 5, 2000); *State Term Contracts for Information Technology Consulting Services* Memo. No. 1 (00/01) (rev. Sep. 5, 2000).

¹²See *Selected State Agencies’ IT Consultant Procurement Practices* (AG Report No. 02-050 Oct. 2001); *IT Consultant Services Contract Audit* (EOG IG Report Sep. 2001); *Audit of State Term Procedures for Acquiring IT Consultant Services* (DMS IG Report No. 2000-118).

¹³See GAO, Contract Management, *Guidance Needed to Promote Competition for Defense Task Orders*, GAO 04-874 (July 2004); GSA IG Report, *Audit of Procurement of Professional Services from the Federal Supply Service’s Multiple Award Schedules*, Report No. A020243/F/A/V03009 (July 31, 2003); GAO, Contract Management, *Not Following Procedures Undermines Best Pricing Under GSA’s Schedule*, GAO-01-125 (Nov. 2000).

¹⁴With regard to contracting for IT services in Florida, DMS awarded a new state term contract in April 2004 which follows the GWAC model more than the MAS model and which provides more guidance on competing for orders. The current IT hardware contract, which was awarded in 2002, is more akin to the MAS model, but also requires buyers to obtain quotes before issuing an order. At the

C. Cooperative Purchasing

Public policy recognizes the value of cooperative purchasing. Cooperation is easiest to achieve within a single jurisdiction; for example, section 287.042(2)(a) of the Florida Statutes authorizes State Purchasing to procure state term contracts for use by other agencies and eligible users. Since 1949, the GSA Federal Supply Service has performed a similar role for federal agencies. The federal streamlined contract alternatives outlined above are all examples of cooperative purchasing.

More recently, cooperative purchasing efforts have crossed jurisdictional boundaries. For example, through the Western States Contracting Alliance (WSCA), formed in 1993 and sponsored by NASPO, fifteen states work together to achieve cost-effective and efficient acquisition of quality products and services.¹⁵ By way of further example, over forty states, including Florida, currently participate in the Minnesota Multi-State Contracting Alliance for Pharmacy (MMCAP), which was created in 1985.¹⁶ At the local level, organizations such as U.S. Communities provide a similar service.¹⁷

In recognition of this trend, and consistent with the developments outlined above in section B, in 1995 the Florida Legislature authorized State Purchasing to approve other jurisdictions' contracts for use by Florida agencies. *See* § 287.042(16), Fla. Stat. (2005). This legislation followed the Federal Acquisition Streamlining Act of 1994, which authorized GSA to open some of its contracts to a broader base of users. In response, State Purchasing answered issued Memorandum No. 05 (95-96), but GSA stalled in opening its contracts.

Section 211 of the federal E-Government Act of 2002¹⁸ resurrected GSA's move toward cooperation with non-federal buyers. This legislation opened the door to information technology (IT) products and services from GSA Schedules 70 and 00CORP (Consolidated [formerly Corporate Contracts] Schedule with associated Special Item Numbers). This most comprehensive implementation of a cooperative purchasing arrangement to date leverages the IT buying power and expertise of GSA for many jurisdictions throughout the country. To implement the E-Government Act, GSA published an interim rule in May 2003, which was made final a year later in May 2004.¹⁹

federal level, FAR 8.404 was amended in June 2004 to provide much greater guidance on the proper use of the GSA schedules.

¹⁵*See* <http://www.aboutwsca.org/welcome.cfm>.

¹⁶*See* <http://www.mmd.admin.state.mn.us/mmcap/>.

¹⁷*See* <http://www.uscommunities.org/>.

¹⁸Pub. L. No. 107-347, 116 Stat. 2899 (2002).

¹⁹69 Fed. Reg. 28,063 (May 18, 2004). For the interim rule, see 68 Fed. Reg. 24,372 (May 7, 2003).

In conjunction with the MyFloridaMarketPlace initiative, in 2004 State Purchasing revised Chapter 60A-1 of the Florida Administrative Code, the general regulations governing purchasing at the state level. Believing in the value of cooperative purchasing, and seeking to take advantage of the E-Government Act opportunities, State Purchasing replaced old rule 60A-1.008(3)(b) with a new rule 60A-1.047, which more comprehensively addresses cooperative purchasing. The new rule allows agencies to seek State Purchasing approval of single transactions from other government entities' contracts. The new rule also authorizes State Purchasing to independently identify alternate contract sources suitable for cooperative purchasing, and to authorize their use by agencies. In its entirety, the new rule provides:

60A-1.047 Alternate Contract Sources of Commodities and Services.

