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# Information Brief

May 2002

Report No. 02-26

## Competition Should Drive Down State Costs for Online Legal Research

### *at a glance*

Online subscription legal materials are an increasing mainstay of legal research. The Office of State Courts Administrator is in a position to provide effective assistance in purchasing legal research subscriptions because it provides the courts' legal opinions to online vendors. The state courts administrator has successfully reduced subscription rates for the courts.

The state courts administrator could help state and local government agencies get better rates by becoming a principal partner in negotiating the state contract for online legal research subscription rates.

A new state contract should be awarded as soon as possible to take advantage of increased competition between online research companies. The Department of Legal Affairs and the Department of State should collaborate with the state courts administrator to ensure that appropriate options are developed to meet the needs of key legal users.

The Department of Management Services should help government agencies ensure accurate billing by posting statewide subscription use and rate information. The department should also ensure that new subscription options and prices for each vendor are clearly described and accessible to facilitate comparison shopping by government agencies.

### Purpose

Pursuant to s. 11.511, *Florida Statutes*, the Director of OPPAGA initiated this project in response to a legislative request to identify cost-savings opportunities through the use of consolidated purchases for law libraries. We focused our review on online legal research services, which librarians indicated have the greatest potential for cost savings.

### Contract Issues

Access to comprehensive, up-to-date legal materials is essential for all attorneys. While printed materials are still central to legal library services, the availability of subscription online legal materials, including case law, databases, and other information, is changing the manner in which legal research is conducted and purchased.

The Department of Management Services (DMS), assisted by the Department of Legal Affairs, negotiates a state term contract with two major vendors, Westlaw and Lexis-Nexis, for online legal research subscriptions. The state contract establishes a ceiling for subscription rates and releases government agencies from going through a formal bidding process when they use the contracted vendors.

DMS coordinates and administers state purchasing contracts; s. 16.58, *Florida Statutes*, designates the Department of Legal Affairs as the state's legal resource center and directs the department to

## *Agency Responses*

serve as a centralized acquisition entity for purchasing computerized and printed legal information. The Department of Legal Affairs (Attorney General) coordinates with legal staff of other agencies and provides the expertise to ensure that online research options in the state term contract address agencies' varied legal resource needs. Since initiating the state contract in 1993, Legal Affairs has been able to provide state agencies subscription rates for legal services that are substantially less than the standard commercial rates.

### ***The judicial branch has successfully reduced subscription prices***

The Office of State Courts Administrator is in a position to provide effective assistance in the negotiation for legal research products because it provides the courts' legal opinions to the vendors. In fact, s. 25.381, *Florida Statutes*, designates West Publishing, the parent company of Westlaw, as the official publisher of Florida legal opinions. In addition, vendors are anxious to have the courts use their product because they expect to obtain additional business from private practitioners who will use the same research company as the courts so as to be in the best position to understand and influence judicial case decisions.

Until recently, the trial courts relied on the state term contract rates negotiated by the Department of Legal Affairs and DMS, while the appeals courts had an independent contract. However, in the 2000-01 fiscal year, the Office of State Courts Administrator negotiated online legal research subscription rates on its own for both trial and appeals courts and obtained a substantial discount from Westlaw, the vendor it had been using. The court reduced its per password rate in the Westlaw contract by approximately 75%.<sup>1</sup> This price reduction enabled the Office of State Courts Administrator to provide passwords for all the judges and law clerks of the Florida Supreme Court, the appellate courts, and the trial courts.

The court administrator also made services from Lexis-Nexis available to its court officers and attorneys in an effort to broaden users' familiarity

with both vendors' products and thereby improve competition between the two. Lexis-Nexis was willing to lower its rate in order to try to increase its share of this market. The increased competition nurtured by the court administrator appears to have contributed to the favorable pricing obtained from both vendors, and should benefit state government as a whole.

### ***To reduce costs, the courts could take the lead in negotiating a new state contract***

It appears that the Office of State Courts Administrator could enhance the state's bargaining position by playing a key role in negotiating the state online subscription contract. DMS may delegate the lead responsibility for state contract negotiation to other agencies when appropriate. The Department of Legal Affairs should continue to coordinate with state agencies and ensure that appropriate options are developed to meet the needs of state agency attorneys. The Department of Legal Affairs and the state courts administrator should then collaborate in contract negotiation for online legal research services.

Staff of the state library within the Department of State should also be included in negotiations for the state contract. The state library negotiates a separate small contract for online legal research that is tailored to meet the Legislature's unique needs. Use is not limited to specific individuals with passwords, but rather allows access by 10 concurrent users from among all eligible personnel and costs \$3,200 per month. The state might obtain lower rates by including the legislative library in the larger state contract.

While both the executive and judicial branches have sufficient numbers of users to achieve economies of scale on their own, unified negotiation with the courts as a principal partner in the bargaining process could maximize the potential for user discounts and enhance the state's negotiating power.

### ***A new state contract should be awarded as soon as possible***

In December 2001, DMS extended the current Westlaw and Lexis-Nexis contracts to November 30, 2002. The subscription rates were not renegotiated at that time.

