

APPENDIX H—SUPPORTING RESEARCH AND ANALYSES

This appendix to the final report addresses specific research and analysis aspects relating to the four areas of project focus:

- Purchasing statutes, regulations, policies, and procedures
- DGS' organizational responsibilities for development of policies and procedures
- Operational roles and responsibilities in the Procurement Division and the Office of Legal Services
- Development and implementation of statewide uniform purchasing policies

H.1 Purchasing Statutes, Regulations, Policies, and Procedures

The CORE Project Team reviewed statutes, regulations, policies, and procedures, and identified the statutory basis for the acquisition of goods and services within the State of California. In performing this review, the team traced the linkages from the statutes, through the regulations, policies, and procedures used to meet the State's purchasing objectives. The team analyzed the consistency and clarity of statutes, regulations, policies, and procedures, and documented contradictions, ambiguity, lack of clarity, and inconsistency. Inconsistencies analyzed included inconsistencies in language among various statutes, regulations, policies, and procedures.

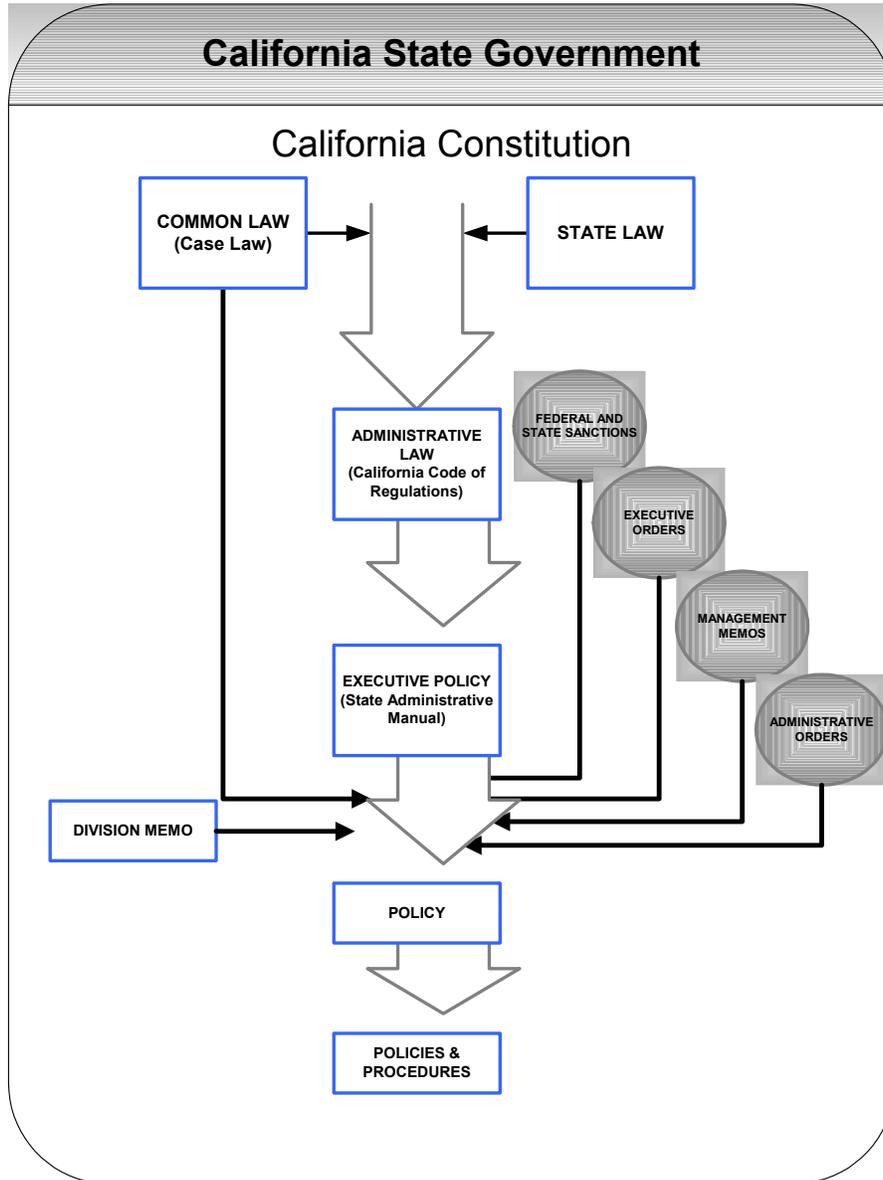
California law consists of the State Constitution's 34 Articles and 29 Codes, with purchasing law contained in multiple sources, including, but not limited to the California Public Contract Code (PCC), Revenue and Taxation Code (RTC), Welfare and Institutions Code (WIC), Business and Professions Code (BPC), and Government Code (GC). Further, legally adopted regulations filed with the Secretary of State have the force of law and are contained in the California Code of Regulations (CCR), some of which apply to purchasing.

