Chapter 1

Purchasing Authority

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Chapter 1

Purchasing Authority
Goods & Services*

Introduction

Statutory authority for purchasing non-information technology (non-IT) goods and information technology (IT) goods and services for State government resides with the Department of General Services (DGS), Procurement Division (PD). The California Department of Technology (CDT) has statutory authority to conduct acquisitions for reportable IT projects. This chapter addresses acquisitions conducted under DGS authority only.

DGS also has statutory authority to grant purchasing authority to state departments. Those departments must meet requirements provided by law, demonstrate the capability to make purchases adhering to all other policies and procedures, and make decisions that are in the best interest of the State. DGS is responsible for the purchasing authority it grants. Within DGS/PD, the Purchasing Authority Unit (PAU) is the entity responsible for the delegating and monitoring of purchasing authority granted to state departments.

*Purchasing Authority for non-IT services is only applicable under the Leveraged Procurement Agreement (LPA) program and is in addition to the contract approval required under PCC 10335(a) and 10295. For all other Non-IT services, refer to SCM Volume 1.

Section A

Purchasing Authority Information

Introduction

This section describes:

- what is included and not included under purchasing authority,
- the program requirements, and
- what is necessary to obtain and maintain purchasing authority.

Topic 1 – Purchasing Authority Basics

1.A1.0 Authority to Delegate Purchasing Authority

The delegation of purchasing authority for non-IT goods is governed by Public Contract Code (PCC) sections 10308, 10309, 10331, 10332, 10333, and 10290.1* and 12100 for IT goods and services.

Purchasing Authority for transactions with the Prison Industry Authority (PIA) is authorized by PCC 10332(c) and Penal Code 2807.

*Includes non-IT services for LPA transactions.

1.A1.1 Program Oversight

The Purchasing Authority Unit (PAU) within the DGS Procurement Division (PD) is responsible for oversight of the purchasing authority program on a statewide basis, including review and approval of purchasing authority applications, monitoring of departments granted purchasing authority, and increases to, as well as decreases to purchasing authority dollar thresholds.

PAU <u>does not</u> have oversight over:

- Acquisitions/transactions conducted by DGS/PD.
- Acquisitions/transactions conducted by or under the oversight of the California Department of Technology under the authority granted in PCC 12100 and 12120.
- Non-IT service acquisitions (except transactions executed under a Leveraged Procurement Agreement [LPA]).
- Departments with exemption status from DGS.

1.A1.2 Must State Departments Have Purchasing Authority?

Unless stated otherwise in statute, state departments that are subject to DGS oversight and functioning without approved purchasing authority are prohibited from the following:

- Non-IT goods purchases exceeding $100.00 (PCC10308).
- IT goods and services of any dollar value, including IT Inter-Agency Agreements (IAA)
- Purchases made against any Leveraged Procurement Agreement.
- Participation in the CAL-Card Purchase Card Program.

State departments may conduct the following purchasing activities under

other authorities (outside of DGS/PD purchasing authority):

- Non-IT goods under $100.00 (PCC 10308) (except those executed under a LPA).
- Telecommunications goods and services pursuant to PCC 12120.
- Non-IT services pursuant to SCM Volume 1.
- IT goods and services pursuant to PCC 12100 that are related to a reportable IT project, as defined by the State Administrative Manual (SAM) section 4800.
- Non-IT goods over $100.00 that are exempt from DGS oversight pursuant to specific laws and/or executive orders that exempt certain state departments and/or certain types of contracts from DGS/PD purchasing authority.

Exception: The Statewide Technology Procurement Division (STPD) at the California Department of Technology may utilize LPAs when conducting acquisitions on behalf of state departments for contracts related to a reportable IT project. STPD does not need purchasing authority from DGS for use of LPAs pursuant to PCC 12100 et seq.

1.A1.3 State Departments with Purchasing Authority

Refer to the Resources section at the end of this chapter for a link to Purchasing Authority Approval Letters (PAALs) for state departments with approved purchasing authority.

1.A1.4 Purchasing Authority (PA) Number

(NEW!)

The PA number is assigned upon approval of the Purchasing Authority Application (PAA) by the PAU. This number will remain unchanged unless circumstances warrant a change (such as a reorganization or consolidation of departments).

1.A1.5 When is the PA Number Used?

The purchasing authority profile that is maintained by the PAU will identify the PA number for each state department as well as the authorized purchasing authority acquisition methods and dollar thresholds associated with each PA number. The PA number needs to be entered in the “comments” field of the Purchase Order when a procurement is done under delegated Purchasing Authority.

1.A1.6 Purchasing Authority Reviews

(NEW!)

Pursuant to PCC 10331, purchasing authority granted to state agencies are subject to annual review by DGS/PD. In addition to DGS/PD's review, departments are subject to audits pursuant to PCC 10333 (b) which is conducted by DGS Office of Audit Services (OAS).

The Purchasing Authority Unit (PAU) will conduct reviews of purchasing authority granted to state departments based on a schedule prepared by the PAU. This schedule will complement the DGS/Office of Audit Services' (OAS) audit schedule so that the audit and Purchasing Authority Review are not conducted at or near the same timeframe. This will also give ample time for state departments to make necessary corrections to audit findings prior to the PAU review. PAU review schedules are subject to change. If this occurs, departments will be notified at least 60 days in advance.

PAU will not conduct reviews during the months of May, June, and July due to heavy workload at state departments during these months. Additionally, reviews will not occur during November or December due to holiday schedules.

PAU will utilize the assessment tool found in the Resources Section at the end of this chapter to conduct the Purchasing Authority Review.

1.A1.7 Rescission or Reduction of Purchasing Authority

DGS/PD reserves the right to rescind or reduce any purchasing authority at any time.

1.A1.8 Contact PAU

After seeking guidance internally, such as contacting either a Procurement and Contracting Officer (PCO) or a Purchasing Authority Contact (PAC), contact the PAU for assistance regarding any aspect of purchasing authority and/or any purchasing activities authorized under purchasing authority granted by DGS/PD PAU.

Questions may be electronically mailed to the PAU at pams@dgs.ca.gov.

This mailbox is monitored daily and a response can be expected within 24 hours or a reasonable amount of time to provide a detailed response to the submitted question.

Topic 2 – Scope of Purchasing Authority

1.A2.0 Acquisition Methods and Dollar Thresholds

Purchasing authority dollar thresholds are tied to acquisition methods. Some acquisition methods are complex and considered high risk while others are not; this is a factor for assigning varied dollar thresholds.
The Purchasing Authority Unit (PAU) determines the appropriate dollar thresholds for state departments based on factors detailed in this chapter of the SCM. State departments are each issued a Purchasing Authority Approval Letter (PAAL) that explains the specific authority granted dollar thresholds vary by state department.

Most dollar thresholds identified throughout the SCM exclude sales and use tax, finance charges, postage, and handling charges. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect, or FOB Destination. The exception to this policy are dollar thresholds established by law or by another state's cooperative agreement and where fees and charges are not specifically exempt from the dollar threshold.

The maximum dollar threshold for the Small Business/Disabled Veterans Business Enterprise (SB/DVBE) Option acquisition method includes all taxes, fees and charges.

1.A2.1 Creating Leveraged Procurement Agreements (LPA)

Pursuant to Public Contract Code (PCC) 10290-10290.3, 10298-10299; 12101.5, state departments are not authorized to create LPAs when conducting acquisitions under purchasing authority granted by the DGS/PD PAU.

1.A2.2 "Competitive" Purchasing Authority

"Competitive" purchasing authority is generally granted at lower dollar levels than Leveraged Procurement Agreement (LPA) purchasing authority due to the complexity and risk associated with these acquisitions.

The table below describes the different levels of "Competitive" purchasing authority thresholds for non-IT goods and services.

NON-IT GOODS AND SERVICES	
Competitive Levels	**Characteristics**
Minimum Between $100.00 and $4,999.99	• Lowest dollar threshold of authority available. • Low risk. • Advertising in the California State Contracts Register (CSCR) is not required. • No formal protests are available to suppliers. • The Fair and Reasonable procurement method is commonly used at this level. • Phone quotes are acceptable. • Appropriate for state departments with a small procurement office and that conduct very few, low dollar value procurements.
Standard 1 Between $4,999.99 and $50,000.00	• Informal level. • Phone quotes are acceptable in certain circumstances. • Written solicitations are advisable but not required in certain circumstances. • Advertising in the CSCR is not required.
Standard 2 Between $50,000 and $100,000	• Informal level. • Written solicitation is required. • Advertising in the CSCR is required. • Departments must be granted Standard 1 level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct at Standard 2 level.
Formal Above $100,000.00	• Formal level. • Written solicitation (Invitation for Bid) is required. • Advertising in the CSCR is required. • Protest provisions are required. • Award to Other Than Low Bidder procedures apply. • Departments must be granted Standard 2 level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct formal procurement activities.

The table below describes the different levels of “Competitive” purchasing authority thresholds for IT Goods and Services.

IT GOODS AND SERVICES	
Competitive Purchasing Authority Level	**Characteristics**
Minimum $0.00 and $4,999.99	• Lowest dollar threshold of authority available. • Low risk. • Advertising in the California State Contracts Register (CSCR) is not required. • No formal protests are available to suppliers. • The Fair and Reasonable procurement method is commonly used at this level. • Phone quotes are acceptable. • Appropriate for state departments with a small procurement office and that conduct very few, low dollar value procurements.

Standard 1
Between $5,000.00 and $500,000.00
	• Informal level.
	• Phone quotes are acceptable for IT goods transactions valued less than $50,000.00
	• Written solicitations are required for:
	  • Any IT service transaction that exceeds $4,999.99.
	  • Any IT goods transaction that exceed $50,000.00
	  • Any IT goods and services transaction where the service portion exceeds $4,999.99.
	• Advertising in the CSCR required for IT goods in excess of $50,000 and for IT services in excess of $4,999.99
	• Departments must be granted this level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct at Standard 2 level.

Standard 2 $500,000 and $1,000,000	• Informal level • Phone quotes are not permissible. • Written solicitation is required. • Advertising in the CSCR is required. • Departments must be granted Standard 1 level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct at Standard 2 level.

Formal Above $1,000,000	• Formal level. • Dollar threshold for formal solicitations is granted on a case-by-case basis. • Written solicitation (Request for Proposal) is required. • Advertising in the CSCR is required. • Protest provisions are required. • Award to Other Than Low Bidder procedures apply • Departments must be granted Standard 2 level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct at Formal level.

1.A2.3 Exceeding Purchasing Authority Thresholds

Departments may not execute a Non-Competitively Bid (NCB) contract, release a solicitation (such as an Invitation for Bid, Request for Quote, or Request for Offer), nor execute any other type of contract that exceeds or is expected to exceed the state department's approved purchasing authority. Exceptions and options are listed below:

1. Emergency contracts (natural disaster) as defined by PCC 1102, 10340, 10302, 12102, and 12102.1 may exceed a state department's purchasing authority dollar thresholds.
2. Emergency contracts (non-natural disaster) must submit a Transaction-Based increase request to purchasing authority.
3. Transactions that are subject to DGS oversight and that exceed or are expected to exceed a state department's purchasing authority must be submitted to the DGS/PD as followings (choose one):
   a) Requisition. Refer to the Resources Section, Section C, at the end of this chapter for instructions on submitting a requisition to the DGS/PD One-Time Acquisitions Unit.

      OR

   b) Transaction-Based increase to purchasing authority. This request must be submitted and approved by the PAU prior to releasing a solicitation to suppliers or executing a contract. Requests must not exceed maximum dollar thresholds noted in Illustration I of this Chapter.

Topic 3 – Purchasing Authority Standards

1.A3.0 General Standards

The standards noted herein are requirements in order to be granted and maintain purchasing authority from DGS/PD.

Departments granted purchasing authority are responsible and accountable for all procurement activities conducted under their approved purchasing authority, regardless of where the procurement activity occurs.

Each department accepts responsibility for its purchasing program which includes but is not limited to:

- Ensuring the necessity of products and services acquired.
- Securing appropriate funding.
- Complying with all applicable laws, regulations, executive orders, policies, procedures, and best business practices.
- Executing purchase documents that are in the state's best interests.

Responsibility for a department's purchasing program resides primarily, but not solely, with the department's executive and management staff. Responsibility also resides with all departmental staff involved in the procurement.

1.A3.1 Designated Agency Officer and Purchasing Authority Contact

The department's responsibilities:	The requirements include:
PCC 10333(a)(1) "Designates an agency officer as responsible and directly accountable for the agency's purchasing program." The department director will designate a Procurement and Contracting Officer (PCO).	1. Must be a member of the Executive Team (CEA and above): • Agency Secretary • Agency Undersecretary • Department Director • Department Deputy Director • Chief Executive Officer (Boards, Commissions) • Assistant Chief Executive Officer • Deputy Director, Administrative Services A department may designate a different position; however, it must have the equivalent level of authority of the positions stated above. 2. PCO must sign and return the PCO Statement of Commitment. 3. The PAU must be notified immediately, via a Purchasing Authority Change Request (PACR), of any change to the

	department's designation of the PCO. The PACR is available in Section C, Resources, at the end of this chapter.
The PCO will designate a Purchasing Authority Contact (PAC), within their organizational structure/chain of command, one for non-IT and one for IT. The designated non-IT PAC must have oversight and review of all non-IT procurements and the IT PAC must have oversight and review of all IT procurements. One individual can be designated as both the non-IT PAC and IT PAC if this individual has oversight of both non-IT and IT procurements.	1. Must be at the level of: • Chief Procurement Officer • Chief of Business Services • Chief of Administration • Branch Chief • Staff Services Manager A department may designate a different position; however it must have the equivalent level of authority of the positions stated above. 2. PAC must sign and return the PAC Statement of Commitment. 3. PAU must be notified immediately, via a PACR, of any change to the department's designation of the PAC.

1.A3.2 PCO and PAC information

When a purchasing authority document requires the signature of the PCO and/or PAC, the signature must match the PCO or PAC "Name."

If the PCO and/or PAC is unavailable to sign, the next highest ranking official must sign on their behalf. If there is a change in PCO/PAC, there is a 30 day window to update the department's information.

1.A3.3 Written Departmental Procurement Policies and Procedures

The department's responsibilities:	The requirements include:
PCC 10333 (a)(2) "Establishes written policies and procedures…" Establish and maintain written departmental procurement policies and procedures.	Required policies and procedures are prescribed in the checklist found in Section C,Resources at the end of the chapter. • Policies and procedures must be relevant to the dollar thresholds and type(s) of purchasing authority that is granted and/or being requested. • Policies and procedures must be kept current. See other requirements noted in Section B of this Chapter.

1.A3.4 Small Business Procurement and Contract Act

The department's responsibilities:	The requirements include:
Established procedures for complying with provisions of the Small Business Procurement and Contract Act (GC section 14835 et seq.) and DVBE participation.	Direction for meeting the SB and DVBE business participation goals in state procurement as established by the DGS/PD in accordance with GC section 14838.
PCC10333(a)(3) "Establishes procedures for complying with the provisions of the Small Business Procurement and Contract Act"	• Designating a department SB advocate (see Topic 4 of this Chapter) when the department's contracting activities exceed $100,000.00 annually. • Developing procedures for meeting the goals.

1.A3.5 Procurement Training

The department's responsibilities:	The requirements include:
PCC 10333(a)(4) "Establishes policies for training personnel in purchasing law and procedures…" E.g. Departmental and California Procurement and Contracting Academy [Cal-PCA] training when available.	• Identify WHAT training is required for individuals involved in various roles in the acquisition process; HOW individuals sign up to receive the training; and WHEN these individuals should take the training (i.e. within the first 30 days of employment and how often afterwards). • Log/track procurement training provided. • Purchasing law, regulations, policies, procedures, and best practices.

	• Controlling and reviewing purchasing practices.
	• Auditing purchasing activities.
	• Purchasing authority within the department.
	• Cal-PCA training:
	  o Only personnel that attend these required training classes can be authorized to execute contracts/purchase orders under purchasing authority from DGS/PD/PAU.
	  o Training must match the acquisition methods and dollar thresholds of purchasing authority granted coupled with each personnel's authorization to conduct acquisitions under the various methods and at various dollar thresholds. For instance, an incidental buyer that is authorized to conduct acquisitions under $5,000 utilizing the Fair and Reasonable acquisition method would need to take Cal-PCA Basic Acquisition and the Fair and Reasonable workshop.

1.A3.5 Controlling and Reviewing purchasing practices

The department's responsibilities:	The requirements include:
PCC 10333(4) "Establishes policies for … controlling and reviewing purchasing practices…"	Management oversight; review and approval of requisitions, solicitations, awards, and purchase documents/contracts; internal audits; training; procurement log; documentation checklists; database tracking (SCPRS); and ethics training.

1.A3.6 Auditing Purchasing Activities

The department's responsibilities:	The requirements include:
PCC 10333(4) "Establishes policies for … auditing purchasing activities…" Ensure all procurement/contracting activities conducted by the department fully comply with State law, appropriations, regulations, executive orders, SCM, and other State and department policies and procedures for any and all non-IT and IT goods and services.	• Procurement documents are made available for review and inspection by DGS. • Provide timely response to any inquiries, deficiencies, and/or findings. • Submitting any audit reports, documents and/or findings upon request.

1.A3.7 Sub-delegating within the agency

The department's responsibilities:	The requirements include:
PCC 10333(4) "Establishes policies for…delegating purchasing authority within the agency."	Policy on how staff assignments are determined in the procurement unit and in other offices/units outside of the procurement unit that have sub-delegated purchasing authority. Identify staff positions/classifications, relevant training and experience their assigned purchasing categories (LPA, competitive, IT, non-IT, etc.), and their dollar limits, etc.

1.A3.6 Ethics and Conflicts

The department's responsibilities:	The requirements include:
Department personnel involved in procurement activities are either directly or indirectly spending public funds and are subject to public scrutiny	• Act responsibly. • Conduct business honestly. • Avoid wasteful and impractical purchasing practices. • Avoid real or perceived conflicts when conducting business on the State's behalf. • Advise departmental personnel of expected standards of ethical and moral behavior during any procurement activities involving their participation. Refer to Section C, Resources at the end of this chapter for access to the Fair Political Practices Commission's webpage for more information.

1.A3.7 Separation of Duties

The department's responsibilities:	The requirements include:
Departments with any type of purchasing authority must maintain sufficient separation of duties in order to reduce the risk of error or fraud in the department's purchasing program.	Segregated duties to separate the responsibilities for: • A buyer that conducts an acquisition shall not approve the purchase document. • Staff approving the purchase document shall not acknowledge or receive the goods or services. • Approving invoices • Staff that approve invoices shall not prepare payments. No one person should control more than one of the key aspects of a procurement activity.

The FI$Cal system enforces separation of duties based on user roles. Refer to Topic 5 of this Section C, Role Mapping, for more information.

1.A3.8 Reporting Requirements

The department's responsibilities:	The requirements include:
Submit procurement reports as required and on a timely basis.	• Documents during the annual purchasing authority review. • Purchasing authority deficiencies. • Responses/resolutions to a purchasing program compliance review. • Other reports as required by statute or by the DGS/PD as indicated in Chapter 9.

1.A3.9 Audits

The department's responsibilities:	The requirements include:
Ensure all procurement/contracting activities conducted by the department fully comply with State law, appropriations, regulations, executive orders, SCM, and other State and department policies and procedures for any and all non-IT and IT goods and services.	• Procurement documents are made available for review and inspection by DGS. • Provide timely response to any inquiries, deficiencies, and/or findings. • Submitting any audit reports, documents and/or findings upon request.

1.A3.10 Americans with Disabilities Act (ADA)

The department's responsibilities:	The requirements include:
Comply with the non-discrimination requirements of Americans with Disabilities Act (ADA).	• Ensuring that all departmental programs, activities, and services are available to all persons, including persons with disabilities. • Ensure the department's ADA Coordinator will be available to assist and respond to persons with disabilities needing a reasonable accommodation to participate in the procurement process.

1.A3.11 Conflict of Interest (COI)

The department will	The requirement includes:
Ensure that contracting personnel are free from conflict of interest.	• Maintaining signed Conflict of Interest (COI) statements for every staff person involved in the procurement process. o Staff involved in: ▪ Soliciting bids. ▪ Preparing procurement documents. ▪ Approving procurement documents. ▪ Receiving goods/services. ▪ Approving payment. ▪ Making the payment. • Ensuring the employee signs a COI at least once during his/her tenure with the department. • A reference to or inclusion of GC section 19990 • Refer to the Resources section at the end of this chapter for a link to a sample COI statement. A department may use its own certification document such as an incompatible activity statement, ethics statement, and COI statement or use the sample located in the Resources section.

1.A3.12 Obtaining Other Required Approvals

The department will	The requirement includes:
Whenever an acquisition warrants, secure and document any approval required by: • California Prison Industry Authority (CALPIA) • DGS/PD • California Department of Technology/ Statewide Technology Procurement Division (STPD) • DGS/Office of Fleet Administration (OFAM) • DGS/Office of Legal Services (OLS) • DGS/Office of Records & Information Management (ORIM) as applicable to GC section 14755 • Any other required approvals.	Maintaining evidence in the procurement files of appropriate approvals being obtained prior to conducting a procurement activity or contract execution, as applicable.

1.A3.13 Procurement Personnel

All personnel involved in the procurement process must have the appropriate training, experience, level of responsibility, and accountability as necessary to ensure compliance with all State laws, regulations, executive orders, and with all DGS/PD policies, procedures, and best practices.

Personnel conducting state procurement must maintain professional and ethical standards.

See 1.A3.4 and Topic 4 of this Chapter for additional requirements.

1.A3.14 Availability of Procurement Files and Related Information

Departments are required to provide purchasing authority documentation (complete contract/procurement files) and related information to DGS/PD upon request and shall not withhold such documentation and/or information.

Topic 4 – Purchasing Authority Roles and Responsibilities

1.A4.0 General

The following topic defines the personnel requirements, roles and responsibilities of individuals involved in a department's purchasing authority.

1.A4.1 Lead Staff

In some instances departments may have lead staff that interface and communicate with the PAC and subordinate staff. In larger departments, lead staff may oversee sub-delegated purchasing activities in decentralized purchasing locations, such as divisions, field offices, district offices, and other remote locations. Lead staff may serve as a mentor to less experienced purchasing staff and conduct the more complex acquisitions. Lead staff are expected to have appropriate knowledge of procurement laws, policies and procedures, and procurement practices. Lead staff must have a reporting relationship and/or a clear line of communication with the PAC.

1.A4.2 Buyer and Incidental Buyer

All purchasing staff (buyers) must have the appropriate and sufficient level of knowledge of procurement laws, policies, procedures, and procurement practices.

Buyer – A position with procurement office oversight whose primary role is to carry out the day to day procurement functions on behalf of the department.

Your roles and responsibilities include, but not limited to:	Recommended positions are:
1. Perform the day-to-day purchasing and contracting activities. 2. Interface, communicate and report to the lead staff and/or PAC. 3. Mentor less experienced purchasing staff. 4. Be knowledgeable of procurement laws, regulations, executive orders, policies, procedures, best practices, and the SCM. 5. Maintain the procurement file and related documentation. 6. May be assigned signature authority to execute smaller dollar value contracts.	Qualified clerical, analytical, or technical staff person as selected by the department.

Incidental buyer – A position within a program that does not have the primary responsibility to purchase on behalf of the department though may occasionally purchase a minimal amount of goods or services.

1.A4.3 SB/DVBE Advocate

Small Business (SB) and Disabled Veterans Business Enterprise (DVBE) Advocate

Your roles and responsibilities include, but not limited to:	Recommended positions are:
1. Promote SB and DVBE business contracting participation. 2. Assist purchasing staff in identifying potential small, micro, and DVBE businesses. 3. Make solicitation information available to small, micro, and DVBE businesses.	Appropriately qualified staff person as selected by the department.

1.A4.4 ADA Coordinator

Americans with Disability Act (ADA) Coordinator

Your roles and responsibilities include, but not limited to:	Recommended positions are:
Assist and respond to questions or concerns for persons with a disability needing reasonable accommodation to participate in the procurement process.	Appropriately qualified staff person as selected by the department.

1.A4.5 CAL-Card Coordinator

CAL-Card Coordinator

Your roles and responsibilities include, but not limited to:	Recommended positions are:
1. Provide written CAL-Card procedures for the department. 2. Ensure compliance with the DGS/PD and department CAL-Card procedures and contract terms. 3. Coordinate CAL-Card training. 4. Issuing and tracking CAL-Cards. 5. Add, delete, and/or modify card restrictions/limits. 6. Monitoring usage of the CAL-Cards. 7. Review billing reports to monitor payments and disputes. 8. Coordinate procurement and contracting activities that use CAL-Card as the payment mechanism with the PAC.	Appropriately qualified staff person in the procurement office as selected by the department.

1.A4.6 Receiving Staff

Receiving Staff

Your roles and responsibilities include, but not limited to:	Recommended positions are:
1. Receive or acknowledge deliveries. 2. Inspect goods. 3. Complete stock received reports and ensures complete delivery. 4. Notification of stock received information to both the buyer and to the Accounting office. 5. Inventory and control assets. 6. Tag assets.	Appropriately qualified staff person as selected by the department.

Topic 5 – Role Mapping *NEW!*

1.A5.0 What is Role Mapping?

The FI$Cal Role Mapping describes and documents the new FI$Cal end-user roles related to the new FI$Cal system. The FI$Cal end-user roles are organized by business process area and must be appropriately assigned in order for users to complete or process items in the system. Role Mapping is accurately assigning the FI$Cal roles to end users.

To add or change a user's role, contact the FI$Cal Change Management office at fiscal.cmo@fiscal.ca.gov

1.A5.1 How does role mapping impact Procurement Functions?

Purchasing is the process of acquiring goods and/or services from vendors. This process includes vendor contracts, solicitations, requisitions, purchase orders (POs), and receipts. It also includes the procurement card, CAL-Card process for purchasing.

The process begins when a requisition is created and approved, and passes the budget check (soft pre-encumbrance). The requisition is sourced to a PO. After the PO is approved and passes a budget check (encumbrance), it is dispatched to support State/department procurement activity. The PO can have change orders (amendments).

When the goods and/or services are delivered, the receipts are recorded in FI$Cal. The State verifies that the goods and/or services are acceptable and conform to the PO. FI$Cal receipt transactions, together with the PO, are copied over to vouchers in the payables area, and are used for automated matching performed in Accounts Payable (AP).

Cal-Cards can be used to pay for the goods and/or services directly with the merchant. The purchasing process can be done prior to obtaining the goods and/or services with Cal-Card as the payment mechanism. State rules govern the use of Cal-Cards requiring POs before purchase, after purchase, and/or where requisitions or POs are not required.

All of these actions require a role in FI$Cal.

1.A5.2 Purchasing Roles

In order to process procurements in the FI$Cal system, users have to have at a minimum, the following roles:

Role Name	Role Description
Department Requester	The department end user who orders the goods and/or services. The user assigned to this role may or may not be the one who enters the requisition into FI$Cal. The Department Requester's name is on the requisition as the person requesting the goods or services.
Department Requisition Processor	The department end user who can enter and update requisitions. The end user assigned to this role may or may not be the requester of the requisition.

Department Requisition Approver 1	The department end user who is responsible for approving department requisitions. This approval step is intended as a first-level review/ approval by a program approver.
Department Requisition Approver 2	The department end user who performs a second-level review/approval for a user who will distribute/assign requisitions to a Department Buyer or Department Advanced Buyer.
Department Buyer	The department end user who verifies the requisition is ready to move forward in the procurement process, creates and updates POs, or sources a PO from a requisition or change orders and dispatch.
Department PO Processor	The department end user who creates POs and updates open POs.
Department PO Approver 1	The department end user who approves department POs. This approval step is intended as a first-level/program approval.

1.A5.3 FI$Cal Role Mapping Handbook

The FI$Cal Role Description Handbook provides greater detail for each FI$Cal end-user role related to the Purchasing process, including:

- Role Name
- Role Description
- Related Business Processes
- Role Responsibilities
- Relationships with other Roles

Refer to the Resources section at the end of this chapter for access to the FI$Cal Role Description Handbook.

Topic 6 – Deficiency Notices

1.A6.0 General

A Deficiency Notice is a formal mechanism to document non-compliance with Purchasing Authority standards. The purpose of this documentation is to aid state departments in taking appropriate corrective action.

State departments with purchasing authority may be cited for a deficiency resulting from, but not limited to:

- Purchasing Authority Reviews
- Non-compliance allegations
- DGS audit findings
- Bureau of State Audits (BSA) audit findings

The state department's Procurement and Contracting Officer (PCO) is responsible for providing responses to all inquiries and the Deficiency Notice.

1.A6.1 Allegations of Non-Compliance

The Purchasing Authority Unit (PAU) occasionally receives allegations of non-compliance with Purchasing Authority standards (standards include State policies, procedures, and laws pertaining to contracting/procurement). The PAU receives these allegations from a variety of sources such as suppliers or other units within the Procurement Division (PD). The PAU may be notified of non-compliance or deficiency issues by way of media coverage of a department's procurement, a response to an audit, or executive management may have been contacted with concerns. Allegations are researched by the PAU.

1.A6.2 Audit Findings

Every department granted purchasing authority undergoes audits conducted by DGS' Office of Audit Services, Bureau of State Audits, or other governmental entities. Departments are typically audited once every three years. When an audit is conducted, DGS/PD is notified. PAU analysts review these findings to determine whether or not a department is cited for a deficiency depending upon the severity of the results.

1.A6.3 Researching Allegations

As a result of a non-compliance report or an audit, the PAU may conduct a quality assurance review. The PAU will notify the state department's PCO of the allegation and ask for a response. The PAU may request that the department submit specific procurement files or may conduct an onsite review.

1.A6.4 Corrective Action Plan

In order to properly address deficiencies, the PAU may ask the department to produce their own Corrective Action Plan (CAP).

PAU will notify the department verbally and/or in writing of the appropriate timeframe for the CAP to be completed.

Topic 7 – Applying for New Purchasing Authority

1.A7.0 Requesting NEW Purchasing Authority

A state department that does not currently have purchasing authority must submit a request for purchasing authority in the system and must attach the Purchasing Authority Application (PAA) and required attachments (as noted on the PAA) to the request.

Refer to the Resources section at the end of this chapter for a link to the Purchasing Authority Application (PAA) and procedures on how to submit the request.

Review and approval processing time is approximately 30 days.

1.A7.1 Approval of a PAA

The Purchasing Authority Unit (PAU) will approve the PAA in the system. The PAU will add/modify the approved dollar values in the corresponding acquisition methods on the state department's system profile.

Once the PAA is approved, the department will receive a Purchasing Authority Approval Letter (PAAL) that specifies the approved purchasing authority categories and corresponding dollar thresholds.

PAALs will be electronically mailed to the department's PAC(s), with a copy to the department's PCO. If the department has not designated a PAC, the approval notification will be electronically mailed to the PCO.

For departments purchasing on behalf of other departments: It is the Primary department's responsibility to notify Secondary departments of the approval. Refer to Topic 8 of this Chapter for more information on primary and secondary departments.

1.A7.2 The Purchasing Authority Number

The purchasing authority number is assigned by the PAU upon approval of the PAA and is entered into the system by the PAU.

