

FLEXIBLE PROCUREMENT APPROACHES THAT FACILITATE RELATIONSHIP CHANGE AND NEGOTIATION: THE USE OF THE INVITATION TO NEGOTIATE

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ABSTRACT. The effectiveness of innovative procurement practices, illustrated at the US federal level by Performance Based Service Contracting and other best value approaches, depends upon changes in the public procurement organizational culture. These changes require agency officials to establish new relationships with contractors, as the challenges of acquiring complex as well as highly customized goods/services is best met through flexibility and negotiation throughout the life of the acquisition. Using procurement approaches that provide maximum flexibility provide challenges to public managers, as choices regarding negotiation include the content as well as the intensity and duration of negotiation sessions. The use of the Invitation to Negotiate (ITN) approach by the State of Florida is one example of an approach that allows flexibility and facilitates different relationships with contractors. Two case studies, from the Departments of Transportation and Management Services illustrate the use of ITN.

INTRODUCTION

In recent years, several innovative procurement practices have become standard operating procedures within the federal government (Pegnato, 2003). Performance Based Service Contracting "where contractors are given the destination and then challenged to come up with the best way to get there" has become a priority of the Bush Administration (Government Accounting Office, 2003; Professional Services Council, 2004), due in part to the

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incentives provided by the Services Acquisition Reform Act of 2003 (USGAO, 2005). Delivering the “best value” for federal departments and agencies has been a priority since the Federal Acquisition Regulation (FAR) rewrite of 1995 (Kelman, 2004; Qiao & Cummings, 2003). The recent federal Office of Management & Budget proposed rule change supporting earned value management is but one of many efforts to further emphasize this goal as a key aspect of public procurement approaches (Palmer, 2005).

The long term success of these new procurement practices depends upon a change in the organizational culture of federal procurement: a change from the traditional ways of acquiring goods and services (Welch, 2003). This change requires agency officials to establish new relationships with contractors, as the challenges of acquiring complex goods/services to meet agency goals is best met through flexibility and negotiation throughout the life of the acquisition (Schambach & Duke, 2004).

Two trends are increasing awareness and desire for this flexibility. First, in the acquisition of information technology based goods and services, the complexity of the end product/service, as well as the means by which it is created, necessitates flexibility throughout the pre and post contract award period. The acquisition of e-government and information technology (IT) based systems have highlighted the need for flexibility to avoid failure. Second, even if services acquired are not complex, a need for customization¹ to more specifically meet agency needs can require flexibility that results in the acquisition of higher quality services and products often at lower prices. The acquisition of property leases, while governed by industry practices and standards, also illustrates the need for customization to optimally meet agency space needs.

Traditional public procurement approaches such as the Invitation for Bids assume standardized uniform products and processes also focusing on lowest bid or price. On the other hand, the use of the Request for Proposal allows for a widely varying approach to the extent of and content of negotiation that can occur. The approaches permitted under the RFP vary from the federal approach, which permits negotiation prior to contract award, to an approach found in the State of Florida, for example, that does not permit negotiation.

At the federal level, FAR 15.306(d)(3) states:

Negotiations are exchanges...that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining...may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract....When negotiations are conducted in a competitive acquisition, they take place after the establishment of the competitive range and are called discussions (as cited in Nash, Cibinic & O'Brien, 1993, pp. 645-646).

These discussions or negotiations are undertaken with the intent of obtaining "best value" which may result in a contract award to an offeror who does not propose the lowest price. Negotiations that take place after the contract award occur primarily when there are problems in meeting contract terms and conditions and rescheduling or change in pricing must be negotiated.²

At the other extreme in terms of what negotiation is allowed using the RFP is the State of Florida approach. It is used when "The request for proposal is used when it is not practicable for the agency to specifically define the scope of workand when the agency is requesting that a responsible vendor propose a commodity...or contractual service to meet the specifications of the solicitation document" [287.012(22)].

Best value is to be obtained, but no negotiations are permitted, as the RFP is used when "the agency does not anticipate a need to revise the solicitation and proposals after initial receipt" (Rothman, 2004). If negotiations are deemed necessary to make revisions to the solicitations, then the Invitation to Negotiate approach is required.