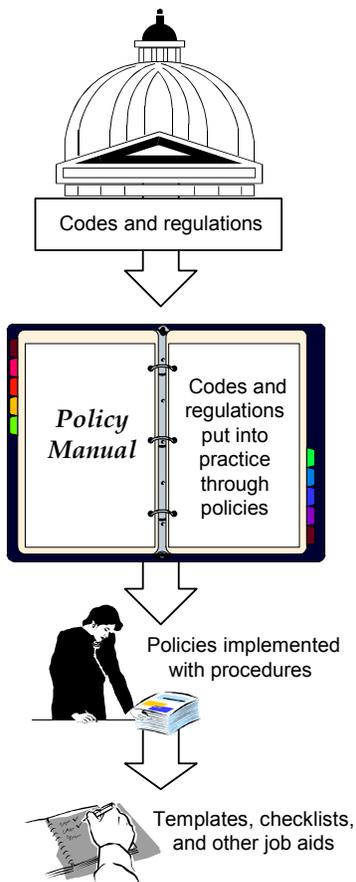
Purchasing policies and procedures are contained in several source documents as well. The State Administrative Manual (SAM) is the State's policy manual. Over time, DGS has discontinued updating SAM in favor of creating the State Contracting Manual (SCM) for non-IT services and the California Acquisition Manual (CAM). The Department of Information Technology (DOIT) originally created the State Information Management Manual (SIMM) as the policy/procedure manual specifically intended for information technology (IT), now maintained by the Department of Finance.

Purchasing policies are initiated and revised using several different methods, including Executive Orders, Management Memos, Administrative Orders, Technology Directives, and Budget Letters. Many State agencies and departments have developed their own specific policies and procedures for purchasing, and have created manuals, desk references, and other source material. All of these publications contain procurement policy and contracting information, some of which is unique, some overlapping, and some contradictory.

The relationships among statutes, regulations, policies, and procedures, which have remained generally static for many years, are depicted in the following exhibit.

Statutes, Regulations, Policies, and Procedures Relationships





The CORE Project Team was tasked with performing a review of the statutes, regulations, policies, and procedures to identify the statutory basis for the acquisition of goods and services within the State of California. As shown in the diagram to the left, codes and regulations form the basis for policies and procedures.

The review included the statutory basis for uniform policies and procedures, as well as organizational responsibilities for the development of policies and procedures.

The main sources of acquisition statutes are the Public Contract Code (PCC), Government Code (GC), and California Code of Regulations (CCR). However, the team's review included other codes as appropriate. The primary and most relevant, specific laws forming the foundation of this response to Task Force Recommendation #7 include, but are not limited to, the codes that are provided herein.

The following sections of the PCC lay the foundation for the laws contained within the code.

Public Contract Code

Division 1. Purpose and Preliminary Matters; Sections 100-102

100. The Legislature finds and declares that placing all public contract law in one code will make that law clearer and easier to find. Further, it is the intent of the Legislature in enacting this code to achieve the following objectives:

- (a) To clarify the law with respect to competitive bidding requirements.*
- (b) To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.*
- (c) To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.*
- (d) To eliminate favoritism, fraud, and corruption in the awarding of public contracts.*

101. California public contract law should be efficient and the product of the best of modern practice and research.

102. To encourage competition for public contracts and to aid public officials in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California's public contract law should be uniform.

For purposes of this report, we have selected representative code and regulation references that site the statutory basis for uniform policies and procedures, presented in the following sections. The first citing defines terms used in other sections.

Public Contract Code

Division 2. General Provisions; Part 2. Contracting by State Agencies; Chapter 2. State Acquisition of Goods and Services; Article 1. Definitions; Sections 10290-10290.1

10290. As used in this chapter:

- (a) "Department" means the Department of General Services.
- (b) "Director" means the Director of General Services.
- (c) "Centralized purchasing" means the purchase for state agencies of materials, supplies, and equipment by the Office of Procurement.
- (d) "Goods" means all types of tangible personal property, including materials, supplies, and equipment.
- (e) "Office" means the Office of Procurement in the Department of General Services.
- (f) "Price schedule" means an agreement between the Office of Procurement and a supplier under which the supplier agrees to accept orders from the office or a state agency for specified goods at set prices for a specified period of time but which does not obligate the office or state agencies to contract for the specified goods from the supplier.
- (g) "Regional contract" means a contract of the same type as a statewide contract but applicable only to specified contracting in a particular area or region of the state.
- (h) "Statewide contract" means a contract awarded by the Office of Procurement to one or more suppliers for the acquisition of specified goods for a period of time, at a price, and in an amount set forth in the contract.
- (i) "Multiple award" means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.
- (j) "Multiple award schedule" (MAS) is an agreement established between the General Services Administration of the United States and certain suppliers to do business under specific prices, terms, and conditions for specified goods, information technology, or services.