(1) Requests for alternate contract source approval. Agencies may request permission from the Department to purchase commodities or services from term contracts or requirements contracts competitively established by other governmental entities. Agencies must submit Form PUR 7102 (03/04), "Agency Request for Review of Alternate Contract Source," which is hereby incorporated by reference, in order to request permission. This form is available on the internet at <http://dms.myflorida.com/purchasing>. The contract must contain specific language or other legal authority authorizing third parties to make purchases from the contract with the vendor's consent.

(2) Approval of alternate contract source requests. If the Department determines that the agency's alternate contract source is cost-effective and in the best interest of the State, the Department shall approve the contract for use by the requesting agency. The Department reserves the right to approve the contract for a single transaction or multiple transactions.

(3) Department identification of alternate contract sources. The Department shall independently identify term contract or requirements contracts awarded by other governmental entities, and approve such alternate contract sources for use by agencies. The Department shall only approve those alternate contract sources that are cost-effective and in the best interest of the State.

(4) Alternate contract sources available online. The Department shall maintain on its website a list of all current alternate contract sources and the agencies authorized to use such contracts. The Department's website is <http://dms.myflorida.com>.

(5) Cooperative Purchasing. An agency may include language in a term contract authorizing the Department to approve the contract as an alternate contract source if requested by another agency. The Department recommends the following sentence: "As provided in Section 287.042(16)(a), F.S., other state agencies may purchase from the resulting contract, provided that the Department of Management Services has determined that the contract's use is cost-effective

and in the best interest of the State. Upon such approval, the Contractor may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein.”

III. Guidance on Use of Alternate Contract Sources

In all cases of alternate contract sources, State Purchasing is guided by the two criteria specified in subsection 287.042(16) of the Florida Statutes: (1) Is the proposed contract cost effective? (2) Is approving its use in the best interests of the State? As noted in the Background section above, sound policy must consider the costs and benefits associated with each step in the procurement process. Simplification cannot override good buying.

In some instances, State Purchasing has determined that the State’s interests are best-served by aggregating all agencies’ demand, conducting a formal competitive solicitation, and awarding a state term contract to the optimal number of vendors that are qualified to meet that demand. This strategy requires more time and effort at the procurement planning and contract management stages, but is justified by the savings achieved by leveraging all of the State’s volume.²⁰ In such cases, it will rarely be in the State’s best interest for an agency to buy outside the contract, i.e., from an alternate contract source. Moreover, doing so may be unfair to the contractor that has based its offered price on the assumption that it will enjoy most of the State’s business. **FOR THIS REASON, AGENCIES GENERALLY SHOULD NOT PURCHASE FROM ALTERNATE CONTRACT SOURCES GOODS OR SERVICES THAT ARE ON STATE TERM CONTRACT, UNLESS JUSTIFIED UNDER RULE 60A-1.044(3).**²¹

²⁰See GAO, Best Practices, *Using Spend Analysis to Help Agencies Take a More Strategic Approach to Procurement*, GAO-04-870 (Sep. 2004). The general term of art for this approach is “strategic sourcing.” The growing recognition of this approach’s value counterbalances the view expressed in 1993 in *Reinventing Federal Procurement*, namely, that centralized, specialized, procurement was outdated and not cost-effective. In the end, the policy challenge is to strike the appropriate balance between what parts of procurement to centralize and what to leave with program managers.

²¹This policy is reflected in subsection 287.056(1), F.S., which generally obligates agencies to purchase from state term contracts. For those rare instances where the State’s interests are not best-served by using the contract, exceptions are provided in rule 60A-1.044(3):

- (a) The purchase does not exceed \$250 or any threshold amount established in the state term contract; or
- (b) The agency determines in writing that the contract item cannot meet an agency need because of one of these factors: critical delivery schedules, the need for compatibility with existing equipment, non-availability of service, applications of unique technical requirements, product quality, or specifications that differ from those of the contract commodities or services; or
- (c) The state term contract expressly designates that it is a non-exclusive contract, which designation may be conditional, e.g., require any off-contract vendors to match or beat the contract price.

If an agency is justified in buying from a source outside the state term contract, then it must determine the best means for doing so. The agency may do a formal solicitation of its own. Alternatively, the agency may use an alternate contract source or, in limited circumstances, other methods such as single sources or emergency purchases. If buying from a contract pre-approved pursuant to rule 60A-1.047(3) (for example, the GSA Schedule 70 approved by this memorandum), the agency need not come to State Purchasing for further approval; otherwise, the agency shall follow the rule 60A-1.047(1) process, which is explained in section III.C below.