1.A7.3 Renewing Existing Purchasing Authority

Effective January 2016, departments do not need to renew their delegated purchasing authority on an annual basis. Departments that have been granted purchasing authority will be subject to annual reviews as described in 1.A1.6, *Purchasing Authority Reviews* of this chapter.

Topic 8 – Changes to Purchasing Authority

1.A8.0 General

The Purchasing Authority Change Request (PACR) is completed by departments that currently have purchasing authority and seek to change one of the following:

- Increase to dollar threshold(s).
- Change or update the Procurement and Contracting Officer (PCO) and/or Purchasing Authority Contacts (PAC) information.
- Add a "Secondary" department or changes to a "Secondary" department's information such as PCO designation or updates to contact information.

1.A8.1 When Must a PACR Be Submitted?

Increases to purchasing authority dollar thresholds can be submitted any time for certain Transaction Based Increase Requests and not more frequently than annually for General Increase Requests (see Topic 5, 1.A6.8).

Departments must submit a PACR within 30 days when:

- Designating a new Procurement & Contracting Officer (PCO).
- Changing any of the PCO's information.
- Designating a new Purchasing Authority Contact (PAC).
- Changing any of the PAC's information.
- A Secondary Department designates a new PCO or any of their PCO information changes.

Requesting authority to conduct acquisitions on behalf of another state department can be submitted at any time.

1.A8.2 Requesting an Increase to Purchasing Authority

Departments interested in requesting an increase in their purchasing authority dollar threshold(s) may request an increase by completing and submitting a Purchasing Authority Change Request to the Purchasing Authority Unit (PAU) at pams@dgs.ca.gov.

Two types of increases are available:

1. General Increase
   - This is an increase in purchasing authority for a specific category (i.e. "Competitive")
   - Once an increase is granted, it must remain for a minimum of three years before another increase request will be considered.

2. Transaction-Based Increase
   - This is a one-time increase for a single transaction/acquisition.
   - "Transaction-Based" increases may be requested at any time.
   - Transaction-Based increases will not be accepted in instances where the dollar threshold requested is in the "formal" range and where the current purchasing authority is in the "informal" range.

The department's purchasing authority must be in good standing to be considered for an increase. In good standing means that the department is reporting as required, does not have unresolved, severe, or continuous deficiencies, and has procurement policy and procedures that have been approved by the PAU. Additional requirements apply for General increase requests (i.e. additional staff, training, etc.) and for high dollar value Transaction-Based increase requests (i.e. department's internal legal counsel review).

1.A8.3 Conditions and differences for Increase Requests

If the department's purchasing authority is in good standing, there are three things a department must fulfill to be considered for an increase. It is recommended that the department discuss PACR requests with their assigned Purchasing Authority Analyst prior to completing the PACR.

1. **Ask.** Requests must be submitted utilizing the Purchasing Authority Change Request (PACR) form prior to advertising and/or release of the solicitation to suppliers. Requesting an increase typically adds time to the acquisition process due to the oversight required to determine eligibility and capability; departments must allow ample time.

2. **Qualify.** The PAU will conduct an initial inspection of the request utilizing information received from the department via the PACR and criteria found in the PACR Assessment (refer to the Resources Section, Section C, at the end of this chapter). The following are key factors of consideration:
   - Is the request complete and signed by the PCO?
   - Is the department's purchasing authority in good standing?
   - Is the department a good candidate (past performance and staffing are main factors)? For example, if a department's organizational structure/staffing does not support procurement professionals with expertise and training to conduct certain high dollar value acquisitions, they may not be granted an increase. In these cases, it is most efficient and in the best interest of the State to submit the request to PD One Time Acquisitions (OTA) to purchase on behalf of the department rather than request an increase in purchasing authority.
   - Has the department buying staff completed relevant and/or required training for the requested acquisition method?
   - Does the department have the expertise, experience, knowledge, and internal procurement policies and procedures to support the type(s), category, and dollar threshold limits of authority requested?
   - Does the acquisition method for the requested increase make good business sense and offer a sufficient level of competition? (Specific to Transaction Based Request)

3. **Demonstrate.** Once the initial assessment is completed, and it is determined that the request may move forward, the PAU will ask the department to demonstrate their ability to conduct an acquisition at the

requested dollar threshold. Refer to table below for the differences how agencies will demonstrate their ability.

TRANSACTION BASED INCREASE REQUEST*	GENERAL INCREASE REQUEST
If the PAU determines that documentation of a recent acquisition sufficiently demonstrated that the agency is capable of conducting an acquisition utilizing the requested acquisition method and at the requested dollar value, the PAU reserves the right to waive some or all of the oversight steps noted below for transaction based increase requests.* **Oversight Method - The agency will demonstrate capability by conducting the acquisition under PAU oversight. Internal PD and PAU procedures may involve oversight by another unit within PD such as the Multiple Awards Program Section (MAPS) for certain transactions executed under contracts that are managed by MAPS. Although another area in PD may be involved in the oversight process, the ultimate authority to increase purchasing authority is with PAU. Key components of the oversight review include the review and approval of the following: **Step 1:** The solicitation document, any changes, addenda, Q&As, etc. (PAU must approve prior to advertising and/or release to suppliers. The PAU will work with PD's Engineering Unit to seek approval of the specifications and evaluation criteria). PAU will verify competition was achieved, CMAS min # of suppliers participated, SB/DVBE, etc. before evaluation.	Demonstration of capability may include one of two methods: 1. **Oversight Method** - The department will conduct **two** acquisitions under PAU oversight as outlined in the left column. This method is applied when requesting an increase from the "informal" to "formal" range and can also be used to increase to a higher dollar value within the "informal" range. **OR** 2. **Audit Method**: The department will provide two copies of complete procurement files for acquisitions that are comparable in dollar value (transactions must be within 20% of the existing purchasing authority delegation) and within the same purchasing authority category as the requested increase. These acquisitions must have been completed within the last twelve months. PAU will audit the files and provide findings to the department. If significant findings exist, the increase will not be granted. The audit method is **not** used when a department is requesting an increase in "Competitive" purchasing authority from the "informal" to "formal" range.

Step 2: The Evaluation and Selection Report or other documentation showing how the bids/offers were evaluated (PAU must approve prior to award). **Step 3:** The final contract/agreement (PAU must approve prior to the start date and prior to the department executing the contract under their delegated purchasing authority).	

PD professionals will mentor buyers, document performance, and provide a performance assessment to the department.

All approved PACRs must be maintained in the department's procurement file.

Refer to Section C, Resources, for access to the PACR and the PACR Assessment.

Topic 9 – Procuring for Another Department (Secondary Department)

1.A9.0 Procuring for Another Department (Secondary Department)

Departments must obtain DGS/PD approval to purchase on behalf of another department. Submission of the Purchasing Authority Application (PAA) in the system is required for DGS/PD approval.

To assist small departments with their business needs, DGS/PD will consider PAAs for one department to procure for another. It is not a standard practice, nor is it intended to set a precedent, to allow one department to procure for another department. Rather, this practice may be allowed where needed by departments without procurement staff or when the procurement staff does not have the requisite procurement expertise.

1.A9.1 Requesting Authority to Procure for Another Department

Authority for one department to procure for another is not automatically granted by virtue of a department being granted purchasing authority. This authority must be requested. If approved, the authority will be granted to the procuring department for the same purchasing authority number(s), type(s), category/sub-category(ies), and dollar threshold limits for which the procuring department has been approved.

1.A9.2 Conditions for Requesting Authority to Procure for Another Department

Departments may request authority to purchase for another department and may be granted such authority under the following conditions:

- Both departments must reside within the same Agency.
- If the department for which procurement activities will be conducted does not have the requisite procurement expertise to conduct its own procurement activities, the reason for the lack of staff and/or staff expertise must be explained, as well as the reason(s) for not submitting the procurement activities to the DGS/PD.
- The procuring department must have current purchasing authority and a purchasing authority history that supports its ability to conduct procurement activities for another department.
- The purchasing authority will be granted to the procuring department for the same purchasing authority number(s), type(s), category/sub-category(ies), and dollar threshold limits for which the procuring department is currently authorized. The department granted purchasing authority to procure for another department is accountable and responsible for procurement activities conducted under that purchasing authority.
- Authority to procure for another department will not be granted to a department requesting new purchasing authority.

The procuring department will not have any departments procure for them under any circumstances. The procuring department must also conduct the purchase on behalf of the department and not sub-delegate that authority elsewhere. The department for which procurement activities will be conducted does not have authority to make any purchases.

Section B

Procurement Policies and Procedures

Overview

Introduction

This section is designed to assist department staff involved in developing their department purchasing authority policies and procedures manual.

Unless otherwise stated, the information and samples provided should be viewed as tools that can be used to provide broad guidance in the purchasing authority policy and procedure development process.

This section is not intended to dictate the techniques that should be used since the details of the process should suit the individual department's authority being addressed, the stakeholders affected; and the format and style standards established by the department policies, procedures, and business needs.

Topic 1 – Purpose of Department Procurement Policies and Procedures

1.B1.0 Statutory Requirement

PCC sections 10333 and 12100 grants the DGS the authority to delegate purchasing authority to departments based upon certain requirements as discussed in this manual. One critical requirement that best demonstrates a department's understanding of and its ability to manage and maintain a purchasing authority program is to establish and maintain current procurement policies and procedures in sufficient detail to support the department's approved purchasing authority for each type, category/sub-category and dollar threshold authorized by the DGS.

Additionally, departments' purchasing authority policies and procedures must also provide instruction to department users on other related purchasing activities such as receiving goods and service, supplier payment, reporting contractor performance, reporting requirements, and ensuring that departments contracting personnel are free from conflict of interest.

1.B1.1 Purpose

The purpose of requiring a department's purchasing authority policy and procedure manual, hereafter, referenced as a procurement manual, is to familiarize department employees (whether a buyer or an employee involved in an aspect of the department's purchasing activities) with department purchasing practices in a clear, common understanding of goals, benefits and policies as well as what the department expects with regard to performance and conduct. The results provide an overall description of the department's purchasing program.

This manual represents the minimum requirements for departments to obtain and maintain any type of purchasing authority. It addresses the statutes, regulations, policies, procedures, and best practices applicable to all facets of statewide purchasing authority.

Consequently, although a department may use this manual as the foundation or guide in developing their department procurement manual, it does not eliminate or substitute the requirement that the individual departments develop a procurement manual that identifies and communicates to personnel involved in department purchasing activities those policies and procedures that are specific to a department's internal processes.

1.B1.2 Policy vs. Procedure

Policies are the business rules and guidelines of a department that ensure consistency and compliance with the department's strategic direction. Policies are the guidelines under which Procedures are developed. Procedures define the specific instructions necessary to perform a task or portion of a Process. Procedures can take the form of a work instruction, a desk top Procedure, a quick reference guide, or a more detailed Procedure.

A department's procurement manual should include both purchasing policies and procedures. The policy section of the manual should discuss the purposes and objectives of the department's purchasing program while the

procedure section establishes and describes, using considerable detail, and the internal procedures of the purchasing program.

In simple terms, policy is "what" the department does operationally, and procedures are "how" it intends to carry out that policy.

Definitions
Policy: A written statement that clearly indicates the position and values of the department on a given subject. It contains rules and tells one what to do.
Procedure: A written set of instructions that describe the approved and recommended steps for a particular act or sequence of acts. It tells one how to perform a set of tasks in relationship to the department's policies on conducting business.

Example #1:
Policy: Pursuant to Executive Orders D-37-01and D-43-01 the Department of Motor Vehicles shall aggressively pursue an annual 25 percent certified Small Business and 3 percent Disabled Veteran business Enterprise participation level in departmental purchasing activities.
Procedure: Buyers will consult the department's Small Business Advocate to assist in locating certified SB or DVBE suppliers prior to preparing any type of solicitation document.

The table below identifies common distinctions between policy and procedures:

Policies	Procedures
Widespread application	Narrow application
Changes less frequently	Prone to change
Usually expressed in broad terms	Often stated in detail
Statements of "what" and/or "why"	Statements of "how", "when", and/or sometime "who"
Answers major issue(s)	Describes in detail the process

Topic 2 – Characteristics of Good Policies and Procedures

1.B2.0 Goal

The overall goal for any policy or procedure document is for the design to be simple, concise, easy to use, and consistent. There is an unlimited amount of "important" items that could be included in a procurement manual. It is up to each department to determine what is most necessary and relevant for their individual purchasing program.

1.B2.1 Degree of Detail

The degree of detail in the procurement manual is dictated by the nature of the individual department's purchasing authority. Although SCM addresses specific policies and procedures, a department's procurement manual should be all encompassing.

Staff responsible for organizing or developing the procurement manual should obtain their department's most current purchasing authority approval document and review Section A of this chapter to determine what minimum requirements must be included in their department's procurement manual.

The SCM was written from the perspective that the procurement office performs most of the purchasing activity and is the main repository of all documentation impacting its purchasing authority program. If that is not true of your department, it is expected that the department's procurement manual will address in detail any and all exceptions.

1.B2.2 Key Features

Key features of the department procurement manual can be located on the Policies and Procedures Manual Checklist found in Section C, Resources,at the end of this chapter.

1.B2.3 Good Policies

The policy portion of a department's procurement manual should discuss the purposes and objectives of the department's purchasing authority program. The policy section of the manual can take many forms dependent upon the size of the department.

A small department could include most of the significant policies that the department's buyers and users may need within a few pages, whereas a large department may already have an established administrative manual(s) that may include procurement policies. In the latter case, the department has to determine how the applicable information will be made accessible to buyers and users.

Whatever the case may be, procurement manual developers should obtain and review their department format and style standards to ensure compliance with existing department requirements.

Refer to Section C, Resources, at the end of this chapter to view a sample policy format.

1.B2.4 Good Procedures

Good procedures establish and describe internal processes in sufficient detail to answer questions before they're asked. Consider the Who, What, Where, How, and Why of writing theory.

Basically, a procedure section of a procurement manual prescribes all the step-by-step processes of each procurement approach within a given purchasing authority type from the origin of a user request (requisition) to the final conclusion of a project or disposition of an item. This follows a natural sequence of events from requesting an action through any post award activities. Internal procedures not only cover the procurement approach beginning to end, but also should include how to maintain ethical relationships with contractors.

1.B2.5 Writing Style

Write procedures at a level of detail that is appropriate for the intended users. Procedures should include detailed, step-by-step instructions for completing each purchasing activity phase, and simple enough for a new employee to understand.

The table below identifies some writing characteristics and considerations that should be taken into account when developing and writing procedures.

Writing characteristic	Considerations
Accuracy	• Is the data current, complete, correct, and relevant? • Is fact separated from opinion?
Clarity	• Documents must be easy to read and understandable. • Do not assume the reader knows something. • What is the most systematic approach to achieve the procedures objectives? • Is it assembled well? • Will personnel misunderstand or misinterpret the procedure? • What are the most common errors made or misunderstandings?
Complete	• Has assistance and input been obtained from all sources available? • Will the procedure provide enough information to ensure understanding? If not, what further information is needed?
Concise	• What specifically is required? • Be direct and to the point. • Use active voice. • Use short sentences and simple words. • Check grammar and spelling.

Flowcharts and checklist	• Flow charts and checklists can be handy tools to help get information organized. • Assist in providing staff with a quick visual concept to the overall work flow. • Tends to provide a general overview of touch points that a document or process may pass through. • Does not replace a procedure but complements the details of the procedure.

1.B2.6 Tips for a Useful Manual

Preparing the department's procurement manual is probably the most time consuming portion of developing a quality purchasing authority program. The design should be determined by the department's needs and organization.

Refer to Section C, Resources, section at the end of the chapter to access a list of tips for developing a procurement manual and the Procurement Policies and Procedures Manual Checklist used by PAU in reviewing department's policies and procedures.

Section C

Resources

Chapter 1 Resources

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C		
Conflict of Interest (COI) Statement Form	PDF	
F		
Fair Political Practices Commission Webpage	Link to Webpage	
O		
One-Time Acquisitions Webpage	Link to Webpage	
P		
Policies and Procedures Manual Checklist	Word	
Policy Format Sample	PDF	
Purchasing Authority Application	Word	PDF
Purchasing Authority Approval Letters	Link to Webpage	
Purchasing Authority Assessment Form	(Under Construction)	
Assessment Tool	(Under Construction)	
Purchasing Authority Change Request (PACR)	Word	PDF
Purchasing Authority Change Request Assessment Form	Word	PDF
R		
Role Description Handbook – FI$Cal	PDF	
T		
Tips for Developing a Useful Procurement Manual	PDF	

Chapter 2

Procurement Planning

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Chapter 2
Procurement Planning

Overview

Introduction

The purpose of this chapter is twofold, (1) The first is to describe the role of the buyer, including conduct, ethics and good business practices during and after the procurement process, and (2) The second is to describe the preliminary considerations and activities that ensure the success of any procurement effort.

Section A

Getting Started

Introduction

Knowing the rules and applying them appropriately throughout the acquisition process is the key to executing any procurement activity.

Buyers will be successful in their procurement activities when they:

- Know and follow the laws and rules applicable to state purchasing,
- Correctly use the appropriate acquisition approach, and
- Are properly trained

Topic 1 – The Buyer's Role

2.A1.0 Fiduciary responsibility

Buyers have a fiduciary responsibility to California's citizens and taxpayers to protect the state's interest as a whole, to place the state's interest above their own interests, to safeguard the state's resources.

The person signing the purchase document certifies, on personal knowledge, that the contract for purchasing the items specified is issued in accordance with the procedures prescribed by the laws governing the purchase of such items for the State of California and is fully compliant with all legal requirements.

2.A1.1 Responsibility over public funds

Buyers involved in procurement activities are either directly or indirectly spending public funds and subject to public scrutiny. Consequently, buyers specifically are reminded to:

- Act responsibly.
- Conduct business honestly.
- Avoid wasteful and impractical purchasing practices.
- Avoid real or perceived conflicts of interest when conducting business on the state's behalf.
- Advise others of acceptable business practices, conflicts of interest and respected standards of ethical and moral behavior during any procurement activities involving their participation.
- Seek to maintain and continuously improve their professional knowledge, skills and abilities.

2.A1.2 Watchdog

Buyers also act as a caretaker and/or watchdog over the procurement process, ensuring the needs of the department are met within state laws, regulations, executive orders, policies and procedures, while maintaining impartiality, allowing for open competition, reducing waste, preventing improper activities and avoiding conflicts of interest before, during and after the procurement process.

Topic 2 – Gifts and Gratuities

2.A2.0 Accepting gifts and gratuities

Government Code Section 19990 establishes the authority for departments to create Incompatible Activity Statements for employees to follow. Buyers are responsible for knowing their department's policies regarding incompatible activities and in terms of best practices, buyers and employees involved in the procurement process, whether directly or indirectly, are discouraged from participating in the following activities:

- Accepting directly or indirectly any gift, including money or equipment, meals, lodging, transportation, entertainment, service, gratuity, favor, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business with the department you represent.
- Using their position in state government to bestow any preferential benefit on anyone related to them by family, business or social relationship.
- Situations that create the appearance of questionable or unethical practices.

2.A2.1 Consider the consequence

Buyers, after reviewing the incompatible activities policy, are encouraged to answer the following questions when dealing with suppliers who may offer gifts or gratuities:

- Will I violate a law or department policy if I accept this gift?
- What is the intent of the gift?
- Do I or my relatives or friends benefit from the gift?
- Would I mind seeing acceptance of the gift publicized in the news media?
- How will accepting this gift be interpreted by others?

2.A2.2 Avoid making a gift of public funds

The Constitution of the State of California prohibits any gift of public funds. All expenditures of public funds must support the Department's function, purpose, and benefit the state.

This prohibition extends to any advance payments or pre-payments made to a contractor before work has been performed or before all goods or services have been accepted.

Per the Governor's press release dated 2/18/11, all state agencies and departments must stop spending taxpayer dollars on free giveaway and gift items (such as key chains, squeeze toys, pens, hats, trinkets, shirts, cups and other gift items).

2.A2.3 Considerations before accepting free or loaner equipment from suppliers

Offers from suppliers of goods or services without cost or obligation to the state should not be accepted. If a decision is made contrary to this recommendation, before accepting any supplier's goods and/or services offered at no cost or obligation, the department must:

- Consider the perception of the acceptance to other suppliers (i.e. how does the department remain fair and impartial if a decision is eventually made to solicit the product?)
- Document the agreement by execution of a purchase document with language indicating the state has no further obligations or hidden costs associated with acceptance.

Refer to Section G, Resources, at the end of this chapter to access links.

Topic 3 – Procurement File

2.A3.0 Procurement File

A Procurement file is required for every acquisition. A procurement file can be defined as a paper file, to be kept locally in the procurement office.

Each state agency must have internal policy and procedures outlining where buyers should file required procurement documents.

Special care should be paid to availability of confidential materials, whether internal or external origins.

Section B

Formulating the Acquisition Approach

Introduction

There are four major areas to consider when planning a purchase activity. Buyers must correctly determine:

- The estimated dollar value of the procurement
- The class of purchase (IT vs. non-IT as well as goods vs. services)
- Pre-procurement review and approvals necessary by state purchasing policies and departmental policies and procedures
- The most appropriate acquisition approach (i.e. competitive, noncompetitive, an existing sources such as a Leveraged Procurement Agreement (LPA). Refer to Section G, Resources, at the end of this chapter to access a link titled “Acquisition Methods List”.

This section provides the necessary information to begin the planning and scheduling of the procurement process.

Topic 1 – Acquisition Planning

2.B1.0 Start planning early

Acquisition planning commences with a legislated directive or when a concept or a need is identified.

Acquisition planning includes identification of:

- What is needed
- When it is needed
- How it will be acquired and by whom
- Approvals needed.

Planning the purchase should begin at the earliest practicable time. The amount of time necessary for the planning process is dependent upon the dollar value, risk, complexity, and criticality of the proposed purchase. In addition, the purchase must be classified (IT/non-IT and goods/services) and a decision made on the acquisition approach (competitive, non-competitive, or using an existing source such as a state program or an LPA).

2.B1.1 Purchase request review

The first step in conducting a procurement is the initial review of a purchase request (purchase requisition, etc. depending on what the department's policies and procedures are regarding the necessary documentation to be submitted to the procuring office). Reviewing the request in terms of the following information will assist in determining any impact in relationship to procurement planning and scheduling activities.

Departmental review and approvals:

- Have the proper approvals/signatures been secured?
- Is the request in compliance with equipment standards?
- Does the request require any department technical review?
- Is there documentation in sufficient detail to support and justify conducting the procurement?
- Are there any program schedule requirements, special delivery instructions, time constraints, etc.?

Funding authority:

- Is the procurement scheduling and planning effort limited by:
  - Budgetary constraints?
  - Federal funding limitations and/or restrictions?
  - Availability of current and future year funding?
  - Timing constraints impacted by availability of fiscal year funding?

External reviews, waivers and/or approvals:

- What is required by law, regulation or policy?
- Refer to Section C of this chapter for details for external reviews and approvals.

Coordination within the department for a particular project:

- Have all impacted issues been addressed?
- Are corresponding program areas on board (so that nothing is overlooked – either from a technology perspective or a program perspective).

2.B1.2 Legal participation

Legal participation should be sought as early in the procurement as possible. Purchasing activities that benefit from legal staff participation may include but are not limited to the following:

- Purchases that have a history of protests or litigation.
- Large scale IT integration projects.
- Conflict of interest issues.
- Follow-on contracting issues.
- In any purchase where suppliers are using an attorney.

2.B1.3 Determining the acquisition approach

The following questions will assist in determining the best acquisition approach to meet needs:

1. What is the Statement of Work?
2. Are specifications required?
3. Is the acquisition an emergency purchase as defined by Public Contract Code Section 1102, Section 12102 for IT, or Public Contract Code 10340 for non-IT?
4. Can civil servants, as opposed to private companies, satisfactorily perform the services?
5. Can another state department provide the product or service through an interagency agreement or alternate contracting means (e.g. surplus)?
6. Does the purchase require the use of any mandatory purchasing processes such as Statewide Contract, CALPIA or use of mandatory LPAs?
7. Is the request within the scope of the department's approved purchasing authority?
8. Can you consolidate other requests for similar goods or services into a single purchase?
9. What is the department's total need for acquiring the goods or services over the next 12-month period of time and can the acquisitions be reasonably consolidated to maximize purchasing power?
10. What available purchasing approach can effectively meet the department's needs at the least cost in terms of time and resources?
11. Can the functional requirements of the request be met through an LPA (i.e., CMAS, Master Agreement, Statewide Contract, State Price Schedule, etc.)?
12. Can the department's procurement needs and purchasing goals both be met by contracting with a California Certified Small Business (SB) or DVBE supplier utilizing the SB/DVBE Option acquisition method? If there are no certified SBs or DVBEs that can be solicited, communicate the need to the Business Development Program Manager and Certification and Outreach Branch Chief.
13. Is there a known supplier market and can the acquisition best be met through open competition?
14. Is the request so unique that no competition exists and the needs of the customer can only be met through a non-competitively bid (NCB) contract? (For purchases exempt from the NCB process, refer to Chapter 6).
15. What risk factors are inherent to the purchase and what steps can be taken in advance to mitigate them?

16. Does the purchase need to be financed or leased? (See Chapter 9 for more detail)

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Topic 2 – Classifying the Purchase

2.B2.0 Importance of properly classifying purchases

The ability to properly classify purchases enables correct execution of procurements.

A buyer must:

- Apply the appropriate laws, regulations, policies, and procedures (e.g., selection of the correct solicitation type, identification of the correct advertising threshold)
- Determine if department has the appropriate purchasing authority to conduct procurement or if DGS/PD or Department of Technology is required to conduct the procurement.
- Secure additional approvals and/or waivers if required.

Inaccurate classification of a purchase may result in:

- Program or project delay
- Waste of time and effort, ultimately wasting taxpayer money
- Loss of funding
- Disputes, protests, and/or lawsuits
- Illegal contracts

2.B2.1 Determine the main purpose Non-IT vs. IT

To determine whether a contract is for IT or non-IT, the buyer must consider the predominant purpose or value of the purchase and whether IT skills and knowledge are involved as the primary purpose of the contract or whether such knowledge or skills are used to further an overarching purpose.

Many items depend on IT to operate, yet they may not be classified as IT.

Example 1: Ten personal computer (PC) keyboards are purchased for replacement stock to issue when an existing keyboard fails. The purchase of PC keyboards is classified as IT. A PC processes data electronically and the keyboard is a critical component to the operation of the PC. Consequently, the purchase is made under the IT purchasing authority.

Example 2: A department purchases a vehicle for enforcement use. The vehicle has been fitted with an electronic mapping system and telecommunications equipment. The purchase is made under the non-IT purchasing authority after securing required approvals from DGS Office of Fleet and Asset Management. The features of the car are secondary to the purpose of the vehicle, which is a means of transportation.

2.B2.2 Distinguishing goods from services

When determining if an acquisition is for goods or services, the following concepts should be considered:

- Does the contract have as its sole or main purpose the acquisition of tangible items, such as equipment, parts, supplies or other merchandise?
- What is the main value of the contract – the good or the service? If the main value is a good with minimal or no services, it is handled as a good.
- If the main value is the service, the transaction should be treated as a service contract.
- Non-IT services included with the purchase of non-IT goods may not exceed $4,999.99 and must be directly related to the purchase of the goods, such as set up or installation. Non-IT services such as maintenance is not allowed and must be procured separately under the SCM, Vol. 1 unless available on a leveraged procurement (LPA) contract.
- Large-scale system integration projects are classified as IT services,

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2.B2.3 Example of goods vs. services

Example #1:
A business solution is required that uses specialized software. Currently a commercial-off-the-shelf (COTS) product is not available to meet the department's need. The department's business needs can be met by developing a customized software application. The main purpose of the purchase is the technical expertise that creates a software product to satisfy the department's business problem. The request would be treated as an IT service.

Example #2:
A manager has requested new furniture for the office. The buyer needs to purchase the new furniture and acquire the services necessary to position that furniture in the office. The main value is the furniture. The request would be treated as a non-IT goods contract.

2.B2.4 Help for classifying purchases

Departments that need assistance to determine the classification of a purchase after reviewing the available resources should first consult with their department's Purchasing Authority Contact (PAC). The following may also be contacted for applicable situations:

- Purchases conducted under delegated purchasing authority: PAMS@dgs.ca.gov
- Purchases conducted by DGS/PD: DGS/PD/One Time Acquisitions
- Purchases made as part of a reportable IT project: The California Department of Technology (CDT)

2.B2.5 Final Authority

The ultimate decision for the classification of acquisitions resides with DGS Deputy Director, Procurement Division.

Topic 3 – Considerations During the Planning Process

2.B3.0 Promotional materials

Prior to conducting a purchase for promotional materials, written justification must be kept in the procurement file supporting how the purchase for promotional materials meets the department's mission and business needs. Written justifications should include a description of the type of event(s) and how the promotional material(s) will be used.

2.B3.1 Requests for reasonable accommodation purchases

A purchase made in response to a request for reasonable accommodation does not preclude adherence to state procurement laws, regulations, executive orders, and policies. However, when conducting a procurement to fulfill a reasonable accommodation request, buyers must be mindful of the need to expedite the purchase, regardless of the purchase class or approach used.

2.B3.2 Public Works

A public works component may be allowed only when it is incidental to the overall project requirements. Any portion of a contract that has a public works component that exceeds $1,000 must meet the prevailing wage requirements of Labor Code Section 1771 and California State Contracting Licensing Board requirements for public works.

For information on Public Works Contracts, see SCM Vol. 1.

2.B3.3 Contracted Personnel services

Careful analysis must be given when determining whether to use contracted personnel versus civil service positions within state government. Contracting for personal services, in lieu of using civil service personnel is permitted only if the standards outlined in Government Code Section 19130, subdivision (a) or (b) are met.

Government Code Section 19130 (a) permits contracting for personal services to achieve cost savings. Any department proposing to execute a contract based on cost savings to the state as justification for not using civil service personnel, must first notify the State Personnel Board (SPB) of its intention.

Government Code Section 19130 (b) permits contracting for personal services when requirements are met and are subject to review at the request of an employee organization representing state employees.

- Departments must provide to the designated exclusive representative copies of executed personal services contracts, RFPs, and IFBs, that call for personal services found in the bargaining unit. The designated exclusive representatives are listed in the Policy Memo 2012-014 - "Contracting Out Update" on CalHR's website, accessible in Section G, Resources, at the end of this chapter.

- For each personal service and/or consulting service transaction,

regardless of purchasing approach or category utilized (i.e. competitive, LPA, etc.), the department must prepare and retain in the procurement file all data and information relevant to the contract and necessary for a specific application of standards set forth in Government Code Section 19130 in the event that the CalHR's review is requested. For standards of review see Public Contract Code Section 10337.

Government Code Section 19130(c) requires that all persons who provide services to the state under conditions that constitute an employment relationship shall, unless exempted by Article VII, Section 4 of the California Constitution, be retained under an appropriate civil service appointment. Therefore, state law and policy require that each department's contract for services with individuals be executed and administered in a manner consistent with the establishment of an independent contractor status when a civil service appointment is not intended.