10290.1. (a) Notwithstanding any other provision of law, in exercising their delegation of contracting authority from the department, state agencies may contract for goods, information technology, or services with suppliers who have multiple award schedules with the General Services Administration of the United States if the supplier is willing to extend those terms, conditions, and prices. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner.

- (b) *The department shall determine the delegation contracting authority for agencies wishing to contract with suppliers who have multiple award schedules. The department shall seek input from both customer departments and agencies and private sector suppliers.*

Public Contract Code

Division 2. General Provisions; Part 2. Contracting by State Agencies; Chapter 2. State Acquisition of Goods and Services; Article 3. Competitive Bidding and Other Acquisition; Section 10307

10307. The director shall establish statewide acquisition standards, the purpose of which shall be to ensure the necessary quality of goods acquired by or under the supervision of the department and to permit the consolidation of acquisitions in order to effect greater economies in state contracting.

Public Contract Code

Division 2. General Provisions; Part 2. Contracting by State Agencies; Chapter 2. Acquisition of Information Technology Goods and Services; Sections 12102-12106

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.

- (a) *Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.*
- (b) *Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.*
- (1) *The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and*

governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single proposal rather than multiple proposals.

- (2) *Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.*
- (c) *The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.*
- (d) *The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.*
- (e) *For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.*
- (f) *Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.*
- (g) *To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so. Further, it is the intent of the Legislature that, if a state information technology advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter*

- shall be submitted to that committee, including supplier representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.*
- (h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.*
 - (i) Information technology goods which have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.*
 - (j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the supplier's exclusion have been corrected.*

12103. In addition to the mandatory requirements enumerated in Section 12102, the acquisition policies developed and maintained by the Department of Information Technology and procedures developed and maintained by the Department of General Services in accordance with this chapter may provide for the following:

- (a) Price negotiation with respect to contracts entered into in accordance with this chapter.*
- (b) System or equipment component performance, or availability standards, including an assessment of the added cost to the state to receive contractual guarantee of a level of performance.*

- (c) *Requirement of a bond or assessment of a cost penalty with respect to a contract or consideration of a contract offered by a supplier whose performance has been determined unsatisfactory in accordance with established procedures maintained in the State Administrative Manual as required by Section 12102.*

12105. The Department of General Services and the Department of Information Technology shall coordinate in the development of policies and procedures which implement the intent of this chapter. The Department of Information Technology shall have the final authority in the determination of any general policy and the Department of General Services shall have the final authority in the determination of any procedures.

Government Code

Title 2. Government of the State of California, Division 3, Part 5.5. Department of General Services, Chapter 1. General Provisions

14607. For the purpose of administration, the director shall organize the department with the approval of the Governor, in the manner that he deems necessary properly to segregate and conduct the work of the department.

The director may arrange and classify the work of the department and with the approval of the Governor may create such divisions and subdivisions as may be necessary, and change or abolish them from time to time.

14610. Notwithstanding Section 11043, the department may employ such persons as are necessary to provide house legal counsel for the department. These persons may advise the director, officers, employees, boards, commissions, and offices of the department concerning legal affairs of the department. The official legal adviser concerning the department's interdepartmental powers, functions, and relationships with other departments is the Attorney General. House legal counsel for the department when authorized by the Attorney General may represent the department and the state in litigation concerning affairs of the department.

The team identified the statutory, regulatory, and administrative policies that are the basis of the procedures and regulations governing bid protests and dispute processes for IT and non-IT goods and services procurements, including:

- DGS for resolution of protests concerning services contracts
- The Victim Compensation and Government Claims Board for the resolution of protests of the award of goods and IT solutions
- The Office of Administrative Hearings for the resolution of award protests lodged on goods and IT solutions that have been conducted under the Alternate Protest Pilot Project
- Different dispute resolution methodologies for IT and non-IT goods and services

The CORE Team researched best practices and provided alternatives to streamline and promote uniformity. The team identified the policies that form the foundation for procedures that support existing IT and non-IT evaluation methodologies, and identified similarities and differences as described in the findings and recommendations.

H.2 Organizational Responsibilities for Development of Policies and Procedures in DGS

All State personnel involved in acquisition must be cognizant of the laws that govern contracts and procurements in the State, such as the Public Contract Code and Government Code. It is a serious responsibility, especially with regard to the Department of General Services. According to PCC §10280, “Any officer or employee of the department who corruptly performs any official act to the injury of the state is guilty of a felony.”

The Department of Finance (assuming responsibility for law citing the Department of Information Technology) and the Department of General Services are tasked with setting the policies and procedures to implement California law. Agencies and departments, particularly those with delegated authority, also set internal purchasing policy and procedure.

