

Written Testimony of David Gragan
Chief Procurement Officer, District of Columbia
Board Member of the National Association of State Procurement Officials
Before the U.S. House Committee on Oversight and Government Reform
Hearing on “Preventing Stimulus Waste and Fraud: Who Are the Watchdogs?”
Thursday, March 19, 2009

Mr. Chairman and members of the Committee, my name is David P. Gragan; I am Chief Procurement Officer of the District of Columbia and a Member of the Board of Directors of the National Association of State Procurement Officials (hereafter referred to as “NASPO”).

NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. Its membership is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through which the member purchasing officials provide leadership in professional public procurement, improve the quality of procurement, exchange information and cooperate to attain greater efficiency, economy, and customer satisfaction. We thank you and welcome the opportunity to comment on state procurement’s role in preventing waste, fraud and abuse in the implementation of funds released by the American Recovery and Reinvestment Act (hereafter referred to as “the Act”).

NASPO has identified a number of ways at the state and local level to help minimize the potential for waste, fraud and abuse inherent in spending such a large amount of stimulus money so quickly. These include:

1. advocating the role of central procurement in all stages of contracting (from the identification of agency acquisition priorities to contract management following award);
2. ensuring adequate staffing of central procurement offices to allow strong and effective oversight; and
3. encouraging the use of cooperative contracting measures across states, their agencies and their local governments to aid in quick and efficient spending of stimulus dollars.

All three of these strategies will help states in their quest to spend the stimulus money promptly (so as to achieve the Administration’s and Congress’ goals of rapid economic impact) while also spending the money effectively (by avoiding instances of waste, fraud and abuse).

This testimony will also highlight the proactive steps state procurement offices are taking to prevent wasteful spending; the plans that state procurement offices have for audits and investigations to identify and prosecute fraud in stimulus programs; and the oversight challenges that state governments (and especially state central procurement offices) are facing in receiving the funds from the Act.

**The Role of Central Procurement, the Need for Adequate Procurement Staffing,
and the Use and Benefits of Cooperative Purchasing**

The Role of Central Procurement

A good procurement strategy is comprised of several factors. Formal competition strategies are essential, and these strategies must be prescriptively and explicitly phased and structured. It is imperative that central procurement be actively engaged in the initial stages of identifying and defining agency needs in order to optimize the efficiency and effectiveness of the solicitation developed to satisfy those needs. Criteria for evaluation and award must be identified, and the protocols for bid evaluation must be established. Procedures must also be established and guidelines followed regarding any necessary public notice of an intended procurement. Finally, a comprehensive file of all action, correspondence, and supplemental materials related to a contract must be maintained to ensure transparency and an auditable trail of all solicitations and awards.

Central procurement offices must be present for all of the stages noted above. The state Chief Procurement Officials (“CPOs”) and their staffs have full and practical knowledge of current applicable state laws, best practices, strategies, and processes within the parameters of their own state procurement regulations.

NASPO has recently issued a resolution encouraging state Governors and the U.S. Office of Management & Budget to include state (CPOs) and NASPO in the development and implementation of state and federal strategies and guidelines for spending stimulus money provided to the states as a result of the American Recovery and Reinvestment Act of 2009 (“Act”). (Please see Appendix A to this Testimony for a copy of that resolution.)

This resolution further recognizes that state CPOs are uniquely positioned to assist in the development of guidelines regarding use, timelines, and transparency of efforts and purchases compelled by the Act and that state CPOs will be primarily responsible for developing the contracts that states and localities will use in conjunction with spending the money released to the states by the Act.

NASPO has and continues to recognize that the effectiveness of a state CPO is clearly linked to his or her ability to engage with policymakers at the highest state levels, and this engagement is critical to ensuring effective direction, coordination, and control over central procurement’s user agency spend. Additionally, state CPOs are charged with protecting all public funds from conflicts of interest, anti-trust violations, fraud and abuse and have already developed controls to address these concerns. Therefore, in order to proactively prevent waste, fraud and abuse of Act dollars, it is imperative that central procurement be given an opportunity from the outset to weigh in at the state and federal level on strategies for disbursing and spending state stimulus money from the beginning of the process and in conjunction with guidelines and recommendations developed by state stimulus leaders and their related stimulus teams.

