

## **A Multistate Algebra II Exam: Crossing New Frontiers In Cooperative Purchasing**

By

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Several pioneering states, with Ohio in the lead, have embarked upon a program that takes multistate cooperative purchasing to a new level. Rather than a typical purchase of “off-the-shelf” commodities, these states have come together to use cooperative purchasing as a tool to implement public policy. Collectively they have acquired development and implementation of a new and unique end-of-course Algebra II exam.

Multi-state cooperative purchasing has been commonly associated with generic items that do not require elaborate specifications or complex evaluation--orange traffic cones, janitorial supplies laptops, standardized services. A collective purchase offers the advantages of both volume discounts and reduced acquisition costs, with one state shouldering the acquisition load from which several states can benefit.

The Algebra II End-of-Course (EOC) Exam went further, as it involves a complex developmental program, sophisticated services, elaborate performance and content specifications, a multifaceted, multiparty “best value” evaluation process, and multiple, and sometimes controversial, judgments in the highly-charged education policy arena. This would have been a complicated and difficult procurement by any measure for only a single state. In this case, nine states are demonstrating that cooperative purchasing can be employed even under this demanding scenario to further common policy objectives.

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## I. A Procurement to Implement Policy

The Algebra II exam procurement was initiated under the auspices of the American Diploma Project (ADP), a network of thirty states working to assure that the high school experience is sufficiently rigorous and meaningful as preparation for college or work. The ADP was organized, and is administered by, Achieve, Inc., a non-profit public interest firm funded primarily by a variety of foundations. Achieve's web site provides the following succinct description about how the states came to focus on Algebra II and a common EOC exam to assess performance:

In May 2005, leaders from the ADP Network States began to explore the possibility of working together, with support from Achieve, to develop a common end-of-course exam in Algebra II. These states were planning to require or strongly encourage students to take Algebra II (or its equivalent) in order to better prepare them for college and careers, as Algebra II (or its equivalent) is a gateway course for higher education and teaches quantitative reasoning skills important for the workplace. State leaders recognized that an end-of-course test would help ensure a consistent level of content and rigor in classes within and across their respective states. They also understood the value of working collaboratively on a common test: the potential to create a higher quality test faster and at lower cost to each state, and to compare their performance and progress with one another.

Achieve, Inc., ADP Algebra-End-Of-Course Exam course Exam<sup>2</sup>

The Algebra II EOC exam procurement is thus not merely a purchase of services and supplies, but also a means to help multiple states collectively promote several common policy

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<sup>2</sup> The website "Fact Sheet" (<http://www.achieve.org/files/AlgebraIIfactSheet020808.vpdf>) is attached as Tab A and also provides a more detailed description of test purposes and content.

objectives: (i) improve the rigor of Algebra II curriculum and instruction, (ii) confirm student preparedness for college-level mathematics, and (iii) track comparative student performance across states. Ultimately, whether students takes Algebra II in Arkansas or Massachusetts, performance on the exam should demonstrate whether they have successfully mastered the subject against common curriculum expectations.

Policy development associated with the exam continues to evolve, however, as the purchasing states have not adopted common practices regarding test administration. To this extent, the procurement itself is somewhat ahead of, and pushing, policy decisions. In the typical case, an individual state would conduct its own procurement for a student performance assessment exam, having decided how to use the test and who will be expected to take it. The procurement would be simply a vehicle to acquire the tool that would carry out a policy already determined.

In this instance; state education chiefs collectively resolved to encourage rigorous Algebra II instruction and to acquire an exam that would promote consistency in the core Algebra II curriculum. The states still have different approaches, however, regarding who will take the test and what the consequence will be. In some states, all students taking Algebra II will be expected to pass the test as a graduation requirement. In others, the test is voluntary. There are even differences as to whether states will pay for the exams or merely encourage school districts to offer the exam as an assessment tool.

The policy aspects of this procurement are profound. A common exam, developed at the collective direction of multiple states, is an unheard of phenomenon.<sup>3</sup> Among the many activities for which states take a leading responsibility, education is among the most politically charged, and a common exam required states to sacrifice some autonomy and expose themselves to performance comparisons with other state education systems. This undertaking advanced only because it was driven from the top. Six to eight months of meetings, the active direct leadership

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<sup>3</sup> An earlier attempt under the auspices of the Southern Regional Education Board to develop a common multistate Algebra I exam failed when state testing directors could not reach agreement.

of governors and state education chiefs, facilitated by the persistent coordination and encouragement of Achieve, were essential to getting this program launched.