The CORE Team examined the authority and roles and responsibilities of the following organizations involved in developing policies and procedures:

- DGS Procurement Division (for goods and IT goods/services)
- DGS Office of Legal Services (services)
- Department of Finance
- Client entity groups—
 - Department of Education
 - California Highway Patrol
 - Franchise Tax Board
 - DGS Telecom
 - Employment Development Department
 - Department of Real Estate
 - Department of Pesticide Regulation

Client entities discussed their existing policies, supported or not supported in statute, as well as their authority and roles and responsibilities with regard to developing purchasing policy for goods and services. Some unwritten and poorly documented policies were discovered during the course of the review.

Existing and De Facto Policies and Procedures

The lack of a single, centralized source for statewide purchasing policy is frequently mentioned in this report. The current practice of disseminating policy within the State Administrative Manual (SAM), Management Memos (MM), the State Contracting Manual (SCM), and the California Acquisition Manual (CAM), and other sources creates confusion and inconsistency. Individuals responsible for policy development, as well as those required to use the policies while conducting their purchasing activities, are often faced with not knowing which policy to follow, and which ones are current or out of date, and so forth.

Resource constraints have hindered the creation of an effective organization to develop and manage policy. Actions taken to facilitate the creation of uniform policy, such as the implementation of CAM, have met with obstacles and delays, rendering them ineffective.

Currently, the same procurement program managers responsible for management and oversight of day-to-day purchasing activities are also responsible for policy development and maintenance. Their first priority must be the timely completion of purchasing activities. The development and maintenance of policy realistically becomes less of a focused priority on a day-to-day basis.

Similarly, the CORE Team identified that purchasing *procedure* development and management is lacking and must be addressed. Analysis concluded that within DGS, buyers use a variety of processes, procedures, methods, and tools to conduct their work. These customized approaches to purchasing rely upon the buyer to, in many cases, individually interpret purchasing policy, create applicable solicitation documents, evaluate the responses, award the contract, and manage the close-out/hand-off of the final contract. The lack of formally documented and published processes and procedures results in:

- Purchasing activities that take varying amounts of time for substantially similar tasks (individual approaches to the same task result in different tools, techniques, and results)
- Purchasing policies that are interpreted and acted upon differently within DGS
- Milestones that are missed, resulting in dissatisfied clients
- Increases in protests because of the inconsistent application of policy and procedure

Purchasing policies and procedures are contained in a multitude of source documents, which are located in a multitude of places. In addition to fragmented sources, the policies and procedures overlap, contradict one another, and are interdependent on one another for meaning. To compound this situation, different personnel or organizations are responsible for updating the different source documents and for communicating policy and procedure changes.

Ideally, policy and procedure should be documented separately since procedures, by definition, are the methods used to support policy. Procedure manuals for DGS staff involved in the acquisition of goods and IT are non-existent or woefully outdated in most cases. In order to accomplish uniformity of both policy and procedure, an adequately staffed, dedicated Policy and Procedures Unit is required.

The DGS PD Acquisition Quality Assurance and Delegations Resources produces Delegation Guidelines for both goods and IT goods/services, and the CMAS Unit produces bulletins and information packets on an as-required basis to inform program participants regarding changes.

Representative of the historic need for an effective organizational structure to create and maintain policies and procedures, the following paragraphs are taken from the findings and recommendations of an Operational Review Report (Number 6102, dated May 1998) by the DGS Audit Section:

Because of its importance in guiding day-to-day activities, of particular concern is the PD's Buyers Procedures Manual which has not been updated since 1987. Consequently, it is not accomplishing its purpose of serving as a training aid for new buyers and as a reference for more experienced buyers. It is our belief that a number of our audit findings partially result from a lack of written operating policies and procedures. State Administration Manual (SAM) Section 20003 provides that the existence of out-of-date policies and procedures manuals are indicative of a vulnerable internal control system.

It should be noted that the PD is aware of the need for updated written policies and procedures for use in its acquisition operations. In fact, at the time of our audit survey fieldwork, we were advised that a team had been established within the Procedures and Training Section tasked with developing, revising and improving written procedures for the PD's various programs.

Currently, the PD Buyers Procedures Manual remains outdated. Furthermore, some PD policies and procedures are undefined, some are unwritten, and some are even unspoken.

For example, one of the departments in the CORE Project client entity groups was surprised when they were informed by DGS that services for moving (from one office location to another) could not be solicited as a services contract, but rather had to be obtained through the DGS Office of Fleet Administration. Such information was not disseminated to the department, yet was important and impacted its plans for relocation.

Currently, services shown on the Office of Fleet Administration Web site do not mention moving services. The Web site does provide detailed information for services it provides, including Garage Operations, Inspection Services, Alternate Fuels Vehicle Program (AFV), Travel Programs, Employee Parking/Commute Services, Credit Card Acceptance, Disposition and Auction Services.

Since the State Contracting Manual is the source for contracting policy, a search of the index shows "moving services" cited in section 7.75, as follows:

SCM §7.75 Specialized Contract Provisions (Rev. 10/98)

B. Commercial Office Moving Services

Contracts exceeding \$2,500 with a carrier for commercial office moving services must conform to the requirements contained in SAM §3810 which provide for such contracts to be with a carrier whose drivers and supporting personnel are operating under current collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. See Government Code Section 14920. Agencies must include such requirements in Invitations for Bids and contracts.