The Need for Adequate Procurement Staffing

The procurement process does not begin nor end with the issuance of a solicitation and the award of a contract. A typical procurement is comprised of a variety of stages, including the development of specifications (which should be done in conjunction with the requesting customer agency and can sometimes include consultation with potential vendors to ensure an effective and comprehensive solicitation document), market research (to identify and understand the current supply market), drafting the solicitation, posting the solicitation (in accordance with prescribed state procurement laws and regulations), bid evaluation, contract negotiation, bid award, and potential protests and claims. Once a contract is awarded, a central procurement staff member is also tasked with managing that contract in its entirety, from award to the end of the contract period. Meticulous recordkeeping is essential to this process, and the Act has added to this process by increasing reporting requirements and analysis.

As a result of states' budget deficits prior to the allocation of funds through the Act, many state central procurement offices have been forced to either lay off staff or to observe a statewide hiring freeze preventing those offices from filling vacant positions. The stimulus funds provided by Act present a unique opportunity to state central procurement to play an essential role in the responsible and effective use of those dollars; but the added contracting burden placed on these offices must be alleviated. States should be encouraged or directed via specific guidelines to increase their procurement staff either by filling and adding open positions, or by contracting for procurement officials to assist the states in the term of any contracts developed as a result of the stimulus funds.

Public procurement professionals add value to every government program by providing efficient delivery of products and services, obtaining best value through competition, offering fair and equitable competitive contracting opportunities for suppliers, and maintaining public confidence through ethical and transparent procurement practices. It is imperative that state central procurement offices be fully staffed with qualified and efficient procurement professionals in order to maximize the benefits to the states from the Act funds and to minimize and mitigate the risks of waste, fraud, and abuse that are real concerns as a result of an overextended procurement staff and the rapidity with which the funds are to be spent.

The Use and Benefits of Cooperative Purchasing

The central role of public procurement is to obtain quality goods and services to support effective and efficient government, thereby ensuring the prudent use of public funds. One way that state and local governments do this is through cooperative purchasing. In simple terms, cooperative purchasing involves sharing procurement contracts between governments.

Cooperative purchasing is effective and popular because it can save significant time and resources in contract production as well as lower contract prices through the power of

aggregation. As the complexity and workload involved with central procurements has increased, cooperative contracts have helped ease the contracting burden on state, agency, and local governments.

As the chief organization representing state procurement since 1947, NASPO plays a critical role today in administering multi-state cooperative purchasing. Currently, NASPO and its subsidiary the Western States Contracting Alliance (“WSCA”) administer thirty-two (32) regional cooperative contracts, for items ranging from computers to tires to floor products and carpets. Since 1993, purchases from contracts administered by NASPO member states have totaled over \$14 billion.

These and other cooperative contracts (including the GSA Schedules and other cooperative procurement opportunities) are effective tools that procurement managers at all levels of government can use to obtain effective, best-value solutions for the state and the taxpayer. Aggregated volume creates significant price breaks, sometimes in the double-digit percentages. Partnering with a lead entity can reduce time, administrative overhead, and other costs, while leveraging the experience and expertise of those with specialized knowledge in a sector.

While it is important to note that the ability to use a cooperative purchasing contract varies from state to state, cooperative procurements present ready-made and previously-vetted purchasing opportunities that can allow states and localities to spend stimulus money quickly, confidently, and reduce the risk of waste, fraud or abuse.

Specific Comment

In its invitation to NASPO to participate in this Hearing, the Committee asked that NASPO address three specific questions.

What Proactive Steps are State Procurement Officials Taking to Prevent Wasteful Spending?

Independent of stimulus funds, Procurement Officials are more and more focused on developing sound controls into their procurement process. Absorbing significant budget reductions and avoiding embarrassing headlines require that procurement offices no longer wait for annual audits to identify waste, fraud and abuse. In the District of Columbia, for example, we are using transparency as a key tool to keep the process clean. We post basic information about every purchase order and purchase card transaction on the District’s website. The curious eyes of reporters and the public are powerful tools against bad behavior.

In terms of developing specific safeguards and processes for stimulus funds, many states are awaiting additional formal guidance from the U.S. Office of Management and Budget (hereafter referred to as “OMB”) and a variety of stakeholder federal agencies (due out on March 31, 2009). However, in anticipation of these projects, NASPO members are developing and using a variety of strategies to aid their staff and customer agencies in

spending the Act stimulus money efficiently, effectively and properly. These strategies range from the generic to the specific, dependent on the level of involvement states have had in the development of their states' overall stimulus strategies. They can also generally be identified as external and internal strategies.

