



M E M O R A N D U M

Date: May 14, 2001

To: **All Delegated Purchasing Contacts**

From: Delegation Resources Program
Department of General Services
Procurement Division

Subject: **REVISED DELEGATION GUIDELINES - Goods**

The Delegation Guidelines – Goods have been revised and are attached to this memo. Effective on the date of this memo, any other existing guidelines for the purchase of goods up to \$25,000.00 are hereby superceded by these revised guidelines.

These revisions are the outcome of many months of collaborative meetings, research, advice, rewrites and review by the staff of Delegation Resources, the PD buying staff and the buying staff of many departments with delegated purchasing authority. These new guidelines reflect the many issues raised and bring the guidelines current with recent legislation.

It is a condition of the Delegated Purchasing Program that the delegation contact is responsible for assuring that all purchasing staff read and understand the guidelines. Therefore, it is of utmost importance that the delegation contact relay this document and information contained therein to all purchasing staff and pertinent department personnel in a timely manner. We urge you and your staff to review these new guidelines carefully and thoroughly to become familiar with their content and any new requirements.

There are many attachments referenced in the guidelines. Their inclusion is intended to provide assistance to your purchasing program, and we encourage their use. Of importance is Attachment 1, Request for Delegated Purchasing Authority. Any new request, renewal or request for modification to an existing delegation must be submitted on this new request form. Requests submitted in any other manner or format will be returned.

If your department also has expanded and/or special delegated purchasing authority where the purchasing limit exceeds \$25,000.00, you must comply with the requirements contained in the guidelines as attached, except for requirements relating to solicitation rules and limits. Revised guidelines for requirements pertaining to expanded and/or special delegations will be issued shortly.

Should you need assistance regarding your delegation, the new guidelines or the new request form, please contact me directly or Cheri Shaw of my staff at (916) 324-0158. We look forward to working with you to continually improve the quality of the delegated purchasing program.

Judy Heringer, Manager
Acquisition Quality Assurance and
Delegation Resources
(916) 323-9228
judy.heringer@dgs.ca.gov

JH;jh

Attachments

cc: Janice King, Acquisitions Branch Manager, Procurement Division
Jim Hawkins, Department of General Services, Audit Section
Departmental Delegation Holders

DELEGATION GUIDELINES

for

Goods

May, 2001

Prepared by:
Department of General Services
Procurement Division
Delegation Resources Program
www.pd.dgs.ca.gov/

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A. AUTHORITY TO GRANT DELEGATION

The Department of General Services (DGS), Procurement Division (PD) grants this delegation pursuant to the authority set forth in Public Contract Code (PCC) Sections 10308 and 10331-10333.

The ability to process acquisitions under this delegation is a privilege and the department to which this delegation is granted (department) shall be held accountable for awarding transactions based on statutes, policies, procedures, sound business practices and cost effectiveness in the best interest of the State. In its sole discretion, PD reserves the right to amend these guidelines or rescind this delegation at any time.

At present, delegations are granted for a one-year period and must be renewed via formal request in writing, one month prior to expiration of the delegation term. All future renewals or modifications to existing delegations must be requested using the attached Request for Delegated Purchasing Authority, see [Attachment 1](#). The information provided will enhance the delegation program by enabling the program staff to have a clear picture of the state agency's purchasing program.

If a department has been granted an Expanded or Special Delegation for formal competitive bidding, the state agency must adhere to all of the rules and responsibilities granted under this Base Delegation. Expanded and/or Special Delegation Guidelines take precedence only in instances regarding the rules for solicitations, solicitation awards, Business Participation preferences and post-award disputes and protests.

This delegation is granted to a primary office of the department. In the event this authority is sub-delegated to other divisions or offices within the department, responsibility and accountability for the procurement activities conducted under this delegation remains with the primary office/agency officer.

Nothing in these delegation guidelines shall be construed to confer authority for any purpose or reason contrary to any State statute, appropriation, regulation, etc.

B. ROLES AND RESPONSIBILITIES

This section defines the various roles and responsibilities of individuals involved in the procurement process. The department must, at a minimum, designate an agency officer in accordance with Section B.1. and a delegation contact in accordance with Section B.2. Designation of lead staff and/or subordinate purchasing staff is optional, depending on the size and organizational structure of the department.

All staff involved in the procurement process must have the appropriate experience, level of responsibility, and accountability as may be required to ensure department compliance with PCC Section 10333 and these guidelines.

1. AGENCY OFFICER

PCC 10333 states, in part, that every department receiving a delegation must comply with certain conditions. One of those conditions is the designation of an "agency officer who is responsible and directly accountable for the department's purchasing program."

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The primary role of the agency officer is to provide management support of the procurement function; provide staff and budgeting resources necessary to ensure that all staff are properly qualified and trained in all aspects of the procurement process; ensure that the acquisition of goods and certain information technology goods (see definition in Section E.) does not violate or circumvent State law, executive orders, appropriations, regulations or the provisions of these guidelines; and assign the responsibility of a Small Business Advocate to an appropriately qualified staff person.

To maintain the statutory intent of PCC Section 10333, acceptable positions to fulfill the agency officer requirement include secretary or undersecretary, director or deputy director, chief executive officer or assistant chief executive officer, or chief of administration. A department may designate a different position, however such position must meet the statutory intent of the law and PD must be notified in writing. The agency officer may assign responsibility for the department's day-to-day procurement activities to a delegation contact (see Section B.2.). The agency officer will not be relieved of the PCC Section 10333 responsibility.

If a department has more than one type of delegation; i.e. goods both base and/or expanded and special, information technology, etc. the designated agency officer to fulfill this requirement must be the same person for all delegations held by the department.