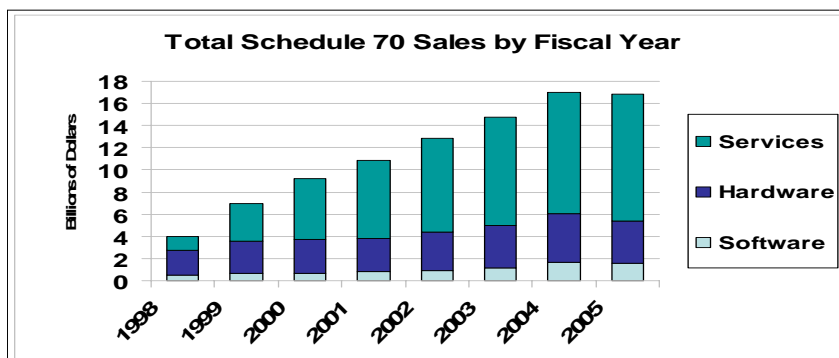
By contrast, non-State agency eligible users of state term contracts are not obligated to buy from the contracts.²² Since they already are free not to use the contracts, there is no harm to the State's interest or to the contractor's expectations if they elect not to and choose instead to use an alternate contract source for some reason, including lower price. The only exception would be if the state term contract expressly identified the optional user as having agreed to buy exclusively under the agreement, in which case the user should be limited to the same exceptions as a State agency for buying outside the contract.

With these general principles in mind, the following subsections contain more information about purchasing technology goods and services from specific alternate contract sources.

A. GSA Schedule 70

The range of goods and services available under Schedule 70 is broad. The key to navigating through them is the GSA Special Item Number (SIN), which is explained in greater detail in Exhibit 1 to this memorandum.

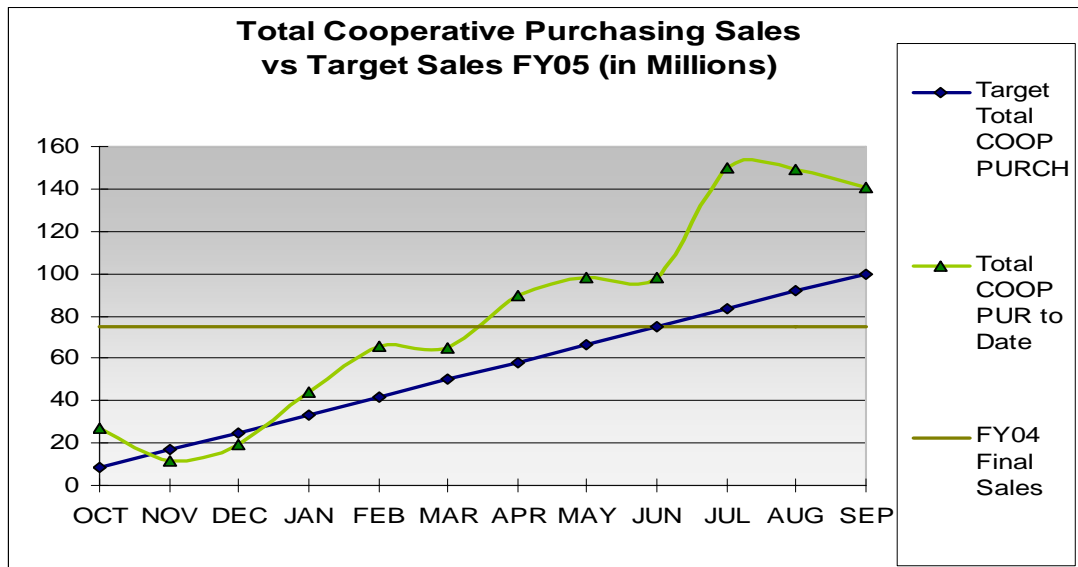
The trend of federal agency purchases Schedule 70 contracts has been steadily upward, before leveling off last federal fiscal year just under \$17 billion, 39% of which went to small businesses:²³



²²See rules 60A-1.005 and 60A-1.044(2).

²³Sales information is taken from The URSA Year-End Report (9/30/05), available at the GSA IT Center Library at www.gsa.gov/itcenter. The federal fiscal year begins in October.

State and local use of Schedule 70 got off to a slower start than some expected, but it has grown steadily, averaging \$0.4 million per month in FY 03, \$6.25 million per month in FY 04, and over \$11 million per month in FY 05, which exceeded GSA's expectations:




Buyers may access Schedule 70 and others via GSA's Schedules E-Library at www.gsaelibrary.gsa.gov. At this site, buyers may search schedules in a variety of ways, e.g., by keywords, contract number, contractor/manufacturer name, schedule number, SIN, etc. When searching this site, non-federal buyers should look for the icon, **COOP PURCH**, which indicates that the contract has been amended to authorize sales to state and local buyers. This designation is at the contract level, and authorizes transactions with all resellers under the contract.