A procurement of this magnitude and political consequence requires motivation and commitment, which requires the time and energy of senior leadership to nurture and develop.

## II. Determining an Acquisition Path

As the states began to coalesce around the concept that an exam could serve as the tool to promote more rigorous Algebra II instruction across state lines, fundamental issues arose about how best to get the desired exam developed and implemented. One initial concept was for Achieve to purchase the exam, coordinate its development, and then make it available to the states. Achieve, as a non-profit education policy group, was equipped to help think through many issues and provide important oversight and coordination functions, however it had neither the expertise nor the manpower to develop the exam, or to acquire and manage test development and implementation services from a vendor. Nor was Achieve in the position to finance such an undertaking.

If Achieve would not develop or purchase the test, then who? There was considerable deliberation over how to secure the services of a test development firm that could design an end-of-course exam which would meet the states' collective specifications. The cost to develop a new multistate test was also a key consideration, as no individual state was prepared to foot the bill for the group, nor did the multiple states interested in pursuing this project have budget authority to fund that activity. Moreover, the states involved were at various stages of commitment to a rigorous end-of-course Algebra II exam, with some having statutory directives for such an effort and others having only policy support from state education authorities.

Achieve made preliminary inquiries to some of the educational testing firms, in the nature of market research, to determine whether there might be willingness and interest in such a pursuit, and whether those firms would expect to charge for such a custom exam development effort. While their responses indicated interest, and even willingness to do so without charge, it was also clear that the vendors would expect to control the design. They would cooperate with and

consider the states' concepts for an Algebra II test, but not necessarily produce an exam to the states' specifications.

One alternative considered was simply to publish the Algebra II core curriculum and test specifications that the states were developing, which would allow testing firms to use them for guidance while creating their own "off-the-shelf" end-of-course exam products. This was eventually rejected as falling short in multiple ways. There would be no assurance about how close any of the independently developed exams would come to matching what the states wanted. Nor would this establish a means for all the states to choose the same vendor-developed exam for their respective testing so that the "common" and comparative assessment objective could be accomplished.

Another approach discussed among the educational policy experts was simply working with one of the test vendors informally to help it shape an exam that would match the ADP criteria being developed by the states. The vendor could then market it to the states independently. This idea did not last long. In the Spring of 2006, Achieve and the educational policy leaders, who were developing the Algebra II curriculum concepts and seeking a common end-of-course exam to drive the policy, finally began to confer with state testing directors. Once these individuals were consulted, who were much more familiar with state procurement practices, including the requirements for, and benefits of, competitive acquisition, any ideas that did not involve some form of competitive procurement were quickly abandoned.

Acquiring a multistate exam on a competitive basis presented problematic questions about how to conduct such a procurement and select among potential educational testing vendors. Each state had experience purchasing and paying for tests to be developed to its prescribed specifications. Many state representatives also felt they would be capable of selecting a preferred test from among available "off-the-shelf" alternatives prepared independently by various vendors. Unfortunately, there was no ready mechanism for them to purchase a test collectively, designed to collaboratively determined specifications, where the states would not foot the bill for test development.

Having each state conduct its own procurement using the commonly developed Algebra II specifications was also considered, but rejected. Each state, it was feared, would “tweak” the specifications. Moreover, the ability to secure valid test results that would permit cross-state reporting and comparisons would be compromised.

In addition, simply having one state procure and manage the test development would not give it the “collective” quality so inimical to this multistate undertaking. Every state involved was participating in the difficult and lengthy deliberations associated with developing an agreed Algebra II curriculum “core content” and the specifications for what an end-of-course exam should accomplish. There was no immediately available model, however, for such a collective purchase. So, an approach had to be invented, which adapted components from both the less complex cooperative procurements that had gone before and the past experience with individual state purchases of educational testing services.

The approach eventually agreed upon mirrors the cooperative purchasing systems that have been employed by entities like the National Association of State Procurement Officials (NASPO) and the Western States Contracting Alliance (WSCA). Thus, the procurement would be conducted by a single “lead” state, which would execute the contract with a selected vendor. The other “Participating States” would then each be able to purchase the administration and scoring of exams under that contract. Implementing this seemingly simple construct required resolution of a host of complicated legal and contractual issues.

