

Findings: Over-Archiving Matrix

● = primary theme

◐ = secondary theme

#	Description	Over-Archiving Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
1	Single Source for Purchasing Policy	●				
2	Purchasing Categories	◐				●
3	Statutory References to Department of Information Technology (DOIT)				●	
4	Alternative Procurement Process Pilot	●			◐	
5	CMAS Purchasing	●	◐			
6	Management Memos as Policy	●				
7	Definitions of Terms and Phrases	●				◐
8	Cross-Reference of Purchasing Laws					●

#	Description	Over-Arching Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
9	Single Source for Processes and Procedures		●			
10	Purchasing Policy and Procedure Training	◐	◐			●
11	System/Process for Developing and Implementing Policy	●				
12	Follow-on Work	◐			●	
13	Small Business Preference Override		●			
14	Procurement Method Models					●
15	Invitation for Bid (IFB) Model "Compliance Phase"	◐	●			
16	Preparation and Dissemination of Lessons Learned					●
17	Contract Types	●				
18	Specifications, Requirements, and Business Needs	◐	◐		◐	●

#	Description	Over-Arching Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
19	Evaluation Methods	●	◐			
20	Protest, Disputes, and Grievances Processes	◐	◐	◐	●	
21	Emergency Purchase Process	●	◐		◐	◐
22	Non-Competitive Bid Process	◐	◐		●	◐
23	Electronic Acceptance of Sealed Bids	●	◐		◐	
24	Bifurcated Responsibilities for Purchasing Oversight			●		
25	Policy and Procedures Office			●		
26	Negotiation				●	◐
27	Approval Levels and Processes					●
28	Incentive Contracting				●	◐
29	Leveraging the Buying Power of the State					●

#	Description	Over-Arching Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
30	DGS Organizational Missions			●		
31	Delegation/Approval System	◐	◐			●
32	Purchasing Audits	◐	◐			●
33	Customer and Supplier Advocate			●		◐

2.1 Over-Arching Theme #1— Centralized Uniform Purchasing Policies

California maintains neither a central source of, nor a dedicated entity assigned with the responsibility for developing, implementing, and maintaining purchasing policy. Within PD, the staff responsible for creating policy is also responsible for day-to-day purchasing activities. There are no fully dedicated policy personnel with the in-depth purchasing knowledge necessary to effectively develop, implement, and manage policies associated with purchasing.

The lack of a single organizational entity with responsibility for policy development, implementation, and maintenance automatically reduces policy as a priority and decreases its usefulness. When policy development, implementation, and maintenance are not considered a priority, policy quickly becomes out of date.

New policy is currently developed by a variety of ad hoc means. The policies are developed and discussed by differing factions of DGS management and are implemented and disseminated through various inconsistent mechanisms including Management Memos, delegation guidelines, personal memos, contract terms, and instruction packets. There is little or no structure to the policy development process, nor is there a formal or informal vetting of proposed or draft policies.

The State Administrative Manual (SAM) is recognized as the State's official policy manual. As such, departments are required to abide by the policies articulated in SAM when conducting State business. Over time, DGS has largely discontinued updating SAM in favor of creating the State Contracting Manual (SCM) and the California Acquisition Manual (CAM).

In addition, the Department of Information Technology (DOIT), and now under the responsibility of the Department of Finance (DOF), created the Statewide Information Management Manual (SIMM) as the policy/procedure manual specifically intended for information technology (IT) acquisition. All of these publications contain purchasing policy some of which is unique, some overlapping, and some contradictory.

Generally in the State, the term "procurement" has become linked to the purchase of goods and IT/telecommunications goods and services, while "contracting" has become the designation for the purchase of services. Within this report, we use "purchasing" as the term incorporating the acquisition of goods, services, and IT/telecommunications goods and services. "Procurement" used in this report refers to the process of soliciting and selecting a source, whereas "contracting" refers to the steps following source selection including entering into a binding contract or purchase order.