Pursuant to Government Code Section 19135, if a contract is disapproved by SPB or its delegate, a department shall immediately discontinue that contract unless ordered otherwise by SPB or its delegate. The department shall not: (1) circumvent or disregard SPB's action by entering into another contract for the same or similar services or, (2) to continue the services that were the subject of the contract disapproved by the department. A department ordered to discontinue a contract shall serve notice of the discontinuation of the contract to the vendor within 15 days from SPB's final action unless a different notice period is specified. A copy of the notice also shall be served on SPB and the employee organization that filed the contract challenge.

Refer to Section G, Resources, at the end of this chapter to access California Law.

2.B3.4 Leasing equipment

Departments may acquire equipment by lease or purchase. The decision to lease or purchase should be the result of a careful analysis of all factors involved, especially the total cost to the state for the expected period of use.

Purchase costs are usually lower than lease costs if equipment is used for an appreciable portion of its useful life. One major disadvantage of consummating a purchase is that the buyer may be "locked in" to the acquisition if a major breakthrough in the technology becomes available. Leasing provides a measure of flexibility. This method is frequently used when the department acquiring the equipment is unable to forecast its future need either due to lack of planning data or to unresolved decisions outside of its control.

Departments may lack budgeted funds sufficient for outright cash purchases of equipment and cite this as a reason to lease. Such funding limitations need not preclude the purchase of equipment on conditional sales or installment payment contracts. There are unique tax advantages available to suppliers and lending institutes selling to governments that allow them to quote special low interest rates on conditional sales contracts. The combined total of both lower equipment costs and lower interest charges on conditional sales contracts often show purchase to be less expensive than leasing over time periods of three to five years or more.

2.B3.5 Cost analysis – lease vs. purchase

Before initiating the acquisition, departments are expected to perform a cost analysis of leasing versus purchasing. Departments should follow the directions contained in SAM section 3700 et seq., in making cost analyses.

Cost analyses are to be based on the "contract or program life" of the items being required. "Contract or program life" is the anticipated life cycle of the requirement for which they are to be used, less any reasonable estimated length of time when a substitute capability will become available at a lesser cost. "Contract or program life" is not to be confused with "usable" or machine life. Modern electronic equipment can be expected to operate within design specifications for up to ten years when adequately maintained. This period is their "usable" or machine life.

When the lease/purchase analysis indicates leasing is the least costly acquisition method, departments are to enter into such a contract in accordance with the procedures set forth herein and SAM section 3700 et seq., except when:

- Insufficient funding is available for either outright or deferred purchase; or
- A short period of operational experience is desirable to provide validity of a system or equipment design with which there is no previous reliable experience.

The terms of such contract should be equal to the predicted "contract or program life."

The completed lease versus purchase analysis form must be uploaded to the FI$Cal system and kept in the procurement file.
Use of any financing arrangement other than Golden State Financial Marketplace (GS $Mart) is prohibited without prior approval from Department of Finance per Budget Letter 06-27. See Chapter 8, Disbursements, Financing and Payment Programs.

Refer to Section G, Resources, at the end of this chapter to access the Lease vs. Purchase Analysis form and a legible copy of the lease versus analysis form as shown in SAM section 3700 Appendices (A-1).

2.B3.6 Purchase option credits

Many lease contracts allow the accrual of monetary credits which the contractor agrees may be applied toward the eventual outright purchase of the equipment being leased if the user so elects. If the probability of exercising a purchase option is remote, the inclusion of purchase option credits in a bid evaluation process will distort the evaluation to a point where it is likely that the bid with the lowest cost will not be selected, and the state will incur higher costs than it would if the winning bid was selected on the basis of the rent alone. Purchase option credits should be cost evaluated in a lease contract only if there is reasonable probability that a purchase option in a lease contract may be executed. Otherwise, purchase option credits are to be excluded from the cost evaluation.

2.B3.7 Lease purchase financing

All state departments and tax funded local government agencies are permitted to enter into either installment purchase agreements (commonly referred to in the industry as “lease purchases”) or financed leases as described in the Uniform Commercial Code, Section 2A (commonly referred to as “operating leases”), via DGS’s State Financial Marketplace ,which includes “GS $Mart” or “Lease $Mart.”

See Chapter 8 for more information on the Golden State Financial Marketplace.

2.B3.8 Extensions or renewals of IT activity contract

If a "contract or program life" is accurately estimated at the time of the initial acquisition, there will normally be no need for extending the agreement. To enable an orderly termination of contracts, which may include supplier notifications as well as internal management adjustments, or to provide lead time for renewing or rebidding the contract, the following procedures apply:

- Each IT equipment and/or equipment maintenance; personal services; and IT processing and support services contract is to have a scheduled review, which should be concluded no later than six months prior to the scheduled expiration date, to determine whether the contract can be permitted to expire and, if applicable, any leased equipment returned to the supplier. (This is general guidance. The amount of lead time may be as much as 12 months or more depending upon the scope of the contract. A rule of thumb that may be used is the amount of time required to plan and conduct the original procurements.)
- If it is determined that there is a continuing need for the goods or services provided under the contract, the department should document those reasons and re-estimate a "contract or program life." The department should conduct a lease/purchase analysis for the new period if hardware is involved.
- If the lease/purchase analysis or other considerations indicate that a purchase is more desirable than a lease, action should be initiated to affect the purchase.
- When a lease/purchase analysis indicates that leasing is more appropriate, contracts may not be extended with the same supplier unless it can be demonstrated that the incumbent supplier's prices are competitive or there is no alternative source. To determine if prices remain competitive, the market is to be tested by obtaining quotes from a reasonable number of suppliers, and from the incumbent supplier. The supplier quotations should be in writing and placed with the contract file. If there is no alternate item or source, a statement supporting this fact is required in the contract file.
- If it appears that extension of the lease with the incumbent supplier is the most appropriate course of action, approval of such an extension should be requested from DGS/PD. The analysis supporting such extension and all supporting documents must accompany such requests. If however, a lease is appropriate but continuation with the incumbent supplier is not, the department must immediately contact DGS/PD to initiate a new competitive procurement.

2.B3.9 Blanket purchases

A blanket purchase is an acquisition mechanism established for no longer than one year with one supplier where the quantities of specific products are not known. In these cases, the department has determined that a group of goods from a specified supplier is necessary to the program, but the department must be flexible when determining the instant need.

In no case may a blanket purchase exceed $4,999.99 per transaction, unless the blanket purchase is issued under an LPA contract whereby the purchase document dollar cap is limited to the LPA contract dollar threshold. The FI$Cal system will track each order placed against each blanket purchase document and each order will be accessible as part of the procurement file. The department must document in the procurement file why it is in the state's best interest to execute a blanket purchase.

2.B3.10 Term purchases

Departments granted purchasing authority to conduct competitive solicitations may establish term purchase contracts through a competitive bid process.

A term purchase establishes a purchasing mechanism for:

- A specified period of time – not to exceed 36-months.
- A specified list of products and quantities.
- Items a department acquires on a routine basis.

Buyers conducting a competitive solicitation for a term purchase must adhere to the following:

- A competitive bid must be conducted whenever the dollar amount is $5,000.00 or greater.
- The solicitation must clearly identify contract start and end dates and the contract period may not exceed a 36-month period.
- The solicitation must clearly state the aggregate amount of the contract, but in no event may it exceed a department's approved purchasing authority limit for goods, as applicable to the procurement.
- The solicitation, the resulting contract or the cumulative value of orders released against the contract may not exceed the amount of a department's approved purchasing authority for goods, as applicable to the procurement.
- The solicitation must clearly state a maximum number of units that may be purchased.

<u>Example:</u>
10 units will be purchased upon award, and the department reserves the right to purchase up to 10 more units during the contract term.

Evaluation and award must be based upon the total quantities per line item to be purchased during the contract term. Using the above example the evaluation and award would be based upon 20 units.

1. The solicitation must clearly state the delivery terms over the course of the contract term.
2. The solicitation must clearly define whether or not pricing is firm over the course of the contract or if allowances will be made for price increases or decreases.
3. The department must keep a running total of orders placed against

each term purchase contract in the procurement file.

A term purchase is not a suitable solicitation approach if a department is unable to commit to the stated quantities.

2.B3.11 Statewide Pharmaceutical Program

DGS implements and administers a Statewide Pharmaceutical Program, also referred to as the Prescription Drug Bulk Purchasing Program, established by Government Code §14977-14982. The California State Departments of Corrections and Rehabilitations (CDCR), Department of State Hospitals (DSH), and Developmental Services (DDS) and other state agencies under DGS authority mandated to participate in this program. Other state, district, county, city, municipal, or public agency governmental entities may elect to participate in this program.

DGS works in conjunction with California Pharmaceutical Procurement Collaborative (CPPC) to implement and administer a Statewide Pharmaceutical Program and strategies to manage escalating prescription drug costs. Representation on the CPPC is appointed by the entities participating in the Statewide Pharmaceutical Program.

Please review the DGS/Pharmaceutical Acquisitions Section Website accessible in Section G, Resources, at the end of this chapter for more information regarding the Statewide Pharmaceutical Program.

Topic 4 – Ineligible Businesses

2.B4.0 Ineligible Business

The state cannot solicit offers from, award contracts to, or renew, extend, or modify, a current contract, or subcontract with a business identified as noncompliant with state laws. Check for both, primes and subcontractors (as applicable):

- When creating mail lists, or prior to soliciting bids, or requesting offers
- During the evaluation of competitive bids, or assessment of offers
- Prior to creation of amendments, or other purchase documents

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2.B4.1 Plastic Trash Bags

Public Resources Code (PRC) section 42290 et seq. is collectively referred to as the "Recycled Content Plastic Trash Bag Law." The law requires that plastic trash bag manufacturers and wholesalers certify their compliance with the law. Manufacturers and wholesalers who are non-compliant with the Plastic Trash Bag Law cannot contract with the state regardless of the product being provided in the contract (i.e. plastic trash bags, janitorial supplies or services, or any other products or services). Businesses found not to be in compliance are deemed ineligible for:

- Award of any state contract or subcontract
- Renewal, extension, or modification of an existing contract or subcontract

A listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the California Department of Resources Recycling and Recovery (CalRecycle) website.

If a supplier or bid is rejected due to ineligibility, documentation must be placed in the procurement file, identifying the reason, including a printout of the CalRecycle web list.

Refer to Section G, Resources, at the end of this chapter for a link to CalRecycle's webpage.

2.B4.2 Loss Leader language

Pursuant to Public Contract Code Section 12104.5(b)(1) all RFPs for IT goods and/or services, and pursuant to Public Contract Code Section 10302(b)(1), every solicitation for non-IT goods, shall contain the following statement:
"It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code."

The above statement shall be deemed to be part of a solicitation even if the statement is inadvertently omitted from the RFP (Pub. Cont. Code § 12104.5(b)(4)) or solicitation (Pub. Cont. Code § 10302(b)(4)).

EXCLUSIONS:
The following acquisitions do not require loss leader language:

- Acquisitions made using Leveraged Procurement Agreements
- Acquisitions made using Fair and Reasonable pricing
- Acquisitions made using the SB Option or DVBE Option

2.B4.3 Non-discrimination (Non-IT goods)

Any employer who wishes to contract with the state for non-IT goods is subject to the provisions of Government Code Section 12990 relating to discrimination in employment. Contractors that do not meet the provisions are not eligible to contract with the state for non-IT goods. Ineligible contractors can be found in the California Regulatory Notice Register, accessible in Section G, Resources, at the end of this chapter.

EXCEPTION:
The requirements of Government Code Section 12990 do not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

2.B4.4 Iran Contracting Act

Pursuant to the Iran Contracting Act of 2010 (Public Contract Code sections 2200 through 2208 are "the Act"), vendors are ineligible to bid on, submit a proposal for, enter into, or renew any contract with the state for goods or services of one million dollars ($1,000,000) or more if the vendor engages in investment activities in Iran, as defined in the Act. The Act requires that DGS establish and periodically update a list of ineligible vendors.

Also, pursuant to the Act, financial institutions are ineligible to bid on, submit a proposal for, enter into, or renew any contract with the state for goods or services of one million dollars ($1,000,000) or more if the financial institution extends credit, as defined in the Act, to a business identified on DGS list of ineligible vendors that will use the credit to provide goods or services in the energy sector in Iran.

Prior to submitting a bid or proposal and prior to executing any state contract or renewal for goods or services of one million dollars ($1,000,000) or more, a vendor must certify that it is not on the list of ineligible vendors (refer to Section G, Resources, at the end of this chapter) prohibited from doing business with the State of California. During the bid evaluation, it is the buyer's responsibility to check the list of ineligible vendors to confirm that the bidder is not on that list. Also financial institutions must certify that they are not extending credit to an ineligible vendor as described in the Act. This certification requirement applies regardless of the procurement approach, method, or solicitation format used, including, but not limited to: Request for Proposals, Invitation for Bids, and non-competitive awards.

A sample of a code-compliant document that satisfies the Act's certification requirements is available in Section G, Resources, at the end of this chapter. Departments that elect to develop their own processes or documents to suit their business needs should work with their legal counsel to ensure compliance with the Act.

The Act provides exceptions to the certification requirement, see Public Contract Code Sections 2203(c) and (d) for additional information regarding the exceptions.

2.B4.5 Prohibition on tax delinquents bidding

Pursuant to the Public Contract Code section 10295.4, effective July 1, 2012, persons or companies identified as the largest tax delinquents by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) are ineligible to enter into any contract with the state for non-IT goods and IT goods or services. Any contract entered into in violation of Section 10295.4 is void and unenforceable.

Prior to executing any state contract or renewal for non-IT goods or services, the contracting department must verify that the contractor is not on a prohibited list by checking both the FTB and BOE websites. This requirement applies regardless of the procurement approach, method, or solicitation format used, including, but not limited to: Request for Proposals, Invitation for Bids, and non-competitive awards. Departments that elect to develop their own processes or documents to suit their business needs should work with their legal counsel to ensure compliance with code.

There are no exceptions to these prohibitions.

Refer to Section G, Resources, at the end of this chapter for the lists established by FTB and BOE.

2.B4.6 Darfur Contracting Act (Non-IT Goods and Services)

Pursuant to Public Contract Code sections 10475 through 10481, for acquisitions of non-IT goods or services, departments must require vendors to certify whether they are a scrutinized company. This applies regardless of the procurement approach, method, or solicitation format used including, but not limited to: Formal Bids, Informal Bids, Request for Proposals, Invitation for Bids, Non-Competitive Bids, the SB/DVBE Option, and under $5,000 fair and reasonable pricing.

A sample of a code-compliant document that satisfies the Act's certification requirements is available in Section G, Resources, n at the end of this chapter.

Departments that elect to develop their own processes and/or documents to suit their business needs should work with their legal counsel to ensure compliance with the Act.

The only exception to departments obtaining this information is for contracts awarded using DGS Leveraged Procurement Agreements (LPAs).

Effective January 1, 2009, procurements for non-IT goods or services must address the requirements of this Act. The Act is intended to preclude state agencies generally from contracting with *SCRUTINIZED* companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

A *SCRUTINIZED* company as defined in Public Contract Code Section 10476 are ineligible to, and cannot, bid on or submit a proposal for a contract with a state agency for Non-IT goods or services (Public Contract Code Section 10477(a)). Public Contract Code Section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a SCRUTINIZED company in order to submit a bid or proposal to a state agency. A SCRUTINIZED company may still, however, submit a bid or proposal for a contract with a state agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code Section 10477(b).

Topic 5 – Freight and Shipping

2.B5.0 Transportation Management Unit (TMU)

The Transportation Management Unit (TMU) was established in accordance with the provisions of Government Code section 14920 et seq. Departments shall contact TMU (916) 376-1888 to determine the cost and routing of freight whenever the weight of the purchase is 100-lbs or more and Free on Board (F.O.B.) Destination, Freight Prepaid is not used. The TMU also reviews and approves freight invoices in accordance with SAM section 3851, 3852 and 8422.1. See Chapter 9, for additional information.

Refer to Section G, Resources, at the end of this chapter to access the TMU website.

2.B5.1 Freight and Shipping Terms

The shipping term Free on Board (F.O.B.) identifies the location where title to the goods changes from the seller (supplier) to the person receiving the good (state).

There are several different types of F.O.B. Refer to the table below:

TYPE	DEFINITION
F.O.B. Origin	Unless otherwise qualified in the F.O.B. clause, the buyer is responsible for freight charges.
F.O.B. Destination	Unless otherwise qualified in the F.O.B. clause, the seller is responsible for freight charges.
Origin/Destination Freight Collect	Buyer pays and bears the freight charges.
Origin/Destination Freight Prepaid	Seller pays and bears the freight charges.
Origin Freight Prepaid & Add	Seller pays and invoices buyer for freight charges
Destination Freight Prepaid & Add	Seller pays the freight and add the freight charges to its invoice to the buyer
Destination Freight Collect & Allowed	Buyer pays freight charges and deducts the amount from seller's invoice.

When any good is purchased F.O.B. Destination, Freight Prepaid or F.O.B. Destination, Freight Prepaid/Add, the title to the good remains with the supplier until it is delivered by the carrier, in original or acceptable condition, to the person receiving the good (state). If loss or damage occurs in transit, the seller is obligated to replace the good or otherwise compensate the state.

Shipping terms for International shipments should be Delivered Duty Paid (DDP). Import Costs, duties, taxes, value added tax or any other transportation or customs costs will not be paid by the state unless expressly included and itemized in the Contract.

Most state purchases will be acquired using the term F.O.B. Destination, Freight Prepaid. Leveraged Procurement Agreement (LPA) purchase documents, unless otherwise specified within the individual LPA user instructions will also identify F.O.B. Destination, Freight Prepaid, as the

shipping term.

2.B5.2 Shipping Methods that Require TMU Pre-Approval

Prior to executing a requisition, contract, or P.O., Buyers shall complete a Freight Rate Analysis Request, and submit via email (**transportationmanagement@dgs.ca.gov**), to TMU for approval before using the following shipping methods:

- *F.O.B. Destination, Freight Prepaid/Add* – Shipping charge is assessed from the originating shipping point to the point of delivery. Upon verification with the TMU, the purchase document must reflect "freight not to exceed cost per supplier quote stated on PO."
- *F.O.B. Origin, Freight Collect* – The TMU will determine the cost and routing of freight. The following information must be provided to TMU:
  - City, State and Zip Code of origin and destination
  - Description of goods being shipped
  - Estimated shipping weight
  - Special handling requirements
  - National Motor Freight Classification (NMFC) – up to 7 digits

Example:
A department located in Sacramento identifies "FOB Origin: Los Angeles" for the shipment of PCs. This means the state will be charged the cost of shipping from Los Angeles to Sacramento.

Transactions Exempt from TMU approval:
TMU approval is not required for any statewide contract or leveraged Procurement Agreement negotiated by DGS.

2.B5.3 Packaging and shipping standards

DGS/PD General Provisions describe to suppliers how goods will be packaged and shipped to a state facility. Any special packaging and shipping requirements or instructions over and above the standard provisions must be documented in detail within the bid solicitation and the Contract/PO.

Topic 6 – Limit to Brand or Trade Name Contracts

2.B6.0 LTB contracting

Limit To Brand (LTB) contracts are limited by statute, in accordance with Public Contract Code Section 12102(b) for IT goods and Sections 10301 and 10302 for non-IT goods, to the following circumstances:

- Emergencies, where immediate acquisition is necessary to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Refer to Chapter 2 – Emergency Purchases for more details.
- The contracting agency and DGS agree that the proposed acquisition of goods meets the state's need.

2.B6.1 $25,000.00 LTB contract purchasing authority dollar threshold

A department's LTB contract purchasing authority dollar threshold will be authorized a maximum of $25,000.00 per transaction, excluding sales and use tax, finance charges, postage and handling. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collected, or FOB Destination. Refer to Chapter 1 for dollar threshold information.

2.B6.2 LTB Statement

The LTB Statement (GSPD-08-001) is used for the purchase of goods of a particular brand or trade name or other specifications which have the effect of limiting bidding to one specified brand or trade name where a department has determined that for a specific category of goods there are unique performance factors necessary to achieve a department's program objectives. A LTB solicitation requires more than one supplier. If there is only one known supplier, a NCB must be used to justify the purchase. See Chapter 6 for details regarding the NCB.

2.B6.3 Acquisitions requiring LTB

A LTB Statement is required for all competitive solicitations (formal and informal) and the SB Option or DVBEOption when a department believes that a product of a specified brand or trade name is the only product that will properly meet their need.

Existing proprietary software does not require a LTB.

2.B6.4 LTB Statement documents

Departments must use the LTB Statement (GSPD-08-001) when submitting a LTB request to DGS. The LTB form must be uploaded and attached to the requisition and work flowed to DGS/PD.

Refer to Section G, Resources, at the end of this chapter for access to the LTB form.

2.B6.5 Signature authority

Buyers executing LTB contract statements must secure their Procurement and Contracting Officer signatures and/or FI$Cal approvals, regardless of whether or not the justification is submitted to DGS/PD for approval.

LTB signature/approval authority may not be delegated further than the next highest-ranking official.

2.B6.6 LTB contract process

The following chart describes the LTB Contract Statement process for goods.

<table>
<tr><th>STAGE</th><th>WHO</th><th>DOES WHAT</th></tr>
<tr><td>1</td><td>Department</td><td>Determines a need to acquire a specified brand or trade name product. Completes a LTB Statement (GSPD-08-001) form, securing approvals from the department Procurement and Contracting Officer or next highest-ranking official. The department buyer must either, upload the LTB Statement and attach it to the requisition to send to DGS/PD, <u>or</u> appropriately workflow the LTB Statement in the system so DGS/PD can view the routing history and verify it has the appropriate approvals.</td></tr>
<tr><td>2</td><td>Department</td><td>Creates the purchase package as follows:
<table>
<tr><th>If the purchase</th><th>Then the department</th></tr>
<tr><td>Is within the department’s LTB contract purchasing authority dollar threshold and the department’s approved competitive purchasing authority.</td><td>• Retains the approved LTB Statement within the procurement file.
• Conducts a competitive solicitation restricting to brand name or trade name
• Executes the purchase order</td></tr>
<tr><td>Exceeds the department’s LTB contract purchasing authority dollar threshold but is within the department’s approved competitive purchasing authority.</td><td>Attaches the LTB Statement as a Waiver to a requisition to workflow to DGS/PD for review and approval. Since this purchase is within the department’s approved purchasing authority, once the LTB Statement is approved, DGS/PD will send it back to the department to conduct the procurement.</td></tr>
<tr><td>Exceeds both the department’s LTB contract purchasing authority dollar threshold and the department’s approved competitive purchasing authority.</td><td>Attaches the LTB Statement as a waiver to a requisition to DGS/PD for review, approval, and processing via workflow in FI$Cal.</td></tr>
<tr><td>Is requested by a department without goods and/or services purchasing authority.</td><td>Attaches the LTB Statement as a Waiver to a requisition to DGS/PD for review, approval, and processing via workflow in FI$Cal.</td></tr>
</table></td></tr>
</table>

<table>
<tr><th>STAGE</th><th>WHO</th><th>DOES WHAT</th></tr>
<tr><td>3</td><td>DGS/PD</td><td>Processes the transaction as follows:
<table>
<tr><th>If the purchase</th><th>Then the department</th></tr>
<tr><td>Exceeds the department’s LTB contract purchasing authority dollar threshold, but is within the department’s approved competitive purchasing authority.</td><td>• Reviews and approves, or denies the LTB Statement.
• If approved, returns LTB Statement to the department for processing.

• If denied, returns LTB Statement to the department advising them to conduct a competitive solicitation not restricting the solicitation to a brand or trade name.
All approvals and denials happen in the system.</td></tr>
<tr><td>Exceeds both the department’s LTB contract purchasing authority dollar threshold and the department’s approved competitive purchasing authority.</td><td>• Reviews and approves or denies the LTB Statement and Department’s Requisition.
• If approved, conducts the appropriate procurement method and executes a purchase document on behalf of the department.

• If denied, conducts a competitive solicitation not restrictive to trade name or brand and executes a purchase document on behalf of the department or cancels the request if directed by the department.</td></tr>
<tr><td>Requested by a department without purchasing authority non-IT goods or IT goods and/or services.</td><td>• Reviews and approves or denies the LTB Statement and Department’s Requisition.
• If approved, conducts the appropriate procurement method and executes a purchase order on behalf of the department.

• If denied, conducts a competitive solicitation without restricting to a specified brand or trade name, and executes a purchase document on behalf of the department or cancels the request if directed by the department.</td></tr>
</table></td></tr>
<tr><td>4</td><td>Department or DGS/PD</td><td>• Executes purchase document upon DGS/PD approval.
• If the LTB Statement is denied, the department may not limit the competitive bidding to the specified brand or trade name. The department will need to conduct a competitive solicitation.</td></tr>
</table>

2.B6.7 File documentation Checklist recommended

Completion and inclusion of the File Documentation Checklist is recommended. Refer to Section G, Resources, at the end of this chapter for a sample.

Topic 7 – Special Category Non-Competitive Bid Request (SCR)

2.B7.0 Special Category NCB Request definition

A Special Category NCB Request (SCR) represents categories of contracts for the purchase of non-IT goods and IT goods and services necessary to achieve a department's program objectives in a timely manner, where DGS has determined in advance and in writing, that for a specific type of category of non-IT goods and IT goods and services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such non-IT goods and IT goods and services are required (e.g. emergencies).

All SCRs must use the Special Category NCB Request form (GSPD-09-008).

Refer to Section G, Resources, at the end of this chapter for access to the Special Category NCB request form and the Contract Advertising Exemption Request.

2.B7.1 Individual SCR for each category

A SCR must be completed and approved for each category of non-IT goods and IT goods and services being requested and submitted to DGS/PD for consideration and approval.

The SCR form is not to be used for emergencies, nor is it to be used to aggregate requests on behalf of other departments.

2.B7.2 SCR dollar threshold and duration

All SCRs have a maximum authorized dollar limit (as noted on the approved SCR) and a maximum "window of approval" not to exceed three (3) calendar years from the date of DGS/PD approval unless renewed by submission of a new SCR 30 days prior to expiration. The expiration date is identified in the box labeled "For DGS Use Only" on the SCR form.

2.B7.3 SCR reference number assigned

Each approved SCR will be assigned an SCR reference number by DGS/PD. This SCR number must be recorded on any purchase document executed under the SCR approval.

2.B7.4 Executing the purchase

Departments with purchasing authority may proceed with execution of purchase documents in accordance with an approved SCR.

DGS/PD must execute all approved SCR purchase documents for departments without purchasing authority and for transactions exceeding a department's purchasing authority. In these instances, the requesting department will submit a requisition for non-IT goods and IT goods and services through workflow in FI$Cal.

Unless otherwise required by a department's internal process, transactions

placed against an approved SCR do not require approval signature on the purchase document by the Department's Director and Agency Secretary or immediate next ranking official since these signatures are obtained during the initial SCR approval process.

2.B7.5 Tracking purchases

Departments must track all SCR purchase documents executed under an approved SCR authority, including transactions processed by DGS/PD, and provide reports to DGS/PD as requested.

Information to be tracked will include at a minimum the following:

- Special Category (SCR) approval number issued.
- Dates of transactions.
- Dollar amounts of transactions.
- Supplier names.

2.B7.6 SCR usage oversight

Purchase orders executed under an approved SCR may be reviewed during the department's purchasing authority renewal process.

Topic 8 – Statement of Work (SOW)

2.B8.0 Determining the need for a SOW

A SOW must be included for all goods and services transactions. A clear and concise SOW protects the state and the contractor by identifying and documenting the details of the work to be performed.

2.B8.1 What to include in a SOW

A SOW is unique to each purchase document, but usually consists of some or all of the following:

1. A detailed statement of the purpose, objective or goals to be undertaken by the contractor or supplier
    - An estimated time schedule for the provision of these services by the contractor. Hours the work is expected to be performed (business hours, after hours, etc.)
    - Completion criteria for the work to be performed
    - An identification of support and/or maintenance that will be provided and how frequently
    - Reference special provisions and applicable laws and regulations
2. An identification of all licensing and/or certification requirements
3. Labor requirements
    - The job classification or approximate skill level of the personnel to be made available by the contractor
    - The name or identification of the contractor personnel to be assigned.
    - The contractor's work hours required to accomplish the purpose, objective or goals
4. Material requirements
    - An identification of all significant material to be developed and delivered by the contractor to the state
    - Reference commodity specifications
    - Environmentally Preferable Purchasing (EPP) criteria
        - Packaging
        - Product take-back requirements
        - Post-Consumer Recycled Content (PCRC)
5. Delivery of Goods
    - Delivery schedules, description of when and where product is to be delivered
    - Pallet requirements
    - State department delivery requirements for personnel, i.e. California Department of Corrections and Rehabilitation (CDCR).
6. Acceptance Criteria
    - Inspection and acceptance requirements
    - Testing procedures and requirements to be performed prior to acceptance
    - Travel details for conducting pre-construction meetings, testing or inspections (when applicable)
7. Budget and Cost
    - The contractor's billing/labor rates per work hour
    - Indicate rates for varying work hours/days (if applicable).
    - The cost per deliverable
    - Contractor's total cost, including any applicable taxes
    - Inspection and testing to be performed prior to acceptance
    - Travel requirements for conducting pre-construction meetings, testing, and inspections

Topic 9 – Specifications

2.B9.0 Specifications development assistance

DGS/PD Engineering Services is available to assist departments in providing technical knowledge, assistance in planning efforts, and specification preparation, including inspection criteria and acceptance testing and Environmentally Preferable Purchasing (EPP) components (See Chapter 3 Socioeconomic and Environmental Programs).

1. Does the acquisition meet PD Purchasing Standards: approved third-party environmental certifications such as Energy Star, Green Seal, or Electronic Product Environmental Assessment Tool EPEAT (®) or industry standards such as Society of Automotive Engineers (SAE) American Society for Testing and Materials (ASTM) or National Institute of Standards and Technology (NIST) or equivalent?
2. Is the acquisition reportable, is it a SABRC commodity category, contain recycled materials or provide take-back options?
3. Is the acquisition for on or off road equipment, an appliance or use for building maintenance?
4. Must the commodity be customized?

Refer to Section G, Resources, at the end of this chapter for access to DGS/PD Engineering Services web page.

2.B9.1 Specifications

When developing specifications departments should begin by identify:

1. Type of commodity (i.e. vehicle, HVAC, plumbing, IT)
2. Number of manufactures offering commodity meeting department's needs
3. Performance factors
4. Cost of ownership
5. Customization requirements
6. Regulatory criteria
7. DGS Purchasing Standards, approved third-party environmental certifications [i.e. Energy Star, Green Seal, or Electronic Product Environmental Assessment Tool (EPEAT®)]
8. Industry standards [i.e. Society of Automotive Engineers (SAE), American Society for Testing and Materials (ASTM), National Institute of Standards and Technology (NIST)]
9. Specialized test and acceptance procedures
10. Licenses and Permits

Installation and setup requirements (i.e. building and IT interface)

Topic 10 – Emergency Purchases

2.B10.0 Definition

Where immediate acquisition is necessary for the protection of the public health, welfare, or safety, Public Contract Code Section 12102(a)(2) allows for emergency purchases of IT goods and/or services. Public Contract Code Section 10302(a) allows for emergency purchases for non-IT goods and services.

