

BASIC ORDERING AGREEMENTS—WHEN & HOW THEY WORK

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The State Purchasing Office (SPO), on behalf of the Statewide Travel Management Program, establishes and administers multiple automobile rental agreements for use by state travelers on official state business. In the past, price agreements were established through a competitive IFB or RFP process. However, the SPO felt that the state would be better served by entering into Basic Ordering Agreements (BOA's) with these vendors. The travel industry is a dynamic market in respect to the services provided and the rates extended to travelers. As such, flexibility is required to assure that the needs of state travelers are served in the most effective manner possible. In several ways, BOA's offer the extra flexibility needed in this market, as compared to the traditional competitive solicitation and price agreement.

The traditional solicitation method “locks in” prices, terms, and conditions for at least one year, usually longer. Vendors are not allowed to change their pricing during the term of their award to accommodate changes in market conditions without express permission. As a result vendors may not be able to commit to the lowest possible prices.

The BOA, however, provides the flexibility needed for this market. A BOA is awarded to any vendor who meets the State's minimum service requirements, terms, and conditions and who provides fair and reasonable prices. BOA's are “open ended” in that the State can terminate a vendor at any time for poor performance and/or failure to maintain competitive rates. The likely result is that state travelers will enjoy better service and lower rates. Vendors who do not have a BOA with the State may make an offer at any time, and if they agree to the terms and conditions and are offering competitive pricing, they may be awarded a BOA. Vendors with a BOA may request rate increases on a quarterly basis. However, the State will accept a rate reduction at any time. In addition, vendors may request that certain cities be deleted or added to their BOA on a quarterly basis, and promotional rates and additional services may be offered at any time. The process is flexible and is designed to give the state the advantage of a very competitive marketplace plus the protection of an agreement as to terms and conditions, particularly with regard to insurance. Further, rental car rates and services vary significantly from city to city. Thus, having BOA's with the maximum number of vendors increases the agencies' and travelers' ability to pick the best deal in a particular city, and it increases the likelihood that a traveler will still be able to find a contract vendor if plans change unexpectedly.

DOES THIS PROCESS MEET PROCUREMENT CODE REQUIREMENTS?

The key to the use of the BOA is that no single purchase will exceed the discretionary purchasing threshold (now \$5,000). Therefore, no specific type of competition is required. Obviously, the state's aggregate spend under a BOA will exceed \$5,000 in a year. However, the test is whether each single purchase can reasonably be viewed as a separate purchase – rather than an illegally “split” purchase. The following factors are the basis for making this determination:

- Can the state or agency specifically define its need for the entire fiscal year (i.e. could it all

be adequately specified and put into a single solicitation and order?);

- Does the state/agency know when and where it will need the vendor's products/services;
- Will the purchase result in a requirements contract (i.e. will the state/agency commit to exclusive use of this agreement to fill all of its needs)

In the case of rental cars, no single purchase will approach the \$5,000 threshold. The state can estimate its total volume for the year and its volume for certain major cities. However, neither the state nor an individual agency can identify, even one year in advance, exactly where and when each trip will be made or how many days a rental car will be needed. Further each rental is truly a separate transaction. Renting a car in Des Moines is not the same as renting one in New York City; renting one in Miami in February is different than renting one in Miami in August.

Our conclusion, after looking at these factors, was that car rentals are small purchases. The state can recognize significant value by negotiating favorable terms, conditions, and ceiling prices, but treating the annual estimated rental car volume as a single purchase is both unnecessary and disadvantageous. Therefore, we felt that dynamic, market driven BOA's were a much more competitive approach than lumping the entire state demand into a single procurement every five years.