

The CORE Project Final Report  
to the California  
Department of General Services

**Review and Analysis of  
Uniform Purchasing Practices**





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## EXECUTIVE SUMMARY

The call for uniformity in government purchasing practices has been sounding in the State of California for more than three decades. Reactions, responses, and recommendations have varied in focus and pace, from reports by the Legislature to Executive Orders, from policy quick fixes using Management Memorandum to the protracted process of reorganizing and consolidating the State's entire purchasing code.

Although some progress has been realized, many of the underlying, core issues remain unresolved, hindering any lasting and meaningful improvements. This report presents findings, recommendations, and implementation plans for initiatives aimed at resolving core issues regarding uniform purchasing policies and procedures.

In 2001, the Department of General Services (DGS) initiated a project to perform a diagnostic review of purchasing operations. Having evolved over a period of years, the statutes, regulations, policies and procedures available to State agencies for the acquisition of information technology goods and services (including telecommunications), and non-information technology goods and services were in need of re-examination.

DGS recognized that contradictions, inconsistencies, ambiguities, and lack of clarity must be addressed to improve the ability of the State's buying agencies in accomplishing their purchasing responsibilities, as well as to assist the State's control agencies in fulfilling their oversight responsibilities.

The inconsistencies related to the existing state purchasing system result in increased costs by causing:

- Increased protests
- Canceled and re-issued solicitations
- Delayed projects
- Inefficient workflow

DGS' efforts to address these issues were raised to greater prominence by the recommendations of the Governor's Task Force on Contracting and Procurement Review, as a result of Executive Order D-55-02.



Task Force Recommendation #7 provided the impetus for this report, and states, in part:

“...DGS should undertake an initiative to align the laws governing contracting and procurement of goods, services, and IT, including the award protest processes. Additionally, DGS should consider whether the separation of the procurement policy and oversight from the operational procurement function should be pursued. In the case of IT procurements, DGS shall work collaboratively with the Department of Finance (DOF) to develop acquisition procedures that are consistent with the development of overall IT acquisition polices [policies] being developed by DOF.”

In order to identify where DGS is and is not operating from a foundation of clear policies and procedures and to improve the acquisition of goods and services in the State, DGS initiated a formal project to:

- Perform a review and analysis of the current and evolving purchasing environment, including statutes, policies, and procedures
- Analyze and assess the organizational structures, functions, and responsibilities involved in the purchasing processes
- Analyze and assess the organizational roles of the DGS Procurement Division (PD) and Office of Legal Services (OLS)
- Identify problems, ambiguities, inconsistencies, errors, and omissions of the purchasing environment
- Develop recommendations and an actionable implementation plan to improve and clarify DGS’ purchasing policies, processes, roles, and responsibilities.

DGS awarded a contract to Eskel Porter Consulting, Inc., as the result of a competitive procurement. The project charter authorized the CORE Team to undertake an independent and objective analysis effort to address the core, underlying issues related to uniform purchasing of goods, services, telecommunications, and information technology goods and services.

In March of 2003, Eskel Porter Consulting began work on the CORE Project. The project name characterizes the intention to address the core, underlying issues related to uniform purchasing.

As described by Ralph Chandler, Deputy Director, the project is “focused on what is tactically possible and practical in the current environment as well as developing a longer-term overall strategy.”

Uniformity begins with nomenclature. Generally in the State, the term “procurement” has become linked to the purchase of goods and IT/telecommunications goods and services, while “contracting” has become the designation for the purchase of non-IT services. Within this report, we use “purchasing” as the term incorporating the acquisition of goods, services, and IT/telecommunications goods and services. “Procurement” used in this report refers to the process of soliciting and selecting a source, whereas “contracting” refers to the steps following source selection including entering into a binding contract or purchase order.

## Approach

The CORE Team employed a formal knowledge acquisition methodology, selecting and applying specific techniques, including:

- Research—-independent research, industry group best practices, and surveys
- Interviews and focus groups—internal DGS staff, Department of Finance, and client entities with purchasing authority delegated by DGS
- Observation and participation—viewing or performing processes first-hand

This approach was designed to establish and maintain the analysis team’s independence and objective, third-party perspective. The team minimized the utilization of material from other similar reports during the first part of the project to preclude undue influence and ensure objectivity. When conducting interviews or focus sessions, the team practiced active listening and avoided asking any leading questions.

The CORE Team analyzed the State’s purchasing activities as an inter-related and inter-dependent system of statutes, regulations, policies, procedures, organizational authorities, roles, responsibilities, structures and interfaces. The team researched and analyzed numerous source documents including:

- State of California Annotated Statutes
- State Administrative Manual
- State Contracting Manual
- Statewide Information Management Manual
- Management Memos, Executive Orders, and other ad hoc sources of policy

Throughout the project, the consultants worked closely with the DGS project team and other State participants, whose cooperation and participation are valued and greatly appreciated.

The CORE Team identified best practices by conducting research and analysis utilizing the following primary sources:

- National Association of State Procurement Officials
- American Bar Association
- Federal Acquisition Regulations
- National Contract Management Association
- Westlaw research services for access to the annotated purchasing codes and regulations for all 50 states

Throughout the project, the consultants worked closely with the DGS project team and other State participants, whose cooperation and participation are valued and greatly appreciated. The DGS team participants attended the CORE Team's bi-weekly review meeting. They reviewed and commented on the draft findings as the team produced them. Their review was critical in identifying gaps or factual errors in these early draft work products.

Additionally, the CORE Team conducted interviews and focus groups with key subject matter experts within DGS. These included sessions with a group of buyers, several key managers, and several of the Department's most knowledgeable and experienced staff.

The team elicited participation from outside of DGS. The team conducted eight client entity group sessions with a variety of agencies (two "large," two "medium," and two "small") in order to gain insights and perspectives from a diverse group of DGS' clients. The team also interviewed the representatives from the Department of Finance (DOF) Technology Investment Review Unit (TIRU) in its role as a partner control agency for IT purchasing.

Lastly, the team conducted meetings with the American Bar Association (ABA) and the DGS Supplier Advisory Workgroup to discuss issues with California's purchasing system from their perspectives. This analysis approach allowed the team to develop creative ideas to address the problems and frustrations brought to light through the combination of strong detailed documentary research strengthened through extensive stakeholder participation.

## Findings and Recommendations

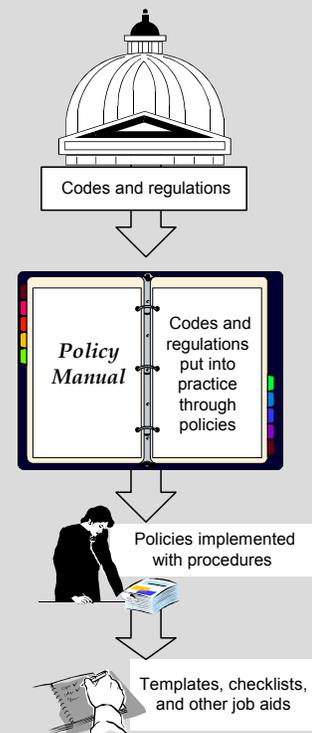
Over a four-month period, the CORE Team identified more than 30 individual topics, or “findings,” related to uniform purchasing. Out of these findings, the following five overarching themes emerged:

- The urgent need for centralized, uniform purchasing policies must be effectively addressed as a first priority.
- Foundational purchasing procedures will be required to successfully put uniform policies into practice.
- Several organizational issues within DGS must be addressed, including establishing the policy and procedures office, and delineating roles and responsibilities between the DGS PD and OLS.
- To maximize the gains of policy uniformity and procedure establishment, some legislative changes are necessary.
- Significant improvements can be realized through addressing specific, individual purchasing issues that are not dependent on other major initiatives.

### Centralize Purchasing Policy Development

Purchasing policies are written to support compliance with laws. California law consists of the 34 Articles of the State Constitution and 29 Codes containing statutes throughout multiple sources, including the California Public Contract Code (PCC), Revenue and Taxation Code (RTC), Welfare and Institutions Code (WIC), Business and Professions Code (BPC), Military and Veterans Code (MVC), and Government Code (GC). Furthermore, legally adopted regulations filed with the Secretary of State have the force of law and are contained in the California Code of Regulations (CCR), some of which apply to purchasing.

One may argue that the laws themselves should be centralized and made uniform through an effort to rewrite the entire body of purchasing code. The CORE Team believes the specific inconsistencies in laws identified, as part of this effort, should be addressed individually. That said, we do not recommend against undertaking a major purchasing code reform project as an entirely separate and distinct effort, which would result in implementing something akin to the ABA’s Model



“The flood of Management Memos, CMAS memos, CalCard memos, Customer Forums, Frequently Asked Questions, etc. etc., can be very confusing and the answers provided are sometimes inconsistent or contradictory. DGS OLS and PD also need to make sure they are speaking with one voice on issues that affect both procurement and contracting.”  
Response to Procurement and Contracting Officer (PCO) Survey

Procurement Code. However, with legislative changes detailed in this report and continued attention to evolving needs in the future, the State need not entertain sweeping purchasing code revisions to realize substantial gains in the efficiency and effectiveness of its purchasing system.

Effective policies are at the core of putting laws into practice. Purchasing policies must be developed, implemented, and maintained to dictate clear-cut rules and set standards for performance measures, as well as lay the groundwork for the appropriate use of public funds.

Sufficient attention to policy is critical to the success of any purchasing program and must be considered a high priority task. Policies must be kept current with changes in statutes, court decisions, executive orders, and other decisions regarding how laws will be followed.

The State Administrative Manual (SAM) is California’s official policy manual. As such, departments are required to abide by the policies that are articulated in SAM when conducting State business. Over time, DGS has discontinued regular updating of SAM in favor of creating the State Contracting Manual (SCM) and the California Acquisition Manual (CAM). In addition, the Department of Information Technology (DOIT) created the Statewide Information Management Manual (SIMM) as the policy/procedure manual specifically intended for information technology (IT) purchasing. All of these publications contain purchasing policy, some of which is unique, some overlapping, and some contradictory.

In recent times, the rate of change to purchasing policies has outpaced updates to SAM, CAM and/or SCM, resulting in misunderstandings and mistakes both within DGS and throughout State organizations. There is no single authority to change policy, no alignment between the manuals, and no timetable for revisions. Of necessity, buyers are forced to find, read, consider, understand and comply with a multitude of memo types.

Confusion and frustration are heightened by the current system, where policy is revised and initiated through bulletins that includes Management Memorandum (Memos), Executive Orders, Administrative Orders, Technology Directives, Budget Letters, and other documents. Moreover, Management Memos themselves have become sources of policy, rather than announcements of change to a manual.

The CORE Team recommends that DGS declare SAM as the single statewide purchasing policy manual. SAM is the policy source specifically called out in statute (Government Code §14615.1), and DGS may update SAM sections relating to purchasing policy without the formal constraints associated with the Administrative Procedures Act. Furthermore, Management Memos should only announce and explain policy changes and reference the section in SAM that has been revised.

To support SAM, DGS must establish a policy and procedures office staffed with appropriately skilled and dedicated resources to enable its success. The office would be responsible for the entire lifecycle of purchasing policies from inception until rescindment. This office would develop and manage the governance process for policy development determining the stakeholder involvement model in the process.

The overwhelming majority of improvements to the purchasing system can be realized through enhanced policies and procedures. DGS has broad authority to establish policies that govern the purchasing activities of the State. The key to success for DGS is to develop and implement a uniform set of policies and related procedures through a rigorous review and vetting process (i.e., governance).

### Develop Uniform Purchasing Procedures

Although it is unreasonable to dictate the performance of each and every purchasing task to all State organizations, DGS must set the foundational procedures for implementing uniform policies—at a minimum, those foundational procedures that encompass a large percentage of the common, repeatable tasks found in every purchase, regardless of type (i.e., goods, services, IT).

Today there is no entity assigned responsibility for the development, implementation, and maintenance of standardized purchasing procedures. Currently, individual buyers use a variety of processes, procedures, methods, and tools to conduct their work. Customized and often arbitrary approaches to purchasing rely upon the buyer to individually interpret purchasing policy, create applicable solicitation documents, evaluate the responses, and award the contract.

State organizations with purchasing delegations from DGS are required to submit their own purchasing procedures to DGS

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

for review and approval. DGS does not offer the agencies a model or template for their use in developing procedures. The agencies are left to interpret and implement the policies directly from the source documents. The fact that DGS is the purchasing control agency and centralized purchasing office means that the other purchasing officials throughout the State look to DGS for guidance.

Currently, the delegated and distributed purchasing officials have no central source for such guidance. They rely on their experience, phone calls to DGS, and trial and error. DGS has the expertise to provide detailed purchasing procedure guidelines that will form the basis for all purchasing activities in the State, both inside and outside DGS.

State departments interviewed for this report noted that the lack of uniform procedures within DGS increases the difficulty for them when required to develop their own procedures. These groups indicated that it would be easier and more efficient to customize their own procedures based upon a set of DGS-standardized procedures.

The CORE Team recommends that DGS declare the State Contracting Manual (SCM) as the single, centralized procedure manual for purchasing. It is anticipated that the new version of the SCM will be entirely re-written to contain uniform procedures in support of the policies documented in SAM. Both DGS and other agencies will follow the procedures as developed, thereby introducing a level of consistency not achieved to date.

DGS must dedicate resources to develop common processes and procedures for use by buyers, both within DGS and in organizations with delegated purchasing authority. DGS must develop internal processes to ensure updates occur as necessary, and that updates are disseminated in a timely manner.

Policy and procedure development must be conducted according to a defined process with a clear governance structure. The policy office will employ the governance process and structure in the development and maintenance of policies and procedures. The governance process must involve internal and external stakeholder participation in the vetting process. Such responsibilities should be assigned to the policy and procedures office, as described in the following report section.

## Address Organizational Inefficiencies

To accomplish its goals for uniform policies and procedures, DGS must create an adequately staffed, dedicated policy and procedures office. Currently, PD has a unit responsible for policy. This unit has struggled with creating and implementing purchasing policy for numerous reasons, including lack of sufficient resources. Contributing to this problem is the organizational placement of the unit as “low” within DGS PD and, subsequently, it does not carry the authority necessary for a policy unit to succeed.

The CORE Team recommends the creation of a new Policy and Procedures Office (PPO), reporting directly to the DGS Director or alternately the PD executive-level (Deputy Director or Assistant Deputy Director). A high-level placement within the DGS organization reflects executive-level commitment to this vital role.

The purchasing control agency function of oversight is currently split between PD and OLS. PD performs this function for goods and IT procurements while OLS performs this role for services contracts. The CORE Team recommends consolidating the approval of contracts for all types of purchases (goods, services, IT goods/services, and telecommunications) within the Procurement Division.

Currently OLS performs a general business review and approval of services contracts. In lieu of conducting this review and approval, OLS should apply its attorney resources in its role as legal counsel to PD and the other DGS divisions. OLS should examine all types of procurements and contracts for legality. Detailed roles and responsibilities for PD and OLS should be delineated to support a collaborative work environment where purchasing officials make business decisions and attorneys make legal determinations as needed.

We recommend DGS increase the role of OLS in determining legal issues for all contract types based on the risk to the State or other criteria, such as deviation from standard contract language or unusual contract types (e.g., revenue sharing agreements). Legal involvement may start with the inception of the transaction and follow through until its completion.

OLS’ involvement should be systematized to provide mandatory review under certain conditions, such as high risk, dollar amount, or variances from standards (e.g., standard terms and conditions). For those transactions where legal involvement is optional, there must be available legal support

Procurement officials should approve all purchases, leaving OLS free to provide legal counsel on a larger number of risky procurements.

Legislative change recommendations range from the simple correction of wordings in code, such as removal of references to the Department of Information Technology, to the clarification of complex concepts such as conflict of interest and follow-on work.

whenever the purchasing officer deems it prudent. By leaving the general business decisions on non-IT services to the purchasing officials in PD, OLS can better serve the State by considering legal issues on a much wider class of purchasing activities and documents.

### Initiate Legislative Changes

There are numerous ways that legislative changes can be approached—sweeping legislative change is one perspective, while others support the notion that specific areas or incremental legislative change may be a better approach.

Several years ago, DGS was disappointed with the defeat of the California Acquisition Reform Act (CARA), aimed at updating and replacing the body of procurement and contracting code. Since then, some personnel have adopted an attitude that certain improvements in purchasing are hindered by laws in need of revision. In some cases this opinion has merit. However, in most cases the development and adherence to uniform policy will remedy the core problems encountered by DGS and its delegated authorities.

The CORE Team recommends several specific legislative changes. As is the case with policies, laws have been created over many, many years, resulting in some inconsistencies and lack of clarity. Some of the key legislative change recommendations include:

- Modify the PCC to allow for incentive contracting in the areas of goods, IT and non-IT services.
- Propose legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.
- Propose legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to establish a delegation for services.
- Propose legislation to further define and clarify “follow-on work.” as it relates to “organizational conflict of interest.”

## Address Individual Purchasing Issues

Throughout the discovery and analysis phases of the project, the CORE Team identified issues that may be acted upon to provide specific benefits. These changes should be undertaken in coordination with the foundational improvements referenced in our other recommendations. The following are summaries of key recommendations within this category:

- Capture “lessons learned” information to share with buyers and legal staff from DGS and individual departments and feed lessons learned into the development of policy and procedure to ensure timely implementation and dissemination.
- Develop standardized models for each type of procurement (e.g., IFB, RFP, RFQ, CMAS, MSA, NCB) that clearly identify the required and optional steps applicable to goods, IT, and non-IT services purchases.
- Develop uniform policies that require the use of performance specifications and minimize the use of design specifications in solicitations where the business needs, in whole or in part, are able to be stated in terms of function.
- Design a simpler system of thresholds and criteria to determine which transactions require review and approval. Currently, approval levels are overly complex with too many different monetary criteria for various types of procurements. DGS should develop a simplified procedure and forms/tools for goods, IT, and services purchases below a “small purchase” threshold, such as \$5,000, within the buying agency’s delegated or organic authority.
- Collect and analyze metrics to identify specific opportunities for combining orders on commonly purchased items, to develop multiple award contracts and master agreements that contain minimum order commitments and tiered volume pricing levels according to the metrics.
- Develop a new system of delegation that simplifies the levels and types of delegations, combining goods, IT, and non-IT services delegations under a single set of rules. Include a universal delegation that applies to all agencies for all purchasing under a fixed dollar

amount, such as \$25,000. Optimally, DGS would propose legislation to centralize the purchasing authority within DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to include non-IT services purchases in their delegation system, thus allowing for true uniformity.

The full analyses and complete set of recommendations for these are described in the body of this report, in Section 2.5.

### Implementation Plan

Our implementation plan recommends an overall methodology for implementing the uniform purchasing policies as a common, organizing structure. Each of the specific recommendations resulting from the analysis follows this common structure.

The individual recommendations, which are addressed in detail in the body of the report, have been organized and grouped into logical initiatives. Each initiative is described in terms of its title, purpose, scope, estimated resources, estimated timeline, and dependencies. This information format is called an Initiative Definition Worksheet (IDW). The following Gantt Chart presents the initiatives as an overall implementation plan.

ID	Task Name	Duration	Start	Finish	2003	2004	2005	2006
					Q1	Q2	Q3	Q4
1	<b>CORE Project - Initiative Implementation Plan</b>	<b>640 days</b>	<b>Mon 8/18/03</b>	<b>Fri 1/27/06</b>	[Gantt bar spanning from Q3 2003 to Q1 2006]			
2	<b>Organization (O)</b>	<b>240 days</b>	<b>Mon 8/18/03</b>	<b>Fri 7/16/04</b>	[Gantt bar spanning from Q3 2003 to Q3 2004]			
3	Initiative O.1 - Establish a dedicated, centralized purchasing policy and procedure office.	3 mons	Mon 8/18/03	Fri 11/7/03	[Gantt bar in Q3 2003]			
4	Initiative O.2 - Create new roles and responsibilities for PD and OLS to remove the overlap of duties and focus on their core competencies.	3 mons	Mon 8/18/03	Fri 11/7/03	[Gantt bar in Q3 2003]			
5	Initiative O.3 - Update organizational missions.	3 mons	Mon 11/10/03	Fri 1/30/04	[Gantt bar in Q4 2003]			
6	Initiative O.4 - Reform procurement audits.	12 mons	Mon 8/18/03	Fri 7/16/04	[Gantt bar spanning from Q3 2003 to Q3 2004]			
7	Initiative O.5 - Establish a Customer and Supplier Advocate separate from the Protests and Disputes Section.	3 mons	Mon 8/18/03	Fri 11/7/03	[Gantt bar in Q3 2003]			
8	<b>Governance (G)</b>	<b>60 days</b>	<b>Mon 11/10/03</b>	<b>Fri 1/30/04</b>	[Gantt bar in Q4 2003]			
9	Initiative G.1 - Design a comprehensive "governance" structure for the development of purchasing policies and procedures.	3 mons	Mon 11/10/03	Fri 1/30/04	[Gantt bar in Q4 2003]			
10	<b>Document Structure/Format (D)</b>	<b>60 days</b>	<b>Mon 8/18/03</b>	<b>Fri 11/7/03</b>	[Gantt bar in Q3 2003]			
11	Initiative D.1 - Design distinct, comprehensive, and navigable policy and procedure documents.	3 mons	Mon 8/18/03	Fri 11/7/03	[Gantt bar in Q3 2003]			
12	<b>Policy &amp; Procedure (P)</b>	<b>480 days</b>	<b>Mon 2/2/04</b>	<b>Fri 12/2/05</b>	[Gantt bar spanning from Q1 2004 to Q1 2005]			
13	Initiative P.1 - Complete the single policy and procedure documents.	24 mons	Mon 2/2/04	Fri 12/2/05	[Gantt bar spanning from Q1 2004 to Q1 2005]			
14	<b>Training (T)</b>	<b>40 days</b>	<b>Mon 12/5/05</b>	<b>Fri 1/27/06</b>	[Gantt bar in Q1 2006]			
15	Initiative T.1 - Develop governance and integration processes with other, on-going training initiatives.	2 mons	Mon 12/5/05	Fri 1/27/06	[Gantt bar in Q1 2006]			
16	<b>Legislation (L)</b>	<b>120 days</b>	<b>Mon 8/18/03</b>	<b>Fri 1/30/04</b>	[Gantt bar in Q3 2003]			
17	Initiative L.1 - Clean-up statutes to remove references to DOIT.	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
18	Initiative L.2 - Propose legislation to further define and clarify "organizational conflict of interest" and "follow-on work."	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
19	Initiative L.3 - Remove statutory references that infer or direct that specifications not be defined in a detailed and precise manner.	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
20	Initiative L.4 - Clarify legislation to consolidate the organizations involved in hearing and resolving protests.	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
21	Initiative L.5 - Modify the PCC to clearly define the Non-Competitive Bid (NCB) process and allowed justifications for NCBs.	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
22	Initiative L.6 - Modify the PCC to allow for incentive contracting in the areas of goods, IT, and non-IT services.	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
23	Initiative L.7 - Propose legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			
24	Initiative L.8 - Propose legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to establish a delegation for service	6 mons	Mon 8/18/03	Fri 1/30/04	[Gantt bar in Q3 2003]			

### In conclusion...

The State of California's purchasing system is in dire need of standardization and clarification in terms of policies, procedures, and organizational assignments. DGS has the authority and is in the position to affect positive change in the purchasing practices of the State by developing, maintaining, communicating, and enforcing a uniform purchasing system.

Very few of the recommended improvements would require legislative changes. The policy, procedural, and organizational changes recommended in this report represent an integrated and comprehensive improvement strategy. The recommended statutory changes would serve to cement the improvements, creating a system of uniform statutes, policies, procedures, and organizational structure. Working together, these elements provide consistent rules, offering increased efficiency and effectiveness in the State's purchasing activities reclaiming the extensive costs associated with the present system. With the addition of an integrated training plan and a uniform system of delegation, the policies and procedures form the platform from which California can springboard to a state leading the way in the area of purchasing.

## SECTION 1— BACKGROUND AND APPROACH

On November 19, 2002, the State of California, Department of General Services, Procurement Division, issued RFP DGS 02-04, “Development of Uniform Contracting Policies and Procedures.” DGS awarded a contract to Eskel Porter Consulting, Inc. through a competitive procurement, and work began on March 6, 2003. This Final Report is the main deliverable of that contract.

### 1.1 Responding to the 2002 Governor’s Task Force on Contracting and Procurement Review

Fueled by issues raised in the Governor’s Executive Order D-55-02 and the recommendations of the Governor’s Task Force on Contracting and Procurement Review that followed, the Department of General Services initiated a project to perform a diagnostic review of purchasing operations.

Having evolved over a period of years, the statutes, regulations, policies, and procedures available to State agencies for purchasing information technology (including telecommunications) and non-information technology goods and services were in need of re-examination. DGS recognized that contradictions, inconsistencies, and lack of clarity must be addressed to improve the ability of the State’s agencies to accomplish their purchasing responsibilities, and to assist the State’s control agencies in fulfilling their oversight responsibilities.

DGS’ organizational analysis and improvement efforts in the areas of statutes, regulations, policies, and procedures were raised to greater prominence by the recommendations of the Governor’s Task Force on Contracting and Procurement Review, as a result of Executive Order D-55-02.

The Task Force presented 19 recommendations for specific actions. Task Force Recommendation #7 is the focus of this report, and states:

DGS shall develop a uniform set of policies, procedures and processes for contracting and procurement activities. As part of this effort, DGS should undertake an initiative to align the laws governing contracting and procurement of goods, services, and IT, including the award protest processes. Additionally, DGS should consider whether the separation of the procurement policy and oversight from the operational procurement function should be pursued. In the case of IT procurements, DGS shall work collaboratively with the Department of Finance (DOF) to develop acquisition procedures that are consistent with the development of overall IT acquisition polices being developed by DOF.

The project charter authorized the CORE Team to undertake an independent and objective analysis effort to address the core, underlying issues related to uniform purchasing of goods, services, telecommunications, and information technology goods and services. As described by Ralph Chandler, DGS Deputy Director, the CORE Project is “focused on what is tactically possible and practical in the current environment as well as developing a longer-term overall strategy.”

The CORE Project Team performed under the authority of an Executive Sponsor, Ralph Chandler, and a Project Sponsor, Russ Guarna. A Steering Committee served as the final decision making body for material decisions and escalated issues related to the project activities, deliverables, scope, and management. The Steering Committee reviewed and approved project deliverables and interim work products in accordance with the project plan. The Steering Committee included:

- Ralph Chandler, Deputy Director, Procurement Division
- Janice King, Acting Assistance Deputy Director, Procurement Division
- Jeff Marschner, Chief Counsel, Office of Legal Services
- Cy Rickards, Deputy Director of Legal Affairs

DGS' Project Manager, Bill Fackenthall, was responsible for the overall success of the project and served as the liaison between the consulting team and the various State of California stakeholders and subject matter experts. Mr. Fackenthall provided oversight and quality assurance reviews in support of the development of work products.

DGS supplied a project team that served as the initial participation and review body for issues identified by the consultant project team. They attended bi-weekly team meetings, reviewed interim work products, and offered subject matter expertise. The DGS project team members were:

- Russ Guarna, Acting Manager, Acquisitions Unit
- Susan Chan, Manager, Disputes Resolution Unit
- Bill Fackenthall, Project Manager
- Carol Umfleet, Manager, CMAS Unit
- Diana LaBonte, Acting Manager, Technology Acquisitions Unit
- Linda Garcia, Analyst, Policy and Procedures Unit
- Judy Heringer, Manager, Procurement Authority Management Unit
- Joyce Gibson, Legislative Analyst
- Sandi Russell, Training and Certification Unit
- Kathleen Yates, Senior Staff Counsel
- Bob French, Manager, One-Time Acquisitions Unit

The Eskel Porter Consulting project team performed under the authority of company Vice President Bryan Gillgrass. The consultant project team, led by Project Manager Darren Chiappinelli, performed research, conducted interviews, facilitated focus groups, performed independent analysis, documented findings, incorporated stakeholder input, and produced work-products and deliverables. Additional consultant team members were:

- Chris Eaves
- Joan Hanacek
- Barbara Street

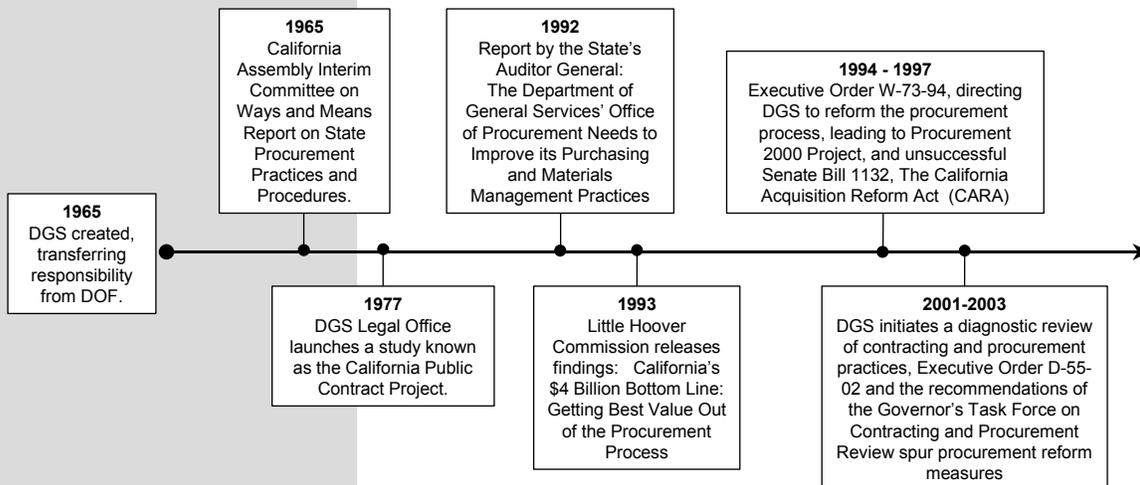
Technical editing support was provided by Anita Sexton and Terry Stapleton. The project timeline set delivery of this Final Analysis Report by August 8, 2003.

## 1.2 Recognizing the Importance of Implementing Current Procurement Reform Measures

Current Procurement Reform initiatives are inextricably connected to previous endeavors of a similar nature. Many of these efforts were initiated in response to audits, investigations, errors, or other events that triggered reactions from State leaders. Many changes and activities resulted from these previous efforts, but their benefits are uncertain. It is a certainty, however, that the Department of General Services shoulders the responsibility for the success or failure of the State’s purchasing activities.

In 1963, the California State Legislature created the Department of General Services to centralize business management into one entity to take advantage of specialized techniques and skills, provide uniform management, and ensure a high level of efficiency and economy.

Beginning with the 1965 California Assembly Interim Committee on Ways and Means “Report on State Procurement Practices and Procedures,” the timeline for purchasing improvement projects reflects the evolving complexities the State has encountered in the acquisition of goods, services, and information technology goods and services. Significant studies, reports, and events are depicted on the timeline that follows.



Although much has been accomplished, more work remains. As stated in the section entitled “Compelling Case for Change” in the 1994 report of the Governor’s Office of Planning and Research, Task Force on Government Technology Policy and Procurement:

Large organizations do not, as a rule, change easily. Typically, a major crisis or series of disruptive events is required to create the sense of urgency and danger that motivates organizations and the people that comprise them to shift away from the norm and step outside of their ‘comfort zones.’ Because change involves risk and uncertainty, organizations only begin to contemplate change when the risks and uncertainty associated with the current crisis are greater than those associated with change.

More than ever today in light of DGS’ leadership and influence in the purchasing environment of the State, the 1994 report goes on to point out that “California has the opportunity to make changes that will enable it to emerge from the current crisis in a position of strength and leadership.”

Actions that DGS takes in response to the Governor’s Executive Order D-55-02 and the recommendations of the Governor’s Task Force on Contracting and Procurement Review will put practices and structures in place to improve State purchasing processes and organizations. DGS is positioned to generate improvements consistent with Task Force Procurement Reform measures, such as:

- Training and certification
- Consistent business practices based on uniform policies
- Measurement of compliance with uniform policies
- Teamwork and collaboration within the organization

With current Procurement Reform initiatives, the State is headed in a new direction that will produce tangible benefits for DGS, the departments and agencies it supports, and for its suppliers.

### 1.3 Approach and Analysis

The CORE Team approached the project in a systematic, structured manner following a consistently applied methodology. The team analyzed the State's purchasing activities as a system of statutes, regulations, policies, procedures, organizational authorities, roles, responsibilities, structures, and interfaces. The team analyzed the system to discover strengths, weaknesses, inconsistencies, and inefficiencies in the components, as well as their linkages and interrelationships. The methodology ensured a thorough analysis while protecting the team's independent perspective.

The analysis began with a discovery process to document the statutory basis for the acquisition of goods and services within the State of California. The CORE Team traced the linkages from statute and regulation to policy and procedures, while analyzing the consistency and clarity of each. The team compared and contrasted the policies and procedures of the "as is" system to industry best practices.

The CORE Team identified best practices in the area of public sector purchasing by conducting research and analysis utilizing the following primary sources:

- National Association of State Procurement Officials (NASPO)
- American Bar Association (ABA)
- Federal Acquisition Regulations (FAR)
- National Contract Management Association (NCMA)
- Westlaw research services for access to the annotated purchasing codes and regulations for all 50 states

The team then focused on the organizational aspects of purchasing, and identified the statutory and regulatory basis for the authority to develop the State's purchasing policy. The CORE Team identified roles and responsibilities for the development of purchasing policies within the State, and examined unwritten, de facto policies that are in general practice. The team also analyzed the existing DGS policy development organization and provided recommendations for improvement.

The next step involved a review and analysis of the operational roles of OLS and PD. The team compared their respective missions, roles, responsibilities, policies,

procedures, and practices to industry best practices, and developed recommendations.

DGS identified seven client entity groups, six representing State departments of varying sizes (e.g., two small, two medium and two large), and the Department of Finance as a control agency. The seven client entity group members included:

- Department of Finance
- Department of Real Estate (small)
- Department of Pesticide Regulation (small)
- Department of Education (medium)
- Franchise Tax Board (medium)
- California Highway Patrol (large)
- Employment Development Department (large)

Additionally, the team met with the DGS Telecom Division (TD). TD is in the role of control agency as well as a delegated purchasing agency. The CORE Team and the DGS Project Manager met with these client entity groups to gather information and perspectives on current purchasing laws, policies, and procedures. These client entity groups provided valuable input to the project team, enabling them to quickly gain an understanding of the issues facing departments in the current purchasing environment in the State of California.

California's purchasing system is very large and complex and has been the focus of many studies and reviews over the past 40 years. The CORE Team reviewed and analyzed numerous studies and reports, including those that recommend legislative change. This research material included:

- California Acquisition Reform Act (CARA)
- Procurement 2000
- Bureau of State Audits (BSA) reports

The historical data available to the team assisted in achieving the project's goals.

This report section provides a discussion of the CORE Team's analysis methodology used to conduct the project. The results of the research and analyses are incorporated in the overall project findings and recommendations in this report Section 2.

### 1.3.1 Knowledge Acquisition Approach

The CORE Team employed a formal knowledge acquisition methodology, selecting and applying specific techniques, including

- Research
- Interviews and focus groups
- Observation and participation

#### ***Conducting Research***

The CORE Team's structured and thorough research approach and methodology were critical to completing the comprehensive review of the voluminous source material within the project timeline.

The team primarily utilized the following source documents for research:

- State Contracting Manual (SCM)
- State Administrative Manual (SAM)
- California Acquisition Manual (CAM)
- Management Memos (MMs)
- California Public Contract Code (PCC)
- California Government Code (GC)
- California Code of Regulations (CCR)

Additional law, regulation, policy, and procedure sources were utilized as needed. The CORE Team used the Westlaw service for online access to current, annotated law as well as the laws and regulations of other states.

Extensive research material and documentation from previous similar efforts were available to the team. The initial library of reference materials for the CORE Project filled 39 archive boxes. This material was supplemented with information from sources such as:

- California law through the State of California, Legislative Counsel
- Reports by the Bureau of State Audits, California State Auditor
- Governor's Executive Orders
- California Department of Finance Budget Letters, Statewide Information Management Manual (SIMM), and other data provided by the Department of Finance

## Industry Groups and Best Practices

Much work has been done in the area of purchasing by industry groups and other government organizations. As appropriate, the CORE Team researched topics with industry groups, and considered the best practices of other organizations. These included, but were not limited to:

- Office of Federal Procurement Policies
- Federal Acquisition Regulations (FAR)
- Procurement reform reports and practices of various government entities
- National Contract Management Association (NCMA) Guide to the Contract Management Body of Knowledge (CMBOK), 1<sup>st</sup> Edition
- National Association of State Procurement Officials (NASPO):
  - Issues in Public Purchasing: A Guidebook for Policymakers
  - NASPO research, such as the document “State and Local Government Purchasing Principles and Practices”<sup>1</sup>
  - NASPO comprehensive survey results
- The National Association of State Information Resource Executives (NASIRE)
- National Institute of Governmental Purchasing, Inc. (NIGP)
- The American Bar Association (ABA), 2000 Model Procurement Code for State and Local Government
- The ABA, 2002 ABA Model Procurement Regulations<sup>2</sup>

Additionally, the CORE Team conducted several specific topical surveys of the NASPO membership.

