Strategic Sourcing and Consortium Purchasing- Navigating the Regulatory Waters

In recent years, strategic sourcing has been the subject of much focus in the procurement profession in both the public and private sectors. One fundamental element in a strategic sourcing strategy is leveraging an institution’s spend. For organizations big and small, this often leads to participation in consortium or cooperative purchasing.\(^1\) This article aims to briefly describe what it means to be engaged in strategic sourcing and contextualizes consortium purchasing within this model. The bulk of this article will examine the legislative and regulatory framework surrounding the use of cooperative purchasing with suggestions on how you can inform yourself in this area so that your institution can better incorporate cooperative purchasing into its overall strategy.

**What is Strategic Sourcing?**

Simply put, the concept of strategic sourcing is a formalization of the procurement processes within a given organization. Managing the supply chain effectively through strategic sourcing involves:

1. Assessment of your institution’s current spend (what is bought where?)
2. Assessment of the supply market (who offers what)?
3. Development of a sourcing strategy (where to buy what, while minimizing risk and costs?)
4. Identification of suitable suppliers
5. Selecting a source through competitive bid or negotiation with suppliers (products, prices, services)
6. Implementation of a new supply structure
7. Tracking results and reassessment (continuous cycle)\(^2\)

The net results of adhering to strategic sourcing are finding the best product at the lowest price and establishing strategic partnerships with suppliers to ensure top-notch service. Major initiatives in strategic sourcing result in the consolidation of contracts, and improved and enforced compliance with approved contracts.

**Leveraging Institutional Spending.**

Channeling an institution’s spend to strategically sourced suppliers maximizes an institution’s buying power. Such a process serves as a strong inducement for suppliers willing to concede better pricing and improved services in return for an increase in volume of business. Consortium or cooperative purchasing takes this concept one step further by aggregating the buying power of multiple institutions to create additional leverage in realizing improved pricing and service. This technique is especially valuable

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\(^1\) In this article, consortium or cooperative purchasing will be used interchangeably as these terms both focus on combining the requirements of two or more entities to obtain the pricing and service benefits of volume purchasing and the reduction in related administrative expenses.

\(^2\) Nishiguchi, Toshihiro. *Strategic Industrial Sourcing* (New York: Oxford University, 1994)
for smaller and mid-size institutions that may not necessarily have the volume of spend necessary to individually realize incremental improvements in pricing and service.

What are some examples of Consortium Purchasing being used at a regional, state and national level?

The value of group or consortium purchasing has long been recognized in higher education. In fact, NAEP recognized the need to create its own purchasing cooperative back in 1934 when it formed E&I (Educational and Institutional Cooperative Service, Inc.), a member-owned and managed group purchasing organization. E&I works to bring the collective expertise of the NAEP members together in developing best-of-breed regional and national contracts.

Given the cooperative nature of the public sector, a countless number of national, regional and local consortiums have been created. While some have been created by statute with formal procurement practices in place, others are created on an ad hoc and informal basis. With some research, you will almost always find a consortium that meets your needs and which adheres to your procurement regulations.

Other popular not-for-profit group purchasing organizations include US Communities, Western States Contracting Alliance, the Foundation for Community Colleges of California and the Massachusetts Higher Education Consortium. You may find that there are a number of regional and local consortiums that you are eligible to work with as well.

Added to this are a number of for-profit group purchasing organizations. Once limited to the health care industry, more and more of these organizations are focusing on higher education.

How do members navigate through their respective legislative and regulatory frameworks to utilize consortium purchasing?

While there are significant benefits to using consortium agreements, as public sector procurement professionals, you need to ensure that you are legally entitled to utilize these types of contracts under your state’s procurement framework.

To ensure fairness and transparency in the public procurement process, each state has enacted legislation to ensure that proper procurement procedures and safeguards are in place. In many states, different procurement rules apply to the varying state entities. For example, some public university systems may be given more latitude to utilize cooperative agreements than community college or K-12 districts. In view of this, it is imperative that you do some sound investigative research into this area when considering consortium purchasing.

The common starting points for all public bodies are the respective state procurement statutes. These statutes are codified into each state’s Procurement Code and lay out the general procurement framework in each of the respective states. By referencing these
provisions, you will be able to discern how the state legislature grants authority and responsibility to various state agencies, university and college boards of regents or trustees and school districts. Of course, you can easily do an Internet search on your state government website to access the procurement and contracting statutes applicable to your institution.

In many instances, the legislation details how consortium agreements can be utilized in conjunction with or in substitution of state agreements. Consortium purchasing provisions act as exemptions from the normal bidding requirements set out in the state contracting procedures.

