

# Small Business Council Sub-Committee - Contracting & Procurement Processes

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## DGS Small Business Council Procurement Processes Committee Minutes

October 27, 2005

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**Committee Attendance** The Department of General Services (DGS) Small Business Council (SBC) Procurement Processes Committee meeting was attended by: Rita Hamilton (Chair); Mariel Dennis (alt. Chair), Rose Schembri, Elisabeth Brinton (Committee Chair), Janet De Zonia, Dave Long (replacing Carl Daly), Rob Porter, Ila Parisek, Kayla Dann, Cheri Shaw

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**Special Guests** The following special guest participated in the SBC meeting:

- Ron Joseph, Director, Department of General Services (DGS)

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**Absent Committee Members** The following members were absent:

- Arlynn Chen, California Department of Veteran Affairs
- Judy Heringer, Department of General Services, Procurement Division
- Deborah Fraga-Decker, Department of General Services, Procurement Division
- Calvin Lucas, C & N Manufacturing
- Randall Martinez, Cordoba Corporation
- Pamela Von Behren Merritt, Department of Technology Services

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**Procurement Processes Committee Meeting**

Elisabeth Brinton welcomed the Committee members, Rob Porter, Janet De Zonia, and reiterated the importance of the committee's work. Elisabeth reviewed the agenda for today's meeting:

1. the purpose of the committee;
2. priority procurement issues consisting of
  - bonding requirements,
  - Master Service Agreements,
  - streamlining/shortening the formal bid process,
  - how to encourage the use of "time and materials" contracts for IT services contracts under \$1 million, and
  - other financial structures with Terms and Conditions that

enable small businesses (in all sectors) to be able to contract with the State;

3. next steps and determining a course of action.

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**Discussion Item:  
Time and Material  
Contracting**

The Committee discussed "time and material" (T&M) contracting. They seem to be disappearing, especially in IT. Trend seems to be that many agencies are treating IT contracts under \$1 million as if they were in the tens of millions of dollars. Small business in the past has seen many opportunities to use T&M contracts, and it has been a useful way to do business with the State because it allows a small business to get paid incrementally upon completion of work without having to wait for a lump sum on long-term contracts. How can we encourage more T&M contracts?

Rita Hamilton asked when does DGS use these types of contracts? Most of the CMAS contracts use it for tasks and deliverables. It doesn't work well for major IT purchases. Mariel Dennis offered her experience with the federal procurement system. The State has a presumption of competitive bids resulting in firm fixed price contracts, occasionally with an escalation provision. Law for goods and IT does not recognize the method of time and materials contracting. There is educational, policy, regulation, constitutional gaps. There is a need to recognize time and labor contracts with specified terms and conditions.

Ila Parisek offered for maintenance contracts, small business could perform a valuable role. They can meet competitive value and the overall 25% objective to allow small business to compete.

Mariel Dennis said the federal government has a streamlined commercial items methodology that might be a good model for the State.

Elisabeth Brinton recommended that a process for putting time and material into the scope of IT including services (under \$1 million) be considered.

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**Discussion Item:  
Bonding**

The committee was concerned because they believe most agencies are requiring bonds even for small projects. Rita provided an information document about various types of bonds and when they were required by statute and the limits of discretion agencies have in requiring bonds or establishing the amount.

Public Contract Code Section 12112 is confusing because it does not address the common situation with IT consulting where most work is done at a State facility and is not "specially manufactured goods". Recommend a clarification be communicated to buyers by policy to distinguish what is a progress payment (payment in advance of services rendered with an amount of the total liability withheld pending satisfactory completion) from payments following completion of phased deliverables. Agencies are confused and think the latter are progress payments and/or they are not allowed.

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**Discussion Item:** The Committee asked for an update on Master Service Agreements (MSA)

**Master Service Agreements (MSA) and CMAS** and CMAS and expressed concerns that they heard they were being eliminated now that the CSSI contracts were being put in place.

Rita Hamilton stated MSAs will continue to be evaluated as they come up for expiration to determine whether the State's needs for a leveraged procurement justify one being created.

One specific MSA for Business and Consulting services expires on October 31, 2005. That contract had 152 suppliers and in the last year, only \$4 million had been purchased from it. The Masters group is conducting a survey of departments to ascertain their requirements and will provide an update to the Committee for the next meeting on whether it would be rebid. Kayla Dann from Masters, will be responsible for managing the RFP. A discussion ensued regarding a timeframe for doing a response to the MSAs, and Elisabeth suggested a timeframe that works with the upcoming holiday schedules. The RFP will be registered on the California State Contracts Register (CSCR). In the interim, until a new MSA is available, departments can use the SB/DVBE Option and CMAS.

CMAS contracts will still be used. Some contracts have 8,000 to 9,000 line items in them. If there are items on California Strategic Sourcing Initiatives (CSSI) also available on CMAS, agencies must use the CSSI contracts. But there are many CMAS that can still be used.

The Committee recognizes that there is pressure on revising CMAS Terms and Conditions, but asks that the State keep in mind what makes sense for the smaller businesses. The MSA and CMAS allow small business to get into the State for business. Small businesses don't have elaborate channels, and the Committee recognizes the receptivity and concerns by the State regarding small business.

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**Action Items**

**The following action items resulted from the Council Discussion:**

1. Rita Hamilton advised there will be an upcoming workshop on CMAS Terms and Conditions, and Elisabeth Brinton will be invited to represent the Small Business Council. Rita Hamilton is hoping to have an interim report to the Committee prior to the upcoming Small Business Council Meeting on December 2, 2005.
2. Rita to coordinate with legal counsel on the progress payments vs. phased deliverables and may assign to internal staff for further action. Status to be reported before the next Council meeting.

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**Public Comment Period**

None were received.

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**Closing Remarks**

The Committee recognized the opportunity to meet with the subject experts from DGS, and welcomes the opportunity to represent small business at the upcoming workshop on Terms and Conditions.

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**Adjournment**

The Council adjourned at 4:35 PM

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**Rita Hamilton  
Deputy Director  
Procurement Division**