As will be discussed below, the ITN approach recognizes and allows for both pre and post contract award negotiations, providing greater flexibility than the FAR usage of the RFP. The ITN facilitates a change in the agency contractor relationships throughout the life of the contract.

After presenting a conceptual framework that further presents the relationship between complexity and customization of procurement, two case studies are then discussed. The Florida Department of Transportation acquired IT based advanced traveler information services for Central Florida in 2004, using the single negotiation

approach. In contrast, the Florida Department of Management Services acquired property leasing for state employees in Tallahassee in 2004 by negotiating with all offerors concurrently. ITN permits public managers to choose the nature of the negotiation process and to what extent it will occur throughout the contract management process.

DEALING WITH COMPLEXITY AND CUSTOMIZATION THROUGH NEGOTIATION

Two dimensions of goods and services are relevant to the most appropriate need for acquisition flexibility. These are the degree of complexity of the product or service, and the degree of customization required by the public agency to effectively implement what it is acquiring. Both dimensions can be viewed as falling along continua ranging from low to high (see Figure 1).

**FIGURE 1
Need for Acquisition Flexibility and Negotiation**

		COMPLEXITY	
		Low	High
CUSTOMIZATION	High	<p>QI</p> <ul style="list-style-type: none"> - Procurement Characteristics: Med/High Flexibility and Low Negotiation - Procurement Type: ITN/RFP - Case Study Example: Leasing 	<p>QII</p> <ul style="list-style-type: none"> - Procurement Characteristics: High Flexibility and High Negotiation - Procurement Type: ITN - Case Study Example: iFlorida/ ATIS
	Low	<p>QIII</p> <ul style="list-style-type: none"> - Procurement Characteristics: Low Flexibility/ No Negotiation - Procurement Type: ITB/RFP 	<p>QIV</p> <ul style="list-style-type: none"> - Procurement Characteristics: Low Flexibility/Low Negotiation - Procurement Type: RFP

Complexity is relevant to both the means by which the product/service is created by the contractor, as well as the ability of agency managers to understand and effectively implement the final result. Solid waste collection is an example of a service of low



complexity, as the process or means as well as the technology involved in collection is relatively simple. The end result of delivering the service is simple as well: the garbage is collected or it is not. Also, there is no expectation that the means or the end result of the service will change over the life of the contract. In contrast, when purchasing an e-government or information technology (IT) based software system, the contractor will employ advanced technology to create the product, agency personnel will require additional knowledge to effectively implement the system, and there is an expectation that creation of the final product will require changes that had been unanticipated when the contract was awarded.

Customization—the second dimension—refers to the degree to which the service or product must be altered to meet the unique needs of the client agency for purpose of increasing quality while decreasing price (Rothman, 2004). If a “Commercial Off the Shelf” (COTS) product can be acquired, then changes in the product required to implement it will be minimal. Even if the product or service is of high complexity, if similar applications of earlier versions have been created elsewhere, then customization will be less. Clearly the greater the number of agencies that must adapt an IT based or e-government software system, the higher the degree of customization that will be required.

Two other dimensions are appropriate to the procurement process: the degree of flexibility, and the amount of negotiation. Both can be viewed along a low to high continuum. In both cases, the goal of the public agency is to choose the procurement type or model that allows for an appropriate amount of negotiation that will lead to a purchase that represents “best value”. Flexibility refers to the extent to which the chosen process provides agency managers sufficient discretion to choose the amount of negotiation needed to make the optimal purchase. The dimension of negotiation can be characterized by: 1) the amount of time spent in pre and post contract award negotiation; 2) the likelihood that offerors should be allowed to change their initial technical and price proposals prior to contract award, making “last and best final offers”; and 3) the likelihood the scope of work will be changed after the contract award. The greater the likelihood that change after receiving initial offeror responses is required to achieve best value, the greater the amount of negotiation required.