2. DELEGATION CONTACT

The primary role of the delegation contact is to interface and communicate with PD, the agency officer, and subordinate staff; maintain the department's procurement policies and procedures manual; stay abreast of changes in statutes, policies, and procurement practices; and generally oversee the day-to-day administration of procurement activities.

The delegation contact may assign responsibility for the preparation and approval of procurement transactions to lead staff or purchasing staff, however the delegation contact may not be relieved of the responsibilities required by this delegation.

The delegation contact must report directly to the agency officer. Acceptable positions to fulfill this position include the department's Chief Procurement Officer, Chief of Business Services or Chief of Administration. A department may designate a different position, however such position must be at a level equivalent to those stated above and PD must be notified in writing.

The delegation contact is responsible for the distribution of these guidelines amongst the state agency's purchasing staff and amongst other responsible purchasing entities, notably the state agency's CAL-Card Coordinator.

3. LEAD STAFF

The primary role of lead staff is to interface and communicate with the delegation contact and subordinate staff; oversee sub-delegated purchasing activities in decentralized purchasing locations, such as divisions, field offices, district offices, and other remote locations; serve as a lead and mentor to less experienced purchasing staff; and conduct the more complex delegated transactions. Lead staff must have the appropriate knowledge of procurement laws, policies, procedures, these guidelines, and procurement practices.

Lead staff must have a reporting relationship and/or a clear line of communication with the delegation contact.

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4. PURCHASING STAFF

The primary role of purchasing staff is to carry out the day-to-day procurement functions on behalf of the department. All purchasing staff must have the appropriate knowledge of procurement laws, policies, procedures, these guidelines, and procurement practices.

5. SMALL BUSINESS ADVOCATE

Pursuant to Government Code (GC) Section 14846, departments with an annual contracting program of \$100,000 or more shall establish a Small Business Advocate to act as a liaison for small businesses. The Small Business Advocate shall:

- a. Assure small businesses are advised about pending solicitation and contracting opportunities.
- b. Ensure prompt payment of invoices due to small businesses.

C. REQUIREMENTS OF THE DELEGATION PROGRAM

1. REQUIREMENTS OF PUBLIC CONTRACT CODE SECTION 10333

PCC Section 10333 states, in part, that every department receiving a delegation must comply with certain conditions. The department acknowledges these conditions as stated below and agrees to abide by them during the term of this delegation. Thus, the department will:

- a. Designate an agency officer as responsible and directly accountable for the department's purchasing program (see Section B.1.).
- b. Establish written policies and procedures. These will include procedures for ensuring and documenting competitive purchasing; complying with purchasing standards established pursuant to PCC Section 10307; inspecting purchased products for compliance with specifications; reporting supplier failures to deliver products as specified in purchase orders; ensuring that department purchasing personnel are free from conflict of interest; and complying with other provisions of law as PD may require.
- c. Establish procedures for complying with the provisions of the Small Business Procurement and Contract Act (GC 14835). The procedure shall include direction for meeting the participation goals for small businesses in state procurement as established by PD pursuant to GC Section 14838.
- d. Establish policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.
- e. Report such data to PD as required.

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2. STATUTORY, POLICY, AND PROCEDURAL REQUIREMENTS

In addition to these guidelines, the department is required to adhere to applicable provisions of state law including but not limited to Public Contract Code, Government Code, Military & Veterans Code, Labor Code, Revenue & Taxation Code, Food & Agriculture Code. Other applicable provisions may include federal law, regulations, policies, procedures, and procurement practices, including the State Administrative Manual (SAM) and the California Acquisition Manual (CAM). The Procurement Division's publications, "Excerpts of California Codes Relating to State Purchasing" (**Attachment 2**) and "Summary of Statutory and Policy Requirements for State Contracts" (**Attachment 3**) are attached for your information and reference.

3. AMERICANS WITH DISABILITIES ACT REQUIREMENT

Acquisitions conducted under this delegation are subject to the Americans with Disabilities Act (ADA). To comply with the non-discrimination requirements of the ADA, it is the policy of the State to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing a reasonable accommodation to participate in the procurement process, or for persons having questions about reasonable accommodation, the delegated department's ADA Coordinator must be available to assist and respond to such requests or questions. These contacts must be shared with the Procurement Division ADA Coordinator in accordance with the Disability Advisory Committee reporting requirements.

4. ADDITIONAL APPROVAL REQUIREMENTS

If any other approvals to purchase are required, such as DGS Fleet Administration, DGS Telecommunications, DGS Office of State Publishing, DGS Real Estate Services Division, Prison Industry Authority, Department of Information Technology, Department of Finance or any other internal approval required by a delegated department, such approvals are in addition to this delegation. It is the department's responsibility to maintain evidence in the procurement files that appropriate approvals were obtained prior to contracting.

5. PROMPT PAYMENT REQUIREMENTS

The department shall establish procedures for complying with the provisions of the California Prompt Payment Act (the Act), GC 927, et.seq. Paraphrased, this code says that unless expressly exempted by statute, the Act requires state agencies to pay properly submitted undisputed invoices in accordance with the contract. Payment will be made not more than 45 days after the later of (a) the date of acceptance of goods or performance of services or (b) receipt of an undisputed invoice. The Act also requires state agencies to automatically authorize the payment of penalties whenever an undisputed invoice is not paid within these timeframes. Visit PD's internet site for more information.

6. CONFLICT OF INTEREST STATEMENTS

The department must maintain signed conflict of interest certifications for every staff person involved in the procurement process. "Involved in the procurement process" is defined as soliciting bids, preparing requisition requests, preparing purchase documents, approving purchase orders, receiving goods, and approving payment. The certification must reference and/or include GC Section 19990. The department may use its own certification document such as incompatible activity statement, ethics statement, conflict of interest statement or they

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may use the sample conflict of interest statement included with these guidelines ([Attachment 4](#)). An employee must certify only once during his/her tenure with the department. Certifications must be available for review in accordance with Section C.7.

