

IMPORTANT NOTICE

Official Announcement #20-01: Use of Consortia and Cooperative Agreements, issued October 8, 2019, is **no longer applicable** and has been superseded by changes in Georgia law as described in Official Announcement #21-03: Announcement of Revised Procurement Policies; House Bill 953, issued January 4, 2021. Please access the following link to view the most current Official Announcements:

<http://doas.ga.gov/state-purchasing/law-administrative-rules-and-policies>



State of Georgia
Department of Administrative Services
State Purchasing Division

Official Announcement # 20-01

FROM: Lisa Eason, Deputy Commissioner, DOAS *LE*

DATE: October 8, 2019

TO: State of Georgia Procurement Professionals

RE: **Use of Consortia and Cooperative Agreements**

The State Purchasing Division (SPD) announces the following informational resources to assist state entities considering the use of consortia or cooperative purchasing groups as a source of supply to ensure compliance with Georgia law and the Georgia Procurement Manual (GPM).

- **Authorized Sources of Supply:** As a reminder, pursuant to O.C.G.A. Section 50-5-51, to be an authorized source of supply, the consortia or cooperative purchasing entity **must** be (1) a private non-profit organization or (2) a governmental entity (other states or their political subdivisions). For-profit consortia or cooperative purchasing entities do not meet this requirement and may not be used.

To assist state entities, SPD has initiated a list of SPD-approved consortia and cooperative entities, that may be amended from time to time. The state entity must seek SPD's approval by submitting a request to process.improvement@doas.ga.gov before using a consortia or cooperative purchasing entity that is not included on the list.

- **Competitively Bid:** To satisfy GPM Section 1.3.4.4. Consortia or Cooperative Purchasing, the contract **must** have been competitively bid. In addition, the state entity should consider several other factors in determining the appropriateness of the consortia or cooperative purchasing contract, including, but not limited to:
 - the value and competitiveness of the contract compared to market research of other available sources of supply;
 - the scale of the competitive bid and whether it is a similar or larger scale than a competitive bid conducted by the state entity itself; and
 - the terms of participation in the consortia or cooperative purchasing contract, such as whether they permit the inclusion of Georgia-required terms, as well as whether there are prohibited terms, such as auto-renewals.
- **Public Notice:** The state entity **must** comply with all requirements of GPM Section 1.3.4.4. Consortia or Cooperative Purchasing, including the requirement to post public notice to the Georgia Procurement Registry using form SPD-NI007.

- Action: Each APO/CUPO must prepare a list of current consortia/cooperatives in use and identify any that are not currently on the SPD approved list. This information will be requested via separate communication with a link to an online survey to be completed no later than **Tuesday, October 22nd**. If you do not receive the separate communication, please contact process.improvement@doas.ga.gov. SPD will review the information received and work with state entities individually to identify next steps.

Please assist us in disseminating this information internally. For any questions or concerns regarding this official announcement, please contact SPD at process.improvement@doas.ga.gov.

Please review the following documents enclosed with this memo:

Approved List of Consortia or Cooperative Purchasing Groups as of October 8, 2019
Attorney General's Office Informal Advice Letter September 2019

Consortia or Cooperative Purchasing Entities Effective October 8, 2019

The State Purchasing Division (SPD) has identified the following consortia or cooperative purchasing entities as meeting the requirement under Georgia law (O.C.G.A. Section 50-5-51) and Georgia Procurement Manual (GPM) Section 1.3.4.4. "Consortia or Cooperative Purchasing" of being either a non-profit or governmental entity. Please note that this list is subject to change at any time with or without notice. The state entity **must** seek SPD's approval by submitting a request to process.improvement@doas.ga.gov before using a consortia or cooperative purchasing entity that is not included on this list.

- **Educational & Institutional (E&I) Cooperative Purchasing**
 - E&I is a member-owned, non-profit purchasing cooperative serving the needs of education. Contracts are available to higher education, K-12 and related communities.
 - Please contact SPD if additional information is needed for participation.