SAM §3810 provides far greater detail, including procedures regarding moving services, as follows:

Commercial Transportation for Office and Institution Moves
(Revised & Renumbered From 3811 2/93)

Intercity Moves.

You can transport State-owned uncrated furniture, fixtures, and equipment between cities within California by using padded van carriers that specialize in moving new furniture or used household goods. State property that is protectively packed in cartons or crates may be transported at much less cost by general freight carriers.

Linehaul rates of household goods carriers, which include inside pickup and inside delivery subject to extra charges for long carries, stairs, and

elevators, are the most costly and do not include any packing labor and materials. To avoid mandatory carrier-assessed valuation charges, orders for transportation by household goods carriers must specify in writing "Shipper hereby releases the entire shipment to a value not exceeding 60 cents per pound per article."

For intercity transportation by any of these types of carriers, use an appropriate PUC licensed carrier at rates not to exceed PUC minimum rates based on weight and distance. Before the move you should have a clear understanding with the carrier that charges will be assessed against actual weight as shown by the public weighmaster's certificate(s).

Local or Hand Moves.

You may use any of the following methods to get a contractor for a move within a building or between buildings in the same metropolitan area. However, you may only lawfully hire PUC licensed carriers for moves that involve transportation over the public streets and highways.

You may use the DGS Office of Procurement's Master Service Agreement contract in the Sacramento area. The Master Service Agreement is designed for small moves expected to cost up to \$2500. You can also use the Master Service Agreement for larger moves over \$2500 when the administrative effort to prepare a bid, conduct a walk-through for bidders, and develop a separate contract is not warranted. You may also use the Master Service Agreement for moves that cannot be clearly defined at walk-through for prospective bidders.

Take full advantage of the DGS Office of Procurement's Master Service Agreement. It provides low hourly rates for experienced help and equipment. The time chargeable to your job is clearly defined. Charges for packing containers are set. The contractor is properly insured and specially bonded. The contractor also agrees to meet the prevailing wage requirements of Government Code Section 14920. When using this Master Service Agreement, you should:

Ensure persons arranging moves in the Sacramento area receive copies of the Master Service Agreement. If you have trouble getting a copy, you can get one from the DGS Traffic Management Unit.

Provide the contractor with two working days notice. Indicate your agency's five-digit billing codes on your work orders. Contract hourly rates do not apply to work performed on federal holidays.

Expedite payment of bills for work done under the Master Service Agreement.

Submit written reports to the DGS Traffic Management Unit of any incidents where the contract moving company fails to perform under the Master Service Agreement.

You may use selected local moving companies for small moves estimated to cost under \$1000 in areas where no Master Service Agreement is available. You must choose the company that offers the lowest hourly rates for experienced labor and piece rates for clean delivered cartons and tape. You should hire your carrier on the basis of productive time on the job. Your written confirmation of these arrangements should contain agreement that rates and charges will not exceed PUC minimums. To avoid mandatory carrier-assessed valuation charges, orders for transportation between buildings by public streets or highways must specify in writing: "Shipper hereby releases the entire shipment to a value not exceeding 60 cents per pound per article."

You may go out for competitive bid for specifically defined work for a lump sum amount. If you cannot define the work at a walk-through conducted for prospective bidders, you may get bids for services at hourly rates. Bid contracts can be up to one year in length. Use the following outline of procedures to obtain competitive lump sum bids. Use similar procedures in preparing bids and contracts for services at hourly rates.

Invite at least three PUC licensed local moving companies to attend a one-time walk-through. Hand out specifications and bid proposal forms. Explain and show all work (including cartons) at the origin and destination that is to be included in the lump sum bid. Advise bidders of tentative dates and hours of the move. State if the move needs to take place during or after normal working hours. Notify moving company representatives that the winning bidder must sign a Standard Agreement, STD. 2, and that the mover will be charged with repair or replacement of damage to building or any items lost, damaged, or stolen while in the carrier's custody. See (3800) A-1 in the Appendix.

To avoid misunderstandings on major jobs, you must get sealed bids. Open them publicly at a set time and date. On small jobs, all of the movers can submit bids at the same time immediately after the walk-through. You must make the award to the lowest responsible bidder.

Use Standard Agreement, STD. 2, with appropriate specifications for contracting lump sum work. For help with contract specifications, contact the DGS Traffic Management Unit.

You must include the following paragraph about prevailing wages in any competitive bid contract and bid specifications for commercial moving services when the amount of the contract exceeds \$2,500:

Prevailing Wages

No contractor performing hereunder shall pay any employee actually engaged in the moving and handling of goods being relocated under such contract less than the prevailing wage rate, except in geographical areas where no such employee wage standards and conditions are reasonably available. The term "prevailing wage rate" means the rate paid to a

majority of workmen engaged in the particular craft, classification or type of work within the locality if a majority of such workmen be paid at a single rate; if there be no single rate being paid to a majority, then the rate being paid the greater number. Upon written request wage rates prevailing at the particular point in time will be furnished for information purposes only.

