

## 2.3 Over-Arching Theme #3— Organizational Issues

The “Organizational Issues” theme resulted from the analysis conducted regarding the roles and responsibilities of the various DGS offices that have responsibilities in the procurement and contracting areas.

The PCC assigns the Director of DGS broad responsibility in the administration of the state’s purchasing authority. Currently, the two areas of purchasing, procurement and contracting, are divided between the Procurement Division (procurement) and Office of Legal Services (contracting). Both within DGS and in external departments confusion exists as to PD’s and OLS’ respective roles and responsibilities relating to the oversight and administration of the two purchasing areas.

Our analysis concludes that some improvements are called for in the assignment of responsibilities and with the clear articulation of responsibilities within DGS, as well as dissemination of this information to the State organizations served.

To summarize the recommendations and their impact on the State's purchasing system, the CORE Team developed the graphical model found in [Appendix G: Department of General Services' Procurement Governance Model](#). This Model illustrates the potential four phase progression of change as a result of Procurement Reform and the CORE Project. The four phases represent:

- Pre-Procurement Reform—the organization and processes relating to the entire State purchasing system prior to Executive Order D-55-02. The purchasing system during this phase was extremely disjointed with the master contracts, CMAS, non-IT services, and goods and IT each falling under a separate governance structure.
- Procurement Reform—reflects the changes to the purchasing organization and processes as an immediate effect of Executive Order D-55-02 up to the present. The procurement reform period represents the present state where some of the fractured governance has been addressed through the expansion of the delegation system. Specifically, the masters and CMAS have been put under the same

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delegation authority as the goods and IT purchasing. Non-IT services remains separate. Uniformity of policy and procedure is not achieved.

- Short-Term Future—incorporates the changes to the purchasing organization and processes over the next 12-month period as a result of implementing the CORE Team's immediate recommendations. This phase progresses towards uniformity by centralizing the control of all purchasing through organizational and policy changes. The integration of non-IT services is accomplished to the maximum degree possible without major legislative change. The policies and procedures are completely centralized and managed through a rigorous governance structure.
- Future—the end state of the purchasing environment at the conclusion of implementing the CORE Team's entire set of recommendations. This future state embodies true uniformity throughout the system of statutes, policies, procedures, and organizational changes. The centralization of the legal authority to both conduct purchasing and offer delegated authority will have been achieved for all purchasing types.

The following findings most predominantly fall under the “Organizational Issues” theme.

### 2.3.1 Bifurcated Responsibilities for Purchasing Oversight

- ◆ FOAM Reference: Finding #24

#### ***Findings***

There is no code or government regulation requiring a bifurcation of responsibilities in the Department of General Services between the Procurement Division and the Office of Legal Services. PCC §10295 states that “every contract” for goods and non-IT services shall be transmitted to the “department, and if approved by the department, shall be effective from the date of the approval.” Specifically, PCC §10335 outlines the responsibilities of the department with respect to approving “all contracts” for non-IT services. PCC §10297 prescribes that when the department performs a

contract review, the department “shall utilize its legal staff as necessary to facilitate the approval process.”

PCC §10297 does not dictate that the entire review be performed only by OLS. The consideration of any legality issues may occur in context of a cooperative workflow where the purchasing official is supported by attorneys as needed.

Government Code (GC) §14610 outlines the specific duties of the DGS “house legal counsel” as providing advice to “the director, officers, employees, boards, commissions, and offices of the department concerning legal affairs of the department.”

In current practice, PD’s oversight role includes:

- Delegating the authority to conduct “buys” to agencies and departments without DGS approval
- Approving purchasing activities (e.g. NCBs, exemptions, master agreements, ITPPs)
- Establishing purchasing policy and procedure for goods and IT goods and services, in SAM and CAM

Likewise, OLS currently performs the following oversight functions for services:

- Managing an exemption program allowing agencies to conduct services purchasing without DGS approval
- Approving non-exempted services contracts
- Coordinating and documenting purchasing policy and procedure for non-IT services (e.g., consulting services, interagency agreements) in the SCM

Besides their oversight role, OLS also provides legal advice to PD, upon request.

A detailed analysis of the functions of both PD and OLS finds that their respective purchasing oversight functions are performed in a duplicative manner. In effect the function of OLS in the contracting area has created a second, purchasing oversight organization within DGS serving in the area of non-IT services. OLS and PD unnecessarily split the oversight function.

The lack of a comprehensive, uniform system that coordinates legal participation in the purchasing process of all types of transactions is an organizational deficiency. This situation leaves the possibility of large, high-risk transactions being executed without proper legal review. This possibility can be reduced by a system that mandates legal participation

An analysis of the functions of both PD and OLS finds an unnecessary split in purchasing oversight.

according to risk and other criteria while always offering legal support to the purchasing official.