There is no single, definitive source for the State's policies and procedures for the conduct of purchasing activities. Traditionally, policies are rules that are more persistent, while procedures are the systematic instructions that implement the rules.

Recently, changes to purchasing policies have been occurring with greater frequency due to Procurement Reform pressures. DGS has increased volume and frequency of the issuance of Management Memos providing policy change direction to agencies and departments. Much of the new policy change is happening so rapidly that DGS has not been able to update SAM, CAM, and/or SCM, resulting in confusion both within DGS and in agencies as to the current applicable policies that they are required to follow. Policies are issued without procedural guidance, leaving the purchasing officials throughout the State to work out the implementation steps on their own.

Our research and analysis has yielded the following findings that predominantly fall under the “Centralized Uniform Purchasing Policies” theme. This theme represents the core issue that addresses the problems described above. The lack of a centralized uniform purchasing policy and the associated governance, organizational and process structure is at the root of the problem that ails the State’s purchasing system.

2.1.1 Single Source for Purchasing Policy

- ◆ FOAM Reference: Finding #1

Findings

There is no single, definitive source for the State’s policies and procedures for the conduct of purchasing activities. Purchasing policies and procedures are contained in a multitude of source documents, which are maintained in a multitude of places. In addition to fragmented sources, the policies and procedures overlap, contradict one another, and are interdependent. Furthermore, different personnel or organizations are responsible for updating the various source documents using their own unique processes, defined or otherwise.

The communication of policy and procedure changes is likewise decentralized and ad hoc. Presently there is no defined distinction between policy and procedure.

Traditionally, policies are rules that are more persistent, while procedures are the systematic instructions that implement the rules.

SAM is the State’s official policy manual. Over time, DGS has discontinued updating SAM in favor of creating the SCM and the CAM. DOIT, and now under the responsibility of the

DOF, created the SIMM as the policy/procedure manual specifically intended for IT acquisition. All of these publications contain purchasing policy some of which is unique, some overlapping, and some contradictory. In several instances the SAM refers the reader to the other manuals.

The California Public Contract Code (PCC) §12102 governs the policies and procedures for purchasing of IT goods and services. It states, “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.”

OLS maintains the SCM. This manual restates, clarifies, and sometimes sets policies that overlap with the policies in SAM, CAM, and other sources. The focus of SCM is on non-IT services, but it also contains information regarding the other types of acquisitions. The document is maintained separately from the SAM and CAM.

Currently, the various policy manuals are updated and revised informally. There is no set timetable for revisions, no documented and uniform authority to change or create policy, little alignment between the manuals, and numerous responsible organizations all working without a consistent governance structure. Additionally, purchasing policy is revised and initiated through a system of bulletins that includes Executive Orders, Management Memos, Administrative Orders, Technology Directives, and Budget Letters. Confusion exists as to what the most current policy is for various contract types, and where to find it. Changes are seen as too frequent, overwhelming, and lacking any clear explanation of exactly what has changed and how the change might affect purchasing policy and/or procedure.

Of particular note, while CAM has merits in concept, its implementation has been fraught with delays and difficulties. Content for CAM is expected from subject matter experts, the people at the upper levels of the organization who have competing demands on their time and resources. As a result, sections of CAM are missing. Others have already become outdated. In some cases, the content provided for CAM is a mixture of background information, policy, procedure, and guidelines.

In summary, the absence of a single source document containing purchasing policy leads to confusion, delays, and errors.