IT Goods and Services:
An emergency as defined by Public Contract Code Section 12102(a): "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."

Non-IT Goods and Services:
Public Contract Code Section 1102 defines an emergency as "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services."

Departments are not required to conduct competitive solicitations when the determination has been made that goods and/or services are needed on an emergency basis, where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

An emergency is further defined and divided into the following classifications:

- An emergency purchase in response to a natural disaster, i.e. fire, flood, earthquake.
- An emergency purchase not in response to a natural disaster, i.e., purchase of goods needed to manage drought conditions.

2.B10.1 Required documentation

Regardless of the classification of the emergency, documentation must be uploaded into FI$Cal system and kept in the procurement file. The following information must be provided to DGS/PD, as applicable:

- A description of the emergency.
- Explanation of how the situation falls within the parameters of an emergency justifying the emergency purchase.
- Explanation of the consequences of making the purchase through normal procurement processes.
- A description of the IT goods and/or services and price.
- The names and quotations of suppliers contacted.
- Approval of the Department Director or designee.

2.B10.2 Responding to a natural disaster

If an emergency purchase in response to a natural disaster when a response requires immediate action, the department shall proceed with the purchase regardless of the department's NCB purchasing authority status. The department shall document in FI$Cal the circumstances of the emergency purchase and then issue the purchase document.

2.B10.3 Emergency purchase not in response to a natural disaster

The following provides the emergency purchase process in response to an emergency situation other than a natural disaster. If the purchasing activity:

Is within a department's authorized NCB contract purchasing authority dollar threshold, proceed with the purchase:

- Document the circumstance of the emergency purchase.
- Document names and quotations of suppliers contacted.
- Issue the purchase document.

Exceeds a department's authorized NCB contract purchasing authority threshold, proceed with the purchase:

- Departments will select NCB – Emergency – Non natural disaster as the procurement method in FI$Cal. This selection will trigger the workflow and the procurement will electronically route emergency Purchase Orders with attached supporting documents to DGS/PD One Time Acquisitions Unit via the system. DGS will be able to track and approve/deny the request within the system.
- DGS/PD contact will review the circumstance and if approved, assigns the transaction an Authorization to Exceed Monetary Limits number.
- Document the circumstance of the purchase.

2.B10.4 Examples of emergency purchase

Example #1 - IT emergency:
A server supporting a prison's security system fails, and the prison has to resort to a backup server. The server must be replaced immediately to ensure the safety of the population internal and external to the prison.

Example #2 – IT non-emergency:
A supplier does not meet a delivery date to supply a department director with a laptop, so the department wants to execute an immediate purchase of a laptop from another supplier. This is not an emergency purchase, as it does not pose an immediate threat to the public health, welfare or safety or an immediate threat to public property.

Example #3 - Non-IT emergency:
A mudslide, caused by a flood, occurs on a highway and the crew must make an immediate purchase for supplies to clean up the mud.

Example #4 - Non-IT non-emergency:
A department wants to purchase three (3) used bulldozers for routine forestry maintenance at a cost of $492,000.00. The purchase saves the department an estimated $260,000.00 when prices are compared to new bulldozer prices. Although it may be in the state's best interest to purchase the used equipment, it does not meet the definition of an "emergency".

Warning: Poor planning is not an emergency.

Section C

Pre-Procurement Reviews and Approvals Applicable to all Contracting Types

Introduction

There are certain classes of purchases that may require review and approval before a department can proceed with a purchasing activity. This section describes those requirements and processes.

At this point, the buyer has determined the class of a purchase request before initiating a procurement activity. Now, the buyer needs to analyze the request to validate any pre-approval requirements.

Topic 1 – Surplus Property Program

2.C1.0 Utilizing existing surplus

Departments shall utilize surplus furnishings whenever feasible and shall contact DGS Surplus Property Program to determine if surplus property is available.

2.C1.1 Contact information

DGS operates property reutilization facilities at its northern California warehouse facilities.

Departments must contact the Surplus Property Program at:

1700 National Drive
Sacramento, CA 95834
(916) 928-5800
(916) 928-0304 fax
ContactSPR@dgs.ca.gov

2.C1.2 Electronic surplus property system

DGS has implemented an automated business management system to allow online web-based submission and approval of the following documentation:

- Property Survey Reports (STD.152) (departments will complete the STD. 152, attach it to a waiver and a requisition and workflow it in the FI$Cal system to the appropriate approver),
- Transfer of Location of Equipment Reports (STD.158) and
- A real time listing of current property that is available at the National Drive warehouse.

Refer to Section G, Resources, at the end of this chapter for access to the Surplus Property Program web page.

2.C1.3 Cost effective reuse of surplus furniture

Departments that require new modular systems furniture (MSF) and conventional furniture shall contact the Office of Fleet and Asset Management for reuse of surplus furniture. Departments that have been notified by the OFAM that their requirements cannot be met by the reuse of surplus shall contact CALPIA. In the event that the OFAM or CALPIA cannot meet the department's requirements, departments may then purchase new MSF and/or conventional furniture. Documentation of the contacts with OFAM and CALPIA must be kept in the procurement file and uploaded into FI$Cal.
For additional information see Management Memo 11-01 in Section G, Resources, at the end of this chapter.

2.C1.4 Needs not met by surplus property

When a department's functional needs cannot be met by the Surplus Property Program, then the department must next consider if its needs can be met by the California Prison Industry Authority (CALPIA). Refer to Section D, Topic 2 for more information on CALPIA.

2.C1.5 Transfer and disposal requirements for IT equipment

Following are rules for transfer and disposal of IT equipment (SAM section 5901, 5902 and 5903):

- Salvage value of state-owned IT equipment (SAM section 5901) and purchase option credits for leased IT equipment are a source of value to the state. Each department must ensure that such value is received to the extent that doing so is in the best interest of the state.
- The disposition of surplus IT equipment must be in accordance with the most economical and practical manner for the state as a whole.
- Government Code Sections 14674-14675 authorizes the Director of DGS to approve the competitive sale, exchange, or interagency transfer of personal property owned by the state if such action is in the best interest of the state. Each department must receive approval from DGS Property Reutilization Unit, prior to disposing of surplus IT equipment.
- Each department is responsible for ensuring that any residual value in surplus IT equipment is realized. Each department must explore the reutilization of surplus IT equipment prior to requesting approval for disposal or attempting to use the equipment as a credit toward the purchase or lease of new equipment.
- The department must submit a completed PSR (STD. 152) to DGS Property Reutilization Unit through FI$Cal at least 30 days prior to the disposal of surplus IT equipment. At the same time, the department must send an informational copy of the completed Property Survey Report to the CDT.

Each department must comply with the state property accounting requirements described in SAM section 8633 and 8640-8642 when disposing of surplus IT equipment.

2.C1.6 Transfer and disposal requirements for IT supplies

The disposition of surplus IT supplies must be in accordance with the most economical and practical manner for the state as a whole. Each department is responsible for ensuring that any residual value in surplus IT supplies is realized. Each department must comply with the state property accounting requirements described in SAM sections 8633 and 8640-8642 when disposing of surplus IT supplies. The department must prepare and maintain in FI$Cal a PSR (STD. 152) when disposing of surplus IT supplies.

A diligent effort must be made to secure at least three competitive bids for the supplies. If three bids cannot be obtained, a list or organizations or individuals solicited must be prepared and signed by an authorized representative of the department. The list and the bids received must be attached to the PSR.

IT paper goods, e.g., computer printouts, punch cards, and pre-numbered forms, must be disposed of in accordance with SAM sections 1930.1 and 1693.

Magnetic media for data processing devices, e.g., magnetic tapes and disk packs, must be disposed of in accordance with the procedures of this section. If sale is not possible, the magnetic media may be disposed of through any organization that will retrieve them without charge to the state.

The handling and disposal of IT supplies containing information classified as confidential or sensitive as defined in SAM section 5320.5 must be conducted according to the policies stated in SAM section 1693 and the procedures established by the department program having ownership responsibility for such information (SAM section 5320.2). See SAM section 5300 et seq. for detailed information on Information Security.

Topic 2 – Additional Pre-Procurement Reviews and Approvals

2.C2.0 Purchases from community-based rehabilitation programs

Purchasing products and services from rehabilitative or sheltered workshops pursuant to Welfare and Institutions Code (WIC) section 19403 is encouraged. In accordance with WIC section 19404, purchases using these programs are exempt from advertising requirements, conducting a competitive bid and dollar threshold limits. These transactions are also exempt from the non-competitively bid (NCB) contract requirements.

The procurement file must be documented to support that the price offered by a community rehabilitation program is fair and reasonable.

2.C2.1 Records management requirements

Prior to the purchase or rental of any file, microfilm, optical disk and/or records destruction equipment, departments will review and coordinate the purchase activity through the department's records manager or analyst in accordance with the State of California Records and Information Management (CalRIM) manual. The Secretary of State (SOS) oversees the CalRIM program.

Refer to Section G, Resources, at the end of this chapter for current program information on the SOS website.

Topic 3 – Negotiation Process Guidelines and Procedures Under Public Contract Code 6611

2.C3.0 Authority over negotiation

Public Contract Code Sections 6611 (a) and (b) set forth the conditions under which DGS may use negotiations for new and existing contracts and/or procurements. Public Contract Code Section 6611(e) also allows the CDT to use the negotiation procedures and guidelines developed by DGS for procuring information technology and telecommunications goods and services on behalf of state departments.

When an appropriate basis exists, DGS or CDT may authorize negotiations in any of the following circumstances:

- At the outset of a procurement,
- During a competitive procurement, or
- When no responsive bids are received

Public Contract Code Section 6611(b) authorizes a negotiation process to amend existing contracts when it is in the best interest of the state.

In all circumstances, approval of the Director of DGS or the Secretary of CDT or their designee is required in advance, and negotiations must be conducted by DGS or CDT (for technology projects). The actual negotiations will be conducted in partnership with the procuring agency.

DGS recommends during the acquisition planning phase, agencies and departments plan accordingly and consider whether a negotiation process is appropriate for a given procurement. Departments should contact DGS for assistance in determining applicability of Public Contract Code Section 6611(a) and developing the framework for the negotiation process.

2.C3.1 Negotiation Process Guide

DGS has provided a Negotiation Process Guide for IT goods & services under Public Contract Code Section 6611. Refer to Section G, Resources, at the end of this chapter for access to the guide.

2.C3.2 How to make a request to DGS

In order to implement negotiations pursuant to Public Contract Code Section 6611(a), using the template in Section G, Resources, at the end of this chapter, state Agencies and Departments shall submit a written request to DGS containing the following information:

- Description of the procurement including estimated cost and term of the contract
- How the procurement meets the state's needs
- Explanation of how the procurement meets one or more of the four conditions listed below under the topic *Bases for Negotiations*.

The request shall be signed by the State Agency Secretary, Department Director, or the Procurement and Contracting Officer and sent to DGS. DGS will respond to the requesting department in writing, with a determination regarding the request to use a negotiation process. If approved, DGS will stipulate any conditions on the use of a negotiation process. CDT may engage in negotiations as specified in Public Contract Code Section 6611(e) without making this request.

The request shall be forwarded to DGS as follows:

Non-IT Goods and IT Goods and Services:

- DGS/PD Deputy Director

Non-IT Services

- DGS/OLS: Deputy Director and Chief Counsel

2.C3.3 Basis for negotiations PCC section 6611(a)

DGS and CDT may initiate negotiations if one or more of the following conditions exist:

The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process (Pub. Cont. Code § 6611(a)(1)); In general, this may occur when a business solution common in the commercial marketplace needs to be tailored to fit the unique needs of the state.

Example: Use of temporary and contract labor to meet volatile staffing demands is commonplace in the private sector. However, due to restrictions on use of personal services contracts for civil service functions, the state often is unable to use these services "as is." The state could negotiate with temporary labor contractors to purchase only the services that conform with California law under Government Code Section 19130.

The business need or purpose of a procurement or contract is known, but a negotiation process may identify different types of solutions to fulfill the business need or purpose (Pub. Cont. Code § 6611(a)(2)); In general this condition can exist with emerging technology where fully developed solutions do not yet exist and require negotiations to ensure the solution meets the state's needs.

Example: The state identifies a need to block unauthorized mobile phone communications at correctional facilities. While emergent frequency management technology exists, no complete solutions have been delivered

to the market. Through a negotiation process, the state would be able to identify potential solutions prospective contractors may be willing to offer.

The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high (Pub. Cont. Code §6611(a)(3)); This condition can exist when the state is acquiring solutions of an extremely large scale and/or scope which requires bidders to perform significant analysis, design, and/or development in order to bid. It can also occur when past attempts to secure bids have resulted in no compliant bids.

Example: Acquisition of any complex system of significant scale and scope. A negotiations process that provided for regular discussion of the state's needs, refinement of requirements, the creation and evaluation of pilot systems, and bargaining to trade-off costs and benefits could reduce the costs for bidders to submit acceptable bids.

The business need or purpose of a procurement or contract is known, but negotiation is necessary to ensure the department is receiving the best value or the most cost-effective goods, services, information technology, and telecommunications (Pub. Cont. Code § 6611(a)(4)); This condition most commonly exists when bid prices exceed the state's target price compared to historical costs or established through market research.

Example: The state has conducted a bid for computer equipment, however bidder prices were higher than expected compared to the state's prior contract. A negotiation process is used to obtain pricing more in line with the estimate.

2.C3.4 Basis for negotiations (PCC section 6611(b)

When a critical business need develops and it is in the best interests of the state, DGS may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of DGS or another state agency.

This Section is not intended to circumvent the NCB amendment process in Chapter 6.

2.C3.5 Participants and roles

While DGS (and CDT when applicable) is responsible for the administration of the negotiating authority, successful negotiations require the cooperation of three key stakeholders: DGS, CDT, and the buying agency. The following guidelines establish that all parties are co-approvers of any final, negotiated outcome. Departments are advised to ensure that all state participants are free from economic conflicts of interest before beginning work on a Public Contract Code Section 6611 negotiation project. See Government Code Section 81000 et seq. (Political Reform Act); see also Government Code Section 1090. Not all participants listed in the table below are required in all situations.

STATE PARTICIPANTS	
PARTICIPANT	**ROLES**
Procurement Official (DGS or CDT)	Conducts the procurement in accordance with the laws of the State of California; Coordinates contract negotiations sessions; Coordinates DGS Legal participation in negotiations, if required; and Oversees negotiation sessions. Co-approval of final negotiated agreement.
Buying Agency	Participates in negotiation sessions to ensure outcomes meet program needs. Co-approval of final negotiated agreement.
Core Negotiation Team	DGS and/or CDT, and sponsoring agency: Provides negotiation facilities; Prepares negotiation points; Participates in negotiation sessions; and Tracks status of outstanding items and completed agreements
State Evaluation Team Members	SMEs tasked with evaluating bid submissions Participates in negotiations sessions, as required. May be same individuals as core negotiation team.
Subject Matter Experts (SMEs)	Provides subject matter expertise and support to the Core Negotiation Team and state Evaluation Team, as requested.
CDT (where DGS is the procurement official)	Ensures negotiations meet all applicable IT architecture, technical, and project standards.

BIDDER PARTICIPANTS	
PARTICIPANT	**ROLES**
Bidder Negotiation Team	At a minimum, the supplier team: Prepares negotiation materials in response to negotiations points; Participates in negotiations sessions; Develops and provides revised proposal materials for state review and agreement during the negotiation sessions; and Provides Best and Final Offer (BAFO) that incorporates all negotiated changes.

2.C3.6 Procedure when conducting negotiations from the outset of a procurement

Departments shall follow this procedure when conducting negotiations from the outset of a procurement:

1. With the exception of CDT, obtain approval from DGS to utilize negotiations (see Section 2.C3.1 above).
2. Craft a solicitation under the authority of Public Contract Code Section 6611. The solicitation should include initial administrative and technical requirements, a cost proposal, evaluation criteria, and reference the state's general provisions. It should also explain the general purpose and scope of the negotiations, the anticipated schedule for the negotiations; and the procedures to be followed for those negotiations See Section 2.C3.1 for template.
3. Identify in the solicitation document the requirements for bidders to be included in negotiations. This may include, but is not limited to, establishment of objective pre-requisites based on capabilities, experience, expertise, or capacity.
4. Determine the negotiation sequence which may include the order of steps such as negotiations, bid submission, evaluation, confidential discussions, supplemental bid submission, and contract award.
5. Evaluate bids.
    a. The solicitation may allow for evaluation of all bids, even bids that would not be responsive under the rules of Public Contract Code Section 12100 et seq. (for IT goods and services) or Public Contract Code Sections 10308, 10309, 10331, 10332, 10333, and 10290.1* (for non-IT goods) Alternatively, the solicitation may require that bids meet certain minimum criteria in order to be evaluated.
    b. Buyers may choose to establish an evaluation team to evaluate bids according to the methodology specified in the solicitation.
    c. Establish initial scores either via ranking, as a percentage of total possible points, or other method that clearly differentiates between each bid.

    *Includes non-IT services for LPA transactions.
6. Negotiate.
    a. Follow the rules of the solicitation in negotiating with bidders.
    b. Negotiations may be completed after a single round, or may be done in several rounds.
    c. Negotiations may be conducted orally and/or in writing. Oral negotiations may be held in person, by conference call, or by use of video or web conferencing.
    d. The negotiation process may include persuasion, alteration of assumptions and positions, give and take, and may apply to price, schedule, requirements, or other terms of the proposed contract. The state may discuss other aspects of the Bidder's proposal that could, in the opinion of the state, be altered or explained to enhance materially the proposal's potential for award. However, the state is not required to discuss every area where the Bidder's proposal could be improved. The scope and extent of negotiation exchanges are the matter of the state's judgment. All Bidders currently in negotiations will be notified of changes in requirements.
    e. The state may establish a negotiation team to consist of

representatives from DGS, and the requesting department, and other state representatives. The table in 2.C3.5 identifies the general roles and responsibilities of a negotiation team although the composition of any team may vary based upon the procurement.

7. Supplemental bids may be received after initial bids are opened. At the conclusion of negotiations, Bidders may be given an opportunity to submit a Best and Final Offer (BAFO) to the state. The state will establish a date and time for receipt of each Bidder's BAFO.
8. Final evaluation and award. Use one of the following options to make a final award:
    a. Using the original criteria in the solicitation, score all proposals based on either the results of negotiations or, if applicable, the BAFO. Award to the highest ranked bidder.
    b. Revise the evaluation criteria based on the results of the negotiations. Prior to final evaluation, all bidders participating in negotiations shall be informed of the revised evaluation criteria and shall have the opportunity to submit a BAFO based on those criteria. Award to the highest-ranked bidder.
9. Issue a final evaluation and selection report documenting any decisions relating to selection of bidders to participate in negotiations, final scoring of proposals, and award decisions.
10. DGS or CDT, as applicable, may terminate negotiations and/or the solicitation at any time.

2.C3.7 Procedure when conducting negotiations during a procurement

Departments shall follow these steps when conducting negotiations during a competitive procurement in which at least one responsive, responsible bid has been received:

1. Obtain approval from DGS to utilize negotiations (see section 2.C3.1 for template.).
2. Only bidders that submitted responsive, responsible bids may participate in negotiations. Notify bidders that will be selected to participate in negotiations. Buyers must establish the criteria for selection in the solicitation either from the outset or via addendum. Examples include:
    a. Negotiate with all responsive, responsible bidders.
    b. Establish a competitive range based on bidders' rankings following bid/proposal evaluations.
    c. Initiate negotiations with the highest ranking bidder then, if no agreement can be reached, move on to the next highest ranked bidder continuing until an agreement can be reached.
3. Negotiate. See "Negotiate" (step 6) of Section 2.C3.6 above.
4. Final evaluation and award. Use one of the following options to make a final award:
    a. Using the original criteria in the solicitation, score all proposals based on either the results of negotiations or, if applicable, the BAFO. Award to the highest ranked bidder.
    b. Revise the evaluation criteria based on the results of the negotiations. Prior to final evaluation, all bidders participating in negotiations shall be informed of the revised evaluation criteria and shall have the opportunity to submit a BAFO

based on those criteria. Award to the highest-ranked bidder.

5. Issue a final evaluation and selection report documenting any decisions relating to selection of bidders to participate in negotiations, final scoring of proposals, and award decisions.
6. DGS or CDT, as applicable, may terminate negotiations and/or the solicitation at any time.

2.C3.8 Procedure when no responsive bids are received

In rare cases, it may be necessary to negotiate with bidders participating in a competitive procurement even when no responsive, responsible bid has been received. This can happen when repeated solicitations yield no bidders or when the complexity of the administrative, technical or cost requirements results in all bids failing to meet the requirements. Departments shall follow these steps in those circumstances.

1. Obtain approval from DGS or CDT, as applicable, to use negotiations. See Section 2.C3.1. Usually, subsection 3, “the complexity of the purpose or need suggests a bidder’s costs to prepare and develop a solicitation response are extremely high” or subsection 4, “negotiation is necessary to ensure the department is receiving the best value” from Section 2.C3.2 will apply.
2. If any responsive, responsible bids have been received, buyers must follow the procedures in 2.C3.5 or 2.C3.6.
3. In order to use negotiations in this circumstance, the criteria for participation must have been established in the solicitation (either from the outset or through an addendum). Any of the following criteria may be used:
    a. All firms that submitted a bid may participate.
    b. Bidders within a competitive range may participate. Rankings may be established by using a percentage of required items and/or scoring non-mandatory items.
    c. The highest ranking bidder negotiates first, then, if no agreement can be reached, the next highest similarly ranked bidder may negotiate continuing the process until the state reaches an acceptable agreement. Rankings may be established by using a percentage of required items and/or scoring non-mandatory items.
4. Negotiate. See “Negotiate” (step 6) of Section 2.C3.5 above.
5. Final evaluation and award. Use one of the following options to make a final award:
    a. Using the original criteria in the solicitation, score all proposals based on either the results of negotiations or, if applicable, the BAFO. Award to the highest ranked bidder.
    b. Revise the evaluation criteria based on the results of the negotiations. Prior to final evaluation, all bidders participating in negotiations shall be informed of the revised evaluation criteria and shall have the opportunity to submit a BAFO based on those criteria. Award to the highest-ranked bidder.
6. Issue a final evaluation and selection report documenting any decisions relating to selection of bidders to participate in negotiations, final scoring of proposals, and award decisions. The final evaluation and selection report becomes a public record.

2.C3.9 Question and Answer Process

DGS or CDT, as applicable, may terminate negotiations and/or the solicitation at any time. Public Contract Code Section 6611(d) states that "...an unsuccessful bidder shall have no right to protest the results of the negotiating process." However, during the negotiation process, any bidder may raise questions regarding the procurement process prior to the conclusion of negotiations.

The requester should provide as much information as possible so that DGS can evaluate their issues. Questions must be mailed or delivered to:

Deputy Director, Procurement Division
707 Third Street, West Sacramento, CA 95605
Facsimile No.: (916) 375-4611.

DGS shall acknowledge the receipt of questions and shall provide a written response or explanation. DGS shall inform all bidders of any actions that are taken in response to such objections or questions. At the Deputy Director's discretion, the issue may be provided to a designated procurement official for resolution or an ombudsman may be selected to work with the parties to address the issue. This Q & A is not a right to protest and the submission of questions does not automatically trigger a delay in the award of a contract. The disposition of the issues and response to the issues raised during this Q & A process is solely at the discretion of DGS.

Topic 4 – Purchase Requisition

2.C4.0 Purchase Requisition

FI$Cal departments will process a requisition (formerly known as a Purchase Estimate, STD. 66) in the system and workflow the request to whichever agency it needs to go to (e.g. DGS or CDT). This is the standard process by which departments initiate a request for DGS/PD or CDT to conduct competitive and/or non-competitive informal and formal procurements of goods and/or services.

2.C4.1 Requisition Approvals

After a requisition is created, it must be submitted for approval before a purchase order can be created. A typical requisition requires two approval steps at the department level, though additional approvers can be added by ad hoc. Each approval step either approves or denies the requisition.

- If approved, FI$Cal forwards the requisition to the next approval step.
- If denied, the requisition goes back to the requester to take appropriate action.

Requisitions that exceed a department's delegated purchasing authority or require DGS assistance will receive a warning message but will be able to continue. POs that are approved and exceed purchasing authority will be stopped in the system and placed on hold.

2.C4.2 Where to send the requisition

The completed Requisition, with all required documentation attached, must be submitted to DGS/PD/One-Time Acquisitions (OTA) through FI$Cal. Using FI$Cal, add an "ad hoc" approver to the Requisition approval workflow using the specified approver from the *Submission of Requisitions to DGS Contact List* document.

Please refer to Section G, Resources, at the end of this chapter for access to the *Submission of Requisitions to DGS Contact List* document and the OTA website.

2.C4.3 Amendments

The Purchase Order/Estimate Change Request will be received via the standard FI$Cal amendment workflow to request a change to a requisition submitted to DGS/PD or to a purchase order issued by DGS/PD.

Section D

Pre-Procurement Reviews and Approvals Specific to Non-IT

Introduction

In addition to the previous requirements, there are additional requirements specific to Non-IT procurements. The following pages provide buyers with this information

Topic 1 – Office of Fleet and Asset Management (OFAM)

2.D1.0 Office of Fleet and Asset Management (OFAM)

In accordance with Government Code Section 13332.09, departments may not procure mobile equipment without first securing approval from DGS/Office of Fleet and Asset Management (OFAM). Evidence of OFAM approvals must be documented in the procurement file as well as uploaded into FI$Cal.

Mobile equipment is defined in the OFAM state Fleet Handbook (OFAM Handbook) as:
"Used for passenger and equipment transportation, construction or maintenance work, and is self-powered or easily moved (trailer or skid mounted). This includes sedans, station wagons, suburbans, carryalls, light utility pickups, vans under ¾ ton, jeeps, trucks, boats, and trailers."

2.D1.1 Fleet assets requiring OFAM approval

The following motor vehicles and general use mobile equipment are subject to OFAM approval:

MOBILE EQUIPMENT TYPE	DESCRIPTION
Motor vehicle	A vehicle that is self-propelled and registered by the Department of Motor Vehicles (DMV) for street use.
General use mobile equipment	• Self-propelled mobile equipment • Self-propelled mobile equipment registered by the DMV for off-road use. • Vessels registered by the DMV for use on water. • Vessels documented by the U.S. Coast Guard.
Surplus mobile equipment	Motor vehicles or general use mobile equipment that was previously owned or operated by any entity.

Please refer to Section G, Resources, at the end of this chapter for access to DGS/OFAM Management Memo 13-01, *State Fleet Asset Oversight* for a complete listing of assets that require DGS/OFAM approval.

2.D1.2 Excluded from OFAM oversight

Departments are not required to obtain the OFAM's approval on the following fleet type assets regardless of registration status by the DMV or not:

- Golf Cart (if rated below 35 mph)
- Mower (self-propelled and 24 hp or less)
- Generator
- Mobile home and/or office (only if permanently parked, if moved see footnote)
- Indoor Forklift
- Pallet jack
- Personnel hoist or lift
- Agriculture or construction equipment pulled by a vehicle
- Other fleet-related equipment as determined by the OFAM
- Trailer (2,999 lbs. GVWR or less)*

Trailer pertains to small trailers only, and not the equipment mounted on trailers, e.g. generators, welders, signs, message boards, kettle pots, outhouses, etc. Assets carried on trailers such as: motorcycles, snowmobiles, ATVs, etc., are considered fleet assets and are referenced separately.

2.D1.3 Mobile equipment purchases and repairs

When purchasing mobile equipment, departments must obtain approval from OFAM prior to contract execution (see OFAM Fleet Handbook for instructions).

In accordance with the OFAM Fleet Handbook, tires and batteries for mobile equipment must be purchased using the state's leveraged procurement agreements whenever possible.

Mobile equipment repairs are considered non-IT services and, therefore, may not be purchased under a department's purchasing authority.

Departments may not make modifications to mobile equipment without OFAM approval. Departments may not repair mobile equipment without OFAM approval if the repair exceeds the OFAM-established dollar thresholds. When contracting for mobile equipment repairs, departments must obtain OFAM approval when the transactions are expected to exceed specific dollar thresholds as established by OFAM. In addition to obtaining advance OFAM approval for vehicle modifications and preapproved repairs, departments must also get OFAM post approval once the modifications and repairs have been completed.

Department's should consult the OFAM Fleet Handbook and the SCM, Vol. 1 regarding these services.

Refer to Section G, Resources, at the end of the chapter for access to the OFAM Fleet Handbook.

Topic 2 – California Prison Industry Authority (CALPIA)

2.D2.0 California Prison Industry Authority (CALPIA)

Pursuant to Penal Code Section 2807, a department must first consider if CALPIA can fulfill the department's need prior to purchasing an item from commercial suppliers. CALPIA offerings include the following:

CALPIA PRODUCT CATEGORIES	PRODUCT EXAMPLES
Bedding, Cleaning Products, Clothing & Textiles, Gloves, Flags, Shoes, Services, Modular Buildings	Mattresses & Pillows, Bar Soap, Janitorial/Kitchen/Laundry Chemicals, Green Seal Certified Chemicals, Flags, Signs, NFPA Wildland Gear, ANSI Garments, Highway Construction & Maintenance Garments, Safety Vests and Clothing Institutional Garments, Hospital & Medical Garments, Optical Services, Dental Services, Portable Customized Buildings
Printing & Bindery Products, Signs & Decals	Binders, Portfolios, Files, Diploma Covers, Parking Placards, Printing Services, Plaques & Name Plates, Banners, Decals & Stickers, Metal Signs, Highway Signs
Furnishings, Open Office Systems, Metal Products	Office furniture Product Lines, Computer Furniture, Office Furniture, Residential Life, Seating, Storage, Tables, Accessories
Food products	Milk, Almonds, Poultry Products, Eggs, Meat Products, Bread Products, Coffee, Juice/Beverages, Packaged Meals, Peanut Butter & Jelly, Cookies, Syrup

2.D2.1 CALPIA exemption process

Departments may be granted a CALPIA exemption to procure goods from other sources when sufficiently justified. The table below describes the CALPIA exemption process that departments must follow:

STAGE	DESCRIPTION
1	The department contacts CALPIA sales branch at (916) 323-2419 or accesses and completes the Exemption Request (accessible in Section G, Resources, at the end of this chapter)
2	The department completes a CALPIA exemption request and mails it to: CALPIA Sales Branch 560 East Natoma Street Folsom, CA 956340-0040 Expedite requests may be faxed to (916) 322-1184, however, expedites must be justified and a hard copy of the exemption request with original signatures is required prior to CALPIA approval.
3	All exemption requests will be faxed back to the department. Copies of the exemption request approved by CALPIA must be retained in the procurement file as proof of exemption determination. Documentation of only the CALPIA exemption number is insufficient to comply with the exemption documentation requirement.
4	The CALPIA Sales Representative will contact the department when an exemption request is denied. The denied exemption request with original signatures will be sent to the department.

2.D2.2 Reasonable accommodation requests

Departments must first evaluate CALPIA products (i.e. chairs, tables) prior to requesting a CALPIA exemption based upon a reasonable accommodation or medical exemption.