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<sup>1</sup> NASPO State and Local Government Purchasing Principles and Practices, Chapter 2, pg.11-Centralized procurement office with a system of limited delegations. Chapter 3, pg. 98-“Procurement decisions should be the sole domain of the Chief Procurement Officer of his or her designee.”  
Copyright 2001, National Association of State Procurement Officials, 167 West Main Street, Suite 600, Lexington, KY 40507

<sup>2</sup> American Bar Association, 2002 ABA Model Procurement Regulations, Section 2-601, Role of legal advisors to the Chief Procurement Officer

DGS is not alone in its desire to be responsive to the changing needs of its customers. Reform is a common theme among many purchasing organizations in the public sector. With the increased pace of change, governments must be more proactive in how they respond to changes in purchasing. A number of trends have impacted the way government purchasing occurs, such as:

- With increased globalization, the size, market position, and negotiating power of suppliers are increasing. Governments need the ability and skill to effectively deal with many types of suppliers.
- The role of information technology systems in government has increased substantially in the past decade.
- Most suppliers expect governments to leverage the Internet for communications and service delivery.
- Government departments outsource a growing number of services that were formerly provided by internal organizations. The purchasing of services requires different skills than commodities, since services are not necessarily driven by price as the primary factor.

Purchasing officials in many U.S. states and other countries continually strive to improve laws, regulations, policies and procedures applicable to purchasing. For example, the Ministry of Management Services in British Columbia, Canada<sup>3</sup>, is undertaking a reform program intended to address issues that include:

- Uniform purchasing legislation for open and fair competition for business opportunities in the public sector
- Forward-thinking purchasing policies
- Consistent application and interpretation of purchasing policy and legislation
- Better value for taxpayers through cost savings achieved by competitive purchasing
- Supplier confidence in the government purchasing process
- Public confidence that contracts are awarded fairly

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<sup>3</sup> Procurement Reform Discussion Paper, February 2002, British Columbia Procurement and Supply Services Division, Ministry of Management Services

- Improved accountability for compliance with open purchasing through tracking and reporting of purchasing activities
- Balance between autonomy for public sector managers and the accountability for purchasing actions

These issues ring true for California as well. Although every purchasing organization has its own elements attributable to governing law, policy, procedure, resources, and even tradition, the purchasing reform practices that similar organizations are implementing can be valuable roadmaps.

For instance, the Commonwealth of Virginia’s “ProReform Project,” is aimed at developing a best practices model for centralized IT purchasing that will be implemented in the new Virginia Information Technologies Agency (VITA). VITA will utilize new approaches to existing purchasing methods to simplify and speed up the process for buying the Commonwealth’s technology goods, services, and systems. These new solutions will ensure that the best goods, services, and systems are obtained while improving the timeliness, efficiency, and quality of technology purchases.

In addition to readily available industry information, the CORE Team solicited data from NASPO members on topics specific to our efforts. The team conducted three email surveys, with the assistance of DGS’ Best Practices Unit. Survey questions are listed in the following tables. Survey responses were analyzed and incorporated into recommendations, where appropriate. Additional information is provided in Appendices A, B, and C to this report:

- Appendix A: NASPO Survey-Leveraged Contracts
- Appendix B: NASPO Survey-Policy Oversight
- Appendix C: NASPO Survey-Legal and Procurement

✉ **NASPO Member Survey #1**

Describe your rules for the issuance of master agreements/ contracts, multiple awards and other "leveraged" contracts.

1. Are your master agreements/contracts and multiple awards competitively bid?
2. What is the duration of your masters and multiple award contracts? How often are they opened up for re-solicitation?
3. What are the limitations for the use of the masters and multiple award contracts?
4. Do your procurement statutes, policies, and procedures allow negotiation? If so, how does this work?
5. What is your process for handling protests?
6. Are there types of procurements that do not allow protests?
7. Describe your contract dispute process (i.e. failure to perform)?
8. What is your process for approving non-competitive bid (NCB) procurements, single and sole source?
9. What are the acceptable justifications for such procurements?
10. Do you have a separate approval process for NCBs? If so, please describe it.
11. Is procurement policy developed and maintained by a central policy group? If so, what job categories/skills/experience make up the group?

✉ **NASPO Member Survey #2**

Separation of duties: Buying, Policy, Oversight

Given that three major functions of a centralized procurement office are; policy making, centralized buying, and oversight (review and approval), please answer the following questions:

1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not, briefly describe how you make statewide procurement policy.
2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy-making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.

✉ **NASPO Member Survey #3**

1. What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?
2. What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?
3. Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?
4. Does your procurement legal counsel perform an advisory role or an oversight role or both?
5. Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?

In summary, the CORE Team's research activities included existing documents, information provided by industry groups, and best practices of similar organizations. All contributed to the findings and recommendations included in Section 2 of this report.

### *Interviews and Focus Groups*

The CORE Team conducted 22 formal interview meetings with 28 DGS personnel, as well as seven focus group meetings with the client entity group members. The client entities provided a broad representation of all State purchasing organizations—small, medium, and large—with purchasing activities ranging from simple to complex. Refer to [Appendix E: Interview Participants](#) and [Appendix F: Focus Groups](#) for listings of dates and names of the interviewees. Many additional informal meetings and follow-up telephone conversations were conducted to obtain clarifications as needed.

The primary purpose of these interviews was to gain an understanding of each individual's or entity's perspective regarding current purchasing law, policies, and procedures. Each meeting and discussion was conducted under the provision that the interaction was confidential, that is, the input provided would only be presented in aggregate and not by name. By ensuring that each, individual interaction was confidential, the participants were at ease to speak candidly. The interview team allowed participants to speak freely without adopting or rejecting any particular perspectives. These candid, roundtable discussions were extremely beneficial to the consultant team, whereby the team could extrapolate trends and common issues/concerns across all participating individuals and groups.

DGS identified six client entity focus groups for participation—two from larger organizations, two from medium sized organizations, and two from smaller organizations. The focus group organizations included the Department of Education, California Highway Patrol, Franchise Tax Board, Employment Development Department, Department of Real Estate, and Department of Pesticide Regulation. The Department of Finance was included as a special client group, for discussion of its interrelationships with DGS in their respective control agency roles. DGS' Telecommunications Division was interviewed because of their similar relationship as a control agency.

Each client entity group was provided with questions for discussion during the focus meeting, as shown in the following table.

 **Client Entity Focus Group Questions**

1. What, if any, frustration or confusion does the State's procurement statutes cause?
2. How are your procurement policies documented?
3. How are your procurement processes documented?
4. How are your procurement roles and responsibilities documented?
5. Do your buyers have their own desktop reference for guiding them through the procurement process? If so, describe it.
6. Where do you go to get procurement guidance or questions answered?
7. How would you characterize the DGS PD delegation guidelines in terms of being a useful tool that guides you through the procurement process?
8. How do you stay abreast of the latest rule changes from DGS PD? OLS?
9. How do you use or perceive the SCM?
10. How do you use or perceive the CAM?
11. How do you use or perceive the SAM?
12. What guidance or templates should DGS PD provide that they currently do not?
13. What guidance or templates should DGS OLS provide that they currently do not?
14. What is your perception of the role of PD versus OLS?
15. How do you receive support/guidance/answers for your organic purchasing of services?

Additionally, the team was able to use the newly created Procurement and Contracting Officers (PCO) from every agency in the State that performs purchasing as a point of contact for a broad-based survey. Each PCO was requested to answer a brief survey, shown below. Responses were used in the analysis, findings, and recommendations, and are provided in Appendix D: PCO Survey.

### PCO Survey

1. Describe the process currently in use for developing procurement policies and procedures, identifying the underlying authorities for doing so within your organization.
2. Is there a difference in the way you make policies for procuring non-IT services as opposed to all other procurement types (e.g., commodities, IT goods and services)?
3. What improvements to DGS' procurement policy and its dissemination would be of value to your organization?

All of the individuals participating in interviews and focus groups, and responding to the PCO survey provided valuable insight into their own organizations' day-to-day issues and concerns, as well as insight into their interactions with DGS. The project team distilled the information gathered from these interviews and focus group meetings, and considered it an important ingredient in the findings and recommendations included in Section 2 of this report.

### *Observation and Participation*

The timeline for this project and the nature of the work did not require the extensive use of observation and participation for knowledge acquisition. The team used observation in two instances where it was deemed critical to directly observe the activity being analyzed:

- The review of contracts conducted by the Office of Legal Services (OLS) in order to gain an understanding of the contract receiving, tracking, and review processes and procedures for non-IT services contracts.
- The use of the Procurement Division's Procurement Information Network (PIN) system to view the contract receiving, tracking and review processes and procedures for goods and IT transactions.

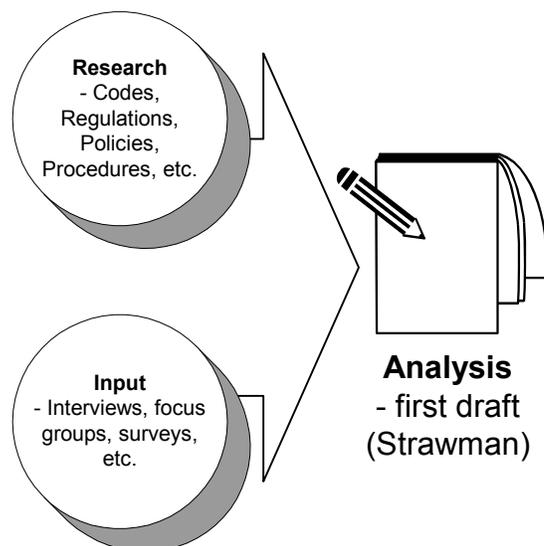
### 1.3.2 CORE Project Process

In order to preserve the independent perspective for this analysis, the CORE Team believed it was important to minimize the influence of previous analyses and related projects. The team conducted the majority of the research and analysis on primary sources by examining the most recent versions of policies and procedures, and tracing them back to laws and regulations. Interviews and focus groups provided additional information and perspective for analysis. Finally, the team considered some of the work products from previous analysis efforts to identify validating or contradictory findings as an additional data point.

#### *Analysis Process Starting Points*

The following exhibit depicts the starting points in the analysis of purchasing statutes, regulations, policies, and procedures.

#### ***Beginning the CORE Project Process***



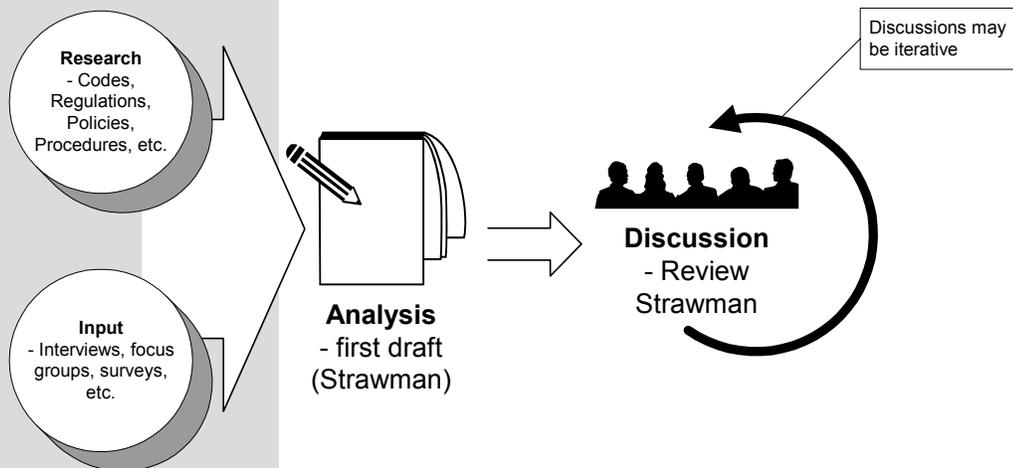
### ***Adding Collaborative Review to the Analysis Process***

Throughout the project the CORE Team worked closely with the DGS project team participants, jointly referred to as the CORE Project Team, and other State participants to fill in gaps, answer questions, and to provide feedback on interim findings and work products. As the CORE Team performed research, they documented their findings and recommendations. Findings were numbered consecutively in the sequence that they were discovered and developed through research and other input methods. No attempt to categorize or prioritize findings occurred at this point in the process.

Sets of draft, “strawman,” findings were distributed to the collaborative DGS/consultant CORE Project Team approximately every two weeks for review and input. The CORE Project Team discussed the sets of findings during their regular bi-weekly meetings, held every other Monday. On several occasions additional meetings were scheduled to conduct further discussion. As research and analysis progressed, new findings were added, and existing findings were revised in an iterative review process.

Findings remained open for input until nearly the end of the project. The team maintained an open-door policy throughout the project and conducted individual discussions with several participants who felt more comfortable discussing their points in this manner. The following exhibit shows the process employed for input from the collaborative CORE Project Team.

### ***Adding Team Discussion to the CORE Project Process***

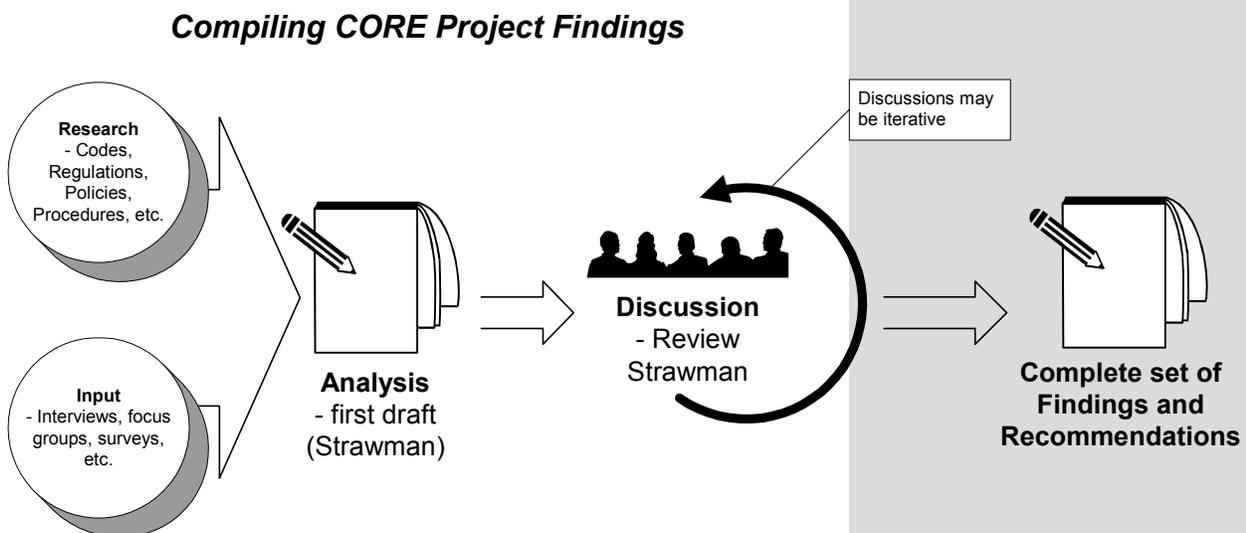


Research and analysis began by focusing on the development of uniform policies and procedures. Within a short period, the topic of responsibilities for developing policies and procedures was added to the analysis. This topic was followed by operational roles and responsibilities in the Procurement Division and the Office of Legal Services. These three subject areas remained open for input throughout the analysis, findings, and recommendations component of work so as to maximize the input and feedback opportunities for participants and stakeholders. Appendix H: Supporting Research and Analyses contains additional information.

### ***Compiling and Organizing Findings and Recommendations***

As described previously, findings and recommendations were initially developed in no particular order or priority, but rather as they were identified during the study. Findings and recommendations were packaged in sets for review during CORE Project Team bi-weekly meetings.

As illustrated in the following exhibit, a complete set of findings was compiled at the conclusion of the analysis period. Section 2 of this report provides the complete set of findings and recommendations including the full discussion of each.



Generally in the State, the term “procurement” has become linked to the purchase of goods and IT/telecommunications goods and services, while “contracting” has become the designation for the purchase of services. Within this report, we use “purchasing” as the term incorporating the acquisition of goods, services, and IT/telecommunications goods and services. “Procurement” used in this report refers to the process of soliciting and selecting a source, whereas “contracting” refers to the steps following source selection including entering into a binding contract or purchase order.

### *Organizing Results*

Throughout the discovery and analysis activities of the project, the team considered the topics further and distilled logical groupings to form an organizational structure. The CORE Team organized findings into the following five over-arching, or central themes:

- Centralized Uniform Purchasing Policies
- Centralized Uniform Purchasing Procedures
- Organizational Issues
- Legislative Change Packet
- Individual Purchasing Issues

Some of the findings and recommendations fit precisely into one theme, while others have characteristics of two or more of the over-arching themes. In situations where a finding spanned more than one over-arching theme, the team selected the most relevant theme for classification purposes.

### *Planning for Implementation*

The CORE Team’s implementation plan used a proven methodology for identifying, prioritizing, and executing the numerous recommendations identified in the previous phase.

There are several key steps in developing the implementation plan, which included: (A) identifying initiatives needed; (B) quantifying initiative tasks, resource and time requirements; (C) prioritizing initiatives; and (D) identifying interdependencies of initiatives.

The following steps, in general, were used to complete the implementation planning process:

#### *(A) Identifying Initiatives Needed*

- The team reviewed the findings and recommendations to prepare for the implementation planning activities.
- The team brainstormed the various recommendations and grouped related action items into the following Initiative Categories:
  - Organization
  - Governance
  - Document Structure/Format
  - Policy & Procedure

- Training
- Legislation
- Within each of the Initiative Categories, the CORE Team began the creation of individual Initiative Definition Worksheets (IDWs), documenting the following items:
  - Initiative name
  - Description
  - Tasks/milestones to be completed

The intention of this effort was to describe and define the initiatives needed for implementation of the recommendations. The IDWs provide implementation teams the core material to take these definitions and develop detailed project plans for execution.

***(B) Quantifying initiative tasks, resource and time requirements***

- For each initiative, the tasks, timeframe for completion, and resources were identified. This information was added to the IDWs in this step.
- The timeframes identified are estimates based upon the CORE Team’s relevant experience with other organizations performing similar efforts.

***(C) Prioritizing expected initiative returns***

- For each initiative the team documented, the benefits and risks. The benefits described the expected return for each initiative while the risks identified the hazards of executing the initiative unsuccessfully or not at all.
- The initiatives were prioritized according to the benefits/risks assessments.

***(D) Identifying interdependencies of initiatives***

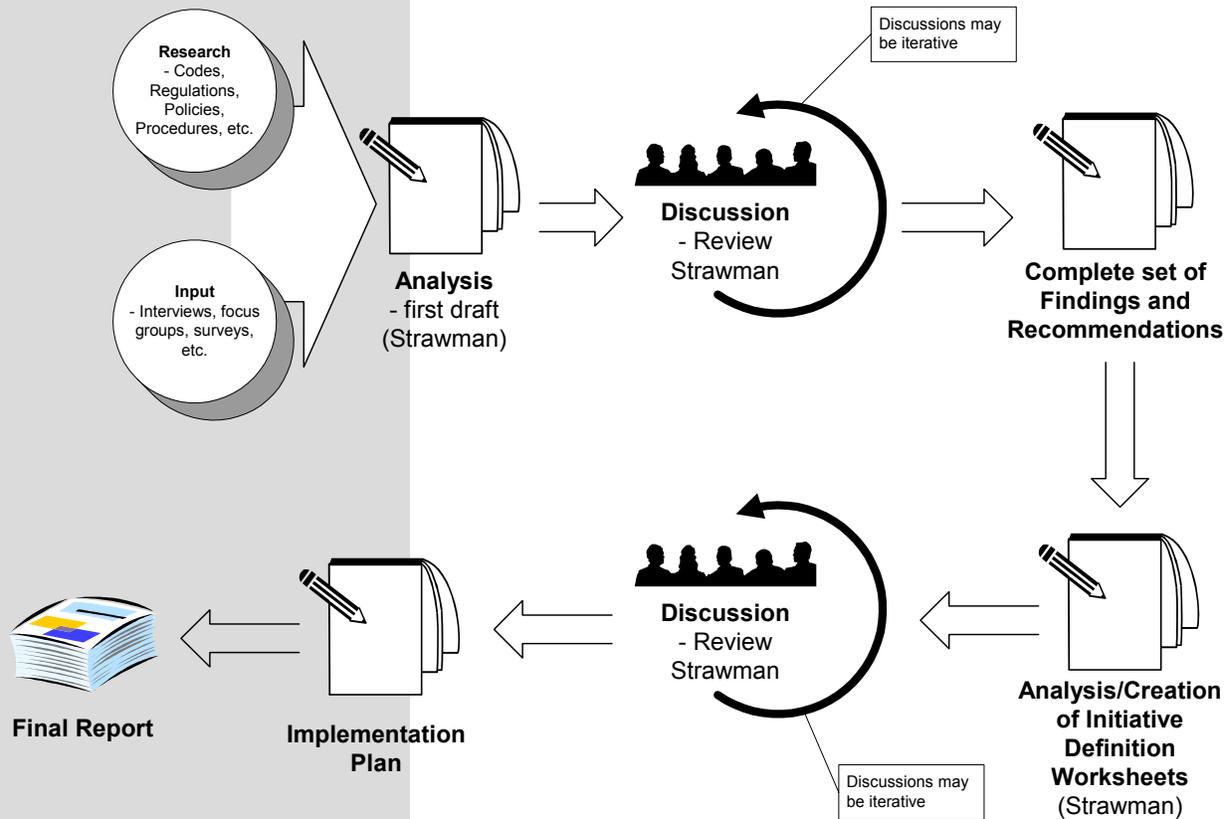
- After all the initiatives were completed, the CORE Team brainstormed the overall dependencies of the individual initiatives.

The resulting complete IDWs, which are found in [Appendix I: Initiative Definition Worksheets Matrix](#), were organized into a master project plan. This project plan graphically illustrates the interdependencies and durations of the complete implementation effort.

## Completing the Process

The final steps in the CORE Project involved developing the comprehensive final report, which constitutes the formal deliverable of the project. The process for creating the final report is shown in the next illustration.

### The Complete CORE Project Process



## SECTION 2— FINDINGS AND RECOMMENDATIONS

As described in Section 1.3, Approach and Analysis, the CORE Team documented their findings and recommendations, numbered in consecutive order and titled by topic summary as they were revealed through research.

Sets of draft “strawman” findings were sent out to the DGS/consultant CORE Project Team every two weeks for review and feedback. The team discussed the sets of findings during bi-weekly meetings, held every other Monday. As research progressed, new findings were added and existing findings were revised. Findings remained open for input from the team until nearly the end of the project. All of the findings and recommendations included in this report have been provided to the CORE Project Team in accordance with the CORE Project Process outlined in Section 1.3.

Deeper analysis of the findings revealed five high-level, over-arching themes. Findings and recommendations were categorized accordingly. Some of the findings clearly fell into one theme. However, some findings spanned multiple over-arching themes. In these cases, the dominant theme was used for categorization.

Findings and recommendations were organized and categorized in a tabular format in the “Findings: Over-Arching Matrix,” or FOAM. The FOAM is provided on the pages that follow. The first column is a brief description of each individual finding. The remaining columns list the five over-arching themes.

Each theme is discussed in detail in the report sections that follow the matrix. The individual findings and associated recommendations are presented according to their primary over-arching theme. The following are the five themes in the order they are presented:

- 2.1 Centralized Uniform Purchasing Policies
- 2.2 Centralized Uniform Purchasing Procedures
- 2.3 Organizational Issues
- 2.4 Legislative Change Packet
- 2.5 Individual Purchasing Issues

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### Findings: Over-Archiving Matrix

● = primary theme

◐ = secondary theme

#	Description	Over-Archiving Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
1	Single Source for Purchasing Policy	●				
2	Purchasing Categories	◐				●
3	Statutory References to Department of Information Technology (DOIT)				●	
4	Alternative Procurement Process Pilot	●			◐	
5	CMAS Purchasing	●	◐			
6	Management Memos as Policy	●				
7	Definitions of Terms and Phrases	●				◐
8	Cross-Reference of Purchasing Laws					●

#	Description	Over-Arching Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
9	Single Source for Processes and Procedures		●			
10	Purchasing Policy and Procedure Training	◐	◐			●
11	System/Process for Developing and Implementing Policy	●				
12	Follow-on Work	◐			●	
13	Small Business Preference Override		●			
14	Procurement Method Models					●
15	Invitation for Bid (IFB) Model "Compliance Phase"	◐	●			
16	Preparation and Dissemination of Lessons Learned					●
17	Contract Types	●				
18	Specifications, Requirements, and Business Needs	◐	◐		◐	●

#	Description	Over-Arching Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
19	Evaluation Methods	●	◐			
20	Protest, Disputes, and Grievances Processes	◐	◐	◐	●	
21	Emergency Purchase Process	●	◐		◐	◐
22	Non-Competitive Bid Process	◐	◐		●	◐
23	Electronic Acceptance of Sealed Bids	●	◐		◐	
24	Bifurcated Responsibilities for Purchasing Oversight			●		
25	Policy and Procedures Office			●		
26	Negotiation				●	◐
27	Approval Levels and Processes					●
28	Incentive Contracting				●	◐
29	Leveraging the Buying Power of the State					●

#	Description	Over-Arching Themes				
		1. Centralized Uniform Purchasing Policies	2. Centralized Uniform Purchasing Procedures	3. Organizational Issues	4. Legislative Change Packet	5. Individual Purchasing Issues
30	DGS Organizational Missions			●		
31	Delegation/Approval System	◐	◐			●
32	Purchasing Audits	◐	◐			●
33	Customer and Supplier Advocate			●		◐

## 2.1 Over-Archiving Theme #1— Centralized Uniform Purchasing Policies

California maintains neither a central source of, nor a dedicated entity assigned with the responsibility for developing, implementing, and maintaining purchasing policy. Within PD, the staff responsible for creating policy is also responsible for day-to-day purchasing activities. There are no fully dedicated policy personnel with the in-depth purchasing knowledge necessary to effectively develop, implement, and manage policies associated with purchasing.

The lack of a single organizational entity with responsibility for policy development, implementation, and maintenance automatically reduces policy as a priority and decreases its usefulness. When policy development, implementation, and maintenance are not considered a priority, policy quickly becomes out of date.

New policy is currently developed by a variety of ad hoc means. The policies are developed and discussed by differing factions of DGS management and are implemented and disseminated through various inconsistent mechanisms including Management Memos, delegation guidelines, personal memos, contract terms, and instruction packets. There is little or no structure to the policy development process, nor is there a formal or informal vetting of proposed or draft policies.

The State Administrative Manual (SAM) is recognized as the State's official policy manual. As such, departments are required to abide by the policies articulated in SAM when conducting State business. Over time, DGS has largely discontinued updating SAM in favor of creating the State Contracting Manual (SCM) and the California Acquisition Manual (CAM).

In addition, the Department of Information Technology (DOIT), and now under the responsibility of the Department of Finance (DOF), created the Statewide Information Management Manual (SIMM) as the policy/procedure manual specifically intended for information technology (IT) acquisition. All of these publications contain purchasing policy some of which is unique, some overlapping, and some contradictory.

Generally in the State, the term "procurement" has become linked to the purchase of goods and IT/telecommunications goods and services, while "contracting" has become the designation for the purchase of services. Within this report, we use "purchasing" as the term incorporating the acquisition of goods, services, and IT/telecommunications goods and services. "Procurement" used in this report refers to the process of soliciting and selecting a source, whereas "contracting" refers to the steps following source selection including entering into a binding contract or purchase order.

There is no single, definitive source for the State's policies and procedures for the conduct of purchasing activities. Traditionally, policies are rules that are more persistent, while procedures are the systematic instructions that implement the rules.

Recently, changes to purchasing policies have been occurring with greater frequency due to Procurement Reform pressures. DGS has increased volume and frequency of the issuance of Management Memos providing policy change direction to agencies and departments. Much of the new policy change is happening so rapidly that DGS has not been able to update SAM, CAM, and/or SCM, resulting in confusion both within DGS and in agencies as to the current applicable policies that they are required to follow. Policies are issued without procedural guidance, leaving the purchasing officials throughout the State to work out the implementation steps on their own.

Our research and analysis has yielded the following findings that predominantly fall under the “Centralized Uniform Purchasing Policies” theme. This theme represents the core issue that addresses the problems described above. The lack of a centralized uniform purchasing policy and the associated governance, organizational and process structure is at the root of the problem that ails the State’s purchasing system.

### 2.1.1 Single Source for Purchasing Policy

- ◆ FOAM Reference: Finding #1

#### *Findings*

There is no single, definitive source for the State’s policies and procedures for the conduct of purchasing activities. Purchasing policies and procedures are contained in a multitude of source documents, which are maintained in a multitude of places. In addition to fragmented sources, the policies and procedures overlap, contradict one another, and are interdependent. Furthermore, different personnel or organizations are responsible for updating the various source documents using their own unique processes, defined or otherwise.

The communication of policy and procedure changes is likewise decentralized and ad hoc. Presently there is no defined distinction between policy and procedure.

Traditionally, policies are rules that are more persistent, while procedures are the systematic instructions that implement the rules.

SAM is the State’s official policy manual. Over time, DGS has discontinued updating SAM in favor of creating the SCM and the CAM. DOIT, and now under the responsibility of the

DOF, created the SIMM as the policy/procedure manual specifically intended for IT acquisition. All of these publications contain purchasing policy some of which is unique, some overlapping, and some contradictory. In several instances the SAM refers the reader to the other manuals.

The California Public Contract Code (PCC) §12102 governs the policies and procedures for purchasing of IT goods and services. It states, “The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.”

OLS maintains the SCM. This manual restates, clarifies, and sometimes sets policies that overlap with the policies in SAM, CAM, and other sources. The focus of SCM is on non-IT services, but it also contains information regarding the other types of acquisitions. The document is maintained separately from the SAM and CAM.

Currently, the various policy manuals are updated and revised informally. There is no set timetable for revisions, no documented and uniform authority to change or create policy, little alignment between the manuals, and numerous responsible organizations all working without a consistent governance structure. Additionally, purchasing policy is revised and initiated through a system of bulletins that includes Executive Orders, Management Memos, Administrative Orders, Technology Directives, and Budget Letters. Confusion exists as to what the most current policy is for various contract types, and where to find it. Changes are seen as too frequent, overwhelming, and lacking any clear explanation of exactly what has changed and how the change might affect purchasing policy and/or procedure.

Of particular note, while CAM has merits in concept, its implementation has been fraught with delays and difficulties. Content for CAM is expected from subject matter experts, the people at the upper levels of the organization who have competing demands on their time and resources. As a result, sections of CAM are missing. Others have already become outdated. In some cases, the content provided for CAM is a mixture of background information, policy, procedure, and guidelines.

In summary, the absence of a single source document containing purchasing policy leads to confusion, delays, and errors.

### ***Recommendations***

- Clarify the distinctions between *policy* and *procedure*. Ideally, policy and procedure will be documented separately since procedures by definition are the methods to support policy. Furthermore, this ensures that updates and changes to policy and procedure are reflected in the proper, corresponding document.
- Establish a permanent organizational structure and process for maintaining the purchasing policies in order to keep them consistent and current.
- Establish a process for the evaluation, analysis, creation, and approval of new policies.
- Declare SAM the single *policy* manual for purchasing. Consolidate all purchasing policies in one source document with defined custodial structure, and update and communication processes. SAM is identified as the state's official policy manual. By statute DGS may update those SAM sections relating to purchasing policy without the formal constraints associated with the Administrative Procedures Act (APA).
- Form a purchasing policy reform committee with representatives from the DGS Office of Legal Services and Procurement Division, as well as other interested parties (e.g., DOF, Governor's Office) to undertake a sufficiently staffed initiative to update SAM.
- Using the aforementioned committee structure and defined process, systematically analyze the SAM, CAM, SCM, SIMM, and other current purchasing policy sources and rewrite them section-by-section to form a consistent set of policies in SAM. Upon completion of the SAM update, dissolve all other purchasing policy sources.
- Assign responsibility for SAM updates to a sufficiently staffed and empowered, single entity and enforce appropriate maintenance.
- Because effective policies and procedures require a specific writing skill, DGS should invest in the appropriate training for policy and procedure authors.

- Publish SAM on the DGS Internet site. This version ought to be the most up-to-date and “trusted” version.
- Update procedures for providing printed versions of SAM to those who cannot access the DGS Internet site.

## 2.1.2 Alternative Procurement Process Pilot

- ♦ FOAM Reference: Finding #4

### *Findings*

In the area of information technology purchasing, SAM §5215, “Pilot Alternative Acquisition Techniques (Revised 4/97),” describes the pilot alternative procurement process for IT. The section states:

Within two years after approval of the first pilot procurement, the Directors of General Services and the Department of Information Technology will assess these processes to determine their appropriateness and suitability for continued usage.

SAM §5215 does not provide any overall information relating to structure or content of an alternative procurement process. This lack of guidance increases the level of complexity and difficulty when using this method of purchasing and may result in unsuccessful procurements. In practice it is most often found that “alternative procurements” under this authorization have followed a process whereby a “mini-Feasibility Study Report (FSR)” is completed at the outset of the solicitation and the “final FSR” is completed following contractor evaluation and selection. Another “alternative procurement” technique has included benefits-based or performance-based contracts where the supplier is not paid until the system is installed, tested, and the anticipated benefits have begun to accrue.

Understanding that specific circumstances may require an alternative procurement process versus the standard procurement processes identified in SAM §5211, pursuant to PCC §12102(a) the DGS director has the authority to approve an “acquisition mode to be used and the procedure to be followed.” Therefore, alternative procurement approaches may continue to be presented to the director for approval upon demonstration of business need.

### *Recommendations*

- Since the intent of the alternative procurement process was to introduce innovation into the purchasing process, DGS should reinforce the creative aspects of the process to bring it back in line with the initial intent of providing unique, alternative procurement approaches to specific, out-of-the-ordinary business problems. This may be accomplished through the re-introduction of a new, better-defined alternative procurement process.
- Upon establishing changes to the alternative procurement process, update all references to the pilot from SAM, CAM, and other policy or procedure documents, such as the Delegation Guidelines and the Alternative Protest Pilot statute PCC §12127(c).
- Remove the terminology that refers to the “pilot” aspects and expiration of the policy (e.g., “Within two years...” and “...assess these processes...”).

### 2.1.3 CMAS Purchasing

- ♦ FOAM Reference: Finding #5

### *Findings*

PCC §10298 states:

§ 10298. Consolidation of needs of multiple state agencies; assistance to local governments

(a) The director may consolidate the needs of multiple state agencies for goods, information technology, and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State and local agencies may contract with suppliers awarded those contracts without further competitive bidding.

Beginning with PCC §12100, it is the stated intent of the Legislature that “this separate authority should enable the timely acquisition of information technology goods and services in order to meet the state’s need in the most value-effective manner.” PCC §12101 continues the Legislature’s intent by specifically identifying that the acquisitions of information technology goods and services be conducted in an “expeditious and value-effective” manner “within a competitive framework.” The definition of value-effective is found in PCC §12100.7(g). The term “competitive framework” is not specifically defined; however, PCC §12102 points to SAM for the “policies and procedures governing the acquisition and disposal of information technology goods and services.” SAM §5211 identifies the three competitive procurement techniques.

Throughout the purchasing related statutes, the Legislature has determined that competition ought to be incorporated into the policies, procedures, and activities of the State. The CMAS program, although based on the federal government’s General Services Administration (GSA) contracts with specific suppliers, which is based on a competitive framework, is by nature a limit on competition. In an attempt to improve the program, recent rule changes require CMAS users to obtain offers and document a “best value” comparison.

In practice, CMAS is a list of potential suppliers that have agreed to provide a good or service to the State at a price not to exceed the federal GSA rate schedule for similar services or goods. Since CMAS prices are “not to exceed” a given amount, it follows that each buyer using CMAS as a purchasing vehicle should take the responsibility to gather examples of offers from a variety of sources to ensure that the State is receiving the best value.

PCC §12101.5 allows the State to use “multiple award schedules” (MAS) to procure IT goods and services. SAM §4800 further defines MAS use: “State Agencies shall use master contracts whenever the functional requirements for which the contract was awarded are substantially the same as the agency's requirements.” The intent of this section of SAM is to allow the State to use master contracts for items that may be clearly defined and readily available.

Numerous Management Memos have changed and continue to change the rules for CMAS users. The DGS CMAS Unit publishes a packet on a regular basis with the intent of communicating the material changes to the program to its users and suppliers. In general, these packets reflect the various policy impacts that have occurred over some period. These packets, however, are not designed to communicate detailed procedures to the program users. For example, the recent requirement of collecting three offers for CMAS purchases was clearly communicated to the end-users via the CMAS packets. These packets stopped short on the methods and techniques necessary to evaluate these offers and document the best value as required.

### ***Recommendations***

- In keeping with previous options, centralize CMAS policies in SAM. Remove the policy aspects from the existing CMAS packets and place them in SAM where appropriate.
- CMAS Bulletin #35 prescribes that at least three offers be solicited and obtained when a State agency uses CMAS as a purchasing mechanism. The CMAS packets also state that CMAS transactions must be in the context of best value. Solicitation and evaluation procedures should be developed to ensure that agency users of CMAS are adequately and consistently determining and documenting their best value decisions. These procedures should reflect the appropriate level of rigor for various transaction types and sizes.
- Optimally, the term “best value” would be replaced with the codified term of “value-effective”.
- Develop procedures for vendors and agencies to follow when there is a grievance or issue with the selection or Purchase Order award for a CMAS transaction.

### 2.1.4 Management Memos as Policy

- ◆ FOAM Reference: Finding #6

#### *Findings*

It is common practice in the State, and most relevantly within DGS, to use the Management Memo as the primary means for the communication of policy changes. This may have resulted from the fact that historically SAM was updated on a twice-yearly schedule. Interim changes to policy would be communicated via a Management Memo until the policy change could be included in the next scheduled SAM revision. At that time, the Management Memo would expire and SAM would be up to date with all current policy.