### III. Legal Authority

Because every state has its own procurement laws and regulations, the first hurdle was determining whether the involved states could even pursue a multistate cooperative acquisition of this type. Although twelve of the ADP states had expressed interest in developing a common Algebra II exam, ultimately this winnowed down to nine Participating States: Arkansas, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, Pennsylvania, Ohio, and Rhode Island. Their respective statutory authority varied in important particulars.

The Arkansas code was among the most straightforward, and reflected the ABA Model Procurement Code language on cooperative purchasing, by authorizing any Arkansas Procurement Agency to “participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any commodities or services with one (1) or more...external procurement activities” (defined to include public procurement units located in other states). Ark. Code Ann. §§19-11-249; 19-11-206(2)(A), (4), (5) (2006). Compare 2000 ABA Model Procurement Code §10-201(1). Pennsylvania’s statutory authority is comparable, permitting public procurement units within the Commonwealth to “participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants.” 62 Pa. Cons. Stat. Ann. §§ 1901-1902 (2006). Rhode Island also authorizes its chief purchasing officer to “enter into cooperative purchasing agreements with other governmental entities,” which are defined broadly to encompass agencies of other states. R. I. Gen. Laws § 37-2-54 (2006).

Employing somewhat different terminology, the legal authority permitting cooperative purchasing by New Jersey was likewise unambiguous. N.J. Stat. Ann. § 52.34-6.2 (West 2006) and N.J. Admin. Code § 17:12-1A.2, A.3 (2006). New Jersey’s Director of the Division of Purchase and Property in the Department of the Treasury may enter into cooperative purchasing agreements with one or more other states to purchase goods and services. These agreements must allow participating jurisdictions to standardize and combine requirements into a single solicitation, which is competitively bid and awarded by one jurisdiction on behalf of all those participating. *Id.* This was exactly the approach pursued for the Algebra II EOC exam.

Kentucky statutes similarly provide broad cooperative purchasing authority for a “public purchasing unit” to enter into cooperative purchasing agreements with a “foreign purchasing activity,” defined broadly to encompass a different state’s agency. Ky. Rev. States 45A.295, 45A.300 (2006). Maryland too encourages cooperative purchasing. Md. Code Ann., State Finance and Procurement §§ 13-102(6), 13-110 (2006). Under the heading “preferred methods,” Maryland’s Code states: “Procurement under an intergovernmental cooperative purchasing agreement is appropriate in situations where the State is expected to achieve a better price as the

result of economies of scale or to otherwise benefit by purchasing in cooperation with another governmental entity.” *Id.*, § 13-102(b)(3).

Massachusetts statutes do not provide much guidance, but the Commonwealth’s procurement regulations do provide that state departments may acquire commodities or services from “existing” contracts that “have been established by or are proposed by...other states.” 801 Mass. Code Regs. 21.05(4) (2006).

Where a state’s cooperative purchasing provisions did not follow the flexible Model Code approach, more specific analysis was required to determine whether the multistate purchase would be feasible. At the time, for instance, Indiana’s procurement statutes expressly addressed cooperative purchasing only with regard to Indiana’s political subdivisions, as opposed to multistate cooperatives. Ind. Code §§36-1-7-1 to 36-1-7-3 (2006) (“Interlocal Cooperation”). Indiana did permit, however, purchases of services using any procedure considered appropriate, which appeared to encompass development and administration of an end-of-course exam (the related supplies, like test booklets, being merely incidental). *Id.* §§5-22-2-30, 5-22-2-38. Moreover, Indiana permitted “special purchases” in those instances “when there exists a unique opportunity to obtain supplies or services and a substantial savings” or “when only one (1) source meets the using agency’s reasonable requirements.” *Id.* §§5-22-10-5, 5-22-10-7, 5-22-10-13. A collective cooperative purchase for the end-of-course Algebra II exam provided both a unique savings opportunity and the only source that would meet the unique requirements of comparable cross-state performance measurement and reporting.

Ironically, of the original nine participating states, the one with the most problematic statutory authority regarding cooperative purchasing was Ohio. There was some question as to whether Ohio would be able to engage in the program and purchase exams conducted under the auspices of some other state’s purchasing processes. The Ohio Department of Education (ODE) and Department of Administrative Services (DAS) recognized, however, that ODE could obtain a release and permit from DAS in order to participate in this effort. Ohio Rev. Code § 125.05 (2006). Fortunately, Ohio’s support for and commitment to this project was strong, and Ohio ultimately overcame any concerns on this score by assuming the role of “lead” state in the



multistate procurement, and as such ran the procurement according to Ohio's acquisition procedures. The "cooperative purchasing" issue thus never had to be addressed more directly because Ohio administered the procurement and awarded the contract to the testing vendor.