7. PERIODIC COMPLIANCE REVIEWS

As required by PCC Sections 10331 and 10333(b), PD will conduct a review of the department's delegated purchasing program every three (3) years or more often as warranted by the most recent compliance review. The compliance review will encompass, as applicable, a review of:

- Selected delegated purchasing authority transactions
- Purchases outside this delegation authority as follows:
 - Orders placed against PD's leveraged contracts, including
 - CMAS
 - Master Agreements
 - Statewide Contracts
 - State Price Schedules
 - Western States Contract Alliance (WSCA)
 - Transactions with Prison Industry Authority
- Transactions utilizing CAL-Card as the payment mechanism

The review will provide the department with an assessment of the strengths and weaknesses of its purchasing program, as well as guidance to assist the department in maintaining compliance with the delegation guidelines and developing a high level of quality purchasing expertise.

Each department must maintain complete and accessible procurement files that include all appropriate documentation. If the department's acquisition program is decentralized (i.e. divisions, field offices, district offices), PD may request that purchase files be available in a central location for PD review. If the findings of a compliance review prove to be unsatisfactory, PD may impose the following actions (or any combination thereof) at PD's sole discretion:

- a. Exercise closer supervision over the department's purchasing delegation program
- b. Impose additional quality assurance or quality control methods and procedures
- c. Withdraw exemptions or delegated purchasing authority previously granted
- d. Restrict the department's authority to administer contracts or execute amendments
- e. Take other actions determined to be appropriate for the circumstances

D. RESOURCES AVAILABLE THROUGH PD

The PD is instrumental in connecting the supplier/seller community with buyers for goods and services that the State needs to carry out the mission of its departments. Within the PD, the Business Development Unit (BDU) acts as a "clearinghouse" for information regarding all aspects of the PD that a department may need, (i.e., who to contact within PD, special procurement events, the California State Contracts Register program, etc). The BDU is PD's point of contact for fielding these types of questions. The Delegation Resources Program is available to assist the department with all aspects of managing its delegated purchasing program is available to consult with on any of your questions or concerns.

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Many of the resources noted in these guidelines, as well as other valuable information, are available on PD's Internet site. A directory of all internet addresses and telephone numbers referenced in these guidelines is attached ([Attachment 5](#)).

E. SCOPE OF DELEGATION

This delegation is intended for the acquisition of non-information technology goods without restriction to the nature of those goods unless otherwise noted in this document. Certain information technology goods defined as incidental, such as cables or other peripheral type connection equipment, memory upgrades, occasional purchases of shrink-wrap software and personal computers that do not exceed the Department of Information Technology certification requirements may be purchased under this delegated authority in accordance with these guidelines.

1. DELEGATION LIMITS

The maximum amount of this delegation is \$25,000.00 (excluding sales and use tax, shipping, postage, and handling) per transaction for all goods with no annual limitations. "Per transaction" means the aggregate total per Contract Delegation Purchase Order (Std. 65) (CDPO), including any amendments, but without sales and use tax, shipping, postage, and handling. Transactions must not be split for the purpose of circumventing these limits.

Although the department has the ability to contract up to \$25,000.00 per transaction, PD will, upon the department's request, process any Purchase Estimate (Std 66) for any amount submitted by the department.

The maximum amount of this delegation increases to \$99,999.99 for purchases made under the provisions of GC Section 14838.5 (a) and (b). This provision allows state agencies to award contracts of \$5,000.01 to \$99,999.99 to certified small businesses, provided the department has obtained price quotations from at least two responsible and responsive certified small businesses and made the award to one of the certified small businesses. (See Section H.1 for more information.)

2. SPLITTING ORDERS

PCC 10329 states that "no person shall willfully split a single transaction into a series of transactions for the purpose of evading the bidding requirements of this article". A department may also not split an order to circumvent the limits of its delegated purchasing authority. Periodic replenishment of consumable supplies is not considered splitting an order.

3. ORDERS EXCEEDING THE DELEGATION LIMITS

Acquisitions valued at more than \$25,000.00 (excluding taxes, shipping, etc.) per transaction shall continue to be processed by submitting the request on a Purchase Estimate (Std. 66) to PD, unless an expanded or special delegation authority has been issued by the Delegation Resources Program or the acquisition is made under the authority of GC Section 14838.5 (see Section E.1.).

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4. EMERGENCY ORDERS

PCC Section 1102 defines emergency as “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”. In the event of an emergency as described herein, departments may undertake the necessary actions to save lives and property. If it is impractical or impossible to contact the PD prior to obtaining the item(s), the department must notify PD within five (5) days of the action with the information described below to obtain a Form 42 in order to process the invoice (see CAM 3.2.7).

If the event cannot be described in these terms, the department must request PD approval to exceed its delegated purchasing authority for emergency purposes and must obtain bids from a minimum of two suppliers and prepare a CDPO for award to the low bidder. The department must submit the CDPO, all relevant documentation, and a justification to PD for consideration and approval. The justification must include the following information:

- Description of the emergency
- Explanation of why the situation warrants an emergency purchase
- Explanation of the consequence of making the acquisition through the normal competitive process
- Provide a description of the goods and price
- Provide the names and quotations of other suppliers contacted
- Provide the name of the intended supplier

If the purchase is authorized, PD will issue an Authorization to Exceed Monetary Limits, Form 42, and provide the department with a copy. The department must enter the Form 42 number (F42-XXXX) in the “Contract/Delegation Number” box on the CDPO. This number identifies the CDPO as an authorized transaction to the State Controller’s Office. For more information, contact PD’s One-Time Acquisitions Section.

