

Executive Summary

The Department of General Services' (DGS) recommendations to the Task Force are designed to strengthen the contracting and procurement processes of the State of California, by improving the quality and openness of the process, and by implementing a set of checks and balances to ensure its integrity.

For each of these guiding principles – higher quality, an open process, and carefully constructed checks and balances – DGS recommends a series of initiatives be undertaken. For each recommendation we have indicated whether it is one that can be accomplished in the near-term (short-term), or if it is a longer-term initiative.

These initiatives are:

HIGH QUALITY

- ❖ DGS should broaden the scope of the Quality Assurance Program so that state agencies¹ conducting any state purchasing are required to do so under authority granted by DGS, including orders placed with contractors holding leveraged procurement instruments established by DGS, such as California Multiple Award Schedules (CMAS) and Master Agreements.
- ❖ DGS should enhance its current process for auditing state agency contracting and procurement transactions. DGS should establish minimum standards that must be met by state agencies to use leveraged procurement instruments on an interim basis, and more stringent standards to achieve higher levels of authority.
- ❖ DGS should develop a uniform set of policies, procedures and processes to apply to all state contracting and procurements to ensure the outcomes are consistent, fair and foster competition.

¹ As used in these recommendations, “state agency” includes all state agencies, departments, officers, offices, commissions, boards, bureaus, institutions, hospitals, training facilities, data centers, or other state entity.

- ❖ DGS should develop and deliver training classes covering the rules governing the use of the various contracting methods and instruments, for state agency personnel with any contracting and procurement responsibilities.
- ❖ DGS should develop and deliver a comprehensive training and certification process for state contracting and procurement officials. Signature authority of individuals at state agencies should be linked to the level of training, experience and proficiency achieved, as should the procurement authority of each state agency.
- ❖ DGS should adopt clear standards of conduct for both contracting officials and vendors, including suspending vendors from doing business with the state in specified circumstances.
- ❖ DGS should continue to meet with industry representatives to help develop model contract terms and conditions that will protect the state's interest, and mitigate risk for all parties.
- ❖ DGS should convene periodic meetings with industry representatives to foster open communication and dialog regarding contracting and procurement policies and procedures.
- ❖ DGS should establish a Customer Advisory Group, to include representatives from both large and small state agencies, to foster open communication and dialog regarding contracting and procurement policies, procedures and practices.

OPEN PROCESS

- ❖ DGS should establish a single point of entry for the processing of contracts for review and approval, regardless of their category (goods, services or information technology (IT²)), and implement an integrated document management system.

² "Information technology", as used in this report, refers to hardware, software and services, including telecommunications.

- ❖ DGS should implement a comprehensive electronic Procurement (eProcurement) system for all state contracts, which will include:
 - Public access to contracting opportunities, as well as historical information
 - Links to online policies and procedures and decision support system and online training
 - Product and pricing comparisons
 - Rules-based approval routing so that no transaction can be issued without appropriate approvals
 - Reverse auctions for commercial off-the-shelf items.
 - Data capture for all transactions, and generation of required reports, eliminating redundant reporting wherever possible.

CHECKS AND BALANCES

- ❖ DGS should begin providing further legal review in all high risk contracting or purchasing transactions.
- ❖ State agencies shall conduct an initial review; apply the high-risk criteria noted in Recommendation #11, and forward to DGS for review and approval, those contracts that meet any of the high-risk criteria.
- ❖ DGS should develop and deliver the necessary training of state agency officials on contract law, regulations, and review requirements, and how to apply the high-risk criteria.
- ❖ DGS should develop electronically based model contract templates with standard terms and conditions for use by state agencies in order to expedite review processes for low risk contracts.
- ❖ Each state agency should designate a single official responsible for all contracting and procurement within the state agency.
- ❖ DGS should authorize individual signature authority for contracting and purchasing officials, based on position held, experience, training and certification.

CONCLUSION

- ❖ On August 20, 2002, DGS should issue a new Management Memo to follow the expiration of Executive Order D-55-02.
- ❖ Continue the provisions of the (Management Memo 02-12) Interim Guidelines, as amended, for up to an additional 90 days, to allow time to begin implementing approved reforms.

RECOMMENDATIONS

HIGH QUALITY

California statutes designate DGS as the control agency responsible for reviewing and approving contracts for services that are executed by state agencies under authority granted in the organic laws that establish the state agency. The statutes also designate DGS as the purchasing agent for the state for goods and IT. All transactions exceeding \$5000 for the acquisition of goods or IT must either be conducted by DGS, or conducted by a state agency under authorization from DGS.

DGS has, with few exceptions, under its Quality Assurance program, authorized many state agencies to conduct procurement transactions valued at up to \$25,000 for goods and up to \$500,000 for IT goods and services, using an informal process that requires competition, but does not require sealed bidding. State agencies apply annually for one or both of these authorizations, and when granted, they are governed by a comprehensive set of guidelines issued by DGS. Statutes require DGS to audit the purchasing programs of state agencies that have been granted purchasing authorization once every three years.