When you receive written requests from prospective bidders or contractors for prevailing wage rates, you must convey in writing the need for the desired wage rate information to the Department of Industrial Relations, Division of Labor Statistics and Research. The geographical areas in which the moving services are to be performed must be included in your request.

You must include the mandated small business preference in your contracting process.

See SAM Section 1200 for contract requirements.

From the information regarding moving services provided in SCM and SAM, one can imagine questions that a department might have when acquiring such services. It would seem reasonable in such situations to contact DGS as the centralized location for purchasing information. However, the lack of consistency in the answers received from DGS was a common issue raised by client entity groups. Lack of standard, updated policy leads to interpretations from DGS representatives, which vary from person to person and from purchase to purchase. Even inside the same purchase, the client entity groups cited different answers received from the same person on different days.

In summary, all of the client entity groups were very responsive to the project team and provided very pertinent input. All of them have developed internal policies and procedures for purchasing, as required by DGS. The departments view their internal policies and procedures as secondary to those set forth as statewide policies and procedures in SAM, SCM, SIMM, and in Management Memos and other documents.

Other input gathered from the client entity group meetings provided two very different perspectives with respect to working with DGS to complete purchasing activities. These groups provided very positive input regarding the assignment of an OLS single point of contact. Each of the groups made a point of articulating the positive impact of having one person to go to when working on purchasing activities. Conversely, the same group noted that there is no PD single point of contact assigned to them. Each of the groups noted that things seem to disappear into “the black hole of PD,” and that they often have to make numerous calls to various individuals to attain status on relevant procurement activities, or to ascertain that PD has received a purchase estimate or procurement request, and is actually working on it.

Current DGS Organizational Structure Assessment

The Business Enhancement Support Team (BEST) within the DGS PD is the unit responsible for policy related to goods and IT goods/services. DGS OLS is responsible for policy related to services. The mission of the current PD policy unit identifies BEST as “responsible” for both purchasing policy and procedures, but lacking are the authority and ability to develop the necessary policies and procedures.

The development of procurement policy is the “duty” (as per the job duty statements) of the individual procurement program managers (i.e., IT acquisition policy is developed by the IT Acquisition Manager). The policy unit’s role in practice is to facilitate the policy development process, not to develop the policies themselves. Due to the program area managers’ day-to-day responsibilities of managing his or her respective purchasing programs, the development of purchasing policy is a secondary duty and, accordingly, a low-level priority.

Contributing to this problem is the organizational placement of the BEST as “low” within DGS PD, which demonstrates a lack of executive-level commitment to the importance and necessity of a successful policy development program. Consequently, BEST does not have the authority necessary for a policy unit to succeed.

Other important factors are related to the knowledge, skills, and abilities (KSA) of the BEST, and are summarized as:

- The unit is responsible for other day-to-day functions (e.g., information requests) in addition to policy and procedure. The time required to perform these ancillary functions greatly reduces the effectiveness of the unit to manage the policy lifecycle (i.e., idea/conception, develop/propose, review, finalize, approve, publish, update, and retire) efficiently. Shifting between performing other duties (e.g., fulfilling an information request) to the policy function and back again greatly diminishes the policy output of the unit.
- The staff has little formal training in policy development or procedure writing. Such experience is not a prerequisite for serving in this unit. Policy development and procedure writing are skills that must be developed through training and experience. Without this foundational training, the output of the policy unit is varied in quality and is dependent upon the individual, not the unit.
- The positions within BEST are permanent assignments. By having permanently assigned staff responsible for policy development, requisite purchasing skills become outdated and negatively impact the quality of the policies and procedures.
- Up-to-date purchasing experience within the group is lacking. The lack of current, real-world purchasing experience minimizes the effectiveness of the staff to manage the policy lifecycle and procedures.
- The opportunities for career advancement and professional growth are nonspecific. As with any position, clear career paths and accompanying professional growth opportunities are vital to the productivity of the staff.

The lack of clear, current, and consistent policy is a common theme throughout the findings and recommendations in Section II of this report. In addition to the project team’s independent analysis, client entity groups consistently articulated that lack of clear policy and constantly changing policy negatively impacts their ability to complete their purchasing activities.

Separation of Duties Analysis

The CORE Project Team analyzed the strengths and weaknesses of separating the development of purchasing policy, and the agency oversight and control responsibilities from the operational procurement responsibilities at DGS, including transferring these responsibilities to a separate

organization. The analysis led to recommendations and alternatives with regard to the development of purchasing policies.