2.D2.3 CALPIA price lists

CALPIA State Price Schedules (SPS) are no longer in effect. CALPIA is now providing pricing through the CALPIA Price List, accessible through the FI$Cal system.

2.D2.4 Ordering procedure

Departments must use a purchase order (PO) to execute CALPIA purchases.

When a buyer selects PIA as the procurement method, the buyer will be able to access CALPIA's price list. When the particular items are selected to be added to the PO, the PO will include the catalog item number, description, unit price and extended dollar amount. The total amount of the purchase document will be calculated and the buyer can issue the PO. In the FI$Cal system, upon all necessary approvals, the PO is automatically faxed to the supplier.

- Do not include sales, use or federal excise taxes, as they do not apply.
- Payment terms are "net 45 days" or Controller Transfer
- Contact CALPIA, Customer Services for FOB point and delivery due dates.

Topic 3 – Other Pre-Approval Requirements

2.D3.0 Real Estate Services Division (RESD)

DGS/RESD has the statutory authority for the acquisition of real property. Departments, prior to acquiring space, property and/or facility design services, must contact RESD.

Refer to Section G, Resources Section at the end of this chapter to access the RESD web page.

2.D3.1 Bottled water requirements

Bottled drinking water may be purchased under a department's delegated purchasing authority where it has been determined that the building water supply does not meet standards set by the California Department of Public Health (CDPH) for state owned facilities or local city, county environmental management department(s) for state leased facilities, or where DGS/RESD has determined that the cost of connecting a drinking fountain to the building water supply renders it impractical. Documentation from the CDPH and/or local city, county environmental management department(s), and/or DGS/RESD must be maintained in the procurement file.

2.D3.2 Department of Conservation (DOC)

Public Contract Code Section 10295.5 prohibits departments from purchasing sand, gravel, aggregates or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975, unless the Department of Conservation (DOC) has determined that the surface mining operation is eligible to sell materials to the state.

If a department purchases sand, gravel, aggregates or other minerals from a mining operation that is not on the DOC's list of approved mining operations, then the department must:

- Obtain both a retailer's certification of the supplier's identification and the Department of Conservation's listing of approved mines in effect at the time of the award and contains the originating mining operation.
- Document the procurement file that the items acquired came from an acceptable source.

Warning: Departments must obtain sufficient supplier certifications until the originating mining operation's identification can be determined.

Refer to Section G, Resources, at the end of this chapter for access to the Department of Conservation's listing of approved mining operations and a *Surface Mining and Reclamation Act Certification Form.*

Section E

Considerations Specific to IT Procurements

Introduction

Just as there are requirements specific to Non-IT procurements, the same is true for IT purchasing. In addition to the requirements in Section C, the following pages provide buyers with this information

Topic 1 – Understanding Information Technology Goods and Services

2.E1.0 Defining an IT procurement

SAM Section 4819.2 defines information technology as "all computerized and auxiliary automated information handling, including systems design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, data communications, requisite systems controls, and simulation."

In accordance with SAM Section 4819.2, any of the activities listed below either individually or in combination are considered IT procurement:

- IT facility preparation, operation and maintenance.
- Application systems development and implementation, or changes to application systems or programs to meet new or modified needs, or maintenance, including:
    - Systems analysis,
    - Systems design
    - Purchase and installation of software
    - Programming services
    - Data or programming conversions
    - Systems and procedures documentation
    - Project appraisal or assessment
- Operation of application systems or programs including handling, assembling or editing of input-output data or media where IT equipment or IT personnel are used.
- Acquisition, installation, operation and maintenance of data processing equipment.
- Other installation management activities including:
    - Performance measurement
    - System tuning
    - Capacity management
- Personnel employed in support of, or directly related to, any of the activities listed above, including:
    - Administration
    - Technical services
    - Clerical services
    - Travel
    - Training
    - Preparation of periodic and special reports
- Control functions directly related to the above activities.

2.E1.1 IT equipment examples

The following are examples of IT goods:
Central processing units (mainframes) and all related features and peripheral units, including processor storage, console devices, channel devices, etc.;

- Minicomputers, midrange computers, microcomputers and personal computers and all peripheral units associated with such computers;
- Special purpose systems including work process:
    - Magnetic Ink Character Recognition (MICR)
    - Optical Character Recognition (OCR)
    - Photo composition
    - Typesetting and electronic bookkeeping
- Communication devices used for transmission of data such as:
    - Modems
    - Data sets
    - Multiplexors
    - Concentrators
    - Routers
    - Switches
    - Local area network (LAN)
    - Private branch exchanges
- Network control equipment, or microwave or satellite communications systems.
- Input-output (peripheral) units (off-line or on-line) including:
    - Terminal
    - Card readers
    - Optical character readers
    - Magnetic tape units
    - Mass storage devices
    - Card punches
    - Printers
    - Computer output to microform converters (COM)
    - Video display units
    - Data entry devices
    - Teletypes
    - Teleprinters
    - Plotters
    - Scanners
- Or any device used as a terminal to a computer and control units for these devices.

The above items are considered IT equipment and may be purchased by departments with IT purchasing authority.

2.E1.2 IT supplies

The following consumable items are considered IT products, but may be acquired as non-IT goods:

- Documents (standards and procedures manuals, contractor supplied systems documentation and educational or training manuals).
- Equipment supplies (printer forms, punch card stock, disk packs, floppy disks, magnetic tape and printer ribbons or cartridges).
- Furniture (IT-related, such as desktop station tables and printer stands).

2.E1.3 IT goods not considered supplies

PC keyboards, mice, zip drives, memory cards, personal digital assistants (PDA), software and scanners <u>are not supplies.</u>

Only departments with an approved IT purchasing authority may acquire the above in accordance with all applicable IT project and procurement standards and requirements.

2.E1.4 IT services

<u>IT personal services</u> are services that have someone doing IT related services, e.g., hardware, software or system maintenance services.

<u>IT consulting services</u> are services of an advisory nature that provide a recommended course of action or personal expertise (product of the mind). This may include subject matter experts or specialists within the IT field overseeing technical projects or providing IT training.

Resumes and customer references should always be reviewed to ensure the level of expertise and experience matches the project requirements or skill levels as identified in the solicitation or request for offer, as well as in the applicable LPA service contracts (CMAS or MSA).

The end product may transmit information, either written or verbal, and is related to the governmental functions of a state department's administration and management and program management or innovation. It may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

<u>Example:</u>
Independent Verification and Validation (IVV) consulting services or Independent Project Oversight (IPO) consulting services are consider IT services because they provide oversight and validation on large IT Integration Projects (required by SIMM Section 45). These services must be acquired in adherence to IT procurement rules.

Topic 2 – Information Technology

2.E2.0 Department of Technology approval of IT activities

GC Section 11545 establishes the Department of Technology (CDT) and gives CDT general authority over the strategic management and direction of the state's information technology resources. SAM Sections 4800-5180 constitutes these powers and defines the procedures for obtaining CDT's approval of proposed information technology expenditures.

All departments must obtain IT project approval as specified in CDT policy BEFORE initiating any IT procurement activity or encumbering any funds.

SAM and SIMM are accessible in the resources section at the end of this chapter. See specifically SAM Sections 4500 et seq.-telecommunications, 4800 et seq. – information technology, 4989 - Desktop and Mobile Equipment Computing Policy, 5200 – IT procurement (5200 was incorporated into this manual) and 6700 – 6780 IT expenditures.

2.E2.1 Department of Technology - technology letters

Technology Letters (TL) are issued by CDT to disseminate new or changes to existing IT policies, standards, and procedures. Departments should review CDT's website frequently to stay current on TL notifications. If a department has questions about any of the TLs, contact the person noted in the TL or your CDT Contact.

2.E2.2 Personal communi-cations device (PCD)

The use of LPA contracts issued by DGS or CDT to obtain PCDs and associated service plans should be considered first. PCDs include but are not limited to:

- Cellular phones
- Pagers
- Personal Digital Assistants (PDA)
- Related items or configurations that permit remote communication and/or messaging.

Topic 3 – Requirements Specific to IT Goods and/or Services

2.E3.0 New equipment

The state will procure new information technology equipment. All equipment must be new and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Equipment owned by a state department that is transferred or sold to another state department is exempt from this requirement. However, such transfers must be conducted in accordance with the rules for disposal of IT equipment and all rules applicable to developing a new or enhanced information technology capability.

Exceptions may be considered for equipment that marginally extends an existing production operation and for which no equivalent new equipment is available. Exceptions will not normally be approved for development or acquisition of a new capability, for enhancement of an existing capability, or for system replacement or upgrade. Requests for exceptions must be fully justified and in the state's long-term best interest. Requests for exceptions must be submitted in writing to CDT. Written approval of an exception must be received from CDT prior to release of any solicitation document and kept in the procurement file.

If the purchase is for equipment that contains used parts, the equipment may be obtained without CDT's approval if the supplier certifies or warrants in writing the equipment as new. This condition must be documented in the purchase document and supporting documentation retained within the procurement file.

2.E3.1 Low power office computing policy

When purchasing IT equipment, departments shall follow the Low Power Office Computing policy outlined in IT Policy Letter (ITPL) 12-3, available in Section G, Resources, at the end of this chapter.

2.E3.2 Productive use requirements

Successful operation of a state program frequently depends upon reliable operation of IT equipment or software. Failure of procured IT products may result in loss of revenue, unnecessary expenditure of funds, idling of state personnel or interruption of services to program recipients.

These Productive Use Requirements are intended to: (1) Minimize risk of failure of a procured product; and (2) Protect the state from procuring equipment or software that has no record of proven performance. The requirements pertain to all procurements for IT goods.

Model language for inclusion in solicitation documents regarding Productive Use Requirements is provided in the IFB/RFP solicitation format.
Refer to Section G, Resources, at the end of Chapter 4 for the current solicitation format.

2.E3.3 Consulting services in feasibility studies and other IT procurements

Occasionally, the state contracts with consultants to assist in the preparation of feasibility studies and/or to make recommendations for the acquisition IT goods and/or services. It is the state's intention that such consultant assistance and all ensuing recommendations be based on objective, unbiased analyses of the relevant facts.

Public Contract Code Section 10365.5 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." SCM Vol. 1, defines the term "consulting services" with respect to state contracts.

The requirements of Public Contract Code Section 10365.5 and this section are applicable to any IT contract that includes a consulting component as articulated in Public Contract Code Section 10430 (b)(1).

All IT solicitation documents that include a consulting component must include the language contained in 2.B6.4 and 2.B6.8 of this section. Amendments to contracts that incorporate a consulting component that was not part of the original solicitation document must also contain this language. A reference to these sections is not sufficient. The actual language should be reproduced and included in the solicitation document.

In addition, should a consultant establish or become aware of such a financial interest during the course of contract performance, the consultant must inform the state in writing within ten (10) working days. If, in the state's judgment, the newly-established financial interest will jeopardize the objectivity of the recommendations, the state shall have the option of terminating the contract.

Failure to disclose a relevant financial interest on the part of a consultant will be deemed grounds for termination of the contract with all associated costs to be borne by the consultant and, in addition, the consultant may be excluded from participating in the state's bid processes for a period of up to thirty six (36) months in accordance with Public Contract Code Section 12102(j).

2.E3.4 Exclusion for conflict of interest

No consultant shall be paid out of state funds for developing recommendations on the acquisition of IT goods or services or assisting in the preparation of a feasibility study, if that consultant is to be a source of such acquisition or would otherwise directly and/or materially benefit from the state adoption of such recommendations or the course of action recommended in the feasibility study. Further, no consultant shall be paid out of state funds for developing recommendations on the disposal of state surplus IT products if that consultant would directly and/or materially benefit from state adoption of such recommendations.

2.E3.5 Analysis of potential follow-on issues

An analysis of potential follow-on issues should be made and include consideration of the following factors.

Initial Contract

If the initial contract is not for consulting services, the prohibitions of Public Contract Code Section 10365.5 do not apply.

Contract Type

In the lifecycle of a typical IT project there are no hard and fast rules; however, an evaluation of the initial contract type is a useful first step. The following are examples of what are typically or not typically considered consulting services:

- IT contracts typically considered a consulting services contract:
  - Feasibility Study Report
  - Strategic Planning and business process reengineering/improvement (not included in the lifecycle of an IT project)
  - Maintenance and Operations
- IT contracts typically not considered a consulting services contract because the primary purpose is not to deliver services having characteristics outlined in Public Contract Code Section 10335.5(a):
  - Design Development and Implementation
  - Project Management
  - Independent Validation and Verification
  - Independent Project Oversight Consultant
- IT contracts that require analysis of the specific details of the contract to determine whether it is a consulting services contract or not:
  - Acquisition Specialist

While the examples above are typically characterized as noted, analysis of contracts for purposes of the follow-on statute must be made on a case-by-case basis. The essential issue is what the contract delivers, not how it is labeled.

Evaluation of Work and Deliverables

In evaluating contracts on a case-by-case basis, the following questions may prove helpful.

- Are consulting services present?
- Does the contract call for services that are advisory in nature, providing a recommended course of action or personal expertise and having an end product that transmit information or analysis related to the governmental functions of a state department?

An analysis of the scope of work with these criteria in mind should suggest an answer.

Are the actions:

- Required, suggested, or otherwise deemed appropriate?
- Found in an end product or deliverable of the contract (Pub. Cont. Code § 10365.5(a))?

If there is no “end product” or deliverable that has the characteristics of a consulting services contract, a follow-on situation will not exist.

Multipurpose Contract

The above does not cover situations where the initial contract is not primarily a consulting services contract, but includes work that is consulting services in nature in the contract’s deliverables. The statute is silent with regard to contracts that do not provide consulting services as the primary deliverable, but include them as a relative minor part of the contract. No definitions are provided, nor is there any other specific guidance.

In absence of specific statutory guidance, the primary or predominant purpose of the initial contract must be determined. Public Contract Code Section 10335.5 provides some guidance. Is the primary or predominant purpose of the contract “advisory in nature;” does it “recommend a course of action or personal expertise”? Is the end product of the contract “basically a transmittal of information…related to the governmental functions of a state department?”

For example, in a large system implementation contract, the supplier’s principal work is to design a new data processing system. This contract would not reasonably be considered a consulting services contract even if, in the course of contract performance, the supplier makes recommendations regarding the new system which it is implementing.

Therefore, if the primary or predominant purpose of the initial contract is not that of a consulting services contract, a follow-on situation will not exist.

Although not based explicitly in statutory language, this approach is a reasonable attempt to meet the Legislature’s clear purpose to effectuate the state’s best interest in IT contracting, while guarding against the potential dangers inherent in the follow-on contracting situation.

This is an administrative interpretation which has not been tested in the courts. Both contracting agencies and suppliers are urged to exercise caution in this area.

Subsequent Contract

If the initial contract is determined to be a consulting services contract, the analysis must turn to the causal relationship, if any, between the initial contract and the potential follow-on contract. The purpose of the causal inquiry is to determine whether there is sufficient link between the end product(s) of the first contract and the deliverable(s) to be procured by the second contract to warrant preclusion of the supplier that performed the first contract.

2.E3.6 Consider potential contracting opportunities

Since the determination of follow-on issues is dependent on the IT services rendered pursuant to the scope of the initial contract, care must be exercised in drafting the scope of services that are anticipated. The awarding department and potential bidders should give serious consideration at the time that an initial contract is being developed to whether there may be potential future contracting opportunities that could fall within the follow-on prohibitions. Solicitations for all consulting services contracts should advise of the application of Public Contract Code Section 10365.5.

Departments may determine, as part of the initial contract that subsequent project oversight services, such as Independent Validation and Verification (IV&V) and Independent Project Oversight Consultant (IPOC) services, shall be used and are not part of the deliverables on the initial contract, thus assuring that bidders in the initial contract may participate in bidding for oversight services without violating the prohibitions of Public Contract Code section 10365.5.

2.E3.7 Advice process

Before determining to either reject a potential bidder or withhold an award of a contract a state department should analyze the issues considering the information provided in this manual and applicable statutes. Consultation with departmental counsel is strongly recommended. Further advice may be sought when a bidder is participating in a solicitation to provide services or goods under circumstances which might constitute a follow-on (subsequent) contract. The purpose of this advice is to facilitate an early determination to allow suppliers and departments to ascertain eligibility for proposed/pending procurements.

For contracts awarded by DGS, or pursuant to purchasing authority delegated by DGS, or which are subject to the approval of DGS, the Procurement and Contracting Officer of a contracting department or a potentially disqualified bidder may seek advice from the Deputy Director, Procurement Division, within ten (10) business days after a contracting opportunity is advertised or announced to bidders, typically through the issuance of an RFI or RFP, whichever occurs first. DGS may, in its discretion, consider requests made after the expiration of the time period. For its part, DGS will make every effort to provide an expeditious response. If the inquiry is from the contracting department, that department shall reimburse DGS for any costs associated for such review.

The request for advice should be submitted to:
Deputy Director
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605
FAX: (916) 375-4505

Any documents submitted for review and any written advice of DGS shall be subject to the Public Records Act (GC section 6250 et seq.) and applicable exemptions thereto.

The advice provided will be considered informal and not an official determination by DGS. The provision of this informal advice shall not

constrain any subsequent determination under law, nor will DGS be restricted from the full exercise of its contract review responsibilities, including further review of issues related to Public Contract Code Section 10365.5 based on factors discovered by DGS subsequent to the initial determination.

Departments must document the procurement file with known suppliers that may not compete. In the event that no official consistent determination is made regarding a supplier's ability to compete, departments must contact DGS/PAMS for advice regarding consistent application of the policy.

2.E3.8 Disclosure of financial interests

Proposals in response to state procurements for assistance in the preparation of feasibility studies or the development of recommendations for the acquisition of IT goods and/or services must disclose any financial interests (i.e., service contracts, OEM agreements, remarketing agreements, etc.) that may foreseeably allow the individual or organization submitting the proposal to materially benefit from the state's adoption of a course of action recommended in the feasibility study or of the acquisition recommendations.

2.E3.9 IT equipment maintenance policies

IT equipment maintenance shall be performed by state personnel when the technical expertise is available and the service can be provided in a timely manner. If maintenance service is performed by private sector individuals or organizations, the services shall be acquired through the competitive bidding process, except as outlined below.

Public Contract Code Section 12102(a) states in part that "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."

Maintenance contracts for any state-owned IT equipment which do not meet the conditions for noncompetitive justification or another exception must be competitively bid. See Chapter 4 for requirements for competitive bidding of maintenance contracts. These requirements are to be applied in the development of the maintenance specifications and the procurement document must contain the specifications.

2.E3.10 IT risk criteria guidelines and financial protection measures

The risk evaluation guidelines and financial protection measures have been developed to protect the best interest of the state pursuant to Public Contract Code Section 12112. These guidelines and protections are effective as of March 19, 2008 and must be applied to all IT goods and/or services solicitations valued at and above $1,000,000. Solicitations valued under $1,000,000 may comply with the risk evaluation guidelines and financial protection measures.

For additional information, refer to Chapter 4.

2.E3.11 Reporting IT projects, software licensing agreements and amendments to the legislature

Pursuant to the Budget Act of 2012, certain contracts associated with IT projects, statewide software licensing agreements, and associated amendments must be reported to the Legislature. With some exceptions, reporting must be made prior to entering into a contract or agreement that exceeds specific dollar thresholds approved for the project or the statewide software licensing business proposal. Control Section 11.00 and 11.10 reporting allows the Legislature an opportunity to review future funding obligations and enterprise license commitments before they are made.

For additional information, see Budget Letter 15-13 in Section G, Resources, at the end of this chapter.

Topic 4 – Desktop and Mobile Computing Purchases

2.E4.0 Requirements

CDT delegates authority to acquire desktop and mobile computer goods to departments that (see SAM section 4989-4989.3):

- Have submitted acceptable Disaster Recovery Plans (DRP) or DRP certifications to CDT,
- Maintain compliance with all applicable state IT security provisions as defined in SAM section 4800, and
- Have appropriate plans for the use of desktop and mobile computing goods.

Under the Desktop and Mobile Computing Policy (DMCP) departments may acquire desktop and mobile computing goods necessary to support programmatic functions and business needs may be acquired.

This does not exclude departments from continuing to establish and maintain appropriate standards for the purchase of desktop and mobile computing goods.

2.E4.1 Allowed purchases

The DMCP includes the acquisition and support of:

- Personal computers
- Laptop computers
- Personal digital assistants
- Peripheral equipment (e.g., printers)
- Local Area Networks
- Other equipment and software commonly required for most state employees to perform daily business transactions.
- Software typically purchased and installed on a standard desktop or mobile computer such as:
    - Word processing
    - Spreadsheets
    - Desktop database
    - Other non-modifiable commercial-off-the-shelf (COTS)

See SAM section 4989.1-4989.3 for additional desktop and mobile computing information. Refer to Section G, Resources, at the end of this chapter for access to the SAM Manual.

2.E4.2 Excluded purchases

In accordance with SAM section 4989.2 the following activities are excluded from the DMCP and must be justified in accordance with SAM sections 4819.3 through 4819.42:

- IT Projects – as defined in SAM section 4819.2, beyond the acquisition, installation and operation of DMCP goods.
- Budget Actions – any acquisition, maintenance or support of desktop and mobile computing IT goods, which requires a Budget Change Proposal, a Budget Revision or other budget action.
- Specialized or single-purpose systems – such as computer-aided design systems, desktop publishing systems, programmer workbench systems or artificial intelligence systems.
- Infrastructure or platform migration – acquisitions associated with or mandated by a change in a department's standard technical architecture for servers, desktops and/or mobile computing platforms. Migrating to a newer version within the existing standard's product family is not considered an infrastructure or platform migration.
- Wide Area Networks (WAN) – acquisition, maintenance or support of desktop and mobile computing goods specifically to install or operate a WAN.

2.E4.3 File documentation

Purchases acquired under the DMCP for desktop and mobile computing equipment must include, within the procurement file, sufficient justification to support that the purchase was conducted in accordance with established hardware, software and security standards for desktop and mobile computing. The documentation supporting the purchase must also be uploaded into FI$Cal.

A statement of fact must be included for each purchase executed under the authority of the DMCP.

Topic 5 – Certificate of Compliance with State IT Policies

2.E5.0 Certification of compliance with state IT policies

A certification signed by the department's director, deputy director or the director's designee of compliance with state IT policies is required for all IT procurements valued at $100,000 or more and are in support of a development effort. SAM section 4819.2 defines development as activities or costs associated with the analysis, design, programming, staff training, data conversion, acquisition, and implementation of new information technology applications. Procurement of hardware, software, and services, including Interagency Agreements are included in this requirement.

The signed certification must be uploaded into FI$Cal and retained within the procurement file. If the procurement is being forwarded to DGS/PD for processing, a certification must be part of the submitted procurement package.

Refer to Section G, Resources, at the end of this chapter to access the certification of compliance with state IT policies.

2.E5.1 When certification is not required

A certification is not required for:

- Procurements for less than $100,000;
- Procurements limited only to maintenance services;
- Procurements in support of previously-approved efforts. See SAM section 4819.40;
- Procurement of services to conduct a feasibility study, provided the services are limited to supporting or conducting the feasibility study
- Procurements of excluded activities as described in SAM section 4819.32.

2.E5.2 Under $100,000 documentation requirements

Although a certificate of compliance is not required for transactions valued at less than $100,000, departments purchasing any IT goods and/or services must provide documentation and/or written justification as to how the acquisition was authorized, and retain this documentation and/or justification within the procurement file. Acceptable forms of documentation include:

- Approved Project Approval Lifecycle (PAL) document from the CDT for non-delegated projects.
- Approved PAL signed by the department director, deputy director or director's designee for department delegated projects.
- A statement in the procurement file documenting that the purchase is in accordance with the DMCP as addressed in Budget Letter 04-26.
- PIER approval letter, in support of a previously approved effort.
- Identifying how the acquisition is excluded from SAM section 4819.32.

Section F

Creating the Paper Trail

Overview

Introduction

It is absolutely essential to maintain good records and information relating to the decisions made during the initial planning phase. This is the beginning of establishing the paper trail that should continue throughout the procurement process from the department request through contract conclusion and closure.

Topic 1 – Documenting the Decisions

2.F1.0 Documenting the decisions

As previously stated, planning the purchasing activity begins as soon as the department has identified a need.

Buyers should develop a strategy of how the procurement activity will be accomplished and document the rationale of what led to the decision.

2.F1.1 Provide the basis of the decisions

Buyers shall also describe how competition will be sought, promoted and sustained throughout the course of the purchasing activity. If open competition is not the method of choice, document the basis of the decision.

2.F1.2 Degree of detail

The degree of documentation detail is determined by the cost, risk, complexity and criticality of the purchasing activity.

Example:
If the selection of the purchase approach was dictated by time constraints, then appropriate notations in the procurement file should be made.

In simple terms, buyers should maintain a diary of the events and decisions that lead up to and complete the purchase transaction, providing a timeline and history of the actions and decisions made throughout the procurement process.

2.F1.3 Take notes

Buyers should make notations of meetings held and decisions made, and create a phone log to record phone conversations impacting the procurement effort.

Consistent, high quality file documentation helps the transaction to be easily understood by a reader who is unfamiliar with it and makes documents easy to locate.

2.F1.4 End result is a public record

Buyers should create and maintain their procurement records keeping in mind that all procurement records are public records subject to request and release to the requestor. Consequently, avoid typos, scratch outs, and personal notations not relevant to the procurement.

Section G

Resources

Chapter 2 Resources

A

Acquisition Methods List		PDF

B

Budget Letters	Link to Webpage	

C

CalHR, Policy Memo	Link to Webpage	
California Law	Link to Webpage	
California Regulatory Notice Register	Word	
CALPIA Exemption Request	Link to Webpage	
Certification of Compliance with state IT Policies		PDF
Conservation, Department of	Link to Webpage	

D

Darfur Contracting Act Certification	Word	
DGS/PD Engineering Services	Link to Webpage	
DGS/PD Pharmaceutical Acquisitions Section	Link to Webpage	
DGS Real Estate Services Division	Link to Webpage	

F

Freight Rate Analysis Request link	Word	

H

Human Resources, Department of	Link to Webpage	

I

Iran Contracting Act Certification	Word	

L

Lease vs. Purchase Analysis form	Word	PDF
Lease versus purchase analysis form as shown in SAM section 3700 Appendices (A-1)		PDF
List of Ineligible Vendors	Link to Webpage	

M

Management Memo 11-01 *Cost Effective Reuse of Surplus Furniture*		PDF
Management Memo 13-01 State *Fleet Asset Oversight*		PDF

N

Negotiation Process Guide	Word	

O

OFAM Handbook		PDF
One-Time Acquisitions (OTA) Website	Link to Webpage	
OTA Submission of Requisitions to DGS		PDF

S

Secretary of State Website	Link to Webpage	
State Administrative Manual (SAM)	Link to Webpage	
Statewide Information Management Manual (SIMM)	Link to Webpage	
Surface Mining and Reclamation Act certification form	Word	PDF
Surplus Property Program	Link to Webpage	

T

Tax Delinquents Lists		
Board of Equalization	Link to Webpage	
Franchise Tax Board	Link to Webpage	
Technology Letter 12-03 *Low Power Office Computing*	Word	PDF
Template – 6611 Negotiation Process	Word	
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Chapter 3

Socioeconomic and Environmental Programs

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Chapter 3

Socioeconomic and Environmental Programs

Overview

Introduction

This chapter describes socioeconomic and environmental programs established by state law and further defined by regulations and policies to increase business opportunities on state procurement and contracting activities for small and disabled veteran businesses and those businesses operating in economically distressed areas of the state. Also included in this chapter are the state policies for sustainable purchasing

Most of the purchasing authority categories provide a means of claiming contracting dollars toward compliance with the state's socioeconomic and environmental programs goals. This chapter provides an overview of each program, identifying the program requirements and describing the application of applicable price preference evaluation adjustments in competitive solicitations during the evaluation process. It also provides examples of the various preferences and incentives for the socioeconomic and environmental programs. Departments in need of assistance with the application of the preferences and/or incentives for goods and services, can contact DGS/PD at PPO@dgs.ca.gov.

An overview of the Americans with Disabilities Act (ADA) policy is also included within this chapter to explain the importance of making all procurement activities available to all persons, including persons with disabilities, and where to go for assistance.

Section A

Socioeconomic Programs

Topic 1- Americans with Disabilities Act (ADA)

3.A1.0 Americans with Disabilities Act (ADA)

In compliance with the provisions of the ADA (Americans with Disabilities Act of 1990, Title II Subpart A) and State policy, every effort must be made to ensure activities and services are available to all persons, including persons with disabilities.

3.A1.1 Provide reasonable accommodation

Reasonable accommodation must be made to those persons with disabilities that have special needs requiring accommodation in order to participate in the procurement process. Preparation should be made in advance to ensure those persons having questions about reasonable accommodation are provided with accurate responses.

Departments should have an ADA Coordinator who is available to assist buyers in responding to questions or concerns regarding reasonable accommodation as it impacts the procurement process.

3.A1.2 DGS/PD assistance with reasonable accommodation

DGS/PD is available to assist departments with reasonable accommodation requests relative to participating in a procurement process. DGS/PD can be contacted at (916) 375-4400 (main office) for assistance.

Departments need to provide DGS/PD a minimum of ten (10) business days before a scheduled event (i.e., meeting, conference, workshop) or competitive bid deadline due date to ensure a request can be accommodated.

3.A1.3 Contact numbers for TTY/TDD and California relay service

DGS/PD TTY/TDD (telephone device for the deaf) and California Relay Service numbers are listed below:

- TTY/TDD telephone number is (916) 376-1891
- California Relay Service telephone numbers are:
  - Voice: 1-800-735-2922
  - TTY/TDD: 1-800-735-2929

Topic 2 – Small Business and Disabled Veteran Business Enterprise Contracting Opportunities

3.A2.0 Opportunity

Pursuant to the Small Business Procurement and Contract Act (Government Code Sections 14835 through 14843) and Military and Veterans Code (M&VC) section 999 et seq, procurement opportunities must be offered to California (CA) certified small businesses (SB), micro businesses (MB), and disabled veteran business enterprises (DVBE) whenever possible. Hereafter, unless otherwise directed, any reference to certified SB also includes certified MB as defined by the above referenced GC.

Consequently, departments should make every effort to seek out and include certified SB and DVBE when conducting any procurement activity within its approved purchasing authority.

3.A2.1 Annual statewide participation goals

Pursuant to Executive Order S-02-06, D-43-01, and M&VC 999.2, each department shall have an annual statewide participation goal in State procurement and contracting of not less than 25% for SB participation and not less than 3% for DVBE participation.

These participation goals were established to enhance and encourage competition by creating an optimum environment that affords all businesses equal access to State procurement and contracting opportunities. Departments unable to meet the required participation goal(s) are required to submit an Improvement Plan with their annual reporting(s). Refer to Chapter 9, Post Award Activities.

3.A2.2 SB/DVBE Advocate

In accordance with Government Code Section 14846, and M&VC section 999.12, State departments whose annual purchasing activities exceed $100,000 (regardless of purchasing type(s) or categories) shall designate a SB/DVBE advocate whose duties include but are not limited to:

- Identify potential SB and/or DVBE prime contractors or subcontractors and potential contracting opportunities.
- Make information regarding pending solicitations available to and consider offers from certified SB and/or DVBE firms capable of meeting the State's business need.
- Ensure that payments due on purchase documents with SB suppliers are promptly made as provided by Government Code Section 927 et seq.