In current practice the Management Memo has continued to be the method to announce the policy change, but the requisite step of updating SAM has not occurred. The frequency of Management Memos has increased lately due to the changes resulting from Procurement Reform.

The variety of memo types further compounds the set of purchasing policies and procedures that buyers are to follow:

- The use of dated versions of individual Management Memos that become new policy. Therefore, even if a buyer is following a particular Management Memo, it may be an early and obsolete version of a policy and, therefore, out of compliance.
- Even though many of the recent Management Memos do not expire (e.g., MMs are marked “Until Rescinded”), there seems to be a question as to what happens to a policy or procedure when its Management Memo does expire. Moreover, the use of Executive Orders, Budget Letters, Administrative Orders, Technology Directives, and even routine memos from purchasing managers contribute to the uncertainty regarding expiration of sources of policy changes.

Of necessity, buyers are forced to find, read, consider, understand and comply with a multitude of memo types that only causes confusion and frustration.

In current practice the Management Memo has continued to be the method to announce the policy change, but the requisite step of updating SAM has not occurred.

### ***Recommendations***

- Only issue Management Memos that announce and explain policy or procedure changes and reference the policy or procedure source documents. The source policy document would then be SAM and not the Management Memos. This practice requires that SAM be updated in a timely manner. As an example, the DOF Management Memo 02-20 summarizes policy changes and points to the actual policies in SAM and SIMM.
- Similarly, work with other groups (e.g., DOF, Governor's Office) to cease issuing source policy through Executive Orders, Budget Letters, Technology Directives and other correspondence that are policy changes in and of themselves, rather than announcements of policy changes. During this work, each issuing organization should review all outstanding memorandum and ensure that they still are applicable, and, if not, rescind them accordingly.

### **2.1.5 Definitions of Terms and Phrases**

- ◆ FOAM Reference: Finding #7

### ***Findings***

Some terms and phrases used in statutes, policies, and procedures are undefined, used ambiguously, or are simply confusing. Many of these terms are critical to understanding the statutes, policies, and procedures in which they appear. In practice, there are numerous key terms that are misused or used in varying contexts. The following are examples of key terms that should have clear and fixed definitions:

- Contract award: There is no written policy that explicitly defines when a contract is considered awarded. According to PD personnel, one definition in use specifies that when a notification letter is mailed to an awardee, the contract is considered awarded when the letter passes into the hands of the U.S. Postal Service. There may be a separate definition for each type of contract or specific instance of contract execution and delivery of the contract documents.

- Best value: The CMAS program uses “best value” in lieu of “value-effective.” The CMAS agency packets define best value by referring the user to PCC §12100.7(g), the definition of value-effective; this seems to create a logical link between best value and value effective. The differences, if any, between value-effective and best value should be documented. If there is no difference then the State ought to use only value-effective, since it is defined by law.
- Competition: This term is defined differently depending on the good or service purchased and the mechanism used. The “Delegation Guidelines for Information Technology” define competition as achieved if two responsive and responsible bids are received. PCC §10340 requires at least three competitive bids or proposals be received unless other conditions apply: emergency; advertised in the contract register, but received less than three responses; inter-agency/California State University/other education institutions; non-competitively bid (PCC §10348(a)); awarded pursuant to Welfare and Institutions Code 19404; awarded pursuant to Government Code §14838.5; related to licensing or proficiency testing.

### ***Recommendations***

- Create and continuously maintain a purchasing glossary that clearly defines and documents purchasing terms and phrases. Provide examples of their usages.

### **2.1.6 System/Process for Developing and Implementing Policy**

- ♦ FOAM Reference: Finding #11

### ***Findings***

Policy development and maintenance is an integral part of the DGS responsibility as the agency responsible for State procurement activities. DGS procurement managers are currently tasked with both policy development and their individual day-to-day management activities.

The demands of the day-to-day workload activities are high and require the full attention of assigned staff. The development and implementation of policy is critical to the success of any procurement program and must be considered a high priority task.

The demands of the day-to-day workload activities are high and require the full attention of assigned staff. The development and implementation of policy is critical to the success of any purchasing program and must be considered a high priority task. Purchasing policies and procedures must be kept current with the changes in statutes, court decisions, executive orders, and other policy decisions.

Currently, purchasing policy development is not a high priority task and therefore, it does not have sufficient resources dedicated to it. As a result, policies are not current; SAM is not updated to reflect policy changes, and CAM is in various stages of development.

Lack of a system supporting policy development and implementation results in:

- Relying upon outdated policies
- Delays in developing and updating policy
- Lack of knowledge and understanding of what the current purchasing policies (rules) are
- Increased opportunity for scrutiny of purchasing activities by the Legislature, suppliers, and other control agencies
- Increased costs due to inefficient workflow

Currently, purchasing policy development is not conducted according to a rigorous procedure. The lifecycle of a policy from inception to drafting to approval and implementation is an unmanaged process. Policy development is often a reactive process in response to external drivers. One negative result of this ad hoc method of policy development is that thorough vetting of the draft policy is not performed.

Policies must be properly vetted within DGS, with other agencies, and with outside stakeholders, so the full impact of the policy is considered while it is still in draft form. This reduces the frustrating practice of releasing policies only to release a superceding policy shortly thereafter to accommodate an unforeseen impact.

### ***Recommendations***

- Identify and dedicate the resources required for policy development.
- Create a full-time policy development unit that does not have responsibility for day-to-day management activities.

- Adopt a system/process that ensures rigorous policy development and continuing maintenance.
- Implement a governance process for developing policies that manages the full policy lifecycle from inception through implementation and rescindment.

### 2.1.7 Contract Types

- ♦ FOAM Reference: Finding #17

#### ***Findings***

There is a lack of clarity and guidance on the definition and use of various contract types in the State's purchasing policies and procedures. The commonly used contracting types are fixed price and cost reimbursement. Terms such as "firm fixed price," and "time and materials," are sometimes used and can be found in contracts, but are not well defined in statute or policy.

This lack of clarity can be seen in the fact that the term "fixed price" is used inconsistently in State contracting. The generally accepted definition of fixed price is the total cost per contract and/or deliverable without regard to the time expended and/or time-based rate. For example, service contracts with fixed price contract terms are often managed as "time and materials with a cap" contracts. The contract managers require time reporting and pay on the contract based on actual time spent, expecting to pay less if the work is performed with less effort than was entered in the contract, when in actuality this is contrary to the contract terms stating a fixed price.

#### ***Recommendations***

- Create clear policies for the definition and use of the various goods and services contract types that the state chooses to offer as available alternatives (e.g., fixed-price contracts, cost reimbursement contracts, incentive contracts, etc.). The following example from the Federal Acquisition Regulations (FAR) provides the definition for "firm-fixed-price contracts" (FAR 16.202) that demonstrates the appropriate level of detail necessary for these definitions:

### 16.202-1 Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

### 16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see Parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see Part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when-

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
- (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

- Ensure model terms and conditions exist and are comprehensive for each approved contract type.

## 2.1.8 Evaluation Methods

- ◆ FOAM Reference: Finding #19

### *Findings*

There are several evaluation methods noted in statute and policy. Goods, services, and IT each have separate sets of methodologies for evaluation based on either the lowest cost that meets specifications or some variation of a value-effective evaluation utilizing cost as one of several weighted

factors. The methodologies are similar in concept but different in implementation. This causes confusion and an unnecessary burden on the purchasing official to learn and employ several different evaluation methodologies depending on the type of procurement.

For IT contracts, PCC §12102(b) states that “Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state’s requirements....Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.”

SAM §5211 identifies three techniques for the use in procuring IT goods and services. These three techniques are Invitation to Bids (IFB), Request for Proposal (RFP), and Request for Quotations (RFQ). Each technique is described in SAM §§5212-5214, respectively. SAM §§5215-5216 specifies two additional procurement techniques, Pilot Alternative Acquisition Techniques and Multi-Step Procurement Procedure, respectively. SAM §5211 further states that it is the statutory responsibility of DGS to select or approve the technique or mode of procurement that is most appropriate for the specific circumstances.

The evaluation mechanisms for the IT goods and services procurement mechanisms are:

- IFB: “Award of a contract can be made only to the lowest responsible bidder compliant with the specifications.”
- RFP: “Selection of the vendor may be on factors other than or in addition to cost alone.”
- RFQ: No specific language relating to evaluation of quotations; however, the optional solicitation document wording does state, “Award of contract will be made on the basis of the lowest net cost to the State....”
- Pilot Alternative Acquisition Techniques: Determined on a case-by-case basis, evaluation technique must be explicit in the proposed acquisition methodology presented to and approved by DGS by the requesting agency.
- Multi-Step Procurement Procedure: “The basis for selection and award, if made, will be to the

responsible bidder meeting specifications at the lowest net cost to the State.”

For non-IT services contracts, PCC §10344 describes the two possible procedures, “sealed bid” and “scoring method,” for utilizing a “request for proposal” procurement. The “sealed bid” procedure, PCC §10344(b), requires that all proposals be initially evaluated on the bidder’s ability to meet the “format requirements and the standards specified in the request for proposal.” Once the set of responsive and responsible bidders is finalized, the sealed bids are opened publicly and the contract award must go to the lowest bidder. PCC §10344(c) specifies that the “scoring method” procedure substantially weights (deemed by DGS to be at least 30% of total score) “the contract price proposed by the bidder” against all other criteria. PCC §10344(c)3, “the contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.”

For goods/commodities, PCC §10301 dictates that all contracts will be awarded to the “lowest, responsible bidder meeting specifications” of the solicitation.

The following table is an overview of formal solicitations.

### Formal Solicitations

Category	PCC §	Procurement Type	Evaluation Method
Goods	10301	IFB	“lowest responsible bidder”
Services	10344 Code states that evaluation criteria shall be exposed in the RFP. Also specifies cost is in separately sealed (2 envelopes).	“sealed bid” (IFB) & “scoring method” (RFP)	SCM Ch. 5.06 describes IFB, Primary RFP (lowest, responsible bidder in 2 steps—scored technical and then lowest bid out of all the responsible bidders); Secondary RFP (scored technical and scored cost – at least 30% - awarded to highest overall score.
IT Goods & Services	12102	IFB, RFP, RFQ, multi-step	SAM §§5211-5216 identifies – IFB (5212), RFP (5213), RFQ (5214), pilot alternative acquisition technique (§5215), multi-step (§5216).

There is a lack of well-documented, comprehensive evaluation methods and procedures. The existing procedures for evaluation methods are represented in CAM (goods and IT) and SCM (services).

CAM Chapter 3.5.3, “Evaluating Solicitation Responses,” is incomplete and unavailable for use. SCM Chapter 5 provides some evaluation procedures, but should provide more detailed information, as well as samples and templates.

SAM §5221 provides a “model” Invitation for Bids. Using the model, it is difficult to interpret what sections are required and when, what sections are optional and why.

The following list of best practices is provided to aid in the development of comprehensive evaluation methods and procedures:

- Hawaii (HI) Administrative Code (ADC) §3-143-205: evaluators must be educated and trained sufficiently to serve as effective evaluators.
- HI ADC §3-122-52: must use a minimum of three government employee evaluators (private contractors can also be used) with the “sufficient qualifications in the area of the goods, services, or construction to be procured.”
- 2 Alaska ADC 12.260: “evaluation committee consisting of at least three state employees or public officials.”
- 8 New York ADC 155.21: no single evaluation criteria will exceed 50% of the total.
- Nevada ADC 333.162: no member of the evaluating committee can possess direct supervisory authority over a majority of the other members of the committee.
- Wisconsin ADC §10.08: “Each committee shall consist of 3 or a larger number of members, depending on the complexity and scope of services being procured. At least one member or a person advising the committee shall be trained in procuring contractual services.”

## *Recommendations*

- Develop policies and procedures identifying the appropriate evaluation methods for each procurement category, as well as describing the individual evaluation steps for each method. These methods and procedures should be as consistent as possible without regard to the type of procurement.
- Develop policies and procedures to provide definition and guidance relating to the evaluation of solicitations in areas such as:
  - Financial strength
  - Credit worthiness – Dunn & Bradstreet score
  - Performance criteria
  - Bid, protest, and performance bonds
  - Evaluated bid price as per application of preferences versus actual bid price
  - Design criteria
  - Weighting of criteria
  - Evaluation team makeup
  - Document control
  - Evaluation integrity
  - Evaluation logistics
  - Proposal/bid/offer review
  - Oral presentations rules/procedures
  - Scoring methods per evaluator
  - Overall score calculation methods
  - Use of contractors in the evaluation process
  - Evaluation results verification
  - Notice, posting, and announcement procedures
  - Skills, roles and responsibilities of the evaluation team, Procurement and Contracting Officer (PCO), evaluation team members, evaluation lead, Independent Verification & Validation (IV&V), legal, DGS PD

### 2.1.9 Emergency Purchase Process

- ◆ FOAM Reference: Finding #21

#### **Findings**

PCC §1102 states:

"Emergency," as used in this code, means 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.

State law provides the ability to conduct “emergency purchases” when necessary for the protection of the public health, welfare, and safety. Code regarding emergency purchases is included in PCC §10302 for goods, PCC §10340 for services, and PCC §12102 for IT. Departments are required to document the emergency and receive approval of such prior to conducting their procurement.

The provision for emergency purchases is intended for true emergencies. On occasion, emergency purchase approval is requested as a result of poor planning on the part of individual departments and/or a lack of understanding of the definition of an emergency.

The result of poor planning and/or lack of understanding of the definition of an emergency may result in:

- Inappropriate requests for emergency purchases.
- DGS being pressured into approving purchases that may not be true emergencies.
- DGS denying purchases not deemed emergencies resulting in dissatisfied customers and uncomfortable relationships with departments.

#### **Recommendations**

- Develop standardized policy and procedures for the applicability and use of emergency purchases that supports the definition of emergency as articulated in the PCC.
- Update the standard form (Form 42) used for documenting and requesting approval on an emergency purchase to reflect the standardized policy and procedures.
- Include a definition of emergency purchases and examples of such in training materials.

## 2.1.10 Electronic Acceptance of Sealed Bids

- ◆ FOAM Reference: Finding #23

### Findings

Related to goods, PCC §10304 states:

All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read. No bids shall be considered which have not been received in the office of the department prior to the closing time for bids set forth in the invitations to bids. The department shall maintain confidentiality regarding each bid until the public opening and reading takes place.

For services, PCC §10341 states:

Whenever a contract subject to the provisions of this article is awarded under a procedure which provides for competitive bidding, the bids shall be publicly opened at the time stated in the invitation for bids and the dollar amount of each bid shall be read. No bids shall be considered which have not been received at the place, and prior to the closing time for bids, stated in the invitation for bids.

Additionally, PCC §10344 states that when using an RFP for services solicitations “the bid price and all cost information” be submitted “in a separate, sealed envelope.

According to PCC §12102(b)2, solicitations for IT goods and services “based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted.”

In practice, DGS only utilizes electronic means in a limited fashion, such as receiving faxed bids for commodities and IT goods, and email in lieu of telephone quotations. The Department’s reluctance to the wider use of receiving all solicitation responses via electronic means is attributed to uncertainty regarding the statutory language describing acceptance of “sealed bids.”

PCC §1600 was added in 1993 and the Legislature’s intent was “to enact necessary statutory revisions to procurement policies to allow electronic procurement transactions to occur.”

The Department’s reluctance to the wider use of receiving all solicitation responses via electronic means is attributed to uncertainty regarding the statutory language describing acceptance of “sealed bids.”

PCC §1600 states:

Notwithstanding any other provision of law, counties, a city and county, and state agencies may enter into and make payment on contracts by way of electronic transmission, including, but not limited to, the issuance of solicitation documents, and the receipt of responses thereof.

To further clarify the use of electronic means for procurement, the Legislature in 2002 added PCC §1601 which states:

Any public entity may adopt methods and procedures to receive bids on public works or other contracts over the Internet, but only if no bid can be opened before the bid deadline and all bids can be verified as authentic.

### ***Recommendations***

- Develop standardized policies and procedures that support the receipt of sealed bids via electronic means. DGS should implement an e-procurement method or system with sufficient security and transaction integrity features to meet the “no bid can be opened before the bid deadline and all bids can be verified as authentic” requirements. The implementation of this option should be in conjunction with the Task Force Recommendation #14 (implement an e-procurement system) working group.

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

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

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

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

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

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

### 2.2.1 Single Source of Processes and Procedures

- ◆ FOAM Reference: Finding #9

#### *Findings*

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

DGS currently does not maintain a single source of purchasing procedure that serves as the uniform source of step-by-step instructions for buyers.

DGS, in its role as a control agency, is in the position to create, maintain, and disseminate procedures for the many purchasing processes it governs.

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

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

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

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

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

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

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

### ***Recommendations***

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

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

- ◆ FOAM Reference: Finding #13

#### ***Findings***

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

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

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

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

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

### ***Recommendations***

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

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

- ◆ FOAM Reference: Finding #15

### ***Findings***

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

The following summarizes the seven-step Compliance Phase:

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

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

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

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

### ***Recommendations***

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

## 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

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.

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

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.

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.

### 2.4 Over-Arching Theme #4— Legislative Change Packet

As the various laws associated with procurement and contracting activities were analyzed, some recommendations for change emerged. Just as policies have evolved, laws have been created over many years, resulting in some inconsistencies and lack of clarity. Legislative change can be approached in numerous ways. One method relies on sweeping legislative change while another approach builds upon incremental legislative change focusing on specific areas.

The project team recommends that specific areas in law be addressed by focusing on correcting errors and/or omissions and adding clarity where needed. The following findings most predominantly fall under the “Legislative Change Packet” theme.

#### 2.4.1 Statutory References to the Department of Information Technology (DOIT)

- ◆ FOAM Reference: Finding #3

##### *Findings*

With the “sun setting” of DOIT on July 1, 2002, in accordance with Government Code §11700 et seq repealed by Statutes of 1999 (AB 1686, Dutra) Chapter 873, the Department of Information Technology (DOIT) no longer exists. Throughout the PCC, Chapter 3 (§12100-12113), references to DOIT create several inconsistencies in the PCC.

In keeping with the intent of PCC Chapter 3 of Part 2 of Division 2, several references state that DOIT and the DGS are jointly responsible to create and coordinate policies and procedures for the acquisition of information technology goods and services. However, Chapter 3 of Part 2 of Division 2 also draws a further distinction between these joint responsibilities when it says that DOIT has the final authority over “any general policy”, and DGS has the final authority over the “determination of any procedures.”

This appears to put the responsibility for “policy” and “procedure” in conflict:

- Section 12102. “The Department of Information Technology and the Department of General Services

shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.”

- Section 12105. “The Department of Information Technology shall have the final authority in the determination of any general policy and the Department of General Services shall have the final authority in the determination of any procedures....”

This separation of authority does not make any distinction between “general policy” and “procedures.” In addition, this contradicts the DGS responsibility to develop and maintain procurement policies *and* procedures for the State as set forth in Government Code §14600 et seq.

Executive Order D-59-02 assigns the DOIT roles and responsibilities to the Department of Finance (DOF).

Subsequently, the DOF issued Management Memo 02-20 detailing the changes to policy, instructions, and guidelines for statewide IT policy. The memo stated the DOF intention to maintain the SAM and SIMM as the “single location for statewide IT policy, instructions, and guidelines.”

Additionally, DOF clarified the delineation of DGS and DOIT responsibilities in the subject area of IT procurements. DOF has assumed responsibility for all statewide IT policy in SAM and the corresponding instructions and guidelines in SIMM; DGS has responsibility for all goods and services procurements including IT goods and services, and requires the use of ITPPs for IT procurements.

### ***Recommendations***

- To clearly define the authority, roles, and responsibilities for procurement of IT goods and services, the legislature should pass such legislation as necessary to update and clarify the Public Contract Code and Government Code, and assign the DOIT roles and responsibilities to another agency.
- Since DGS is responsible for developing policies and procedures for the purchase of goods, it should also be responsible for developing policies and procedures for the purchase of IT goods and services. Coordination with other control agencies such as DOF would be necessary, but the final authority for all purchasing policies and procedures should lie with DGS. Even though MM 02-20 clearly states that purchasing

policy is DGS' area, an effort should be made to work through the legislature to change the statutes to grant DGS the authority for development of statewide IT purchasing policy and procedure.

### 2.4.2 Follow-on Work

- ◆ FOAM Reference: Finding #12

#### ***Findings***

PCC §10365.5(a) states: “No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.” With the passing of SB 1467 (D-Bowen) effective July 1, 2003, PCC §10365.5 applies not only to consulting services, but also to the acquisition of information technology (IT) goods and services.

The purpose of this law is to address the unfair advantage and bias that can occur through an organizational conflict of interest (OCI) caused by the position of the consultant in an advisory role. The OCI most often occurs when the consultant is involved in preparing specifications or statements of work that will be used in a subsequent solicitation document and then is allowed to submit a proposal for the solicitation.

This law is overly broad and simplistic to the point of being counter to the State's best interest and stated intentions for competition in purchasing. The conflict of interest issue for consultants lies in their position as advisors preparing specific specifications, making specific recommendations, or having access to non-public information with regard to some future solicitation. Allowing consultants to bid on solicitations containing the specifications that they produce could cause bias in producing the specifications, with a built-in advantage to the consultant. It can also cause an unfair competitive advantage by virtue of the consultant having been exposed to non-public information with a material relevance to the solicitation.

As written, the law restricts consultants from performing any future work that is connected in any general way to the end deliverable of their awarded contract. In doing this, the law is counter to the legislative intent that the State foster competition and participation in public contracting. The generalized language of the law prohibits consultants from bidding in cases where no reasonable opportunity for conflict of interest or bias exists. To compound the problem, each situation is decided on a case-by-case basis.

The breadth of the law is restrictive in nature, causing the State's buyers to ignore it or implement it according to their own interpretation. The following real life examples illustrate the varying degrees of the interpretation of the law:

- Writing non-specific, over-arching consulting contracts in an attempt to allow for any and every possible follow-on task circumvents the intent of the law
- Overly restricting consultants who advise senior management from doing any other work in the department
- Allowing consultants to bid on anything so long as they did not physically write the FSR or RFP
- Combining advisory, requirements, design, integration, and implementation roles under one contract to subvert the law at the cost of creating a non-specific contract giving the firm "carte blanc" to write the requirements, as well as design, integrate, and implement the system

In addition to the rule restricting follow-on contracting being overly broad, we find that the application of the rule is overly narrow. The OCI that can exist in consulting services contracts may also exist in other areas such as goods and IT goods and services contracts. The same OCI may also exist if the participation of the party in question is under a paid contract or is serving voluntarily or pro bono. In fact, allowing vendors to donate their time to aid the State in preparing specifications, requirements, or solicitation documents presents both an OCI and a quid pro quo. For example, a vendor offering his services to assist a department in developing an FSR without charge is not in violation of the law, but clearly poses an OCI when the same vendor later responds to the solicitation.

### ***Recommendations***

- Because of the breadth, clarity, and simplicity of the law, the margin for any policy or procedural clarification to positively change its effect is limited to clarifying the application of the rule as written. The best course of action is to revise the law to restrict follow-on work more appropriately linking it to actual conflicts of interest. Specify the law to deal with situations leading to organizational conflicts of interest that are inherent in vendor participation in the pre-solicitation activities. In redrafting this statute, the State ought to make it broadly applicable to all purchasing transactions not limited to consulting services and not limited to instances where the initial work is performed for fee or under a contract. Examples from other government entities are provided in [Appendix J](#). These examples are in keeping with our recommendation and should be considered during implementation.
- With the change in the law due to SB 1467, SAM §5202 must be updated to remove the reference to PCC §10365.5; it is now redundant and potentially confusing due to the included example that applies the rule in a very specific context.
- Develop policy and procedures to clarify the application of the law as it is written and in the case of any future statutory improvements, including specific steps for applying the law in context of the purchasing process and individual purchasing models.

### **2.4.3 Protests, Disputes, and Grievances Processes**

- ♦ FOAM Reference: Finding #20

### ***Findings***

For each type of procurement, the statutes define a protest process by which the State receives, processes, and decides on bidder protests. For goods solicitations, the Victim Compensation and Government Claims Board (VCGCB) (PCC §10306) hears protests. IT goods and services protests are also heard by the VCGCB (PCC §12102).

In accordance with PCC §10345, protests for non-IT services are to be decided by DGS. The Alternative Protest Pilot provides an alternative process with different grounds for protesting utilizing the Office of Administrative Hearings (OAH) for arbitrating the decision (CCR Title 1 Chapter 5).

PCC §12102 directs DGS to develop procedures for processing protests for any formal competitive IT procurement. It also permits “initial” protests of the requirements before bids are submitted.

For goods and services, PCC §10300 states that DGS must provide a Customer and Supplier Advocate for aiding vendors with the protest process.

PCC §12127.5 states:

All other procurements subject to this chapter shall meet one or more of the following criteria:

- (a) The agency or department has stated its business needs and not detailed specification in the solicitation.
- (b) The agency or department has stated the criteria and the weight to be given to each criterion by which it will evaluate all proposals.
- (c) The contract shall be awarded based on “value effective acquisition,” as that term is defined in Section 12100.7, competitive negotiation, an alternative procurement, performance-based solicitations, or other methodologies as established by the Department of General Services.

SAM §5210.2 states:

Protests involving informal quotations or protests of the procurement document or process prior to selection announcement will be heard and resolved by the Department of General Services.

CAM Chapter 3.48 describes the process for handling initial protests of solicitation requirements.

Within the Historical and Statutory Notes for PCC §10290.1, the legislative intent regarding the protest process is clearly expressed:

Section 1 of Stats.1995, c. 932 (S.B.910):

- b) The integrity of the procurement process, as well as the ability to attract maximum competition, are further enhanced by allowing an aggrieved bidder the right to a timely and equitable process to protest a solicitation, award, or related decision.

The statutes and policies relating to protests, disputes, and the like are spread throughout the universe of codes, regulations, policy manuals, and other sources. This disorganization presents a tremendous challenge to both the buyer and vendor community in effectively utilizing and managing the protest-related processes. In general, there is a lack of clear and detailed policies, procedures, roles and responsibilities that govern the processing of protests, disputes and grievances.

The practice of maintaining various protest hearing and decision bodies is not advantageous. It introduces confusion and opportunity for discrepancies with regard to the processes and the outcomes of protests. This redundancy is not justified.

### ***Recommendations***

- Create policies to protect the rights of all respondents to State of California solicitations to have their protests heard and decided. An adjunct process is necessary that provides all bidders with opportunities to be fully debriefed following a solicitation, thereby, reducing the protests occurring simply because an unsuccessful bidder wants to understand the reasons why they lost.
- Create policies with timelines for responding to all protests, questions, disputes, or complaints.
- Create a policy that clearly states under what conditions the Alternative Protest Pilot may be applied and which solicitation methods may be used.
- Create a policy regarding the assignment and roles of the Customer and Supplier Advocate. Additionally, ensure that IT goods and services are addressed within this policy.
- Create procedures to handle the protest process with the following attributes:
  - Integrity of the process with regard to roles and conflicts of interest
  - Chain of custody for the files, documents, and other evidence to avoid losses of information that would affect the outcome
  - Proper and timely routing of protest documents
  - Communications to vendor controlled to protect against improper threats or quid pro quo or other perceived conflicts of interest

- Create policies and processes for handling protests and/or grievances for all procurement mechanisms including informal, CMAS, MSA, and NCBs.
- Modify the PCC to standardize the protest hearing and decision body.
- Modify the PCC to standardize the process for announcing intent to award and the period for accepting protests.
- Modify the PCC to allow for the DGS to find a protest frivolous and require a bond to be posted for the hearing body to decide the protest. Require that the bond be forfeited should the disappointed vendor lose the decision.

#### 2.4.4 Non-Competitive Bid Process

- ♦ FOAM Reference: Finding #22

##### *Findings*

For goods, State law provides the ability to conduct non-competitive bid (NCB) procurements when an individual department and DGS agree that an article of a specified brand or trade name is the only article that will properly meet the needs of the department (see PCC §10301).

For services, PCC §10348 states:

The department shall prescribe the following:

(a) The conditions under which a contract may be awarded without competition, and the methods and criteria which shall be used in determining the reasonableness of contract costs when a contract is awarded without competition.

Additionally, PCC §12102(a) states that IT goods and services will be acquired through competition except when DGS determines that “(1) the goods or services proposed for acquisition are the only goods and services which can meet the state’s need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.”

In some cases it may not make sense to conduct competitive procurements if there is only one supplier that can meet the needs of a department. For example, a department purchases a specific brand of postal equipment, including a postal meter. Maintenance on the meter is only available from the original

equipment manufacturer. It does not make sense for the department to be required to competitively bid a maintenance contract where no other supplier could provide support.

An NCB may not be appropriate for procurements that could be responded to by a number of vendors. For example, a department may need to engage a vendor to perform some type of consulting services. In the current market place, there are literally hundreds of vendors that can provide a variety of consulting services, making it much more difficult for a department to adequately justify that an NCB is necessary and appropriate.

The result of poor planning and/or lack of understanding of the definition and appropriate use of the NCB process may result in:

- Inappropriate requests for NCB approval
- DGS being pressured into approving an NCB that might be more appropriately a competitively bid procurement

### ***Recommendations***

- Amend the Public Contract Code to define a consistent definition of NCB, and the applicability of the NCB process for goods, services and IT.
- Regardless of the statutory change above, develop standardized policy and procedures that defines the appropriate use of NCB, including all types of NCB (i.e., single-source [specified brand or trade name] and emergency).
- Update the standard form to be used for documenting and requesting approval on an NCB to match the clarified policies and procedures.
- Establish policies and procedures that include standard processing durations (e.g., turn-around time) and visibility into the status of the request to interested parties throughout the NCB approval process
- Include a definition of NCBs and examples of such in the purchasing training.

### 2.4.5 Negotiation

- ♦ FOAM Reference: Finding #26

#### Findings

The Federal Acquisition Regulations (FAR) §15.306(d) defines “negotiation” as follows:

Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions....

Similarly, the National Contract Management Association (NCMA) provides the following definition:

A method of contracting that uses either competitive or other-than-competitive proposals and (usually) discussions. It is a flexible process that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract.

The National Association of State Purchasing Officials (NASPO) and the FAR reference negotiation in context of the two prevailing procurement models, competitive and non-competitive. NASPO’s position is that the State, as the buyer, must negotiate with the seller when the solicitation is non-competitive. This condition is necessary to ensure that the resulting contract is not too one-sided due to the lack of alternatives afforded by competition. Therefore, the requirement to conduct negotiation should be statutory.

There are two types of negotiations related to when they occur during the solicitation process; these are pre-award and post-award. Pre-award negotiations can be broad and may result in material changes to the scope of the proposals, the price, or the solicitation specifications. Post-award negotiations may not include material changes to the scope or prices because of the fairness principle. To do so would, in effect, change the solicitation ex post facto, thereby opening the possibility that a different contractor could have won if the negotiated terms were solicited. This not only is unfair

NASPO’s position is that the State, as the buyer, must negotiate with the seller when the solicitation is non-competitive.

but also may result in a reduced value to the purchasing agency.

Post-award negotiation is important nonetheless because small changes to the terms may be inconsequential to the contractor but significant to the purchasing agency. Both types of negotiation have their place in the California purchasing system. It is also important to note that negotiation is not defined solely in terms of price negotiation. In fact, price may not be as important a factor to State purchasing as is negotiating terms, scope, features, schedule, quality, or some other performance aspect of the contract.

Currently, there is little to no negotiation in California under the following procurement methods:

- Invitation for Bid (IFB) method for goods purchases. The IFB method calls for sealed bid envelopes, which precludes pre-award negotiations once the bids are received. It may be permissible to create policies that allow some pre-bid and post-award negotiations.
- Competitive bidding for non-IT services.
- MSA ordering process. The ordering process is modeled after the sealed proposal/bid method. This is a practice rather than an effect of policy or statute.
- CMAS ordering process. This is a practice rather than an effect of policy or statute.

Negotiation does take place in IT procurements using the compliance phase. The compliance phase is an option for IT IFB procurements and RFP procurements; it is mandatory for multi-step procurements. This process is founded in the concept of negotiation. Currently, only scope and performance oriented aspects of the proposals or bids are negotiated. This is due to a strict interpretation of the policy that calls for cost proposals to be sealed separately and submitted at the final stage of the process after all confidential discussions have occurred. The statutes governing IT procurements do not preclude price negotiations, in fact, PCC §12103 encourages price negotiation by directing DGS to develop policies and procedures for conducting them.

In public agency purchasing, the openness of the process represents a built-in advantage to the contractor in conducting negotiations. They often know the budget, criticality, evaluation criteria, the other contractors involved, and many other attributes of the procurement that would not be disclosed in the private sector. The goal of negotiation is to

arrive at a mutually agreeable contract. It should not be seen as an adversarial process that sets the stage for a contentious relationship during contract execution and delivery.

The process of public agency procurement negotiation must be guided by policies and detailed procedures. This structure is required to preserve the principles of public purchasing, such as openness, fairness, and competition. The negotiation meetings must be highly structured. There must be a fixed number of meetings. There must be well-defined criteria for entering into negotiation.

Care must be taken to ensure that fair and equal treatment is maintained when the negotiation team is dealing with several contractors. The information passed from the negotiation team to the contractors must not represent a comparison among proposals. The negotiation team must be diligent in offering the same type and level of information to each contractor.

Negotiation is a skill that requires proper training and experience. In order to conduct an effective negotiation and obtain all of the “must have” and the most of the “would like to have” aspects of the contract for the most advantageous price, the negotiation team must be confident, assertive, and competent.

Sufficient skill and experience is especially required for the public sector negotiation team, given the built-in disadvantages of this environment. The team must also be careful not to negotiate a contract that strips the value from the delivery of the goods or services in favor of a lower price.

### ***Recommendations***

- Draft legislation that requires negotiation for non-competitive solicitations.
- Develop comprehensive policies implementing the practice of negotiation that address the following:
  - Preservation of the principles of openness, fairness, and competition.
  - Defining the various types of negotiation and when they may be applied.
  - Specify training and skills needed for the negotiation team members.

Negotiation is a skill that requires proper training and experience.

Incentive contracts may be of great benefit to the State.

- Develop detailed step-by-step procedures to guide the negotiation process including:
  - Planning for negotiation – prior to the start of the procurement, identify if and how negotiation may aid in achieving the specific objectives relating to price, delivery, performance standards, warranty, contractual terms and conditions
  - Including language in the solicitation documents specifying if negotiation will be employed or not and, if so, detailing the negotiation process to be followed
  - Specifying how contractors are selected to enter into negotiations
  - Specifying the possible outcomes and process following the negotiation up to contract award
- Develop a training and certification program that qualifies purchasing officials to conduct negotiations.

### 2.4.6 Incentive Contracting

- ♦ FOAM Reference: Finding #28

#### *Findings*

Within California, incentive contracting is used primarily in the public works construction area. The PCC §10226 authorizes incentive contracting for certain public works projects based only on the time of completion. By the rules of legal interpretation, this authorization in statute implies that there is not an authorization for incentive contracting in the procurement of goods, services, or information technology.

Incentive contracts may be of great benefit to the State. They can shift risk to the contractor and increase the value equation for the State while offering the contractor opportunities to increase their compensation and profit. There is a potential for incentive contracts to save money, reduce risk, and increase quality.

Incentives may take the form of extra compensation for achieving positive results or certain desired behavior or compensation reductions for negative performance or behavior. They also may be non-monetary, for example, tying the execution of contract extensions or options to

specific performance metrics on the base contract. The following are examples of incentive contracts:

- Goods – contract stipulates that for consistent delivery of a fresh produce product that meets the highest end of the quality range the payment would be higher, whereas the delivery of product at the low end of the acceptable quality range would yield a lower payment per unit. This incentive insulates the buyer from the quality risk inherent in the fresh produce market.
- Services – contract language calls for incentive payments based on the results of customer satisfaction surveys in the case of an outsourced call-center.
- Information Technology – contract provides positive and negative monetary incentives for quality (number of defects above or below a threshold number) and schedule performance (delivery of milestones prior to certain dates) on a custom software development and integration effort.

Incentive contracts are not without their costs. Additional overhead costs are involved in administration of the incentives. The contract administrator must track and oversee the collection of metrics to support the incentives. The contract administrator must put in place processes for the incentive decisions and payment processes to enforce them. They must also be prepared for any contract disputes that may result from the determination of the amount or applicability of the incentive.

### ***Recommendations***

- Draft legislation to specifically allow for incentive contracting in goods, services and information technology procurements.
- Develop policies to provide sound guidance on when incentive contracting should be considered as well as the requirements and impacts on the solicitation, selection, award, and contract administration processes.
- Develop procedures for conducting procurements with incentive contracting.

## 2.5 Over-Arching Theme #5— Individual Purchasing Issues

Throughout the discovery and analysis phase, the project team found inconsistent, outdated, and insufficient definitions for the various purchasing categories (types), key terms and phrases, and procurement methods. Input gathered through analysis, as well as from the client entity groups, supported the need for preparing lessons learned, as well as further definition, training and education in the areas of: (1) Specifications, Requirements and Business Needs, (2) Approval Levels and Process, and (3) Leveraging the Buying Power of the State.

The ability of buyers to know and understand the differences in purchasing categories (or types) is critical to the overall success of procurement and contracting activities. Further, the understanding of the various terms and phrases used and the types of procurement methods available, including the conditions under which type is appropriate, is an integral part of successful purchasing.

Additionally, of high importance within DGS and with the client entity groups, is the development and maintenance of a cross-reference of the various purchasing codes. The body of California law surrounding purchasing is very large and complex. Most individuals and groups indicated that they often are not sure which statutes apply to their specific procurement and contracting activities.