As a means of validating our findings, the CORE Team conducted a survey of other states (refer to [Appendix C: NASPO Survey-Legal and Procurement](#)) to determine to what extent and in what manner their purchasing officials utilize legal services. The survey responses indicate that the role of legal counsel is generally limited to providing legal advice to the purchasing officials (e.g., developing standard procurement documents, clauses, terms and conditions).

Typically, legal counsel is not involved in approving individual transactions. Generally within the surveyed states, legal counsel performs an advisory role rather than an oversight or approval role. The survey revealed that the use of counsel as advisors supporting the purchasing officials is a general practice and is consistent with GC §14610 referenced above.

The CORE Team realizes that the states surveyed may not operate under statutory frameworks identical to California, however, the general principle that legal counsel serves to advise the purchasing officials can and should be followed by California. This best practice is not precluded by California statute.

The argument for the status quo could be made based on the fact that the reviewed number of transactions is arguably more in OLS than it is in PD. However, this is irrelevant to the proper application of attorney resources and the best practices of procurement roles and responsibilities. It would be shortsighted to remain in the current model based on workload distribution. Organizational transfer of an operational function is a relatively simple implementation task. Furthermore, the statute requiring review of all services contracts above \$50,000, or in cases \$75,000, is the reason for such high numbers of reviewed services transactions. This should be examined for possible improvement based on a risk assignment methodology in context of an overall system of approvals (see report Sections 2.5.7 and 2.5.9).

The Federal Acquisition Regulations is another example of a best practice for the use of legal counsel in purchasing. The model calls for a system of risk, based on the attributes or size of transactions. The risk determines the necessity for legal review. Legal review results in the counsel either concurring with, or commenting on the transaction or document under

review. Should there arise a disagreement between the legal counsel and the purchasing official, the matter is escalated to an assigned person or board according to predetermined escalation rules. The federal model also leaves it to the discretion of the purchasing officer to call for legal review in any other transaction where he or she deems it necessary. Legal counsel is also conferred with during the purchasing policy making process.

### ***Recommendations***

- Consolidate the approval of contracts for all types of purchasing to a single entity, the Procurement Division.
- Direct OLS to focus on their duties as DGS house legal counsel and support the Procurement Division as legal advisors.
- Develop detailed roles and responsibilities for both PD and OLS that support a collaborative work environment that applies legal participation as needed in the State's purchasing oversight processes.
- Increase the legal role in reviewing all contract types based on the risk to the State or other criteria, such as deviation from standard contract language or unusual contract terms (e.g., revenue-sharing agreements).

### **2.3.2 Policy and Procedures Office**

- ◆ FOAM Reference: Finding #25

#### ***Findings***

One of the initial findings of this analysis is the identification of a single, centralized location for purchasing policy development and management, to replace the current system of policy contained within the SAM, Management Memos, SCM, and CAM, among other sources. Similarly, the CORE Team identified that purchasing procedures must be centralized in a single location, separate from policy. In order to accomplish both of these goals, an adequately staffed, dedicated Policy and Procedures Office is required.

Currently, the DGS PD has a unit responsible for policy. However, as revealed by numerous interviews with DGS personnel, this unit is considered ineffective. The underlying causes are numerous, but primarily stem from the unit's lack of authority and proper resources. The mission of the current

In order to accomplish the goal of centralizing both purchasing policy and procedure, an adequately staffed, dedicated Policy and Procedures Office is required.

PD policy unit identifies it as “responsible” for both procurement policy and procedures, but lacking are the authority and ability to develop the necessary policies and procedures.

The development of purchasing 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 existing policy unit’s role in practice is to facilitate the policy development process, not to develop the policies themselves.

Due to the program area manager’s day-to-day responsibilities of managing their respective procurement program, 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 current policy unit as “low” within DGS PD; consequently, it does not carry the authority necessary for a policy unit to succeed. The placement of the policy unit within PD demonstrates a lack of executive-level commitment to the importance and necessity of a successful policy development program.

Other important factors are related to the knowledge, skills, and abilities (KSA) of the existing policy unit. The deficiencies in these KSAs are outlined below:

- The unit is responsible for other day-to-day functions (e.g., information requests, forms management) besides policy and procedure.
  - Result: 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 opportunities for career advancement and professional growth are poor and ill defined.
  - Result: As with any position, a clear career path and accompanying professional growth opportunities are vital to the productivity of the

- staff. Serving in the policy unit ought to be a career enhancing assignment.
- The positions within the existing policy unit are permanent assignments.
    - Result: Up-to-date purchasing experience is necessary to develop effective purchasing policy and procedure. By having permanently assigned staff responsible for policy development, these skills become outdated and negatively impact the quality of the policies and procedures
  - The staff has little formal training in policy development or procedure writing and this is not a prerequisite for serving in this unit.
    - Result: 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 its quality and dependent upon the individual, not the unit.
  - Up-to-date purchasing experience within the group is lacking.
    - Result: The lack of current, real-world purchasing experience minimizes the effectiveness of the staff to manage the policy lifecycle and procedures.