Another useful on-line resource is GSA Advantage! at www.gsaadvantage.gov, the federal eProcurement site that is similar to MyFloridaMarketPlace. Non-federal buyers may not conduct transactions through GSA Advantage!, but the site is a very useful tool for conducting market research and comparing offerings.

Federal buyers using Schedule 70 must comply with the associated FAR Subpart 8.4.²⁴ Agency buyers employing the schedule as an alternate contract source shall do likewise with respect to ordering procedures, to ensure sound purchasing practice. **IN PARTICULAR, AGENCIES SHALL FOLLOW THE ORDERING PROCEDURES OUTLINED IN 8.405-1 AND 8-405-2, COPIES OF WHICH ARE ATTACHED TO THIS MEMORANDUM AS EXHIBIT 2.** At an agency's request with reasonable notice, State Purchasing will deliver on-site training on these ordering procedures.

²⁴The FARs are available on numerous sites. One useful resource is the Contracting Laboratory's FAR site at <http://farsite.hill.af.mil/> -- click FAR under the "Regs" tab on the left, then select FAR part 8.

In applying the ordering procedures contained in FAR 8.405-1 and FAR 8.405-2, that is, in determining to whom to send an RFQ and how many quotes are required, agencies shall use the following guidelines.

- The “micro-purchase threshold” shall be \$2,500.²⁵ Below this level, no quotes are necessary, and purchases may be made directly from a schedule contractor.
- The “maximum order threshold” shall be \$150,000.²⁶ At or below this level, provide the RFQ to at least three schedule contractors; above this level, provide the RFQ to additional schedule contractors. Schedule contractors without the  designation may be counted for purposes of this requirement provided they respond with a quote.
- For purchases over \$10 million, agencies shall not use the GSA schedule, and shall instead use one of the traditional procurement methods outlined in section 287.057 of the Florida Statutes.

The agency should ultimately select the vendor that offers the best value.

Generally, the RFQ process is a critical component of obtaining best value under the schedule program. However, there may be circumstances where it is not possible to obtain multiple quotes, but the Schedule 70 price still represents best value. For example, a manufacturer may authorize only a single distributor of its product, the authorized distributor may be on schedule, and the manufacturer may not bid directly on contracts or may refuse to underbid its authorized distributor. In such a case, it may be fruitless to burden an agency with additional processes that will never yield a better price. The FARs recognize this reality in 8.405-6, Sole Sources Justification and Approval. At the same time, however, public policy in Florida favors competition, and the Legislature has specified a single source process in section 287.057(5)(c) of the Florida Statutes, which should not be overwritten by FAR 8.405-6 or otherwise swallowed by exceptions. To honor this policy while also ensuring that agencies get the best value, the following additional guidance is provided for agencies that cannot seek the necessary number of quotes from schedule contractors:

- For purchases over \$2,500 but not over \$25,000, the agency may proceed with the purchase but shall document its decision per rule 60A-1.002(3). The documentation may include evidence of quotes from non-schedule contractors, or evidence that no other quotes were available due to unique distribution channels.

²⁵The \$2,500 threshold represents the "micro-purchase limit" under the Federal regulations and is also consistent with rule 60A-1.002(2), Fla. Admin. Code.

²⁶Generally, the GSA Maximum Order Threshold is \$500,000, which is five times the federal threshold for competitive procurement (\$100,000). By analogy, the Florida threshold could be five times the state's \$25,000 competitive procurement threshold, or \$125,000. For administrative convenience, however, rather than create a new threshold unique to the GSA process, State Purchasing has chosen the closest existing purchasing threshold, Category Four, which is \$150,000. *See* § 287.017(1)(d), F.S. (2005).

- For purchases exceeding \$25,000, if an agency cannot provide the RFQ to the required number of schedule contractors, then the agency shall proceed with a procurement process authorized by section 287.057 of the Florida Statutes. If the agency wishes to preserve its option to buy from Schedule 70, it shall so indicate in the solicitation documents and expressly specify it will deem responsive only those offers that meet or beat the schedule price. If the section 287.057 process does not result in an equal or better value as compared to Schedule 70, then the agency may reject all offers and proceed to purchase from the schedule contractor.