DGS PD has recognized the aforementioned situation and developed two documents; “California Codes Relating to State Acquisitions, Statutes of 2000” and “Excerpts and Summary of Statutory & Policy Requirements for State Contracts” as reference guides for interested parties. With the proliferation of changes to purchasing law and policy over the past three years, these documents are now outdated and require resources to update them.

DGS can begin addressing many of the findings within this theme right away as they do not necessarily affect nor are they affected by other findings and recommendations.

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

### 2.5.1 Purchasing Categories

- ◆ FOAM Reference: Finding #2

#### ***Findings***

The State has identified many distinct areas where purchasing is conducted. Some of these areas are: public works, architect and engineering services, real estate, fleet, benefits contracts, goods/commodities, services, and information technology (IT) goods and services. The scope of the CORE Project and our analysis is limited to three categories: goods, services, and IT goods/services.

Public Contracting Code (PCC) Part 2, Chapter 2 (§10290 - 10381) governs the procurement of goods and services. However, a separate section of the PCC, Part 2, Chapter 3 (§12100-12113), governs the procurement of information technology goods and services.

Different laws applying to different procurement categories imply an important distinction between them. As a result, it is important that State buyers understand how to correctly classify procurement items. Purchasing under an incorrect or inappropriate law may result in:

- Increased protests
- Bid cancellations and re-bids
- Dissatisfied customers
- Frustrated bidders
- An illegal contract or order
- Increased resources and overhead for procurement

The distinctions between goods, services, or IT goods/services used to determine the category of a particular item are not clearly documented in current policies and procedures. There can be misunderstanding or disagreement about the category to which a particular item might belong.

There are presently some basic guidelines and definitions in SAM and SCM, however, unless the item falls within one and only one purchasing type, buyers must rely upon their experience and judgment to correctly identify the appropriate category.

The PCC §12120 directs all telecommunications purchasing to be conducted under the same authorities and processes described by the information technology statutes (PCC §12100 et seq). There are unique aspects of telecommunications purchasing as required by the DGS Telecommunications Division (TD) serving in their telecommunications oversight role. The special requirements are not well-documented or integrated into existing policy or procedures.

When the category of an item is not clear, decisions may be made based on the category that is the “easiest” to process rather than that which is more appropriate. The validity of the authorities and other rules, including evaluation and protest processes, also depend on the purchasing type.

Attempts to clarify which rules or authority apply to a particular procurement type has led to the production of a confusing variety of policies and procedures. This array of statutes, policies, and procedures that might be considered valid requires State employees and officials to choose, in some cases ad hoc, rather than be guided to select which statute, policy, or procedure properly applies to a particular purchasing situation.

Attempts to clarify which rules or authority apply to a particular procurement type has led to the production of a confusing variety of policies and procedures.

### ***Recommendations***

- Create policies that define and clarify purchasing categories in keeping with the statutes. Additionally, classify within policy those types of items that can be “universally” typed or categorized.
- Using the statutory or policy definitions of each category, develop a standardized procedure to assist buyers in identifying the correct purchasing category. Standardized procedures should reduce or eliminate the gray area between categories and define a process for consistent choice and use of the rules and definitions contained in the statutes and policies. These procedures should include the documentation necessary to justify what information the buyers used to make their decision.
- Include telecommunications policies and procedures as one of the purchasing types. Coordinate with TD to develop an integrated process including appropriate approvals and checks performed by TD, DOF, and PD. Telecommunications is an area where all three

oversight agencies must coordinate to make the process clear for client agencies.

- Develop procedural job-aids or guides, such as decision trees, checklists, and flowcharts, to assist buyers in classifying or “typing” the purchasing category as goods, services, IT goods/services. These tools would help buyers follow the procedures and comply with the policies as they conduct the State's purchases.

## 2.5.2 Cross-Reference of Purchasing Laws

- ◆ FOAM Reference: Finding #8

### *Findings*

California law consists of the 34 Articles in the State Constitution, and 29 Codes containing statutes within multiple sources, causing confusion and leading to inadvertent errors, as well as the potential for overt abuse. Sources of purchasing law include the California Public Contract Code, Revenue and Taxation Code, Welfare and Institutions Code, Business and Professions Code, Military and Veterans Code, and Government Code.

The PCC is the most commonly referenced code and is accessible online through links from the DGS home page and at <http://www.leginfo.ca.gov/>. The PCC as well as the other Codes are not cross-referenced, however, and are not annotated with updates and revisions. It is therefore difficult to determine if a code is in effect or not (i.e., repealed, overturned by case law).

For example, the minority and women-owned business participation requirements cited in PCC §10115 remain in Code, but have been ruled unconstitutional according to an appellate court decision making it illegal to follow the Code as it is represented. Thus, agencies and departments without access to the annotated code and legal staff experienced in purchasing are at a disadvantage in their efforts to interpret and follow the requirements of the law.

DGS PD has recognized the aforementioned situation and developed the documents “California Codes Relating to State Acquisitions, Statutes of 2000,” and “Excerpts and Summary of Statutory & Policy Requirements for State Contracts.” With the proliferation of changes to procurement law and

Procurement and contracting law exists within multiple sources, causing confusion and leading to inadvertent errors as well as the potential for overt abuse.

policy over the past three years, these documents are now outdated and require resources necessary to update them.

### ***Recommendations***

- Develop a defined process, assign responsibility, and dedicate the requisite resources to maintain the aforementioned references continually.
- Include the true and updated annotated code in the references instead of the current plain-text version.

### **2.5.3 Purchasing Policy and Procedure Training**

- ◆ FOAM Reference: Finding #10

### ***Findings***

State of California purchasing personnel have significant responsibility to ensure that procurements are conducted legally and within the bounds of State policy. In recognition of the complexity of purchasing policy and procedure, a well-trained buyer is more efficient, resulting in increased productivity, improved quality, reduced errors, as well as fewer re-bids and protests.

### ***Recommendations***

- In response to the Contracting and Procurement Task Force's Recommendation #8, DGS has begun developing a comprehensive procurement training program. In accordance with PCC §10349, DGS is working with the Department of Personnel Administration (DPA) and a training consultant (California State University, Northridge). The resulting training should be developed in such a way that it can be continuously available and updated as changes in laws and rules occur. Additionally, the training content should be based on a consolidated policy and procedure source such as SAM.
- DGS/DPA should make training available in a variety of delivery modes (e.g., on-line, classroom).
- DGS/DPA should develop a process to ensure that all training materials are kept updated and consistent with current purchasing policy and procedures. The training should focus on the less well-defined issues of procurement official responsibilities, ethics, and

judgment/decision making. Additional training topics should include practical, hands-on training in areas such as legal aspects of purchasing, contract crafting, and post-award contract administration.

#### 2.5.4 Procurement Method Models

- ◆ FOAM Reference: Finding #14

##### *Findings*

Procurement methods are identified in numerous places including SCM Chapter 5 (consulting services), SAM 5200 (IT goods and services), and PCC §10300 et seq. The level of detail and specificity contained in each of these sources varies. For example, SCM provides a table of the three procurement methods for consulting services (i.e., IFB, Primary RFP, Secondary RFP). This table contains guidance as to the applicability of certain procurement elements (i.e., DVBE, small business, advertising), but stops short of providing a “model” or template that could be used in total. OLS does provide model templates for both IFB and RFP on its website, but there is no reference in SCM to these models.

In another case, SAM identifies the procurement methods to use to procure the IT goods and services authorized under PCC §12100. Specifically, SAM §5211 identifies three methods to use to procure IT goods and services:

- Invitation to Bids (IFB)
- Request for Proposal (RFP)
- Request for Quotations (RFQ)

Each is described in SAM §§5212-5214, respectively. SAM §5215 and §5216 specify two additional procurement methods, the “Pilot Alternative Acquisition Techniques” and the “Multi-Step Procurement Procedure,” respectively. SAM §5211 further states that DGS has the statutory responsibility to select or approve the method most appropriate for the circumstances of a specific procurement.

Of the three procurement methods specified in SAM §5211, the IFB method refers to a model “form” available in SAM §5221 to use for IFB development. This model provides the user with minimal guidance and seems overly complex. For example, the model provides both “standard and suggested language,” as well as stresses that the “applicability of portions of the illustration is dependent, in some instances,

The lack of specific, comprehensive models or templates for each procurement mechanism causes confusion and increases the complexity of creating the appropriate procurement documents.

upon the identity of the goods or services required.” However, the model does not provide guidance as to the circumstances required to utilize the “suggested” sections or provide assistance as to which sections are applicable.

Additionally, the model IFB contained in SAM §5221 is the basis for the other procurement methods identified in SAM §5211, RFP and RFQ, with minimal alterations such as using the word “vendor” instead of the word “bidder.”

The lack of specific, comprehensive models or templates for each procurement mechanism causes confusion and increases the complexity of creating the appropriate procurement documents.

### ***Recommendations***

- Develop standardized models for each type of procurement (e.g., IFB, RFP, RFQ, CMAS, MSA, NCB) that clearly identify the required versus optional elements. Also, develop guidelines outlining the circumstances when the optional steps should be considered for use. Additionally, these standardized models should apply universally regardless of the procurement category or type (i.e., goods, non-IT consulting services, and IT goods and services).

### **2.5.5 Preparation and Dissemination of Lessons Learned**

- ◆ FOAM Reference: Finding #16

### ***Findings***

DGS is in a unique position with respect to State purchasing practices because it conducts purchasing for itself, as well as on behalf of individual departments. It also manages protest and dispute processes, and is responsible for the development and implementation of purchasing policies and procedures.

Because of the role DGS plays, it is in the position of having a wealth of knowledge about what contributes to successful and unsuccessful procurements, and what issues prompt protests and disputes. For example, when a protest is heard and resolved, there is currently no mechanism for examining the basis for the decision, determining if the decision impacts policy or procedure, and if so, for updating the policy and procedure accordingly.

During numerous interviews, a common theme emerged that highlighted the lack of a formalized process to incorporate feedback, lessons learned, and other pertinent information into the State’s purchasing policies and procedures. The knowledge that DGS has is valuable and should be shared with the following goals in mind:

- Standardize the processes buyers use to conduct procurements.
- Shorten the time required to complete procurements.
- Minimize protests and disputes.

### ***Recommendations***

- Prepare “lessons learned” information to share with buyers and legal staff from DGS and individual departments. These lessons learned should include ideas, pointers, recommendations, etc., about ways to standardize and streamline purchasing practices and minimize protests and disputes.
- Update and distribute these lessons learned on a regular basis.
- Incorporate lessons learned as examples into training material.
- Host regular meetings with DGS and individual department buyers to discuss these lessons learned, share ideas about what works and what does not, and brainstorm additional ways to distribute lessons learned information.
- Feed lessons learned into the development of policy and procedure to ensure timely implementation and dissemination.

### **2.5.6 Specifications, Requirements, and Business Needs**

- ♦ FOAM Reference: Finding #18

### ***Findings***

Without proper analysis and detailed specification of the business needs, it is difficult to produce solicitation documents that are clear to the vendors and that result in a successful procurement that meets the intended business needs. There are two major types of specifications for

Without proper analysis and detailed specification of the business needs, it is difficult to produce solicitation documents that are clear to the vendors and that result in a successful procurement that meets the intended business needs.

inclusion in solicitations, design specifications and performance specifications.

Typically, performance specifications are synonymous with functional or business requirements and state the required functions that need to be performed. Design specifications represent the physical or technical features of the item being procured; thus, a common synonym for the term design specification is technical specification.

Both performance and design/technical specifications have their place in solicitation documents. It is a best practice, however, that wherever possible the solicitation document use performance specifications in lieu of design specifications.

In cases where the specifications can be stated as performance specifications, the responding vendors have flexibility in how they choose to propose to meet the specifications. In cases where the solicitation uses technical or design specifications, the vendors have little flexibility in how they meet the requirements of the solicitation.

There are appropriate uses for both types of specification. Often times the best choice is to use technical or design specifications only for critical needs (such as integration to an existing system) and state the large majority of requirements as performance specifications. This is the case in most large software package or information systems development procurements, for example.

In cases where performance specifications are used exclusively or primarily, they ought to be very complete and detailed. A detailed performance requirement does not make it a technical or design requirement. The determination of performance versus design is one of quality and not of specificity.

It is a best practice in both procurement and in systems engineering to use precise specifications when stating functions and business needs. If business needs are not detailed, they can be interpreted to mean different things, and the State would then be in a position of comparing solutions to sets of diversely interpreted requirements instead of evaluating proposals that provide for solutions to a single set of business needs. Lack of specificity in the requirements may also lead to the business requirements not being met.

In the California purchasing system, there are statutes and policies that introduce confusion to the development of

specifications. There is a lack of guidance in policy and procedure for the development of specifications. The following sections of statutes and policies are inconsistent with the best practice of creating detailed specifications to represent the business need or problem to be solved:

- PCC §12127 and PCC §12127.5 states: “Major information technology acquisitions subject to this chapter shall meet the following criteria:
  - The agency or department has stated its business needs and not detailed specification in the solicitation”
- SAM §5213- Request for Proposal (RFP) states: “This technique differs from the competitive bidding or Invitation for Bids procedure primarily in two respects:
  - 1. It is permissible for the Requirements (or specifications) portion of the solicitation document to be stated in a more general nature describing the problem to be solved or the goal to be achieved. Vendors may be allowed to propose their own individual problem solution free of any precise State imposed mix of hardware, software, etc.”
- SAM §5216 discusses at length, the “limitations” of clearly defining requirements.

The statements above are flawed in that they imply that defining requirements at a “very detailed level” is equivalent with writing technical or design specifications. These statements are misleading and may be construed to mean that the business needs must only be described in a generalized and not a detailed fashion. As previously mentioned, it is a standard practice and, in fact, a necessity when building large-scale integrated IT systems, that the business needs be specified in detail to ensure that each bidder has a clear understanding of the solicitation requirements.

### ***Recommendations***

- Develop uniform policies that require performance specifications and minimize design specifications in solicitations where the business needs, in whole or in part, are able to be stated in terms of function.
- Provide procedures and job-aids for “how-to” and “when-to” develop detailed performance and design specifications.

- Provide how-to training for the development of detailed performance specifications. This is especially important to the procurement of integrated and custom developed information systems.
- Define the terms “performance specifications,” “detailed specifications,” “design specifications,” and “technical specifications” and use them in a consistent manner throughout the statutes, policies, and procedures.
- Remove any references in the statutes and policies that imply or direct that specifications are not to be defined in a detailed and precise manner.

### 2.5.7 Approval Levels and Processes

- ♦ FOAM Reference: Finding #27

#### ***Findings***

California’s purchasing system is largely controlled by DGS. PCC §10295 states that all contracts for goods or services are not valid unless approved by DGS. The role of DGS as a control agency involves the review and approval of various purchasing documents and transactions.

PCC §10297 requires DGS to review competitively bid contracts for compliance with the requirements of the solicitation and for compliance with laws. It also requires the Department to review non-competitively bid contracts for justification of the non-use of competition.

PCC §10308 requires DGS to perform or supervise all goods procurements over \$100.00. PCC §10309 disallows any state agency to purchase goods except as per their DGS delegated authority to do so.

PCC §10330 requires the Department to establish the delegation minimum level. It must be increased each year by at least the percentage increase in the California Consumer Price Index. PCC §10333 indicates the requirements for State agencies to receive and maintain their delegated purchasing authority. PCC §10335 requires DGS to approve all services contracts over \$5,000.

PCC §10351 allows DGS to exempt certain agencies from submitting their services contracts up to \$75,000 so long as

they meet certain criteria that are similar to the goods delegation requirements.

PCC §12100 states that all acquisition of information technology goods or services shall be made by or under the supervision of the Department. PCC §12101(c) authorizes the Department to establish an IT delegation program for the other state agencies.

PCC §12101.5(c) authorizes DGS to establish a delegation program for multiple award schedules for IT goods and services. PCC §12102 reiterates the authority for DGS to develop a delegation program for IT goods and services and requires DGS to selectively review transactions conducted under the delegation program.

The following table is a summary of the various DGS procurement-related approvals. The overt complexity of this table demonstrates the requirement for consistency and uniformity of approval thresholds and processes.

### Approvals

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
ITPP (Information Technology Procurement Plan)	IT projects must complete an ITPP and submit for approval for all non-delegated transactions	Policy as stated in MM 03-05	Received by PD Technology Acquisition Section (TAS). Review includes:  Methodology (CMAS, Masters, RFP, etc.)  Confirmation that ITPP follows FSR  Coordinates with DOF
NCB Requests/Contracts  Non-IT Services	For non-IT services, OLS is part of the review process for all over \$5,000	Policy  SCM, GC §14838 and MM 03-10	Per MM 03-10 (OLS reviews 1-2 days)  All are submitted to DGS/PD, logged in and routed to Purchasing Authority Management Section (PAMS) staff for analysis and routing.  For non-IT services, PAMS Manager signs up to \$250,000, PD Deputy Director signs up to \$5M, DGS Director signs for over \$5M.  For Goods, Manager signs up to \$250,000. Higher levels are the same as non-IT services.  For IT, IT Acquisitions Manager signs up to \$250,000. Higher levels are the same as non-IT services.
Non-IT Service Contracts	All contracts over \$50,000 except for those agencies that have an exemption of up to \$75,000 or other criteria as per SCM 4.03.	PCC §10335 GC §14616 Administrative Order 01-04  (By policy this duty is delegated to OLS)	All are submitted to DGS/PD, logged in and routed to Purchasing Authority Management Section (PAMS) staff for analysis and routing. PAMS Manager signs up to \$250,000, PD Deputy Director signs up to \$5M, DGS Director signs over \$5M.

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
Services Solicitation Documents	These are reviewed by request of the agency involved.	Policy	Review is for compliance with law and policy
CMAS Contractor Applications	N/A	PCC §10290 et seq. & §12101.5  Telecommunications Division (TD) provides technical and business review of proposed CMAS agreements where telecommunications services are offered; ensures services do not conflict with the California Integrated Information Network (CALNET) Master Services Contract's (CNT-001) mandatory services.	See CMAS Contractor Packet Section 2  PD CMAS Unit request TD to establish basis guidelines for services and review and approval service for CMAS application.
CMAS IT Order Limits	\$500,000	DGS/PD policy	See MM 03-10 Attachment A-1
CMAS IT Order Limit Threshold Approval	\$250,000	DGS/PD policy	See MM 03-10 Attachment A-1. Prior approval is required by Agency Secretary and Department Director and Notice of Contract Award (NCA) report due to DGS/PD/TAS within 5 days of issuance.
CMAS Non-IT Service Order Limits	\$250,000	DGS/PD policy	See MM 03-10 Attachment A-2

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
CMAS Non-IT Service Order Limit Threshold Approval	\$50,000	DGS/PD policy. PCC 10351 requires DGS approval for non-IT service orders \$75,000 and above.	See Section 11 of CMAS Agency Packet. DGS/PD/TAS reviews and approves CMAS non-IT service orders over \$50,000 before the agency issues them to the supplier. NOTE: Non-CMAS non-IT service orders require prior approval from DGS/OLS before issuance.
CMAS Non-IT Goods Limit	\$100,000	DGS/PD policy	See MM 03-10 Attachment A-3
CMAS Furniture Waiver Orders	All furniture waiver orders	DGS/PD/CMAS policy	See CMAS Bulletin #30 and individual contract ordering instructions. DGS/PD One-Time Acquisitions reviews and approves furniture waiver orders before the agency issues them to the supplier.
Telecommunications Goods and Services Delegation	Review and approval of requests for delegated authority	DGS/TD	Review based on cost of project, telecommunications experience in the equipment or services requested.

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
Request for Delegated Purchasing Authority – Goods and IT	<p>After new requirements announced mid July, 2003 the following thresholds/limits are in effect:</p> <p>Competitive bids – goods \$25,000, IT \$100,00</p> <p>Non-competitively bid contracts – goods and IT \$25,000</p> <p>CMAS contracting – goods \$100,000, IT \$500,000, non-IT services \$250,000</p> <p>Master Agreement contracting – As allowed by individual agreement</p> <p>Statewide Contracts – Unlimited</p> <p>State Price Schedules - \$25,000</p> <p>Western State Contracting Alliance - Unlimited</p>	PCC §10333 and §12100	All Request for Purchasing Authority are renewed by requesting approval annually. Departments MAY be granted these authorities dependant upon the completeness/thoroughness of the application and the experience level of the department. All are approved by Purchasing Authority Management Section.

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
<p>Small Business Certification Application, STD.813 (REV. 1/2002)</p>	<p>All applicant firms must complete and submit an application along with required support documents that confirm program eligibility to receive small business certification by the Office of Small Business and Disable Veterans Business Enterprise Certification (OSDC) and be eligible for program benefits.</p>	<p>CCR, Title 2, Subchapter 8, Section 1896 et seq.</p>	<p>Applications received by OSDC are date-stamped, logged into Business Information System, and processed within 30 workdays by Certification Officers. Applicant receives certification approval, deficiency, or denial letter. Core requirements for a business:</p> <ul style="list-style-type: none"> <li>Must be independently owned and operated;</li> <li>Cannot be dominant in its field of operation;</li> <li>Must have its principal office located in California;</li> <li>Must have its owners (or officers in the case of a corporation) domiciled in California; and</li> <li>Together with its affiliates, be either:                             <ul style="list-style-type: none"> <li>(1) A business with 100 or fewer employees, and an average annual gross receipts of \$10 million or less over the previous three tax years, or</li> <li>(2) A manufacturer with 100 or fewer employees.</li> </ul> </li> </ul>

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
<p>Disabled Veteran Business Enterprise (DVBE) Certification Application, STD. 812 (REV. 1/2002)</p>	<p>All applicant firms must complete and submit an application along with required support documents that confirms program eligibility to receive DVBE certification by OSDC and be eligible for program benefits.</p>	<p>CCR, Title 2, Division 2, Chapter 3, Subchapter 10.5, Section 1896.60 et seq.</p> <p>Military &amp; Veterans Code, Article 6, Section 999</p> <p>PC §10115, et seq.</p>	<p>Applications received by OSDC are date-stamped, logged into Business Information System, &amp; processed within 30 workdays by Certification Officers. Applicant receives certification approval, deficiency, or denial letter. Core requirements for a business:</p> <p>Must be at least 51% owned by one or more disabled veterans.</p> <p>Daily business operations must be managed and controlled by one or more disabled veterans.</p> <p>The disabled veteran(s) who manages &amp; controls the business is not required to be the disabled veteran business owner(s).</p> <p>The home office must be located in the U.S.</p> <p>The home office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.</p> <p>For certification purposes, a "disabled veteran" is:</p> <p>A veteran of the U.S. military, naval, or air service; and</p> <p>Has a service-connected disability of at least 10% or more; and</p> <p>Must be a California resident.</p>

Document or Transaction Type	Approval Threshold	Approval Authority	Approval Process and Standards
Nonprofit Recognition Application (for Prompt Payment Benefits)	All applicant nonprofit organizations must complete and submit an application along with required support document that confirm program eligibility to receive Nonprofit Recognition by the OSDC and be eligible for Prompt Payment benefits.	CCR Title 1, 927 et seq.	Applications received by OSDC are date-stamped, logged into Business Information System, and processed within 30 workdays by Certification Officers. Applicant receives letter of recognition, deficiency, or denial letter. Nonprofits are not eligible for the small business or DVBE certification. Core requirements:  Submittal on Nonprofit Recognition Application, and Entire signed Form 990 "Return of Organization Exempt from Income Tax" for the most recently completed tax year, <u>or</u> Nonprofit's Articles of Incorporation as filed with the California Secretary of State's Office.
Surplus Property Acquisition of Furniture	All Agencies must check with SP program to determine if SP exists to meet agency needs before purchase.  Must seek Waiver for property beyond PIA capability to produce.	Policy Letters SAM 3250	Std Form 152 or 158
Surplus Furniture	All Agencies declare surplus property through a Surplus Property Board review of form 152.	SAM 3250	Std From 152 or 158
Notice of Contract Award	Applies: Masters over \$250,000 CMAS over \$250,000 NCB contract within delegation		

## Recommendations

- Re-baseline approval levels on risk or metrics to most effectively apply resources at DGS. The existing approval levels are too low in some cases and, in general, unnecessarily complex.
- Design a more simple system of thresholds and criteria to determine those transactions that require review and approval. Currently, approval levels are overly complex with too many different monetary criteria for various types of procurements.
- Develop a simplified procedure and forms/tools for goods, IT, and services purchases below a “small purchase” threshold (i.e., \$5,000) within the buying agency’s delegated or organic authority.
- Develop a service order form, or modify an appropriate existing form, for small services purchases under \$5,000.
- Overall, it may be more effective and efficient for DGS to increase its use of selective or periodic audits and decrease the amount of transactions that require approval.
- Clearly communicate specific sanctions and penalties for agencies and individuals who fail compliance audits and follow-through with the application of the sanctions.
- Develop simple, clear and well-communicated approval processes. The approval processes are overly complex and poorly communicated. The requestor ought to know the specific routing of the document and what happens at each step.
- Allow visibility into DGS processes and systems to allow requestors and other interested parties access to the status of the transaction and its documentation.
- Create service level agreements to facilitate procurement planning and scheduling for the requesting agencies.
- Set the standards or attributes that the reviewer/approver will check to ensure they are clearly communicated and specific enough to reduce differences of interpretation.

## 2.5.8 Leveraging the Buying Power of the State

- ◆ FOAM Reference: Finding #29

### **Findings**

PCC §10298(a) states that DGS may leverage the buying power of the State and specifically mentions the use of masters and multiple award contracts in this context.

§ 10298. Consolidation of needs of multiple state agencies; assistance to local governments

(a) The director may consolidate the needs of multiple state agencies for goods, information technology, and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State and local agencies may contract with suppliers awarded those contracts without further competitive bidding.

The acquisitions of foodstuffs and telecommunications goods are offered as examples where the State could increase its use of the large buying power of the State to obtain advantageous pricing arrangements.

There is anecdotal evidence that DGS does not perform this function as well or as much as it could. The acquisitions of foodstuffs and telecommunications goods are offered as examples where the State could increase its use of the large buying power of the State to obtain advantageous pricing arrangements. Large organizations typically leverage their buying power by committing to a certain level of purchasing over a specific time period.

These minimum commitments are not present in many of the current masters agreements and multiple awards. Another way to leverage the buying power of the state without committing to specific levels of purchasing is to establish volume purchase pricing levels or tiers where the per unit price goes down as the volume reaches each threshold or tier.

The economies of scale realized in both the reduction of prices and the increases in purchasing efficiencies would save the State significant funds.

Organizations need to collect and analyze their purchasing metrics in order to do this more effectively. Supply chain systems collect metrics and offer decision support analytics.

## Recommendations

- Collect and analyze metrics to identify specific opportunities.
- Create a policy and process for combining orders on commonly purchased items.
- Develop multiple award contracts and master agreements that contain minimum order commitments and tiered volume pricing levels.

### 2.5.9 Delegation/Approval System

- ♦ FOAM Reference: Finding #31

#### Findings

The system of purchasing delegation in the State of California is founded in statute. PCC §10330, 10331, 10332 guide the DGS delegation of goods. PCC §12101 authorizes the DGS delegation of IT goods and services. PCC §10320 authorizes a specific delegation for the purchases by the “district agricultural associations.”

Telecommunications Division (TD) runs a delegation program for the purchase of telecommunication goods and services under its authority as stated in GC §15275-15279. The delegation relates to telecommunications projects and acquisitions and is a policy that is established in SAM, published in Agency Telecommunications Bulletins, and documented in the State Telecommunications Management Manual.

The telecommunications delegation is unique in that TD has a special oversight function relative to telecommunications projects. This delegation relates to the specifications and compliance with standards and works in conjunction with the Procurement Division’s delegation system.

For non-IT services, the State’s agencies have an organic authority to make procurements and enter into contracts. DGS must approve all services contracts by law (PCC §10335) and may exempt agencies from this approval under certain conditions (PCC §10351). For the purposes of this discussion, this approval and exemption authority is considered a delegation.

The set of statutes is implemented by DGS through a set of policies and practices. DGS has assigned the management of

The lack of consistency in levels, rules, and management of the various delegations causes confusion and inefficiency.

the goods and IT delegations to the Procurement Authority Management Section (PAMS) in the Procurement Division. The non-IT services delegation is managed by OLS. The delegation levels vary according to statute and policy. For goods there is a general delegation of \$25,000. For IT the delegations fall in ranges of \$100,000, \$250,000, \$500,000, and higher.

Most of the State of California's departments, boards, commissions and agencies do not have an IT delegation; therefore, DGS must conduct all IT related purchasing for these departments. As a result DGS' IT acquisition specialists spend an inordinate amount of time and resources conducting small IT purchases that would be more efficiently performed directly by the agency buyers.

For non-IT services, the statutes call for exemption from DGS review and approval for contracts of up to \$75,000 under certain conditions.

This system of delegation is overly complex and difficult to manage for both DGS and the delegated agencies. The lack of consistency in levels, rules, and management of the various delegations causes confusion and inefficiency.

### ***Recommendations***

- Develop a new system of delegation that simplifies the levels and types of delegations combining the goods, IT, and services delegations under a single set of rules.
- Centrally manage all delegations (e.g., goods, IT, services and other delegations managed by a single unit).
- Implement a universal delegation level for all goods, IT, and services.
- For purposes of the delegated authority, only discriminate by purchasing level, not procurement type (IT, goods, services) or mechanism (competition, CMAS, MSA).
- Submit legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.
- Create a policy that states that the contract approval for services contracts will only occur if the procurement (solicitation approach and documents) is pre-approved. This ensures DGS will review the transaction early in

the process and correct mistakes before the solicitation is conducted.

- Initiate legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to include services purchases in their delegation system.

### 2.5.10 Procurement Audits

- ◆ FOAM Reference: Finding #32

#### *Findings*

Under the goods delegation statutes (PCC §10333) DGS is required to “audit” the delegated agencies once per three-year period. DGS is currently performing this function through the Procurement Authority Management Section (PAMS). PAMS performs “compliance reviews” on all delegated agencies. They perform these reviews according to a master schedule at a rate somewhat longer than once per three years.

Under the PCC §10351 DGS may exempt from its review services contracts up to \$75,000. The exempted agency must conduct an internal audit every two years in order to obtain and maintain their exemption. DGS conducts quality control reviews of these audits.

The DGS Office of Audit Services (OAS) audits each agency approximately every seven years. The audits are conducted under the authority of GC 14615. These audits include the procurement and contracting areas but also include other business and fiscal functional areas. DGS OAS also performs the quality control review of the exempted department’s internal audits as per PCC §10351.

Currently, the DGS delegation “compliance review” does not technically meet the statute’s requirement for performing an audit on the delegated agencies. The PAMS does not perform audits. Professional auditors do not conduct the compliance reviews, nor are industry accepted auditing standards applied. This practice is inconsistent with the statutes requiring DGS to perform audits on the delegated agencies.

The reviews result in a report that contains the findings and any corrective actions required. The PAMS team then performs follow-up checks to ensure that the agency takes the corrective actions specified in the report. The reviews

conducted by PAMS are thorough enough that the OAS will not audit the procurement area of an agency if the PAMS compliance review was recently conducted.

### ***Recommendations***

- Add the necessary process rigor and skills to the PAMS for them to perform actual audits on every delegated agency once per three-year period.
- Alternately, increase the staffing of the OAS to allow that unit to take on the full responsibility of the delegation audit requirements.
- Because much of the procurement risk to the State exists within the DGS PD conducted procurements and other activities, DGS OAS should increase the frequency of audit on the PD and all of its program areas.
- Within the context of other Procurement Reform changes, examine opportunities to increase the DGS audit function as a replacement for up-front review and approval. This will become increasingly important, as delegations are more widespread.

### **Summary**

Using a formal knowledge acquisition process for research and analysis, the CORE Team identified 33 findings within a four-month period. The CORE Team, with input from the DGS project team, DOF, client entities, and other stakeholders, made recommendations to address the findings, and discovered five over-arching themes within the findings. Distilling the topics and options into these over-arching themes formed the foundation for implementation planning. The over-arching themes aided the team in understanding the magnitude of the work that must be done to successfully address Recommendation #7 of the Governor's Task Force on Contracting and Procurement Review.

## SECTION 3— IMPLEMENTATION PLAN

The CORE Team’s implementation plan utilizes a proven methodology for identifying, prioritizing, and executing the numerous recommendations identified in our findings and recommendations. The Implementation Plan consists of three parts:

1. Initiative Definition Worksheets (IDW) – contains the initiative name, description, major tasks, required resources, and dependencies.
2. Initiative Categories vs. Findings and Recommendations Matrix (Implementation Matrix) – identifies the relationship between the specific IDWs and the individual recommendations from the Findings and Recommendations section, thereby, ensuring that each recommendation is addressed by at least one IDW.
3. High-level Project Plan - provides an illustration of the dependencies and durations of the IDWs.

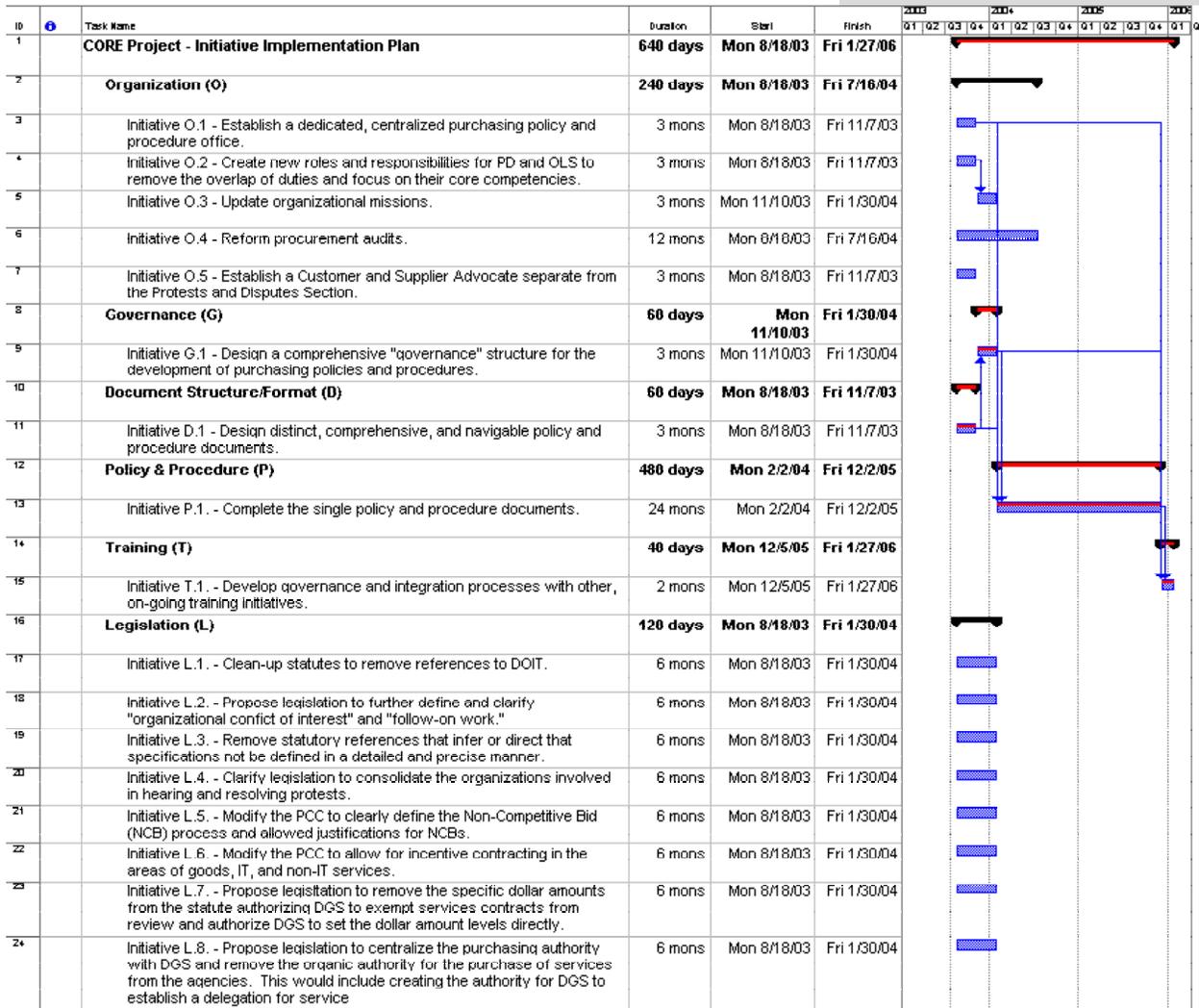
The individual recommendations were grouped based upon their similarities and relationships, and subsequently categorized into one of the six Initiative Categories (Organization, Governance, Document Structure/Format, Policy and Procedure, Training, and Legislation).

Within each of the Initiative Categories, the CORE Team began the creation of individual IDWs. As a means of tracing the relationship between each IDW and the addressed recommendations, the Initiative Definition Worksheet Matrix was generated and is included in [Appendix I](#).

For ease of reference a unique naming convention was followed, for example, IDW number 1 within the category of Organization (O) is identified by “O.1”, and IDW number 2 within the same category would be designated “O.2”. Each IDW may be found in the section immediately following, for reference the following table lists each IDW.