5. SERVICES vs. GOODS

The department’s delegated purchasing authority is for the acquisition of goods only (including the occasional purchase of information technology goods as described in Section E. above). To determine if a transaction is for the acquisition of goods or services, the following criteria may be useful:

- a. Does the contract have as its sole or main purpose the acquisition of tangible items, such as equipment, parts, supplies or other merchandise?
- b. What is the main value of the contract - the good or the service? If the main value is the service, the transaction should be treated as a service contract and be acquired under the guidelines of PCC Section 10335, SAM 1200, and the State Contracting Manual (SCM).

Example: A contract for painting includes purchase of the paint, but the main value of the contract is the application of the paint. This would be a personal service contract.

For more information regarding the purchase of non-information technology services, contact DGS’ Office of Legal Services. For more information regarding the purchase of non-delegated information technology services, contact PD’s Technology Acquisitions Section.

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6. USE OF CAL-CARD AND DELEGATED AUTHORITY

Any department with delegated purchasing authority may apply to participate in the State's CAL-Card Purchase Card Program. The CAL-Card is a payment method, not a procurement method. Use of the CAL-Card does NOT preclude the requirement to follow all acquisition rules and delegation guidelines (see Section F.). The department's delegation contact is responsible for distributing the Delegation Guidelines to the CAL-Card Coordinator and is the responsible party for questions related to the departments purchasing program. For more information regarding CAL-Card responsibilities, contact PD's CAL-Card Program.

7. PURCHASES OUTSIDE THIS DELEGATION

Specific types of purchases are outside the scope of this delegation. Those specific types of purchases are as follows:

- a. Purchases Conducted Under PD Oversight. Do not use the department's delegated purchasing authority to make purchases against the separate procurement authorities as described below. As applicable, the relevant contract number must be entered in the Contract/Delegation Number box on the CDPO instead. Prison Industry Authority orders do not require a contract/delegation number; the PIA name in the supplier box is sufficient identification. The department may request delegated purchasing authority for the purchase of information technology goods and services by contacting the Delegation Resources Program. The department may request expanded or special delegated purchasing authority for goods by contacting the Delegation Resources Program. These purchases include, but are not limited to:
 - Purchases that exceed this delegated purchasing authority of \$25,000.
 - Information technology goods and services, except goods as described in Section E.
 - California Multiple Award Schedule (CMAS) Orders.
 - Master Agreement Orders.
 - Master Purchase Agreement orders (including Prime Food contract and California Computer Store orders).
 - Master Rental Agreement orders.
 - Master Service Agreement orders.
 - Statewide Contract orders (including "just in time" contracts with Office Depot and Grainger).
 - State Price Schedule orders.
 - Western States Contracting Alliance (WSCA) orders.
 - Prison Industry Authority orders.
- b. Purchases Conducted Under Other Authority. Do not use the departments delegated purchasing authority to make these types of purchases. PD does not have oversight authority over these purchases.
 - Goods valued at \$100.00 or less. Departments have statutory authority to purchase goods valued at \$100.00 or less without DGS oversight, (see PCC 10308).
 - Services. DGS' Office of Legal Services has oversight over the purchase of services, except information technology services.
 - Goods and/or services for public works. "Public Works" is defined in the PCC 1101 as an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road or other public improvement of any kind. (See the SCM).

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- Memberships in professional organizations for represented and non-represented employees. For more information, contact the departments labor relations officer.
- Departmental memberships in professional organizations. For more information, contact DGS' Office of Legal Services.

8. PRINTING ACQUISITIONS

The Office of State Publishing (OSP) has declared printing to be a “non-mandated” OSP service. PD encourages the use of the services of OSP or the department may conduct its own acquisitions for custom printing acquisitions under this delegation. Any purchases for custom printed materials including envelopes, publications, forms, brochures, labels, pamphlets or booklets beyond the department’s delegation limits must be processed on a Printing Requisition (Std. 67) through OSP. Note that this is not the Purchase Estimate (Std 66).

OSP has published a manual to assist agencies with procurement of printed material. The OSP Printing Procurement Manual is available from DGS' Office of State Publishing.

Acquisitions beyond the department’s delegation limit for products that are NOT PRINTED, such as blank envelopes and blank continuous computer paper must continue to be processed through PD on a Purchase Estimate (Std. 66) (see [Attachment 6](#)) unless available on a statewide contract.

F. **PROCUREMENT STANDARDS**

1. RULES FOR ACHIEVING COMPETITION

a. Acquisitions Valued at Less Than \$5,000.00

Competition is always the preferred method of acquisition. However, in accordance with GC Section 14838.5, effective January 1, 2001, agencies may acquire goods valued at less than \$5,000.00 per transaction without competition or extensive file documentation, see Section F.2.b.(6) for minimum requirements. The department is strongly advised to seek competition whenever reasonable pricing cannot be determined or the department anticipates a degree of risk that could be better controlled through competition.

b. Acquisitions Valued at \$5,000.00 to \$25,000.00

Competitive solicitations conducted under this delegation are considered “informal”. This means that the solicitation may be conducted in writing, via telephone, fax, electronically or by other means. The discussion that follows describes the number of bidders required to determine effective competition:

- (1) To determine that “competition” has been effective, bids must be received from at least two responsive and responsible bidders. For a definition of “responsive” and “responsible” refer to the California Acquisition Manual (CAM) Chapter 3.5.4. However, to establish a competitive range, more than two bids are desirable. A response of “no-bid” shall not be considered as receiving a bid. When two or more bids are received that are responsive and the lowest bidder is deemed responsible, the department may proceed with the award.
- (2) It is recognized that the attempt to achieve a competitive result may not always provide two responsive and responsible bidders due to a variety of circumstances. In such cases, the following procedure(s) shall apply and the file must be documented with the business case and result:

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(a) Competition results in no responsive, responsible bids received

If this occurs, the buyer has two options:

Option 1. The solicitation may be cancelled and re-bid, modifying any possible restrictive requirements. The buyer should also consider methods to broaden the number of potential suppliers.