The four dimensions are reflected by the quadrants shown in Figure One. The complexity of the service to be acquired and the need for customization will vary in a given situation, requiring different degrees of flexibility and negotiation in order to achieve the desired goal. As indicated by Quadrant III, when complexity and customization are both low, then the traditional procurement approaches such as the Invitation to Bid are most appropriate. There is no need for much flexibility or negotiation, for example, when contracting out for waste management services.

At the opposite end of the spectrum (QII), when public managers are acquiring a highly complex product that needs a great deal of customization, the appropriate procurement approach requires a high degree of negotiation, both before and after contract award. The ITN approach is most appropriate. The amount of knowledge held by both public and private managers regarding the final product/service and the process needed to create it is may not be sufficient during the initial stages of the acquisition (Callendar, Jamieson & Vincent, 2004). Acquiring e-government or IT systems is an appropriate example.

The remaining two scenarios provide different challenges to the procurement process. If complexity is low but customization is high (QI), then flexibility is still required but not extensive negotiation. Approaches such as the ITN provide the needed flexibility that other approaches such as the RFP may not, especially if greater flexibility is needed in the post contract award time period. The example of acquiring leases fits this category. Negotiation can result in acquiring higher quality space, renovated to meet the specific needs of an agency, at more favorable financial conditions. Since knowledge of these aspects is governed by real estate industry accepted standards, extensive negotiation before and after contract award will not be required.

Finally, if complexity of the final product is high but commercial off-the-shelf products are appropriate, or customization has occurred in prior contracts (QIV), then only low amounts of flexibility and negotiation are required both before and after contract award. The RFP process will likely suffice. Acquiring e-government services such as a non-interactive webpage or adding capabilities to already existing IT systems fits this category.

THE INVITATION TO NEGOTIATION APPROACH: THE STATE OF FLORIDA

As indicated above, the Invitation to Negotiate (ITN) is used when the agency deems it is in the best interest of the agency to negotiate with offerors to achieve "the best value": defined as "the highest overall value ... based on objective factors ... not limited to price, quality, design, and workmanship" [s.287.012(4)] (Rothman, 2004).

At least three interpretations are possible to further understand the impact of best value when using ITN. First, cost should be secondary to the technical proposal in that the offeror who is deemed most likely to achieve the project goals should be awarded the contract. The greater the complexity and/or customization required, the more weight should be given to the technical proposal.

Second, there is the implication that cost can be negotiated, as the initial bid made by the offeror may be reduced prior to the contract award; or, additional goods/services may be purchased for the original bid.

Third, in contrast with the use of the RFP, there is the assumption that negotiations will entail an exchange of ideas and methods concerning how to best deliver the service, and that a likely result of this exchange is that changes will result either to the original scope of services or to the offeror's response. These changes should be reflected in the contract award.

In addition, there may be the expectation that post award negotiations can or should occur. As stated by Rothman (2004), "Informal negotiations may be conducted with incumbent vendors due to changes in circumstances or objectives, or at renewal decision points." For those acquisitions characterized by high levels of complexity and/or customization, agencies should expect that post contract award negotiations should occur.

Under the ITN process, single or concurrent negotiation methods are allowed. After a rating process creates a short list of offerors, negotiation will occur either with one offeror before dealing with another offeror if the first negotiation proves unsatisfactory, or with all members of the short list before determining contract award.³

An example of the single method is provided from the Florida Department of Transportation. It involves the acquisition of Advanced

Traveler Information Services (ATIS).⁴ These services employ information technology based software systems. The second case, the acquisition of leases under the jurisdiction of the Florida Department of Management Services, represents an example of the concurrent method.

Using ITN to Acquire Complex Products and Services: the iFlorida Conditions System

In March 2003, the US Federal Highway Administration chose the Florida Department of Transportation (FDOT) to deploy the "iFlorida conditions system" for Central Florida. iFlorida's goal is to provide a highly integrated system of information concerning traffic congestion that draws upon several sources, including:

- cameras along the major interstate highway in Central Florida (I-4);
- transponders placed on vehicles that are part of the SunPass system;
- the Florida Highway Patrol Computer Aided Dispatch system;
- transit information; and
- weather data.