Separation of policymaking from operational functions is a topic of discussion in several forums, including the National Association of State Purchasing Officials (NASPO). In NASPO’s “Issues in Public Purchasing, a Guidebook for Policymakers,” such separation is described as intended to reduce political and other influences on purchasing decisions, and free operations personnel from policymaking. However, it is important for the policymaking unit to account for trends and directions of the purchasing unit, and incorporate lessons learned from both the procurement and disputes units.

Analysis of the strengths and weaknesses is summarized in the following table.

Analysis Area: Separating Policy from Operational Duties		
Strengths <ul style="list-style-type: none"> ➤ Dedicated staff will improve uniformity and consistency ➤ Elevated importance, executive focus ➤ Allows development of writing skills 	Weaknesses <ul style="list-style-type: none"> ➤ Centralization can be perceived as loss of control by current staff ➤ Requires change management 	Recommendations <ul style="list-style-type: none"> ➤ Separate policy making from operational duties
Analysis Area: Separating Control Functions from Operational Duties		
Strengths <ul style="list-style-type: none"> ➤ Dedicated staff may be more efficient ➤ May perform compliance reviews as well as up-front approvals ➤ Maintains a level of independence if not performing procurements 	Weaknesses <ul style="list-style-type: none"> ➤ Independence is somewhat compromised by performing both compliance reviews and up-front approvals ➤ Skills for performing procurements and approving procurements are directly overlapped so separating the functions would require more staff and more training 	Recommendations <ul style="list-style-type: none"> ➤ Do not separate the up-front approval from the operational purchasing functions ➤ Separate the compliance review function from the operational purchasing function ➤ Expand the compliance review function to cover all procurement areas and increase the reviews

H.3 Operational Roles and Responsibilities: PD and OLS

A bifurcation of responsibilities in the Department of General Services exists between the Procurement Division (PD) and the Office of Legal Services (OLS). In current practice, PD establishes purchasing policy and procedure for commodities and IT, both goods and services. In general, PD's role includes: conducting "buys," delegating the authority to conduct buys to agencies and departments, and approving non-competitive bids (NCBs), exemptions, master agreements, Information Technology Procurement Plans (ITPP), and so forth.

Likewise, OLS establishes purchasing policy and procedure for non-IT services (e.g., consulting services, interagency agreements). In addition to their role in approving non-IT services contracts, OLS also provides legal advice to PD, upon request, on such procurements that represent a high risk, changes to standard terms and conditions, and other appropriate aspects.

The CORE team conducted a survey of other states to determine to what extent and in what manner other states' procurement offices utilize legal services. Results of this NASPO survey contributed to the recommendations presented in Section II of this report.

The team analyzed the current missions and roles and responsibilities of OLS and PD and made recommendations. An organization's mission statement describes its reason for existence and explains the functions, priorities, and values of the organization to both internal and external stakeholders. It should guide leaders and help the staff stay focused on the things that are most important. All of the organization's activities and expenditures of resources should be consistent with its mission.

Additionally, the CORE Team examined the formal and informal policies and procedures in effect for the review and approval of purchasing actions by PD and OLS. California's procurement system is largely controlled by DGS, as Public Contract Code states that all contracts for goods or services are not valid unless approved by DGS. The role of DGS as a control agency involves the review and approval of various procurement documents and transactions.

H.4 Implementation Planning

Implementation planning began in parallel with analysis and research in the fourth month of the five-month project. The CORE Project findings and recommendations, organized into the five over-arching themes, formed the starting point for implementation planning.

To prepare for the implementation planning phase, the CORE Team used an overall methodology for implementing the uniform procurement policies as a common, organizing structure. The specific recommendations resulting from the analysis were organized by this common structure, and grouped into logical projects or initiatives. Each initiative is described in an initiative description worksheet (IDW). IDWs were prioritized according to business priority, costs, and timelines.

In order to complete the prioritization, the team facilitated input from key stakeholders, and then created an overall plan for executing and completing the prioritized set of initiatives.

The team's approach is a "best-of-breed" model, incorporating aspects of various methodologies, including:

- John Kotter's "Leading Change," an approach resulting from many years of experience in consulting with hundreds of organizations. He observed the myriad difficulties associated with change efforts, distilled the common themes, and turned them around into a prescriptive framework.
- Michael Hammer approach to developing and managing business processes, creating operational excellence and world-class performance, primarily from the book, "The Reengineering Revolution," by Michael Hammer and Steven A. Stanton. Dr. Michael Hammer incorporates decades of research in business processes and the accumulated experiences of hundreds of companies.