Recommendations

- Clarify the distinctions between *policy* and *procedure*. Ideally, policy and procedure will be documented separately since procedures by definition are the methods to support policy. Furthermore, this ensures that updates and changes to policy and procedure are reflected in the proper, corresponding document.
- Establish a permanent organizational structure and process for maintaining the purchasing policies in order to keep them consistent and current.
- Establish a process for the evaluation, analysis, creation, and approval of new policies.
- Declare SAM the single *policy* manual for purchasing. Consolidate all purchasing policies in one source document with defined custodial structure, and update and communication processes. SAM is identified as the state's official policy manual. By statute DGS may update those SAM sections relating to purchasing policy without the formal constraints associated with the Administrative Procedures Act (APA).
- Form a purchasing policy reform committee with representatives from the DGS Office of Legal Services and Procurement Division, as well as other interested parties (e.g., DOF, Governor's Office) to undertake a sufficiently staffed initiative to update SAM.
- Using the aforementioned committee structure and defined process, systematically analyze the SAM, CAM, SCM, SIMM, and other current purchasing policy sources and rewrite them section-by-section to form a consistent set of policies in SAM. Upon completion of the SAM update, dissolve all other purchasing policy sources.
- Assign responsibility for SAM updates to a sufficiently staffed and empowered, single entity and enforce appropriate maintenance.
- Because effective policies and procedures require a specific writing skill, DGS should invest in the appropriate training for policy and procedure authors.

- Publish SAM on the DGS Internet site. This version ought to be the most up-to-date and “trusted” version.
- Update procedures for providing printed versions of SAM to those who cannot access the DGS Internet site.

2.1.2 Alternative Procurement Process Pilot

- ♦ FOAM Reference: Finding #4

Findings

In the area of information technology purchasing, SAM §5215, “Pilot Alternative Acquisition Techniques (Revised 4/97),” describes the pilot alternative procurement process for IT. The section states:

Within two years after approval of the first pilot procurement, the Directors of General Services and the Department of Information Technology will assess these processes to determine their appropriateness and suitability for continued usage.

SAM §5215 does not provide any overall information relating to structure or content of an alternative procurement process. This lack of guidance increases the level of complexity and difficulty when using this method of purchasing and may result in unsuccessful procurements. In practice it is most often found that “alternative procurements” under this authorization have followed a process whereby a “mini-Feasibility Study Report (FSR)” is completed at the outset of the solicitation and the “final FSR” is completed following contractor evaluation and selection. Another “alternative procurement” technique has included benefits-based or performance-based contracts where the supplier is not paid until the system is installed, tested, and the anticipated benefits have begun to accrue.

Understanding that specific circumstances may require an alternative procurement process versus the standard procurement processes identified in SAM §5211, pursuant to PCC §12102(a) the DGS director has the authority to approve an “acquisition mode to be used and the procedure to be followed.” Therefore, alternative procurement approaches may continue to be presented to the director for approval upon demonstration of business need.

Recommendations

- Since the intent of the alternative procurement process was to introduce innovation into the purchasing process, DGS should reinforce the creative aspects of the process to bring it back in line with the initial intent of providing unique, alternative procurement approaches to specific, out-of-the-ordinary business problems. This may be accomplished through the re-introduction of a new, better-defined alternative procurement process.
- Upon establishing changes to the alternative procurement process, update all references to the pilot from SAM, CAM, and other policy or procedure documents, such as the Delegation Guidelines and the Alternative Protest Pilot statute PCC §12127(c).
- Remove the terminology that refers to the “pilot” aspects and expiration of the policy (e.g., “Within two years...” and “...assess these processes...”).

2.1.3 CMAS Purchasing

- ◆ FOAM Reference: Finding #5

Findings

PCC §10298 states:

§ 10298. Consolidation of needs of multiple state agencies; assistance to local governments

(a) The director may consolidate the needs of multiple state agencies for goods, information technology, and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State and local agencies may contract with suppliers awarded those contracts without further competitive bidding.

Beginning with PCC §12100, it is the stated intent of the Legislature that “this separate authority should enable the timely acquisition of information technology goods and services in order to meet the state’s need in the most value-effective manner.” PCC §12101 continues the Legislature’s intent by specifically identifying that the acquisitions of information technology goods and services be conducted in an “expeditious and value-effective” manner “within a competitive framework.” The definition of value-effective is found in PCC §12100.7(g). The term “competitive framework” is not specifically defined; however, PCC §12102 points to SAM for the “policies and procedures governing the acquisition and disposal of information technology goods and services.” SAM §5211 identifies the three competitive procurement techniques.