#### IV. Contractual Agreements

The time frames of this procurement were such that, once the concept of a multistate procurement was agreed upon in the Spring of 2006, the race was on to develop the solicitation for a vendor to develop and administer the test. The schedule was ambitious. The objective was to conduct field testing in 2007 and full test administration by Spring 2008. From both a procurement and test development standpoint, this was ambitious, but there was strong desire to maintain the forward momentum in order to preserve the political enthusiasm for this project.

These time constraints meant that immediate effort was focused most intently on completing the exam specifications and developing a formal Request for Proposal (RFP). In retrospect, the more logical approach would have been to put in place the agreements and legal "infrastructure" among the states about how they would work together to conduct the procurement and administer the contract, but of necessity those documents were developed in parallel. Discussing them in their logical sequence, three different contracts were developed for this project: (i) a "Participation Agreement" among the states to govern their involvement in the project, (ii) a Memorandum of Understanding (MOU) among the states and Achieve with regard to Achieve's continuing role, and (iii) the purchase contract with the vendor.

##### A. Participation Agreement

In a more typical cooperative procurement, the participation agreement or addendum is the contractual vehicle that allows a state to buy off of the vendor contract entered into by a lead state, but with the addition of provisions specifically and/or uniquely applicable to the participating state's purchases. The ADP Algebra II EOC Exam was somewhat different because the participating states would be involved beyond a re acquisition. The ultimate contract with the testing vendor would encompass a substantial period of exam development in which the multiple states expected to play a continuing role.

The test development activities were ones typical for an educational assessment project, such as creating test items and the test instrument, rangefinding and “cutscore” determinations, and multiple planning and implementation meetings. What made this project extraordinary was that educational professionals from nine different states would be involved, rather than representatives from only one. This created not only a cumbersome management and logistical predicament for the vendor, but also meant that the states needed some means to organize themselves. This framework came to be embodied in the Participation Agreement.

A copy of the initial Participation Agreement is attached at Tab B. It was deliberately kept a relatively sparse document, reflecting a conscious political desire to keep legal “entanglements” from dampening the important spirit of cooperation and flexibility among the states that had been the hallmark of this project. It does encompass, however, several essential components.

The Participation Agreement reflects the states’ understanding that, while this is a cooperative effort, one state will take the “lead” in conducting the procurement and entering into a contract with the testing vendor. While the lead state will be the contracting entity, each state will administer its own purchases from the vendor under that contract.

The Participation Agreement also establishes a governing body to guide administration of the multistate procurement. Designated the “Coordination and Direction Team” (CDT), to which each state appoints a single representative, this entity has had responsibility for proposal evaluation, source selection recommendations, project and test development oversight, and generally for actions to administer contract performance. Several aspects of the CDT’s operation and powers were the subject of very deliberate consideration and discussion.

Although most actions may be approved by majority vote of the CDT representatives, and both meetings and voting may be conducted by informal means (*i.e.* telephone attendance and email voting are allowed, but not proxy voting), two actions require unanimous consent: amendments to the contract awarded to the testing vendor and replacement of the lead state that contracted directly with the vendor. A mechanism was provided to select a replacement lead state.

The Participation Agreement made clear the extent and limitation of each state's obligation. Each state would bear its own expenses, own the results of the exams administered in its respective state, and could unilaterally terminate and withdraw from participation.

One oversight of the initial Participation Agreement was the absence of a procedure to add more states that might later seek to join the project and also purchase exams under the lead state's contract with the test vendor. This was rectified with an amendment permitting new states to join upon majority CDT approval, provided they also agree to the Participation Agreement. Time will tell whether further adjustments to this arrangement will be necessary, but to date the project has proceeded successfully under this minimal structure.

B. Memorandum of Understanding (MOU)

Having facilitated the ADP Network and the eventual consensus to pursue a common multistate Algebra II testing regime, Achieve's continuing involvement as a technical advisor was important to the participating states. Achieve fulfilled, and continues to fulfill, several important functions. First, Achieve operates as the neutral "honest broker" in policy deliberations among the states regarding setting direction for the Algebra II test development. In this capacity, Achieve coordinates the CDT's activities and helps keep the various agenda items moving forward. This has included a considerable amount of management and planning work, as well as pursuits such as recruiting additional states to participate in the project. Second, with its expertise in the educational policy arena and its familiarity with the ADP objectives, Achieve has provided technical advisory support in connection with test development issues and acted as an intermediary between the states and the vendor as test development has proceeded. Finally, Achieve will eventually be called upon to assess and report on test results across the participating states.