Initiative Category Reference and IDW Title
Initiative O.1 – Establish a dedicated, centralized purchasing policy and procedure office.
Initiative O.2 – Create new roles and responsibilities for PD and OLS to remove the overlap of duties and focus on their core competencies.
Initiative O.3 – Update organizational missions.
Initiative O.4 – Reform procurement audits.
Initiative O.5 – Establish a Customer and Supplier Advocate separate from the Protests and Disputes Section.
Initiative G.1 – Design a comprehensive “governance” structure for the development of purchasing policies and procedures.
Initiative D.1 – Design distinct, comprehensive, and navigable policy and procedure documents.
Initiative P.1 – Complete the single policy and procedure documents.
Initiative T.1– Develop governance and integration processes with other, on-going training initiatives.
Initiative L.1 – Clean-up statutes to remove references to DOIT.
Initiative L.2 – Propose legislation to further define and clarify “organizational conflict of interest” and “follow-on work.”
Initiative L.3 – Remove statutory references that infer or direct that specifications not be defined in a detailed and precise manner.
Initiative L.4 – Clarify legislation to consolidate the organizations involved in hearing and resolving protests.
Initiative L.5 – Modify the PCC to clearly define the Non-Competitive Bid (NCB) process and allowed justifications for NCBs.
Initiative L.6 – Modify the PCC to allow for incentive contracting in the areas of goods, IT and non-IT services.
Initiative L.7 – Propose legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.
Initiative L.8 – Propose legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to establish a delegation for services.

Upon completion of the IDWs, a High-level Project Plan was created to illustrate the dependencies and durations of the entire implementation effort as depicted in the following chart.



The Implementation Plan presented in this section represents one approach to achieve the goal of implementing the recommendations set forth in this report. Other, alternative approaches are feasible and may be undertaken after careful consideration by the DGS, its business partners, and staff.

The overall approach to change management advocated in this plan, incorporates aspects of several proven process improvement methodologies including John Kotter's "Leading Change," and Michael Hammer's "The Reengineering Revolution."

The implementation of the policy, procedure, organization, and legislative changes will require a marked attention to the organization's appetite for change. To move too quickly risks the changes being rejected. To move too slowly risks the credibility of the department in terms of follow-through. For these reasons it is important for the DGS Director, PD Deputy Director, OLS Deputy Director, and the leader of the Policy and Procedure Office to maintain their commitment to implementing positive change. Each of these key leaders must communicate their support for the implementation both internally and externally. There are many stakeholders including DGS employees, other State procurement officials, and vendors who anxiously await the first results of this effort.

Initiative Definition Worksheets are provided on the pages that follow.

## Initiative Definition Worksheets

### **Initiative O.1 – Establish a dedicated, centralized purchasing policy and procedure office.**

#### Overview

In conjunction with the creation of a single source for purchasing policy and procedure (Initiative D.1), a dedicated, centralized purchasing policy and procedure office (PPO) with responsibility for developing and managing purchasing policy and procedure, ensures that statewide purchasing policy and procedure is well documented and current.

#### Major Tasks

- ◆ Establish PPO:
  - ◆ Reports to DGS executive-level (Director, Chief Deputy Director).
  - ◆ Staffed with sufficient personnel resources (3-5 FTE) utilizing “rotational” positions plus part-time participants from DGS and other agencies (e.g., OLS legal counsel, DOF, etc.).
- ◆ Identify training for staff (policy development/writing, procedure writing, process analysis).
- ◆ Develop PPO “mission” statement, charter, goals, and objectives.

#### Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
3 months	<ul style="list-style-type: none"> <li>▪ Policy &amp; Procedure Office (PPO) Manager.</li> <li>▪ PPO Staff (3-5 FTE).</li> <li>▪ Subject Matter Experts as needed.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Dedicated PPO responsible for both development and management of policy and procedure.</li> <li>▪ “Rotational” staff positions maintain current procurement experience in PPO allows for cross fertilization between policy and operations.</li> <li>▪ Organizational level of PPO provides visibility and professional recognition of manager(s) and staff.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Organizational change may disrupt day-to-day operations.</li> <li>▪ May require Human Resource policy changes to enact “rotational” positions.</li> <li>▪ Staff openings may not attract qualified candidates.</li> <li>▪ PPO authority and ability to enforce compliance is insufficient to overcome resistance to change.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ Initiative O.1 (this initiative) must be completed prior to “P.1-Complete the single policy and procedure documents.”

**Initiative O.2 – Create new roles and responsibilities for PD and OLS to remove the overlap of duties and focus on their core competencies.**

## Overview

Currently, DGS splits the contracting and procurement oversight function between OLS and PD respectively. For non-IT services, OLS performs oversight in the form of contract approval. For goods and IT, PD performs oversight through the delegation system. There are no statutes requiring this split of duties and it is counter to procurement industry best practices.

The DGS OLS should provide advice and review on procurements and contracts according to risk (e.g., high risk procurements warrant legal review). Their role on the oversight team ought to be that of a legal counsel to the procurement official. Presently many procurements and contracts are conducted without legal involvement while OLS concentrates its resources on performing reviews and approvals of non-IT services contracts that do not require the skills and training of an attorney to perform. These non-legal reviews should be conducted by adequately trained procurement officials.

## Major Tasks

- ◆ Change the duty assignments in DGS to assign the services contract review function to PD.
- ◆ Task OLS to serve as the legal counsel to the Procurement Division for all types of procurements.
- ◆ Create standards for requiring legal examination and advice on a procurement and the resulting contract/order.
- ◆ Develop detailed roles and responsibilities for the procurement office and OLS that support a collaborative work environment.
- ◆ Increase the legal role in reviewing all contract types based on the risk to the State and/or other criteria, such as deviation from standard contract language or unusual contract types like revenue sharing agreements.

## Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
3 months	<ul style="list-style-type: none"> <li>▪ DGS Director.</li> <li>▪ Agency Secretary.</li> <li>▪ Deputy Director of OLS.</li> <li>▪ Deputy Director of PD.</li> <li>▪ Governance participants, as necessary.</li> <li>▪ Subject Matter Experts as needed.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Enables the review function for all contracts to be uniform.</li> <li>▪ Focuses legal resources on legal issues and procurement officer resources on procurement issues.</li> <li>▪ Creates a more understandable division of duties and allows a single interface point for all procurements without regard to type.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Transition period could cause performance decrease and confusion if not managed well.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ Although this initiative would result in a much clearer division of organizational duties and would enhance many of the policies and procedures developed, there is no absolute dependency on or with the other initiatives.
- ◆ The development of new missions for OLS and PD, as per Initiative “O.3-Update organizational missions,” is directly related to the implementation of this initiative.

**Initiative O.3 – Update organizational missions.**

**Overview**

The organizational missions of DGS, PD, and OLS are in need of improvement. The missions ought to reflect the main purpose and responsibilities of each unit. If Initiative O.2 is undertaken, this initiative should take into context these new roles and responsibilities.

**Major Tasks**

- ◆ Craft missions.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
3 months	<ul style="list-style-type: none"> <li>▪ DGS Director’s Office.</li> <li>▪ OLS Leadership Team.</li> <li>▪ PD Leadership Team.</li> <li>▪ Subject Matter Experts as needed.</li> </ul>

**Rationale**

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Creates the clear missions for each unit.</li> <li>▪ Promote unity of culture and purpose.</li> <li>▪ Guides strategy, planning, resource allocation, decision making, and actions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ None.</li> </ul>

**Initiative Dependencies/Relationships**

- ◆ This initiative should be coordinated with “O.2-Create new roles and responsibilities for PD and OLS to remove the overlap of duties and focus on their core competencies.” The organization’s duties are directly reflective of their missions.

**Initiative 0.4 – Reform procurement audits.**

**Overview**

In performing the Department’s control agency functions, DGS performs various audits and compliance reviews. The legislature uses the word “audit” in several places in the Public Contracting Code, most notably, in PCC 10333 where DGS is required to perform an audit of each delegation holder once per three-year period. *Audit* is a term-of-art and has a specific meaning regarding the use of professional, trained auditors following generally accepted audit standards. DGS should apply the appropriate resources in performing audits.

**Major Tasks**

- ◆ Decide which organization within DGS, Purchasing Authority Management Section (PAMS) or Office of Audit Services (OAS), will be responsible for performing audits of delegated agencies.
- ◆ Add the necessary process rigor, skills, and resources to the chosen delegation auditing organization (PAMS or OAS) for them to perform actual audits on every delegated agency once per three-year period.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
12 months	<ul style="list-style-type: none"> <li>▪ DGS Director.</li> <li>▪ PAMS and OAS management.</li> </ul>

**Rationale**

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Meets the intent of the statute.</li> <li>▪ Adds rigor and skill to the audit function.</li> <li>▪ Enables the increase of the audit function as a control as delegations are increased.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Resource constraints and personnel issues may restrict the ability to accomplish this.</li> <li>▪ An alternate would be to increase the resources and rigor of the current “compliance reviews”.</li> </ul>

**Initiative Dependencies/Relationships**

- ◆ None.

## **Initiative O.5 – Establish a Customer and Supplier Advocate separate from the Protests and Disputes Section.**

### Overview

The role of Customer and Supplier Advocate is referred to by PCC §10300. Currently this role is assigned to the Protests and Disputes Section. The role should be separated due to an organizational conflict. The Customer and Vendor Advocate is aligned with the vendor while the Protests and Disputes Section is in some cases aligned with DGS.

Both roles are of such importance that they warrant placement high in the organization. The Customer and Vendor Advocate should report to the DGS executive level while the Protests and Disputes Section should report to the executive level of PD.

### Major Tasks

- ◆ Change the organizational structure to elevate the Protests and Disputes Section to the executive level of PD.
- ◆ Separate the Customer and Vendor Advocate function from the Protests and Disputes function.
- ◆ Create a new Customer and Vendor 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 Vendor Advocate that complies with the requirements of PCC §10300.

### Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
3 months	<ul style="list-style-type: none"> <li>▪ DGS Director.</li> <li>▪ PD Director.</li> <li>▪ HR resources.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"><li>▪ Removes organizational conflict between the two roles.</li><li>▪ More executive visibility into the protest and disputes process.</li></ul>	<ul style="list-style-type: none"><li>▪ The change may cause some confusion for vendors to know whom to call with questions.</li><li>▪ Staffing the new ombudsman position may be difficult because the skills required to help vendors are specialized.</li></ul>

## Initiative Dependencies/Relationships

- ◆ None.

**Initiative G.1 – Design a comprehensive “governance” structure for the development of purchasing policies and procedures.**

## Overview

In order to successfully implement many of the changes undertaken by DGS related to uniform policy and procedure, a formalized “governance” process is necessary. The “governance” process ensures that the Department’s policy and procedure decisions are evaluated, analyzed, vetted, and approved by the effected stakeholders. This level of involvement will maximize the acceptance of these changes, as well as provide a mechanism to gather feedback and incorporate positive improvements.

## Major Tasks

- ◆ Design a process for the evaluation, analysis, creation, and approval of new policies.
- ◆ Establish a stakeholder participation process.
- ◆ Identify stakeholders in procurement policy and procedure.
- ◆ Ascertain stakeholder participation expectations in “governance” process.
- ◆ Enlist support and assistance for continued “buy-in.”
- ◆ Develop feedback mechanism for process improvement recommendations and updates.
- ◆ Establish communication channels for the dissemination and continuous support and feedback with regard to policies and procedures.
- ◆ Leverage the DGS Internet and intranet sites as tools to enable the governance process.

## Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
3 months	<ul style="list-style-type: none"> <li>▪ PPO Manager.</li> <li>▪ PPO Staff.</li> <li>▪ Governance participants, as necessary.</li> <li>▪ PD Deputy Director.</li> <li>▪ OLS Deputy Director.</li> <li>▪ DGS Director.</li> <li>▪ Subject Matter Experts as needed.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Makes visible the procurement policy and procedure development process.</li> <li>▪ Ensures affected parties are aware of, and can plan for, upcoming changes.</li> <li>▪ Provides mechanism to vet policies prior to adoption or change.</li> <li>▪ Changes to policies can occur more frequently due to acting upon feedback and process improvement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ May slow the policy development process due to increased outside involvement.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ “D.1-Design distinct, comprehensive, and navigable policy and procedure documents” establishes the single source document for policies and procedures. The governance process must assign ownership of these documents and govern their update and publication both electronic and physical.

## **Initiative D.1 – Design distinct, comprehensive, and navigable policy and procedure documents.**

### Overview

The primary initiative involves establishing a single source for procurement policy, as well as a single source for procurement procedure. Each of these documents must be well designed to ensure their ease of use and longevity.

### Major Tasks

- ◆ Clarify the distinctions between *policy* and *procedure*.
- ◆ Consolidate all procurement policy and procedure into single source documents.
- ◆ Declare SAM the single source for policy and SCM the single source for procedure.
- ◆ Design a structure to promote ease of use.
- ◆ Design document update mechanisms to ensure timely incorporation of changes to both on-line and hard copies.
- ◆ Develop training and education program.

### Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
3 months	<ul style="list-style-type: none"> <li>▪ PPO Manager.</li> <li>▪ PPO Staff.</li> <li>▪ Governance participants, as necessary.</li> <li>▪ Various procurement program managers.</li> <li>▪ Subject Matter Experts as needed.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Provides a single, authoritative source document for procurement policy and one for procedure.</li> <li>▪ Promotes ease of use and compliance.</li> <li>▪ Simplifies the update/change process.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Radical change from current practice of multiple sources for policy and procedure.</li> <li>▪ During the transition period, the existence of both “old” and “new” policy and procedures may cause confusion if not properly managed.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ The design, creation, and ongoing maintenance of these primary source documents is the cornerstone of the policy and procedure reform effort. The governance program, “G.1-Design a comprehensive “governance” structure for the development of purchasing policies and procedures,” and the policy development, “P.1-Complete the single policy and procedure documents,” initiatives depend on the existence of a single source, D.1 (this initiative).

**Initiative P.1 – Complete the single policy and procedure documents.**

## Overview

A significant level of effort is required to populate the newly designed single sources for procurement policy and procedure. Specifically, all existing procurement policy and procedure must be gathered, analyzed and re-developed into the new document structure. As the PPO develops and publishes new policy and procedure, changes/updates will only occur in the “new” document resulting in a uniform and consistent policy and procedure reference.

## Major Tasks

- ◆ Gather all existing procurement policy and procedure according to the sections of the newly designed single source documents.
- ◆ Analyze the material to identify implementable units of policy and procedure.
- ◆ Order the units by dependencies.
- ◆ Prioritize the units of policies.
- ◆ Analyze individual units of policy to address inconsistencies, overlaps, and omissions.
- ◆ Create the “strawman” new policies.
- ◆ Execute the governance process to review and approve the new policies.
- ◆ Once approved, create the procedures and tools for the unit of policy.
- ◆ Populate single policy and procedure documents with the new policies and procedures.
- ◆ Utilize communications process to notify affected parties of upcoming changes.
- ◆ Develop and conduct training on the new policies and procedures.

## Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
24-36 months	<ul style="list-style-type: none"> <li>▪ PPO Manager.</li> <li>▪ PPO Staff.</li> <li>▪ Governance participants, as necessary.</li> <li>▪ Subject Matter Experts as needed.</li> <li>▪ Various procurement program managers.</li> <li>▪ Publishing personnel (web, OSP, etc.).</li> <li>▪ Trainers.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Ensures a single, authoritative source for policy and one for procedure.</li> <li>▪ Iterative development delivers updated policy on a regular basis allowing immediate improvement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ During the transition, the new documents will necessarily add another source to the already confusing set of source policy documents. Over time the impact of this issue will decrease as the single source documents grow to contain the majority (and eventually all) of the procurement policies and procedures.</li> <li>▪ The transition will require extensive communications and training.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ The creation of the new policies must be conducted in accordance with the new governance processes as per “G.1-Design a comprehensive ‘governance’ structure for the development of purchasing policies and procedures.”
- ◆ The new policies must be populated into the new single source documents as per “D.1-Design distinct, comprehensive, and navigable policy and procedure documents.”
- ◆ The development of new uniform policies and procedures require the establishment of a policies unit as per “O.1-Establish a dedicated, centralized purchasing policy and procedure office.”
- ◆ Some of the specific policies will require legislative changes enabling uniformity, clarity, and compliance with best practices, such as L.2-Propose legislation to further define and clarify ‘organizational conflict of interest’ and ‘follow-on work’.”
- ◆ As policies are developed it will be necessary to incorporate the new policies into the State’s procurement training program. This integration is the topic of “T.1-Develop governance and integration processes with other, on-going training initiatives.”

**Initiative T.1– Develop governance and integration processes with other, on-going training initiatives.**

**Overview**

Training is an important consideration when developing policies and procedures. The coordination and continuous two-way communications and feedback between the training unit and the Policies and Procedures Office is essential to successful procurement operations in the State. The governance of the integration of these two key functions must be designed and implemented.

**Major Tasks**

- ◆ Develop a detailed governance process for policies and procedures to feed into the State’s procurement training program.
- ◆ Develop a feedback loop for the training program to give input into the development and maintenance of policies and procedures.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
2 months	<ul style="list-style-type: none"> <li>▪ PPO Staff.</li> <li>▪ Training Program leaders.</li> </ul>

**Rationale**

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ As new policies are created, the procurement officials throughout the State will have the training to support their use.</li> </ul>	<ul style="list-style-type: none"> <li>▪ If the coordination fails it could cause negative perceptions of the new policies.</li> </ul>

**Initiative Dependencies/Relationships**

- ◆ “P.1-Complete the single policy and procedure documents.”
- ◆ “G.1-Design a comprehensive ‘governance’ structure for the development of purchasing policies and procedures.”
- ◆ “O.1-Establish a dedicated, centralized purchasing policy and procedure office.”

**Initiative L.1 – Clean-up statutes to remove references to DOIT.**

**Overview**

The Code specifically references the now defunct Department of Information Technology (DOIT). In order to eliminate confusion, DGS should work with the Department of Finance (DOF) to initiate clean-up legislation. Additionally, this legislation should be used to further clarify and define the specific roles and responsibilities of the DOF, who has assumed the duties of DOIT, and DGS with respect to information technology procurements.

**Major Tasks**

- ◆ Create well delineated roles and responsibilities for both DOF and DGS.
- ◆ Craft legislation removing references to DOIT and clarifying the roles and responsibilities of DOF and DGS.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

**Rationale**

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Removes confusing references to DOIT from Code.</li> <li>▪ Clarifies duties, roles and responsibilities of both DGS and DOF for IT procurements.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation may not be adopted.</li> <li>▪ Policy would have to address statutory deficiencies in lieu of statutory change.</li> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

**Initiative Dependencies/Relationships**

- ◆ None.

**Initiative L.2 – Propose legislation to further define and clarify “organizational conflict of interest” and “follow-on work.”**

**Overview**

The existing Code specifying the appropriateness of “follow-on work” does not reflect best practices from other states or the federal government and does not serve the State’s best interests. DGS should initiate legislation to deal with situations leading to organizational conflicts of interest that are inherent in vendor participation in the pre-solicitation activities. Additionally, the state should broaden the application of the “follow-on work” definition to apply to all contracting and procurement transactions, and not limit it to only consulting services. Also, “follow-on work” should not be limited to only those instances where the initial work is performed under contract or for fee.

**Major Tasks**

- ◆ Craft legislation addressing organizational conflict of interest and follow-on work for all procurements within the State.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Protects the best interests of the State.</li> <li>▪ Reflects best practices in other states and the federal government.</li> <li>▪ Applies more broadly to all procurement areas, not just consulting.</li> <li>▪ Maximizes fairness, openness, and competition.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislature defers decision on changes until the impacts of the latest changes, effective July, 2003, are analyzed.</li> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ None.

**Initiative L.3 – Remove statutory references that infer or direct that specifications not be defined in a detailed and precise manner.**

**Overview**

The term “specification” has multiple meanings, especially in the area of information technology (e.g., design specifications, performance specifications). The undefined, unspecific use of this term in the Code introduces confusion into the development of specifications. The various references in Code may be construed to mean that business requirements need only be described in a generalized and not detailed fashion. Whereas, in fact, a necessity when building large-scale integrated systems, the business requirements need to be specified in detail to ensure that each bidder has a clear understanding of the solicitation requirements.

**Major Tasks**

- ◆ Craft legislation defining and applying the identified types of “specifications.”
- ◆ Upon passing of legislation, update policies.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Increases the likelihood that procurements meet the business needs.</li> <li>▪ Protects the best interests of the State.</li> <li>▪ Reflects best practices in private industry.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation may not be adopted.</li> <li>▪ Policy would have to address statutory deficiencies in lieu of statutory change.</li> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ None.

### **Initiative L.4 – Clarify legislation to consolidate the organizations involved in hearing and resolving protests.**

#### Overview

For each type of procurement, the Code defines a protest process by which the State receives, processes, and decides on bidder protests:

- ◆ For goods and information technology (IT) goods and services, protests are heard by the Victim Compensation and Government Claims Board (VCGCB).
- ◆ For non-IT services, protests are heard by the DGS.
- ◆ For those procurements utilizing the Alternative Protest Pilot, protests are heard by the Office of Administrative Hearings.

For each protest hearing body, the processes differ significantly. This structure presents a challenge to both the buyer and vendor community in effectively utilizing and managing the protest-related processes.

In consideration of the large number of protests heard by the various units each year, the Code should be modified to deter frivolous protests. As reflected in the best practices of other states, protests can have a multi-tiered review process. For example, the initial protest is heard internally to DGS by an appropriate person who may rule the protest valid or frivolous. If the initial protest is found frivolous, the protester may elevate the protest to the hearing body outside of DGS in consideration of a “protest bond” that may be forfeited if the protester “loses.”

#### Major Tasks

- ◆ Analyze the workload, capabilities, and other attributes of each of the protest hearing units including the relevant processes.
- ◆ Craft legislation to consolidate the protest hearing units to a minimal number and define standardized processes for announcing intent to awards and other milestones of the protest process.
- ◆ Create legislation allowing DGS to make initial findings on protests including the ability of the protester to appeal in lieu of a protest bond.

## Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Creates a consistent, uniform approach to all protests.</li> <li>▪ Allows DGS to pass initial judgment on protests.</li> <li>▪ Ensures that the vendor community has a fair and open protest mechanism.</li> <li>▪ Protects the best interests of the State and reflects best practices in other states.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Complex changes effecting vendor community and existing State organizations.</li> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ There may be an impact on the DGS protest facilitator and ombudsman that are addressed in “O.5-Establish a Customer and Supplier Advocate separate from the Protests and Disputes Section.”

**Initiative L.5 – Modify the PCC to clearly define the Non-Competitive Bid (NCB) process and allowed justifications for NCBs.**

**Overview**

The use of non-competitively bid (NCB) procurements is inconsistent due to a lack of clarity in the law. The Public Contract Code ought to include a clear set of rules guiding the applicability and conduct of the NCB process.

Non-competitively bid contracts do not have the built-in protections on value that are present in a free-market competition based procurement. The lack of such protections requires extra diligence on part of the State procurement official to conduct analysis and enter into negotiations with the single supplier. The requirement for negotiation in this situation is so compelling as to justify a legal requirement for this activity.

**Major Tasks**

- ◆ Craft legislation to define the applicability and conduct including the negotiation process of the NCB process.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"><li>▪ Creates a consistent, uniform and clear set of rules for using an NCB.</li><li>▪ Ensures that the vendor community has a fair and open procurement mechanism wherever possible.</li><li>▪ Protects the best interests of the State and reflects best practices in other states.</li></ul>	<ul style="list-style-type: none"><li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li></ul>

## Initiative Dependencies/Relationships

- ◆ None.

**Initiative L.6 – Modify the PCC to allow for incentive contracting in the areas of goods, IT and non-IT services.**

**Overview**

The use of performance incentives is a practice that could be expanded to lower risk, increase value, and maximize potential savings. The use of such contracts is limited to specific revenue sharing or share-in-savings contracts. Incentives could be expanded to include a much wider range of contracts. Because the authority for incentive contracts is not explicit in the PCC other than in the State Contract Act sections related to public works contracts, it would be in the State of California’s interest to craft such legislation specifically authorizing the use of incentives in all contracting (i.e., goods, IT, and non-IT services) when appropriate.

**Major Tasks**

- ◆ Craft legislation to authorize the wide and creative use of incentives in procurements and contracts.

**Resources**

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Creates the clear authority for the use of incentives in contracting.</li> <li>▪ Realize increased value, cost savings and lower risk in State contracting.</li> <li>▪ Protects the best interests of the State and reflects best practices in other states.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ None.

**Initiative L.7 – Propose legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.**

Overview

In order to create a more consistent system of delegations, the approval levels for contracts ought to be standardized. DGS is authorized to set these levels in the case of goods and IT delegations. It is restricted, in the non-IT services area, to a \$75,000 level set in PCC 10351. This specific dollar amount should be removed and replaced with a clause allowing DGS to set the amount as is the case with goods and IT procurements.

Major Tasks

- ◆ Craft legislation to remove the specific dollar amount (\$75,000) listed in PCC 10351 and replace with a clause allowing DGS to set the levels for services contract approval exemptions.

Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary</li> </ul>

Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Creates a uniform system of delegations without regard to procurement type.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

Initiative Dependencies/Relationships

- ◆ None.

**Initiative L.8 – Propose legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to establish a delegation for services.**

## Overview

In order to create a uniform system of delegations, the authority for conducting procurements in the State must be standardized. DGS has the organic authority to conduct both goods and IT related purchases. In the case of non-IT services, DGS does not delegate the authority but rather the authority resides in the individual agencies. This inconsistency impedes the creation of a uniform system of delegation. A legislative change is required to remove the inconsistency.

## Major Tasks

- ◆ Craft legislation to remove the organic authority that State agencies possess to procure non-IT services.

## Resources

<i>Estimated Timeframe</i>	<i>Resource Requirements</i>
6 months	<ul style="list-style-type: none"> <li>▪ Legislative Analyst.</li> <li>▪ Office of Legal Services (OLS).</li> <li>▪ PPO Staff.</li> <li>▪ Program managers.</li> <li>▪ Governance participants, as necessary.</li> </ul>

## Rationale

<i>Benefits</i>	<i>Risks/Issues</i>
<ul style="list-style-type: none"> <li>▪ Creates a uniform system of delegations.</li> <li>▪ Eases administration of the delegation program.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unanticipated and undesired changes may be incorporated during the legislative process.</li> </ul>

## Initiative Dependencies/Relationships

- ◆ None.

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## APPENDICES

The following documents are provided as appendices to this report.

Appendix A: NASPO Survey-Leveraged Contracts

Appendix B: NASPO Survey-Policy Oversight

Appendix C: NASPO Survey-Legal and Procurement

Appendix D: PCO Survey

Appendix E: Interview Participants

Appendix F: Focus Groups

Appendix G: DGS Procurement Governance Model

Appendix H: Supporting Research and Analyses

Appendix I: Initiative Definition Worksheets Matrix

Appendix J: Organizational Conflict of Interest Examples

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## Appendix A

### NASPO Responses Leveraged Contracts

	Massachusetts	Missouri	Pennsylvania
<b>Describe your rules for the issuance of master agreements/contracts, multiple awards and other "leveraged" contracts. Are your master agreements/contracts and multiple awards competitively bid?</b>	The link to our handbook is: <a href="http://mass.gov/agency/documents/osd/policy/phand.pdf">http://mass.gov/agency/documents/osd/policy/phand.pdf</a> Information starts on page 50.	Rules are lowest and best.  Yes (competitively bid).	Refer to the Commonwealth's Field Procurement Handbook. This Handbook can be found on our website at: <a href="http://www.dgs.state.pa.us/dgs/cwp/view.asp?a=353&amp;Q=113711&amp;dgsNav= 5053">http://www.dgs.state.pa.us/dgs/cwp/view.asp?a=353&amp;Q=113711&amp;dgsNav= 5053</a> A: See Attachment No. 1, Section A, pages 1 thru 3. See also Attachments 6 and 7 for additional information.
<b>What is the duration of your masters and multiple award contracts?</b>  <b>How often are they opened up for re-solicitation?</b>	page 51 and 53	Anywhere from one to three years depending on various factors.  Sometimes there are minimum order limitations but that is all.	Most are 1 year with four possible 1-year renewals. Some are two-years with renewals. (Not to exceed 5 years total). Each year the contracts are reviewed along with the current market and it is decided whether to bid or renew. Most of the time we utilize every renewal option, unless there is a major change in the market. (Attachment No. 2)
<b>What are the limitations for the use of the masters and multiple award contracts?</b>	Pg. 53		A: See Attachment No. 1, Section C, page 10.

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	Massachusetts	Missouri	Pennsylvania
<b>Do your procurement statutes, policies, and procedures allow negotiation? If so, how does this work?</b>	page 43, page 191 (Best Value Selection and Negotiation)	Yes. Our negotiation is a formal process that allows us to change specs or requirements and technically reissue the RFP.	A: Yes, in the Competitive Sealed Proposal (RFP) process. See Attachment No. 1, Section B, pages 3 thru 10. Negotiations are specifically talked about in Section B.11, pages 9 thru 10.
<b>What is your process for handling protests?</b>	Human and Social Services only; page 193 (Debriefing and Appeals)	The protest goes to my assistant director (one not involved at all in the procurement process). We do an internal review and make a determination. An appeal may be made to the Director or the Commissioner of Administration. Final appeal is court related. Protests are handled in accordance with our rules and regulations.	A: See attached policy/procedure guidelines. (Attachment No. 3)
<b>Are there types of procurements that do not allow protests?</b>	Commodities and other services allow debriefings only at the discretion of the procuring department); page 190, Debriefing. Protests are not allowed	Not really	A: None that I am aware of.
<b>Describe your contract dispute process? (i.e. failure to perform)</b>	page 99	Agencies are the first line of contact. They must notify our office of problems reaching breach status. At that point, our office gets involved and does all further contract administrative duties.	See attached policy/procedure guidelines. (Attachment No. 4)

	Massachusetts	Missouri	Pennsylvania
<p><b>What is your process for approving non-competitive bid procurements/single and sole source (NCBs)? What are the acceptable justifications for such procurements? Do you have a separate approval process for NCBs? If so, please describe it.</b></p>	<p>Not allowed; page 27</p>	<p>Must be advertised for 5 days and meet 3 criteria as identified in statutes (amount must be above \$25,000 for this to occur).</p> <p>Supplies are proprietary and only available from the manufacturer or a single distributor. Based on past procurement experience, it is determined that only one distributor services the region in which the supplies are needed. Supplies are available at a discount from a single distributor for a limited period of time.</p> <p>No separate approval process.</p>	<p>Attachment No. 5 Sole Source</p> <p>See Attachment Nos. 5A, 5B &amp; 5C. These forms are the Sole Source Fact Sheets and Checklists that the agencies must fill out for approval to do sole source procurements (Supplies, Services &amp; Construction</p> <p>They must complete the regular approval process plus the approval of the Board of Commissioners of Public Grounds and Buildings. (Attachment No. 5 Sole Source)</p>

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## Appendix B

### NASPO Responses Separation of duties: Buying, Policy, Oversight

Given that three major functions of a centralized procurement office are; policy making, centralized buying, and oversight (review and approval), please answer the following questions:

State:	1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not briefly describe how you make statewide procurement policy.	2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.
Alaska	In Alaska, it's all combined in one small operation - no separation of duties at all. Statewide policy is developed by the Chief Procurement Officer (the CPO also acts as Director here) with the help of buyer staff (contracting officers) and input by a user group consisting of lead buyers from each customer agency. Oversight is by CPO with assistance from the same contracting officer staff.	
Arkansas	No. Our management team: 2 procurement managers, the director, state procurement and our legal counsel have the primary responsibility. The team requests input from State agencies and Colleges and Universities prior to the final decision.	No. Oversight is accomplished through monitoring of agency and college and university buying practices on an as needed basis.. We also have the legislative auditors who do an audit of procurement practices every few years.
Indiana	No separate unit for policy making. The administrative staff of the Director, and two Deputies are responsible for recommending policy to Deputy Commissioner.	No separate unit. There is a separate section of the Department that does periodic reviews to make sure agencies are purchasing within the policies of their streamline authority. Hope this helps.

State:	1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not briefly describe how you make statewide procurement policy.	2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.
<b>Kentucky</b>	We do not have a separate agency. However, we publish policies and procedures from the central procurement organization that are approved by a legislative committee and are incorporated by reference into our regulations, which makes them have the impact of law. All policy proposals are reviewed by our general counsel and our internal auditor prior to being forwarded to the legislature, and we are required to post a notice of public hearing so that all interested parties can discuss the changes prior to legislative review.	All contracts are reviewed and approved by a branch manager and director. These two people do not normally function as buyers, but limit their activities to review and approval. While the director is in a policy-making position, all official policies are reviewed and approved through the process described above.
<b>Louisiana</b>	Louisiana does not have separate dedicated units for policy making, review and/or approval.	
<b>Massachusetts</b>	<p>Procurement Policies are established by the Executive Office for Administration and Finance (EOAF) and the Operational Services Division (OSD). At OSD, senior staff which consists of the State Purchasing Agent and two Deputy State Purchasing Agents establish and approve new policies with assistance from procurement directors, other departments (if necessary) and EOAF. In 1998 we implemented procurement Reform which was spearheaded by EOAF that essentially changed procurement as we knew it back then.</p> <p>Today, EOAF under a new administration wants to make drastic procurement policy changes and put more control back to Central Purchasing. We are still in that process. The Procurement Policy team consists of the State Purchasing Agent, Two Deputies, Assistance Secretary for Administration and Finance, the Budget Director for the Commonwealth, budget analysts and an economists. Other departments will be included once we establish the framework.</p>	<p>We have a Quality Assurance Unit which consists of staff from OSD and the Comptroller's Office who review procurement folders by department on a post audit basis. They assist when needed and provide training when necessary (procurement 101) and may also take the departments' procurement delegation away if they see no improvement in following procurement rules, regulations and policies.</p> <p>Procurement Team Leaders review and approve procurements that are over a department's delegation. They actually have to go on-line and apply approvals before the encumbrance is consummated and the vendor is notified of the purchase. Any procurement within a department's delegation will go through automatically and are reviewed on a post audit basis by QA.</p>

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State:	1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not briefly describe how you make statewide procurement policy.	2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.
<b>Missouri</b>	No	We did, however it has been decimated in budget cuts. This section also was the main group that detailed the policy decisions with Director approval. In the past, we used to create a transaction list of agency procurements within their authority and secured a random sample to audit the agencies compliance with the procurement delegation. Several agencies were found to have bypassed purchasing delegations and were trained and given oversight for a period of time. (Basically penalized us and not the agency though).
<b>New York</b>	New York does not.	
<b>Oklahoma</b>	<p>We have an audit team that assists me in setting policy and writing rules which have the force and effect of law. They report directly to me. By statute, they review and submit to me for approval all the agencies internal purchasing procedures. They also conduct audits, reviews and investigative reviews of any agency, announced or unannounced. The auditors are trained and seasoned auditors with formal training in procurement. They also conduct formal certification of State procurement staff from other agencies.</p> <p>The review and approval process starts with the Contracting Officer with review and sign off by a designated peer. It is then submitted to the supervisor in charge of that branch. It is then forwarded to me for approval. The process has been streamlined and there is no hold up in the contract process and has worked quite well. I review all of the contracts over 250,000 dollars.</p>	

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State:	1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not briefly describe how you make statewide procurement policy.	2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.
Pennsylvania	The PA Department of General Services is, by PA law, the Procurement agency for the Commonwealth. All policies are made by the Director of the Bureau of Purchases, Deputy Secretary for Procurement, the Secretary of General Services and Legal Counsel for the Department. These policies are discussed with other agencies prior to enforcement.	
South Dakota	No separate dedicated unit for policy making. The purchasing administrator recommends policy to the Commissioner of the Bureau of Administration. Some policy can be established by the Commissioner, other policy must be established through rulemaking authority granted by the legislature, and the rest is set in state law.	No separate unit dedicated for oversight. The central procurement office does not do audits of state purchases. The state auditor reviews state purchases, and returns questionable transactions to the agency and requires them to work through the Central Procurement Office to "clean up" the problem.