Throughout the purchasing related statutes, the Legislature has determined that competition ought to be incorporated into the policies, procedures, and activities of the State. The CMAS program, although based on the federal government’s General Services Administration (GSA) contracts with specific suppliers, which is based on a competitive framework, is by nature a limit on competition. In an attempt to improve the program, recent rule changes require CMAS users to obtain offers and document a “best value” comparison.

In practice, CMAS is a list of potential suppliers that have agreed to provide a good or service to the State at a price not to exceed the federal GSA rate schedule for similar services or goods. Since CMAS prices are “not to exceed” a given amount, it follows that each buyer using CMAS as a purchasing vehicle should take the responsibility to gather examples of offers from a variety of sources to ensure that the State is receiving the best value.

PCC §12101.5 allows the State to use “multiple award schedules” (MAS) to procure IT goods and services. SAM §4800 further defines MAS use: “State Agencies shall use master contracts whenever the functional requirements for which the contract was awarded are substantially the same as the agency's requirements.” The intent of this section of SAM is to allow the State to use master contracts for items that may be clearly defined and readily available.

Numerous Management Memos have changed and continue to change the rules for CMAS users. The DGS CMAS Unit publishes a packet on a regular basis with the intent of communicating the material changes to the program to its users and suppliers. In general, these packets reflect the various policy impacts that have occurred over some period. These packets, however, are not designed to communicate detailed procedures to the program users. For example, the recent requirement of collecting three offers for CMAS purchases was clearly communicated to the end-users via the CMAS packets. These packets stopped short on the methods and techniques necessary to evaluate these offers and document the best value as required.

Recommendations

- In keeping with previous options, centralize CMAS policies in SAM. Remove the policy aspects from the existing CMAS packets and place them in SAM where appropriate.
- CMAS Bulletin #35 prescribes that at least three offers be solicited and obtained when a State agency uses CMAS as a purchasing mechanism. The CMAS packets also state that CMAS transactions must be in the context of best value. Solicitation and evaluation procedures should be developed to ensure that agency users of CMAS are adequately and consistently determining and documenting their best value decisions. These procedures should reflect the appropriate level of rigor for various transaction types and sizes.
- Optimally, the term “best value” would be replaced with the codified term of “value-effective”.
- Develop procedures for vendors and agencies to follow when there is a grievance or issue with the selection or Purchase Order award for a CMAS transaction.

2.1.4 Management Memos as Policy

- ◆ FOAM Reference: Finding #6

Findings

It is common practice in the State, and most relevantly within DGS, to use the Management Memo as the primary means for the communication of policy changes. This may have resulted from the fact that historically SAM was updated on a twice-yearly schedule. Interim changes to policy would be communicated via a Management Memo until the policy change could be included in the next scheduled SAM revision. At that time, the Management Memo would expire and SAM would be up to date with all current policy.

In current practice the Management Memo has continued to be the method to announce the policy change, but the requisite step of updating SAM has not occurred. The frequency of Management Memos has increased lately due to the changes resulting from Procurement Reform.

The variety of memo types further compounds the set of purchasing policies and procedures that buyers are to follow:

- The use of dated versions of individual Management Memos that become new policy. Therefore, even if a buyer is following a particular Management Memo, it may be an early and obsolete version of a policy and, therefore, out of compliance.
- Even though many of the recent Management Memos do not expire (e.g., MMs are marked “Until Rescinded”), there seems to be a question as to what happens to a policy or procedure when its Management Memo does expire. Moreover, the use of Executive Orders, Budget Letters, Administrative Orders, Technology Directives, and even routine memos from purchasing managers contribute to the uncertainty regarding expiration of sources of policy changes.

Of necessity, buyers are forced to find, read, consider, understand and comply with a multitude of memo types that only causes confusion and frustration.