The conditions system is comprised of software that will fuse all the data sources and place the information on a website accessible by the traveling public. FDOT District Five, the district with responsibility for serving Central Florida, issued an ITN document on September 30, 2003 (Florida DOT, 2003a).

The steps that resulted in the contract award included the following. First, FDOT public procurement staff created an ITN "shell" or guidelines into which the ITN scope of services for a given project could be inserted. A key aspect of the ITN is a "Qualifications Questionnaire," composed of questions that are designed to "determine and evaluate the supplier's qualifications and experience in providing the desired commodities and/or service. Suggested areas of inquiry would include business experience, management plan, technical approach, facilities, qualifications/resumes of key personnel, etc." (Florida DOT, 2003b, p. 2).

The FDOT program managers created the questionnaire suggested by the guidelines, plus identified the remaining scope of services that constituted the iFlorida Conditions ITN. Seven bidders completed the questionnaire and returned it along with their technical and price proposals. The total of 21 questions included:

1. "Has your firm been a developer or integrator of transportation systems and software systems of the level and complexity as described [in the appendices] for a period of time of no less than five years? If yes, how long... and describe the services. Also attach a list of software work references.
2. What software languages and operating systems does your firm have expertise in?
3. Please provide a proposed staffing chart and management plan for the project.
4. Please describe the software development environment and facilities your firm uses to develop and manage software.
5. Does your firm have a formal, documented process for configuration management of your products?
6. Does your firm have a formal documented software quality assurance program?
7. How will you test the sub-system software before final acceptance testing?" (Florida DOT, 2003b, p. 1).

These questions were directed toward eliciting information about the past performance, and the management and technical capabilities of the offeror. The answers also served as potential negotiation content guidelines.

The answers to the questionnaire were rated by the evaluation committee using a system which assigned a maximum point value for the answer to each question, plus a weighing system which gave the answers to 15 of the questions twice as much weight as the other six. The total number of possible points was 283. Three short listed firms received points as shown in Table 1. A smaller evaluation committee comprised of three senior officials rated these three short listed firms, using the following rating scheme (Table 2). The final ratings of the firms are shown in Table 3.

TABLE 1
Short Listed Firms as a Result of a Weighing System

Firms	Points
PB Farradyne	281
Southwest Research	268
Castle Rock Consultants	253

TABLE 2
Rating Scheme

Criteria	Points
Project Understanding and Approach	30
Staffing	10
Innovative Cost-Effective Approach	15
Project Schedule	20
Price Proposal	25

TABLE 3
Final Rating Results

Firms	Points
Castle Rock Consultants	86.3
PB Farradyne	85.0
Southwest Research	71.7

FDOT program managers felt confident that their evaluation system, comprised of both the questionnaire rating and the final rating, produced an ordered ranking that sufficiently differentiated the offerors.

Negotiation Issues and Results

Negotiations were held with Castle Rock Consultants (CRC) on December 8 and 9, 2003, reviewing the ITN document section by section. The content of the negotiations raised several issues, allowing the FDOT team to prioritize and emphasize those topics that were of highest priority. First, it was clearly stated that CRC was to build upon existing and newly developed agency websites in creating the iFlorida system, rather than creating an entirely new system.

Second, the importance of meeting the stated May 1, 2005 deadline for final acceptance was stressed several times. Discussions focused on the design and testing schedule for the various components of the system. Although it may be more efficient for the testing of several functional requirements at once, CRC was cautioned that each requirement must be tested singly, as one requirement may work in tandem with some of the others, but may not work when all the requirements are tested as a whole.

It was agreed that CRC would test components prior to FDOT staff also testing the final version. This redundant testing process meant that CRC may have to adjust its internal testing schedule to ensure the final deadline was met. Also, it was recognized that creating interfaces to collect data from the sources (as identified above) would vary in the amount of time required.

Third, the process of problem resolution was a key issue. CRC was encouraged to create a log identifying when a problem occurred, when it was solved, and what methods were used to solve it. Public managers were to become involved in the problem solving process by categorizing problems as high priority and low priority. In this manner the public managers can have confidence that the most important problems would be solved, as they would be able to trace the process.