OR

Option 2. If, in the opinion of the buyer, a second solicitation would not result in a different outcome, the buyer may cancel the solicitation and proceed with a sole source award, following the procedures outlined in Section G.4. To determine which supplier should be selected as a sole source, the proposed supplier's bid must be substantially technically compliant/responsive with the specifications and the supplier must be deemed responsible.

(b) Competition results in only one responsive bid from a responsible supplier even though multiple bids were received

If this occurs, a buyer may declare that competition has been achieved under the following conditions after carefully considering all factors of the situation (risk, urgency, and impact to their program).

- (i) Non-participation due to the State's socio-economic requirements. The buyer must document the procurement file with the reasons why only one responsive bid was received. The buyer will likely have to request this information from bidders who were initially responded to the solicitation announcement. If non-participation was due to the state's statutory requirements such as DVBE, Small Business, etc., this information shall be incorporated into the documentation. The file must also be documented with the evaluation of other bidders who were determined to be non-responsive or responsible. Then, after carefully documenting the rationale, the buyer may proceed with the award.
- (ii) Non-participation due to concerns with the bid specifications. If this occurs the buyer should consider three options:

Option 1. If the specification(s) in question are not unnecessarily restrictive, the buyer may proceed with award after documenting the file with the rationale used for determination.

OR

Option 2. If the specification(s) in question is determined to be unnecessarily restricted to one supplier's product(s), the solicitation may be cancelled and a new solicitation developed modifying the specification(s) as necessary to facilitate fair competition.

OR

Option 3. If the specification(s) and or requirement(s) in question is determined to be unique to one supplier's product(s) AND the department determines that only that product(s) meets the department's needs, the buyer must document the file that this solicitation has been determined to be a sole source and may proceed with the award, following the procedures outlined in Section G.4.

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2. SOLICITATION CREATION AND EVALUATION

a. Acquisitions Valued at Less Than \$5,000.00

While solicitations are not required for these transactions, the department is encouraged to do so when considering unknown pricing and unique risk factors. If determined to be necessary, the department should use the same criteria when creating and evaluating these solicitations as for transactions \$5,000.00 and greater.

b. Acquisitions Valued at \$5,000.00 to \$25,000.00

Solicitations for these informal acquisitions may be conducted in writing, by telephone, by fax or by other means. When conducting a solicitation by telephone, the department should write a "script" or narrative of what the bid entails so that each bidder is informed equally. To maximize competition, it is recommended that solicitations be advertised in the California State Contracts Register (CSCR) maintained by PD and available on PD's Internet site.

- (1) Bid Lists. The department should develop a variety of avenues for finding potential suppliers, establishing bidder's lists, and varying the use of bidders. The department should also make a concerted effort to solicit certified small businesses (SB's) and disabled veteran-owned business enterprises (DVBE's). Solicitations may be advertised on the CSCR as PD no longer maintains bid lists. Contact the CSCR for instructions on how to advertise solicitations on the PD Internet site and/or the Delegation Resources Program for further information.
- (2) Samples. The practice of obtaining samples from suppliers prior to contract award is not recommended, unless it is a requirement of the solicitation process. If items are needed for review prior to award for demonstration or pre-purchase testing, the solicitation must so state and noted with the information that the State is not obligated for the cost of the items or for their return. Be extremely cautious that the solicitation response does not contain terms or conditions that would result in the automatic purchase of the item(s) being tested.
- (3) Bidders Instructions. To adequately protect the State, it is required that all written solicitations valued at \$5,000.00 or more include the current Bidder's Instructions (GSPD-451, Rev. 1-1-01 or later revision) (**Attachment 7**). Deletion or alteration of any instruction(s) may not occur without first consulting with PD. Updated versions of the Bidder's Instructions will be posted periodically and are available for printing on PD's internet site. The department may add any additional bidder instructions as may be required to suit the special needs of an individual solicitation.
- (4) General Provisions. To adequately protect the State, all solicitations valued at \$5,000.00 or more must include the current General Provisions (GSPD-401, Rev. 1-1-01 or later revision) (**Attachment 8**). The General Provisions may be incorporated into solicitations by reference to PD's internet site. The General Provisions may be modified in certain instances (see the General Provisions Summary on PD's internet site). These modifications should be included as Special Provisions and referenced as such on the CDPO. Any addition, deletion or alteration of any provision may not occur without prior approval by the department's internal legal counsel OR in the absence of such legal counsel, PD's Contract Negotiation Manager. Evidence of legal review and approval must be maintained in the procurement file. Updated versions of the General Provisions will be posted periodically and are available for printing on the PD Internet site.

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- (5) Bid Evaluation. Attached is a suggested format for a “Bid/Quote Worksheet” ([Attachment 9](#)) to use to document the quotations received. This worksheet will facilitate easy compilation and evaluation of quotations received and will assist in final selection. If another supplier, other than the lowest responsible bidder meeting specifications is selected for award, documentation must be included in the procurement file explaining why a lower bid was rejected, and how and why the selection was made.
- (6) File Documentation. Regardless of the solicitation method used, the procurement file must contain the solicitation documentation or the written solicitation that includes all the requirements, the name and address of each supplier contacted, the amount of each supplier’s quote, and the date the supplier was contacted.