In current practice the Management Memo has continued to be the method to announce the policy change, but the requisite step of updating SAM has not occurred.

Recommendations

- Only issue Management Memos that announce and explain policy or procedure changes and reference the policy or procedure source documents. The source policy document would then be SAM and not the Management Memos. This practice requires that SAM be updated in a timely manner. As an example, the DOF Management Memo 02-20 summarizes policy changes and points to the actual policies in SAM and SIMM.
- Similarly, work with other groups (e.g., DOF, Governor's Office) to cease issuing source policy through Executive Orders, Budget Letters, Technology Directives and other correspondence that are policy changes in and of themselves, rather than announcements of policy changes. During this work, each issuing organization should review all outstanding memorandum and ensure that they still are applicable, and, if not, rescind them accordingly.

2.1.5 Definitions of Terms and Phrases

- ◆ FOAM Reference: Finding #7

Findings

Some terms and phrases used in statutes, policies, and procedures are undefined, used ambiguously, or are simply confusing. Many of these terms are critical to understanding the statutes, policies, and procedures in which they appear. In practice, there are numerous key terms that are misused or used in varying contexts. The following are examples of key terms that should have clear and fixed definitions:

- Contract award: There is no written policy that explicitly defines when a contract is considered awarded. According to PD personnel, one definition in use specifies that when a notification letter is mailed to an awardee, the contract is considered awarded when the letter passes into the hands of the U.S. Postal Service. There may be a separate definition for each type of contract or specific instance of contract execution and delivery of the contract documents.

- Best value: The CMAS program uses “best value” in lieu of “value-effective.” The CMAS agency packets define best value by referring the user to PCC §12100.7(g), the definition of value-effective; this seems to create a logical link between best value and value effective. The differences, if any, between value-effective and best value should be documented. If there is no difference then the State ought to use only value-effective, since it is defined by law.
- Competition: This term is defined differently depending on the good or service purchased and the mechanism used. The “Delegation Guidelines for Information Technology” define competition as achieved if two responsive and responsible bids are received. PCC §10340 requires at least three competitive bids or proposals be received unless other conditions apply: emergency; advertised in the contract register, but received less than three responses; inter-agency/California State University/other education institutions; non-competitively bid (PCC §10348(a)); awarded pursuant to Welfare and Institutions Code 19404; awarded pursuant to Government Code §14838.5; related to licensing or proficiency testing.

Recommendations

- Create and continuously maintain a purchasing glossary that clearly defines and documents purchasing terms and phrases. Provide examples of their usages.

2.1.6 System/Process for Developing and Implementing Policy

- ♦ FOAM Reference: Finding #11

Findings

Policy development and maintenance is an integral part of the DGS responsibility as the agency responsible for State procurement activities. DGS procurement managers are currently tasked with both policy development and their individual day-to-day management activities.

The demands of the day-to-day workload activities are high and require the full attention of assigned staff. The development and implementation of policy is critical to the success of any procurement program and must be considered a high priority task.

The demands of the day-to-day workload activities are high and require the full attention of assigned staff. The development and implementation of policy is critical to the success of any purchasing program and must be considered a high priority task. Purchasing policies and procedures must be kept current with the changes in statutes, court decisions, executive orders, and other policy decisions.

Currently, purchasing policy development is not a high priority task and therefore, it does not have sufficient resources dedicated to it. As a result, policies are not current; SAM is not updated to reflect policy changes, and CAM is in various stages of development.

Lack of a system supporting policy development and implementation results in:

- Relying upon outdated policies
- Delays in developing and updating policy
- Lack of knowledge and understanding of what the current purchasing policies (rules) are
- Increased opportunity for scrutiny of purchasing activities by the Legislature, suppliers, and other control agencies
- Increased costs due to inefficient workflow

Currently, purchasing policy development is not conducted according to a rigorous procedure. The lifecycle of a policy from inception to drafting to approval and implementation is an unmanaged process. Policy development is often a reactive process in response to external drivers. One negative result of this ad hoc method of policy development is that thorough vetting of the draft policy is not performed.