Overall, there was a sense that the public managers wished to work closely with CRC, understanding that some requirements may need to change as the project evolved. It was stated that as the conditions interfaces were created that CRC should identify aspects of the functional requirements that would be difficult to meet. In response, the FDOT managers may decide to change or eliminate the requirement.

The negotiations were deemed a success by the public managers. On the second day of negotiations, CRC provided draft language involving changes that were agreed upon during the first day. A contract was awarded on January 12, 2004.

The Invitation to Negotiate Lease Procurement Process

The ITN leasing procurement process employed by the State of Florida represents a unique collaboration among state agencies, the Florida Department of Management Services (DMS) and a private

“tenant broker” firm, the Staubach Company. More specifically, rule amendment 60H-1 (along with Florida Statute 255), effective April 25, 2004, allowed the ITN to be used for lease procurement.

Each of the three organizations involved in each leasing endeavor is assigned various roles and responsibilities during the ITN process. The state agency wishes to obtain space that meets its specific needs, including reconstruction or remodeling if necessary. The DMS oversees the entire process, ensuring that quality and fairness is maintained. In a real sense, DMS acts as a landlord for the state agencies. Staubach, employed by the State since October 2003, may provide an initial analysis of ITN responses, and is part of the team that negotiates with the landlords.

In the past, agencies who wished to lease space used a Request for Proposal (RFP) process that did not permit negotiation. There were two major problems with this approach. First, the lack of flexibility to negotiate meant that unneeded reconstruction may have occurred and higher lease prices were likely. The landlord provided a cost estimate that included costs for renovation as specified by the agency. Agencies were required to choose one of the responses without additional discussion that may have led to increased cost savings. For example, if an agency wanted ten offices that measured 10' x 14', and the landlord had offices that measured 10' x 12', then the cost of moving the walls two feet would be part of the cost estimate submitted by the landlord. The result: often an agency did not obtain the needed space that it preferred, at a price that may have been higher than it should have been.

Second, the higher weight given to price during the evaluation process meant that the space acquired was not always of the preferred quality. Previously, with price given 40-50% of the weight when rating a response, an agency may have leased space that was of lower quality than preferred. A landlord may have responded identifying space much below average market cost. This space may have been a “refurbished strip mall” that was not desirable, but agencies had to acquire this space because of the lower costs.

With the increased flexibility of ITN, these problems are solved. The agency can negotiate with the landlord to take the offices as they exist, or modify its original request for space configuration. The overall cost is more likely to be lower (R. Baker, personal interview,

April 12, 2004). The greater emphasis on quality and less on price that accompanies the ITN means that more weight is given to space quality (25%) than to price (20%) when responses are evaluated.

Overall DMS feels that ITN gives it increased flexibility to negotiate market prices on a more consistent basis in a given region. Both agencies and DMS favored the change in procurement process. ITN also is a greater responsibility for DMS to act as a landlord for the state agencies, as it gives DMS the flexibility to consolidate agency operations and co-locate agency personnel where possible (Marsiglio, 2004).

The ITN process begins with an agency composing a Request for Space Needs (RSN) for additional space and sending it to DMS for review and approval. The RSN contains a justification for the space, including the addition of staff that is "overcrowding" existing space, any increased workload including numbers of clients served. If the Department of Motor Vehicles experiences an increase in the number of citizens visiting its facilities in a given region, for example, and a concurrent increase in wait time for these citizens, it may request additional space.

DMS personnel then reviews existing space owned by the state, and if none is available or appropriate will approve the lease. Refusals are rare, and would only occur if the proposed space usage is inappropriate, e.g., office space used for service to clients or the general public.

Approval is sent simultaneously to the requesting agency and to Staubach. At this point, Staubach and the agency review regulations and specific needs. Using this information as well as a market analysis, Staubach then writes the ITN. Advertisements are then placed twice in regional newspapers. According to a timeline placed in the ITN, questions are received and answered in the form of an addendum to the ITN. In some cases, a pre-proposal conference is held to answer additional questions.

Staubach may provide an initial analysis of the responses to the evaluation committee. This includes in part the result of a physical survey of the buildings proposed by each responding landlord. The evaluation committee then rates each respondent, and may choose to create a short list of respondents.