- **General Services Administration (GSA)**
 - GSA is a federal government agency providing centralized procurement for the federal government.
 - Use of GSA contracts does not require SPD's prior approval; however, the state entity must comply with the following:
 - The state entity may only utilize those GSA schedules that are open to state government entities.
 - The state entity may only contract with those suppliers with the cooperative purchasing symbol as identified by the GSA.
 - The state entity must comply with the GSA's bidding process as applicable.

- **Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) Infuse**
 - MMCAP Infuse is a national cooperative group purchasing for government facilities that provide healthcare services. It was established in 1985 and is operated by the State of Minnesota, Office of State Procurement.
 - Please contact SPD if additional information is needed for participation.

- **National Association of State Procurement Officials, Inc. (NASPO)**
 - NASPO is a non-profit association that 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.
 - Use of NASPO contracts requires SPD's execution of a participating addendum. The State entity must contact SPD prior to posting a public notice to use a NASPO contract. SPD will coordinate with the state entity to ensure compliance with GPM Section 1.3.4.4.

- **Sourcewell (formerly National Joint Powers Alliance or NJPA)**
 - Sourcewell is a service cooperative created by the Minnesota legislature as a local unit of government.
 - Please contact SPD if additional information is needed for participation.



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CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

September 17, 2019

MEMORANDUM:

TO: Rebecca Sullivan
General Counsel, Assistant Commissioner of Government Affairs
Georgia Department of Administrative Services

THROUGH: Julie Jacobs
Senior Attorney General

FROM: Alkesh Patel 
Assistant Attorney General

RE: Omnia Partners, Inc.

This memorandum responds to your request for informal advice regarding a letter Commissioner Atwood received regarding OMNIA Partners ("OMNIA"). Specifically, you inquire whether Department of Administrative Services ("DOAS") has the ability to utilize contracts available through OMNIA, a cooperative purchasing organization. Based upon my review of the facts and relevant law, it appears that DOAS may not participate in OMNIA's cooperative purchasing system.

On July 11, 2019, Commissioner Atwood received a letter from counsel for OMNIA, expressing his client's position that DOAS is authorized to participate on contracts available through its cooperative purchasing agreement. In order to participate, DOAS would register as a participating public agency with OMNIA. Afterwards, DOAS would be able to "piggyback" on other contracts held by other governmental agencies. Thus, OMNIA asserts that its position is supported by statute, as well as, public policy.

In addressing statutory authorization, OMNIA points to O.C.G.A. § 50-5-51(9), which provides that DOAS "shall have the power and authority...to enter into or authorize

agreements with private nonprofit organizations or other states and their political subdivisions to effectuate the purposes and policies of this chapter.” OMNIA reasons that DOAS, pursuant to O.C.G.A. § 50-5-51(9), would be authorized to utilize its cooperative contracts because DOAS would simply “piggyback” on a contract that has already been solicited and awarded to another state, or a political subdivision of another state. Thus, even though OMNIA is a for-profit organization, the underlying contracts available to DOAS through the cooperative system it operates are held by other governmental entities.

Statutory authority aside, OMNIA argues that cooperatives are vital to government procurement offices as they reduce administrative costs and provide the best value for quality goods and services. Thus, OMNIA believes that “...DOAS should focus on finding the best overall value for quality goods and services and not artificially reduce the options available to the State” and that the “tax-paying status of the purchasing cooperative offering the contracts should not be the subject of the Department’s review.”

Here, OMNIA’s position is not fully supported by the language of the statute. Without evidence to the contrary, statutory language should be read in light of its ordinary, logical, and common meaning.¹ Additionally, the cardinal rule to guide the construction of law is to ascertain the legislative intent and purpose in enacting the law, and then to give it the construction which will effectuate the legislative intent and purpose.² A statute should not be interpreted to produce an absurd result.³ Lastly, statutes are to be construed in connection and in harmony with existing law.⁴

Under the State Purchasing Act, O.C.G.A. §§ 50-5-50 through 50-5-138, DOAS has the power and authority to “canvas all sources of supply and to contract for the lease, rental, purchase, or acquisition of all supplies, materials, equipment, and services...under competitive bidding in the manner and subject to the conditions provided for in this article.” O.C.G.A. § 50-5-51(1). One such condition is set forth in O.C.G.A. § 50-5-51(9).