Policies must be properly vetted within DGS, with other agencies, and with outside stakeholders, so the full impact of the policy is considered while it is still in draft form. This reduces the frustrating practice of releasing policies only to release a superceding policy shortly thereafter to accommodate an unforeseen impact.

Recommendations

- Identify and dedicate the resources required for policy development.
- Create a full-time policy development unit that does not have responsibility for day-to-day management activities.

- Adopt a system/process that ensures rigorous policy development and continuing maintenance.
- Implement a governance process for developing policies that manages the full policy lifecycle from inception through implementation and rescindment.

2.1.7 Contract Types

- ♦ FOAM Reference: Finding #17

Findings

There is a lack of clarity and guidance on the definition and use of various contract types in the State's purchasing policies and procedures. The commonly used contracting types are fixed price and cost reimbursement. Terms such as "firm fixed price," and "time and materials," are sometimes used and can be found in contracts, but are not well defined in statute or policy.

This lack of clarity can be seen in the fact that the term "fixed price" is used inconsistently in State contracting. The generally accepted definition of fixed price is the total cost per contract and/or deliverable without regard to the time expended and/or time-based rate. For example, service contracts with fixed price contract terms are often managed as "time and materials with a cap" contracts. The contract managers require time reporting and pay on the contract based on actual time spent, expecting to pay less if the work is performed with less effort than was entered in the contract, when in actuality this is contrary to the contract terms stating a fixed price.

Recommendations

- Create clear policies for the definition and use of the various goods and services contract types that the state chooses to offer as available alternatives (e.g., fixed-price contracts, cost reimbursement contracts, incentive contracts, etc.). The following example from the Federal Acquisition Regulations (FAR) provides the definition for "firm-fixed-price contracts" (FAR 16.202) that demonstrates the appropriate level of detail necessary for these definitions:

16.202-1 Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see Parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see Part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when-

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
- (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

- Ensure model terms and conditions exist and are comprehensive for each approved contract type.

2.1.8 Evaluation Methods

- ◆ FOAM Reference: Finding #19

Findings

There are several evaluation methods noted in statute and policy. Goods, services, and IT each have separate sets of methodologies for evaluation based on either the lowest cost that meets specifications or some variation of a value-effective evaluation utilizing cost as one of several weighted

factors. The methodologies are similar in concept but different in implementation. This causes confusion and an unnecessary burden on the purchasing official to learn and employ several different evaluation methodologies depending on the type of procurement.

For IT contracts, PCC §12102(b) states that “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....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.”

SAM §5211 identifies three techniques for the use in procuring IT goods and services. These three techniques are Invitation to Bids (IFB), Request for Proposal (RFP), and Request for Quotations (RFQ). Each technique is described in SAM §§5212-5214, respectively. SAM §§5215-5216 specifies two additional procurement techniques, Pilot Alternative Acquisition Techniques and Multi-Step Procurement Procedure, respectively. SAM §5211 further states that it is the statutory responsibility of DGS to select or approve the technique or mode of procurement that is most appropriate for the specific circumstances.

The evaluation mechanisms for the IT goods and services procurement mechanisms are:

- IFB: “Award of a contract can be made only to the lowest responsible bidder compliant with the specifications.”
- RFP: “Selection of the vendor may be on factors other than or in addition to cost alone.”
- RFQ: No specific language relating to evaluation of quotations; however, the optional solicitation document wording does state, “Award of contract will be made on the basis of the lowest net cost to the State....”
- Pilot Alternative Acquisition Techniques: Determined on a case-by-case basis, evaluation technique must be explicit in the proposed acquisition methodology presented to and approved by DGS by the requesting agency.
- Multi-Step Procurement Procedure: “The basis for selection and award, if made, will be to the

responsible bidder meeting specifications at the lowest net cost to the State.”