After ITN responses are held, a concurrent or single ITN negotiation process can occur. A negotiation team, comprised of representatives from DMS, State agencies and Staubach, will negotiate with all short listed landlords or the top rated landlord. Staubach then prepares a "Letter of Intent" with each of the landlords that summarizes the results of the negotiation. After a review of this additional information, the evaluation committee makes the final choice (Florida Department of Management Services, 2004).

The Master Lease Approach

Florida Executive Order 04-118 (June 3, 2004) required every executive agency to use DMS as the state's central leasing agent, taking advantage of DMS' professional services as well as those of a professional tenant broker. In addition, agencies are directed to "enter into interagency agreements with DMS to procure and manager all leases of 5,000 square feet or more in an effort to aggregate them where practical and improved lease terms".

In July 2004 DMS announced its intent to consolidate 1.5 million square feet of office space housed by state agencies into "government centers". One of the resulting leases is known as the Koger Center Master Lease, encompassing over 570,000 sq feet of office space in 19 separate buildings for seven different state agencies. It is a 15 year lease, with two five year optional renewals. The lease runs from November 1, 2004 to October 31, 2019, at an initial rate of \$16.50 per square foot, a figure that rises 3.15% per year.

In addition, state agencies receive free rent for the first 20 months. As a final incentive, a tenant improvement program is funded by a payment of \$11m from the landlord to the state. This fund is placed into a tax bearing escrow account, and is used for renovations to the existing buildings as required.

Response Ratings and Evaluation

Four landlords responded to the ITN (Florida DMS,2004b): CRT properties; Winwood, Fort Knox, and Urban America. Each was rated using six criteria (Florida DMS, 2004c) as shown in Table 6.

To assist the evaluation committee, an analysis of the buildings proposed by each respondent was performed by an outside

TABLE 6
Six Criteria Used for Leasing Contracts

Criteria	Points
Quality of Proposed Space	25
Price	20
Proximity of Space	20
Location	15
Sufficiency and Flexibility of Base Building and System	15
Evidence of Capacity to Perform	10

consultant. Each of the buildings was rated using the BOMA (Building Owners and Managers Association) approach. Buildings were classified as A, B, C, or D, based on a number of aspects including age, construction, management market perception, amenities, and the physical inspection of the proposed buildings.

The price criterion further described the intent of the State to include low cost rental rates, "more efficient planning and tenant improvement allowances", and "creative mechanisms that will provide immediate financial relief to the State". Moving costs were also to be considered. The proximity criterion gave more weight to space that was contiguous or near space already occupied by the State. The location criterion rated space on the degree to which it resulted in "the least amount of disruption for State employees". The ability of the landlord to adapt to the changing needs of the State over the course of a long term lease was rated by the "Sufficiency" criterion. Finally, the Dun and Bradstreet rating which reflected the financial capability of the landlord constitutes the basis for the final criterion.

Out of a total possible score of 100 points, the four respondents received the following scores: CRT: 70; Urban America 71.5; Fort Knox 52.5; Winwood 54.3. The evaluation committee negotiated with all four respondents concurrently, holding negotiation sessions on four consecutive days, September 27-30, 2004.

Negotiation Process: Issues and Results

Price and Cost Issues

Cost issues included the initial charge per square foot, the rate of increase for each year of the leases; any rent payment waivers (free

rent) and the amount of the tenant improvement fund—money set aside for the renovation of existing buildings.

Negotiations depended on the amounts for each category identified by each respondent. For example, during the negotiations with CRT Properties (the final choice), it was identified that the market rate of increase in the region is approximately 3% per year, not the 4% identified by CRT. The response was an offer to lower the rate to 2%, but all increases in operating costs would be paid by the State. The negotiating team responded that all rate increases had to include operating costs, as this request was the same made to all respondents.

A key cost issue was the existence of the tenant improvement funds, and how they would be spent. One negotiation result—with CRT—was the creation of a fund that would be placed in an interest bearing account controlled by DMS. In addition, DMS was given the option of contracting for remodeling efforts. This result was contrary to the usual agreement that place any renovation funds under the complete control of the landlords. Not only does the state gain interest, it has the flexibility to spend these funds in a variety of ways, not all of which must be relevant to renovation.

