Call To Action: Recommendations for Improved State IT Procurement

The state information technology (IT) community has long called for improvements in IT procurement processes and practices and state chief information officers (CIOs) are consistently dissatisfied with the state IT procurement process.

> In the 2015 state CIO survey, The Value Equation, roughly one-half (47%) of state CIOs expressed negative outlooks on IT procurement processes.

Because of this consistent level of dissatisfaction, NASCIO is advocating for procurement reform by issuing the following call to action to states. NASCIO recommends that states:

Remove unlimited liability clauses in state terms and conditions
As of 2016, 36 states have eliminated unlimited liability (www.nascio.org/LOL).

Introduce more flexible terms and conditions
As technology options continue to evolve, states must adopt flexible and agile terms and conditions (see Center for Digital Government's Best Practice Guide for Cloud and As-A-Service Procurements).

Don't require performance bonds from vendors
In order for states to lower costs and create a competitive procurement pool, states need to consider finding ways of leveraging existing protections and adjusting performance bond requirements if necessary (see NASCIO publication Leaving Performance Bonds at the Door).

Leverage enterprise architecture for improved IT procurement
The procurement process should be adjusted to recognize and align with enterprise IT strategies, architecture and standards based acquisitions (see NASCIO publication Leveraging Enterprise Architecture for Improved IT Procurement).

Improve the Negotiations Process
Implement rules for using competitive negotiations to facilitate "give-and-take" between buyer and seller (see IJIS Institute document Strategies for Procurement Innovation and Reform).

For more information and resources, please visit www.nascio.org/procurement

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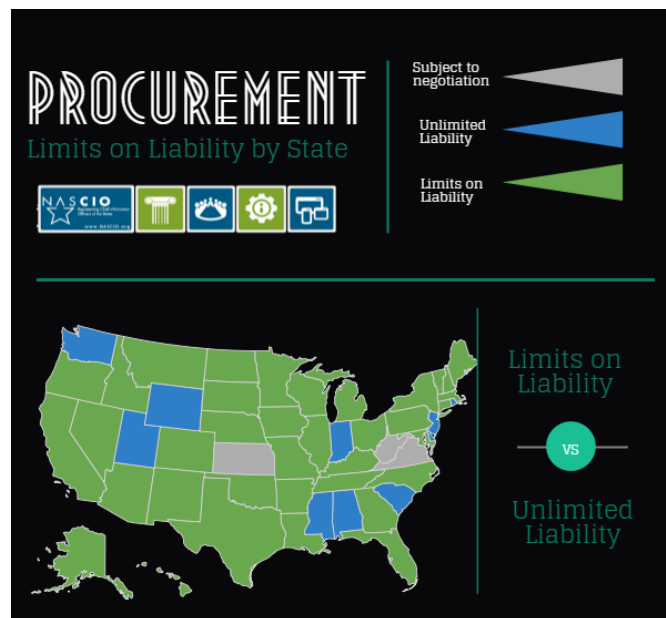
NASCIO Recommends: Remove Unlimited Liability

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> *The first recommendation is that states remove unlimited liability for IT contracts.*

As state CIOs continue to deploy IT solutions, it is important to recognize the fiscal benefits of transforming the procurement process to meet the needs of a smaller workforce, budget constraints, and consolidation efforts. States who have eliminated unlimited liability have also experienced an increased innovative and competitive contract culture.

As an alternative, states have implemented risk management strategies for state IT contracts. For more information, please see NASCIO's publication Procurement: Avoiding Risky Business.

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NASCIO Recommends: Introduce Flexible Terms and Conditions

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The second recommendation is that states introduce more flexible terms and conditions for IT contracts

The Center for Digital Government's Best Practice Guide for Cloud and As-A-Service Procurements states the following:

> While technology service options continue to evolve, however, procurement processes and policies have remained firmly rooted in historical practices that are no longer effective. In order for governments of all sizes to take advantage of the best the market now has to offer, a more flexible and agile procurement process must be identified and implemented. Effective procurement achieves timely results and good outcomes, and protects the public's interest. That is all still possible through a more flexible, services-centric approach.

The guide also provides the following tips for creating more flexible terms and conditions:

- Take advantage of negotiations
- Move away from requirements-based procurement
- Keep negotiations moving forward
- Create a timeline for negotiations
- Start with a business problem-based solicitation
- Minimize mandatory requirements
- Establish model terms as standards
- Develop national minimum standards
- Improve communication
- Conduct market research
- Use demonstrations
- Implement a multiple round selection process
- Permit multiple awards
- Create alternative sourcing processes

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NASCIO Recommends: Don't Require Performance Bonds

The state information technology (IT) community has long called for improvements in IT procurement processes and practices and state chief information officers (CIOs) are consistently dissatisfied with the state IT procurement process. In the 2015 State CIO survey, The Value Equation, roughly one-half (47%) of state CIOs express negative outlooks on IT procurement processes.