State:	1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not briefly describe how you make statewide procurement policy.	2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.
Tennessee	<p>Our division is governed by the Board of Standards (Comptroller of Treasury, Commissioner of Finance and Administration, and Commissioner of General Services). All policies, procedures, and statutes must be approved by the board.</p>	<p>The Board of Standards implemented a Board of Standards Staff which is made up of members from the respective departments. They review and approval purchases and report to the board.</p> <p>12-3-401. Board of standards created - Members and officers - Expenses. There is created a board of standards, which shall consist of the commissioners of general services and finance and administration, and the comptroller of the treasury. The commissioner of finance and administration shall be the chair of this board, and the commissioner of general services shall be the secretary and as such shall be responsible for the keeping of all records of the board of standards. The members of this board shall serve without additional compensation. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter</p> <p>12-3-402. Duties of board. It is the duty of the board of standards to develop policy and criteria under which specifications will be established and to examine and approve the rules and regulations governing the operation of the department of general services as hereinafter provided.</p> <p>12-3-403. Procedural rules - Records. The board of standards shall adopt rules governing its proceedings, and shall keep a permanent and accurate record of all its proceedings.</p>
Utah	<p>Utah has by statute a Procurement Policy Board. It adopts the state's procurement rules. The chief procurement officer (me) is the non-voting secretary to the board. The board meets only a few times a year to consider rule changes.</p>	<p>Utah has, by statute, a Procurement Appeals Board. The board is comprised of three non-state employees (attorneys). The board only meets to consider legally filed appeals.</p>

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<b>State:</b>	<b>1. Does your procurement organization have a separate dedicated unit for policy making? If so, describe its staffing and duties. If not briefly describe how you make statewide procurement policy.</b>	<b>2. Does your centralized procurement organization have a dedicated oversight (review and approval) unit that is separate from the buying unit and/or policy making functions? If so, describe its staffing and duties. If not, briefly describe how oversight is performed.</b>
<b>Washington</b>	<p>Washington has one position who is a policy and protest manager who Drafts policy</p>	<p>We rely on the state auditor for reviews of compliance with purchasing policy. We do not participate in the review and approval of requisitions, Our central purchasing either does the bid process, or coaches the agencies but does not process any orders. For contract work that has been delegated to agencies, we do not perform a compliance/oversight review.</p>

## Appendix C

### NASPO Responses Legal and Procurement Roles

State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
Arizona	The procurement officer determines whether to involve legal counsel to review procurement documents and contract, advise on determinations, decisions and disputes, provide opinions, etc. Legal counsel approves all base procurement documents like standard clauses.	The procurement officer is responsible for the business decision with legal guidance from counsel.	We have a team of three lawyers employed by Attorney General assigned to procurement. They serve our office and 120 state agencies.	Advisory .	Contract administration is a team effort. The client is responsible for day to day interaction with contractor, approval of deliverables and payment authorization. Procurement officer handles modifications, problems, disputes and other contract issues.	In Az we don't serve as central control.
Arkansas	The Attorney General lawyers	Internal counsel deals with	We have an internal legal	Our internal counsel and	We manage only the high visibility state-wide	

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State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
	review our general T&Cs and contract language. They represent us in any court proceedings. They do not approve or review individual procurements. They have requested that they begin to review procurements over \$1M, but we are negotiating with them on that issue	protests, disbarments, specific contract issues, liaison with the AG's office, regulation writing and review, writing of advisory opinions on issues involving contract ethics issues and general interpretation of the procurement statutes.	counsel which does a more in-depth review of certain procurements, answers questions from the AG's office and prepares answers to protests and writes advisory opinions on the ethics section of our contract law, reviews and writes regulations and interprets the procurement statutes.	the AG lawyers are advisory only.	contracts. Our agencies are responsible for managing their agency specific contracts. We do provide an oversight function on all contracts/procurements but not detailed management.	
Indiana	Our legal counsel has no oversight or approval of procurements.	Our attorneys are used as guidance rather than approval of	There is no legal counsel in central procurement.	Legal is advisory	Requesting agencies manage their respective contracts. Procurement manages quantity	

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State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
		procurements.	We have legal counsel in the agency that we can consult when needed.		purchase agreements.	
<b>Kentucky</b>	Our legal counsel reviews our standard terms and conditions, and reviews and approves any terms and conditions of "standard" agreements presented by the vendors to ensure there are no conflicts with our laws. The legal counsel also determines the outcome of all vendor protests, ensuring the procurements have	The general counsel's review is limited to areas of responsiveness and compliance with statutes and regulations. They generally do not review technical responsiveness or qualifications.	Our central procurement office does not have an internal counsel. All our procurement matters go through the general counsel for our cabinet.	Advisory more than oversight.	For statewide contracts, our central office also does the administration. For contracts we issue on behalf of only one agency, that agency does the contract administration.	Our central purchasing office performs review and approval on the front end-prior to contract award. We approve all purchases that are in excess of an agency's small purchase authority and not on an existing contract prior to the order being placed.

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State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
	<p>been done in accordance with statutes and regulations. As a matter of policy, we also consult with the general counsel prior to disqualifying vendors from a bid whenever there is any question concerning the responsiveness of the vendor. If it is a gray area, we get the general counsel to rule first.</p>					
<p><b>Louisiana</b></p>	<p>At this time, legal counsel is not involved in our procurement process.</p>	<p>See above.</p>	<p>The Office of Administration has a legal counsel for consulting but we use the Attorney General for</p>		<p>The Division of Purchasing and Materials Management is the final contract management authority, but we rely on information from agencies to determine</p>	<p>Audit is a part of our responsibility. Some commodities require upfront review.</p>

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State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
			court issues.		issues. They are the first line of contact with the contractor.	
<b>Minnesota</b>	Advise on request; sign contracts for form and execution only (latter statutory requirement likely to be eliminated)	None	Office of Attorney General formally represents. We also have attorneys on staff.	Advisory only.	Statewide commodity and service contracts managed by central procurement. Professional/technical contracts managed by individual contracting agencies.	
<b>New York</b>	Legal staff involved in many of the procurements. Briefly the role is that the procurement staff make the business decisions and assess risk and the Legal staff limit their reviews to legal issues only. Ultimately, if there is conflict, the business side		There are legal staff dedicated to the centralized procurement but organizationally, they still reside centrally with OGS Legal Services (it was not always that way, in the past, they resided with the program			

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State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
	makes the final determination and has the final authority (and responsibility).		unit, could swing either way on that issue).			
<b>North Dakota</b>	Legal counsel is involved in our procurement process only when necessary.	See above.	An attorney from the Attorney General's Office advises and represents the State Procurement Office as needed. We do not have internal legal counsel.	Both.	The State Procurement Office is the final contract management authority, but we rely on information from agencies to determine issues. They are the first line of contact with the contractor.	The North Dakota State Procurement Office performs "assistance visits" to agencies that have delegated authority beyond the blanket delegated authority.
<b>Oklahoma</b>	Legal counsel is available should a Certified Procurement Officers (CPO) determine the need for such counsel. Legal counsel has no oversight and	Due to the training and experience of the Central Purchasing CPO's attorneys are rarely consulted, except in	Legal Counsel is internal to our Department and available to the Central Purchasing Division when the need is determined. The	Advisory when requested.	Contract Management occurs in the Central Purchasing Division as directed by the State Purchasing Director, with Contract Administration activities occurring at the using agency level.	Purchasing does both purchasing and control agency functions.

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State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
	approval of procurement when compared to the CPO. If the CPO has a question regarding a offerors proposal; they either ask the State Purchasing Director, who has the final say regarding these matters or the Contract Manager for counsel.	conditions as mentioned above or , in the very rare circumstances, of a "Bid Protest."	2 attorneys have other Departmental responsibilities.			
<b>South Dakota</b>	Our legal counsel plays no role in oversight or approval of our procurements. Legal counsel has approved the boilerplate language in our solicitation documents and contracts, and only	Legal counsel would only look at new language that might be required in solicitations or contracts.	Our Bureau of Administration has internal legal counsel that assists the Office of Purchasing and Printing when requested.	Our legal counsel acts in an advisory role upon request.	Our centralized procurement office provides ongoing contract management for statewide contracts. Some agencies have contract management responsibilities if the contract is exclusively for them.	

# CORE Project Final Report

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	provides legal advice when requested. Buyers prepare all solicitations which under oversight of the Purchasing Administrator.					
Utah	Legal does not review procurements.	Legal does not review procurements.	External by the Attorney General's Office. Role generally is to assist in counseling the chief procurement officer as he sits as the protest hearing officer, and then to defend decisions in the event of appeals. Also infrequent	Advisory.	Agencies.	

# CORE Project Final Report

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			counsel regarding revisions to our standard contract terms and conditions.			
<b>Washington</b>	The state legal counsel is an Assistant Attorney General (AAG), they provide approval as to the T&C, and legal advise regarding protests and other matters. Buyers, have a great deal of latitude in developing responsive and responsibility criteria, specific terms and conditions and award criteria. They make the awards without AAG	see 1st question	State counsel.	Advisory role.	Both, for state level master contracts our office performs all work from development, award and contract management. For delegated procurement (nearly 70% of all purchasing dollars) the individual agency does all the work.	We do neither, the "audit" if you will for transactions occur as part of the state auditors agency review an may not occur at all if it is not part of the auditors audit plan for that agency.

# CORE Project Final Report

State:	What is the role of legal counsel in the oversight and approval of procurements as compared to the role of procurement officers or buyers?	What issues or items do your attorneys consider as opposed to your procurement officers in the review and approval of procurements?	Does your centralized procurement office have internal legal counsel or is there an external legal services group that performs this role?	Does your procurement legal counsel perform an advisory role or an oversight role or both?	Does your centralized procurement office perform on-going contract management or is this left to the requesting agencies?	As a follow-up to this information can you please tell me if your central procurement agency serves also as a control agency. By control agency, I mean does the agency perform upfront review and approval of transactions or audits of transactions after the fact?
	review					
Wisconsin	Generally, the procurement specialist determines whether to involve legal counsel in a procurement. The specialist may issue the solicitation and make the award without legal review.	The specialist may request a legal interpretation of a statute or assistance with writing contract language. Legal counsel does approve boilerplate language used statewide, such as the standard terms and conditions and the basic contract form. Legal is involved with protests/appeals.	The Department of Administration has two attorneys. Both are available to assist the Bureau of Procurement.	Advisory.	The Bureau of Procurement is responsible for administering the statewide contracts we establish. The using agency is responsible for receipt and inspection of materials purchased from the contracts. Any complaints should be forwarded to the Bureau.	Wisconsin Statutes place authority and responsibility for all state purchases in the Dept. of Administration, Bureau of Procurement. The law also allows us to purchase centrally or to delegate authority to other state agencies. Agencies must obtain prior approval for nondelegated procurements from the bureau, for example, sole source procurements over \$25,000. The Bureau conducts periodic management reviews of purchasing transactions of the delegated purchasing offices.

## Appendix D Procurement and Contracting Officer (PCO) Survey

<b>PCO Representing:</b>	<b>1. Describe the process currently in use for developing procurement policies and procedures, identifying the underlying authorities for doing so within your organization.</b>	<b>2. Is there a difference in the way you make policies for procuring non-IT services as opposed to all other procurement types (e.g., commodities, IT goods and services)?</b>	<b>3. What improvements to DGS' procurement policy and its dissemination would be of value to your organization?</b>
<b>Alcoholic Beverage Control</b>	The Department fully complies with the process and the requirements of DGS.	DGS has established guidelines and procedures for non-IT services. Once again the procedures are well defined and we also comply with those.	I believe DGS procurement policy dissemination is fine. However, I would suggest that as we develop procurement policies and directives we strive for a balance between getting the job done and control. In other words, don't make the process so restrictive and convoluted that it takes week and months to get things going.
<b>Board of Equalization</b>	The day-to-day procurement policies and procedures at the Board of Equalization have evolved over time, primarily in response to control agency requirements, staffing levels, and budgetary influences. The policy and procedures for "what" will be procured, are influenced by management decision making and are thus more dynamic than "how" it will be procured, which are subject to clearly defined control agency requirements. While the Procurement and Contract Officer has overall responsibility for the contract and procurement the processes, the Contract and Procurement Section Manager is responsible for implementing external and internal directives in order to effectively acquire the goods and services needed by the Board of Equalization.	The approval process leading to the acquisition of non-IT services is essentially the same as for all other goods and services. Most acquisitions require Division Chief approval. The approved acquisitions follow the prescribed control agency guidelines.	There is an almost overwhelming amount of reporting related to the contract and procurement processes. Its not clear to the BOE that all of the reporting has value commensurate with the effort to compile and maintain the underlying data. BOE believes that one of DGS' strong points is its management of the contract and procurement processes. We are satisfied that DGS attempts to disseminate information quickly, and respond rapidly to Executive and Legislative changes with revised procedures. DGS sponsors a number of forums, focus groups, and training, that are valuable to BOE.
<b>Board of Prison Terms</b>	The underlying authority for developing procurement policies and procedures at the Board of Prison Terms comes from Department of General Services edicts.	No.	No suggestions.

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California African American Museum	Procurement policies and procedures are developed through the process of all procurement personnel receiving the identified training from DGS-Office of Procurement. Guidelines are interpreted, developed and distributed to all staff. On a monthly basis the Finance and Administration Committee meet to review policies and procedures. The authority level are comprised of supervisors, managers, and the executive director. Supervisors/managers review all requests for procurement compliance. The Executive Director approves all requests. In the absence of the Executive Director, the Deputy Director or Fiscal Officer approves the requests.	There is no difference in the way CAAM makes policies for procuring non-IT services as opposed to all other procurement types.	No comment on what improvements to DGS' procurement policy and its dissemination at this time.
California Law Revision Commission			Don't impose elaborate training requirements for procurement of routine office supplies by small agencies. We don't have personnel to do our own work, let alone become experts in government procurement and all the various forms, reporting requirements, etc. We could spend all our time training, sending out bids for a box of paper clips, keeping statistics on DVBE, etc. Think about the small guy who just needs to get something done.
California Military Department	<ul style="list-style-type: none"> <li>a. We determine if there is current DGS policy, if so we implement it.</li> <li>b. If there is no DGS policy we review the process in question and how it may be affected by related processes or policies. We draft a Military Dept. Policy and submit it to the Comptroller for review and approval</li> </ul>	We follow the State Contracting Manual (SCM). The only basic difference from our policy and the SCM is that we require written quotes under \$5,000 not verbal quotes.	<ul style="list-style-type: none"> <li>a. PIA establish a minimum cost for goods that require a waiver. It has become very time consuming and consequently expensive in employee costs to process waivers for small amounts of money.</li> <li>b. One single, comprehensive, source of information, policy, procedures, public code, etc. posted to the DGS web site.</li> <li>c. Changes or new policy/procedures</li> </ul>

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			<p>distributed to the field by email subscription.</p> <p>d . When we ask procedural or policy questions we are given verbal answers but nothing in writing. We should have something in writing.</p> <p>The questions should be reviewed by DGS and if appropriate, included in DGS policy.</p> <p>e . DGS should have one master on-line library of Payee Data Records and Drug Free Workplace Certifications. Agencies and vendors alike waste HUGE amounts of time, money and effort duplicating records.</p>
<p><b>Department of Aging</b></p>	<p>To the extent needed, we develop administrative memos that clarify and implement the state's procurement policies and procedures, as reflected in the State Administrative Manual, the State Contracting Manual, DGS procurement guidelines, DGS Management Memos, and most recently DGS Ethics and Leveraged Procurement Training. We have developed a system of internal reviews and approvals that ensure, to the extent practical, that current state policies and processes are being followed. During periods of severe budgetary constraints, we often impose additional and/or higher levels of approval to ensure that purchases are essential for continuing operations. Recently the department's Procurement Officer and Legal Office have become more involved in procurements, especially those involving competitive bids or any suggested as NCB, as a way to develop an understanding of the new Procurement Guidelines, to ensure appropriate application within the</p>	<p>Higher dollar amounts have additional levels of approval IT goods must go through IT Branch for compliance with department standards Major IT procurement decisions are brought to Department's IT Steering Committee.</p>	<p>Communication and understanding of DGS policy among the different units within its own department.</p> <p>Better organization of the material for ease of reference and understanding which is the most current.</p> <p>Concrete best-value evaluation guidelines and real-world examples of how to apply them in both goods and services, IT and non-IT.</p> <p>Policies and procedures that consider the cost of staff time (of all Departments involved in any review and approval process). The cost of internal controls should not outweigh the benefit.</p> <p>Reasonable turnaround of document review, responses to inquiries, etc.</p>

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	department and identify the need for additional administrative memos and training.		
<b>Department of Alcohol and Drug Programs</b>	<p>The Department of Alcohol and Drug Programs' (ADP) current process for developing procurement policies and procedures and identifying the underlying authorities for doing so within its organization is as follows. Upon notification of changes to procurement policies and procedures via documents such as Management Memos, State Administrative Manual updates or Executive Orders, the Deputy Director of Administration assigns the document to the appropriate administrative staff to identify the impacts of the change in policy or procedure and to also make the appropriate changes to the procurement portion of ADP's Administrative Manual. The administrative staff reviews the changes, distributes the document for review by affected ADP program areas and requests their input. Administrative staff also contact other state agencies to see how they are implementing the changes and also the appropriate control agency responsible for issuing the document to clarify any issues. Based on the information gathered, administrative staff prepares the appropriate revisions to the Administrative Manual and submits the revisions to the Deputy Director of Administration for approval. Once approved, the Administrative Manual is updated to reflect the change. Procurement policy or procedures development based on issues raised within</p>	<p>No, there is no difference in the way ADP develops policies for procuring non-IT services as opposed to all other procurement types.</p>	<p>We encourage DGS to establish an advisory group consisting of staff from business services offices from various state agencies. This advisory group would be responsible for identifying the workload impact on state agencies to implement new policies and to review and analyze the impact on existing procurement procedures before the changes are formalized through Management Memos, State Administrative Manual updates or Executive Orders.</p>

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	ADP are approved by the ADP's executive staff and incorporated into the Administrative Manual. Approval is given via the approval of issue papers.		
Department of Community Services and Development	We simply follow DGS guidelines.	We simply follow DGS guidelines.	The answer to number 3 is that we are fine with the way things are right now
Department of Corrections	<p>The Department Operations Manual (DOM) spells out Department of Corrections (CDC) policy. Changes to policy require approval of the CDC Executive Staff, over twenty different offices, and optimistically take as long as six months to complete. Realistically, policy changes often take over a year to make the rounds of approval, edit, re-approval, etc. Procedural changes are less complex and are developed by Business Management Branch with input from the institutions and headquarters customers. Procedure changes, if significant would be approved by the Deputy Director, who in some instances will ask for the Chief Deputies and/or the Director to concur. The DOM outlines what each Deputy and Assistant Deputy Director are responsible for. While the Business Management Branch (BMB) has functional responsibility over all commodity purchasing offices within CDC, our department has 38 individual delegation holders which makes approval of any purchasing policy or procedure changes a challenging undertaking.</p>	<p>Due to the size of the department, service procurement procedures are the responsibility of the Office of Contract Services (OCS), while procedures for goods procurement are the responsibility of the Business Management Branch, both offices are under the Deputy Director, Administrative Service Division. The OCS is centralized with one statewide delegation, and processes all service contracts and service and expense orders for the institutions and headquarters, while the commodity procurement function is decentralized amongst 37 separate delegation holders, over which the BMB has recently been given functional responsibility. IT goods and services also requires the approval of our Information Systems Division via the department's Workgroup Computing Justification Form (CDC 1855) in addition to the DGS required ITPP. The CDC does not have a separate IT delegation.</p>	<p>DGS could improve their procurement policy by talking more with other departments before issuing directives. As the largest department in the state, the CDC is rarely consulted prior to the DGS issuing policies that have been developed to fit a smaller less complex department. If this were the private sector the CDC would play a significant role in how business is conducted due to our size and complexity. Virtually every procurement issue that can be found in smaller departments is found somewhere within CDC, from food service, to health service, to IT, to law enforcement, to construction and maintenance. Developing policies based on a small department that does only one thing does not work others. The CDC has a variety of unique and complex issues, it would be more advantageous and efficient for DGS to become more familiar with these issues in an effort to be proactive rather than reactive when directives are being developed. For example, the DGS internet based registration system mandated for all state departments, when at the time, less than half of CDC's delegation holders did not have connectivity; the lengthy NCB process when we are under legal</p>

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			mandates to provide certain items or we are subject to contempt of court fines (law libraries \$10,000 per day per library and we have about 160 libraries); dollar limits and thresholds for some departments may be adequate but for CDC is to restrictive to meet our mandated requirements.
<b>Department of Developmental Services</b>	<p>Consistent with the statewide nature of our operations, the administrative function within the Dept. of Developmental Services (DDS) is somewhat decentralized. Departmentwide policies and procedures addressing issues of general concern are made at Headquarters (HQ) and apply not only to HQ but the individual Developmental Centers (DCs) as well. These general, departmentwide policies and procedures are normally developed by the HQ Customer Support Section (CSS), usually in consultation with the DCs, and are reviewed and approved by the Deputy Director of Administration, the Chief Deputy Director, and/or the Department Director. State and departmental policies and procedures serve as an umbrella under which HQ and the DCs develop their individual policies and procedures to address specific issues not covered in the more general state or departmental policies and procedures. These individualized HQ and DC policies and procedures must be consistent with the more general state and departmental policies and procedures, of course.</p>	<p>The same process is used for IT and non-IT policy and procedure formulation except CSS consults with the DDS Information Services Division (ISD) on IT policies and procedures. Typically, ISD is given the opportunity to review and comment on draft policies and procedures concerning IT before the drafts proceed up the chain of command.</p>	<p>It would be very useful if policies and procedures were issued by one source within DGS. The flood of Management Memos, CMAS memos, CalCard memos, Customer Forums, Frequently Asked Questions, etc. etc., can be very confusing and the answers provided are sometimes inconsistent or contradictory. DGS OLS and PD also need to make sure they are speaking with one voice on issues that affect both procurement and contracting.</p>
<b>Department of Financial Institutions</b>	DFI follows Management Memo 03-10 for policy and procedure	No difference	None DGS should be complimented on their dissemination.

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<b>Department of General Services</b>	<p>As the PCO, I ask for representatives from PD, IT and other impacted areas to work on the development of policies and procedures. Those policies and procedures are sent to the Executive Team (our deputy directors of which I'm a member) and a decision is made at that level.</p>	<p>There is no difference except that our IT managers are responsible for developing policies and procedures for their part of the procurement process.</p>	<p>It would be nice to receive a binder with a table of contents, numbering system and then we could easily add to the P and P. Also the MM are very difficult to read; too much information or sometimes too many words for what needs to be said; difficult to comprehend for my staff. There doesn't seem to be any logic for what MM is being sent. If we had that table of contents we would have a roadmap of where we're going.</p>
<b>Department of Housing and Community Development</b>	<p>The Department of Housing and Community Development incorporates Management Memos, Budget Letters, the State Administrative Manual, Government Code, and other information received into the Department's electronic Housing Administrative Manual. The policies and procedures are developed by the Contracting and Procurement staff and reviewed by management staff.</p>	<p>No, not in the methodology, however, there are different guidelines and procedures which must be followed depending on the purchase type.</p>	<p>Continued use of the Internet and e-mail for the distribution of policy from DGS. It is difficult to navigate the current DGS Website, and often almost impossible to find all of the current information on specific topics. Suggest the DGS Website have an index that will direct you to all of the current publications about a specific topic. The forums sponsored by DGS have been good, but we need an opportunity to have more intimate sessions so we can ask questions and discuss issues in a more round table environment. Perhaps scheduling sessions with two or three departments at a time would work.</p>
<b>Department of Insurance</b>	<p>Typically, development or revision of California Department of Insurance (CDI) policies and procedures is commenced as a result of audit findings or recognition that such policies and procedures would be of benefit to CDI. Initially, Business Management Bureau (BMB) management and staff will meet and coordinate activities with those impacted by proposed policies or revisions (i.e., Internal Audits, Fraud Division, etc.). Timelines and work plans</p>	<p>IT procurements are handled differently as there are different delegations for each. All IT procurements are submitted to CDI's Information Technology Division (ITD) by the requestor. Following ITD involvement and approval, which can range from a simple needs review to conducting a formal competitive bid process, the contract or purchase document is prepared by BMB.</p>	<p>The improvements to DGS procurement policy that would most benefit CDI are increased purchasing and contract delegations, and more competitively bid master agreements, in particular, continuation/renewal of the master agreement for business and management consulting services. As far as dissemination goes, it would be helpful to all agencies if revisions to the State Contracting Manual occurred more</p>

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	<p>are established and analysts develop the policies and procedures in cooperation with all stakeholders involved. The draft policies and procedures are formatted as an Administrative Bulletin. The final part of the process includes review for content and accuracy by both BMB Assistant Bureau Chiefs, the BMB Bureau Chief, and the Deputy Commissioner, Administration and Licensing Branch. Upon acceptance by the Deputy Commissioner, the Administrative Bulletin is disseminated via email to all CDI staff and then placed in BMB's site on CDI's Intranet.</p>		<p>frequently, perhaps on a semi-annual basis.</p>
<p><b>Department of Rehabilitation</b></p>	<p>At Dept of Rehabilitation (DOR) our contracting and procurement processes are in transition in response to the procurement reforms recommended by the Task Force. Currently, we have a Contract Unit in the Budget Section and a Procurement Unit in the Business Services Section, both in the Administrative Services Division. In addition, in program areas we have technical level procurement staff who do some procurement related functions. Effective 7/1/03, DOR is establishing a new section in Administrative Services Division combining the Contract Unit and Procurement units into a new Contracting and Procurement Section. Contracting in DOR is centralized in the Contract Unit. Requests for contracts from programs and administrative sections are reviewed and processed by contract analysts. Contract Unit staff use the State Contracting Manual, Public Contract Code and other guidance issued by DGS. Questions on new or revised policies primarily go to DGS</p>	<p>Typically, DOR does not contract for IT goods and services and we currently don't have IT purchasing delegation authority. IT goods and services are procured via leveraged purchasing agreements such as CMAS, WSCA and master service agreements. In contrast, non-IT services are procured via use of a Service Order and limited to \$5,000. Non-IT Services over \$5,000 are procured via the contract process subject to the State Contracting Manual. Non-IT goods are typically procured under our delegated purchasing authority for non-IT goods and commodities.</p>	<p>We are in agreement with much of the procurement reform efforts and would like to see the following improvements in DGS' procurement policy and dissemination:</p> <ul style="list-style-type: none"> <li>Timely and complete information.</li> <li>Currently, many of the critical procurement policies are in draft or unavailable such as many sections of CAM.</li> <li>Keep the number of reference manuals to the minimum. Currently, there are too many individual reference manuals or guides particularly in non-contract procurement areas.</li> <li>Standardize documents and forms to the extent possible.</li> <li>Dissemination via the DGS website and distribution sites is good.</li> <li>Put CMAS contracts on line.</li> </ul>

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	<p>Legal staff. Due to the centralization of processing contracts in DOR, there has not been a need to develop separate "policies". There are procedures on program specific contract provisions that are in the DOR Rehabilitation Administrative Manual (RAM) and other guidance provided to DOR program contract administrators and contractors. The Procurement Unit in DOR provides for centralized purchasing for administrative and IT goods and decentralized for consumer purchases in the Vocational Rehabilitation program administered in over 100 offices on a statewide basis. Procurement Unit staff use the Delegation Guidelines, California Acquisitions Manual, and other guidance issued by DGS. Questions on new or revised policies primarily go to the DGS Procurement Division staff. The DGS policies and DOR specific program requirements are disseminated to all DOR employees by Directives. Directives are incorporated into revisions of the RAM</p>		
<p><b>Department of Social Services</b></p>	<p>CDSS policies and procedures for procurement are tied directly (and patterned) to DGS Procurement Guides (Commodities, CMAS, MSA and Services), State Contracting Manual, State Administrative Manual, Management Memos, Governor's Executive Orders, Public Contract Code and other related Codes (W&amp;I, GC, etc.). Procurement and contracting policies and procedures are developed by procurement and contract staff, and approved by the respective Branch Chief(s), Deputy Director of Administration and Chief Deputy</p>	<p>No. However, all requests for procurements for IT goods and services, are reviewed by our Information Technology Division for compliance to departmental standards and practices. In addition, all IT related services and goods, procurements, contracts and purchase orders are reviewed by our Legal Division.</p>	<p>With the Governor's Task Force recommendations, CDSS would recommend more timely and frequent updated training for procurement and contract staff. In the past, the availability of training for new contract and procurement staff was limited, at times staff would have been on the job for almost a year before being able to attend a DGS Contract Training Class. More detailed information regarding new policies and procedures could be presented during the State Contract Advisory Network (SCAN) and Procurement Forums. Training in today's</p>

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	<p>Director(s). Policies and procedures are published on the Department's internal webpage and distributed to all staff, All Supervisors and Above and Bureau Chiefs and Above. In addition, audit report findings also assist in identifying areas of improvement and for compliance, resulting in review of current policies and procedures or creation of new/additional policies &amp; procedures.</p>		<p>environment is critical to ensure compliance and adherence to legal mandates, policies and procedures. In addition, there should be training made available to higher level management staff (not just procurement and contracting staff) regarding leveraged procurements and ethical decision making.</p>
<p><b>Department of Transportation</b></p>	<p>Jan Smelser, the Procurement and Contracting Officer (PCO) for the Department of Transportation, has received delegation of the Director's authority to promulgate procurement policies and procedures for the department.</p>	<p>Jan Smelser, Chief of the Division of Procurement and Contracts, has a Policy Branch in her Service Contracts section, in A &amp; E Contracts section, and in her Procurement section. These individual sections keep abreast of law/rule and any necessary procedural changes. They recommend policy changes for the approval of Jan Smelser. As policy is approved, manuals and training programs are revised to reflect the changes.</p>	<p>E-mail notification of changes is an improvement. Keeping the manuals (State Contracting Manual, California Acquisition Manual, State Administrative Manual) up to date would also be helpful. Further, it would be helpful to have a place to go when staff identifies conflicting sections within these policy manuals. Currently, staff at DGS is unclear on how to resolve these conflicts.</p>
<p><b>Department of Water Resources</b></p>	<p>If we see a need for a new or revised procedure, such as with our Enterprise Process Guides, we either make changes to existing procedures or create new ones. Usually, changes are a result of changes that come down to us through DGS. IT standards are set by an internal IT standards group. Proposed purchases outside of these standards require special review and IT Governance (management committee) approval.</p>	<p>IT follows DGS Procurement Division IT delegations while non IT services follow the SCM.</p>	<p>Provide written guidance more quickly on new issues. The new 85% wage rule and addition of more benefits that have to be provided is an example. It takes several months to process a contract that will begin July 1, which by law must include the latest wage rates and benefit categories, however, we still don't have the guidance from DGS on how to do this and these contracts are supposed to start July 1. It would be helpful if DGS could be more clear, consistent and comprehensive in their written instructions and guidelines. The rule on time only amendments that could actually be time and money in some situations is a good example. There is</p>

PCO Representing:	1. Describe the process currently in use for developing procurement policies and procedures, identifying the underlying authorities for doing so within your organization.	2. Is there a difference in the way you make policies for procuring non-IT services as opposed to all other procurement types (e.g., commodities, IT goods and services)?	3. What improvements to DGS' procurement policy and its dissemination would be of value to your organization?
			<p>nothing about that anywhere. We only know because we asked our OLS attorney who provided verbal information. Also, monthly updates or further explanations of changes or Q&amp;As for the SCM information would be very helpful. DGS attorneys should be consistent in the application of the rules. Each time we are assigned a new attorney, what is required of us changes and we have to change our internal practices to accommodate the perceptions and interpretations of that individual. This gets complicated when one attorney provides guidance, which we follow, then another reviews the contract and has a different opinion of or take on the situation and rules, and makes us change the contract.</p> <p>Provide some method of checking on the status of contracts under review at DGS, OLS, without having to call or email our attorney. The new DGS registration system could be enhanced to provide this type of status.</p> <p>It would be helpful to have our non IT services delegation raised to \$75,000.</p> <p>We have found that our monthly meetings with our OLS attorney are essential in keeping up with all the changes, clarifying things in existing guidelines, and determining how to proceed or resolve issues in situations we encounter that are not covered in any written guidelines.</p> <p>We need to know which section or staff person in Procurement Division to go to with particular questions, such as NCB or ITPP rules, so we can get direct, first party</p>

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			information. Also, we get different answers to the same question depending on which analyst we talk to. Would be nice to have consistency in the guidance they provide.
<b>Employment Development Department</b>	<p>The department has done the following to develop and improve procurement policies and procedures.</p> <p>In October 2002, an inter-Branch workgroup was formed to review EDD's acquisition process in order to identify opportunities for improvement.</p> <p>In February 2003, the Department adopted a policy requiring that all major or sensitive procurements of goods or services be reviewed by the Director's Office. The criteria for determining if a procurement is "major" or "sensitive":</p> <ul style="list-style-type: none"> <li>* A Feasibility Study is Required</li> <li>* Consultant services are being purchased</li> <li>* The estimated cost of the acquisition is \$250,000 or more</li> <li>* The acquisition is politically sensitive</li> <li>* PC, server, non-EDD supported software, and non-Business Driven</li> <li>* Architecture buy list purchases</li> <li>* Cell phones, fax machines, and furniture.</li> </ul> <p>The Department has implemented an inter-disciplinary procurement consulting team with a representative from Procurement Section, Legal, Fiscal, and IT Branch to assist users in the procurement process.</p> <p>The Department has implemented a formal contract negotiation process headed by</p>	<p>There are some differences based on DGS Policy. EDD does give greater scrutiny to politically sensitive non-IT purchases and items such as furniture, cell phones, high cost printing publications.</p>	<p>EDD would requests that procurement policies be simplified, streamlined, and centralized in one place (instead of Law, Codes, Policy, SAM and others). We are hopeful that DGS meets its goal of developing a uniform set of policies, procedures and processes for contracting and procurement activities. As part of this effort DGS must undertake an initiative to align laws governing contracting and procurement of goods, services, and IT, including award protest processes. Additionally , we fully support DGS efforts to develop and deliver a comprehensive training and certificate program to procurement staff and officers. Procurement staff and procurement officers must be trained and familiar with all the procurement business requirements and processes.</p>

# CORE Project Final Report

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	<p>EDD's Legal Office to address inconsistencies between contractor proposals and the solicitation document, and contractual points that need clarification.</p> <p>Non-compliance consequences have been added to inter-Department contracting delegations.</p> <p>Future improvement efforts, to be implemented by the end of this year, will include:</p> <ul style="list-style-type: none"> <li>* Implementation of a procurement monitoring/auditing system for delegated contracting responsibilities.</li> <li>* Development of periodic reporting systems.</li> <li>* Development of user tools for the procurement process.</li> <li>* DGS procurement training (once available) for staff involved in procurements.</li> </ul> <p>Our authority for doing these improvements and changes is State Law, policy and regulations, DGS policy and EDD Executive Orders. Please see copies of recent EDD Executive Notices attached below.</p>		
<b>Fair Political Practices Commission</b>	<p>The Fair Political Practices Commission (FPPC) currently uses the guidelines outlined in Management Memo 03-10 (see attachment) to develop procurement policies and procedures, which are authorized by the Chief of Administration, Robert Tribe.</p>	<p>The guidelines in MM 03-10 are used for making policies to procure non-IT services as well as other procurement types (e.g., commodities, IT goods and services).</p>	<p>It would help the FPPC to have a primary contact at Procurement to contact for assistance on the current policies.</p>
<b>Franchise Tax Board</b>	<p>Procurement policies and procedures are developed by the Procurement and Asset</p>	<p>Yes - Non-IT services will not require investigating the need for a justification</p>	<p>Timely update of the DGS web page would be a start. And for Management Memos I</p>

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<b>Board</b>	Management Bureau under the direction of the Procurement Contracting Officer. These policies and procedures are submitted to a review committee for approval and publication. The review committee consists of members representing the entire organization including Legal, Fiscal and Business Services. Once approved they are published in the Franchise Tax Board's Policy File and General Procedures Manual.	document such as a Feasibility Study nor review for follow-on contracts.	recommend that the Memo's be distributed 1) electronically, and 2) at least 4-6 weeks prior to an effective date so that we can properly adjust our processes to be in compliance ON the effective date, and 3) it is also recommended that a focus group of experienced procurement and contracting officials be established to review and comment on proposed Management Memos prior to release. This could help alleviate lots of confusion and complaining.
<b>Office of Criminal Justice Planning</b>	Our procedures are developed following review of SAM, Management Memos and other communications from DGS. We are a small office so do not necessarily have written policies, but focus more in procedures.	No	We believe the current dissemination is good. It would be easier for our staff if there were consistency among the terms and conditions of the various types of procurements (CMAS, MSA, SPS)
<b>State Treasurers Office</b>	When developing procurement policies and procedures, STO follows the latest Management Memo issued by the Department of General Services. Any issues that are not addressed in a DGS memo, we would then refer to SAM. Although the Management Memo states that all Constitutional Offices are exempt from the Management Memo, STO takes all necessary actions to comply completely with the Management Memos issued by DGS.	There is no difference in the way STO makes policies in regards to types of purchases. Our policies are based on DGS guidelines, however; STO has imposed some guidelines that are more stringent than DGS' guidelines. Such as with offers, DGS does not require any offers under \$5,000, but STO internally requires (3) offers for any purchase over \$2,500.	Management Memos are received via IMS mail, and they are sent to a pre-determined group, they are not sent to everyone in the unit that is involved in procurement activities. At one point in time, agencies could sign up to be added to a distribution list to receive change notifications electronically. Rather than checking the website everyday for new forms, guidelines, etc., We believe that it would be beneficial to receive this information electronically.
<b>Teale Data Center</b>	Teale policies (including procurement) are reviewed and approved by a central policy committee. Teale's Policy Review Committee (PRC) includes executive and management staff representing all areas of the organization. Policy recommendations are submitted by any Teale staff to the	All policy development follows the process describe in Response #1.	Allow a PCO review and comment period for draft policies when appropriate Create uniform policies Provide training Follow-up. Communicate with PCOs to ensure policies are meeting intent and to