Externally, state central procurement offices recognize the need for clear, consistent and direct communications with both their partner and customer agencies. This means that close collaboration with government partners (e.g. their state's auditors, comptrollers, CIOs, and/or stimulus leaders) is necessary to provide a unified strategy and approach to the receipt, spending, and tracking of stimulus funds within the parameters of the Act. State CPOs are working closely with these groups and their state CIOs to increase their capacity to conduct more online solicitations in an effort to create more easily searched, organized and accessible bid and contract information as well as assist state central procurement offices in electronic reporting in accordance with the stimulus guidelines as they are developed. In an effort to accomplish these things, state CPOs are advocating their inclusion on stimulus teams within their states from their inception.

This also means that state central procurement offices must communicate guidance and expectations/best practices to user agencies and localities. Most states are issuing guidance to agency customers to promote uniformity of requests and reporting, while other states are creating data collection forms for customer agencies to help identify and track stimulus funds. Procurement offices are working with agencies to identify projects and begin drafting specifications and statements of work. State CPOs and their staffs are promoting the use of cooperative and pre-established contracts, while also proactively setting up contracts for local governments and school districts specifically related to stimulus funds.

Internally, state CPOs and their staffs are busy researching the Act and current OMB guidelines to prepare accurate timelines for spending the money and identifying which internal procurement timelines (e.g. bid, award, etc.) must be compressed in order for states and agencies to be in compliance with many of the "use it or lose it" provisions in the Act. States are also identifying available staffing resources for in-house stimulus teams charged with developing stimulus-specific contracts (which may be more specific or more fast-tracked than traditional procurements). State CPOs are encouraging their staffs to identify viable cooperative and pre-established contracts for internal use as well.

What Plans do States Have for Audits and Investigations to Identify and Prosecute Fraud in Stimulus Programs?

Transparency is a cornerstone of the Act and is an essential element of state central procurement strategies to identify waste, fraud, and abuse of stimulus dollars. NASPO and its partner organizations are currently in discussions with OMB, GAO and related agencies to identify the recommended flow of information as it relates to Act reporting, and state CIOs are working closely with state CPOs and the stimulus teams to develop systems to assist in this reporting. State CPOs are developing guidance and guidelines for state agency customers in an effort to promote uniformity of requests and reporting,

and consequently promoting methods for easier analysis by both the public and audit officials. Some states are currently issuing solicitations for audit and accounting staff to help monitor, track and report on the use of stimulus money.

The District of Columbia has developed a separate wiki site, to which they are posting any and all documentation related to procurements made with Act funds. This wiki will be open to the public for review, comment and suggestion. In addition, the District will be holding a free, open and public roundtable in order to identify and discuss all potential and perceived agency contract needs.

The important focus for state CPOs is to put controls on spending and reporting in place ahead of Act fund use in an effort to mitigate any potential for waste, fraud or abuse and to facilitate audits during and after these funds are spent.

What Oversight Challenges are State Governments Facing in Receiving Stimulus Money?

The overarching concerns of state central procurement offices and CPOs are the challenges posed by the rapidity with which Act funds are to be spent and the lack of guidance to date for practical strategies for spending and tracking these dollars. Basically, the concerns of the states can be broken down into two categories: data issues and procurement concerns.

Data Issues

To date, the federal government through OMB has not given states clear instruction or guidance on data points that states are to track, what expenditures states are supposed to track, or how and in what format stimulus expenditures are to be tracked and reported. In addition, it is unclear as to whether a part of the Act funds for states should or are meant to be used for information systems upgrades to facilitate transparency and reporting.

While the current OMB guidelines and the Act itself (Section 1512 of the Act) give specific information on data points to be reported, there has yet to be additional definition of what those data points comprise. For instance, how should states quantify job creation and how does the Recovery Board expect to make this formula uniform across states?

The state central procurement offices are also awaiting guidelines related to exactly what they are expected to track and report related to stimulus money. Specifically, is the state responsible for accountability for funds that are expended by just the state, or also for funds that flow through the state to the local units of government? What about for funds that are disbursed to local governments directly from federal agencies? Guidance is necessary to help states identify what specific reporting and monitoring requirements they must have in place for money the state receives as well as money spent by their customers.

Finally, there exist non-uniform reporting requirements and mechanisms across states as well as across state user-agencies. States are anticipating guidance to determine whether uniform reporting will be developed (from OMB and across agencies and states) or if reporting requirements will be agency-specific (from federal agencies, e.g. Education, Energy, etc.) If the reporting requirements are agency-specific, it will place an undue and currently unfunded burden on state procurement offices. In addition, confusion exists in the states as to the process for reporting—will state agencies report their use of stimulus funds to the federal agencies (forcing states to cull that information individually from the federal agencies for their own transparency websites), or will they report that use to the state (forcing federal agencies to confront the similar problem of having to cull this information individually from states in order to report the results on their agency transparency websites)? Requiring agencies to report to both raises timing concerns—some states or federal agencies may be more proactive than their counterparts, resulting in lags between reporting and/or unmatched data being published.