The MOU (Tab C) is a very simple document in which each Participating State acknowledges Achieve's various roles, confirms that the necessary test data for cross-state reporting will be licensed for Achieve's use, and relieves Achieve of any liability associated with its efforts. So far, Achieve has undertaken this work at no charge to the states, which is also reflected in the MOU.

### C. Developing the Solicitation

Not surprisingly, the most complex document developed in this procurement was the contract with the vendor, consisting of the Solicitation/RFP and multiple associated components. This endeavor took several months, including revisions relatively late in the process to address both vendor and state concerns about how best to evaluate price proposals.

By mid-June 2006, Ohio had accepted the role of lead state, and all participating states had coalesced around the fundamental statement of work and performance specifications for the Algebra II EOC exam. Achieve took the first stab at developing a draft RFP “template” that Ohio and the other states could use as a basis for discussion, employing a recent Ohio exam procurement as a model. This was transmitted to the Ohio DAS in mid-July 2006.

Also in mid-July, Achieve issued to the test vendor community (and posted on its internet web site) an announcement alerting them to the anticipated multistate exam procurement, providing copies of the Algebra II core curriculum that the test would be expected to assess, as well as the draft test specifications. The objective was both to stimulate interest and to encourage vendors that were already contemplating development of such exams on their own to take account of these specifications as well as this upcoming opportunity.

The basic procurement structure was to award a five-year (with two 1 year renewal options) indefinite delivery-indefinite quantity (IDIQ) contract to a single vendor. That vendor, under direction from and in coordination with the CDT, would be responsible for developing the exam (according to the test specifications), and then for the exam administration, scoring and reporting. The states would not pay for the development activity up front, but instead would order exams for each test administration (fall and spring) by a prescribed deadline. The number of tests ordered collectively by the participating states would determine the per exam price, with various price breaks at increasing volumes.<sup>4</sup>

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<sup>4</sup> A copy of the RFP’s Executive Summary is attached as Tab D.

This approach accomplished a number of important objectives. First, the up front development costs would be borne by the vendor, which was critical as the states did not have funding for this effort. This involved some not inconsiderable risk assumption by the prospective vendors, because this multistate cooperative approach was experimental, including an entirely new test. Although there was no initial commitment to purchase any exams, there would nevertheless be a compelling potential upside for the contracting vendor. Not only was there an immediate market of at least nine states, which would have invested considerable time and energy in this undertaking, and for which this test would be custom-designed, but the vendor would own the test. There was no objection to having the vendor market and sell the test even more broadly, given that one objective was to encourage cross-state commonality and comparison.<sup>5</sup> If successful, the vendor might reasonably expect that additional states would be interested in purchasing this exam, designed and used by multiple sister states.

Throughout the summer, Ohio, Achieve and the participating states worked diligently to wrestle with and resolve a variety of complicated concerns that this policy-driven multistate enterprise was creating. Three of the more difficult aspects of the procurement give a sense of the added complexity when cooperative purchasing is employed both to drive policy and to accommodate multiple and varied state interests.

1. Evaluation Criteria

Evaluation criteria ordinarily focus on specific considerations of quality or capability. For acquisition of commodity-type supplies, relative technical equivalence may cause the award decision to be based largely, if not exclusively, on price. For the Algebra II procurement, the evaluation criteria were employed as a very deliberate instrument to drive vendors towards the states' overriding policy objectives.

There was little doubt that the major educational testing vendors with the resources and capabilities to develop and administer a multistate Algebra II EOC exam could all accomplish

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<sup>5</sup> The RFP provided that the vendor would not sell the exam at a lower price than that offered to the participating states (*i.e.*, a “most favored customer” clause).

the standard functions of exam writing, test administration, scoring and reporting. The RFP provided for evaluation criteria in these areas to recognize the offerors' respective differences in proposed approaches and performance history. Significantly, however, the evaluation criteria also gave special emphasis to each offerors' approaches (i) to assuring that the test items and construction aligned with the state-designed specifications, (ii) to cross-state comparability reporting, (iii) to establishing credibility of the exam results with higher education institutions. These were the three most heavily weighted technical evaluation considerations, and reflected the policy objectives that distinguish this particular exam from typical individual state testing acquisitions. The objective was to encourage vendors to propose approaches that gave special and creative emphasis to these important considerations, rather than simply offering up "off-the-shelf" exams (or only slightly customized versions), or proposing merely standard test development and administration methods.