### ***Recommendations***

- To address these issues, the creation of a “new” Policy and Procedures Office (PPO) is necessary. The PPO should report directly to the DGS Director or alternately the PD executive-level (i.e., Deputy Director or Assistant Deputy Director) and be granted the authority and responsibility to develop purchasing policy and procedure as their sole function. This high-level organizational position reflects executive-level commitment to this vital role.
- The PPO should be staffed utilizing a 24-month rotational assignment of three to five full-time senior purchasing personnel. The specific individuals should be highly experienced purchasing professionals representing, in aggregate, the broad spectrum of procurement programs (e.g., IT, goods, CMAS). These positions will have administrative support from two permanent positions (e.g., clerk, editor). The

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introduction of a rotational assignment provides the following benefits:

- Attracts the “rising stars” within PD to this highly visible, challenging position
- Ensures recent purchasing experience necessary for the development of clear, applicable policy
- Provides for career planning and professional development opportunities
- The PPO must develop a “mission statement” that clearly communicates their function and purpose. The mission would reflect that the PPO is responsible for creating and writing policy, as well as facilitating the development of procedure. For both of these functions, the PPO must establish a well-defined governance process for the policy and procedure lifecycle. This governance process will identify the numerous stages of a policy and procedure (i.e., idea/conception, develop/propose, review, finalize, approve, publish, update, retire). The governance process is critical to the overall acceptance of policy and procedure by ensuring the participation of the various stakeholders and users in the development process. This includes citizens, the vendor community, and the State agencies, among others.
- To ensure that qualified candidates are available for the senior positions within the PPO, a comprehensive training program must be developed. The training curriculum would include classes/certifications in policy development and procedure writing. These training courses would be a pre-requisite when applying for the senior rotating positions in the PPO, with the exception of the first rotation.

### 2.3.3 DGS Organizational Missions

- ◆ FOAM Reference: Finding #30

#### *Findings*

An organization’s mission statement describes its reason for existing and sets its direction. It 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 tasks that are most important. All of

the organization's activities and expenditures of resources should be consistent with its mission.

The following example, developed by the Courtyard by Marriott hotel chain, is a good example of a clear, effective, and powerful mission statement:

To provide economy and quality minded travelers with a premier, moderate priced lodging facility which is consistently perceived as clean, comfortable, well-maintained, and attractive, staffed by friendly, attentive and efficient people.

The following benefits can be realized by organizations with an effective mission statement:

- ***Missions promote unity.*** A well-written and understood mission statement can rally the entire organization around a core reason for being. Focusing on the most important purposes of an organization brings clarity to staff expectations.
- ***Missions help allocate scarce resources.*** No organization has all the resources it could use, whether financial, environmental or human. Resource allocation decisions are among the hardest, but linking those decisions to an organization's mission makes them more reasoned and defensible. This is especially apropos to the budget-constrained California State Government.
- ***Missions help move from ideas to action.*** Undertaking the strategic planning steps of goal setting, developing objectives and defining measures are difficult without a well-defined mission. This applies to the organization as a whole, as well as to subordinate units and individual staff members.
- ***Missions establish culture.*** The culture of an organization emanates from the mission and from its leaders. The effort to modify organizational culture can be daunting, but the acceptance of an organizational mission statement can ease the task and help overcome resistance to these changes.

In order for Procurement Reform to be effective, DGS must have a clearly stated and appropriate mission at the Department level, as well as in each subordinate division or office. A government service organization's mission statement should have the following attributes to be effective:

- Describes the services provided and the standards to be met by the organization in accordance with the authorizing statutes
- Recognizes the customers or beneficiaries of the services
- Includes accountability for performing the services
- Is easily understood by employees and stakeholders
- Describes measurable or observable attributes so that it is clear to all if the mission is being served

It is difficult to include all of the attributes in a short mission statement. Bulleted lists may be used to make the statement more readable.

### The Mission of DGS

Working together, we deliver innovative solutions and services with efficiency, economy and integrity to help our customers succeed.

The DGS mission statement is vague. It does not represent the Department's duty to manage the business functions and services of the State. It should reference some of the main functions that the Department is responsible for, as well as its overall position as the State's business functions and services department.

GC §14600 states; "Department of General Services is created to provide centralized services including, but not limited to, planning, acquisition, construction, and maintenance of state buildings and property; purchasing; printing; architectural services; administrative hearings; and accounting services. The Department of General Services shall develop and enforce policy and procedures and shall institute or cause the institution of those investigations and proceedings as it deems proper to assure effective operation of all functions performed by the department and to conserve the rights and interests of the state."