Procurement Concerns

The compressed timelines provided for in the Act could well compromise state procurement procedures and regulations, and also result in a staffing resources issue which has been discussed earlier in this testimony.

Many of the procurement timelines prescribed in the Act currently are outside of normal state procurement procedures, some of which are legislatively mandated. These state timelines were developed to prevent fraud and abuse, and requirements to invoke accelerated timelines and procedures make conducting a full and open competitive process more challenging. In addition, procurement functions within different states fall along the full range of centralized to decentralized. This means that each state must come up with somewhat individual procedures to spend the Act money quickly and within the guidelines of the Act. Developing these strategies is essential to obligating the money responsibly, but requires resources that will impact states' timelines for developing bids and award contracts. Finally, the rapidity with which these funds must be contracted requires unprecedented communication, coordination and standardization across state agencies and the central procurement office—the successful implementation of which will also decrease the amount of time left over for states to obligate the funds per the Act deadlines.

Additional specific challenges state central procurement offices are facing include the Buy American provisions and potential supply constraints resulting from mass government spend of both recommended purchases as well as emergency purchases. States need specific guidance addressing how existing Free Trade Agreements (“FTAs”) are impacted by the Buy American provisions in the Act, and which FTAs and other obligations apply to the use of the Act funds.

Finally, simultaneous spend by states, agencies and localities could lead to inefficient pricing and/or supply constraints. For example, if all 50 states decide to update their traffic lights with LED lamps, the resulting demand will drive up the price for these

lamps to inefficient levels. Similarly, should there be a limited number of vendors for certain items, there could be an insufficient supply of these items for the states to procure, raising the probability that states will not be able to spend the funds in the spirit of the Act in sufficient time to be compliant with the timelines provided for in the Act.

Conclusion

In conclusion, NASPO advocates the inclusion of central procurement leaders in all stages of stimulus funding planning at the state level, encourages stimulus-funded solutions to the crisis of insufficiently staffed central procurement offices, and advocates the use of established cooperative contracts as a means to save states, agencies, and localities time and resources in their efforts to spend the Act funds quickly and wisely. This written testimony was also designed to highlight proactive measures states are taking to prepare for the use of funds allocated by the Act, and to identify the existing and potential issues or roadblocks that state procurement may encounter along the way.

We thank you again for this opportunity to speak with the Committee today.

Attachments:

- Appendix A: NASPO Resolution dated March 6, 2009 calling for NASPO to be recognized as the central point of contact and clearinghouse for information and resources related to state procurement and the impact and development of guidelines to be issued to states regarding procurement under the Act; and that state central procurement officials be invited to state discussions surrounding strategy development for the use of stimulus funds.
- Appendix B: NASPO joins with NASBO, NASACT, and NASCIO letter to OMB dated February 17, 2009 calling for coordination on the stimulus bill.
- Appendix C: List of specific procurement issues remitted to OMB in preparation for the Act Implementation Conference on March 12, 2009.

For more information you can visit NASPO's website (www.naspo.org)

APPENDIX A



Resolution encouraging state Governors and the U.S. Office of Management & Budget to include state Chief Procurement Officers (CPOs) in the development and implementation of strategies and guidelines for spending stimulus money provided to the states as a result of the American Recovery and Reinvestment Act of 2009.

WHEREAS, the 111th United States Congress has passed the *American Recovery and Reinvestment Act of 2009*; and

WHEREAS, the state Chief Procurement Officer (CPO) has full and practical knowledge of current applicable state procurement legislation, best practices, strategies, and processes within the confines of their own state procurement regulations; and

WHEREAS, state CPOs are uniquely positioned to assist in the development of guidelines regarding use, timelines, and transparency of efforts and purchases compelled by the ARRA; and

WHEREAS, state CPOs will be primarily responsible for developing the contracts states and localities will use in conjunction with spending the money released to the states by the ARRA; and

WHEREAS, the ARRA calls for specific levels of transparency of state spending of the stimulus dollars; and

WHEREAS, states have a variety of reporting and transparency guidelines designed to ensure equity and fairness in awarding contracts which will need to be standardized as a result of the reporting and transparency provisions in the ARRA; and

WHEREAS, state procurement protects public funds from conflicts of interest, anti-trust violations, fraud and abuse; and