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	<p>PRC for review and approval. Each request is reviewed and a determination is made as to its merit and necessity. After the request(s) have been reviewed and approved by the PRC, the policy is forwarded to the Directorate for signature and then made available for distribution throughout the Data Center. The directorate is the underlying authority for the Policy Review Committee.</p>		<p>identify issues.</p>
<p><b>Water Resources Control Board</b></p>	<p>DGS procurement policies are reviewed by SWRCB's Procurement and Contracting Officer (PCO), then delegated to the Chief of Business Services for interpretation of consistency with Board policies. These policies are then collected and detailed in the Procurement Section of the SWRCB Business Services Manual. Board procurement policies closely mirror those of DGS. Following is a selection of process controls that the SWRCB adheres to:</p> <p>For all purchases: SWRCB's purchasing function is part of the Solicitation and Acquisition (S&amp;A ) Unit. The requesting office is responsible for obtaining the requisite number of bids before submission of order to S&amp;A. All orders over \$5000 require approval of PCO.</p> <p>For Delegated Purchases: Purchases may be made up to SWRCB's delegated limit, \$25,000, with two bids. Purchases may be made up to \$100,000 if two bids are received from Certified Small Businesses, and the purchase is made from one of the Certified Small Businesses.</p> <p>For CMAS orders: 3X quotes must be</p>	<p>There are no different procedures for the procurement of non-IT services than for other goods and services, however the SWRCB does apply some specific controls on some types of purchases:</p> <ul style="list-style-type: none"> <li>· Items are inventoried if their value is greater than \$5000, if they have a useful life of more than one year, or if they are considered sensitive equipment.</li> <li>· All purchases of IT hardware and software must be reviewed and approved for conformity with Board systems by SWRCB's Office of Information Technology. Authority is delegated to select divisions or RWQCB's to procure IT repair services and parts (not new systems) under \$5000.</li> </ul>	<p>DGS should be collaborative and include purchasing departments in policy setting. Regulations should be developed with input from the users. Another improvement would be more uniformity in purchasing methods (i.e. CMAs, MSA's, WSCA, delegated purchases) and in notification of policy changes. Additionally, a central point for technical assistance on purchasing would be extremely helpful. With its charge to monitor and ensure water quality, the SWRCB has a regular and mission-critical need for environmental lab services. This need is shared by other departments, including the Department of Toxic Substances Control, Department of Pesticide Regulation, Air Resources Board, Integrated Waste Management Board, Department of Health Services, Department of Water Resources and Department of Food and Agriculture. Due to the recurring need for these services, the SWRCB is constantly issuing solicitations for them. In order to ensure that State Contracting Codes are followed, these contracts are often delayed, creating</p>

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	<p>obtained from qualified CMAS vendors for the same products. If the chosen vendor did not the offer the lowest quote, a substantiation of best value for the purchase must be submitted. 1X quote must be from a Certified Small Business (also a CMAS vendor). Justification must be submitted if a Certified Small Business quote cannot be obtained.</p> <p>For Cal-Card Purchases: SWRCB promotes Cal-Card usage by its divisions and Regional Water Quality Control Boards (RWQCB) in order to reduce paperwork and shorten the time to pay its vendors to a 2-day average. Cal-Card spending limits are set by the Executive Officer of each division or RWQCB and approved by the Chief of Business Management. Cal-Card spending limits range from \$1000-\$5000 for divisional or RWQCB cardholders up to \$15,000 for the two purchasing officers in Business Management. Each cardholder's Approving Official is responsible for review and sign-off of monthly statements. Items to be checked include:</p> <ul style="list-style-type: none"> <li>o Split orders</li> <li>o Personal use</li> <li>o Accidental use</li> <li>o Required bids</li> <li>o Control agency approvals where applicable</li> </ul> <p>For Solicitations: Small business contracting is promoted by the employ of Small Business Invitations for Bid (IFBs) when possible. Small Business IFBs are conducted when the maximum bid is less</p>		<p>unnecessary lapses in service. A simple and effective solution for remedying this process would be for DGS to create MSA's for state-certified labs. A list of these labs can be found at <a href="http://www.dhs.cahwnet.gov/ps/ls/elap/html/LablistStart.htm">http://www.dhs.cahwnet.gov/ps/ls/elap/html/LablistStart.htm</a></p> <p>Form 5 should have a subtotal line for non-taxable items.</p>

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	<p>than \$100,000 and must be bid by a minimum of 2 Certified Small Businesses. If a bidder does not comply with the 3 percent DVBE requirement, that vendor must demonstrate a good-faith effort was made to locate a DVBE contractor.</p>		

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**Appendix E**  
**List of Interview Participants**

<b>Date of Interview(s)</b>	<b>Interview With:</b>
03/11/2003	Garry Ness
03/12/2003 & 06/16/2003	Pat Jones
03/17/2003	Susan Chan
03/17/2003	Carol Umfleet
03/18/2003	Gaylord Moulds
03/19/2003	Judy Heringer Cheri Shaw
03/19/2003	Tom Lee
03/20/2003	Janice King
03/21/2003	Diana LaBonte
03/21/2003	Jeff Marschner
03/21/2003	Earl Santee
03/25/2003	Cy Rickards
04/08/2003	Mallie Stone Renata Rasberry Kristine French
04/09/2003	Faye Miyagi Gaylord Moulds
04/10/2003	Pete Mastella
04/15/2003	Tom Rainbolt
04/18/2003	Linda Garcia
05/01/2003	J. Clark Kelso
05/19/2003	Ralph Chandler
05/28/2003	Kathy Havey DeDe Hames
06/06/2003	Mariel D'Eustachio
06/24/2003	Sandra Silva Judy Heringer

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Appendix F  
List of Client Entity Focus Groups

<b>Date of Meeting</b>	<b>Client Entity Group</b>
04/24/2003	Department of Education
04/25/2003	California Highway Patrol
04/29/2003	Franchise Tax Board
04/30/2003	DGS Telecom, Public Safety Radio
04/30/2003	Department of Finance*
05/06/2003	Employment Development Department
05/13/2003	Department of Real Estate
06/26/03	Department of Pesticide Regulation

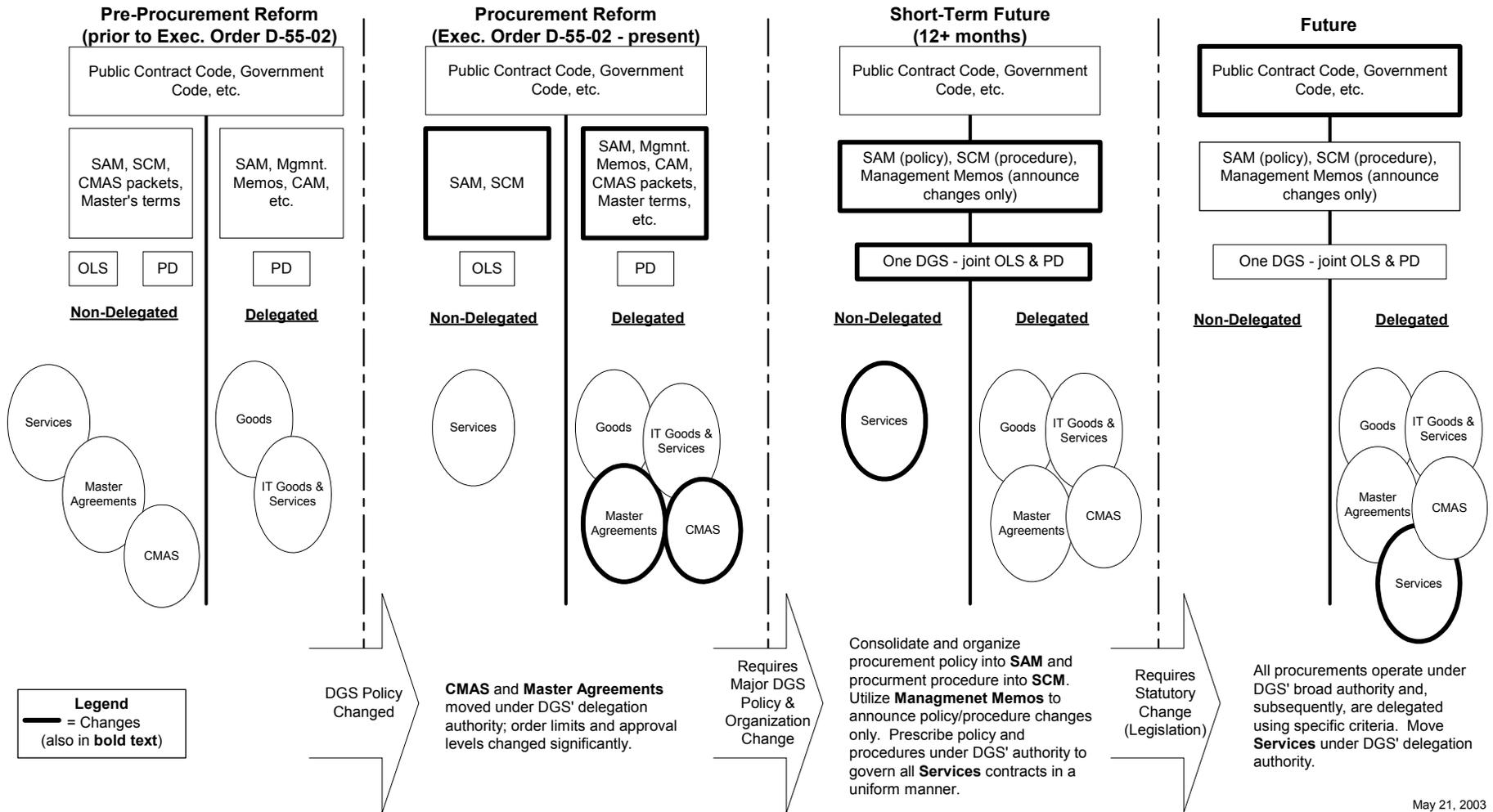
\* Included as a Client Entity Group although interfaces with DGS differ from other groups

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## Appendix G

### Department of General Services' Procurement Governance Model

Enabling Uniform Contract Policy Development & Maintenance and  
Uniform Review & Approval Processes



May 21, 2003

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## APPENDIX H—SUPPORTING RESEARCH AND ANALYSES

This appendix to the final report addresses specific research and analysis aspects relating to the four areas of project focus:

- Purchasing statutes, regulations, policies, and procedures
- DGS’ organizational responsibilities for development of policies and procedures
- Operational roles and responsibilities in the Procurement Division and the Office of Legal Services
- Development and implementation of statewide uniform purchasing policies

### H.1 Purchasing Statutes, Regulations, Policies, and Procedures

The CORE Project Team reviewed statutes, regulations, policies, and procedures, and identified the statutory basis for the acquisition of goods and services within the State of California. In performing this review, the team traced the linkages from the statutes, through the regulations, policies, and procedures used to meet the State’s purchasing objectives. The team analyzed the consistency and clarity of statutes, regulations, policies, and procedures, and documented contradictions, ambiguity, lack of clarity, and inconsistency. Inconsistencies analyzed included inconsistencies in language among various statutes, regulations, policies, and procedures.

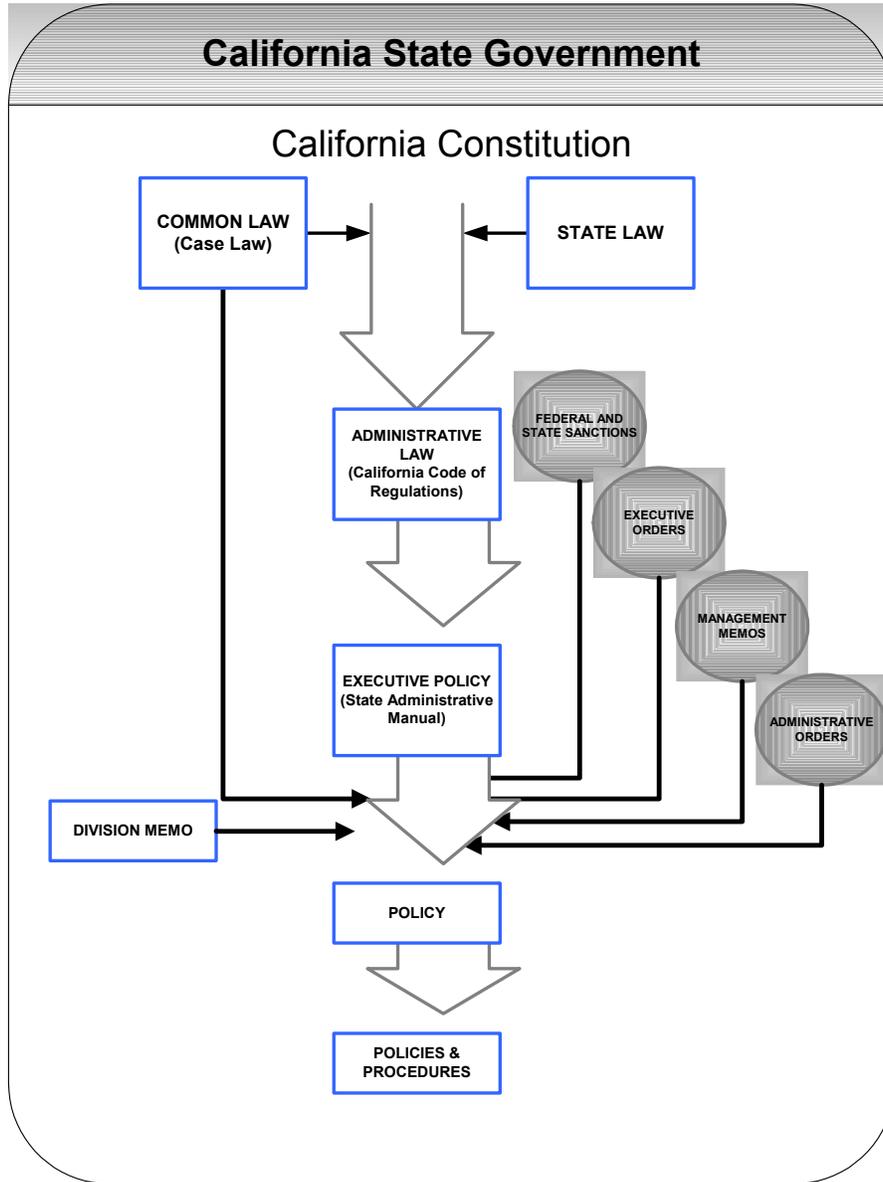
California law consists of the State Constitution’s 34 Articles and 29 Codes, with purchasing law contained in multiple sources, including, but not limited to the California Public Contract Code (PCC), Revenue and Taxation Code (RTC), Welfare and Institutions Code (WIC), Business and Professions Code (BPC), and Government Code (GC). Further, legally adopted regulations filed with the Secretary of State have the force of law and are contained in the California Code of Regulations (CCR), some of which apply to purchasing.

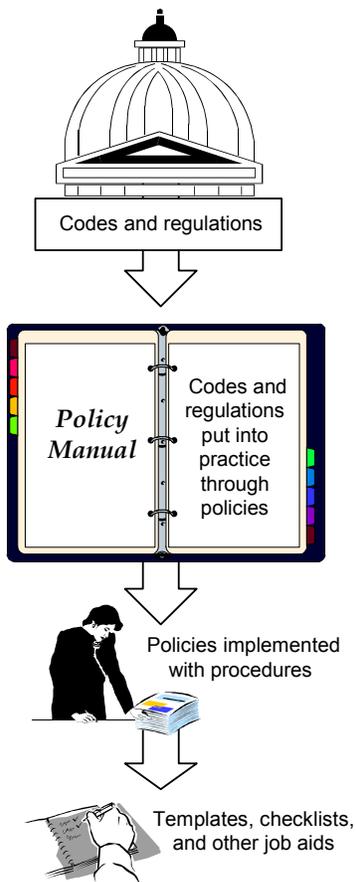
Purchasing policies and procedures are contained in several source documents as well. The State Administrative Manual (SAM) is the State’s policy manual. Over time, DGS has discontinued updating SAM in favor of creating the State Contracting Manual (SCM) for non-IT services and the California Acquisition Manual (CAM). The Department of Information Technology (DOIT) originally created the State Information Management Manual (SIMM) as the policy/procedure manual specifically intended for information technology (IT), now maintained by the Department of Finance.

Purchasing policies are initiated and revised using several different methods, including Executive Orders, Management Memos, Administrative Orders, Technology Directives, and Budget Letters. Many State agencies and departments have developed their own specific policies and procedures for purchasing, and have created manuals, desk references, and other source material. All of these publications contain procurement policy and contracting information, some of which is unique, some overlapping, and some contradictory.

The relationships among statutes, regulations, policies, and procedures, which have remained generally static for many years, are depicted in the following exhibit.

Statutes, Regulations, Policies, and Procedures Relationships





The CORE Project Team was tasked with performing a review of the statutes, regulations, policies, and procedures to identify the statutory basis for the acquisition of goods and services within the State of California. As shown in the diagram to the left, codes and regulations form the basis for policies and procedures.

The review included the statutory basis for uniform policies and procedures, as well as organizational responsibilities for the development of policies and procedures.

The main sources of acquisition statutes are the Public Contract Code (PCC), Government Code (GC), and California Code of Regulations (CCR). However, the team's review included other codes as appropriate. The primary and most relevant, specific laws forming the foundation of this response to Task Force Recommendation #7 include, but are not limited to, the codes that are provided herein.

The following sections of the PCC lay the foundation for the laws contained within the code.

### Public Contract Code

#### Division 1. Purpose and Preliminary Matters; Sections 100-102

*100. The Legislature finds and declares that placing all public contract law in one code will make that law clearer and easier to find. Further, it is the intent of the Legislature in enacting this code to achieve the following objectives:*

- (a) To clarify the law with respect to competitive bidding requirements.*
- (b) To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.*
- (c) To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.*
- (d) To eliminate favoritism, fraud, and corruption in the awarding of public contracts.*

*101. California public contract law should be efficient and the product of the best of modern practice and research.*

*102. To encourage competition for public contracts and to aid public officials in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California's public contract law should be uniform.*

For purposes of this report, we have selected representative code and regulation references that site the statutory basis for uniform policies and procedures, presented in the following sections. The first citing defines terms used in other sections.

### Public Contract Code

#### Division 2. General Provisions; Part 2. Contracting by State Agencies; Chapter 2. State Acquisition of Goods and Services; Article 1. Definitions; Sections 10290-10290.1

10290. As used in this chapter:

- (a) "Department" means the Department of General Services.
- (b) "Director" means the Director of General Services.
- (c) "Centralized purchasing" means the purchase for state agencies of materials, supplies, and equipment by the Office of Procurement.
- (d) "Goods" means all types of tangible personal property, including materials, supplies, and equipment.
- (e) "Office" means the Office of Procurement in the Department of General Services.
- (f) "Price schedule" means an agreement between the Office of Procurement and a supplier under which the supplier agrees to accept orders from the office or a state agency for specified goods at set prices for a specified period of time but which does not obligate the office or state agencies to contract for the specified goods from the supplier.
- (g) "Regional contract" means a contract of the same type as a statewide contract but applicable only to specified contracting in a particular area or region of the state.
- (h) "Statewide contract" means a contract awarded by the Office of Procurement to one or more suppliers for the acquisition of specified goods for a period of time, at a price, and in an amount set forth in the contract.
- (i) "Multiple award" means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.
- (j) "Multiple award schedule" (MAS) is an agreement established between the General Services Administration of the United States and certain suppliers to do business under specific prices, terms, and conditions for specified goods, information technology, or services.

10290.1. (a) Notwithstanding any other provision of law, in exercising their delegation of contracting authority from the department, state agencies may contract for goods, information technology, or services with suppliers who have multiple award schedules with the General Services Administration of the United States if the supplier is willing to extend those terms, conditions, and prices. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner.

- (b) *The department shall determine the delegation contracting authority for agencies wishing to contract with suppliers who have multiple award schedules. The department shall seek input from both customer departments and agencies and private sector suppliers.*

Public Contract Code

Division 2. General Provisions; Part 2. Contracting by State Agencies; Chapter 2. State Acquisition of Goods and Services; Article 3. Competitive Bidding and Other Acquisition; Section 10307

*10307. The director shall establish statewide acquisition standards, the purpose of which shall be to ensure the necessary quality of goods acquired by or under the supervision of the department and to permit the consolidation of acquisitions in order to effect greater economies in state contracting.*

Public Contract Code

Division 2. General Provisions; Part 2. Contracting by State Agencies; Chapter 2. Acquisition of Information Technology Goods and Services; Sections 12102-12106

*12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.*

- (a) *Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.*
- (b) *Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.*
- (1) *The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and*

*governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single proposal rather than multiple proposals.*

- (2) *Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.*
- (c) *The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.*
- (d) *The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.*
- (e) *For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.*
- (f) *Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.*
- (g) *To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so. Further, it is the intent of the Legislature that, if a state information technology advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter*

- shall be submitted to that committee, including supplier representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.*
- (h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.*
  - (i) Information technology goods which have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.*
  - (j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the supplier's exclusion have been corrected.*

*12103. In addition to the mandatory requirements enumerated in Section 12102, the acquisition policies developed and maintained by the Department of Information Technology and procedures developed and maintained by the Department of General Services in accordance with this chapter may provide for the following:*

- (a) Price negotiation with respect to contracts entered into in accordance with this chapter.*
- (b) System or equipment component performance, or availability standards, including an assessment of the added cost to the state to receive contractual guarantee of a level of performance.*

- (c) *Requirement of a bond or assessment of a cost penalty with respect to a contract or consideration of a contract offered by a supplier whose performance has been determined unsatisfactory in accordance with established procedures maintained in the State Administrative Manual as required by Section 12102.*

*12105. The Department of General Services and the Department of Information Technology shall coordinate in the development of policies and procedures which implement the intent of this chapter. The Department of Information Technology shall have the final authority in the determination of any general policy and the Department of General Services shall have the final authority in the determination of any procedures.*

### Government Code

#### Title 2. Government of the State of California, Division 3, Part 5.5. Department of General Services, Chapter 1. General Provisions

*14607. For the purpose of administration, the director shall organize the department with the approval of the Governor, in the manner that he deems necessary properly to segregate and conduct the work of the department.*

*The director may arrange and classify the work of the department and with the approval of the Governor may create such divisions and subdivisions as may be necessary, and change or abolish them from time to time.*

*14610. Notwithstanding Section 11043, the department may employ such persons as are necessary to provide house legal counsel for the department. These persons may advise the director, officers, employees, boards, commissions, and offices of the department concerning legal affairs of the department. The official legal adviser concerning the department's interdepartmental powers, functions, and relationships with other departments is the Attorney General. House legal counsel for the department when authorized by the Attorney General may represent the department and the state in litigation concerning affairs of the department.*

The team identified the statutory, regulatory, and administrative policies that are the basis of the procedures and regulations governing bid protests and dispute processes for IT and non-IT goods and services procurements, including:

- DGS for resolution of protests concerning services contracts
- The Victim Compensation and Government Claims Board for the resolution of protests of the award of goods and IT solutions
- The Office of Administrative Hearings for the resolution of award protests lodged on goods and IT solutions that have been conducted under the Alternate Protest Pilot Project
- Different dispute resolution methodologies for IT and non-IT goods and services

The CORE Team researched best practices and provided alternatives to streamline and promote uniformity. The team identified the policies that form the foundation for procedures that support existing IT and non-IT evaluation methodologies, and identified similarities and differences as described in the findings and recommendations.

### H.2 Organizational Responsibilities for Development of Policies and Procedures in DGS

All State personnel involved in acquisition must be cognizant of the laws that govern contracts and procurements in the State, such as the Public Contract Code and Government Code. It is a serious responsibility, especially with regard to the Department of General Services. According to PCC §10280, “Any officer or employee of the department who corruptly performs any official act to the injury of the state is guilty of a felony.”

The Department of Finance (assuming responsibility for law citing the Department of Information Technology) and the Department of General Services are tasked with setting the policies and procedures to implement California law. Agencies and departments, particularly those with delegated authority, also set internal purchasing policy and procedure.

The CORE Team examined the authority and roles and responsibilities of the following organizations involved in developing policies and procedures:

- DGS Procurement Division (for goods and IT goods/services)
- DGS Office of Legal Services (services)
- Department of Finance
- Client entity groups—
  - Department of Education
  - California Highway Patrol
  - Franchise Tax Board
  - DGS Telecom
  - Employment Development Department
  - Department of Real Estate
  - Department of Pesticide Regulation

Client entities discussed their existing policies, supported or not supported in statute, as well as their authority and roles and responsibilities with regard to developing purchasing policy for goods and services. Some unwritten and poorly documented policies were discovered during the course of the review.

#### Existing and De Facto Policies and Procedures

The lack of a single, centralized source for statewide purchasing policy is frequently mentioned in this report. The current practice of disseminating policy within the State Administrative Manual (SAM), Management Memos (MM), the State Contracting Manual (SCM), and the California Acquisition Manual (CAM), and other sources creates confusion and inconsistency. Individuals responsible for policy development, as well as those required to use the policies while conducting their purchasing activities, are often faced with not knowing which policy to follow, and which ones are current or out of date, and so forth.

Resource constraints have hindered the creation of an effective organization to develop and manage policy. Actions taken to facilitate the creation of uniform policy, such as the implementation of CAM, have met with obstacles and delays, rendering them ineffective.

Currently, the same procurement program managers responsible for management and oversight of day-to-day purchasing activities are also responsible for policy development and maintenance. Their first priority must be the timely completion of purchasing activities. The development and maintenance of policy realistically becomes less of a focused priority on a day-to-day basis.

Similarly, the CORE Team identified that purchasing *procedure* development and management is lacking and must be addressed. Analysis concluded that within DGS, buyers use a variety of processes, procedures, methods, and tools to conduct their work. These customized approaches to purchasing rely upon the buyer to, in many cases, individually interpret purchasing policy, create applicable solicitation documents, evaluate the responses, award the contract, and manage the close-out/hand-off of the final contract. The lack of formally documented and published processes and procedures results in:

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

Purchasing policies and procedures are contained in a multitude of source documents, which are located in a multitude of places. In addition to fragmented sources, the policies and procedures overlap, contradict one another, and are interdependent on one another for meaning. To compound this situation, different personnel or organizations are responsible for updating the different source documents and for communicating policy and procedure changes.

Ideally, policy and procedure should be documented separately since procedures, by definition, are the methods used to support policy. Procedure manuals for DGS staff involved in the acquisition of goods and IT are non-existent or woefully outdated in most cases. In order to accomplish uniformity of both policy and procedure, an adequately staffed, dedicated Policy and Procedures Unit is required.

The DGS PD Acquisition Quality Assurance and Delegations Resources produces Delegation Guidelines for both goods and IT goods/services, and the CMAS Unit produces bulletins and information packets on an as-required basis to inform program participants regarding changes.

Representative of the historic need for an effective organizational structure to create and maintain policies and procedures, the following paragraphs are taken from the findings and recommendations of an Operational Review Report (Number 6102, dated May 1998) by the DGS Audit Section:

Because of its importance in guiding day-to-day activities, of particular concern is the PD's Buyers Procedures Manual which has not been updated since 1987. Consequently, it is not accomplishing its purpose of serving as a training aid for new buyers and as a reference for more experienced buyers. It is our belief that a number of our audit findings partially result from a lack of written operating policies and procedures. State Administration Manual (SAM) Section 20003 provides that the existence of out-of-date policies and procedures manuals are indicative of a vulnerable internal control system.

It should be noted that the PD is aware of the need for updated written policies and procedures for use in its acquisition operations. In fact, at the time of our audit survey fieldwork, we were advised that a team had been established within the Procedures and Training Section tasked with developing, revising and improving written procedures for the PD's various programs.

Currently, the PD Buyers Procedures Manual remains outdated. Furthermore, some PD policies and procedures are undefined, some are unwritten, and some are even unspoken.

For example, one of the departments in the CORE Project client entity groups was surprised when they were informed by DGS that services for moving (from one office location to another) could not be solicited as a services contract, but rather had to be obtained through the DGS Office of Fleet Administration. Such information was not disseminated to the department, yet was important and impacted its plans for relocation.

Currently, services shown on the Office of Fleet Administration Web site do not mention moving services. The Web site does provide detailed information for services it provides, including Garage Operations, Inspection Services, Alternate Fuels Vehicle Program (AFV), Travel Programs, Employee Parking/Commute Services, Credit Card Acceptance, Disposition and Auction Services.

Since the State Contracting Manual is the source for contracting policy, a search of the index shows "moving services" cited in section 7.75, as follows:

SCM §7.75 Specialized Contract Provisions (Rev. 10/98)

B. Commercial Office Moving Services

*Contracts exceeding \$2,500 with a carrier for commercial office moving services must conform to the requirements contained in SAM §3810 which provide for such contracts to be with a carrier whose drivers and supporting personnel are operating under current collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. See Government Code Section 14920. Agencies must include such requirements in Invitations for Bids and contracts.*

SAM §3810 provides far greater detail, including procedures regarding moving services, as follows:

Commercial Transportation for Office and Institution Moves  
(Revised & Renumbered From 3811 2/93)

Intercity Moves.

*You can transport State-owned uncrated furniture, fixtures, and equipment between cities within California by using padded van carriers that specialize in moving new furniture or used household goods. State property that is protectively packed in cartons or crates may be transported at much less cost by general freight carriers.*

*Linehaul rates of household goods carriers, which include inside pickup and inside delivery subject to extra charges for long carries, stairs, and*

*elevators, are the most costly and do not include any packing labor and materials. To avoid mandatory carrier-assessed valuation charges, orders for transportation by household goods carriers must specify in writing "Shipper hereby releases the entire shipment to a value not exceeding 60 cents per pound per article."*

*For intercity transportation by any of these types of carriers, use an appropriate PUC licensed carrier at rates not to exceed PUC minimum rates based on weight and distance. Before the move you should have a clear understanding with the carrier that charges will be assessed against actual weight as shown by the public weighmaster's certificate(s).*

### *Local or Hand Moves.*

*You may use any of the following methods to get a contractor for a move within a building or between buildings in the same metropolitan area. However, you may only lawfully hire PUC licensed carriers for moves that involve transportation over the public streets and highways.*

*You may use the DGS Office of Procurement's Master Service Agreement contract in the Sacramento area. The Master Service Agreement is designed for small moves expected to cost up to \$2500. You can also use the Master Service Agreement for larger moves over \$2500 when the administrative effort to prepare a bid, conduct a walk-through for bidders, and develop a separate contract is not warranted. You may also use the Master Service Agreement for moves that cannot be clearly defined at walk-through for prospective bidders.*

*Take full advantage of the DGS Office of Procurement's Master Service Agreement. It provides low hourly rates for experienced help and equipment. The time chargeable to your job is clearly defined. Charges for packing containers are set. The contractor is properly insured and specially bonded. The contractor also agrees to meet the prevailing wage requirements of Government Code Section 14920. When using this Master Service Agreement, you should:*

*Ensure persons arranging moves in the Sacramento area receive copies of the Master Service Agreement. If you have trouble getting a copy, you can get one from the DGS Traffic Management Unit.*

*Provide the contractor with two working days notice. Indicate your agency's five-digit billing codes on your work orders. Contract hourly rates do not apply to work performed on federal holidays.*

*Expedite payment of bills for work done under the Master Service Agreement.*

*Submit written reports to the DGS Traffic Management Unit of any incidents where the contract moving company fails to perform under the Master Service Agreement.*

*You may use selected local moving companies for small moves estimated to cost under \$1000 in areas where no Master Service Agreement is available. You must choose the company that offers the lowest hourly rates for experienced labor and piece rates for clean delivered cartons and tape. You should hire your carrier on the basis of productive time on the job. Your written confirmation of these arrangements should contain agreement that rates and charges will not exceed PUC minimums. To avoid mandatory carrier-assessed valuation charges, orders for transportation between buildings by public streets or highways must specify in writing: "Shipper hereby releases the entire shipment to a value not exceeding 60 cents per pound per article."*

*You may go out for competitive bid for specifically defined work for a lump sum amount. If you cannot define the work at a walk-through conducted for prospective bidders, you may get bids for services at hourly rates. Bid contracts can be up to one year in length. Use the following outline of procedures to obtain competitive lump sum bids. Use similar procedures in preparing bids and contracts for services at hourly rates.*

*Invite at least three PUC licensed local moving companies to attend a one-time walk-through. Hand out specifications and bid proposal forms. Explain and show all work (including cartons) at the origin and destination that is to be included in the lump sum bid. Advise bidders of tentative dates and hours of the move. State if the move needs to take place during or after normal working hours. Notify moving company representatives that the winning bidder must sign a Standard Agreement, STD. 2, and that the mover will be charged with repair or replacement of damage to building or any items lost, damaged, or stolen while in the carrier's custody. See (3800) A-1 in the Appendix.*

*To avoid misunderstandings on major jobs, you must get sealed bids. Open them publicly at a set time and date. On small jobs, all of the movers can submit bids at the same time immediately after the walk-through. You must make the award to the lowest responsible bidder.*

*Use Standard Agreement, STD. 2, with appropriate specifications for contracting lump sum work. For help with contract specifications, contact the DGS Traffic Management Unit.*

*You must include the following paragraph about prevailing wages in any competitive bid contract and bid specifications for commercial moving services when the amount of the contract exceeds \$2,500:*

### Prevailing Wages

*No contractor performing hereunder shall pay any employee actually engaged in the moving and handling of goods being relocated under such contract less than the prevailing wage rate, except in geographical areas where no such employee wage standards and conditions are reasonably available. The term "prevailing wage rate" means the rate paid to a*

*majority of workmen engaged in the particular craft, classification or type of work within the locality if a majority of such workmen be paid at a single rate; if there be no single rate being paid to a majority, then the rate being paid the greater number. Upon written request wage rates prevailing at the particular point in time will be furnished for information purposes only.*

*When you receive written requests from prospective bidders or contractors for prevailing wage rates, you must convey in writing the need for the desired wage rate information to the Department of Industrial Relations, Division of Labor Statistics and Research. The geographical areas in which the moving services are to be performed must be included in your request.*

*You must include the mandated small business preference in your contracting process.*

*See SAM Section 1200 for contract requirements.*

From the information regarding moving services provided in SCM and SAM, one can imagine questions that a department might have when acquiring such services. It would seem reasonable in such situations to contact DGS as the centralized location for purchasing information. However, the lack of consistency in the answers received from DGS was a common issue raised by client entity groups. Lack of standard, updated policy leads to interpretations from DGS representatives, which vary from person to person and from purchase to purchase. Even inside the same purchase, the client entity groups cited different answers received from the same person on different days.

In summary, all of the client entity groups were very responsive to the project team and provided very pertinent input. All of them have developed internal policies and procedures for purchasing, as required by DGS. The departments view their internal policies and procedures as secondary to those set forth as statewide policies and procedures in SAM, SCM, SIMM, and in Management Memos and other documents.

Other input gathered from the client entity group meetings provided two very different perspectives with respect to working with DGS to complete purchasing activities. These groups provided very positive input regarding the assignment of an OLS single point of contact. Each of the groups made a point of articulating the positive impact of having one person to go to when working on purchasing activities. Conversely, the same group noted that there is no PD single point of contact assigned to them. Each of the groups noted that things seem to disappear into “the black hole of PD,” and that they often have to make numerous calls to various individuals to attain status on relevant procurement activities, or to ascertain that PD has received a purchase estimate or procurement request, and is actually working on it.

### Current DGS Organizational Structure Assessment

The Business Enhancement Support Team (BEST) within the DGS PD is the unit responsible for policy related to goods and IT goods/services. DGS OLS is responsible for policy related to services. The mission of the current PD policy unit identifies BEST as “responsible” for both purchasing policy and procedures, but lacking are the authority and ability to develop the necessary policies and procedures.

The development of procurement 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 policy unit’s role in practice is to facilitate the policy development process, not to develop the policies themselves. Due to the program area managers’ day-to-day responsibilities of managing his or her respective purchasing programs, 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 BEST as “low” within DGS PD, which demonstrates a lack of executive-level commitment to the importance and necessity of a successful policy development program. Consequently, BEST does not have the authority necessary for a policy unit to succeed.

Other important factors are related to the knowledge, skills, and abilities (KSA) of the BEST, and are summarized as:

- The unit is responsible for other day-to-day functions (e.g., information requests) in addition to policy and procedure. 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 staff has little formal training in policy development or procedure writing. Such experience is not a prerequisite for serving in this unit. 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 quality and is dependent upon the individual, not the unit.
- The positions within BEST are permanent assignments. By having permanently assigned staff responsible for policy development, requisite purchasing skills become outdated and negatively impact the quality of the policies and procedures.
- Up-to-date purchasing experience within the group is lacking. The lack of current, real-world purchasing experience minimizes the effectiveness of the staff to manage the policy lifecycle and procedures.
- The opportunities for career advancement and professional growth are nonspecific. As with any position, clear career paths and accompanying professional growth opportunities are vital to the productivity of the staff.

The lack of clear, current, and consistent policy is a common theme throughout the findings and recommendations in Section II of this report. In addition to the project team’s independent analysis, client entity groups consistently articulated that lack of clear policy and constantly changing policy negatively impacts their ability to complete their purchasing activities.

### Separation of Duties Analysis

The CORE Project Team analyzed the strengths and weaknesses of separating the development of purchasing policy, and the agency oversight and control responsibilities from the operational procurement responsibilities at DGS, including transferring these responsibilities to a separate

organization. The analysis led to recommendations and alternatives with regard to the development of purchasing policies.

Separation of policymaking from operational functions is a topic of discussion in several forums, including the National Association of State Purchasing Officials (NASPO). In NASPO’s “Issues in Public Purchasing, a Guidebook for Policymakers,” such separation is described as intended to reduce political and other influences on purchasing decisions, and free operations personnel from policymaking. However, it is important for the policymaking unit to account for trends and directions of the purchasing unit, and incorporate lessons learned from both the procurement and disputes units.

Analysis of the strengths and weaknesses is summarized in the following table.