After completing the required RFQ or other sourcing process, to complete the order an agency shall enter into an agreement with the schedule contractor in substantially the same form attached to this memorandum as Exhibit 3, which shall include the transaction fee language required by Florida law. The agency shall then issue a direct order within MyFloridaMarketPlace, treating the transaction as a non-catalog purchase. To ensure tracking of such purchases, agencies shall include the appropriate information in the data fields for commodity code, purchasing code, and state contract ID, as indicated here:

The screenshot shows a web browser window displaying the 'Add Items' step of a requisition process. The page title is 'Requisition PR569559' and 'Untitled Requisition'. A left-hand navigation menu includes 'Title', 'Add Items', 'Shipping', 'Accounting', 'Comments', 'Approval Flow', and 'Summary'. The main content area has tabs for 'Catalog', 'Non-Catalog', 'Favorites', 'Saved Searches', and 'Master Agreements'. The 'Non-Catalog' tab is active, showing a form with the following fields:

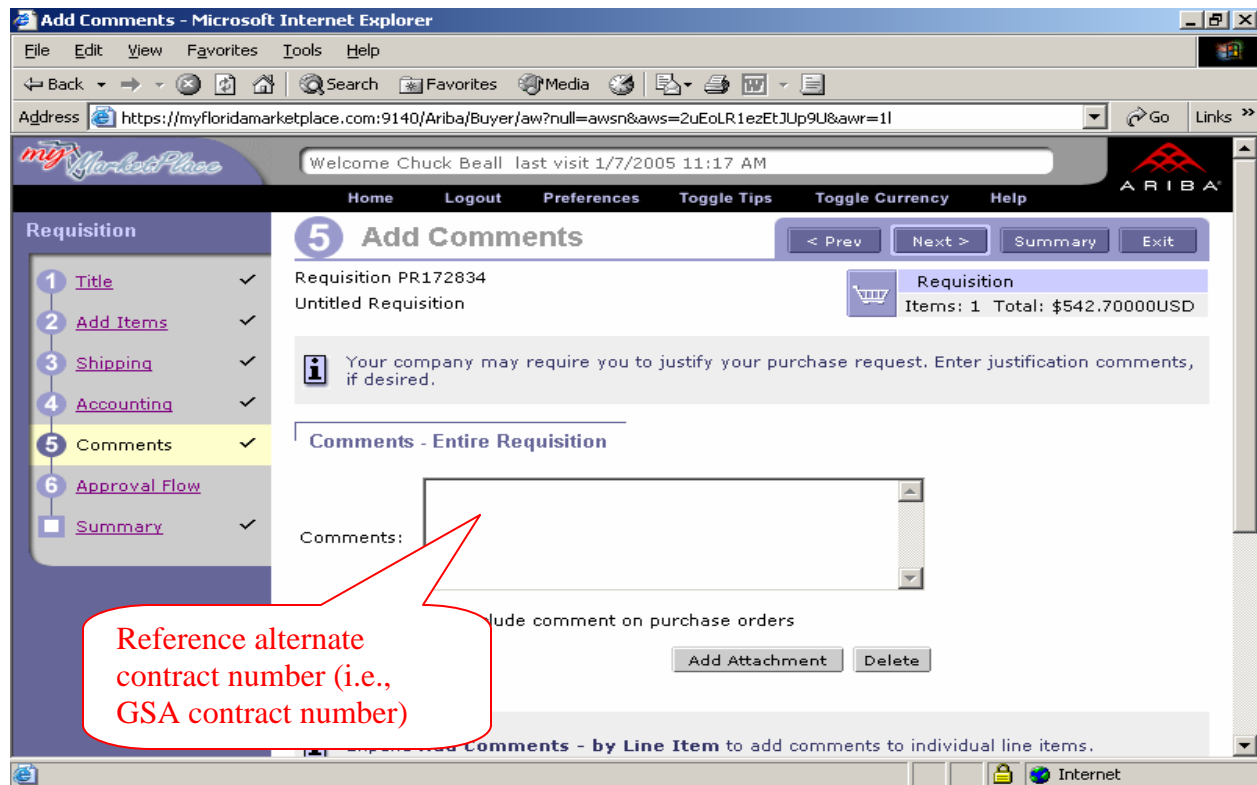
- Tax Or Other Charge:
- Full Description:
- *Commodity Code: (No Preference)
- Procurement Method: (No Preference)
- State Contract ID: (Dropdown menu with options: 252-GSA-Software, 973-GSA-IT Services, 730-GSA-Telecommunications, 250-GSA-Hardware, 252-GSA-Software)

Three red callout boxes provide instructions:

- 'Choose appropriate six-digit commodity code' points to the Commodity Code field.
- 'Choose code C for alternate contract source' points to the Procurement Method field.
- 'Enter appropriate contract number' points to the State Contract ID dropdown menu.

MyFloridaMarketPlace has been modified to include four different State Contract IDs for GSA contracts, which are tied to related Florida commodity classes (250, 252, 730, and 973). Agencies shall enter the State Contract ID most closely related to the commodity or service purchased (see Exhibit 1 for more on the relationship between state and GSA identifiers).