### The Mission of OLS

The DGS OLS mission, as stated on the DGS Internet site is:

To render legal advice and services on a timely basis at a reasonable cost.

This mission could be improved by making it more specific to the domain within which OLS operates by identifying their customers and areas of expertise. Government Code Section

14610 outlines the duties of the DGS “house legal counsel” as providing advice to “the director, officers, employees, boards, commissions, and offices of the department concerning legal affairs of the department.” The OLS mission ought to reflect the organization’s statutory responsibilities to the Department of General Services.

### The Mission of PD

The mission of the DGS Procurement Division, as per the 2000-2001 strategic plan, is:

Maintaining the Public’s trust, we provide contemporary professional services matching customer needs with leadership, knowledge, and expertise in acquisitions, materials management, records management, supplier relations, and technical services.

This mission does not clearly convey the main functions of the Procurement Division. Conducting procurements, overseeing procurements, setting procurement policy, providing procurement related services, and managing statewide procurement programs ought to be reflected more prominently in the mission statement.

PD has a separate vision statement. Vision statements foretell what the organization wants to become. The vision statement for PD is, “The provider of choice, delivering exceptional business solutions in a dynamic marketplace.” This statement is confusing in that DGS’ primary clients do not have a choice whether or not to use them.

Vision statements for government organizations ought to be in context of the mission. The mission reflects what the organization exists to do and the vision ought to be bound by the mission and address how the organization will perform its mission in the future. The vision ought not foretell of a new future mission, as can be the case in private organizations, because government organizations are creations of statute and cannot determine their own direction.

### ***Recommendations***

- Develop a new mission statement for DGS, derived from statute, to serve as the basis for the subordinate unit mission statements.
- Develop a new mission statement for PD focusing on the unit’s responsibilities to set policy, and oversee and conduct procurements.

- Develop a new mission statement for OLS focusing on the unit's role as the DGS legal advisors.

### 2.3.4 Customer and Supplier Advocate

- ◆ FOAM Reference: Finding #33

#### *Findings*

The role of a customer advocate in government agencies is critical to maintaining good public relations. Because DGS is continuously interacting with suppliers and contractors on material matters in its role of managing the State's purchasing activities, it is critical that the department maintain this function. PCC §10300 calls for DGS to establish a Customer and Supplier Advocate.

§10300. Customer and Vendor Advocate; information for bidding on state contracts; assistance when filing protest on award

(a) A Customer and Supplier Advocate shall be established in the department as a resource to state agencies and departments, and suppliers seeking information regarding the state process, procedures, and regulations for bidding on state contracts, and as a resource to bidders seeking to file a protest on award in accordance with this chapter. The advocate shall, at a minimum, provide the following services to the protesting bidder:

(1) Assistance to customer departments and agencies regarding contracting rules and regulations, and acquisition resource options.

(2) Assistance to the bidder in assessing the validity of the bidder's proposed grounds of filing the protest in accordance with the terms of the solicitation, as well as statutory or regulatory guidelines governing the solicitation in question.

(3) Provision of information to the protesting bidder regarding avenues and options available to the bidder to proceed with a formal protest of the award.

(b) The advocate shall make services, as specified in this section, available on a timely basis to the protesting bidder.

(c) Notification to bidders regarding the availability of services by the advocate shall be included in the solicitation. This notification shall also outline procedures and timelines for bidders who may wish to engage the services of the advocate.

Currently, the Protests and Disputes Section serves in this role. The section reports three levels down from the Deputy Director of PD. This reporting structure is inappropriate for this role. The role requires a level of independence and

executive support that can be achieved only if the unit reports outside of the Procurement Division to the DGS executive management (i.e., Director, Chief Deputy Director).

Furthermore, the protests and disputes function is in the position of participating in the information collecting and decision-making processes for protests. In this role the unit is partially serving as an advocate for DGS relative to the protest complaint. It is improper that the protests and disputes function is one with the vendor advocate function.

The current Protests and Disputes Section is organizationally separate from the Acquisitions Section, but still its placement is too low. Protests and disputes are serious matters. In the course of gathering the case-files and facilitating the decisions, the protest and disputes facilitator ought to have direct access to the executive level of PD. The Deputy Director of PD is the ultimate decision-maker in protests and disputes and as such ought to have direct and unfettered access to the Protests and Disputes Section leader.

### ***Recommendations***

- Change the organizational structure to elevate the Protests and Disputes Section to the executive level of PD.
- Separate the Customer and Supplier Advocate function from the protests and disputes function.
- Create a new Customer and Supplier Advocate function at the DGS executive level, for example, reporting under the Public Affairs Office or as a peer to that office.
- Create a mission or charter for the Customer and Supplier Advocate that complies with the requirements of PCC §10300.