One negotiated item may lead to increase costs by the state. The parties agreed that electric usage by state should be no more than “normal office space usage” which is 18 kw per sq foot per calendar yr. However, “in order for the Lessor to assess this annual charge, Lessor must provide Lessee with a quarterly report showing KWH usage information sufficient to allow Lessee to amend operating practices and thus reduce costs, or budget for the additional rent.”

The landlord provides systematic information that assists the state to engage in additional conservation and usage limitation efforts if electrical usage is unusually high.

Space Issues

State agencies may experience changing space needs, with agencies wishing to expand or contract the space that they occupy. Negotiations resulted in language that addresses the needs of both the State and the landlord. If space becomes available any place in the 19 building complex, DMS is given the “right of first option” to occupy that space. If space becomes vacant, two actions are

possible. First, DMS promises to try to fill that space with employees from other state agencies. Second, space can be sublet to private companies. If this occurs, any “profit” from this subletting is split evenly between the state and the landlord.

Repair and Maintenance

The relationship between the agency and the landlord after the contract has been signed is governed by both specific and general language in the contract, as well as by standard industry practices and a desire to maintain a positive working relationship. A list of maintenance duties for the janitorial staff, for example, specifies how often identifiable tasks must be performed. On the other hand, the responsibilities of the landlord include keeping major aspects of the buildings in “good repair and working order”, including structural elements of the building, all mechanical, electrical and physical aspects, common areas, the roof and interior surface. Although this language does not define these terms, there is the expectation that an agency employee who is designated the building manager for the state will monitor building conditions and report to the landlord any aspects that are not acceptable. Because the lease is long term, i.e., 15 years or more, the landlord can reasonably expect the state agencies to remain a tenant, and will strive to meet these lease terms.

CONCLUSION

When acquiring highly complex and/or highly customized goods and services, traditional procurement processes such as the Invitation to Bid and the Request for Proposal in states such as Florida typically do not allow for sufficient flexibility. Negotiation is not an expected component of the acquisition process. For those managers familiar with employing these traditional approaches, adjusting to more innovative approaches such as the ITN means making unfamiliar decisions and acquiring new skills. These managers must recognize the conditions of high complexity and/or high customization—those that are appropriate for these approaches. The case studies presented here attempt to provide examples of the range of situations that require flexibility and the concurrent degree of negotiation.

Acquiring leased space is a process long governed by industry standards and practices. It is expected, for example, that upon acquisition that renovation of existing space will be needed to satisfy agency (tenant) needs. The introduction of a tenant broker into the process adds knowledge about market conditions, for example, and further highlights the need for negotiation, even though the subject matter that is negotiated is not nearly as complex as acquiring IT or e-government systems. Formal negotiation prior to contract award does not have to be extensive, while negotiation after the contract award concerning renovated space and any subsequent repair or maintenance problems primarily involves the tenant agency and the landlord throughout the life of the lease. The ITN approach employed by the Florida Department of Management Services illustrates this situation. Best value was achieved while meeting the customized needs of tenant agencies.

In contrast, when purchasing complex IT systems, there is much less certainty that relevant industry standards and practices exist. Extensive negotiation may be required before and after contract award, especially if a high degree of customization is needed to meet agency needs. The approach used by the Florida Department of Transportation illustrates this situation.

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NOTES

1. Customization is used here in a generic sense, indicating there are degrees to which any product or service must be customized by the contractor to meet the needs of the public agency. To the extent that products do not need customization and can be both purchased "off the shelf" and "installed" by agency personnel, the agency will likely pay a lower cost. Customization is used here to incorporate both those products that are the intellectual property of a given contractor, and those that are more generic and considered more in the public domain.
2. See FAR 42 for more details.

3. For more information concerning the use of concurrent methods, see Lawther, 2003.
4. For more information about advanced traveler information systems, see McQueen, Schuman and Chen (2002).