Transactions exceeding a state agency's authorized limits are either forwarded to DGS for processing, or in many instances are acquired directly by state agencies from a vendor that holds a CMAS or Master Agreement established by DGS. In addition, state agencies that do not have purchasing authority in excess of \$5,000 are currently allowed to make purchases using a variety of leveraged procurement instruments issued by DGS, including CMAS schedules and Master Agreements³.

In fiscal year 2000/01, transactions conducted under purchasing authorization from DGS (\$267 million) accounted for about five percent of the over \$7 billion spent on goods and services contracting in California. During the same fiscal year, state

³ The Master Agreement program includes Master Rental Agreements (MRA), Master Purchase Agreements (MPA), Master Service Agreements (MSA), Statewide Commodity Contracts, State Price Schedules, Western States Contracting Alliance contracts, and others.

A theme that has emerged from both public comment and state agencies alike is the need for more training, and the professionalization of the contracting and procurement workforce. Of particular urgency is the need to develop and deliver targeted training to contracting and procurement personnel, on how to deal with some of the complex realities of the contracting process and ensure they are aware of the regulations and policy requirements regarding ethics violations and conflicts of interest.

Over the longer term, more attention must be focused on developing contracting and procurement professionals that are equipped with the knowledge, skills and abilities to engage in complex acquisition activities, such as:

- ❖ advance requirements planning;
- ❖ market research;
- ❖ feasibility studies;
- ❖ developing comprehensive statements of work;
- ❖ developing well-defined and meaningful evaluation and selection criteria, including evaluation of the life-cycle of projects;
- ❖ cost/benefit analysis and return on investment;
- ❖ effective project management including well-defined performance measures and metrics;
- ❖ change management, problem escalation and resolution; and
- ❖ contract close-out with lessons learned.

Perhaps Eva Macial from Robbins Gioia LLC said it best, in testimony to the Task Force on July 12, 2002:

“Without strong acquisition management capabilities the State runs the risk of investing in technology projects that take longer to implement, cost more than anticipated, and deliver less capability than originally promised.”

While Ms. Macial’s statement was directed towards IT projects, the same concepts apply to other types of projects acquired and managed by state agencies.

RECOMMENDATION #4 -- SHORT-TERM IMPLEMENTATION.
DGS should be directed to develop and deliver training classes on the rules governing the use of the various contracting methods and instruments, to state contracting and procurement officials.

Current statutes promote this concept. State agencies are currently required to advertise their solicitations for goods, services and IT exceeding \$5,000 in the CSCR, which can be viewed on DGS' website. In addition, statutes require that state agencies post public notices of intent to award contracts if requested to do so. The CSCR also includes these notices. There is no statutory requirement for state agencies to post a recap of all bids and prices received, so unless a vendor contacts the contracting or purchasing official for that information, it remains unseen, albeit still a public record.

Currently, state agencies are not required to advertise any requirements they hope to fulfill by contracting with a vendor that has a CMAS schedule, or one that holds a Master Agreement, and yet DGS' data shows that over \$1.5 billion was spent during the last fiscal year under these programs. While some of the Master Agreements are awarded to the lowest responsible bidder meeting specifications (in which case there is no need to seek additional competition before placing an order), public testimony clearly points to these transactions as some that should be more openly competed. Reverting to a formal bid process for all requirements would negate the efficiencies and effectiveness of these procurement approaches. Therefore, a new solution is needed, one that is **open** and **effective**.

DGS' CAL-Buy initiative, currently underway, is an electronic procurement system (eProcurement) that would be capable of facilitating online product and pricing comparisons and electronic bidding. Other functions that can be automated (and some already are) include advertising opportunities, postings of notices of intent to award and recaps of bids received. eProcurement systems also typically use workflow technology to automate the approval process so no orders are issued without complying with established, built-in business rules – this functionality is currently available in the CAL-Buy system.

An eProcurement system can easily be designed to include the capability for reverse auctions. This would be especially effective in the CMAS arena. With reverse auctions, the requirement is advertised, and bids are placed online. Everyone can see the prices, but the names of the vendors bidding remain confidential until the bidding (auction) is closed. This technique is one that many states and the federal government have found to be particularly effective with commercial off-the-shelf items with tremendous savings being realized.

One other function eProcurement systems enable is the capability for enhanced oversight and monitoring of the transactions being processed through the system. This is not only an open process necessity, but it helps to ensure and preserve the integrity of the entire contracting and procurement system. Therefore, this procurement approach fosters effective, open competition with enhanced visibility and oversight.

RECOMMENDATION #10 -- LONG-TERM IMPLEMENTATION.
DGS should implement a comprehensive electronic Procurement (eProcurement) system for all state contracts, to include:

- ❖ Public access to contracting opportunities, as well as historical information
- ❖ Links to online policies and procedures and decision support system and online training
- ❖ Product and pricing comparisons
- ❖ Rules-based approval routing so that no transaction can be issued without appropriate approvals
- ❖ Reverse auctions for commercial off-the-shelf items.
- ❖ Data capture for all transactions, and generation of required reports, eliminating redundant reporting wherever possible.

This recommendation will require additional resources to implement.