Refer to Section C, Resources, at the end of this Chapter to access the SB and DVBE Advocate Directory.

3.A2.3 Available acquisition approaches to achieve goals

All acquisition methods can be used to achieve participation goals. Examples include competitive solicitations, such as the SB or DVBE Option and use of existing sources such as leveraged procurement agreements (LPAs).
Refer to Chapter 5, Leveraged Procurement Agreements (LPA), for information on the process of claiming SB and DVBE contracting dollars under an LPA purchasing category.

3.A2.4 SB or DVBE Option

Government Code Sections 14838.5 (a) and (b) enables a department to conduct a competitive solicitation valued at $5,000.01 through $249,999.99 that targets only certified SB, including micro businesses, or certified DVBEs.

Refer to Chapter 4, Open Competition, for detailed information regarding the SB or DVBE Option process.

: Buyers conducting a competitive solicitation utilizing the SB or DVBE Option need to verify if there are mandated or sourced contracts associated to the product or services. Some Statewide Contracts include language allowing departments to exercise a SB/DVBE off-ramp.

3.A2.5 Verify certification status

Solicitations (including verbal or written requests for offers), consideration of bids, or award of contracts shall not be provided to any firm that has been suspended from State procurement and contracting as listed on DGS/PD web page. The FI$Cal system maintains certification status of SBs and DVBEs.

To access a list of suspended firms, refer to Section C, Resources, at the end of this Chapter

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3.A2.6 Authority for Commercially Useful Function

In accordance with Government Code Section 14837 and M&VC section 999, all SB and DVBE contractors, subcontractors and suppliers that bid on or participate in a State contract, regardless of being a verbal or written solicitation and/or paid for using the CAL-Card as a payment method, must perform a Commercially Useful Function (CUF). In addition, the requirement to determine CUF is not affected by the applicability of the 5% SB preference and/or the DVBE participation goal or DVBE incentive. There is no exception to this requirement; consequently, certified SB, MB and DVBEs must perform a CUF. CUF must be determined prior to contract award.

Refer to Chapter 8 for CAL-Card requirements.

3.A2.7 Performing and Demonstrating a Commercially Useful Function

A business performing a CUF is one where the contract administrator determines that the business does all of the following:

- Is responsible for a distinct element of the work of the contract
- Carries out its obligation by actually performing, managing or supervising the work involved
- Performs work that is normal for its business, services and functions
- Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices

A California certified SB and/or DVBE contractor, subcontractor, or supplier will not be considered to perform a CUF if the role of the contractor or supplier is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SB, MB, or DVBE participation. After award, the contract administrator must monitor compliance with CUF for the duration of the contract.

Departments must document their evaluation of CUF compliance in the procurement file. The CUF Evaluation and Determination Worksheet or some other equivalent must be used to document CUF compliance. Departments have the option of creating a Departmental Policy or may use the sample policy found in Section XX, Resources, to provide additional direction regarding CUF. Information that departments may want to include can be found in the sample. The sample policy provided also includes a link to a Frequently Asked Questions (FAQ) document.

A link to the CUF Evaluation and Determination Worksheet can be found in Section XX, Resources, at the end of this chapter.

3.A2.8 CUF compliance

Failure of a certified SB, MB, or DVBE to demonstrate performance of a CUF, when bidding as a prime contractor, will result in that certified bidder being eliminated from consideration. When analysis discloses that a certified subcontractor/supplier is not providing a CUF, a contract may still be awarded if the prime contractor is a responsible bidder without the involvement of the firm that has been determined not to provide a CUF and/or the work can be performed by an alternate SB, MB, or DVBE firm where the substitution is determined to have no material effect on the bid.

With respect to possible sanctions or decertification where it is determined that fraud or misrepresentation has occurred, information provided by bidders to demonstrate compliance with the CUF requirement is required under M&VC section 999.9 and Government Code Section 14842. Awarding departments are reminded of their responsibilities under these sections, particularly with respect to receipt of complaints, investigations, and reporting responsibility to DGS/PD's Office of Small Business and DVBE Services (OSDS).

For more information on SB/DVBEs failing to perform CUF, refer to the DVBE and SB Program Violations and Sanctions information in Section C, Resources, at the end of this chapter.

3.A2.9 Contact DGS/PD/ OSDS

To contact DGS/PD/OSDS, refer to DGS/PD/OSDS SB and DVBE Services web page accessible under "Contact Us" in Section C, Resources, at the end of this chapter.

Topic 3 – Disabled Veteran Business Enterprise Participation Program Requirements

3.A3.0 Authority

The Disabled Veteran Business Enterprise (DVBE) participation program for all State contracts is established in PCC section 10115 et seq., M&VC, section 999 et seq., and CCR, Title 2, section 1896.60 et seq. Compliance with DVBE requirements is required for all State entities.

This section provides information about the State's DVBE program to ensure that certified DVBEs are afforded opportunities to compete for State contracts, requirements and application of incentives.

3.A3.1 Competitive solicitation and DVBE requirement

Departments must develop DVBE solicitation language to include in their competitive solicitations that complies with the DVBE participation program.

Unless statutorily exempt, the DVBE participation requirement applies to all contracts regardless of the solicitation format (e.g., RFQ, IFB, RFP) or dollar value. Upon the approval of a department director or designee the requirement may be made exempt from an individual solicitation. When this occurs, the department must state in the solicitation that the DVBE requirement is waived.

It is still the departments' responsibility to ensure compliance with the 3% annual DVBE goal, as well as noting within the procurement file, the reason the DVBE participation is waived.

Example:
"For the purpose of this solicitation, the DVBE participation requirement was waived."

3.A3.2 Meeting DVBE program requirements

If DVBE participation is a requirement of the competitive solicitation then a bidder must document commitment to full DVBE participation. Documentation should demonstrate that the bidder identified, contacted and committed to using certified DVBE firms who will perform the percent of work specified by the solicitation.

DGS/PD's OSDS publishes DVBE Resources on its web site that lists approved DVBE trade and focus papers.

Refer to Section C, Resources, at the end of this chapter to access the DVBE Resources

3.A3.3 Meeting DVBE goals

There are two methods of meeting the goals:

1. For non-DVBE bidders: Commit to use DVBEs for not less than the percentage specified in the solicitation, or
2. For DVBE bidders: Commit to perform not less than the percentage specified in the solicitation with its own forces or in combination with other DVBEs.

3.A3.4 Definition of broker/agency and equipment broker

M&VC Section 999.2(b) provides definitions for the following terms:

- "Broker" or "agent" means any individual or entity, or combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- "Equipment broker" means any broker or agent who rents equipment, directly or indirectly, to an awarding department.

3.A3.5 Broker/agent status for DVBE

The State must obtain declarations from certified DVBEs as identified below pursuant to M&VC sections 999.2(b) through 999.9. The purpose is to eliminate the benefits of DVBE status from those contractors who are using their certified status and obtaining State funds, but working only as brokers or agents. Therefore, in order to enable the State to verify that a DVBE is not an equipment broker, the DVBE's Federal Tax Information Number must be reported on the STD. 843.

To access the STD. 843, Disabled Veteran Business Enterprise Declaration, refer to Section C, Resources, at the end of this chapter, under forms.

3.A3.6 Impacted DVBEs

Declarations are to be obtained using a Disabled Veteran Business Enterprise Declaration (STD. 843) when the State intends to transact business:

- With a certified DVBE prime or
- For equipment rental situations, with either a certified DVBE prime or a prime who is using a certified DVBE subcontractor(s)

This pertains to all types of transactions including competitive and non-competitive situations. It applies both when establishing Leveraged Procurement Agreements (LPAs) and when placing orders against LPAs.

3.A3.7 Purchase document submission

When DVBEs are involved as identified above:

- Departments that submit purchase documents for PD review and approval are to provide a copy of the Std. 843(s) by uploading it in FI$Cal and attaching it to a waiver form to send with the requisition.
- Purchase documents submitted to PD in conjunction with emergency acquisitions must include a copy of the Std. 843(s) by uploading it in FI$Cal and attaching it to a waiver form to send with the requisition.

3.A3.8 Declaration information

As long as all other requirements are met (such as Commercially Useful Function), the State can still transact business with a DVBE that is determined to be a broker or agent or who declares that one or more of its DV owners or DV managers does not own at least 51% of the equipment to be rented; however, the DVBE:

- Will not receive the benefit of their certification for the respective transaction (This includes benefit, as applicable, for a DVBE incentive) and
- Participation (attributed to the DVBE that is the broker) will not count towards the awarding department's annual DVBE participation goal.

3.A3.9 OSDS Role

OSDS reviews and certifies DVBEs. To support the requirements of M&VC sections 999.2(b) through 999.9, OSDS requires all DVBEs (both new applicants and those currently certified) to declare their status as a broker or agent, submit the business enterprise's federal tax returns and – for those who rent equipment to the State – to submit their personal tax returns.

DVBEs who rent equipment to the State and who fail to submit their personal tax returns to OSDS automatically attain broker or agent status and will be considered non-certified for DVBE participation goal purposes.

3.A3.10 Notify OSDS

Notify the OSDS, Compliance Unit, when the completed Std. 843 identifies that:

- A DVBE is a broker or agent (in Section 2 of the form)
- If rental equipment is to be provided, one or more of the DV owners or DV managers of the DVBE does not own at least 51% of the equipment to be rented (in Section 3 of the form)

When notifying OSDS, provide a copy of the Std. 843. Also provide your contact information.

3.A3.11 DVBE responsibility

The law requires that a DVBE that fails to maintain certification requirements shall immediately notify departments with current contracts, and the administering department, of the situation. The notification shall identify the particular certification requirement that has not been maintained (M&VC §999.2(h)).

3.A3.12 Consequences

Failure of a DVBE to submit business enterprise federal tax returns to OSDS will:

- Prohibit benefit of DVBE certification in any State contract until compliance occurs
- Result in OSDS decertification of the DVBE
- Prohibit the DVBE from participating in State contracts until the business is in compliance
- Negate DVBE annual 3% participation credit for any funds expended involving the DVBE

Topic 4 – DVBE Incentive and Competitive Solicitations

3.A4.0 Authority

M&VC section 999.5 et seq. authorized DGS to establish a DVBE incentive process to enhance participation of DVBEs in state contracting. Furthermore, the DVBE incentive regulations are located within the California Code of Regulations (CCR), Title 2, Division 2, Chapter 3, Subchapter 10.6, Sections 1896.99.100 and 1896.99.120 and are available in Section C, Resources, at the end of this chapter

3.A4.1 Definition of DVBE incentive

A DVBE incentive is a method that encourages participation of certified DVBEs in solicitations by providing an adjustment of price for awards based on low price or points for awards based on high score. The DVBE incentive is applied during the evaluation process for bids proposing participation of California certified DVBEs. The application of an incentive varies from that of a preference both in when it is incorporated into competitive solicitations and how incentive percentages are determined and calculated. Unlike preferences in which the inclusion is standardized in competitive solicitations and a standard percentage is stipulated, discretion is left to the departments to determine incentive percentages for a particular transaction based upon a business strategy to achieve their annual goal.

3.A4.2 Opportunity

Departments must offer procurement opportunities to California (CA) certified SBs, MBs, or DVBEs, whenever possible. This includes applying the DVBE incentive during the evaluation process of a competitive solicitation that includes the CA DVBE Program Requirements package and where there are bids that propose participation of CA certified DVBEs.

3.A4.3 Applicability

The DVBE incentive applies to all competitive solicitations regardless of format (e.g., RFQ, IFB, RFP, or phone quotes), delivery method, or dollar threshold whenever the solicitation includes the DVBE Program Requirement. If a solicitation includes the DVBE Program Requirements, buyers will use DGS provided CA DVBE Program Requirements whenever conducting competitive solicitations under a department's approved purchasing authority.

Refer to Section C, Resources, at the end of this chapter for access to the DVBE Program Requirements.

3.A4.4 DVBE incentive exemption provision

A department may elect to exempt a solicitation from the DVBE Program Requirement and/or the DVBE incentive providing it has obtained the required signed approvals and has met specified exemption criteria detailed in the DVBE Program Requirements and DVBE Incentive Waiver (GSPD-07-04) form (Refer to Section C, Resources, at the end of this chapter). Buyers must complete and document the form as directed.

Departments having met or exceeded the DVBE 3% goal for 2 out of the 3 previous years, may have their highest ranking executive officer or his/her designee elect to exempt contracts from the DVBE incentive. The 3 most current published DGS annual reports are used to document a department's DVBE participation goal.

To access the DVBE Incentive Exemption List web page, refer to Section C, Resources, at the end of this chapter.

3.A4.5 Incentive percentages

Competitive solicitations that include the DVBE participation requirement, regardless of solicitation format (RFQ, IFB, or RFP) delivery method or dollar value must identify in the solicitation the allowable incentive percentage(s) and how evaluation will occur. For awards based on low price, the allowable incentive percentage(s) identified in the solicitation cannot exceed 5% or be less than 1%. For awards based on high points, the incentive cannot exceed 5% or be less than 1% of total possible available points, not including points for socioeconomic incentives or preferences.

The following table pertains to awards based on low price. It is located in the DVBE Program Requirements packet and identifies the percentage(s) used to adjust the net bid price when calculating the DVBE incentive.

Confirmed DVBE Participation of:	DVBE Incentive:
5% and Over	5%
4% - 4.99% inclusive	4%
3% - 3.99% inclusive	3%

Should the circumstances of a particular acquisition dictate the need, the packet provides a provision to override the table with another table that either depicts:

- A different scale with varying percentages (within the acceptable range) or
- Single incentive percentage (within the acceptable range)

If the table will be superseded, elsewhere within the solicitation identify the new table and state that it overrides the table in the DVBE Program Requirements. Then:

- Ensure that the incentive amount does not exceed 5% and is no less than 1% for awards based on low price.
- Obtain managerial approval and document the rationale for the change in the procurement file.
- Ensure that the incentive amount does not exceed 5% or $100,000, whichever is less, of the #1 ranked net bid price.

- When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed $100,000.

Prior to a buyer including either of the above variances in the DVBE incentive requirements, the rationale for the change must be documented in the procurement file. The procurement file must also include signed approval for the variance by the department's Procurement and Contracting Officer (PCO) or a designee at a managerial level with sufficient knowledge of the day-to-day procurement activities of the department. If DGS/PD is conducting the procurement for the department, a copy of the rationale for the change and the appropriate signed approval must be forwarded to PD with the department's requisition.

3.A4.6 Allowable maximum for low price awards

For each solicitation, the awarding departments' highest ranking executive officer or his/her designee may elect to place a cap of not less than $100,000 on the incentive and/or cap of not less than $100,000 for all combined incentives and preferences. The department must document this approval in the procurement file.

3.A4.7 Bidder declaration

Written solicitations shall include the Bidder Declaration (GSPD 05-105) to allow bidders to identify if they are a DVBE and identify DVBE subcontractors, their proposed contract function and the corresponding percentage of participation.

When conducting a verbal solicitation, the Bidder Declaration, GSPD 05-106 – Verbal Version and its respective instructions must be provided to the suppliers for completion and must be signed by the prime supplier.

Refer to Section C, Resources, at the end of this chapter for links to the:

- Bidder Declaration Narrative
- Bidder Declaration, GSPD 05-105 – Written Version
- Bidder Declaration, GSPD 05-106 – Verbal Version

3.A5.9 Exceptions

The Bidder Declaration is not required for:

- Amendments that do not involve new or substitute subcontractors.
- Emergency purchases as defined by PCC section 1102 if it is ascertained that the bidder has not been listed as ineligible to transact business with the State, is not a California (CA) certified DVBE and is not using subcontractors.
- Purchases activities using Community Rehabilitation Programs or Prison Industry Authority.
- Verbal solicitations under $5,000 if it is ascertained that the bidder has not been listed as ineligible to transact business with the State, does not possess a CA DVBE certification and the bidder is not using subcontractors.

3.A4.8

It is the responsibility of each department's PCO or his/her designee to

Documenting the results

establish the appropriate protocol within his/her organization to ensure that buyers document the application of the DVBE incentive for the individual department's reporting purposes.

When a department conducts an acquisition under its delegated purchasing authority, the Procurement Summary (GSPD-300) document or a similar document developed by the individual department will be used to document the application of the DVBE incentive. When conducting a formal competitive solicitation (RFP or IFB), the Evaluation and Selection Report format or Procurement Summary (or a similar document developed by the individual department), where appropriate, will be used. When award is based upon value effective methodology (also referred to as high score), the methodology used to determine incentive points must be documented in the procurement file.

Refer to Section C, Resources, at the end of this chapter for links to the:

- Procurement Summary (GSPD 300)
- Participation Worksheet
- Participation Worksheet Instructions.

If PD is conducting a procurement, it will indicate in the purchase order(s) sent to customer agencies and the application of the DVBE incentive resulted in an award, a statement to that effect will be included in a contract cover letter. Buyers who receive this information from PD will process the information according to the reporting protocol established by their department's PCO.

3.A4.9 When is the incentive calculated for low cost?

If included in the solicitation, the bidder must be compliant with the DVBE program requirements and responsive to all other requirements. The incentive is only given to those who are responsive and propose DVBE participation in the resulting purchase document. When award is based on low price, incentives shall be applied in the following order:

- Small business preference
- Recycle preference
- The DVBE incentive
- All other preferences are subsequently applied

However, for low cost awards, application of the DVBE incentive cannot displace award to a #1 ranked small business.

The net bid price is the value of the bid excluding sales and use tax, finance charges, postage and handling charges. Shipping charges are also excluded from the net cost unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination. The net bid price includes any evaluation corrections and applicable discounts.

3.A4.10 How is the incentive calculated?

The following steps are taken to calculate the incentive. Since the percentage of participation can vary between bidders, and thus the incentive percentage can vary, the "calculated incentive amount" will need to be determined for each incentive percentage (see below).

STEP	CALCULATION ACTION
1	Identify the bidder with the #1 ranked net bid price (the lowest responsive bid).
2	Based upon the evaluated DVBE participation percentage, determine the corresponding percentage of DVBE incentive for the bidder.
3	Multiply the #1 ranked net bid price by the DVBE incentive percentage to determine the "calculated incentive amount" for the bidder. Compare the "calculated incentive amount" to the incentive maximum (specified percentage or identified cap if any), and use the lower figure as the incentive amount.
4	Subtract the incentive amount from the net bid price of the bidder. If a preference calculation was performed, be sure that the allowable cumulative adjustment is not exceeded.
5	Repeat Steps (as needed) for each qualified bidder.

3.A4.11 Low price awards

For purposes of the examples, bidders listed with a certified status are deemed eligible for the preference or incentive.
DVBE = bidder is eligible for the DVBE incentive;
SB = prime is a small business;
MB = prime is a micro business;
NVSA = prime is a certified nonprofit veteran service agency;
NS = non-small business prime claiming preference due to qualifying subcontractors.

EXAMPLE – INCENTIVE CALCULATION				
BIDDER:	**A**	**B**	**C**	**D**
Responsive & responsible	Yes	Yes	Yes	No
Eligible preference	None	SB	MB	MB
Eligible DVBE incentive	None	3%	5%	None
Net bid price	$8100	$8150	$8300	$8000
Rank	1*	2	3	N/A
Preference amount		$ 405	$ 405	N/A
Subtotal		$7745	$7895	
Rank	3	1	2	N/A
Incentive percentage		3%	5%	
Incentive amount		$ 243	$ 405	
Evaluated bid price	$8100	$7502	$7490	
Final rank	3	2	1	N/A

Results:

Following application of the SB preference the lowest responsive, responsible bidder is a certified small business (Bidder B).
However, both Bidder B and Bidder C are eligible to receive the DVBE incentive and since Bidder C is also a responsive and responsible SB, the incentive

calculation is performed

Incentive Calculation:	
STEP	**ACTION**
1	Identify the net bid price of the #1 ranked bidder (Bidder A at $8100).
2	Calculate the 5% SB preference for both Bidder B and Bidder C: $8100 X .05 = $405
3	Determine the corresponding percentage of DVBE incentive for the bidder; Bidder B has 3% DVBE participation so the incentive is 3%.
4	Determine the "calculated DVBE incentive amount" for Bidder B by multiplying the #1 ranked bid amount by the incentive amount. ($8100 X .03 = $243). Compare it to the DVBE incentive maximum, if applicable, and use the lower figure.
5	Subtract the SB preference amount and the DVBE incentive amount from the net bid price of Bidder B: $8150 - $405 - $243 = $7502.
6	Repeat steps for Bidder C. Determine the "calculated DVBE incentive amount by multiplying the #1 ranked bid amount by the incentive amount. ($8100 X .05 = 405). Subtract the SB preference amount and the DVBE incentive amount from the net bid of Bidder C: $8300 - $405 - $405 = $7490.
Award: The award is to Bidder C.	

3.A4.12 High point awards

The use of the DVBE incentive in solicitations where the award is based on high points requires that:

- The department only awards points to those bidders who have been determined responsible and are responsive to all solicitation requirements (including the DVBE program requirements, if applicable) and propose DVBE participation in the resulting purchase document.
- The department provides a rationale that explains how incentive points were determined for the solicitation. The incentive cannot exceed 5% or be less than 1% of total possible available points, not including points for socioeconomic incentives or preferences.
- The department includes incentive points in the sum of non-cost points. The incentive points cannot be used to achieve any applicable minimum point requirements.
- The department must identify how awarded points are to be tallied per the evaluation methodology identified within the solicitation.

When using the information technology IFB/RFP model, possible incentive points should be identified.

The incentive percentage cannot exceed 5% or be less than 1% of total possible points. Departments may identify a scale with varying percentages (within the acceptable range) or a single incentive percentage (within the acceptable range) based on the business need of a particular transaction.

3.A4.13 High point award

The example below is provided to show how to determine whether the designated DVBE incentive points fall with the acceptable percentage range.

example

The following provides an example of how points MAY be assigned for a solicitation. It does **not** represent, nor should be considered, the only approach that a customer may use for an award based on high points.

A solicitation has assigned 300 points as the maximum amount for administrative requirements and technical requirements (excludes the incentive). The cost points assigned total 300. The point designation reflects an evaluation methodology weight for cost of 50% where administrative and technical requirements (excluding any preferences and incentives) = 50% and cost = 50%.

The number of points established for the DVBE incentive correlated to participation is depicted using the scale below:

DVBE Incentive Points	
Confirmed DVBE Participation of:	DVBE Incentive:
5% or Over	30
4% to 4.99% inclusive	24
3% to 3.99% inclusive	18
2% to 2.99% inclusive	12
1% to 1.99% inclusive	6

Total possible points, excluding points for socioeconomic incentives or preferences, in this sample solicitation equal 600 with 5% representing 30 points, 1% representing 6. The acceptable point range of the DVBE incentive must fall within the 1% to 5% range (6-30 points). The DVBE incentive points in this sample meet this criterion.

Topic 5 – Management of DVBE Contract Requirements

3.A5.0 Compliance

The awarding agency shall establish a method of monitoring adherence to the goals. Examples of monitoring methods include:

1. Random verification of contacts made, either for federal, state or local organization contacts, or for DVBE solicitations or bid consideration.
2. Review of multiple bids submitted by the same vendor to verify independent effort and documentation. Evidence of insincere efforts may include:
   - Repeating unsuccessful contacts rather than trying a new contact.
   - Use of contacts that are out of business.
   - Business solicitations not relevant to the contract.
   - Copying of identical DVBE documentation packages.

3.A5.1 Post award audits

Awarding agencies must investigate and report allegations of program violations as follows to DGS/OSDS. Upon receipt of the awarding department's report OSDS will conduct its own review, which may result in suspension. If finding sufficient grounds, OSDS may forward the investigative report to the Attorney General for possible action. It is unlawful for a person or firm to:

- Knowingly and with intent to defraud, fraudulently obtain or retain certification as a DVBE. Willfully and knowingly make a false statement with the intent to defraud, to influence certification of any entity as a DVBE. Willfully and knowingly obstruct an investigation regarding DVBE certification. Knowingly and with intent to defraud, obtaining or attempting to obtain public moneys to which the person is not entitled under the DVBE Participation Program.
- Knowingly and with intent to defraud, fraudulently represent DVBE participation in order to obtain or retain a bid preference or state contract.
- Willfully and knowingly make a statement, declaration or other document, which is false as to any material matter.
- Willfully and knowingly aid or assist in the preparation or presentation of a false document. Willfully and knowingly fail to file any declaration or notice required by M&VC Section 999.2.
- Establish or cooperate in the establishment of, or exercise control over, a firm found to have violated the above. Violators are guilty of a misdemeanor and may also be liable for a civil penalty. Additionally, violators shall be suspended from bidding on, or participating as a contractor, subcontractor, or supplier in any state contract or project.

3.A5.2 Prepare written report

Prior to reporting an alleged violation of PCC Section 10115.10 to DGS/OSDS awarding agencies must investigate the alleged violation and must prepare a written report of their findings. The written report must also include a recommendation for action to be taken commensurate with the awarding agency's findings and must be submitted to DGS/OSDS within 60 days of notification to the awarding agency of the alleged violation.

For contracts with DVBE goals, agencies should include the following language to assist in verifying compliance:

"Contractor agrees to provide verification, in a form agreed to by the state, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract, or with any subsequent amendment."

3.A5.3 Awarding department and prime contractor

Pursuant to the Military and Veterans Code Section 999.5 for an awarded contract for which a commitment to achieve a DVBE goal was made, an awarding department shall require the prime contractor that entered into a subcontract with a DVBE to certify to the awarding department, within 60 days after receiving final payment, all of the following:

1. The total amount the prime contractor received under the contract.
2. The name and address of the disabled veteran business enterprise that participated in the performance of the contract.
3. The amount each disabled veteran business enterprise received from the prime contractor.
4. That all payments under the contract have been made to the disabled veteran business enterprise. An awarding department shall keep that certification on file. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars ($2,500) and the maximum amount of twenty-five thousand dollars ($25,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

For contracts awarded on and after July 1, 2014, awarding departments must complete portions of the Prime Contractor's DVBE Subcontracting Report prior to emailing the form to prime contractors.

Refer to Section C, Resources, at the end of this chapter for access to the Department's Contractor DVBE Subcontracting Consolidation Report, STD. 810D.

Refer to Chapter 9 for post award activities, including reporting requirements.

3.A5.4 Substitution of sub-contractors

After award of a contract, the successful bidder/contractor must use the DVBE subcontractors and/or suppliers proposed in the bid or proposal to the State unless a substitution is requested. A prime contractor may, subject to the approval of DGS/OSDS, replace a DVBE identified by the prime contractor in its bid, with another DVBE pursuant to Military and Veterans Code Section 999.10 (a).

3.A5.5 Situations allowing

The California Code of Regulations (CCR), Title II section 1896.73 provides the current requirements for awarding departments to approve the substitution of a DVBE subcontractor. Departments shall follow the process

substitution of sub-contractors

set forth in 2 CCR section1896.73 when a prime contractor requests the substitution of a DVBE subcontractor with the added provisions that:

- Only another DVBE subcontractor shall be considered to replace a DVBE subcontractor, and
- The awarding department shall obtain final approval to replace a DVBE subcontractor from DGS.

3.A5.6 Required language in solicitations

To ensure prime contractors honor their commitments to use DVBE subcontractors and meet the commitment levels identified in bids, departments must include language in solicitations and contracts that highlight legal requirements. The following suggested or similar language shall be incorporated into solicitations and resulting contracts:

> Contractor understands and agrees that should award of this contract be based in part on their commitment to use the Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.
>
> Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&VC section 999.9; Public Contract Code (PCC) section 10115.10.

3.A5.7 Written DVBE Substitution Request to DGS/OSDS

Requests to replace a DVBE subcontractor must be documented to show that the replacement meets the criteria as specified in the CCR or the PCC. Documentation may include, but is not limited to the request, confirmation of receipt of the request, the subcontractor's objection and request for hearing and the final Statement of Decision. Requests and resulting amendments generated by the DVBE subcontractor substitution should be timely so as not to unreasonably delay the contractor's performance of the contract, resulting in potential claims against the awarding department for delay damages.

Requests are to be sent electronically to OSDShelp@dgs.ca.gov. Refer to Section C, Resources, at the end of this chapter for access to the "DVBE Substitution" Form and Instructions.

Topic 6 – Small Business Preference and Competitive Solicitations

3.A6.0 Preference amount

Small businesses will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced, responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in Section 1896.8, of the California Code of Regulations. . The SB preference applies for competitive solicitations regardless of the solicitation format (e.g., RFQ, IFB, RFP) or dollar value with few exceptions.

Exception**:**
The SB preference is not applicable when:

- Using the SB or DVBE Option as the procurement approach in accordance with Government Code Section 14838.5(a) or
- The price of the acquisition is less than $5,000.00 and the buyer is applying one of the acceptable methodologies to determine fair and reasonable pricing.

3.A6.1 Applying the preference

1. If SB preference is claimed, it shall be 5% of the net bid price of the lowest responsive and responsible bid of a business that is not eligible for the SB preference (CCR Section 1896.8(a)). The SB preference is not applied when the lowest responsive, responsible bidder is eligible for the SB preference.. Also see Topic 2 of this chapter for CUF requirements.
   : The net bid price is the value of the bid excluding sales and use tax, finance charges, postage and handling charges. Shipping charges are also excluded from the net cost unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination. The net bid price includes any evaluation corrections and applicable discounts.

2. Subtract this amount from all qualifying small business and qualifying small business subcontractor bids.
3. If no other preferences or the DVBE incentive are applicable, re-rank bids to determine which bidder has the low responsive bid. Award is made to the #1 ranked bid.
   : Applying the SB preference formula is for evaluation purposes only and does not change the actual bids offered by any suppliers.
4. Document the procurement file in sufficient detail to support the award. Documenting the file includes recording the SB preference calculations.
   Example:
   Supplier A – Bidder does not qualify for the SB preference: Multiply the low net bid price by preference factor ($12,500 x .05 = $625)
   Supplier B – Certified SB: Subtracted the preference adjustment from the net bid price ($13,000 - $625 = $12,375)
   Results: Since $12,375 is less than $12,500 the award was made to the certified SB (assuming all other conditions of the solicitation were met).

3.A6.2 Awards based on high point

Small business preference calculation is performed for awards based on high points.

To apply the preference:

1. Identify the highest ranked bid (the responsive bid with the highest total score) not eligible for the SB preference (CCR Section 1896.8(b)). If the highest ranked bid is eligible for the SB preference, the preference is not applied.
2. Multiply the total score of the highest ranked bid by 5% to determine the preference amount (per Government Code Section 14838(b)(2)).
3. Add the preference amount to the total score of responsive bids eligible to receive the preference.

The following are examples based on a value effective IT solicitation where only the SB preference was claimed by bidders and a two-envelope method was used.