REFERENCES

- Callendar, G., Jamieson, D., & Vincent, K. (2004). "Software Costing Analysis Model for Evaluating Value for Money." In K.V. Thai, et al. (Eds.), *Challenges in Public Procurement: An International Perspective* (pp. 81-103). Boca Raton, FL: PRAcademics Press.
- Kelman, S. (2004). "The Procurement System: Backwards to Bureaucracy? A Look At the Goals of Procurement Reform over The Past Few Decades And A Suggested Course of Action That Mirrors Current Concern Over Achieving Performance Outcomes While Adhering to High Ethical Standards." *The Public Manager*, 33 (2):9-12.
- Lawther, W.C. (2003). "Invitation to Negotiate: Determining the Boundaries of Innovative Source Selection." *Journal of Public Procurement*, 3 (3): 301-319.
- Marsiglio, C. (2004, July 19). "ITN No. DMS 04/05-025 Procurement of 'Government Center' Office Space in Leon County" (Memorandum to Kaye Robertson). Tallahassee, FL: Florida Department of Management Services.
- McQueen, B., Schuman, R., & Chen, K. (2002). *Advanced Traveler Information Systems*. Norwood, MA: Artech House, Inc.
- Nash, R. C., Cibinic, J., & O'Brien, K. R. (1993). *Competitive Negotiation: The Source Selection Process* (2nd ed.). Washington, DC: The George Washington University.
- Palmer, K. (2005). "Earned Value Management OMB Proposed Rule: OMB Pushes Measurement of Contract Costs, Performance." [Online]. Available at www.govexec.com. (Retrieved March 15, 2005).
- Pegnato, J. A. (2003). "Assessing Federal Procurement Reform: Has the Procurement Pendulum Stopped Swinging?" *Journal of Public Procurement*, 3 (2): 145-175.

- Professional Services Council (2004). *Business as Unusual: Moving Targets and Shifting Risk*. Washington, DC: Author.
- Qiao, Y., & Cummings, G. (2003). "The Use of Qualifications Based Selection in Public Procurement: A Survey Research." *Journal of Public Procurement*, 3 (2): 215-249.
- Rothman, R. (2004). "Public Procurement in Florida." [On-line]. Available at <http://dms.myflorida.com/dms/content/download/2591/10510/file>. (Retrieved January 16, 2006).
- Schambach, P., & Duke, E. (2004). "Making Performance-Based Contracting (and Relationships) Work: Learn How the Federal Government's Transportation Safety Administration Has Used Non-Traditional Procurement Methods to Establish an Information Technology (IT) Infrastructure with Nothing Less Than the Safety And Freedom of the Traveling Public at Stake." *The Public Manager*, 32 (4): 7-11.
- State of Florida, Department of Management Services (2004a). "ITN Lease Procurement Process." [On-line]. Available at http://dms.myflorida.com/dms/media/facilities/workspace_management/itn_lease_procurement_process_pdf. (Retrieved May 29, 2005).
- Florida Department of Management Services (2004b). *Procurement of "Government Center" Office Space in Leon County* (FL, ITN No. DMS 04/05-025). Tallahassee, FL: Author
- Florida Department of Management Services (2004c). *Procurement of "Government Center" Office Space in Leon County* (FL, ITN No.: DMS 04/05-025 Evaluation). Tallahassee, FL: Author
- Florida Department of Transportation, District Five (2003a). *Invitation to Negotiate iFlorida Conditions System* (ITN -DOT- 03/04-5002). Deland, FL: Author.
- Florida Department of Transportation, District Five (2003b). *Invitation to Negotiate iFlorida Conditions System Qualifications Questionnaire* (ITN -DOT- 03/04-5002). Deland, FL: Author.
- US General Accountability Office (2003, April). *Federal Procurement: Spending and Workforce Trends* (GAO-03-443). Washington, DC: Author.

United States General Accountability Office (2005, February). *Federal Acquisition: Progress in Implementing the Services Acquisition Reform Act of 2003* (GAO-05-233). Washington, DC: Author.

Welch, B. (2003). "Best Practices in Federal Acquisition." *The Public Manager*, 32 (3):11-17.