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<sup>1</sup> This contract is typical of most online contracts in that each user is required to have his or her own password.

It is an opportune time to begin the process to negotiate a new contract to take advantage of the significant increase in competition since the current contract was negotiated. While Westlaw currently holds the market, Lexis-Nexis has become more competitive in Florida by revising its service to include desired features such as case summaries for quick review.

Reduced subscription rates would benefit state, county, and city governments, as all of these entities are authorized to use the subscription rate in the state contract to purchase online services.

There are three indications that a new contract will result in savings for the state. First, Lexis-Nexis is anxious to have a new contract awarded. Second, the courts successfully reduced their subscription rates. And third, the state attorneys recently have begun working together as a group to share information about subscription options and costs. By combining their purchasing power and negotiating as a group with both providers, it appears that they may be able to cut their subscription costs in half.

We conclude that the executive branch, like the courts and the state attorneys, could realize significant savings for state and local government offices by negotiating a new state contract as soon as possible.<sup>2</sup>

***DMS should help users assure that they are accurately billed***

DMS is responsible for ensuring that online subscription contracts are properly administered. However, the department does not aggregate or track usage and expenditures across agencies. The current contract offers a variety of options with decreasing rates for increasing numbers of users. Thus, effective use of the discounts requires aggregating enrollment and usage patterns across all agencies, districts, and offices.

For example, Exhibit 1 illustrates the Westlaw per password costs for the Florida option (opinions from Florida and Florida’s federal district, and Florida law) and the more expensive “full database” option, which includes opinions from all states and all federal districts.

**Exhibit 1  
Contract Rates Decrease With More Users**

Number of Users	Westlaw Monthly Cost Per Password	
	Florida	Full Database
0-650	\$54	\$115
651-750	51	109
751-850	48	104
851-950	46	98
951-1,050	44	93
1,051 or More	42	88

Source: Department of Management Services’ Westlaw contract.

Each participating government agency develops a purchase agreement with the preferred vendor for the desired option. The vendors submit quarterly reports to DMS on the number of participants using each option and the charges assessed each agency.

At this time, the state depends on the vendors to properly bill and report subscription usage. Our review found the summary billing information very difficult to analyze to determine contract use, and there appeared to be wide variability among agencies in pricing, despite uniform pricing agreements based on the negotiated contract. Westlaw acknowledged that its current data reporting structure does not allow it or the state to accurately assess whether discounts are properly applied.

Difficulty interpreting vendor reports and the variation in reported billing rates increase the likelihood that the state is not being properly billed for online services. The department should help participating agencies ensure that the vendors are billing accurately.

DMS should require the vendors to provide reports that clearly list the agencies participating in each option, the number of passwords per agency, the rate and amount each agency is billed, and the total number of passwords per option. The department should post the vendors’ reports on its website.<sup>3</sup> Each participating agency could then review the

<sup>2</sup> Because current charges and discounts cannot be accurately determined, potential cost savings cannot be estimated.

<sup>3</sup> The current contract requires quarterly vendor reports, so DMS should post this information quarterly. However, the agencies are billed monthly. Future contracts should require vendor reports that correspond to the agency billing periods so that the statewide information could be posted in time to assist participating agencies with making accurate payments.

accuracy of its billing statement and the applied discount. For example, (using the information in Exhibit 1, page 3), if a posted Westlaw report indicates that 700 passwords used the Florida option, each agency could verify whether it had been accurately charged the contracted rate of \$51 per password.

When a new contract is negotiated, if the tiered payment structure is replaced with a flat rate for each option, it would simplify billing and enable the agencies to more easily determine whether they have been accurately charged.

If agencies find billing errors, they should notify the vendor to obtain a corrected bill and also notify DMS so that patterns of errors and repeat errors could be addressed in future contract negotiations. If sufficiently egregious, billing errors could also be investigated by the DMS inspector general, as currently authorized by law.

***Subscription options should be described clearly in the contract and online***

Currently, the contract format is confusing and the rates cannot be easily compared. When developing the new state contract, negotiators should assure that competing vendors follow the same format to facilitate comparisons of subscription options. Better education of contract users is needed, as some users are unaware of the options available to them. For example, we found that some agencies subscribed to a more expensive option and were not aware of the less expensive, "Florida only" option. Posting clear information on subscription options on the DMS website would facilitate comparison shopping and assist agencies with making appropriate choices.

## Recommendations

To take advantage of increased competition between Westlaw and Lexis-Nexis, we recommend that the Department of Management Services make the Office of State Courts Administrator a key player in negotiating a new state term contract for online subscription legal research. The state courts administrator and the staff of the Departments of State and Legal Affairs should collaborate to ensure that appropriate subscription options are developed to meet the needs of key legal users.

To assist government offices that participate in the online contract, we recommend that the Department of Management Services post online legal research subscription rate information to facilitate comparison-shopping by state and local government agencies. We also recommend that state contract negotiators assure that the subscription options provided by the vendors are clearly described and are comparable. Finally, we recommend that if a tiered pricing structure is used, DMS post billing information on its website so that agencies can use this information to verify the accuracy of vendor charges and discounts. Together, these efforts will ensure that needed information is readily available to government staff responsible for purchasing online legal research subscription services.

