

Misunderstanding of the NASPO Program led to BART Making Purchases without Proper Contracts in Place

Office of the Inspector General



Investigation Results

Training and knowledge gaps led to BART misrepresenting its use of the National Association of Procurement Officials' (NASPO) ValuePoint program to buy technology goods and services. BART made purchases from both Oracle and SHI Corporation, stating they were doing so under the NASPO program, which was inaccurate. BART did not have authority to make purchases under the Oracle

NASPO agreement because it lacked the required California Participating Addendum. The necessary Participating Addendum was in place for BART to use the SHI Corporation NASPO agreement, but for only software. BART's purchase included hardware, which was specifically prohibited. The BART Board of Directors approved the Executive Decision Documents to make the purchases believing the purchases were allowed under NASPO agreements. NASPO agreements offer the best value, but because BART did not make its purchases via the NASPO agreements as it was believed, BART cannot be certain it received the best pricing and service terms. Further, because BART did not have the authority to make the purchases under NASPO agreements, the purchases were made without BART's required contract provisions to protect BART's financial and legal interests.

Recommendations

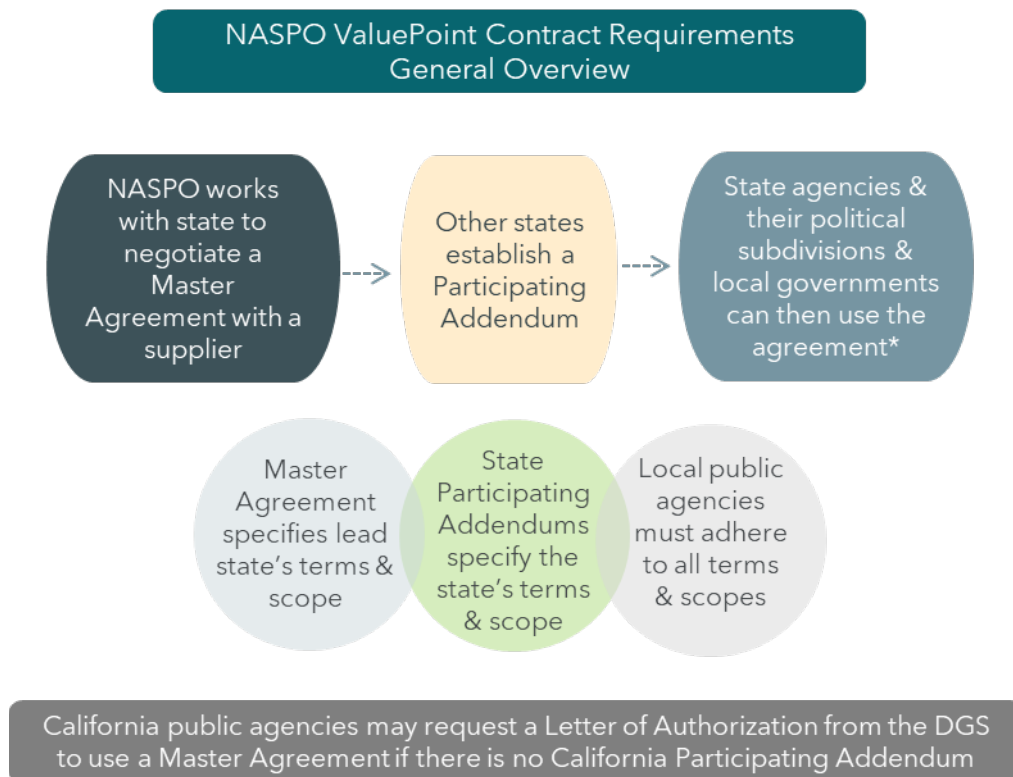
1. Provide training and education on the rules concerning the NASPO ValuePoint cooperative purchasing program to staff with a role in making, reviewing, and approving purchases.
2. Institute procedures whereby Procurement verifies that proposed purchases are covered by NASPO agreements prior to submitting the EDD to the Board. Require the department requesting the purchase provide Procurement with a copy of the Master Agreement, California Participating Addendum, or Letter of Authorization.
3. Institute procedures whereby staff are required to cite the specific NASPO Master Agreement or California Participating Addendum on EDDs submitted to the Board, or state that BART received a Letter of Authorization from DGS.
4. Ensure appropriate contracts are in place with Oracle and SHI to continue using them as suppliers.

Background



[NASPO ValuePoint](#) is the contracting arm of the National Association of State Procurement Officials, a cooperative alliance working together to pursue contracting opportunities and competitive solicitations following the procurement laws of the state leading the procurement effort. NASPO works with state procurement agencies to create Master Agreements with suppliers with the goal of obtaining quality goods and services to support effective and efficient government while ensuring the prudent use of public funds. When a Master Agreement is established, the terms include a provision allowing procurement officials of other states to enter into a Participating Addendum. A Participating Addendum is specific to the state and necessary to get the state's statutory requirements included into the agreement. The Participating Addendums allow state agencies and their political subdivisions and local governments to use the Master Agreement, but they must abide by the contract scope and terms, including those added to the state's Participating Addendum.

[California Public Contract Code, Section 10298](#) allows the California Department of General Services (DGS) to enter into cooperative agreements that leverage California's buying power. BART may then make purchases from the suppliers awarded those contracts without further competitive bidding. For BART to use NASPO Master Agreements, the DGS must have entered into a Master Agreement with a supplier or a Participating Addendum under another state's Master Agreement. Alternatively, the DGS may issue BART a Letter of Authorization to use another state's Master Agreement under which the DGS does not have a Participating Addendum.