## 2. Individual State Requirements

An important contractual consideration was the need to accommodate particular legal and operational issues unique to each of the Participating States. The RFP language included Ohio's standard contractual terms and conditions, which for the most part mirrored similar standard provisions employed by the other states. The Participating States were encouraged to accept the Ohio provisions, to the extent that they were not inconsistent with their own (even if differently worded). This was satisfactory for most contractual terms for most states. In addition, the RFP included language protecting each state from being obligated for any purchases beyond budgeted authority (*i.e.* a general "limitation of funds" restriction) and providing that any claims arising from any state's exam purchases would be resolved in that state's appropriate forum.

Nevertheless, there remained unique considerations for each state that the vendor would need to accommodate. To the extent practicable, these state-specific considerations were included in a series of attachments to the RFP, one for each state. Generally, these individual state attachments provided particulars about order administration and payment, dispute resolution, and special logistical considerations. A few states by statute required that certain

provisions be included in any purchase contract, and these were spelled out in their respective RFP attachments.

As noted, many participating states were still deliberating about which students would be expected to take the exam and for what purposes. The deadline to place orders for the first exam administration was also more than a year away. Because of the lingering uncertainty, estimates about the number of exams that would be purchased and administered were difficult to develop and continued to evolve even after the RFP was issued. It was not until the second RFP addendum, only 20 days before proposals were due, that estimates for state-by-state participation were provided. These were expressly referenced as non-binding estimates.

A final, but essential, state-by-state consideration was the need to be alert for and to recognize peculiar solicitation requirements of the participating states. In some instances, state laws require certain procurement practices in order for a purchase to be legitimate. For instance, one participating state could not purchase under any contract that had not been advertised for a minimum number of days prior to the proposal due date. This was a longer period than followed under Ohio's source selection practices, so the initial period before the due date for proposals was extended slightly in order to assure that the other participating state could purchase exams under the awarded contract.

### 3. Options

Although the states were able to come to agreement on a common core Algebra II curriculum and specifications for what the exam should encompass, there was considerable and inevitable variation among the states as to how the tests would be administered, and what options and features were desired. The result was a complex array of accommodations, modules, and customization for which the vendor had to be prepared to adapt depending on which state was placing an order. The variations included:

- Fall and/or Spring test administrations;
- Varying numbers of student-level reports;

- Multiple test accommodations, which vary among the states (timing, setting, presentation and student responses);
- Expedited scoring and reporting (particularly where exam performance will be a graduation requirement);
- On-line versus pencil and paper test administration;
- Additional optional subject modules (data and statistics, iterative processes, probability, trigonometry, matrices, conics, logarithms);
- Alternative versions of the test (Spanish, Braille and audio).

The first three categories are evidently quite common in the educational testing realm, and so were not separately priced. The remaining four categories, however, required specific additional per exam additional pricing, to be paid by those states that elected to order exams with these features. Vendors were required in their proposals to address how they would accommodate all of the possible permutations and to propose the array of alternative prices.

In addition to reaching agreement on the appropriate Algebra II curriculum content -- a not insignificant area of debate amongst the various state math instructors -- the states managed to settle on a common position in two other respects that threatened to derail the procurement. First, the states ultimately adopted a common calculator use policy, another hotly debated subject, without which a uniform testing approach (and associated pricing) would have been very difficult.<sup>6</sup> Second, the states accepted a common testing “window” during which all of the exams would be administered. A single test day could not be agreed upon, given the vagaries of state-to-state school calendars, but at least a limited testing period was finally accepted. Without this important accommodation by the states, there would have been increased concerns regarding test security and substantial additional vendor costs (and higher prices) associated with ramping up and maintaining test scoring and reporting resources.

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<sup>6</sup> The policy itself was not finally created until well after the RFP had issued, but the states committed to adopt a common policy.



## V. Source Selection

The 94-page single-spaced RFP was finally issued on September 29, 2006.<sup>7</sup> It triggered immediate interest from multiple vendors, who attended a pre-proposal conference in Columbus, Ohio on October 13<sup>th</sup>. Vendor questions and answers, posted on the Ohio DAS web site, ran to 31 single-spaced pages.