In the absence of such provisions, you may find that there are certain dollar limits under which you are given the latitude to purchase from cooperative agreements. These threshold amounts vary from state to state and even by institution. The dollar limits can be as low as $500 or as high as $250,000. As a result, depending on your state, you may have varying degrees of purchasing flexibility. As these threshold amounts may be subject to yearly review, you may have to look at additional regulations set by the State’s purchasing arm or within your institution or system’s board policies to determine current bid threshold limits.

Almost every state allows for its institutions to “piggyback” on contracts created by other public state institutions and agencies. This type of intergovernmental purchasing opens up the door to a myriad of contracts for the public institution.

Once you find the statutory authority to enter into consortium agreements, you should also be on the look out for related provisions which may require you to obtain approval from the state purchasing officer or Comptroller’s office prior to utilizing consortium agreements. You may also discover that different commodities are treated differently and allow for more or less purchasing flexibility. For example, in several states, technology products come under the umbrella of the state’s IT services departments. This may change the amount of flexibility you have to purchase these types of commodities from consortiums.

In some states the procurement statutes simply delegate the rulemaking authority down to the Department of Purchasing or the Board of Regents of your system. If this is the case, you need to review the various regulations, board policies and procedures that are pertinent to your institution. Look for references outlining the availability of cooperative purchasing as well as dollar thresholds under which you have greater flexibility in purchasing.

You may also find that your own institution has the delegated power and authority to outline procurement practices related to cooperative purchasing. In Oregon and Colorado, for example, legislation permits a public agency to develop its own framework of policies and procedures that pre-empt the state procurement requirements if accepted procurement practices and oversight is applied. For example, the Community College
Rules of Procurement crafted by Chemeketa Community College specifically identify the cooperative contracts that the institution can access. Section 306 reads,

“Competitive procurement need not be used to conduct procurements through the Educational & Institutional Cooperative Service, Incorporated (E&I).”

In this instance, the Rules specifically enumerate the consortium that can be utilized in lieu of competitive bidding. In explaining the rationale for this Eileen Miller, Purchasing Management Analyst at Chemeketa Community College elaborates that her institution is “undergoing redesign efforts” and included among them is the goal of “cost-saving readjustments to [their] systems and processes.” Adding cooperative purchasing as a strategic tool to her procurement resources has proven instrumental because it allows her institution to “benefit from pricing that otherwise might no be leveraged due to economies of scale.”

How can you implement changes to the procurement framework at your institution?

Having purchasing policy and oversight delegated down to the Board or institution-specific level can make it easier for you to implement changes to permit cooperative purchasing. To accomplish this, you may need to draft and promote a Board Resolution or amendment to the procurement policies. This method of action is significantly less onerous than lobbying for legislative change at the state level.

Nevertheless, state legislation is subject to constant flux and you may also find an opportunity to provide comments or proposals to legislators reviewing procurement legislation to enhance efficiencies. Consortium purchasing is currently being considered in a number of states including Tennessee, Alabama and Mississippi. If no such opportunities currently exist, you may wish to coordinate your efforts with other like-minded institutions that are seeking access to cooperative agreements. E&I is working hand-in-hand with members in a number of states to bring about more open access to cooperative agreements.

How can you get more information?

• Your first point of information may actually be the consortiums you wish to work with. As they work with members in your state, they probably have a solid understanding of how the rules and regulations apply to public institutions.
• You may also want to reach out to various colleagues at other public institutions for their practices.
• One additional means of assistance may be state procurement officials. Be aware though, that in many states the use of consortium purchasing is a grey area, so you may also get differing opinions on their availability. In these circumstances, it may also be worthwhile approaching your General Counsel to do an analysis for you.
E&I, under the guidance of the NAEP Cooperative Purchasing Committee, has also been involved in documenting the procurement framework as it relates to cooperative purchasing and working on making consortium purchasing more accessible to members. If you are interested in receiving more information on the status of cooperative purchasing in your state or would like assistance in adopting consortium purchasing at your institution, please contact E&I’s Compliance Counsel, Amyn Thawer at athawer@eandi.org.

**Conclusion:**
The options available for consortium purchasing at your institution can be limitless. As a procurement professional, your ability to discern which contracts are best suited for your particular institution is what makes your role a truly strategic one. By tapping into consortium contracts in a judicious manner, you can effectively manage your procurement resources to maximize savings on campus. By acting in a strategic fashion, you enable your institution to channel more funds toward its core education mission. In this age of tight funding, budget cutbacks and limited resources, it is imperative for purchasing professionals to be innovative in their procurement functions. Consortium purchasing is one means by which such innovation is fostered.