It is advantageous for BART to use the NASPO program because the best pricing and service have already been negotiated with suppliers, and purchases can be made more expediently. Therefore, in 2016, the BART Board of Directors approved the use of the NASPO program. However, purchases of \$100,000 or more must still go to the Board for approval. BART presents the request for approval to the Board in an Executive Decision Document (EDD), which describes the purchase, need, and funding. In August 2020, the Board of Directors approved BART's purchase of cloud computing services from Oracle, and in October 2020, they approved a purchase of telecommunications hardware and software licenses from SHI Corporation. Both of the Executive Decision Documents that the Board used to inform their approval stated the purchases would be made under the NASPO program.

Key Findings

BART's purchases from Oracle and SHI were not made under NASPO agreements as stated in the EDDs. The BART Board of Directors approved the purchases believing they were allowed under the NASPO program.

- The EDD for the Oracle cloud services purchase did not cite a specific Master Agreement or Participating Addendum number. There is a NASPO Master Agreement for sales of cloud services between Oracle and Utah, but the California DGS does not have the required Participating Addendum. Further, BART did not request and, therefore, the DGS did not issue a Letter of Authorization. Therefore, BART was not authorized to purchase Oracle cloud services under the NASPO agreement. BART used the Board's approval to enter into a service agreement with Oracle but not as part of NASPO as BART staff believed.
- California has a Participating Addendum that allows BART to make purchases under a Master Agreement between SHI Corporation and Arizona. However, the scope is for software purchases and the California Participating Addendum specifically prohibits the purchase of hardware. BART cited a NASPO number in the EDD, but it was for a different Master Agreement for cloud services, not telecommunications hardware and software licenses as cited in the EDD.

BART did not have a copy of a Master Agreement or Participating Addendum for either purchase, which supports that those documents were not first obtained and evaluated before identifying the purchases as part of the NASPO program in the EDDs. Staff relied on language from prior EDDs that cited the use of NASPO agreements to use as templates rather than preparing an EDD with the appropriately cited Master Agreement, Participating Addendum, or Letter of Authorization. Staff acknowledged that they



The Office of the Inspector General received an allegation that BART was misusing the NASPO ValuePoint cooperative purchase program to buy technology goods and services. We considered this a potential violation of policy and launched an investigation into the matter.

misunderstood program eligibility for these purchases. Specifically, they did not understand that a Participating Addendum or Letter of Authorization was required, or that there could be state specific terms and exclusions in the Participating Addendums.

Nothing during this investigation suggested that any member of BART intentionally misled the BART Board of Directors or knowingly circumvented procurement requirements. The purchases were made for legitimate business needs. What is missing are procedures and guidance supplemented with training to ensure all necessary employees understand the NASPO ValuePoint program and how purchases are to be made under that program. Nor is there a process that allows Procurement to verify an appropriate Master Agreement, Participating Addendum, or Letter of Authorization is in place, or that the purchase is covered by the scope of services of the Master Agreement or Participating Addendum. As a result, the purchases were made without ensuring all necessary contract provisions are in place to protect BART’s financial and legal interests and to ensure compliance with California regulations and BART policies. Further, BART is not ensured that it is receiving the best value for its purchases.



For more information, contact:



Jeffrey Dubsick



Jeffrey.Dubsick@bart.gov



510-817-5937

Providing independent oversight of the District’s use of revenue.

BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDINGS & RECOMMENDATIONS

Report Title: Misunderstanding of the NASPO Program led to BART Making Purchases without Proper Contracts in Place

Management Response:

1	Recommendation:	Provide training and education on the rules concerning the NASPO ValuePoint cooperative purchasing program to staff with a role in making, reviewing, and approving purchases.
	Responsible Department:	Purchasing/Contracts
	Implementation Date:	9/30/2021
	Corrective Action Plan:	Issue an internal memo on the revised rules and provide training to the Procurement Department as required to ensure compliance.
2	Recommendation:	Institute procedures whereby Procurement verifies that proposed purchases are covered by NASPO agreements prior to submitting the EDD to the Board. Require the department requesting the purchase provide Procurement with a copy of the Master Agreement, California Participating Addendum, or Letter of Authorization.
	Responsible Department:	Purchasing/Contracts
	Implementation Date:	10/30/2021
	Corrective Action Plan:	Review all current and ongoing EDD's for adherence to this recommendation to ensure the Purchase/Scope of Work is in line with the NASPO Agreement and CA PA requirements and require Staff to provide documentation as stated. Develop and document formal NASPO Procurement procedures and update the Procurement Manual.
3	Recommendation:	Institute procedures whereby staff are required to cite the specific NASPO Master Agreement or California Participating Addendum on EDDs submitted to the Board, or state that BART received a Letter of Authorization from DGS.
	Responsible Department:	Purchasing/Contracts
	Implementation Date:	10/30/2021
	Corrective Action Plan:	Review all current and ongoing procurements for adherence to this recommendation prior to processing. Develop and document formal NASPO Procurement procedures and update the Procurement Manual.

BART OFFICE OF THE GENERAL MANAGER RESPONSE TO OIG FINDINGS & RECOMMENDATIONS**Report Title: Misunderstanding of the NASPO Program led to BART Making Purchases without Proper Contracts in Place**

4	Recommendation:	Ensure appropriate contracts are in place with Oracle and SHI to continue using them as suppliers.
	Responsible Department:	Purchasing/Contracts
	Implementation Date:	Immediate
	Corrective Action Plan:	Ensure no future contracts/POs are put in place with SHI or Oracle without proper and approved contract documentation.