## Agency Responses

The Departments of Management Services and Legal Affairs and the Office of State Courts Administrator agreed with our recommendations. The full text of their individual responses is available upon request or may be found at OPPAGA's website:

[www.oppaga.state.fl.us/government](http://www.oppaga.state.fl.us/government)

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OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

**Florida Monitor:** <http://www.oppaga.state.fl.us/>

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John W. Turcotte, OPPAGA Director



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ROBERT A. BUTTERWORTH  
*Attorney General*  
*State of Florida*

April 5, 2002

Mr. John W. Turcotte, Director  
Office of Program Policy Analysis and Government Accountability  
111 West Madison Street, Room 312  
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Thank you for your draft of OPPAGA Information Brief which -- entitled *Competition Should Drive Down the Cost of Online Legal Research* -- was submitted to this office on March 20, 2002.

The Office of the Attorney General ("OAG") agrees that the time is ripe for renegotiation and requested same in July of 2001. At the same time of this request, the OAG also made recommendations to improve and simplify the contract. Such recommendations included, but were not limited to, the use of floating passwords and the elimination of the hourly charge option. As noted in your report, "since initiating the state contract in 1993, Legal Affairs has been able to provide state agencies subscription rates for legal services that are substantially less than the standard commercial rates." With the recent explosion of free legal information on the Internet and the increased number of vendors providing legal resources, major vendors such as Lexis and Westlaw should be and are more willing to tailor usage agreements to the specific needs of researchers.

As always, the OAG appreciates the time and efforts of the Office of Program Policy Analysis and Government Accountability.

Sincerely,

/s/

Richard Doran  
Deputy Attorney General



**FLORIDA  
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April 5, 2002

John W. Turcotte, Director  
Office of Program Policy Analysis  
And Government Accountability  
Claude Pepper Building, Room 312  
111 West Madison Street  
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Pursuant to Section 11.51(5), Florida Statutes, this is our response to your information brief, Competition Should Drive Down the Cost of Online Legal Research. Our response corresponds with the order of your recommendations.

**Recommendation 1:**

*To take advantage of increased competition between Westlaw and Lexis-Nexis, we recommend that the Department of Management Services give the Office of State Courts Administrator the lead role in negotiating a new state term contract for online subscription legal research.*

**Response:**

We agree with the recommendation. Although the Department retains the authority to establish state term contracts, we will coordinate with the Office of State Courts Administrator to collaborate in negotiating a new state term contract for online legal research subscription services.

**Recommendation 2:**

*To assist government offices that participate in the online contracts, we recommend that the Department of Management Services post online legal research subscription rate information to facilitate comparison shopping by state and local government agencies.*

**Response:**

We agree with the recommendation. The Department of Management Services currently posts the state term contract for

Mr. John W. Turcotte  
April 5, 2002  
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Computer Assisted Legal Research Services on the *MyFlorida.com* website. This posting contains complete information on subscription options and costs offered by participating vendors.

**Recommendation 3:**

*We also recommend that state contract negotiators assure that the subscription options provided by the vendors are clearly described and are comparable.*

**Response:**

We agree with this recommendation. We will work with the Office of State Courts Administrator and other interested parties when negotiating the new contract to ensure that subscription options presented in the bid solicitation are clearly described and comparable.

**Recommendation 4:**

*Finally, we recommend that if a tiered pricing structure is used, DMS post billing information on its website so that agencies can use this information to verify the accuracy of vendor charges and discounts.*

**Response:**

We agree with the recommendation. We anticipate revising the current pricing structure in the new contract. However, should the Department continue to use tiered pricing, we will post billing information on our website or identify another appropriate mechanism to ensure the availability of billing information.

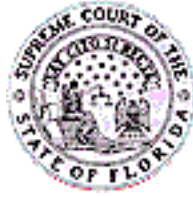
If further information concerning our response is needed, please contact James D. Varnado, Inspector General, or John Davis, Audit Director, at 488-5285.

Sincerely,

/s/ James D. Varnado for  
Cynthia A. Henderson  
Secretary

CH/sll

cc: Mallory Harrell, Deputy Secretary  
Robert Hosay, Acting Director,  
Division of State Purchasing



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Charles T. Wells  
Chief Justice

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Robin L. Lubitz  
State Courts Administrator

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**Office of the State Courts Administrator**

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April 30, 2002

Mr. John W. Turcotte  
Director  
Office of Program Policy Analysis  
and Government Accountability  
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Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

We appreciate the opportunity to review the most recent draft of the OPPAGA information brief entitled *Competition Should Drive Down the Cost of On-line Legal Research*. The current version of the report satisfactorily addresses the concerns that I raised in my April 5th letter to you.

The Office of the State Courts Administrator would be willing to assist in negotiations for the provision of on-line legal research services to state and local government users. We support your recommendation for a collaborative effort among the OSCA, the Department of Legal Affairs, and the Department of Management Services in order to enhance the state's bargaining position, and we will do all that we can to facilitate the negotiation of more favorable subscription rates with the on-line legal research providers.

Sincerely,

/s/  
Robin L. Lubitz

RLL:mub