Further, to ensure that the direct order can be connected to the particular alternate contract supporting the purchase, agencies shall include sufficient identifying information in the comment box, as shown here:



SO LONG AS AN AGENCY EMPLOYS THESE PROCESSES AND ABIDES BY THE PRINCIPLES OUTLINED IN THIS MEMORANDUM, pursuant to section 287.042(1) of the Florida Statutes and Rule 60A-1.047(3) State Purchasing and EITS hereby approve the agency's use of Schedule 70 as an alternate contract source. The agency need not initiate the rule paragraph (1) process to obtain approval on a transaction-by-transaction basis.²⁷ This approval extends only to use of the schedule as an alternate contract source, and not to any other aspect of the acquisition, e.g., compliance with EITS technology standards or policy, budgetary approval, compliance with Legislative requirements, etc.

B. NASPO/WSCA Contracts

Florida is an active NASPO member and is regularly identified in NASPO and WSCA solicitations as a potentially participating state. On a case-by-case basis, applying the rule 60A-

²⁷Inability to satisfy all of the requirements outlined for pre-approval shall not preclude an agency from seeking approval of a particular transaction pursuant to the rule paragraph (1) process; in such a case, the agency must demonstrate that the rule criteria are satisfied.

1.047 criteria, State Purchasing executes participating addenda with awarded contractors, authorizing the contracts' use in Florida. The authorized contracts are listed on State Purchasing's web site, along with instructions for their use.²⁸

With regard to non-state agencies, this authorization is not required but is for the convenience of the WSCA-member state administering the contract, that is, State Purchasing acts as a single point of contact and saves the other state the trouble of securing hundreds of participating addenda with local jurisdictions. State law does not require non-state agencies to obtain State Purchasing approval, and these agencies are responsible for ensuring their own compliance with local law.

State agencies desiring to use the NASPO/WSCA contracts shall review the participating addendum to determine its scope. Sometimes, the authorization is unconditional for state agencies, and no further approval by State Purchasing is required. This is true, for example, with the recently authorized contract for defibrillators, which State Purchasing has adopted as the state term contract (number 465-820-06-11), and with the Nextel contract (WSCA number 12-00115), which State Purchasing approved to meet a niche demand not met by the state term contract (number 725-330-05-1). In other cases, the approval is conditional – for example, with respect to IT hardware manufacturers already on state term contract. In these cases, agencies must obtain further State Purchasing approval by following the process outlined in rule 60A-1.047(1) and described in section III.C below.

C. Agency Requests for Approval of Transactions

Absent State Purchasing's blanket pre-approval of an alternate contract source under rule 60A-1.047(3), a state agency desiring to use another governmental entity's contract in lieu of its own must obtain approval under rule 60A-1.047(1). The steps for doing so are as follows:

- First, determine that the proposed alternate contract source
 - ✓ is a term (or requirements) contract²⁹
 - ✓ was competitively established
 - ✓ contains specific language or other legal authority authorizing third parties to make purchases from the contract with the vendor's consent

²⁸See http://dms.myflorida.com/dms/purchasing/state_contracts_agreements_and_price_lists.

²⁹Proper understanding and application of rule 60A-1.47 depends on rule 60A-1.001(1)(b), which defines "term contract" (or requirements contract): "A term contract is an agreement between an agency and a vendor whereby the vendor agrees to provide an indefinite quantity of commodities or contractual services, on an indefinite delivery schedule, over a specified period of time." Only term contracts are appropriate for approval as alternate contract sources under the rule. Agencies should *not* seek Department approval to use a non-term contract, i.e., a definite quantity contract, which is defined in subparagraph (a) of the rule as "an agreement between an agency and a vendor whereby the vendor agrees to furnish a specific quantity of an item or items or a specific contractual service, at a specified price, to a specified location."

- Obtain the contractor's agreement to the State's additional terms, *i.e.*, paragraphs (4) through (7) of the attached Exhibit 3
- Then, complete and submit to State Purchasing Form PUR 7102 (03/04), "Agency Request for Review of Alternate Contract Source," which must include an electronic copy of, or hyperlink to, the proposed contract and original bid tabulation.
- State Purchasing will review the submittal and approve the request if the alternate contract source is cost-effective and in the best interest of the State.

If you have any questions, please contact Tim Moore at (850) 487-0417 or via e-mail tim.moore@dms.myflorida.com.

Exhibit 1

GSA Special Item Numbers

Items available under Schedule 70 are grouped by GSA’s special item numbers (SIN), as follows:

SIN	Description
132-3	Leasing of Product
132-4	Daily / Short Term Rental
132-8	Purchase of Equipment
132-12	Maintenance of Equipment, Repair Service and/or Repair/Spare Parts
132-32	Term Software License
132-33	Perpetual Software License
132-34	Maintenance of Software
132-50	Training
132-51	Professional Information Technology Services
132-52	Electronic Commerce Services
132-53	Wireless Services

Knowledge of these SINs is necessary to make best use of the GSA Schedules E-Library (www.gsaelibrary.gsa.gov) and, to a lesser extent, of GSA Advantage! (www.gsaadvantage.gov).