For non-IT services contracts, PCC §10344 describes the two possible procedures, “sealed bid” and “scoring method,” for utilizing a “request for proposal” procurement. The “sealed bid” procedure, PCC §10344(b), requires that all proposals be initially evaluated on the bidder’s ability to meet the “format requirements and the standards specified in the request for proposal.” Once the set of responsive and responsible bidders is finalized, the sealed bids are opened publicly and the contract award must go to the lowest bidder. PCC §10344(c) specifies that the “scoring method” procedure substantially weights (deemed by DGS to be at least 30% of total score) “the contract price proposed by the bidder” against all other criteria. PCC §10344(c)3, “the contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.”

For goods/commodities, PCC §10301 dictates that all contracts will be awarded to the “lowest, responsible bidder meeting specifications” of the solicitation.

The following table is an overview of formal solicitations.

Formal Solicitations

Category	PCC §	Procurement Type	Evaluation Method
Goods	10301	IFB	"lowest responsible bidder"
Services	10344 Code states that evaluation criteria shall be exposed in the RFP. Also specifies cost is in separately sealed (2 envelopes).	"sealed bid" (IFB) & "scoring method" (RFP)	SCM Ch. 5.06 describes IFB, Primary RFP (lowest, responsible bidder in 2 steps—scored technical and then lowest bid out of all the responsible bidders); Secondary RFP (scored technical and scored cost – at least 30% - awarded to highest overall score.
IT Goods & Services	12102	IFB, RFP, RFQ, multi-step	SAM §§5211-5216 identifies – IFB (5212), RFP (5213), RFQ (5214), pilot alternative acquisition technique (§5215), multi-step (§5216).

There is a lack of well-documented, comprehensive evaluation methods and procedures. The existing procedures for evaluation methods are represented in CAM (goods and IT) and SCM (services).

CAM Chapter 3.5.3, “Evaluating Solicitation Responses,” is incomplete and unavailable for use. SCM Chapter 5 provides some evaluation procedures, but should provide more detailed information, as well as samples and templates.

SAM §5221 provides a “model” Invitation for Bids. Using the model, it is difficult to interpret what sections are required and when, what sections are optional and why.

The following list of best practices is provided to aid in the development of comprehensive evaluation methods and procedures:

- Hawaii (HI) Administrative Code (ADC) §3-143-205: evaluators must be educated and trained sufficiently to serve as effective evaluators.
- HI ADC §3-122-52: must use a minimum of three government employee evaluators (private contractors can also be used) with the “sufficient qualifications in the area of the goods, services, or construction to be procured.”
- 2 Alaska ADC 12.260: “evaluation committee consisting of at least three state employees or public officials.”
- 8 New York ADC 155.21: no single evaluation criteria will exceed 50% of the total.
- Nevada ADC 333.162: no member of the evaluating committee can possess direct supervisory authority over a majority of the other members of the committee.
- Wisconsin ADC §10.08: “Each committee shall consist of 3 or a larger number of members, depending on the complexity and scope of services being procured. At least one member or a person advising the committee shall be trained in procuring contractual services.”

Recommendations

- Develop policies and procedures identifying the appropriate evaluation methods for each procurement category, as well as describing the individual evaluation steps for each method. These methods and procedures should be as consistent as possible without regard to the type of procurement.
- Develop policies and procedures to provide definition and guidance relating to the evaluation of solicitations in areas such as:
 - Financial strength
 - Credit worthiness – Dunn & Bradstreet score
 - Performance criteria
 - Bid, protest, and performance bonds
 - Evaluated bid price as per application of preferences versus actual bid price
 - Design criteria
 - Weighting of criteria
 - Evaluation team makeup
 - Document control
 - Evaluation integrity
 - Evaluation logistics
 - Proposal/bid/offer review
 - Oral presentations rules/procedures
 - Scoring methods per evaluator
 - Overall score calculation methods
 - Use of contractors in the evaluation process
 - Evaluation results verification
 - Notice, posting, and announcement procedures
 - Skills, roles and responsibilities of the evaluation team, Procurement and Contracting Officer (PCO), evaluation team members, evaluation lead, Independent Verification & Validation (IV&V), legal, DGS PD