Appendix H, Attachment 1

**CORE Project
Research and Analysis Reference Documents Matrix**

#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
1	Single Source for Purchasing Policy		12102			4800-5180			02-20	
2	Purchasing Categories	10290-10381	12100-12113							
3	Statutory References to Department of Information Technology (DOIT)		12100-12113	11700 14600					02-20	AB 1686
4	Alternative Procurement Process Pilot		12102(a) 12127(c)			5211 5215				
5	CMAS Purchasing	10298	12100.5 12100.7			4800				
6	Management Memos as Policy									
7	Definitions of Terms and Phrases	10340	12100.7							
8	Cross-Reference of Purchasing Laws	10115-10116								
9	Single Source for Processes and Procedures									

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#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
10	Purchasing Policy and Procedure Training	10349								
11	System/Process for Developing and Implementing Policy									
12	Follow-on Work	10365.5				5202				
13	Small Business Preference Override			7084(e) 14838(f)			8.21	3.5.2		
14	Procurement Method Models	10300	12100			5200, 5211,5212- 5214	5.0			
15	Invitation for Bid (IFB) Model "Compliance Phase"					5221.2 (c)(2)				
16	Preparation and Dissemination of Lessons Learned									
17	Contract Types	10371(c)					7.30 2.05			
18	Specifications, Requirements, and Business Needs		12127			5213 5216				
19	Evaluation Methods	10301 10344	12100			5211-5216 5221	5.06	3.5.3		

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#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
20	Protest, Disputes, and Grievances Processes	10300 10306 10345	12100.7 12102 12127.5			5210.2		3.48		CCR Title 1 Ch. 5. Sect. 1 of Stats.1995, c. 932 (SB 910)
21	Emergency Purchase Process	10319 10340	12102		PCC §1102					
22	Non-Competitive Bid Process	10301								
23	Electronic Acceptance of Sealed Bids	10304 10341			PCC §1601					
24	Bifurcated Responsibilities for Purchasing Oversight	10295 10297 10335		14610						
25	Policy and Procedures Office									DGS Org Chart
26	Negotiation									FAR 15.306(d)
27	Approval Levels and Processes	10295, 10297, 10308, 10309, 10330, 10333, 10335, 10351	12100, 12102							
28	Incentive Contracting				PCC 10226					
29	Leveraging the Buying Power of the State				PCC 10298, 10299					

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#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
30	DGS Organizational Missions			14600 14610						DGS Website; PD Strategic Plan
31	Delegation/Approval System	10320, 10330, 10331, 10332	12101	15275-15279					03-10	Delegation Guidelines
32	Purchasing Audits	10333, 10351		14615						Delegation Guidelines
33	Customer and Supplier Advocate	10300								

Appendix H, Attachment 2

Procurement Information Network (PIN) Statistical Report

PIN PE Statistical Report (FY 01-02)

	Goods		IT Goods and Services		FOOD	
	# of Transactions	Total Dollars	# of Transactions	Total Dollars	# of Transactions	Total Dollars
\$0-\$999.99	2	954.7	0		8	4,696.50
\$1,000-\$4,999.99	8	23,990.51	2	5743.08	45	150,790.92
\$5,000-\$24,999.99	32	579,251.40	7	113,725.85	40	1,901,118.73
\$25,000-\$99,999.99	173	9,287,274.26	17	947,085.41	109	5,842,282.10
\$100,000-\$499,999.99	132	28,261,142.04	8	1,361,278.77	13	1,601,641.93
\$500,000-\$999,999.99	27	19,440,989.41	1	505,961.08	0	0
\$1,000,000 and over	23	51,300,136.51	4	25,003,558.13	0	0

PIN PE Statistical Report (FY 02-03)

	Goods		IT Goods and Services		FOOD	
	# of Transactions	Total Dollars	# of Transactions	Total Dollars	# of Transactions	Total Dollars
\$0-\$999.99	31	9,509.63	10	3,902.43	6	3,975.90
\$1,000-\$4,999.99	24	45,288.36	18	46,763.45	46	149,853.79
\$5,000-\$24,999.99	19	320,347.60	16	167,744.52	144	1,869,994.20
\$25,000-\$99,999.99	128	6,291,522.43	7	375,487.58	99	5,508,188.60
\$100,000-\$499,999.99	91	18,790,785.30	2	540,750.65	18	2,267,471.22
\$500,000-\$999,999.99	18	12,509,439.16	5	3,621,374.39	0	0
\$1,000,000 and over	11	33,150,305.43	6	11,455,705.18	0	0

Appendix H, Attachment 3

Non-Competitive Bid (NCB) Statistical Report

NCB Statistical Report *

Dollar Levels	Goods		IT Goods and Services		Non-IT Services	
	Transactions	Total Dollars	Transactions	Total Dollars	Transactions	Total Dollars
\$0-\$999.99	0	\$0.00	2	637.08	1	\$0.00
\$1,000-\$4,999.99	1	\$3,041.90	8	23216.49	1	\$4,999.00
\$5,000-\$24,999.99	4	\$55,112.63	15	194385.12	105	\$1,427,875.53
\$25,000 and over	158	\$48,149,903.18	131	1087143709	322	\$668,855,964.87

* The transaction and total dollar figures are from Approved and Pending NCBs only.

Total #	748
Total \$\$	\$1,805,858,845.18
Average	\$2,414,249.79

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