3. PURCHASE ORDER/CONTRACT CREATION

- a. Contract/Delegation Purchase Order (CDPO) (Std 65). All purchase orders prepared using this delegation will use the CDPO (Rev. 12/00 or later revision) ([Attachment 10](#)). Where necessary, the department may create its own form as a substitute version so long as the substitute is identical in every detail to the pre-printed form. The CDPO includes elements designed to capture the department’s delegation number, agency bill code, information technology project identification number, supplier identification number, and other information important to PD’s management of the statewide acquisition program. The delegation number also informs the State Controller’s Office that the CDPO does not require DGS approval. Creation of a substitute version that is not identical in every detail to the pre-printed form must be submitted to PD’s Delegation Resources Program for review and approval, prior to use.
- b. Unique Numbering. To avoid duplicate billings by PD and incorrect supplier invoicing, the department’s agency order number must be unique from transaction to transaction and from year to year (i.e. 00-001, 00-002, 00-003, etc., “00” representing the fiscal year of issue).
- c. General Provisions. To adequately protect the State, all orders of \$5,000.00 or more must include the current General Provisions (1-1-01 version or later revision) and may be incorporated into solicitations and contracts by reference to PD’s internet site. This reference is included as a “check mark” box on the CDPO (1/1/01 version). The General Provisions may be modified in certain instances (see the General Provisions Summary on PD’s internet site). These modifications should be included as Special Provisions and referenced as such on the CDPO. Any addition, deletion or alteration of any provision may not occur without prior approval by the department’s internal legal counsel OR in the absence of such legal counsel, PD’s Contract Negotiation Manager. Evidence of legal review and approval must be maintained in the procurement file. Updated versions of the General Provisions will be posted periodically and are available for printing on the PD Internet site.

Orders with a value less than \$5,000.00 may include the General Provisions at the department’s discretion. However, we suggest that the department use this discretion wisely and consider risk carefully when determining that the General Provisions need not be included. If the General Provisions are not included, the department must, at a minimum, include the individual clauses required by statute, see [Attachment 3](#).

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- d. Corporations Qualified to do Business in California. It is the responsibility of each department to verify that a corporation is qualified to do business in California. Verification can be made through the Secretary of State. The procurement file must be documented with this information.

- e. Amendments and Changes. If the purchase order was the result of a competitive solicitation, the unit price may not be increased unless specifically allowed in the original solicitation and evaluated for award. If, however, other conditions cause the need to alter a transaction after the original purchase order has been issued, the following guidelines apply:
 - (1) Issue an amended purchase order using the original purchase order number and noting "Amendment No. 1" (or document subsequent numbers as applicable).

 - (2) The amended order should detail the specific change (i.e., increase or decrease in quantity, corrected model number, revised delivery date, change in delivery location, changes to contract language, etc.).

 - (3) If the total amount of the purchase order is being altered, show the original amount, the amount of the change, and the new total. However, do not process an amendment that will cause the contract total to exceed the delegation transaction limit, unless approved in advance by Delegation Resources.

 - (4) The amendment must be reported in accordance with Section J of these guidelines, making sure that only the amount of the amendment is reported.

G. OTHER PROCUREMENT STANDARDS, INCLUDING SOLE SOURCE

The procurement standards contained in Sections G.1 through G.4 must be developed through the solicitation process and must be used in conjunction with the competitive strategies outlined in F.1 above. **Competitive bidding shall be the method of choice for all procurement transactions of \$5,000.01 or more.** However, when it is determined that none of these strategies are capable of producing competition, the sole source process may be applied as outlined in section G.4.

1. PRE-DETERMINED SUPPLIERS AND/OR PRODUCTS

- a. If the department determines that only certain suppliers and/or products can meet its needs, a competitive bid can be conducted soliciting only those pre-determined suppliers or products under this delegation without prior approval from PD. Examples of acceptable types of pre-determination include suppliers of certain goods authorized or certified by a manufacturer or goods of a specific make and/or model needed to meet the state's need.

- b. When a competitive bid is conducted using pre-determined suppliers and/or products, the procurement file must be appropriately documented with the details of the business need, why other suppliers and/or products will not meet the need, and how the proposed suppliers and/or products were determined.

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2. TERM PURCHASE CONTRACTS

A "Term Purchase Contract" is defined as the establishment of an acquisition mechanism for a specified period of time, for a specified list of products and quantities for items a department acquires on a routine basis. Prior to establishing a term purchase contract, first consider using statewide master contracts and/or California Multiple Award Schedules (CMAS). The following conditions apply to these transactions:

- a. A competitive solicitation must be conducted to establish a term purchase contract whenever the dollar amount is expected to be \$5,000.00 or greater.
- b. The solicitation must clearly state the start and end dates of the contract, but in no event may it exceed one year.
- c. The solicitation must clearly state the aggregate amount of the contract, but in no event may it exceed \$25,000.00. Neither the contract, nor the cumulative value of orders released against the contract may exceed the amount of this delegation.
- d. The solicitation must clearly state a maximum number of units that may be purchased (i.e., 10 units will be purchased upon award, and the department reserves the right to purchase up to 10 more units during the term of this agreement). Note that evaluation and award must be based on the total anticipated quantities per line item to be purchased during the term of the contract (i.e., in the example above, evaluation and award would be made on 20 units). The department is cautioned against making commitments to a certain number of items, unless it is prepared to meet that commitment.
- e. The solicitation must clearly define how unit pricing will be treated over the course of the contract (i.e., is the unit pricing firm for the term or are provisions included in the solicitation that allow for unit price increase or decrease).
- f. The department must keep a running total of orders placed against each term purchase contract in the file documentation for accountability purposes.