CHECKS AND BALANCES

Increase Legal Review of Contracts

DGS conducts a legal review of about 5000 services contracts each year, valued at nearly \$5 billion. Statute requires that all contracts must be reviewed unless exempted by DGS. The legislature has currently capped this exemption authority at \$50,000, and DGS currently operates with a \$35,000 exemption level.

IT contracts have received minimal legal review to-date. Due to the potential risk inherent in these transactions, it is essential that the state integrate its legal resources in the IT contracting process.

This becomes a balancing of legal resources versus risk. On complex acquisitions, it may be prudent to include legal participation in the entire process, including planning, document preparation, negotiations and final review. Other transactions might involve contract review only.

Decisions regarding the allocation of legal resources should be based on criteria that include contract value and risk-based criteria, such as complexity, use of non-standard terms or processes, or other criteria established by DGS. These increased responsibilities will require additional legal resources with the requisite training/expertise for more complex IT transactions.

RECOMMENDATION #11 – SHORT-TERM IMPLEMENTATION. DGS should begin providing further legal participation in all high risk contracting or purchasing transactions. Following are the high-risk criteria recommended by DGS:

- ❖ Goods and IT goods contracts over \$500,000
- ❖ IT services contracts over \$200,000
- ❖ Non-IT services contracts over \$50,000
- ❖ All IT large scale system integration projects
- ❖ History of protest or litigation for this or like contracts
- ❖ Public safety
- ❖ Acquisition of unique or specially manufactured goods or services
- ❖ Complex projects
- ❖ Proposed deviation from standard processes or terms and conditions (e.g. advance payments, modification to warranty, indemnity, or liability language, etc.)
- ❖ High profile procurement
- ❖ Potential conflicts of interest
- ❖ Hazardous activity
- ❖ Federal matching funds

The above list is not all-inclusive. DGS may add new criteria, and state agencies can request DGS review of any contract.

RECOMMENDATION #12 – SHORT-TERM IMPLEMENTATION. State agencies shall conduct an initial review; apply the high-risk criteria noted in Recommendation #11, and forward to DGS for review and approval, those contracts that meet any of the high-risk criteria.

CONCLUSION

There are certain areas that require attention to establish appropriate checks and balances, ensure open contracting and procurement processes, and reinforce the integrity of those processes.

The interim guidelines developed in DGS May 28, 2002 Management Memo 02-12, as later amended, provided an excellent framework to review and assess the integrity of the competitive and non-competitive contracting and procurement processes used throughout the State. Many of the interim guidelines, as amended, reflect best practice approaches and should remain in place for a period of up to 90 days as we manage the transition process for the reforms recommended by the Task Force.

RECOMMENDATION #17 – SHORT-TERM
IMPLEMENTATION: DGS should, on August 20, 2002, issue a new Management Memo to follow the expiration of Executive Order D-55-02.

RECOMMENDATION #18 – SHORT-TERM
IMPLEMENTATION: Continue the provisions of the (Management Memo 02-12) Interim Guidelines, as amended, for up to an additional 90 days, to allow time to begin implementing approved reforms.

Approach to the Problem

“Ensure that open and competitive bidding is utilized to the greatest extent possible.”

Governor Gray Davis
Executive Order D-55-02
May 20, 2002

On May 20, 2002, Governor Davis signed Executive Order D-55-02, directing a three-member task force to review the state’s contracting and procurement procedures and recommend any statutory, regulatory or administrative changes necessary to “*ensure that open and competitive bidding is utilized to the greatest extent possible*” by state agencies. The Executive Order also directed the task force to include recommendations regarding any statutory or regulatory changes necessary to ensure adequate oversight of the procurement authority utilized by state agencies.

Members of the Governor’s Task Force on Contracting and Procurement Review (task force) include:

Cliff Allenby, Director
Department of Developmental Services

David Janssen
Chief Administrative Officer
County of Los Angeles

Annette Porini, Chief Deputy Director
Department of Finance
Chairperson

DGS presented to the task force an overview of state contracting and purchasing, including information regarding the interim guidelines for non-competitive bid transactions executed by state agencies.

Representatives from DGS attended all five public meetings held by the task force. Additionally, DGS convened two meetings with state agencies to discuss the issues the task force was asked to address, and obtain feedback from state agencies regarding these issues.

DGS wishes to thank the many individuals that took the time to share their comments in writing. Those comments, along with verbal testimony were all considered as these recommendations were drafted. The public comments submitted are furnished to the Task Force separate from these recommendations.

Many of DGS' recent experiences, including the Joint Legislative Audit Committee hearings, the State Auditor's report⁷ regarding the Oracle enterprise licensing agreement, and the subsequent rescission of that agreement, plus our day-to-day contracting and purchasing experience, also helped shape the recommendations.

Ultimately, DGS' recommendations to the Task Force were focused on aspects of public contracting that will improve the quality and openness of the process, and establish a set of checks and balances to ensure integrity and confidence in the process.

⁷ Report 2001-128, Enterprise Licensing Agreement: The State Failed to Exercise Due Diligence When Contracting With Oracle, Potentially Costing Taxpayers Millions of Dollars, April 16, 2002