

## 2.2 Over-Arching Theme #2— Centralized Uniform Purchasing Procedures

DGS currently does not maintain a single source of purchasing procedure that serves as the uniform source of step-by-step instructions for buyers. DGS buyers use a variety of ad hoc procedures to conduct their work. These are largely developed and maintained by individual buyers.

Departments and agencies with purchasing delegations granted by DGS are required to develop and submit their own purchasing procedures to DGS for review and approval. DGS does not publish detailed, step-by-step procedures for the many transaction types. Buyers who face a new situation must make do with asking their fellow buyers, who may have conducted a similar transaction.

With the large variety of procurement methods available to departments, it is critical that some level of uniformity in procedures is developed, implemented, and maintained, and that there is some assurance that these uniform procedures are being followed.

Through surveys and interviews, client entity groups noted that the lack of uniform procedures within DGS increases the burden on them when developing their internal procedures. These departments indicated that it would be easier and more efficient to develop their own procedures if DGS had standard procedures that could be used as a model.

The following findings most predominantly fall under the “Centralized Uniform Purchasing Procedures” theme.

### 2.2.1 Single Source of Processes and Procedures

- ◆ FOAM Reference: Finding #9

#### *Findings*

Within DGS, individual buyers use a variety of processes, procedures, methods, and tools to conduct their work. These customized approaches to purchasing rely upon the buyer to individually interpret purchasing policy, create applicable solicitation documents, evaluate the responses, award the contract, and manage the close-out/hand-off of the final

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contract/order. The lack of formally documented and published processes and procedures increases the chance that:

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

DGS currently does not maintain a comprehensive procedures manual for its buyers. The CAM has some of this type of information but as repeatedly noted, the CAM is incomplete. DGS, in its role as a control agency, is in the position to create, maintain, and disseminate procedures for the many purchasing processes it governs.

In keeping with the requirements of PCC §10333, it is the practice of the DGS Procurement Authority Management Section (PAMS) to require individual delegated agencies to have policies and procedures in order to maintain their delegation. The agencies must submit their procedures to PAMS for approval. The agencies use the DGS Delegation Guidelines, the SAM, CAM, the Public Contracting Code, and other sources in developing their procedures. None of these sources contain detailed, comprehensive, step-by-step procedures. This leaves the individual agency to interpret the source material and create their internal procedures from scratch.

PCC §10351 requires that DGS exempt from its approval non-IT services contracts from State agencies that meet certain criteria. One of these criteria is that they must establish “written policies and procedures and a management system that will ensure the state agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.” SCM does not contain a detailed and comprehensive set of procedures.

DGS currently does not maintain detailed, comprehensive procedures for conducting procurements. This is a natural duty for DGS as the State’s purchasing control agency. Developing, maintaining, and disseminating a uniform set of

procurement procedures is well within the purview of DGS. The State's procurement officials inside and outside of DGS would greatly benefit from such a procedure source. The procedures would form the basis for each agency's internal procedures.

### ***Recommendations***

- Identify and dedicate resources to develop common processes and procedures for use by DGS buyers and those purchasing officials in other State agencies. These processes and procedures would culminate in an electronic knowledge-base accessible at the buyer's desktop, including tools, job aids, templates, etc. Since procedure is contained in multiple locations today (e.g., CAM, Delegation Guidelines), an initial task should be a comprehensive review of the existing material to identify the re-usable elements.
- Develop internal processes to ensure that the procedure updates occur as necessary and are disseminated in a timely manner.
- Invest in training for policy and procedure authors because policies and procedures require a specific writing style to be effective.

### **2.2.2 Small Business Preference Override**

- ◆ FOAM Reference: Finding #13

#### ***Findings***

Government Code (GC) §7084(e) and §14838(f) state in similar language that small business bidders, "... shall have precedence over non-small business bidders in that the application of any bidder preference for which non-small business bidders may be eligible ... shall not result in the denial of the award to a small business bidder." This means that a small business cannot lose a bid to a non-small business merely by the application of a preference, such as Recycle, Target Area Contract Preference Act (TACPA), Enterprise Zone Act (EZA), and Local Agency Military Base Recovery Area (LAMBRA).

In other words, if a non-small business achieves a low-bid status because of the application of a preference, the result must be re-examined to determine if a small business would have achieved low-bid status if the non-small business

preference had not been used or applied at a reduced level, such as in the case of the Recycle preference where the maximum preference is reduced to \$50,000 from a standard maximum of \$100,000 when in competition with a small business.