As referenced above, the discourse with the vendors helped trigger an RFP addendum in early November that adjusted the price evaluation scheme. The relative evaluation weight accorded to price did not change, but an alternative approach was adopted that provided a more straightforward assessment of the price proposals. The states had struggled with how to evaluate price, particularly in light of the many potential volume discount levels and the number of separately priced options and modules. The original RFP had provided for the assignment of evaluation points based on a variety of subjective price considerations. The final approach introduced a creative, albeit complicated, system that divided up the available price points according to different categories (price per exam, renewal pricing, optional features, etc.) and allocated almost all of the points through objective calculations.

Multiple proposals were submitted for evaluation. Copies of the non-cost portions were distributed to each Participating State, subject to careful control and formal non-disclosure commitments. Representatives of all nine-states then convened in Columbus on December 13-14, 2006 to evaluate and deliberate on the proposals. The evaluation session was managed by Ohio representatives according to Ohio procedures and the RFP, with technical scoring being completed before distribution and consideration of the price proposals.

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<sup>7</sup> The original RFP is available at: <http://www.procure.ohio.gov/PDF/CSP902107.PDF>. The original RFP with Q&A and addendums 1 and 2 inserted is at:

<http://www.procure.ohio.gov/pdf/EDF056 RFPwQA.pdf>

The original RFP with Q&A and addendums 1 and 2 inserted is at:

<http://www.procure.ohio.gov/PDF/EDU056 RFP add1/pdf>

Addendum 1 to RFP is: <http://www.procure.ohio.gov/PDF/EDU056 add2.pdf>

Under Ohio procurement practices, there followed a period during which clarification questions were submitted to the finalist identified by the evaluators, and the finalist was permitted to make a further “demonstration” regarding its proposal in response to evaluator inquiries. The finalist vendor’s responses were reviewed and considered at a series of CDT meetings.

Ultimately, contract award was made to Pearson Educational Measurement (PEM) on March 23, 2007 (Ohio Contract Number CSP902107).<sup>8</sup>

#### VI. Contract Administration

Upon award, contract performance began at a furious pace. The difficult and time consuming complexities associated with developing and amending the RFP, making the source selection, and definitizing the contract had caused contract award to take place nearly four months after the date initially contemplated.

In addition to the contractor’s work, contract performance has required extensive continued involvement by Achieve and the Participating States, including representatives on the CDT and other state personnel engaged in meetings and developmental work associated with test development. Both Ohio, as the lead contracting state, and Achieve, as the CDT coordinator and technical advisor, have had to devote extensive time and energy to manage the contract and coordinate the sometimes conflicting interests and input of multiple state entities.

Since award of the contract, there have been two major developments in addition to the work specified under the contract. First, four additional states have joined as “Participating States” (Arizona, Hawaii, Minnesota and North Carolina). This required amendments both to Pearson’s contract with Ohio and to the Participation Agreement. With Pearson’s consent, and the CDT’s approval new attachments were added to the contract to embody the new states’ unique requirements. In addition, each of the new states committed to the Participation Agreement and MOU terms.

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<sup>8</sup> The contract document issued by the state of Ohio is available at:  
<http://www.procure.ohio.gov/proc/viewContractsAwards.asp?contactID=8189>

Second, the RFP included provision for the potential addition of further related tests as part of a “suite” of exams. The RFP had required offerors to propose their approach for accomplishing such a result, which was a separate evaluation factor in the source selection. Since the contract award, Participating States have developed an Algebra I curriculum content and EOC test specification, and at this writing an amendment to Pearson’s contract is under being finalized that will add an Algebra I EOC exam.

## VII. Lessons Learned (So Far)

Starting over, many aspects of this procurement could have been accomplished more smoothly, with less effort and fewer hours of lost sleep. In some respects, the following considerations now seem obvious to those who were involved in this process, as is always the case with hindsight. But, these thoughts are worth serious reflection by anyone contemplating a comparable exercise pushing the boundaries of cooperative purchasing.

- Time: Any large, complicated procurement seems always to take longer than anticipated. All of the delays involved in getting agreements and approvals of policy, procurement and legal authorities, implementing procedures, making decisions, etc. inevitable in any procurement, in this instance were multiplied by nine. While Ohio took the lead in getting the RFP issued and coordinating proposal evaluation, the RFP and proposals were subject to review and comment by multiple state players, each of which had its own issues regarding the time and resources it could (or would) devote to this project.
- Politics. No state will devote the necessary time and energy on its own to a procurement of this magnitude without the policy issues having first been resolved. In this procurement, the policy issues were extensive and overriding. Seemingly endless meetings were necessary to overcome political debates and concerns about the risks associated with this venture. This is a significant part of what eats up the time, because when the issues

are sensitive and complicated, developing a unanimous consensus among multiple states is that much more difficult.