These are only a few of the issues that must be addressed when conducting a competitive solicitation for a term purchase contract. It is strongly recommended the department contact PD's Delegation Resources Program for assistance in conducting these types of solicitations.

3. BLANKET PURCHASE ORDER

A Blanket Purchase Order is defined as an acquisition mechanism established for no longer than one year with one supplier where the quantities of specific products are not known. In these cases, the department has determined that a group of goods from a specified supplier are necessary to the program, but the department must be flexible when determining the instant need. In no case may a blanket purchase order exceed \$5,000.00 per transaction. The department must keep a copy of each order placed against each blanket purchase order.

4. SOLE SOURCE ACQUISITIONS

This delegation includes the authority to purchase goods using sole source methodology whenever the business case supports no competition.

- a. Acquisitions Valued at Less Than \$5,000.00. Purchases less than \$5,000.00 need not be approved or documented as sole source purchases. However, the reasonableness of the price obtained for these transactions must be included in the file documentation.

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- b. Acquisitions Valued at \$5,000.00 to \$25,000.00. Competition is always encouraged, however acquisitions valued at \$5,000.00 to \$25,000.00 (excluding tax, shipping, postage, handling, etc.) may be acquired without competitive bidding or prior approval from PD. A sole source justification that documents the business case must be included in the transaction file. Attached is the required form ("Sole Source Justification", **Attachment 11** [Word](#) [PDF](#)) to document these types of transactions.
- c. Reporting. Sole source transactions valued at \$5,000.00 to \$25,000.00 and approved by the department must be reported to the Delegation Resources Program. The department will report these transactions by submitting a copy of the CDPO and the Sole Source Justification to PD on a quarterly basis. Reports are due by the 10th of the month following the last day of the quarter, as follows:
 - First Quarter Report for the period January 1 through March 31 is due April 10.
 - Second Quarter Report for the period April 1 through June 30 is due July 10.
 - Third Quarter Report for the period July 1 to September 30 is due October 10.
 - Fourth Quarter Report for the period October 1 through December 31 is due January 10.The department must use PD's Sole Source Report (**Attachment 12**), when submitting the sole source transactions to PD. The sole source reporting required by this section is in addition to the transaction reporting required by Section J.
- d. Sole Source Privilege. The department is reminded that the ability to process sole source acquisitions under this delegation is a privilege which has attached to it a high level of accountability. Abuse of this privilege may result in suspension or revocation of the department's authority to process sole source acquisitions under this delegation.
- e. Agency Secretary Approval. All requirements of Management Memo 96-16 and Executive Order W-103-94 must be adhered to when processing sole source acquisitions.
- f. Proprietary Software. Proprietary, shrink-wrapped commercial off-the-shelf (COTS) software MUST be competitively bid.

H. BUSINESS PARTICIPATION PROGRAM REQUIREMENTS

1. SMALL BUSINESS

- a. Opportunity. Pursuant to the Small Business Procurement Contract Act (GC Sections 14835 through 14843), all departments must offer procurement opportunities to small businesses whenever possible. When establishing bidder lists, make efforts to seek out and include certified small businesses. The department may contact PD's Office of Small Business Certification and Resources (OSBCR) or PD's Small Business Opportunity Program for additional assistance.
- b. Preference. All departments must offer a 5 percent preference to certified small businesses whenever conducting a competitive solicitation, except when conducted under GC 14838.5. To apply the preference, 5 percent of the low net non-small business bid is subtracted from the low net certified small business bid. If this calculation causes the certified small business bid to be lower than the non-small business bid, then the award may be made to the certified small business if it is compliant with all other requirements. It is important to note that application of this preference is for evaluation purposes only and does not change the actual amounts bid by any supplier. However, the file should be documented with the calculation that follows so that any person can ascertain how the award was made.

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Example:

Supplier A – Non-Small Business	Supplier B – Certified Small Business
\$12,500.00 Low Net Bid	\$13,000.00 Low Net Bid
X .05 Preference Factor	- 625.00
= \$ 625.00	\$12,375.00

\$12,375.00 is less than \$12,500.00 so in this case the award would be made to the Certified Small Business (assuming all other conditions of the solicitation have been met).

- c. Increased Opportunity for Small Businesses. Pursuant to GC Section 14838.5(a) and (b), State agencies may award contracts of \$5,000.01 to \$99,999.99 for goods, services or information technology goods and/or services to **certified small businesses**. In order to do so, departments must have obtained price quotations from at least two responsible and responsive certified small businesses and make the award to one of the certified small businesses. The Public Contract Code requirements for advertising (for services solicitations) and for furnishing a copy of the solicitation to all suppliers on the DGS pre-qualified bidders list do not apply to these transactions. Departments must verify a small business' eligibility by contacting OSBCR's internet site and printing the data for documenting the procurement file or stating certification eligibility if verifying by telephone. Proof of eligibility must be maintained in the purchase file for all transactions issued under this authority. GC Section 14838.5 authority may not be used if a bid is obtained from any supplier other than a certified small business.
- d. Annual Goal. GC Section 14838 requires DGS to establish goals for certified small business participation. Therefore, as a condition of this delegation, the department **must** make a concerted effort to award a minimum of 25 percent of total annual expenditures to certified small businesses.
- e. Reporting. The department must report small business participation information to the DGS Business Management Unit annually by August 1st.