O.C.G.A. § 50-5-51(9) clearly provides that DOAS may enter into or authorize agreements with (1) private nonprofit organizations, or (2) other states and their political subdivisions. While OMNIA may argue that DOAS would simply “piggyback” on an underlying contract held by another governmental entity, thereby satisfying statutory requirements, the process is not that simple. At a minimum, in order to participate in OMNIA’s Public Sector Cooperative, DOAS would need to become a “participant,” which requires DOAS to register as a participating public agency with OMNIA and enter

¹ *McKinney v. Fuciarelli*, 298 Ga. 873, 874 (2016).

² *City of Jesup v. Bennett*, 226 Ga. 606 (1970); *Hollowell v. Jove*, 247 Ga. 678 (1981).

³ *Haugen v. Henry County*, 277 Ga. 743, 746 (2004); *General Electric Credit Corp. of Ga. v. Brooks*, 242 Ga. 109, 112 (1978).

⁴ O.C.G.A. § 1-3-1(a). *Copher v. Mackey*, 220 Ga.App. 43 (1996).

into a Master Intergovernmental Cooperative Purchasing Agreement with OMNIA.⁵ Simply put, DOAS would be required to enter into a contract with OMNIA to participate in OMNIA's cooperative system and to gain access to contracts held by other governmental entities. Such an arrangement appears to be outside the scope of O.C.G.A. § 50-5-51(9) as OMNIA is a for-profit corporation.

OMNIA argues that the tax status of an organization should not be part of DOAS' review, and that such a position runs counter to legislative intent. As stated earlier, however, O.C.G.A. § 50-5-51(9) expressly provides two types of entities that DOAS may enter into or authorize agreements with: (1) private nonprofit organizations; or (2) other states and their political subdivisions. Prior to 2005, the statute only permitted agreements with states and their political subdivisions. In 2005, the legislature amended O.C.G.A. § 50-5-51(9) to include "private nonprofit organizations" as an additional option. If the tax status of an organization were not relevant, as OMNIA suggests, the legislature would not have specified the status of an organization when it amended the statute in 2005.⁶

Therefore, it appears that DOAS may not utilize OMNIA's cooperative system. The plain language and legislative updates to the statute support this finding.

I hope this informal advice is responsive to your request. Please keep in mind that this is not an official or unofficial opinion of the Attorney General.

⁵ Registration is done online and DOAS would agree to the terms and conditions in the Master Intergovernmental Cooperative Purchasing Agreement by simply checking a box indicating that it agrees to its terms and conditions.

⁶ "When considering the meaning of a statute courts must afford the words of the statute their 'ordinary signification' and we must presume that the General Assembly meant what it said and said what it meant." *Arby's Restaurant Group, Inc. v. McRae*, 292 Ga. 243, 245 (2012)(internal citations omitted).



Brian P. Kemp
Governor

J. Alexander Atwood
Commissioner

November 1, 2019

MEMORANDUM

From: Lisa Eason *LE*
Deputy Commissioner - State Purchasing Division
Department of Administrative Services

Subject: Use of Consortia and Cooperative Purchases

The Department of Administrative Services State Purchasing Division's (DOAS) **Official Announcement # 20-01** pertaining to use of consortia and cooperative agreements relates to purchases made by governmental entities of the state that are subject to DOAS authority pursuant to the State Purchasing Act (O.C.G.A. § 50-5-50 et seq). As local government entities maintain their own purchasing procedures independent of the State Purchasing Act and are not subject to DOAS authority, **Official Announcement # 20-01** has no applicability to them.