Preference Calculation

	BIDDER A	BIDDER B	BIDDER C
Responsive and responsible	Yes	Yes	Yes
Eligible preference	None	None	SB
Combined administrative & Technical Score	400	450	450
Score based on price bid	1200	1140	1100
Total Score	1600	1590	1550
Rank	1	2	3
Preference Amount			80
Final Score	1600	1590	1630
Final Rank	2	3	1

The preference calculation is performed as follows:

1. Identify the total score of the #1 ranked bidder (Bidder A at 1600).
2. Determine the preference amount (1600 X .05 = 80).
3. Add the preference amount to the total score of bids eligible to receive the preference (Bidder C: 1,550 + 80 = 1,630).

The award is to Bidder C.

3.A6.3 Maximum preference allowed for low price awards

For awards based on low price, the maximum SB preference allowed may not exceed $50,000 per bid. In combination with any other preferences (TACPA, , recycled, etc.), the maximum limit of the combined preferences is 15% of the bid amount and, in no case, more than $100,000.00 per bid, whichever is less.

3.A6.4 Tie between suppliers

In the event of a precise tie between the bid of a certified SB and the bid of a certified DVBE that is also a SB, the award shall go to the DVBE that is also a SB. (Reference Government Code Section 14838 (f)).

After application of the SB preference, in the event of a precise tie: the award

shall first go to a certified SB, secondly to a non-SB using eligible SB subcontracting, last to a bid not eligible for the SB preference.

Only the recycle preference* can preclude award to a SB that is either ranked #1 or moves into the #1 rank following application of the SB preference. However, one SB can displace another SB for award as a result of application of other preferences and/or the DVBE incentive.

*The recycle preference when award is based on low cost is limited to $50,000 if its application would preclude award to a SB.

Topic 7 – Non-Small Business Subcontractor Preference and Competitive Solicitations

3.A7.0 Preference amount

A 5% preference shall be offered to a non-small business (non-SB) that commits to subcontract at least 25 percent (25%) of its net bid price to a California certified SB(s) per Government Code Section 14838(b). SB and MB bidders shall have precedence over non-SB bidders in that application of the preference for which a non-SB bidder may be eligible shall not result in the denial of the award to a SB or MB bidder, per Government Code Section 14838(f).

Exception: The non-SB preference is not applicable when the solicitation is being conducted using the "SB or DVBE Option" procurement approach or if the acquisition is less than $5,000 and price has been documented to be fair and reasonable.

3.A7.1 Documenting the commitment

An non-SB claiming 25% California certified SB subcontractor participation must identify applicable subcontractor information in their bid response to support the subcontracting claim:

- Subcontractor name(s)
- Subcontractor address(es)
- Subcontractor phone number(s)
- A description of the work to be performed and/or the products supplied and,
- The dollar amount or percentage of the net bid price (as specified in the solicitation) per subcontractor

Completion of the Bidder Declaration serves this purpose.

: Each listed California certified SB must perform a "Commercially Useful Function" in performance of the contract as defined in Government Code Section 14837(d)(4).

3.A7.2 Required solicitation language

Buyers must include non-SB preference language in all written solicitations, except those solicitations conducted as a "SB or DVBE Option" procurement approach or if the acquisition is less than $5,000.00 and the price has been documented to be fair and reasonable.

When applying the non-SB preference to a solicitation that is not written, the same concepts required for a written solicitation must be applied and the appropriate documentation must be retained in the procurement file.

Refer to Section C, Resources, at the end of this chapter to access the required non-SB solicitation language.

3.A7.3 Award based on low price

The following is an example of applying the non-SB preference to determine the successful bidder when award is based on low price.

BIDDER	NET BID PRICE	BID AFTER APPLYING SB PREFERENCE	STATUS OF BIDDER
A	$19,870	$18,894	Non-SB subcontractor preference (commits to 25% certified SB participation)
B	$19,975	$19,975	Does not claim to be SB and does not claim non-SB subcontractor participation
C	$19,520	$19,520	Does not claim to be SB and does not claim non-SB subcontractor participation.

1. Calculate 5% of the net bid price of the lowest responsible and responsive bid. In this example Bidder C is the lowest responsive bid. Bidder C: Multiply net bid price by the preference factor ($19,520 x .05 = $976). $976 is the preference value to be applied for evaluation purposes to non-SB and SB.
2. Subtract the preference value from the bid amount of Bidder A claiming non-SB subcontractor preference.

   Applying the SB preference formula is for evaluation purposes only and does not change the actual bids offered by any suppliers.

3. Apply the results of No. 2 above as follows:
   Bidder A (non-SB claiming subcontractor preference): Subtract preference value amount from the net bid price of Bidder A.
   ($19,870 - $976 = $18,894)
   Results: Since $18,894 is less than $19,520 the award is made to Bidder A.
4. Document the procurement file in sufficient detail to support the award. This includes recording the non-SB preference calculations.

In the case above, if Bidder C was a SB, a preference would not be calculated since a SB that is already ranked #1 cannot be displaced for award due to application of the SB preference.

3.A7.4 Award based on high point awards

SB preference calculation is performed for awards based on high points. To apply the preference:

1. Identify the bidder with the #1 ranked bid (the responsive bid with the highest total score
2. Multiply the total score of the #1 ranked bid by five (5%) to determine the preference amount (per Government Code Section 14838(b)).
3. Add the preference amount to the total score of responsive bids eligible

to receive the preference.

4. Identify the total score of the #1 ranked bidder (Bidder A at 1600).
5. Determine the preference amount (1600 X .05 = 80).
6. Add the preference amount to the total score of bids eligible to receive the preference (Bidder C: 1,550 + 80 = 1,630).

Example:

	BIDDER A	BIDDER B	BIDDER C
Responsive and responsible	Yes	Yes	Yes
Eligible preference	None	None	SB
Combined administrative & Technical Score	400	450	450
Score based on price bid	1200	1140	1100
Total Score	1600	1590	1550
Rank	1	2	3
Preference Amount			80
Final Score	1600	1590	1630
Final Rank	2	3	1

The award is to Bidder C.

3.A7.5 Ties between suppliers claiming preferences

In the event of a precise tie between a California certified SB bid and an non-SB subcontracting with California certified SB, the award will be made to the California certified SB.

In the event of a precise tie between a certified SB bid and a certified DVBE/SB bid, the award will be made to the certified DVBE/SB.

3.A7.6 Maximum preference allowed for low price awards

For awards based on low price, the maximum bid preference allowed individually may not exceed $50,000 for any bid. In combination with any other preferences (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preferences is 15% of the bid amount or $100,000.00 whichever is less.

Topic 8 – Small Business/Nonprofit Veteran Service Agencies and Competitive Solicitations

3.A8.0 Preference amount

Nonprofit veteran service agencies (NVSA) that have been CA certified as a SB nonprofit veteran service agency are eligible to claim the 5% SB preference when responding to competitive solicitations.

3.A8.1 Eligibility

Nonprofit veteran service agencies (NVSA) suppliers will be designated as SB/NVSA in FI$Cal. A NVSA must already possess a valid CA certification prior to submitting a response to a competitive solicitation.

3.A8.2 Verifying certification status

As with other certifications, buyers shall verify CA NVSA certification status by accessing the SB and DVBE Services certified firm inquiry database located in FI$Cal.

3.A8.3 Applying the preference for awards based on low price

The application of the SB preference is only allowed when an NVSA is acting as the prime bidder. To apply the preference:

1. If the NVSA is claiming an SB preference, it shall be 5% of the lowest responsible bidder meeting specifications.
   - **:** "Net bid price of the bid that does not qualify for the SB preference" is the value of the offer excluding sales and use tax, finance charges, postage and handling charges. Shipping charges are also excluded from the net cost unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect or FOB Destination. The net bid price includes any evaluation corrections and applicable discounts.
2. Subtract this amount from all qualifying bids.
3. If no other preferences or the NVSAs are applicable, re-rank bids to determine which bidder has the low responsive bid.
   - **:** Applying the SB preference formula is for evaluation purposes only and does not change the actual bids offered by any suppliers.

Documenting the file includes recording the SB preference calculations.

<u>Example:</u>
Bidder A – Business that does not quality for SB preference: Multiplied low net bid price by the preference factor.
($12,500 x .05 = $625)

Bidder B – Certified SB: Subtract $625 from the net bid price.
($13,000 - $625 = $12,375)

Results: Since $12,375 is less than $12,500 the award is made to the certified SB (assuming all other conditions of the solicitation were met).

3.A8.4 SB or DVBE Option

A California certified NVSA may be solicited when conducting a SB or DVBE Option solicitation in accordance with Government Code Section 14838.5 (a). For additional information on the SB or DVBE Option, see Chapter 4.

3.A8.5 Notification of ineligibility

In order to maintain NVSA certification a NVSA is required to provide social security, unemployment and disability benefits for its employees. In the event that the NVSA ceases to be compliant with these requirements, any existing contract awarded as a result of the application of the SB preference must be terminated and the NVSA will be ineligible to contract with the State for two (2) years.

Notification of ineligibility will be disseminated to departments through DGS/PD broadcast bulletins and the information posted to the OSDS website.

3.A8.6 NVSA reporting

Contract awards to NVSAs shall be separately identified and included with the count of total SB participation as part of the annual reporting requirements.

Refer to Chapter 9 for Post Award Reporting Activities.

Topic 9 –TACPA Competitive Solicitations

3.A9.0 TACPA preference

The Target Area Contract Preference Act (TACPA) preference program attachment shall be included with IT and non-IT competitive solicitations valued at $100,000 and greater:

The TACPA preference only applies to California based firms that demonstrate and certify under penalty of perjury that at least 50% of the total labor hours for manufactured goods or 90% of the total labor hours for services will be performed at a worksite within a TACPA defined distressed area.

- Bidders that qualify for the worksite preference may also apply for additional workforce preference of one to four percent if the bidder agrees to hire certain identified persons equal to a percentage of its workforce during the contract performance period (See Government Code Section 4533.1,)

3.A9.1 Recommended Dollar value to include language and preference forms

DGS/PD buyers shall include preference attachments with all competitive solicitations valued at $85,000 and greater. For departments with purchasing authority, DGS/PD strongly recommends that the preference forms be included in all competitive solicitations valued at $85,000 and greater. If the low responsive bid received from a responsible supplier is $100,000 or more, and the preference requirements were not included in the solicitation, the solicitation must be canceled and re-issued.

3.A9.2 TACPA solicitation language

Departments shall include language that identifies to bidders that the TACPA preference is applicable to the competitive solicitation. Recommended solicitation language is as follows:

> "The TACPA preference will be granted for this procurement. Bidders wishing to take advantage of this preference will need to review the following website and submit the appropriate response with the bid: http://www.documents.dgs.ca.gov/pd/poliproc/tacpapage.pdf"

3.A9.3 Program description

An overview of the TACPA preference program is provided below:

TACPA

- Pursuant to Government Code Sections 4530 – 4535.3
- Encourages and facilitates job maintenance and job development in distressed and declining areas found in California cities and towns.

Contracts excluded from this Preference Program include construction contracts and contracts with a designated worksite.

3.A9.4 Preference procedures

DGS, Procurement Division reviews all TACPA applications. Departments Bidders wishing to take advantage of these preferences are required to complete the following applications which the department buyer then forwards to DGS/PD:

- TACPA (Std. 830)
- Manufacturer's Summary of Contract Activities and Labor Hours (DGS/PD 525)
- Bidder's Summary of Contract Activities and Labor Hours (DGS/PD 526).

These forms are available in Section C, Resources, at the end of this chapter.

The department buyer must also include:

- Copy of Solicitation
- Delivery Schedule (if applicable)

Preference requests are reviewed and processed within five (5) business days and a recommendation memo (approval/denial) will be workflowed to the originating department's contract analyst. Applications that do not have the Bidder's Summary and Manufacturer's Summary forms attached are rejected.

After receipt of the recommendation memo, the contract analyst must notify the Preference Unit if an award is made based on the approved preference points. The Preference Unit monitors the contract for compliance. Non-compliance contract performance has the following consequences:

- The contractor will pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded;
- In addition to the amount specified in (A) above, be assessed a penalty in an amount of not more than 10% of the amount of the contract involved; and
- The contractor will be ineligible to directly or indirectly transact any business with the state for a period of not less than six (6) months and not more than 36 months.

: Prior to the imposition of any sanction under this chapter, the contractor or supplier shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

3.A9.5 Maximum preference allowed for low price awards

The maximum preference allowed for TACPA is 9% and may not exceed $50,000.00 for any bid. In combination with any other preferences (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preferences is 15% of the bid amount and, in no case, shall be more than $100,000.00 per bid.

3.A9.6 Preference

DGS/PD/Dispute Resolution and Preference Program administer the bid preference programs. Contact information is located in Section C,

program contact and information	Resources, at the end of this chapter.

Section B

Environmental Programs

Topic 1 – State Agency Buy Recycled Campaign (SABRC) Program

3.B1.0 Using recycled content products

Public Contract Code (PCC) section 12203 requires departments to utilize recycled content products (RCP). A minimum of 50% of funds expended in each of the targeted categories must be products meeting the requirements of an RCP. The required Recycled Content Products varies by SABRC product category.

3.B1.1 Department Recycled Content Product purchasing requirements

The State of California promotes the procurement of sustainable and recycled content products. Departments shall ensure that the responsibility for SABRC is shared among procurement personnel, managers, buyers, contract specialists, contractors, suppliers and all others who procure goods and services for the State.

Departments will consider RCP in conducting its purchasing activities. All departments are required to comply with the RCP requirements of the State Agency Buy Recycled Campaign contained in PCC Sections 12200-12217.

The SABRC reportable categories and requirements are located on the Department of Resources Recycling and Recovery (CalRecycle) website. Refer to Section C, Resources, at the end of this chapter.

3.B1.2 Recycle preference and competitive solicitations

Pursuant to PCC section 12203 (d), to the maximum extent economically feasible in performance of the contract work, each department shall require the businesses with whom it contracts to use recycled content products. SABRC compliant products as a component of these contracts shall be reported (Refer to Chapter 9 – Post Award Activities).

Contact the Department of Resources Recycling and Recovery CalRecycle at (916) 341-6199 or SABRC@CalRecycle.ca.gov for information on qualifying SABRC reusable and recycled content products.

3.B1.3 Noncompliant trash bag manufacturers and wholesalers

Pursuant to Public Resources Code 42297 (c) (1) and (2), any plastic trash bag supplier, manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, is ineligible for any State contract or subcontract or renewal, extension or modification of any State contract, if it is not in compliance with the certification requirements of the law. To be compliant, manufacturers must meet any one of the following options:

- Ensure that its plastic trash bags contain a quantity of recycled plastic postconsumer material (RPPCM) equal to at least 10% of the weight

of the regulated bags.

- Ensure that at least 30% of the weight of material used in all of its plastic products intended for sale in California is RPPCM.
- Ensure that its plastic trash bag is labeled as biodegradable or compostable and meets ASTM D6400 standard for Compostable Plastics.

Manufacturers and wholesalers who are non-compliant with the Plastic Trash Bag Law cannot contract with the State regardless of the product being provided in the contract (i.e. plastic trash bags, janitorial supplies or services, or any other products or services). Additional information, including a listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the CalRecycle website.

3.B1.4 Supplier certification

Pursuant to PCC section 12205, all purchases of products in the targeted categories must include a written certification by the business/supplier, under penalty of perjury as to the recycled content percentage. The supplier may certify that the product or material contains zero recycled content.

This certification can be waived if the post-consumer recycled content can be verified by other written means such as product label, packaging, catalog, manufacturer/vendor website, product advertisement.

Refer to Section C, Resources, at the end of this chapter to access the Post-Consumer Recycled Content Certification form.

3.B1.5 Tire Recycle Preference

Per Public Resources Code (PRC) section 42890 et seq., a 5% recycle preference is available for recycled tire products (also known as tire-derived products). Recycled tire products are reportable for SABRC and purchases are SABRC compliant if they contain at least 50% recycled used tires.

3.B1.6 Tire Preference evaluation

When evaluating bids, application of the recycle preference is only applicable if both virgin products and recycled content products (RCP) are acceptable for a line item and the products bid are similar. Should only recycled content products be bid, then the preference is not calculated.

Should a solicitation include a mix of line items containing both qualified and non-qualified tire-derived RCPs, the preference shall only apply to qualified line items. If line item awards are made, the preference shall be applied, to the extent possible, so as to maximize award to bidders proposing recycled tire products (PRC section 42892).

: Virgin products refer to products not qualified as a recycled product.

3.B1.7 Tire Preference calculation

The following pertains to recycle preference calculation for awards based on low price. Only responsive bids from responsible bidders are eligible for the preference.

1. The recycle preference is calculated subsequent to price adjustment for the small business preference and prior to application of the DVBE incentive.

2. The 5% preference is calculated against the net bid price of the lowest responsive bid proposing a virgin product and subtracted from eligible bids proposing recycle content products.
3. The preference amount cannot exceed $100,000.
4. The preference cannot exceed $50,000 if its application would preclude award to a small business.
5. Should a bidder be eligible for a recycle preference in addition to another preference(s) and/or the DVBE incentive, the cumulative adjustment is the lower of 15% or $100,000.

3.B1.8 Tie bids

Where the fitness and quality of proposed products in tie bids is equal, award shall be made to the bidder proposing the greater percentage of recycled tire content (PRC section 42894).

3.B1.9 Example of Utilizing recycled content products

A department is purchasing $20,000 of printing and writing papers for their copy machines. At least $10,000 of the paper must have 30% recycled content by weight. The other $10,000 may be any mix of recycled or non-recycled products.

3.B1.10 Reportable purchases

Departments are to report all purchases within the SABRC 11 reportable categories, identify the commodities meeting the percent post-consumer recycle content as SABRC compliant and record the percent of post-consumer recycle content contained within the product. Buyers must include requirements for bidders to document this information within bid submittals. Refer to Chapter 12- Reporting Requirements for further information on reporting RCP.

1. Paper Products
2. Printing and Writing Papers
3. Mulch, Compost, Co-compost
4. Glass Products
5. Lubricating Oils
6. 6a Plastic Products
7. 6b. Plastic Products- Printer or duplication cartridges
8. Paint
9. Antifreeze
10. Tires
11. Tire-Derived Products
12. Metal Products

The reportable product categories applicable to SABRC IT goods would be plastics products including printer or duplication cartridges that:

- Plastic Products that are 10% postconsumer, by weight
- Printer or duplication cartridges that:
  - Have 10% postconsumer material, or
  - Are purchased as remanufactured, or
  - Are backed by a vendor-offered program that will take back the

printer cartridges after their useful life and ensure that the cartridges are recycled and comply with the definition of recycled as set forth in PCC section 12156

: Pursuant to PCC section 12156 no State department shall purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person. For purposes of this section, these restrictions include, but are not limited to, all of the following:

- Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge.
- A licensing agreement on the cartridge that forbids remanufacturing.
- Any contract that forbids the remanufacturing or recycling of the cartridge.

Notwithstanding the above a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

- Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.
- Recycling.

Topic 2 – Environmentally Preferable Purchasing (EPP)

3.B2.0 Authority

Pursuant to Public Contract Code (PCC) sections 12400-12404 departments are to purchase and use environmentally preferable products that have a lesser or reduced effect on human health and the environment when compared with competing goods that serve the same purpose, whenever applicable, perform well, and are cost effective.

Executive Order B-16-2012 directs departments to support and facilitate the rapid commercialization of zero-emission vehicles.

Executive Order B-18-12 directs departments to purchase and use environmentally preferable products and services, supporting the State's Green Building Action Plan.

3.B2.1 Definition

EPP is the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose. Departments shall take into consideration, to the extent feasible raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, product performance, durability, safety, the needs of the purchaser, and cost (PCC sections 12400-12404).

3.B2.2 EPP Purchasing requirements

In order to designate a purchase as EPP, the purchase must fulfill one or more of the following criteria:

1. Acquired through a leveraged procurement agreement that is identified as an "EPP" commodity or contract
2. Meet a DGS Purchasing Standard
3. Be SABRC compliant
4. Meet third-party environmental certification(s) (e.g., Energy Star ®, Green Seal®)
5. Incorporate a take-back program
6. Meet the requirements of an EPP purchases identified in an executive order or the State Administrative Management Memos and IT policies.

Pursuant to Executive Orders B-16-2012 and B-18-12, state departments must purchase:

- Alternate fuel and zero emission vehicles
- Energy Star® rated products
- Recycled paint for exterior applications
- Low or Zero VOC paint for building indoor applications
- Remanufactured ink and toner cartridges
- WaterSense® or equivalent industry standard labeled fixtures and equipment

To support the state's efforts to improve energy efficiency, reduce petroleum dependency and lower carbon emissions, state departments must follow the State Administrative Management Memos and IT policies, such as:

- Energy Efficiency in Data Centers and Server Rooms
- Standard Operating Procedures For Energy Management In State Buildings
- Indoor Environmental Quality: New, Renovated, And Existing Buildings

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3.B2.3 EPP solicitation requirement

When developing a solicitation with the intent of being an EPP purchase, buyers must:

- Develop the technical specification to include EPP requirements and/or
- Develop EPP administrative requirements within the solicitation

---

3.B2.4 EPP Documentation

In order to document a product as EPP, Buyers are required to record the following elements by line item within FI$Cal:

- UNSPSC
- DGS Purchasing Standard
- Third-Party Environmental Certification(s)
- SABRC Compliant Product (Y/N)
- SABRC Category
- Postconsumer Recycled Content (PCRC)
- Total Recycled Content (TRC)
- Take-Back Program (Y/N)

3.B2.5 EPP Reporting

Departments shall record EPP purchases within FI$Cal.

By recording EPP attributes within FI$Cal, as described in Section 3.11.5 EPP Documentation, departments will be able to monitor their progress through FI$Cal reports.

Refer to Chapter 9, Post Award Activities for further information on reporting EPP.

3.B2.6 EPP best practices

DGS publishes a best practices manual – the Buying Green Guide – for buyers, online at www.dgs.ca.gov/buyinggreen. The guide provides state buyers with a single source of up-to-date green contracts, DGS purchasing standards, bid specifications and buying tips. Departments should use the Buying Green Guide to assist procurement staff in making environmentally preferable purchases.

Topic 3 – Infrastructure-Related Bond Act of 2006

3.B3.0 Opportunity

In 2006, the People of California enacted the infrastructure-related bond acts of 2006 (I-Bonds) authorizing the issuance of $42.7 billion in bonds for five distinct infrastructure programs: transportation (proposition 1B), housing (proposition 1C), education (proposition 1D), flood control (proposition 1E), and natural resources (proposition 84). Collectively, these bonds fund more than 60 programs within the state and are the first stage of the twenty-year California Strategic Growth Plan.

In keeping with the State's commitment to SB, MB, and DVBE, Assembly Bill 761 was signed into law (added Government Code Section 14838.1) ensuring that SB, MB, and DVBE are given an opportunity to participate in, and be a successful part of the State's infrastructure construction.

3.B3.1 Contract Requirements

In conformity to Government Code Section 14838.1, each state department awarding contracts directly to contractors with proceeds of the I-Bonds shall do all of the following:

- Establish a 25% SB participation goal in all I-Bond financed contracts awarded directly from the department to the contractor.
- Advertise all opportunities to bid on I-Bond funded contracts in the FI$Cal California State Contracts Register (CSCR). Contract announcements Opportunities* published in the CSCR must use the following numbering convention:
  - For Proposition 1B: if your department is using funds from the *Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006*, begin your contract opportunity number with **Bond06-1B HWY** followed by your department's unique identifying number. For example: Bond06-1B HWY-08-316604
  - For Proposition 1C: if your department is using funds from the *Housing and Emergency Shelter Trust Fund Act of 2006*, begin your contract opportunity number with **Bond06-1C HOUSE** followed by your department's unique identifying number. For example: Bond06-1C HOUSE-08-316604
  - For Proposition 1D: if your department is using funds from the *Kindergarten-University Public Education Facilities Bond Act of 2006*, begin your contract opportunity number with **Bond06-1D EDU** followed by your department's unique identifying number. For example: Bond06-1D EDU-C0837010
  - For Proposition 1E: if your department is using funds from the *Disaster Preparedness and Flood Prevention Bond Act of 2006*, begin your contract opportunity number with **Bond06-1E DIS** followed by your department's unique identifying number. For example: Bond06-1E DIS-08-316604
  - For Proposition 84: if your department is using funds from the *Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006*, begin your contract opportunity number with **Bond06-84 WATER** followed by your department's unique identifying number. For example: Bond06-84 WATER-10088675
- Include in the advertisement an Internet link to information for prospective bidders, including at minimum, general bidding procedures and proper procedures for preparing a bid for I-Bond funded contracts.

***:** The CSCR uses "contract number" rather than "opportunity number."

3.B3.2 Participation Reporting

State departments must report the SB, MB, and DVBE participation in their I-Bond funded contracts beginning with fiscal year 2008-2009. Each department, on or before August 1, 2009, and annually thereafter, will complete and submit a STD 810A Infrastructure Bond Acts of 2006 Activity Report. Report coordinators may contact DGS reports coordinator at osdshelp@dgs.ca.gov for assistance.

3.B3.3 SB Advocate

There is no additional requirement to Government Code Section 14846, for departments contracting directly with the proceeds of I-Bond funding to designate a SB advocate. In accordance with section 14846, departments must assure that payments due on a contract with a SB are made promptly as provided for in Government Code Section 927 et seq.

3.B3.4 SB Preference

I-Bond funded contracts shall offer a 5% preference to SBs when evaluating bids. For more information on the application of the SB preference, see Chapter 3 of this Manual..

3.B3.5 SB and DVBE Requirements

For requirements and definitions of California-Certified SB, MB, and DVBE, visit OSDS Website accessible in Section C, Resources, at the end of this chapter.

3.B3.6 SB or DVBE Option

The SB or DVBE Option, Government Code Sections 14838.5 and 14838.7, shall not be allowed for I-Bond funded projects directly contracted by a state department.

3.B3.7 NCB Contracts

The use of non-competitive bid contracting with I-Bond financing as defined in PCC sections 10301 and 12102 shall not be allowed for I-Bond funded projects directly contracted by a state department.

3.B3.8 LPA Contracts

The use of leveraged procurement agreements including master agreements, California Multiple Award Schedules, statewide contracts, the Software Licensing Program, or the State Price Schedules shall not be allowed for I-Bond funded projects directly contracted by a state department.

3.B3.9 Further Assistance

For further assistance with I-Bond funded contracting, please contact:

- Your department's budgeting or capital outlay office to determine whether you department received funding form the infrastructure-Related Bond Acts of 2006.
- OSDS for general assistance at 916-375-4940, or via email: osdshelp@dgs.ca.gov
- DGS/PD for non-IT goods and IT goods and services: ppo@dgs.ca.gov
- DGS/OLS for non-IT services and public works: http://www.dgs.ca.gov/ols/AboutUs.aspx
- DGS Real Estate Services Division (RESD): DCalvo@dgs.ca.gov.

Section C

Resources

B

Bidder Declaration, GSPD 05-105 – Written Version	PDF
Bidder Declaration, GSPD 05-106 – Verbal Version	PDF
Bidder Declaration Narrative	Word

C

CalRecycle	Link to Webpage
	Link to Webpage
Contact Us:	
DGS/PD/Dispute Resolution and Preference Program	Link to Webpage
DGS/PD/OSDS- SB and DVBE Services	Link to Webpage

D

DGS Buying Green	Link to Webpage
DVBE and SB Program Violations and Sanctions	Link to Webpage
DVBE Incentive Exemption List	Link to Webpage
DVBE Incentive Regulations	Link to Webpage
DVBE Participation	Link to Webpage
DVBE Program Requirements and DVBE Incentive Waiver	PDF
DVBE Resources	Link to Webpage

F

Form, STD. 843 – DVBE Declaration	PDF
Form, STD. 810D - Department's Contractor DVBE Subcontracting Consolidation Report	Link to Webpage
Form, STD. 830 – TACPA Preference Request	PDF
Form, DGS/PD 525 – Manufacturer's Summary of Contract Activities and Labor Hours	PDF
Form, DGS/PD 526 – Bidder's Summary of Contract Activities and Labor Hours	PDF

N

Non-SB Solicitation Language.	PDF

P

Participation Worksheet	Word
Participation Worksheet Instructions	PDF
Post-Consumer Recycled Content Certification form	PDF

S

SB/DVBE Advocate Directory	Link to Webpage
SB/DVBE Toolkit	Link to Webpage
Suspended Firms	Link to Webpage

Chapter 4

Competitive Acquisition Methods

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Chapter 4
Competitive Acquisition Methods

Overview

Introduction

This chapter describes the requirements relative to conducting competitive acquisition methods for:

- Non-IT Goods
- IT Goods
- IT Services

Discussion points include supplier treatment, advertising requirements, acquisition methods, and developing solicitations. Also included are descriptions of evaluation and selection methods and use of the Small Business (SB)/Disabled Veterans Business Enterprise (DVBE) Option for acquiring non-IT goods and IT goods and/or services.

Chapter 4 only addresses solicitation methods for competitive bids.

This chapter does not address competitive acquisition methods for non-IT services. See State Contracting Manual (SCM), Vol. 1 for acquisitions of non-IT services outside of the Leveraged Procurement Agreement (LPA) framework.

Section A

The Basics of Competition

Overview

Introduction

Competition is one of the basic tenets in State procurement and contracting. The nature of effective competition varies with the goods and services being acquired. Depending upon decisions made during the planning phase, the procurement may be informal or formal; the selected competition method may be a phone call, or a written solicitation document. Depending on the procurement value, solicitations may be distributed by fax, electronic mail, United States Postal Service mail, or via the California State Contracting Register (CSCR) in FI$Cal. Unless otherwise provided by law, procurement activities must be conducted in an open and fair environment that promotes competition among prospective suppliers.

The competitive acquisition methods described in this chapter are applicable to acquisitions for non-IT goods and IT goods/services.

Topic 1 – General Requirements

4.A1.0 Procurement standards

Departments granted purchasing authority to conduct competitive procurements for non-IT goods and IT goods and services will do so in a manner that promotes open, fair and equal competition among prospective suppliers.

4.A1.1 Supplier treatment

Buyers conducting competitive procurements shall provide qualified suppliers with a fair opportunity to participate in the competitive acquisition process, stimulating competition in a manner conducive to sound State fiscal practices emphasizing the elimination of favoritism, fraud, and corruption in awarding contracts.

4.A1.2 Per Transaction Thresholds

Competitive procurements conducted under purchasing authority for non-IT goods or IT goods and services may not exceed the dollar thresholds as authorized by DGS/PD to the individual department, as identified on the department's Purchasing Authority Approval Letter (PAAL) (refer to Chapter 1, Section C, Resources, for access to the PAALs).

With the exception of the SB/DVBE Option, dollar thresholds exclude sales and use tax, finance charges, postage and handling.

Shipping charges are included in the dollar threshold limits during the evaluation when the freight terms are FOB Origin, Freight Collect, FOB Destination, or Freight Prepaid/Add.

When a transaction exceeds or is expected to exceed a department's approved authority threshold, the department will send a requisition to DGS/One-Time Acquisitions Unit (OTA) through workflow in FI$Cal for processing. Refer to Section F, Resources, for assistance with how to submit a requisition to OTA.For more information on Purchasing Authority, see Chapter 1.

4.A1.3 Confidentiality of Information

The general premise for confidentiality is that all information must remain confidential and secured during the development and management of the competitive acquisition, through the evaluation, and up to the award.