The SINs are mapped to the North American Industry Classification System (NAICS), which replaced the 1987 Standard Industrial Classification System (SIC), as follows:

SIN	NAICS	NAICS Description
132-3 132-4	532420	Office Machinery and Equipment Rental and Leasing (pt)
132-8	334111	Electronic Computer Manufacturing
	334112	Computer Storage Device Manufacturing
	334113	Computer Terminals Manufacturing
	334119	Other Computer Peripheral Equipment Manufacturing (pt)
	334210	Telephone Apparatus Manufacturing
	334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
	334290	Other Communications Equipment Manufacturing
	334310	Audio and Video Equipment Manufacturing
	335931	Current-Carrying Wiring Device Manufacturing
	335932	Noncurrent-Carrying Wiring Device Manufacturing
132-12	443120	Computer and Software Stores (pt) – Retail
	811212	Computer and Office Machine Repair and Maintenance (pt)

SIN	NAICS	NAICS Description
132-32 132-33 132-34	511210	Software Publishers
132-50	611420	Computer Training, except Computer Repair
132-51	541511	Custom Computer Programming Services
	541512	Computer Systems Design Services (pt)
	541513	Computer Facilities Management Services
	541519	Other Computer Related Services
132-51 132-52	511199	All Other Publishing
132-52	516110	Internet Publishers and Broadcasting
	517110	Wired Telecommunications Carriers (pt)
	518111	Internet Service Providers
	518112	Web Search Portals
	518210	Data Processing Services (pt)
132-52 132-53	517310	Telecommunications Resellers (pt)
	517410	Satellite Telecommunications (pt)
	517910	Other Telecommunications
132-53	517211	Paging
132-53	517212	Cellular and Other Wireless Telecommunications (pt)

As explained at the beginning of Section III of the memorandum, **AGENCIES SHALL NOT PURCHASE FROM ALTERNATE CONTRACT SOURCES GOODS OR SERVICES THAT ARE ON STATE TERM CONTRACT, UNLESS JUSTIFIED UNDER RULE 60A-1.044(3)**. State term contracts are identified by state-unique commodity codes that do not translate easily to SINs or the NAICS or the SIC. As a general guide, agencies should be aware that commodities and services available on Schedule 70 may also be available on state term contracts beginning with the following class codes: 250, 252, 255, 480, 725, 730, 880, 933, 970, 973, and 991. Currently, commodities and services available on the following state term contracts may overlap with Schedule 70:

- 250-000-03-1 IT Hardware
- 255-001-02-1 Principle Technology: Microsoft
- 725-330-05-1 Wireless Voice Services
- 730-030-04-1 Phones, Feature
- 730-100-03-1 Office Equipment: Facsimile
- 730-310-99-1 Telephone Systems, Electronic Key
- 730-650-99-1 Telecommunications Equipment – PBX
- 880-001-06-1 Audio Visual Equipment
- 973-561-04-2 IT Consulting Services [non-exclusive contract]
- 973-890-05-1 Computer Software Training
- 991-150-04-1 Computer Assisted Legal Research Services

Exhibit 2

FAR Subpart 8.405 – Ordering Procedures for Federal Supply Schedules.

Ordering activities shall use the ordering procedures of this section when placing an order or establishing a BPA for supplies or services. The procedures in this section apply to all schedules.

8.405-1 – Ordering Procedures for Supplies, and Services Not Requiring a Statement of Work.

(a) Ordering activities shall use the procedures of this subsection when ordering supplies and services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (*e.g.*, installation, maintenance, and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. Although not required to solicit from a specific number of schedule contractors, ordering activities should attempt to distribute orders among contractors.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering activity shall consider reasonably available information about the supply or service offered under MAS contracts by surveying the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see [8.405-5](#)). In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:

- (1) Past performance.
- (2) Special features of the supply or service required for effective program performance.
- (3) Trade-in considerations.
- (4) Probable life of the item selected as compared with that of a comparable item.
- (5) Warranty considerations.
- (6) Maintenance availability.
- (7) Environmental and energy efficiency considerations.
- (8) Delivery terms.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the ordering activity shall seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a BPA (see [8.405-3](#)), ordering activities shall--

- (1) Review the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);
- (2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (see [8.404\(d\)](#)); and
- (3) After seeking price reductions (see [8.405-4](#)), place the order with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

8.405-2 – Ordering Procedures for Services Requiring a Statement of Work.