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> *The third recommendation is that states don't require performance bonds from vendors.*

Though once easily attainable, the surety market has significantly changed the availability of performance bonds because of a wave of factors external to the IT industry. The amount of readily available performance bonds has become a challenge and, in some instances, bond companies have begun to require companies to partially or fully collateralize performance bonds with bank letters of credit.

In order for states to lower costs and create a competitive procurement pool, states need to consider finding ways of leveraging existing protections and adjusting performance bond requirements if necessary.

The NASCIO publication Leaving Performance Bonds at the Door provides extensive background information on the disadvantages of performance bonds and offers the following:

- A reasonable limitation of the application of the performance bond requirement will increase competition. States should seek to attract a sufficient quantity of bidders to ensure innovative solutions within budgeted funds.

- States have other more effective contractual protections that are more effective than performance bonds, such as service level agreements in appropriate projects, warranties, and acceptance criteria. Some contractual provisions also operate as sufficient incentives for vendors to perform.

- Performance bonds should not be broadly required because, in addition to changes in the claims surety market, the original intent has changed with emerging technologies.
  - Bonds are difficult to secure, time consuming, and expensive to the states
  - Bond collection is rarely triggered under IT services contracts
  - Perhaps most importantly, the Federal government and several states have abandoned the requirement of performance bonds in IT service contracts

NASCIO Recommends: Leverage EA for Improved IT Procurement

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Because of this consistent level of dissatisfaction, NASCIO is advocating for procurement reform by issuing a call to action to states.

The fourth recommendation is that states leverage enterprise architecture for improved IT procurement.

NASCIO describes enterprise architecture (EA) as a technique for developing the necessary repository for an enterprise approach to state IT. EA should articulate the desired direction of state government, including business process modernization. EA is critical because it contains the blueprint for integration of information and services at the design-level across agency boundaries. When state governments stray from a holistic view of the state, silos are soon created and gaps in communication and alignment spread across agencies.

The procurement process should be adjusted to recognize and align with enterprise IT strategies, architecture and standards based acquisitions—all of which can be used to improve and lower costs of state IT procurement. By finding synergies that exist, both disciplines and stakeholders will benefit from the higher levels of value, strategic conformity, and more sensible IT investment decisions.

The NASCIO publication Leveraging Enterprise Architecture for Improved IT Procurement provides the following suggestions for successful enterprise IT procurement:

- Emphasize the guiding principles of EA in IT procurement

- Leverage the symbiotic relationship between EA and IT Procurement

- Standardize EA to provide a roadmap for vendors

- Create a transparent environment with stakeholders

- Regular review of architecture vitality

- Communicate a vision for success

NASCIO Recommends: Improve Negotiations Process

The state information technology (IT) community has long called for improvements in IT procurement processes and practices and state chief information officers (CIOs) are consistently dissatisfied with the state IT procurement process. In the 2015 State CIO survey, The Value Equation, roughly one-half (47%) of state CIOs express negative outlooks on IT procurement processes.

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The fifth recommendation is that states improve the negotiations process.

Improving the negotiations process by implementing rules for using competitive negotiations helps facilitate "give-and-take" between buyer and seller (i.e. state and vendor). NASCIO participated in a procurement reform task force, led by the IJIS Institute, which produced a set of recommendations, Strategies for Procurement Innovation and Reform. The report states the following:

> As the costs of procurement and subsequent contract negotiations within the public sector continue to rise, it becomes critically important to examine ways to introduce reform and innovation rather than to simply accept the status quo. Since the increased costs have not lead to a commensurate increase in performance, delivery, or completion of projects, there is certainly an opportunity to examine ways to improve the procurement process, from both the buyer and seller perspectives.

The report also offers the following thoughts and recommendations:

- Buyers, where legally permissible, should be prepared to negotiate terms and conditions as part of the procurement process. Competitive negotiations can, in most cases, lead to a more balanced risk model that can reduce costs and improve results.

- Allow competitive negotiations to explore possible compromises that can improve the likelihood of success and/or reduce the cost of the solution.

- Set expectations during contract negotiations to ensure all efforts will be made to keep the buyer's and seller's teams as intact and as consistent as possible.