2.1.9 Emergency Purchase Process

- ◆ FOAM Reference: Finding #21

Findings

PCC §1102 states:

"Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

State law provides the ability to conduct “emergency purchases” when necessary for the protection of the public health, welfare, and safety. Code regarding emergency purchases is included in PCC §10302 for goods, PCC §10340 for services, and PCC §12102 for IT. Departments are required to document the emergency and receive approval of such prior to conducting their procurement.

The provision for emergency purchases is intended for true emergencies. On occasion, emergency purchase approval is requested as a result of poor planning on the part of individual departments and/or a lack of understanding of the definition of an emergency.

The result of poor planning and/or lack of understanding of the definition of an emergency may result in:

- Inappropriate requests for emergency purchases.
- DGS being pressured into approving purchases that may not be true emergencies.
- DGS denying purchases not deemed emergencies resulting in dissatisfied customers and uncomfortable relationships with departments.

Recommendations

- Develop standardized policy and procedures for the applicability and use of emergency purchases that supports the definition of emergency as articulated in the PCC.
- Update the standard form (Form 42) used for documenting and requesting approval on an emergency purchase to reflect the standardized policy and procedures.
- Include a definition of emergency purchases and examples of such in training materials.

2.1.10 Electronic Acceptance of Sealed Bids

- ◆ FOAM Reference: Finding #23

Findings

Related to goods, PCC §10304 states:

All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read. No bids shall be considered which have not been received in the office of the department prior to the closing time for bids set forth in the invitations to bids. The department shall maintain confidentiality regarding each bid until the public opening and reading takes place.

For services, PCC §10341 states:

Whenever a contract subject to the provisions of this article is awarded under a procedure which provides for competitive bidding, the bids shall be publicly opened at the time stated in the invitation for bids and the dollar amount of each bid shall be read. No bids shall be considered which have not been received at the place, and prior to the closing time for bids, stated in the invitation for bids.

Additionally, PCC §10344 states that when using an RFP for services solicitations “the bid price and all cost information” be submitted “in a separate, sealed envelope.

According to PCC §12102(b)2, solicitations for IT goods and services “based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted.”

In practice, DGS only utilizes electronic means in a limited fashion, such as receiving faxed bids for commodities and IT goods, and email in lieu of telephone quotations. The Department’s reluctance to the wider use of receiving all solicitation responses via electronic means is attributed to uncertainty regarding the statutory language describing acceptance of “sealed bids.”

PCC §1600 was added in 1993 and the Legislature’s intent was “to enact necessary statutory revisions to procurement policies to allow electronic procurement transactions to occur.”

The Department’s reluctance to the wider use of receiving all solicitation responses via electronic means is attributed to uncertainty regarding the statutory language describing acceptance of “sealed bids.”

PCC §1600 states:

Notwithstanding any other provision of law, counties, a city and county, and state agencies may enter into and make payment on contracts by way of electronic transmission, including, but not limited to, the issuance of solicitation documents, and the receipt of responses thereof.

To further clarify the use of electronic means for procurement, the Legislature in 2002 added PCC §1601 which states:

Any public entity may adopt methods and procedures to receive bids on public works or other contracts over the Internet, but only if no bid can be opened before the bid deadline and all bids can be verified as authentic.

Recommendations

- Develop standardized policies and procedures that support the receipt of sealed bids via electronic means. DGS should implement an e-procurement method or system with sufficient security and transaction integrity features to meet the “no bid can be opened before the bid deadline and all bids can be verified as authentic” requirements. The implementation of this option should be in conjunction with the Task Force Recommendation #14 (implement an e-procurement system) working group.