Since the policies and procedures regarding bid evaluations are not consistently documented, there is the risk this law is not being followed in every instance. For example, SCM Chapter 8.21 discusses the application of the Small Business Preference, and Chapter 8.30 discusses the application of other preferences, such as TACPA, EZA, and LAMBRA. However, SCM lacks the procedures outlining how to apply the Small Business Preference in conjunction with the other identified preferences.

The Delegation Guidelines for Information Technology and Goods does provide guidance that the small business preference supercedes the other preferences. CAM Chapter 3.5.2 provides guidance for the evaluation of bids and the application of preferences. CAM Chapter 3.5.2 (c)(4) correctly recognizes that procedures for applying small business preferences take priority over others.

### ***Recommendations***

- Develop a clear policy and procedure reflecting the impact of the statutes that reflect that the small business preference takes precedence over other identified preferences (e.g., TACPA, EZA, LAMBRA), paying particular attention to the applicability of the Recycle preference and its impact. Upon the completion of the policy and procedures, it would be possible to develop an automated tool to ensure accuracy and adherence to the rules.

### **2.2.3 Invitation for Bid (IFB) Model "Compliance Phase"**

- ◆ FOAM Reference: Finding #15

### ***Findings***

The IFB model form in SAM §5221.2(c)(2) refers to a section entitled "Compliance Phase" as optional for an IFB. The seven-step Compliance Phase relies upon developing the proposal and contract using "an iterative, conversational mode" of exchange between the State and each vendor.

The following summarizes the seven-step Compliance Phase:

- State/Agency presents a broad description of the business problem in the IFB.
- The vendor(s) respond with a “Conceptual Proposal,” providing a general concept of how the vendor would meet the IFB requirements.
- The vendor(s) may be asked to provide a “Detailed Technical Proposal” that must further break down the “Conceptual Proposal.”
- The State evaluation team reviews the Conceptual Proposal and/or the Detailed Technical Proposal against the pre-established evaluation criteria and creates a list of items to discuss with the bidder.
- The State holds confidential discussions separately with each vendor to review the items uncovered during the evaluation.
- The results of these confidential discussions are summarized in a memo and agreed upon between the vendor and the State.
- At the State’s sole discretion, a bidder’s proposal may be rejected if at this time the State deems the bidder’s conceptual or detailed technical proposal is not in line with the State’s expectations, and any final bid based on these initial proposals would be considered non-responsive.
- The State may request that the remaining vendors submit an amended proposal, conceptual or detailed technical, to incorporate the changes identified in the confidential discussions.
- This process of “propose – discuss – re-propose” can continue as long as the State wishes.

By definition, the Compliance Phase is a “radical departure from the rigid ‘either accept or reject’ philosophy of traditional competitive bidding” (SAM §5221). This back-and-forth proposal development process between the State and each individual vendor is drastically different from the traditional procurement approach. While SAM §5221 does provide certain procedures for conducting the Compliance Phase, the untraditional nature of the process injects a level of risk that must be mitigated by providing more detailed and comprehensive procedures for buyers to utilize.

The interactions between the State and the vendors under this phase present a high risk of violating the principles of competitive procurement.

The interactions between the State and the vendors under this phase present a high risk of violating the principles of competitive procurement. By offering comments and feedback as to whether or not the vendor's proposal meets the requirements, the State invariably will give different information to each vendor. To the extent that this information is different in quality, quantity, or level of detail, the State violates the fairness principle. Lastly, bearing in mind the untraditional nature of the Compliance Phase, the wording of the policy itself and the use of specific phrases must be examined to eliminate the perception of impropriety.

### ***Recommendations***

- Develop further comprehensive, detailed procedures for the SAM §5221 Compliance Phase. Specifically, create procedures that:
  - Provide a decision aid to use when deciding if a compliance phase procurement is appropriate. The risks must be outweighed by the benefits.
  - Specify the roles and responsibilities for each attendee at the “confidential discussion,” as well as the topics and types of information to be discussed and those to be avoided in order to protect the integrity of the process.
  - Ensure that changes to the vendor's proposal do not affect/change the original solicitation document unless the change is broadcast to the other vendors.
- Reword the Compliance Phase to replace “confidential” with another phrase, such as “vendor discussions” or “vendor presentations.”