<b>Analysis Area: Separating Policy from Operational Duties</b>		
<b>Strengths</b> <ul style="list-style-type: none"> <li>➤ Dedicated staff will improve uniformity and consistency</li> <li>➤ Elevated importance, executive focus</li> <li>➤ Allows development of writing skills</li> </ul>	<b>Weaknesses</b> <ul style="list-style-type: none"> <li>➤ Centralization can be perceived as loss of control by current staff</li> <li>➤ Requires change management</li> </ul>	<b>Recommendations</b> <ul style="list-style-type: none"> <li>➤ Separate policy making from operational duties</li> </ul>
<b>Analysis Area: Separating Control Functions from Operational Duties</b>		
<b>Strengths</b> <ul style="list-style-type: none"> <li>➤ Dedicated staff may be more efficient</li> <li>➤ May perform compliance reviews as well as up-front approvals</li> <li>➤ Maintains a level of independence if not performing procurements</li> </ul>	<b>Weaknesses</b> <ul style="list-style-type: none"> <li>➤ Independence is somewhat compromised by performing both compliance reviews and up-front approvals</li> <li>➤ Skills for performing procurements and approving procurements are directly overlapped so separating the functions would require more staff and more training</li> </ul>	<b>Recommendations</b> <ul style="list-style-type: none"> <li>➤ Do not separate the up-front approval from the operational purchasing functions</li> <li>➤ Separate the compliance review function from the operational purchasing function</li> <li>➤ Expand the compliance review function to cover all procurement areas and increase the reviews</li> </ul>

### H.3 Operational Roles and Responsibilities: PD and OLS

A bifurcation of responsibilities in the Department of General Services exists between the Procurement Division (PD) and the Office of Legal Services (OLS). In current practice, PD establishes purchasing policy and procedure for commodities and IT, both goods and services. In general, PD's role includes: conducting "buys," delegating the authority to conduct buys to agencies and departments, and approving non-competitive bids (NCBs), exemptions, master agreements, Information Technology Procurement Plans (ITPP), and so forth.

Likewise, OLS establishes purchasing policy and procedure for non-IT services (e.g., consulting services, interagency agreements). In addition to their role in approving non-IT services contracts, OLS also provides legal advice to PD, upon request, on such procurements that represent a high risk, changes to standard terms and conditions, and other appropriate aspects.

The CORE team conducted a survey of other states to determine to what extent and in what manner other states' procurement offices utilize legal services. Results of this NASPO survey contributed to the recommendations presented in Section II of this report.

The team analyzed the current missions and roles and responsibilities of OLS and PD and made recommendations. An organization's mission statement describes its reason for existence and 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 things that are most important. All of the organization's activities and expenditures of resources should be consistent with its mission.

Additionally, the CORE Team examined the formal and informal policies and procedures in effect for the review and approval of purchasing actions by PD and OLS. California's procurement system is largely controlled by DGS, as Public Contract Code states that all contracts for goods or services are not valid unless approved by DGS. The role of DGS as a control agency involves the review and approval of various procurement documents and transactions.

### H.4 Implementation Planning

Implementation planning began in parallel with analysis and research in the fourth month of the five-month project. The CORE Project findings and recommendations, organized into the five over-arching themes, formed the starting point for implementation planning.

To prepare for the implementation planning phase, the CORE Team used an overall methodology for implementing the uniform procurement policies as a common, organizing structure. The specific recommendations resulting from the analysis were organized by this common structure, and grouped into logical projects or initiatives. Each initiative is described in an initiative description worksheet (IDW). IDWs were prioritized according to business priority, costs, and timelines.

In order to complete the prioritization, the team facilitated input from key stakeholders, and then created an overall plan for executing and completing the prioritized set of initiatives.

The team's approach is a "best-of-breed" model, incorporating aspects of various methodologies, including:

- John Kotter's "Leading Change," an approach resulting from many years of experience in consulting with hundreds of organizations. He observed the myriad difficulties associated with change efforts, distilled the common themes, and turned them around into a prescriptive framework.
- Michael Hammer approach to developing and managing business processes, creating operational excellence and world-class performance, primarily from the book, "The Reengineering Revolution," by Michael Hammer and Steven A. Stanton. Dr. Michael Hammer incorporates decades of research in business processes and the accumulated experiences of hundreds of companies.

Appendix H, Attachment 1

**CORE Project  
Research and Analysis Reference Documents Matrix**

#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
1	Single Source for Purchasing Policy		12102			4800-5180			02-20	
2	Purchasing Categories	10290-10381	12100-12113							
3	Statutory References to Department of Information Technology (DOIT)		12100-12113	11700 14600					02-20	AB 1686
4	Alternative Procurement Process Pilot		12102(a) 12127(c)			5211 5215				
5	CMAS Purchasing	10298	12100.5 12100.7			4800				
6	Management Memos as Policy									
7	Definitions of Terms and Phrases	10340	12100.7							
8	Cross-Reference of Purchasing Laws	10115-10116								
9	Single Source for Processes and Procedures									

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#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
10	Purchasing Policy and Procedure Training	10349								
11	System/Process for Developing and Implementing Policy									
12	Follow-on Work	10365.5				5202				
13	Small Business Preference Override			7084(e) 14838(f)			8.21	3.5.2		
14	Procurement Method Models	10300	12100			5200, 5211,5212- 5214	5.0			
15	Invitation for Bid (IFB) Model "Compliance Phase"					5221.2 (c)(2)				
16	Preparation and Dissemination of Lessons Learned									
17	Contract Types	10371(c)					7.30 2.05			
18	Specifications, Requirements, and Business Needs		12127			5213 5216				
19	Evaluation Methods	10301 10344	12100			5211-5216 5221	5.06	3.5.3		

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#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
20	Protest, Disputes, and Grievances Processes	10300 10306 10345	12100.7 12102 12127.5			5210.2		3.48		CCR Title 1 Ch. 5. Sect. 1 of Stats.1995, c. 932 (SB 910)
21	Emergency Purchase Process	10319 10340	12102		PCC §1102					
22	Non-Competitive Bid Process	10301								
23	Electronic Acceptance of Sealed Bids	10304 10341			PCC §1601					
24	Bifurcated Responsibilities for Purchasing Oversight	10295 10297 10335		14610						
25	Policy and Procedures Office									DGS Org Chart
26	Negotiation									FAR 15.306(d)
27	Approval Levels and Processes	10295, 10297, 10308, 10309, 10330, 10333, 10335, 10351	12100, 12102							
28	Incentive Contracting				PCC 10226					
29	Leveraging the Buying Power of the State				PCC 10298, 10299					

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#	Findings Description	PCC Goods & Services	PCC IT	GC	Other Code	SAM	SCM	CAM	MM	Other Source
30	DGS Organizational Missions			14600 14610						DGS Website; PD Strategic Plan
31	Delegation/Approval System	10320, 10330, 10331, 10332	12101	15275-15279					03-10	Delegation Guidelines
32	Purchasing Audits	10333, 10351		14615						Delegation Guidelines
33	Customer and Supplier Advocate	10300								

Appendix H, Attachment 2

**Procurement Information Network (PIN) Statistical Report**

**PIN PE Statistical Report (FY 01-02)**

	Goods		IT Goods and Services		FOOD	
	# of Transactions	Total Dollars	# of Transactions	Total Dollars	# of Transactions	Total Dollars
\$0-\$999.99	2	954.7	0		8	4,696.50
\$1,000-\$4,999.99	8	23,990.51	2	5743.08	45	150,790.92
\$5,000-\$24,999.99	32	579,251.40	7	113,725.85	40	1,901,118.73
\$25,000-\$99,999.99	173	9,287,274.26	17	947,085.41	109	5,842,282.10
\$100,000-\$499,999.99	132	28,261,142.04	8	1,361,278.77	13	1,601,641.93
\$500,000-\$999,999.99	27	19,440,989.41	1	505,961.08	0	0
\$1,000,000 and over	23	51,300,136.51	4	25,003,558.13	0	0

**PIN PE Statistical Report (FY 02-03)**

	Goods		IT Goods and Services		FOOD	
	# of Transactions	Total Dollars	# of Transactions	Total Dollars	# of Transactions	Total Dollars
<b>\$0-\$999.99</b>	31	9,509.63	10	3,902.43	6	3,975.90
<b>\$1,000-\$4,999.99</b>	24	45,288.36	18	46,763.45	46	149,853.79
<b>\$5,000-\$24,999.99</b>	19	320,347.60	16	167,744.52	144	1,869,994.20
<b>\$25,000-\$99,999.99</b>	128	6,291,522.43	7	375,487.58	99	5,508,188.60
<b>\$100,000-\$499,999.99</b>	91	18,790,785.30	2	540,750.65	18	2,267,471.22
<b>\$500,000-\$999,999.99</b>	18	12,509,439.16	5	3,621,374.39	0	0
<b>\$1,000,000 and over</b>	11	33,150,305.43	6	11,455,705.18	0	0

Appendix H, Attachment 3

**Non-Competitive Bid (NCB) Statistical Report**

**NCB Statistical Report \***

Dollar Levels	Goods		IT Goods and Services		Non-IT Services	
	Transactions	Total Dollars	Transactions	Total Dollars	Transactions	Total Dollars
\$0-\$999.99	0	\$0.00	2	637.08	1	\$0.00
\$1,000-\$4,999.99	1	\$3,041.90	8	23216.49	1	\$4,999.00
\$5,000-\$24,999.99	4	\$55,112.63	15	194385.12	105	\$1,427,875.53
\$25,000 and over	158	\$48,149,903.18	131	1087143709	322	\$668,855,964.87

\* The transaction and total dollar figures are from Approved and Pending NCBs only.

<b>Total #</b>	<b>748</b>
<b>Total \$\$</b>	<b>\$1,805,858,845.18</b>
<b>Average</b>	<b>\$2,414,249.79</b>

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<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>1) Single Source for Purchasing Policy</b>						
<b>1.1)</b> Clarify the distinctions between policy and procedure. Ideally, policy and procedure will be documented separately since procedures by definition are the methods to support policy. Furthermore, this ensures that updates and changes to policy and procedure are reflected in the proper, corresponding document.			D.1			
<b>1.2)</b> Establish a permanent organizational structure and process for maintaining the purchasing policies in order to keep them consistent and current.	O.1	G.1				
<b>1.3)</b> Establish a process for the evaluation, analysis, creation, and approval of new policies.		G.1				
<b>1.4)</b> Declare SAM the single <i>policy</i> manual for purchasing. Consolidate all purchasing policies in one source document with defined custodial structure, update and communication processes.			D.1			
<b>1.5)</b> Form a purchasing policy reform committee with representatives from the DGS Office of Legal Services (OLS) and Procurement Division (PD) as well as other interested parties (e.g. DOF, Governor's Office) to undertake a sufficiently staffed initiative to update SAM.	O.1	G.1				

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>1.6)</b> Using the committee structure and defined process, systematically analyze the SAM, CAM, SCM, SIMM, and other current purchasing policy sources and rewrite them section-by-section to form a consistent set of policies in SAM. Upon completion of updating SAM, dissolve all other purchasing policy sources.				P.1		
<b>1.7)</b> Assign responsibility for SAM updates to a sufficiently staffed and empowered, single entity and enforce appropriate maintenance.	O.1	G.1				
<b>1.8)</b> Because effective policies and procedures require a specific writing skill, DGS should invest in the appropriate training for policy and procedure authors.					T.1	
<b>1.9)</b> Publish SAM on the DGS Internet site. This version ought to be the most up-to-date and “trusted” version.			D.1			
<b>1.10)</b> Update procedures for providing printed versions of SAM to those who cannot access the DGS Internet site.				P.1		
<b>2) Purchasing Categories</b>						
<b>2.1)</b> Create policies that define and clarify purchasing categories in keeping with the statutes. Additionally, classify within policy those types of items that can be “universally” typed or categorized.				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<p><b>2.2)</b> Using the statutory or policy definitions of each category, develop a standardized procedure to assist buyers in identifying the correct purchasing category. Standardized procedures should reduce or eliminate the “gray area” between categories and define a process for consistent choice and use of the rules and definitions contained in the statutes and policies. These procedures should include the documentation necessary to justify what information the buyers used to make their decision.</p>				P.1		
<p><b>2.3)</b> Include telecommunications policies and procedures as one of the purchasing types. Coordinate with TD to develop an integrated process including appropriate approvals and checks performed by TD, DOF, and PD. Telecommunications is an area where all three oversight agencies must coordinate to make the process clear for client agencies.</p>				P.1		
<p><b>2.4)</b> Develop procedural job-aids or guides, such as decision trees, checklists, and flowcharts, to assist buyers in classifying or “typing” the purchasing category as goods, services, IT goods/services. These tools would help buyers follow the procedures and comply with the policies as they conduct the State's purchases.</p>					T.1	
<p><b>3)</b> Statutory References to the Department of Information Technology (DOIT)</p>						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>3.1)</b> To clearly define the authority, roles, and responsibilities for procurement of IT goods and services, the legislature should pass such legislation as necessary to update and clarify the Public Contract Code and Government Code, and assign the DOIT roles and responsibilities to another agency.						L.1
<b>3.2)</b> Since DGS is responsible for developing policies and procedures for the purchase of goods, it should also be responsible for developing policies and procedures for the purchase of IT goods and services. Coordination with other control agencies such as DOF would be necessary, but the final authority for all purchasing policies and procedures should lie with DGS. Even though MM 02-20 clearly states that purchasing policy is DGS' area, an effort should be made to work through the legislature to change the statutes to grant DGS the authority for development of statewide purchasing policy and procedure.						L.1
<b>4)</b> Alternative Procurement Process Pilot						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>4.1)</b> Since the intent of the alternative procurement process was to introduce innovation into the purchasing process, DGS should reinforce the creative aspects of the process to bring it back in line with the initial intent of providing unique, alternative procurement approaches to specific, out of the ordinary business problems. This may be accomplished through the re-introduction of a new, better-defined alternative procurement process.				P.1		
<b>4.2)</b> Upon establishing changes to the alternative procurement process, update all references to the pilot from SAM, CAM, and other policy or procedure documents, such as the Delegation Guidelines and the Alternative Protest Pilot statute PCC §12127(c).				P.1		
<b>4.3)</b> Remove the terminology that refers to the “pilot” aspects of the policy (e.g., “Within two years...” and “...assess these processes...”).				P.1		
<b>5)</b> CMAS Purchasing						
<b>5.1)</b> In keeping with previous options, centralize CMAS policies in SAM. Remove the policy aspects from the existing CMAS "packets" and place them in SAM where appropriate.			D.1			

<p style="text-align: center;"><b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])</p>	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<p><b>5.2)</b> CMAS Bulletin #35 prescribes that at least three offers be solicited and obtained when a State agency uses CMAS as a purchasing mechanism. The CMAS packets also state that CMAS transactions must be in the context of “best value.” Solicitation and evaluation procedures should be developed to ensure that agency users of CMAS are adequately and consistently determining and documenting their “best value” decisions. These procedures should reflect the appropriate level of rigor for various transaction types and sizes.</p>				P.1		
<p><b>5.3)</b> Optimally, the term “best value” would be replaced with the codified term of “value-effective”.</p>				P.1		
<p><b>5.4)</b> Develop procedures for vendors and agencies to follow when there is a grievance or issue with the selection or Purchase Order award for a CMAS transaction.</p>				P.1		
<p><b>6)</b> Management Memos as Policy</p>						
<p><b>6.1)</b> Only issue Management Memos that announce and explain policy or procedure changes and reference the policy or procedure source documents. The source policy document would be SAM and not the Management Memos. This practice requires that SAM be updated in a timely manner. As an example of this, the DOF Management Memo 02-20 summarizes policy changes and provides pointers to the actual policies in SAM and SIMM.</p>		G.1	D.1			

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>6.2)</b> Similarly, work with other groups (e.g., DOF, Governor's Office) to cease issuing Executive Orders, Budget Letters, Technology Directives and other correspondence that are policy changes in and of themselves, rather than announcements of policy changes.		G.1				
<b>7) Definitions of Terms and Phrases</b>						
<b>7.1)</b> Create and continuously maintain a purchasing glossary that clearly defines and documents purchasing terms and phrases. Provide examples of their usages.				P.1		
<b>8) Cross-Reference of Purchasing Laws</b>						
<b>8.1)</b> Develop a defined process, assign responsibility, and dedicate the requisite resources to maintain the aforementioned references continually.	O.1					
<b>8.2)</b> Include the true and updated annotated code in the references instead of the current plain-text version.			D.1			
<b>9) Single Source for Processes and Procedures</b>						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	<b>Initiative Categories</b>					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>9.1)</b> Identify and dedicate resources to develop common processes and procedures for use by DGS buyers and those purchasing officials in other State agencies. These processes and procedures would culminate in an electronic knowledge-base accessible at the buyer’s desktop, including tools, job aids, templates, etc. Since procedure is contained in multiple locations today (e.g., CAM, Delegation Guidelines), an initial task should be a comprehensive review of the existing material to identify the re-usable elements.	O.1					
<b>9.2)</b> Develop internal processes to ensure that the procedure updates occur as necessary and are disseminated in a timely manner.		G.1				
<b>9.3)</b> Invest in training for policy and procedure authors because policies and procedures require a specific writing style to be effective.					T.1	
<b>10)</b> Purchasing Policy and Procedure Training						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>10.1)</b> In response to the Contracting and Procurement Task Force’s Recommendation #8, DGS has begun developing a comprehensive procurement training program. In accordance with PCC §10349, DGS is working with the Department of Personnel Administration (DPA) and a training consultant (California State University, Northridge). The resulting training should be developed in such a way that it can be continuously available and updated as changes in laws and rules occur. Additionally, the training content should be based on a consolidated policy and procedure source such as SAM.					T.1	
<b>10.2)</b> DGS/DPA should make training available in a variety of delivery modes (e.g., on-line, classroom)					T.1	
<b>10.3)</b> DGS/DPA should develop a process to ensure that all training materials are kept updated and consistent with current purchasing policy and procedures. The training should focus on the less well-defined issues of procurement official responsibilities, ethics, and judgment/decision making. Additional training topics should include practical, “hands on” training in areas such as, legal aspects of purchasing, contract crafting, and post-award contract administration.					T.1	
<b>11) System/Process for Developing and Implementing Policy</b>						
<b>11.1)</b> Identify and dedicate the resources required for policy development.	O.1					

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>11.2)</b> Create a full-time policy development unit that does not have responsibility for day-to-day management activities.	O.1					
<b>11.3)</b> Adopt a system/process that ensures rigorous policy development and continuing maintenance.		G.1				
<b>11.4)</b> Implement a governance process for developing policies that manages the full policy lifecycle from inception through implementation and rescindment.		G.1				
<b>12) Follow-on Work</b>						
<b>12.1)</b> Because of the breadth, clarity, and simplicity of the law, there is little margin for any policy or procedural clarification to positively change its effect. The required course of action is to revise the law to allow follow-on work in a less restrictive manner. Specify the law to deal with situations leading to organizational conflicts of interest that are inherent in vendor participation in the pre-solicitation activities. In redrafting this statute, the State ought to make it broadly applicable to all purchasing transactions not limited to consulting services and not limited to instances where the initial work is performed for fee or under a contract. Examples from other government entities are provided in Appendix J. These examples are in keeping with our recommendation and should be considered during implementation.						L.2

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>12.2)</b> With the change in the law due to SB 1467, SAM §5202 must be updated to remove the reference to PCC §10365.5; it is now redundant and potentially confusing due to the included example that applies the rule in a very specific context.				P.1		
<b>12.3)</b> Develop policy and procedures to clarify the application of the law.				P.1		
<b>13) Small Business Preference Override</b>						
<b>13.1)</b> Develop a clear policy and procedure reflecting the impact of the statutes that reflect that the small business preference takes precedence over other identified preferences (e.g., TACPA, EZA, LAMBRA), paying particular attention to the applicability of the Recycle preference and its impact. Upon the completion of the policy and procedures, it would be possible to develop an automated tool to ensure accuracy and adherence to the rules.				P.1		
<b>14) Procurement Method Models</b>						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>14.1)</b> Develop standardized models for each type of procurement (e.g., IFB, RFP, RFQ, CMAS, MSA, NCB) that clearly identify the required versus optional elements. Also, develop guidelines outlining the circumstances when the optional steps should be considered for use. Additionally, these standardized models should apply universally regardless of the procurement category or type (i.e., goods, non-IT consulting services, and IT goods and services).				P.1		
<b>15) Invitation for Bid (IFB) Model “Compliance Phase”</b>						
<b>15.1)</b> Develop further comprehensive, detailed procedures for the SAM §5221 Compliance Phase. Specifically, create procedures that: <ul style="list-style-type: none"> <li>➤ Provide a decision aid to use when deciding if a compliance phase procurement is appropriate. The risks must be outweighed by the benefits.</li> <li>➤ Specify the roles and responsibilities for each attendee at the “confidential discussion,” as well as the topics and types of information to be discussed and those to be avoided in order to protect the integrity of the process.</li> <li>➤ Ensure that changes to the vendor’s proposal do not affect/change the original solicitation document unless the change is broadcast to the other vendors.</li> </ul>				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>15.2)</b> Reword the Compliance Phase to replace “confidential” with another phrase, such as “vendor discussions” or “vendor presentations”.				P.1		
<b>16)</b> Preparation and Dissemination of “Lessons Learned”						
<b>16.1)</b> Prepare “lessons learned” information to share with buyers and legal staff from DGS and individual departments. These lessons learned should include ideas, pointers, recommendations, etc., about ways to standardize and streamline purchasing practices and minimize protests and disputes.				P.1		
<b>16.2)</b> Update and distribute these lessons learned on a regular basis.				P.1		
<b>16.3)</b> Incorporate lessons learned as examples into training material.					T.1	
<b>16.4)</b> Host regular meetings with DGS and individual department buyers to discuss these lessons learned, share ideas about what works and what does not, and brainstorm additional ways to distribute lessons learned information.		G.1				
<b>16.5)</b> Feed lessons learned into the development of policy and procedure to ensure timely implementation and dissemination.		G.1				
<b>17)</b> Contract Types						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>17.1)</b> Create clear policies for the definition and use of the various goods and services contract types that the state chooses to offer as available alternatives (e.g., fixed-price contracts, cost reimbursement contracts, incentive contracts, etc.).				P.1		
<b>17.2)</b> Ensure model terms and conditions exist and are comprehensive for each approved contract type.				P.1		
<b>18) Specifications, Requirements and Business Needs</b>						
<b>18.1)</b> Develop uniform policies that require performance specifications and minimize design specifications in solicitations where the business needs, in whole or in part, are able to be stated in terms of function.				P.1		
<b>18.2)</b> Provide procedures and job-aids for “how-to” and “when-to” develop detailed performance and design specifications.				P.1		
<b>18.3)</b> Provide “how-to” training for the development of detailed performance specifications. This is especially important to the procurement of integrated and custom developed information systems.					T.1	
<b>18.4)</b> Define the terms “performance specifications,” “detailed specifications,” “design specifications,” and “technical specifications” and use them in a consistent manner throughout the statutes, policies, and procedures.				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>18.5)</b> Remove any references in the statutes and policies that imply or direct that specifications are not to be defined in a detailed and precise manner.						L.3
<b>19) Evaluation Methods</b>						
<b>19.1)</b> Develop policies and procedures identifying the appropriate evaluation methods for each procurement category, as well as describing the individual evaluation steps for each method. These methods and procedures should be as consistent as possible without regard to the type of procurement.				P.1		
<b>19.2)</b> Develop policies and procedures to provide definition and guidance relating to the evaluation of solicitations.				P.1		
<b>20) Protests, Disputes, and Grievances Processes</b>						
<b>20.1)</b> Create policies to protect the right of all respondents to State of California solicitations to have their protests heard and decided. An adjunct process is necessary that provides all bidders with an opportunity to be fully debriefed following a solicitation, thereby, reducing the protests occurring simply because an unsuccessful bidder wants to understand the reasons why they lost.				P.1		
<b>20.2)</b> Create policies with timelines for responding to all protests, questions, disputes, or complaints.				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>20.3)</b> Create a policy that clearly states under what conditions the Alternative Protest Pilot may be applied and which solicitation methods may be used.				P.1		
<b>20.4)</b> Create a policy regarding the assignment and roles of the Customer and Supplier Advocate. Additionally, ensure that IT goods and services are addressed within this policy.				P.1		
<b>20.5)</b> Create procedures to handle the protest process with the following attributes: <ul style="list-style-type: none"> <li>➤ Integrity of the process with regard to roles and conflicts of interest</li> <li>➤ Chain of custody for the files, documents, and other evidence to avoid losses of information that would affect the outcome</li> <li>➤ Proper and timely routing of protest documents</li> <li>➤ Communications to vendor controlled to protect against improper threats or quid pro quo or other perceived conflicts of interest</li> </ul>				P.1		
<b>20.6)</b> Create policies and processes for handling protests and/or grievances for all procurement mechanisms including informal, CMAS, MSA, and NCBs.				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>20.7)</b> Modify the PCC to standardize the protest hearing and decision body.						L.4
<b>20.8)</b> Modify the PCC to standardize the process for announcing intent to award and the period for accepting protests.						L.4
<b>20.9)</b> Modify the PCC to allow for the DGS to find a protest frivolous and require a bond to be posted for the hearing body to decide the protest. Require that the bond be forfeited should the disappointed vendor lose the decision.						L.4
<b>21) Emergency Purchase Process</b>						
<b>21.1)</b> Develop standardized policy and procedures for the applicability and use of emergency purchases that supports the definition of emergency as articulated in the PCC.				P.1		
<b>21.2)</b> Update the standard form (Form 42) used for documenting and requesting approval on an emergency purchase to reflect the standardized policy and procedures.				P.1		
<b>21.3)</b> Include a definition of emergency purchases and examples of such in training materials.					T.1	
<b>22) Non-Competitive Bid Process</b>						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>22.1)</b> Amend the Public Contract Code to define a consistent definition of non-competitive bid (NCB), and the applicability of the NCB process for goods, services and IT.						L.5
<b>22.2)</b> Regardless of the statutory change, develop standardized policy and procedures that defines the appropriate use of NCBs, including all types of NCBs (i.e., single-source [specified brand or trade name] and emergency).				P.1		
<b>22.3)</b> Update the standard form to be used for documenting and requesting approval on an NCB to match the clarified polices and procedures.				P.1		
<b>22.4)</b> Establish policies and procedures that include standard processing durations (e.g., turn-around time) and visibility into the status of the request to interested parties throughout the NCB approval process		G.1				
<b>22.5)</b> Include a definition of NCBs and examples of such in the purchasing training.					T.1	
<b>23)</b> Electronic Acceptance of Sealed Bids						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>23.1)</b> Develop standardized policies and procedures that support the electronic receipt of sealed bids via electronic means. DGS should implement an e-procurement method or system with sufficient security and transaction integrity features to meet the “no bid can be opened before the bid deadline and all bids can be verified as authentic” requirements. The implementation of this option should be in conjunction with the Task Force Recommendation #14 (implement an e-procurement system) working group.				P.1		
<b>24) Bifurcated Responsibilities for Purchasing Oversight</b>						
<b>24.1)</b> Consolidate the approval of contracts for all types of purchasing to a single entity, the Procurement Division.	O.2					
<b>24.2)</b> Direct OLS to focus on their duties as DGS house legal counsel and support the Procurement Division as legal advisers.	O.2					
<b>24.3)</b> 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.	O.2					
<b>24.4)</b> 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).	O.2					

<p style="text-align: center;"><b>Findings and Recommendations</b>                      (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])</p>	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>25) Policy and Procedures Office</b>						
<p><b>25.1)</b> 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 procurement policy and procedure as their sole function. This high-level organizational position reflects executive-level commitment to this vital role.</p>	O.1					

<p style="text-align: center;"><b>Findings and Recommendations</b>                      (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])</p>	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<p><b>25.2)</b> 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 introduction of a rotational assignment provides the following benefits:</p> <ul style="list-style-type: none"> <li>➤ Attracts the “rising stars” within PD to this highly visible, challenging position</li> <li>➤ Ensures recent procurement experience necessary for the development of clear, applicable policy</li> <li>➤ Provides for career planning and professional development opportunities</li> </ul>	O.1					

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<p><b>25.3)</b> 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 including (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.</p>	O.1					
<p><b>25.4)</b> 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.</p>	O.1					
<p><b>26)</b> Negotiation</p>						

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>26.1)</b> Draft legislation that requires negotiation for non-competitive solicitations.						L.5
<b>26.2)</b> Develop comprehensive policies implementing the practice of negotiation that address the following: <ul style="list-style-type: none"> <li>➤ Preservation of the principles of openness, fairness, and competition.</li> <li>➤ Defining the various types of negotiation and when they may be applied.</li> <li>➤ Specify training and skills needed for the negotiation team members.</li> </ul>				P.1		

Findings and Recommendations (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<p><b>26.3)</b> Develop detailed step-by-step procedures to guide the negotiation process including:</p> <ul style="list-style-type: none"> <li>➤ Planning for negotiation – prior to the start of the procurement, identify if and how negotiation may aid in achieving the specific objectives relating to price, delivery, performance standards, warranty, contractual terms and conditions, etc.,</li> <li>➤ Including language in the solicitation documents specifying if negotiation will be employed or not and, if so, detailing the negotiation process to be followed</li> <li>➤ Specifying how contractors are selected to enter into negotiations</li> <li>➤ Specifying the possible outcomes and process following the negotiation up to contract award</li> </ul>				P.1		
<p><b>26.4)</b> Develop a training and certification program that qualifies purchasing officials to conduct negotiations.</p>					T.1	
<p><b>27)</b> Approval Levels and Process</p>						
<p><b>27.1)</b> Re-baseline approval levels on risk or metrics to most effectively apply resources at DGS. The existing approval levels are too low in some cases and, in general, unnecessarily complex.</p>				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>27.2)</b> Design a more simple system of thresholds and criteria to determine those transactions that require review and approval. Currently, approval levels are overly complex with too many different monetary criteria for various types of procurements.				P.1		
<b>27.3)</b> Develop a simplified procedure and forms/tools for goods, IT, and services purchases below a “small purchase” threshold (i.e., \$5,000) within the buying agency’s delegated or organic authority.				P.1		
<b>27.4)</b> Develop a service order form, or modify an appropriate existing form, for small services purchases under \$5,000.				P.1		
<b>27.5)</b> Overall, it may be more effective and efficient for DGS to increase its use of selective or periodic audits and decrease the amount of transactions that require approval.				P.1		
<b>27.6)</b> Clearly communicate specific sanctions and penalties for agencies and individuals who fail compliance audits and follow-through with the application of the sanctions.				P.1		
<b>27.7)</b> Develop simple, clear and well communicated approval processes. The approval processes are overly complex and poorly communicated. The requestor ought to know the specific routing of the document and what happens at each step.				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>27.8)</b> Allow visibility into DGS processes and systems to allow requestors and other interested parties access to the status of the transaction and its documentation.				P.1		
<b>27.9)</b> Create service level agreements to facilitate procurement planning and scheduling for the requesting agencies.				P.1		
<b>27.10)</b> Set the standards or attributes that the reviewer/approver will check to ensure they are clearly communicated and specific enough to reduce differences of interpretation.				P.1		
<b>28)</b> Incentive Contracting						
<b>28.1)</b> Draft legislation to specifically allow for incentive contracting in goods, services and information technology procurements.						L.6
<b>28.2)</b> Develop policies to provide sound guidance on when incentive contracting should be considered as well as the requirements and impacts on the solicitation, selection, award, and contract administration processes.				P.1		
<b>28.3)</b> Develop procedures for conducting procurements with incentive contracting.				P.1		
<b>29)</b> Leveraging the Buying Power of the State						
<b>29.1)</b> Collect and analyze metrics to identify specific opportunities.				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>29.2)</b> Create a policy and process for combining orders on commonly purchased items.				P.1		
<b>29.3)</b> Develop multiple award contracts and master agreements that contain minimum order commitments and tiered volume pricing levels.				P.1		
<b>30) DGS Organizational Missions</b>						
<b>30.1)</b> Develop a new mission statement for DGS, derived from statute, to serve as the basis for the subordinate unit mission statements.	O.3					
<b>30.2)</b> Develop a new mission statement for PD focusing on the unit's responsibilities to set policy, and oversee and conduct procurements.	O.3					
<b>30.3)</b> Develop a new mission statement for OLS focusing on the unit's role as the DGS legal advisors.	O.3					
<b>31) Delegation/Approval System</b>						
<b>31.1)</b> Develop a new system of delegation that simplifies the levels and types of delegations combining the goods, IT, and services delegations under a single set of rules.				P.1		
<b>31.2)</b> Centrally manage all delegations (e.g., goods, IT, services and other delegations managed by a single unit).				P.1		

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>31.3)</b> Implement a universal delegation level for all goods, IT, and services.				P.1		
<b>31.4)</b> For purposes of the delegated authority, only discriminate by purchasing level, not procurement type (IT, goods, services) or mechanism (competition, CMAS, MSA).		G.1				
<b>31.5)</b> Submit legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.						L.7
<b>31.6)</b> Create a policy that states that the contract approval for services contracts will only occur if the procurement (solicitation approach and documents) is pre-approved. This ensures DGS will review the transaction early in the process and correct mistakes before the solicitation is conducted.				P.1		
<b>31.7)</b> Initiate legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to included services purchases in their delegation system.						L.8
<b>32) Procurement Audits</b>						
<b>32.1)</b> Add the necessary process rigor and skills to the PAMS for them to perform actual audits on every delegated agency once per three-year period.	O.4					

<b>Findings and Recommendations</b> (Numbering scheme below references the Findings Over-Arching Matrix [FOAM])	Initiative Categories					
	Organizational (O)	Governance (G)	Document Structure/Format (D)	Policy & Procedure (P)	Training (T)	Legislation (L)
<b>32.2)</b> Alternately, increase the staffing of the OAS to allow that unit to take on the full responsibility of the delegation audit requirements.	O.4					
<b>32.3)</b> Because much of the procurement risk to the State exists within the DGS PD conducted procurements and other activities, DGS OAS should increase the frequency of audit on the PD and all of its program areas.				P.1		
<b>32.4)</b> Within the context of other Procurement Reform changes, examine opportunities to increase the DGS audit function as a replacement for up-front review and approval. This will become increasingly important, as delegations are more widespread.		G.1				
<b>33) Customer and Supplier Advocate</b>						
<b>33.1)</b> Change the organizational structure to elevate the Protests and Disputes Section to the executive level of PD	O.5					
<b>33.2)</b> Separate the Customer and Supplier Advocate function from the protests and disputes function.	O.5					
<b>33.3)</b> 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.	O.5					
<b>33.4)</b> Create a mission or charter for the Customer and Supplier Advocate that complies with the requirements of PCC §10300.	O.5					

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## APPENDIX J

Examples relating to Organizational Conflict of Interest (OCI) from other states and the federal government.

- State of **Maryland** Public Ethics Law § 15-508. Submission of bid; ineligible persons:
  - (a) An individual or a person that employs an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals may not:
    - (1) Submit a bid or proposal for that procurement; or
    - (2) Assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.
  - (b) For purposes of subsection (a) of this section, assisting in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement does not include:
    - (1) Providing descriptive literature such as catalogue sheets, brochures, technical data sheets, or standard specification "samples", whether requested by an executive agency or provided on an unsolicited basis;
    - (2) Submitting written comments on a specification prepared by an agency or on a solicitation for a bid or proposal when comments are solicited from two or more persons as part of a request for information or a prebid or preproposal process;
    - (3) Providing specifications for a sole source procurement made in accordance with § 13-107 of the State Finance and Procurement Article;
    - (4) Providing architectural and engineering services for programming, master planning, or other project planning services; or
    - (5) Providing specifications for an unsolicited proposal procurement made in accordance with § 13-107.1 of the State Finance and Procurement Article.
  
- Code of **Mississippi** Rules 09000001 - 9.209 Contractor/Consultant Conflict of Interest  
It is the policy of the State of Mississippi to identify, avoid or mitigate conflicts of interest in contracting with independent contractors and consultants for services related to the subsequent competitive acquisition of commodities as defined in Section 31-7-1 (e) Mississippi Code of 1972, Annotated.  
The underlying principles of this policy are:
  - (a) preventing the existence of conflicting roles that may bias a contractor's or consultant's judgment in its work for the State; and
  - (b) preventing unfair competitive advantage.An independent contractor or consultant hired by any state agency for the purpose of preparing or furnishing complete or essentially complete specifications which are to be used in competitive acquisition for the furnishing of the same services or equipment shall not:
  - (a) be awarded a contract in the subsequent competitive acquisition of commodities; or
  - (b) be a subcontractor or consultant to a bidder participating in the competitive acquisition of the same

- **Colorado** Regulations 600 - SECTION 7 - CONFLICT OF INTEREST
  1. CDOT will award a Design-Build Contract only to a Firm that does not have impaired objectivity or an unfair competitive advantage, due to any interest of the Firm that creates an actual conflict or a significant potential conflict with the proposed contract.
  2. Except as provided below, any consultant shall be disqualified from submitting a proposal on a Project, or from acting as a subconsultant or subcontractor on a Project, if CDOT determines that the consultant has such a conflict, including in the following situations:
    - a) it develops the Scope of Work for a Design-Build Project; or,
    - b) it develops the RFQ or RFP for the Project; or,
    - c) it performs 20% or more of the Preliminary Engineering on the Project.
  3. Any consultant that is so disqualified may still be part of any CDOT oversight team for the Project, if CDOT deems it appropriate.
  
- **New York** State Law Chapter 56, Article 9 § 163-a. Vendor preparation of specifications for technology procurements; prohibitions  
If a vendor prepares and furnishes specifications for a state agency technology procurement proposal, to be used in a competitive acquisition, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor.
  
- Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. Such restrictions shall not apply where:
  1. The vendor is the sole source or single source of the product or service;
  2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
  3. A vendor has furnished at government request specifications or information regarding a product or service they provide, but such vendor has not been directly requested to write specifications for such product or service or an agency technology procurement proposal; or
  4. The state agency together with the office for technology determines that the restriction is not in the best interest of the state. Such office shall notify each member of the advisory council established in article ten-a of the executive law of any such waiver of these restrictions.
  
- **The Federal Acquisition Regulations:**  
[http://www.arnet.gov/far/current/html/Subpart\\_9\\_5.html#1049089](http://www.arnet.gov/far/current/html/Subpart_9_5.html#1049089)