WHEREAS, the inclusion of state CPOs will facilitate and set precedent for greater cooperation between state agencies and state procurement offices, creating an environment of collaboration that will continue to serve the states and their taxpayers in the future; and

WHEREAS, the National Association of State Procurement Officials recognizes and asserts that the effectiveness of a state CPO is clearly linked to its location in the government structure, and that placing the office at a high level is critical to ensuring effective direction, coordination, and control over a government's procurement spend; and

WHEREAS, the National Association of State Procurement Officials is uniquely positioned to disseminate information to state CPOs and their staffs, and to gather responses related to legislation and procedures affecting state procurement;

NOW THEREFORE, BE IT RESOLVED, THAT the National Association of State Procurement Officials advocates the inclusion of state Chief Procurement Officers in the development of guidelines for contracting procedures related to the spend of state finances authorized by the American Recovery and Reinvestment Act; and

BE IT FURTHER RESOLVED, THAT state Chief Procurement Officers should also be present in discussions with Governors' offices and state agency leaders in developing projects and strategies for spending state money authorized by the American Recovery and Reinvestment Act; and

BE IT FURTHER RESOLVED, THAT the National Association of State Procurement Officials should be recognized as the chief point of contact to assist in distribution of information to state CPOs and as a collective resource for the development of guidelines related to the American Recovery and Reinvestment Act as they relate to state procurement.

Adopted by
National Association of State Procurement Officials
March 6, 2009

APPENDIX B

NASACT

*National Association of State
Auditors, Comptrollers and
Treasurers*

NASBO

*National Association of State
Budget Officers*

NASCIO

*National Association of State
Chief Information Officers*

NASPO

*National Association of State
Procurement Officials*

February 17, 2009

Dr. Peter Orszag
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Mr. Gene L. Dodaro
Acting Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Dr. Orszag and Mr. Dodaro:

The passage of the American Recovery and Reinvestment Act (ARRA) provides significant funds to states across an array of programs with tracking and reporting requirements to ensure accountability. As representatives of the state auditors, comptrollers, and treasurers, the state budget officers, the state chief information officers, and the state procurement officials, we sincerely believe that a coordinated approach is imperative and want to express our strong interest in working with your staff on the reporting and compliance aspects of this important legislation.

States are working on processes to ensure that funds are spent as efficiently as possible while maintaining the appropriate controls and reporting mechanisms to ensure accountability and transparency. Many states have existing accountability and transparency initiatives or are in the planning stages to make investments in the near future. Your guidance to the states on the reporting and accountability requirements will be extremely helpful. We look forward to meeting with your staffs soon to provide information to ensure that these stimulus funds are spent in the most efficient and effective manner. Please do not to hesitate to call upon us when we can provide assistance.

Sincerely,



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APPENDIX C



Issue List for ARRA Implementation Conference (to be held March 12, 2009)

- Federal Acquisition Regulations (FAR)
 - Will they apply to states' use of stimulus funds?
 - Is there a difference between grants from Federal agencies vs. allocations from discretionary accounts?
 - Will FAR be modified?
- Free Trade Agreements (FTAs)
 - What is the impact of reduced notice times on member states' compliance with various Free Trade Agreements and the WTO IGPAC?
 - How does the Buy America provision in the ARRA affect states' compliance with the WTO IGPAC and other FTAs to which they are party?
 - Does the Buy America provision put them in non-compliance with these agreements? What are the implications of noncompliance? Will there be a retaliatory effect that states should anticipate? (I have attached a PDF of states and the various trade agreements to which they have signed on. This data is current as of 2008.)
 - How will the "use it or lose it" provisions and time periods affect states' compliance with posting/reporting requirements under the WTO IGPAC and other FTAs to which they are party? For instance, the WTO IGPAC is quite prescriptive as to publishing/advertising requirements for all open bids, which in some cases are longer than the time period within which states must allocate and/or spend their stimulus money. Has this issue been addressed in the guidelines, and what can states expect as a result of noncompliance with these standards?
- Accountability
 - How will state central procurement officials be made aware of grant or other funding allocations in their state to which they might possibly be responsible for awarding contracts?
 - Will there be detailed guidelines on audit procedures and requirements to promote complete compliance and to protect central procurement from penalties later?
 - Will there be guidance on capturing and qualifying job creation data?
 - How will OMB ensure consistency of data collection methods and strategies across federal agencies to simplify reporting by state agencies?
- Transparency
 - What additional auditing and reporting requirements will there be?
- Other Issues
 - Concerns about staffing state central procurement offices in order to spend the stimulus money