- Getting the right players involved early. This procurement was initiated and driven by multiple state education departments and policy specialists. Many of these well-meaning individuals are not familiar with government procurement practices and requirements. This entire program was well under way before anyone thought to involve or consult procurement specialists. In many instances, the procurement and legal personnel did not become sufficiently engaged early on in assuring that the procurement cleared all the necessary hurdles within each Participating State. Whether because program personnel did not get procurement officials involved, or because the procurement offices did not devote adequate attention to a procurement, for which they were not primarily responsible this lack of coordination within each individual state caused repeated problems and delays, both during the lead up to source selection and afterwards. Only recently does it appear that all issues have finally been resolved regarding the authority and procedures for some states to order and pay for the EOC exams. It is important that the legal and procurement staff from each Participating State be part of the process from the beginning (including RFP development) all the way through contract administration.
- Leadership. This project would never have moved forward without a “top down” emphasis within each of the Participating States. Because this exam was not necessarily mandated by statute or specifically budgeted for, Governors and state education chiefs were essential to implementing the commitment to more rigorous Algebra II classes, using the exam as a tool to drive that result. A procure of this magnitude and political consequence requires motivation and commitment, which requires the time and energy of senior leadership to nurture and develop.

- Flexibility. This cutting-edge cooperative purchasing endeavor required a very fundamental level of compromise and accommodation. Each of the Participating States gave up autonomy, not only with regard to the Algebra II core curriculum, but also with regard to procurement practices and procedures. It was critical for the states to maintain this posture across various functions. At times, involved education officials were required to work creatively, and sometimes vigorously, with procurement and legal personnel (sometimes with assistance from the Governor's office--see above) to reach agreement on how to proceed. Creative approaches and "out of the box" thinking that do not fit customary models and practices are possible, but only with the right motivation. The need to overcome sometimes "knee jerk" demands or arbitrary requirements was a common occurrence. Setting a flexible tone at the beginning, and preserving and promoting it throughout the endeavor at all levels, has been a key element to the progress and success achieved on this project to date.
- Roles and responsibilities. As noted above, the race to issue the RFP and move the procurement forward meant that the project's framework did not get all of the thoughtful consideration it deserved. The consequences played out over time in at least two ways. First, the responsibilities of Ohio, as contract administrator, and Achieve, as technical advisor and CDT coordinator, sometimes became crossed and confused. This was particularly problematic for Pearson, which struggled at times to understand from whom it should be taking direction and to whom it should be posing questions on various issues. Much of this has been worked out and contract amendments have been adopted to clarify some roles and responsibilities. With some greater time and thought devoted at the front end to these considerations, however, wasted time and friction during contract administration could have been avoided.

This problem also played out somewhat awkwardly in the context of the delay in finalizing the Participation Agreement and MOU. The procurement proceeded and the RFP issued with these agreements still unsigned. Working through the roles of the Participating States, while they are already well along in terms of their “participation,” was at times more than a little awkward. All questions and concerns were ultimately resolved, particularly those raised by state government lawyers and officials whose approval was required, beyond the involved education offices, but not without periods of anxiety that could have been avoided.

- Data Collection.

With so many states engaging in a developmental pursuit, and with their varying intended uses and anticipated options, gathering reliable data for the vendor on expected exam purchases and utilization was a difficult process for all involved. The states, again, were struggling with still evolving policy, and in many instances did not have reliable and/or readily accessible data resources. While the exam project was being pursued at the state level, particulars regarding the number of expected students who would take the exam (and their characteristics) was available, if at all, only at the individual school or district level. Unfortunately, several states did not begin gathering this critical information until relatively late in the process. As a consequence, the data in this regard that could be provided to the vendor arrived late and was, in some regards, incomplete. The lesson here is the need to have specific informational needs from the participating entities identified early and pursued with vigor.

## VIII. Closing Thoughts

Probably the most important virtues to this enterprise were the patience, persistence, and good will of the individuals involved. By keeping focused on the common and important goals, the sometimes frustrating “hiccups” along the way were

overcome. The “unexpected” usually involved developing a solution to accomplish something that had not been tried before, or educating and working through issues (practical, legal, etc.) with someone introducing a question or concern which, preferably, would have been introduced and addressed far earlier in the process.