2. DISABLED VETERAN-OWNED BUSINESS

- a. Annual Goal. Pursuant to PCC Section 10115, every department shall have an annual statewide participation goal of not less than 3 percent for disabled veteran-owned business enterprises. The department director or designee has the discretion to exempt individual transactions from the goal; however, the annual goal still applies.
- b. Solicitation Language. Language that complies with the Disabled Veteran Business Enterprise (DVBE) Participation Program must be included in solicitations as selected by the department. The department may use DGS solicitation language or language developed pursuant to regulations adopted by the department's administration. The language used must include the option for suppliers to submit a Business Utilization Plan to PD for approval as permitted by PCC Section 10115.15.
- c. Reporting. The department must report disabled veteran-owned business enterprise participation to the Governor, Legislature, OSBCR and Department of Veterans Affairs annually by January 1.

3. RECYCLED PRODUCTS

- a. Utilization. PCC Section 12150, et. seq. requires agencies to utilize Recycled Content Products (RCP). The current percentage requirements of specific types of goods in which recycled content products must be purchased are outlined in Management Memo (MM) 99-01. This MM will be revised shortly, however the percentage requirements remain in effect. A minimum of 50 percent of purchases in ten of the eleven targeted groups must be products meeting the requirements of an RCP. The exception is "fine printing and

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writing paper” which has a requirement of 25 percent (DGS divisions have a requirement of 40 percent).

- b. Preference. PCC Sections 12162(c) and 12205(b) require all state agencies to grant a preference to suppliers offering RCP’s. In cooperation with the Integrated Waste Management Board, DGS has established a preference of 5 percent for all categories, except fine printing and writing paper that has a 10 percent preference. To apply the preference, 5 percent (or 10 percent) of the low net non-RCP supplier’s bid is subtracted from the low net RCP supplier’s bid. If this calculation causes the RCP supplier’s bid to be lower than the non-RCP supplier’s bid, then the award can be made to the RCP supplier if he/she is compliant with all other requirements. It is important to note that application of this preference is for evaluation purposes only and does not change the actual amounts bid by any supplier.

Example:

Supplier A – Non-RCP Supplier	Supplier B – RCP Supplier
\$12,500.00 Low Net Bid	\$13,000.00 Low Net Bid
<u>X</u> .05 Preference Factor	<u>- 625.00</u>
= \$ 625.00	\$12,375.00

\$12,375.00 is less than \$12,500.00 so the award would be made to the RCP supplier (if all other conditions of the solicitation have been met).

- c. Certification. All purchases of products in the targeted categories must include a certification by the supplier as to the content percentage. The required language is as follows:

“Contractor hereby certifies under penalty of perjury that (enter value or zero here) percent of the materials, goods or supplies offered, or products used in the performance of this contract meets or exceeds the minimum percentage of recycled material as defined in Sections 12161 and 12200 of the Public Contract Code.”

- d. Reporting. Agencies are required to annually report purchases of RCP’s and non-RCP’s in the targeted groups to the California Integrated Waste Management Board.

I. POST-AWARD DISPUTES

If a post-award dispute between the department and a supplier arises, the department shall deal in good faith and attempt to resolve potential disputes informally. Suppliers should state their disputes in writing, including all facts of the dispute, and submit it to the Department Director or designee. The Department Director or designee shall review the matter and render a final decision in a timely manner. If the supplier is not satisfied with the final decision, the matter may be referred to PD’s Protest and Dispute Resolution Unit for final resolution.

J. REPORTING

- 1. All transactions prepared under this delegation must be reported to PD in one of the following manners:

Option 1. The department may create CDPOs directly in the Procurement Information Network (PIN) System.

OR

Option 2. Forward a copy of each CDPO to PD. It is important that copies are clear, legible and complete in every detail. Orders must be batched together for each reporting period and forwarded to the Procurement Division, Business Management Section, Data Capture Unit, 1823 – 14th Street, Sacramento, CA 95814, on a monthly basis. Copies must be forwarded by

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the tenth day following each monthly period (i.e. submit by the 10th day of April for the March reporting period).

OR

Option 3. Forward a copy of the monthly summary report of activity conducted under this delegation authority. Forward reports to Procurement Division, Business Management Section, Data Capture Unit, 1823 14th Street, Sacramento, CA 95814. This report must include all data elements as in the attached report format (**Attachment 13 & Instructions**) and must be formatted as shown. To ensure correct data entry, reports must be typed or computer generated, no less than 12 pitch, and printed with a landscape orientation. Reports must be forwarded by the tenth day following each monthly period (i.e. submit by the 10th day of April for the March reporting period). If a summary report is used, do not send individual copies of orders to avoid possible duplicate billings.

2. Sole source transactions approved in accordance with Section G.4. must be reported as required by this section.
3. Orders using CAL-Card as the payment method are not subject to the delegation administrative fee and need not be reported with the delegation reporting.

K. DGS BILLING

All transactions issued under this delegation (except those paid with CAL-Card) are subject to an administrative fee as published in the DGS Price Book, based on the subtotal amount of the CDPO. The DGS Price Book is available on the DGS internet site or may be obtained by contacting the Delegations Resources Program.

L. FILE DOCUMENTATION

Each procurement file must contain, at a minimum and as applicable for the transaction, the following documentation. All record keeping guidelines below, except item 7, apply to CAL-Card purchases.

1. Copies of any required approvals
2. Copies of specifications or other solicitation information
3. A list of all suppliers solicited (name, telephone number, address)
4. Bid/Quote Worksheet
5. All quotes received
6. Sole Source Justification
7. Copy of purchase order and any amendments
8. Cost evaluation
9. Documentation of selection of other than lowest bidder
10. Preference program calculations
11. Corporate qualification verification
12. Documentation demonstrating compliance with the other applicable laws, policies, and procedures
13. All related correspondence, paper or electronic, and written record of verbal conversations