(a) *General.* Ordering activities shall use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

(b) *Statements of Work (SOWs).* All Statements of Work shall include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (*e.g.*, security clearances, travel, special knowledge). To the maximum extent practicable, agency requirements shall be performance-based statements (see [subpart 37.6](#)).

(c) *Request for Quotation procedures.* The ordering activity must provide the Request for Quotation (RFQ), which includes the statement of work and evaluation criteria (*e.g.*, experience and past performance), to schedule contractors that offer services that will meet the agency's needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy (see [8.402\(d\)](#)).

(1) *Orders at, or below, the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. The ordering activity should attempt to distribute orders among contractors.

(2) *For orders exceeding the micro-purchase threshold, but not exceeding the maximum order threshold.*

- (i) The ordering activity shall develop a statement of work, in accordance with [8.405-2\(b\)](#).

(ii) The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs.

(iii) The ordering activity should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(3) *For proposed orders exceeding the maximum order threshold or when establishing a BPA.* In addition to meeting the requirements of [8.405-2\(c\)\(2\)](#), the ordering activity shall-

-

(i) Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the ordering activity. When determining the appropriate number of additional schedule contractors, the ordering activity may consider, among other factors, the following:

(A) The complexity, scope and estimated value of the requirement.

(B) The market search results.

(ii) Seek price reductions.

(4) The ordering activity shall provide the RFQ (including the statement of work and the evaluation criteria) to any schedule contractor who requests a copy of it.

(d) *Evaluation.* The ordering activity shall evaluate all responses received using the evaluation criteria provided to the schedule contractors. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order, or establish the BPA, with the schedule contractor that represents the best value (see 8.404(d)). After award, ordering activities should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

Exhibit 3

**STATE OF FLORIDA
ALTERNATE CONTRACT SOURCE
AGREEMENT FOR GSA SCHEDULE PURCHASES**

This Agreement, effective the last date signed below, is made by and between the agency (“Buyer”) and vendor (“Seller”) identified below with respect to the following.

WHEREAS, pursuant to section 287.042(16), *Florida Statutes* (2005), State Purchasing and the Enterprise Information Technology Service within the Department of Management Services (“DMS”) have evaluated the multiple award schedule program administered by the U.S. General Services Administration (“GSA”) and determined that it is cost-effective and in the best interest of the State to allow agencies to purchase from Schedule 70 in accordance with State Purchasing Memorandum No. 2 (2005-06); and

WHEREAS, Buyer has followed the process outlined in State Purchasing Memorandum No. 2 (2005-06) and desires to enter into this Agreement with Seller.

THEREFORE, in consideration of the foregoing and the mutual promises contained in the contract documents, Buyer and Seller hereby enter into this Agreement.

(1) The statement of work is attached hereto as Attachment A and is hereby characterized as the type checked below:

Simple. The order is for commodities, or services valued at \$25,000 or less, which are listed in the GSA schedule at a fixed price for the performance of a specific task (e.g., installation, maintenance, repair). Transaction details are included in the statement or are incorporated by reference to the associated purchase order.

Detailed. The order is for services priced at hourly rates established in the GSA schedule. The statement describes the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; any special requirements (e.g., security clearance, travel, special knowledge); and any detail required by paragraphs (a)-(f) of section 287.058(1), *Florida Statutes* (2005), which is hereby incorporated by reference.

(2) The underlying GSA schedule is either attached as or incorporated by reference into Attachment B. Neither GSA, nor any other agency of the United States, is a party to this Agreement or to any related purchase order.

(3) To effect a purchase under this Agreement, Buyer shall issue a direct order in MyFloridaMarketPlace referencing this Agreement.

(4) Seller has registered as a vendor with MyFloridaMarketPlace. Rule 60A-1.031, Florida Administrative Code (F.A.C.), is hereby incorporated by reference. All transactions are subject to a transaction fee of 1.0% pursuant to the rule, which is in addition to, and not in lieu of, any obligation Seller has with the regard to the GSA industrial funding fee.

(5) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. Payment terms are governed by sections 215.422 and 287.0585, *Florida Statutes* (2005).

(6) Seller shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Vendor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

(7) The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply, and the parties waive any right to jury trial.

(8) All transactions are subject to the terms of the following documents, which, in case of conflict, shall have the order of precedence listed:

- a) This Agreement
- b) The related GSA schedule (Attachment B)
- c) The statement of work (Attachment A)
- d) The direct order(s) that effects a transaction under this Agreement

SO AGREED:

BUYER:

[Agency name and address]

By:
Its:

Date

SELLER:

[Vendor name and address]

By:
Its:

Date

Attachment A

<Statement of Work (simple or detailed)>

Attachment B

The related GSA Schedule is either (check one):

Attached (attach schedule)

Incorporated by reference:

Schedule No.: _____

Date: _____