When there is a public bid opening, the price portion of the proposal becomes public. In some cases, such as the Alternative Protest Process (APP), final proposals are made public when the intent to award is published (see Chapter 7 of this manual for information on the APP). In these cases the contents of all bids, proposals, draft bids, correspondence, agenda, memoranda, working papers, or any other medium which discloses any aspect of a bidder's proposal or bid shall be held in the strictest confidence **until** the notice of intent to award is issued.

A proposal marked “Confidential” or “Proprietary” may be rejected, and marking it as such does not keep the document(s) from being released as part of the public record following issuance of the notice of intent to award for formal solicitations or award of informal solicitations. In order to prevent the release of documents marked “confidential” or “proprietary,” it is the bidder’s responsibility to obtain a court order that directs the State not to release the document(s).

Any disclosure of confidential information by the bidder during the procurement process is a basis for rejecting the bidder’s proposal and finding the bidder ineligible. Any disclosure of confidential information by a state employee during the procurement process is a basis for disciplinary action, including dismissal from State employment, as provided by Government Code (GC) Section 19570 et seq. Total confidentiality during the procurement process is vital to preserve the integrity of the process. It cannot be over emphasized.

4.A1.4 Who Should Sign Confidentiality Statements

Procurement officials and bidders should be aware that any information submitted, may be subject to the Public Records Act at any point during the procurement process.

During the development, Procurement Officials are not to provide and unfair advantage to suppliers.

In addition to the buyer, competitive acquisitions can involve a team that may be internal and/or external to the department, in the solicitation development, evaluation, and selection process, as well as other personnel on a “need to know” basis. All of these personnel must sign confidentiality statements. The signed statements must be retained within the procurement file.

A confidentiality statement should include statements that the person signing the confidentiality statement:

- Certifies that he/she has no personal or financial interest and no present or past employment or activity which would be incompatible with my participation in any activity related to the planning or procurement processes for the project or procurement
- Agrees that no gift, benefit, gratuity or consideration will be accepted, or a personal or financial interest in a party who is bidding/proposing, or associated with a bidder/proposer initiated on a project or procurement
- Certifies that all information concerning the planning, processes, development or procedures of the project or procurement will be kept confidential and secure
- Certifies that no copy or disclosure of information will be made to any other party who has not signed a copy of this confidentiality agreement with the exception of DGS/OLS and oversight agencies
- Understands that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, and terms and conditions. This includes concepts and discussions as well as written or electronic materials
- Understands that if he/she leaves the project or procurement before it ends, that all project or procurement information must still be kept

confidential
- Agrees that any instructions provided by the project or procurement relating to the confidentiality of Project information will be followed
- Fully understand that any unauthorized disclosure I make may be a basis for civil or criminal penalties and/or disciplinary action (including dismissal for State employees)
- Agrees to immediately advise the buyer in the event that he/she either learns or has reason to believe that any person who has access to confidential project or procurement information has or intends to disclose that information in violation of this agreement

The person signing the confidentiality statement should also provide the following information:
- Date
- Signature
- Printed Name
- Title
- Organization
- Telephone Number
- Fax Number
- Email address

Refer to Refer to Section F, Resources, at the end of this Chapter for sample Confidentiality Statement.

4.A1.5 Confidentiality of Data Made Available to the Contractor

Contracts and solicitation documents may include a version of the following paragraph customized as appropriate to the situation.

"All financial, statistical, personal, technical, and other information relating to the State's operations, which are designated confidential by the State and made available to the contractor in order to carry out this contract, shall be protected by the contractor from unauthorized use and disclosure by the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure will be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the contractor's data and information are deemed by the State to be appropriate, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the contractor outside the scope of this Contract, or is rightfully obtained from third parties".

4.A1.6 Supplier Recrimination Will Not Be Tolerated	Departments shall not condone recriminations against suppliers who request information regarding a bid response or who request information regarding specifications required in any contract.

Topic 2 – Advertising Requirements

4.A2.0 California State Contracts Register

The California State Contracts Register (CSCR) was established to maximize competition through advertising State purchasing and contracting opportunities. See GC Sections 14825 et seq. The CSCR is used for the following solicitation functions:

- Posting Solicitations
- Posting of contractor ads to seek prime or sub-contractors.

4.A2.1 When advertising is required

Solicitations must be advertised in the CSCR. A copy of the published advertisement must be included within the procurement file. The following describes the requirements for advertisements. Advertising is required if the purchase is classified as follows:

If the purchase is classified:	And the dollar threshold is valued:
Non-IT Goods	In excess of $50,000.00
IT Goods	In excess of $50,000.00
IT Services	In excess of $4,999.99
IT goods and/or services	If the service portion is in excess of $4,999.99 and/or the goods portion is in excess of $50,000.00

4.A2.2 Solicitation Release Date

Solicitations shall not be released prior to publication in the CSCR and must be released after or simultaneously with the contract advertisement publication.

4.A2.3 Publish Date vs. Bid or Proposal Due Date

Bid opportunities must be advertised (published in the CSCR) for at least 10 working days prior to the bid due date, per GC 14827.2. and PCC 10302. Requests for a shorter timeframe for the advertisement of the solicitation of goods, shall be submitted in writing as follows:

- Departments with delegated purchasing authority must submit written justification signed by their Purchasing Authority Contact to the CSCR staff.
- DGS/PD One Time Acquisitions (OTA) buyers making purchases on behalf of other State Agencies requesting a shorter timeframe must submit a written justification signed by their respective Branch Chief to the CSCR staff.

4.A2.4 Contract Advertising Exemption for

An exemption from advertising in the CSCR for services may be obtained if a Contract Advertising Exemption Request (STD.821) is submitted to DGS/PD for review and approval through FI$Cal (refer to chapter 6 for more information on the STD 821 process). This form is used when a competitive

Services

acquisition is requested to be exempted from advertising or is neither feasible nor possible.

When a competitive acquisition will be conducted, but an advertising exemption is being requested, a Non-Competitive Bid (NCB) contract justification is not required. However, a written statement must be submitted with the STD.821 that:

- Explains why an exemption is being requested
- Provides supporting information such as why the services cannot be advertised, and
- Includes a list of the contractors that will be solicited.

An NCB contract justification must be submitted with the STD.821 when a competitive acquisition will not be conducted and the department is requesting an advertising exemption. See Chapter 6 of this manual for information on NCB Contracts.

Refer to Section F, Resources, at the end of this chapter for a link to the STD 821.

4.A2.5 Additional Exemptions by Statute or Policy

There are types and/or categories of purchases that may be awarded without advertising or competitive bidding as a result of being exempt by statute or policy. Transactions that are exempt from both advertising and competitive bidding either by statute or policy do not require an NCB contract justification and/or a STD. 821. A statement must be documented in the procurement file to identify the basis of the exemption.

For a list of these types and/or categories of purchases and examples of documenting an exempted transaction see Chapter 6 of this manual.

Section B

The Solicitation

Overview

Introduction

This section contains information on the solicitation documents and the procurement process, and includes the solicitation and purchase document requirements. It provides guidance to ensure suppliers submit responsive bids and that the procurement is successful.

Topic 1 – Developing the Open Competition Solicitation

4.B1.0 Solicitations Should be Clear, Concise and Consistent

All solicitations regardless of format (phone quote, RFQ, IFB, RFP) must clearly state the needs or business requirements of the department in order for a supplier to weigh the risks and price the purchase.

Concise, logical wording in precise terms, stating the supplier's obligations as well as those of the department should be used. Use clear, simple English as much as possible.

The words "shall" and "must" identify mandatory requirements within a solicitation. The words "should" and "may" identify optional or desired requirements sometimes referred to as desirable requirements.

4.B1.1 Avoid Writing Restrictive Requirements

Requirements restricting the bidding to a single supplier may not be included in competitive acquisitions. Avoid restrictive requirements by:

- Including only essential requirements
- Avoiding restrictive or impractical requirements such as those that are nonessential or obsolete
- Carefully checking delivery requirements to ensure the turnaround time from supplier's receipt of order to delivery is not too restrictive or limiting
- Defining requirements to promote and encourage bidders to bid standard items or standard service where possible
- Not specifying a particular brand name, product or a feature of a product that is peculiar restrictive to one manufacturer, except for reference purposes. Try to use words like equal and comparable when a brand, model, or style is specified.
- Not dictating detailed design solutions prematurely
    - Try using Performance vs. Designed based requirements.
    - Allowing sufficient time from the solicitation mail release date to the bid due date or the first key action date to provide suppliers time to review and consider the requirements, prepare a response, and mail the response back

4.B1.2 Common Elements of Written Solicitations

All written solicitations must contain the following elements:

- The date and time suppliers' responses are due
- Space for the signature of an authorized supplier representative that can bind the company contractually
- Information on how the bid responses are to be submitted (i.e., sealed envelope with the solicitation number and due date and time on the outside of the sealed package
- Any attachments which are included and are required to be returned by bidders such as:
  - Preference program forms (i.e., Target Area Contract Preference Act (TACPA)
  - DVBE participation program and DVBE utilization reporting forms
  - Post-Consumer Content Form
- Statement of Work
  - Administrative requirements, as applicable
  - Technical requirements, as applicable
- Cost forms or clear indication of cost placement in the solicitation
- Evaluation information (basis for award)

4.B1.3 Preference Programs

The TACPA business participation program requirement must be included in competitive acquisition with an estimated dollar value of $100,000 and over

It is strongly recommended that the solicitation language and preference forms be included in all competitive acquisitions valued at $85,000 and greater. If the low responsive bid received from a responsible supplier is $100,000 or more, and the preference requirements were not included in the solicitation, the solicitation must be canceled and re-issued. For more information on preference programs, see Chapter 3 of this manual.

4.B1.4 DVBE Participation

Departments are reminded to develop DVBE language to include in their solicitations that complies with the DVBE participation program. Refer to Chapter 3 for further information.

The DVBE program requirements may be exempted from a solicitation by using DVBE Program Requirements and DVBE Incentive Waiver and obtaining the approval of a department director or designee; however, the 3% annual goal still applies. The completed waiver form should be retained within the solicitation procurement file if the transaction is conducted under the department's delegated purchasing authority. If the transaction is above the department's delegated purchasing authority, the completed waiver should be sent to DGS-PD along with the requisition. When exemption to DVBE participation program requirements occurs, the solicitation should state that DVBE program requirements are waived.

Whenever the DVBE participation requirement is not included in a solicitation, the buyer must provide documentation within the procurement file to support that the department director or designee has authorized the exemption. This requirement is **not applicable** if the informal SB/DVBE Option acquisition method is used.

4.B1.5 DVBE Incentive

The DVBE incentive applies to all competitive acquisitions that include the DVBE Program Requirement, regardless of format (RFQ, IFB, RFP or phone quotes), delivery method or dollar threshold, unless the program requirement and/or incentive have been waived. Refer to Chapter 3, Topic 4, for information about using the DVBE incentive.

4.B1.6 SB Participation

Every effort must be made to seek out and include certified small businesses in procurement efforts and to include the 5% SB preference and non-SB subcontractor preference in all solicitations, except when soliciting California certified SBs and DVBEs under the informal SB/DVBE Option acquisition method. See Chapter 2, Topics 2 and 4, of this manual for additional information on SB participation and how to apply these preferences in evaluations.

4.B1.7 EPP Consideration

State Departments are required to purchase goods and services meeting Environmentally Preferable Purchasing (EPP) Policy. See Chapter 3, Section B, Topics 1 and 2. If the purchase is within the category specified then departments are to apply the EPP criteria within the solicitation and identify these items individually within the cost worksheets. Reports can be generated for those purchases identified as EPP or SABRC within the FI$Cal system.

4.B1.8 Obtaining Samples

The practice of obtaining samples from suppliers prior to contract award is not recommended, unless it is a requirement of the solicitation process. If items are needed for review prior to award for demonstration or pre-purchase testing, the solicitation must so state and be noted with the information that the State is not obligated for the cost of the items or for their return. Extreme caution should be taken to ensure that the solicitation response does not contain terms or conditions that would result in the automatic purchase of the item(s) being tested.

4.B1.9 Clarifications or Changes to a Solicitation (Addenda)

Clarifications or changes to a solicitation must be transmitted to all participating bidders by an addendum. An addendum documents all changes or revisions to the solicitation and shall include at a minimum the following information:

- Addendum number, (must be numbered consecutively), solicitation title and solicitation number
- Indication of where the revision or change is occurring in the solicitation. This may include deleting and inserting changed solicitation pages.
- Revised or unchanged quote/bid opening date;

A solicitation may be modified prior to quote/bid response due date. The addendum may be accomplished verbally (for phone quotes only) or written to coincide with the original solicitation format.

Example:
If a RFQ solicitation is conducted by phone then the modification may also be conducted by phone. The addenda information must be documented as part of a phone script and must become part of the procurement file.

Incorrect example:
An addendum to a written solicitation cannot be conducted by phone. If the solicitation was released in written format then any addendum to the solicitation must be in writing.

An addendum to a solicitation shall be issued a minimum of five days prior to the final bid due date to allow prospective bidders sufficient time to prepare their bids. Otherwise the due date must be extended in the addendum. If the addendum is significant and bidders will need more time to submit a responsive bid, then the date and time for the bid opening must also be extended in the addendum.

In addition to communicating in writing to all suppliers that have expressed an intent to bid, addenda for formal RFPs must be posted in a public location.

4.B1.10 Cloud Computing Considerations

Additional considerations must be addressed when acquiring Cloud Computing services. Guidance has been developed to assist with identifying the special requirements and service level expectations.

Refer to Section F, Resources, at the end of this chapter for access to the Cloud Computing Contract Checklist for (SaaS) and helpful tools.

Topic 2 – Invitation for Bid

4.B2.0 Invitation for Bid (IFB)

The Invitation for Bid (IFB) is a written acquisition method used to solicit bid responses for non-IT goods or for IT goods and/or services where suppliers are asked to provide a bid to the State's known and detailed, clear requirements.

An IFB can be used for solicitations within the informal dollar range when the acquisition is complex or of elevated risk. Formal IFBs are solicitations more complex or elevated risk acquisitions and of a higher dollar value.

The risk assessment process is completed in the planning stage of the procurement. Risk evaluation guidelines and financial protection measures for formal solicitations are established in TOPIC It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process as conditions change.

4.B2.1 Types of IFB Formats

There are three (3) IFB formats available: one (1) for non-IT goods and two (2) for IT purchases. The characteristics of the purchase will determine which format best suits the purchasing activity. The following bullets describe the elements to consider in determining which IFB format to use.

- For **non-IT goods** procurements exceeding $100,000.00, the use of the IFB for non-IT goods format is required.

- For **IT goods only** (i.e., Hardware and/or Software containing straightforward requirements, considered to be a low risk or less complex purchase) and the evaluation selection criteria is low net cost meeting all other bid specifications, then the solicitation will be developed using:
  - IFB for IT goods only format must include contract award and protest language.
  - Bidder Instructions* (GSPD-451)
  - IT General Provisions

- For **IT goods and/or services** (i.e., Hardware, Software, and/or Services) then the solicitation will be developed using the:
  - Formal IFB solicitation format, including all ten (10)-sections
  - Use Section II instead of the Bidder Instructions (GSPD-451)
  - IT General Provisions

*Bidder Instructions in lieu of Section II – Rules Governing Competition may be used if the procurement is straight-forward, and evaluation and selection is based on lowest net cost meeting all other bid specification.

High risk purchases such as large scale integration projects are usually conducted using the formal RFP format.

Refer to Section F, Resources, at the end of this chapter for sample solicitation templates and to obtain Elements of the Solicitation.

4.B2.2 Phased Approach

The IFB solicitation format using the multi-step procurement procedure is more structured than the RFQ and allows requirements to be organized by type such as administrative/technical specifications, evaluation methodology, bid preparation instructions and includes contract language.

This IFB format also allows phases to the procurement effort by establishing dates for suppliers to provide specified required documents, such as Intent to Bid letter, Draft Bid, and Final Bid. The IFB specifies the state's minimum acceptable functional, technical, and contractual requirements.

When using this IFB format, the evaluation and selection team procedures results will be documented using an Evaluation and Selection Report.

4.B2.3 Documenting the results

The evaluation and selection may be documented using the Procurement Summary form or the department may develop its own format as long as the pertinent facts are included. This document must provide a chronology of the events that occurred during the solicitation process such as:

- Date of advertisement
- Names of bidders responding
- Date solicitation released

Refer to Section F, Resources, at the end of this chapter to access a Procurement Summary form and information regarding file documentation recommendations.

4.B2.4 Award Methodology Types

The evaluation criteria governing contract award may be based on the highest evaluated points for value effective evaluations that include services or may be based on lowest cost if the IFB is for goods alone.

If the IFB evaluation criteria is based upon a value effective methodology then cost is required to be submitted in a separately sealed envelope and requires the technical and administrative evaluation to occur prior to opening the cost envelope. Cost envelopes will not be opened for bid responses containing material deviations.

The IFB contract award process is determined by the evaluation criteria. For the:

- Lowest net cost meeting all other bid specifications criteria, the contract award, if made, will be to the responsible bidder submitting a responsive bid that is the lowest cost after application of any preference requirements (SB/DVBE, TACPA, recycle, etc.) or discounts, if applicable.
- Value effective criteria, then the contract award if made, will be the responsible bidder submitting a responsive bid that scores the highest points in accordance with the evaluation methodology as described in the solicitation.

4.B2.5 Evaluation and Selection Team Procedures

When using the IFB phased approach format, an Evaluation and Selection Team procedures document is to be used. This document provides information on how the IFB evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation and includes templates of letters and transmittal documents to bidders including the Intent to Award letter.

Refer to Section F, Resources, at the end of this chapter for a sample Evaluation and Selection Team Procedure document.

4.B2.6 Evaluation and Selection Report

When using the IFB format, an Evaluation and Selection Report must be used to document the evaluation and selection process used for contract award.

Refer to Section F, Resources, at the end of this chapter for the Evaluation and Selection Report template.

Topic 3 – Bidder Instructions and Required Contract Language

4.B3.0 Bidder Instructions

Bidder Instructions (GSPD-451) describe to potential bidders how to provide a responsive bid. The Bidder Instructions must be included or incorporated by reference in all competitive acquisition methods (written or verbal) for non-IT goods and IT goods and/or services, except when conducting formal solicitations where the evaluation is based on value effective using the 10 section format criteria.

Complex, formal solicitations typically use DGS/PD developed IFB/RFP Section II, Rules Governing Competition, in place of the State's Bidder Instructions. Other solicitations, where the procurement is straight-forward and the evaluation and selection is based on lowest net cost meeting all other bid specifications may use the Bidder Instructions.

Refer to Section F, Resources, at the end of this chapter to obtain the Bidder Instruction document.

4.B3.1 General Provisions

The State's General Provisions (GSPD-401IT) shall be incorporated by reference in all competitive acquisitions and purchase documents for IT goods and/or services (written or verbal) valued in excess of $4,999.99.

The State's General Provisions (GSPD-401 non-IT commodities) shall be incorporated by reference in all competitive acquisitions and purchase documents for non-IT goods (written or verbal) valued in excess of $4,999.99.

The General Provisions may be supplemented with additional provisions tailored to a specific solicitation. Except where the General Provisions refer to specifics in the Statement of Work, there are to be absolutely no changes made to the General Provisions without prior approval of DGS/PD.
Refer to Section F, Resources, at the end of this chapter to obtain the General Provisions.

4.B3.2 Contract Modules

You may include additional terms and conditions to meet your specific procurement needs. The Agency Special Provisions, such as facility security requirements or federal funding requirements or a Statement of Work may be attached as applicable to the solicitation.

4.B3.3 Obtaining Seller's Permit

A copy of the seller's permit or certification of registration must be obtained on any tangible personal property purchase regardless of the dollar value and regardless of whether it is included either by reference to the PD web page. This requirement does not apply to a credit card purchase of goods of $2,500 or less. The total amount of exemption authorized herein shall not exceed $7,500 per year for each company from which a state agency is purchasing goods by credit card. See PCC 10295.1 for details.

Another exception to this requirement is identified in PCC 10295.1 where a department director or his designee makes a written finding that the purchase is necessary to meet a compelling State interest. A "compelling state interest" includes, but is not limited to, the following:

- Ensuring the provision of essential services
- Ensuring the public health, safety and welfare
- Responding to an emergency, as defined in PCC section 1102

In order to support a purchase based upon this exception, the director's or his/her designee's written finding must be included in the purchase file documentation.

Seller's permits or certification of registration or a department's written exception to this requirement must be retained in the procurement file. It is good practice to verify that the seller's permit is active by going to the Board of Equalization website, print the validation page, and uploading it as part of the purchase file documentation.

4.B3.4 Cloud Computing Special Provisions SaaS

The State's Cloud Computing Special Provisions for Software as a Service (SaaS) must be used in addition to the General Provisions (GSPD-401IT), where applicable. These Special Provisions shall be incorporated by reference in all competitive and proprietary solicitations and purchase documents for Cloud Computing SaaS.

Refer to Section F, Resources, at the end of this chapter for the State's Cloud Computing SaaS Special Provisions.

Section C

Supplier Selection

Overview

Introduction

This section describes the requirements for impartial and comprehensive evaluation and selection processes, ensuring impartiality and comprehensive evaluation of responses as warranted by the complexity of the transaction.

Topic 1 – Supplier Selection Basics

4.C1.0 Evaluator's Responsibility

Evaluators are expected to:

- Be unbiased and to evaluate all bids fairly
- Be State employees
- Excuse themselves from participating in an evaluation if the evaluator or a family member has a personal involvement with the bidder or firm

Example:
Evaluator's spouse is an employee of the bidder.

4.C1.1 Evaluation Criteria Revisions

Evaluation criteria may not be changed once bids have been submitted.

4.C1.2 Negotiation

The Department of General Services (DGS) can use a negotiation process under certain circumstances when procuring or contracting for goods, services, information technology, and telecommunications. See Chapter 2 for more information regarding negotiation.

4.C1.3 Public Record

During the evaluation, solicitation and bid information are kept confidential. Once bids are opened, evaluated and awarded, they become public records available to anyone requesting to review the file. Where the solicitation process requires posting a Notice of Intent to Award, procurement documents become public and bidders may request a review of the procurement file after the Notice of Intent to Award is posted. Refer to Public Records Act, GC 6250 for exemptions from disclosure.

For value effective acquisitions the results of the administrative and technical score shall be made available before the cost proposal opening (see PCC 12102.2 (a)(2); for the rule on solicitations under the Alternative Protest Process, see 1 CCR [California Code of Regulations] section 1404).

4.C1.4 Bid Response/ Award Availability	Where notices of intent to award are not used, bid response/award information shall be made available to any requestor after the award is complete. This information is to be retained in the procurement file and is subject to public inspection.

Topic 2 – Determining Responsive Bid and Responsible Bidder

4.C2.0 Responsive and Responsible Definition

Responsive Bid: A bid is considered responsive if it indicates compliance without material deviation from the requirements of the solicitation and the terms and conditions of the proposed contract.

Responsible Bidder: A bidder is responsible if they possess the experience, facilities, reputation, financial resources and are fully capable of performing the contract.

4.C2.1 Determining Effective Competition

Competition requires the act of seeking responses from qualified suppliers consistent with the size and nature of the procurement. To determine that "competition" has been effective, responsive bids must be received from at least two responsible bidders, unless the solicitation is advertised. A response of "no bid" or "no response" is not considered as receiving a bid.

Effective competition differs when the acquisition is less than $5,000 and conducted under GC section 14838.5(c) using a fair and reasonable evaluation methodology.

4.C2.2 No Responsive Bids Received from Responsible Bidders

When competition results in no responsive bids from responsible bidders, there are three options that may be taken:

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

OR

Option 2 If a second solicitation would not result in a different outcome, the solicitation may be canceled and procurement made with an NCB, following the procedures outline in Chapter 6 of this manual. To determine which supplier should be selected as the source, the proposed supplier's bid must be substantially technically compliant/responsive with the specifications and the supplier must be deemed responsible.

OR

Option 3 During the multi-step solicitation process, in the event that Final Bid Proposals from all bidders contain material deviations, the buyer may declare the Final Bid Proposals as an additional draft and call for a new final bid proposal in order to continue the bid process. If this occurs, an addendum shall be issued and a confidential discussion should be held with each bidder that submitted a flawed final proposal.

4.C2.3 Multiple Bids Received, Only One Responsive Bid from Responsible Bidder

When competition results in only one responsive bid from a responsible bidder even though multiple bids were received, competition may be declared as being achieved if the solicitation was advertised or under the following conditions after carefully considering all factors of the situation (risk, urgency, and impact to the program):

Non-participation due to the State's socio-economic requirements. The procurement file must be documented with the reasons why only one responsive bid was received. The information will likely need to be requested from bidders who initially responded to the solicitation announcement.

Non-participation due to the State's statutory requirements. If non-participation was due to the State's statutory requirements, such as DVBE, Small Business, etc., this information shall be incorporated into the documentation. The file must also be documented with the evaluation of other bidders who were determined to be non-responsive/responsible.

After carefully documenting the rationale, the award may be made.

4.C2.4 Non-participation Due to Concerns with Bid Specifications

If non-participation occurs due to concerns with the bid specifications, the buyer must consider three options:

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

OR

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

OR

Option 3 If the specification(s) and or requirement(s) in question is determined to be unique to one supplier's product and it is determined that only that product meets the department's needs, then an NCB is required the procurement file must be documented that the solicitation has been determined to be an NCB and then an award may be made, following the procedures outlined in Chapter 6 of this manual.

4.C2.5 Award to other than low bidder for Non-IT Goods

Informal:
If a buyer determines that the low bidder will not be awarded the contract and the solicitation is being conducted as an informal solicitation, the buyer will document the procurement file in sufficient detail to justify the determination of the lowest bidder being non-compliant then award the purchase to the next lowest bidder.

Formal:
Per Public Contract Code 10306, formal procurement evaluations, when the low bidder will not be awarded the contract, the displaced bidder shall be notified 24 hours prior to awarding the contract or purchase. The procurement official must include documentation explaining why the department recommends rejecting the lower bid must be forwarded/Ad hoc to

DGS/PD One-Times Acquisitions Unit (OTA) for concurrence prior to contract award, and for posting in a public place within the offices of the department. Departments may not make the award without DGS/PD approval/concurrence.

This does not apply if any bidder submits a lower bid that is compliant, but will not receive the award because another bidder (i.e. small business) has a lower bid after application of a preference.

Topic 3 – Material Deviations

4.C3.0 Wording That Indicates a Requirement or Condition

The State has established certain requirements with respect to bids to be submitted by prospective contractors. The use of "shall," "must," or "will" (except to indicate simple futurity) in solicitations, indicates a requirement or condition from which a deviation, if not material, may be waived by the State. A deviation from a requirement is material if the deficient response is not in substantial accord with the solicitation requirements, provides an advantage to one bidder over other bidders or has a potentially significant effect on the delivery, quantity or quality of items bid, amount paid to the supplier or on the cost to the State. Material deviations cannot be waived.

4.C3.1 Wording That Indicates Desirable Attributes and Conditions

The words "should" or "may" in solicitations indicate desirable attributes or conditions, but are non-mandatory in nature. A deviation from or omission of a desirable attribute or feature will not in itself cause rejection of the bid.

4.C3.2 State Options

The State may reject any or all bids and may waive any immaterial deviation or defect in a bid. The State's waiver of any immaterial deviation or defect shall in no way modify the solicitation documents or excuse the bidder from full compliance with the solicitation specifications if awarded the contract.

4.C3.3 Determining Responsive-ness

Bid responses should be evaluated by first determining that each response is clearly responsive to the bid requirements. If a response does not appear to be responsive, the following questions will help to determine the materiality of the requirement:

- Is the response in substantial accord with the requirement? If no, the deviation is material.
- Does the response provide the bidder an advantage over other bidders? If yes, the deviation is material.
- Does the response have a potential significant effect on the delivery, quantity, or quality of the items bid? If yes, the deviation is material.
- Does the response have a potentially significant effect on the amount paid to the supplier or cost to the State? If yes, the deviation is material.

Refer to Section F, Resources, at the end of this chapter for a sample Deviation Worksheet.

4.C3.4 Waiving Mandatory Requirements is Prohibited

Material deviations of mandatory requirements cannot be waived and the bid must be rejected. All such deviations must be thoroughly documented in the procurement file to support the rejection.

4.C3.5 Examples of Deviation Types

Immaterial Deviation: A deviation can be accepted by the State when it is determined to be of such a minor concern that it carries little or no importance, has not affected the amount of the bid, has not given the bidder an advantage or benefit not allowed to other bidders. In other words the variance is inconsequential, and by accepting it, it doesn't provide the bidder with any material advantage over other bidders.

Example:
A bidder referenced the wrong page in their supporting technical literature. The bidder directed the evaluator to page 4 and the correct page should have been page 5.

Material Deviation: A deviation in the bid response that is so substantial it cannot be accepted by the State because by accepting it, the response will provide the bidder with an advantage not allowed to other bidders; or the deviation is so significant it may affect the cost, quantity or quality of the proposed goods or services to be provided to the State.

Example:
The solicitation required a system that would serve 500 users and the bidder only offered a system that would serve 250 users.

Topic 4 – Evaluation and Award

4.C4.0 Procurement Summary Document

The evaluation process and resulting source (supplier) selection decision must be documented for every procurement effort and referenced as a procurement summary*. The purpose of the procurement summary is to provide a single document that specifies the history of those particular procurement transactions by explaining the significant facts, events and decisions leading up to the contract award.

Procurement summaries should be written clearly, concisely and convincingly to support the soundness of the purchasing decision.

Procurement summary information includes but is not limited to:
Documenting the offered prices
Determining that the selected supplier is responsible and the bid is responsive.
Attaching the Procurement Summary Document, Bid/Quote Worksheet or the Evaluation and Selection Report

*****The Procurement Summary Document is not required, however if this form or a similar form is not used, then the procurement file must include the Bid/Quote Worksheet or the Evaluation and Selection Report as required by the solicitation method conducted (RFQ, RFP, IFB, SB/DVBE Option, etc.).

Refer to Section F, Resources, at the end of this chapter for samples and templates of the:

- Procurement Summary Document
- Bid/Quote Worksheet
- Evaluation and Selection Procedures
- Evaluation and Selection Report

4.C4.1 Tie Bids

Tiebreaker language should be included in the solicitation document, indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are a coin toss or other similar objective method. Such event must be observed by witnesses and the affected bidders should be invited.
In the event of a precise tie between two SB suppliers in which one is also a DVBE, the award shall go to the SB that is also a DVBE.

Example:

- Supplier-A and Supplier-B are tied.
  - Supplier – A is a SB
  - Supplier – B is a SB and a DVBE
  - Supplier – A claiming the DVBE incentive by subcontracting to a DVBE
  - Supplier-B is a SB claiming the DVBE incentive by being a DVBE
- The award shall be made to Supplier-B that is a SB and also a DVBE

(Reference Chapter 3 and GC section 14838 (f) and 2 CCR section 1896.8(f)).

In the event of tie for recycled tire product contracts, the contract will be awarded to the bidder whose product has the greatest percentage of recycled tire content if the fitness, quality, and price are equal. (PRC section 42894) "Recycled tire product" means a product with not less than 50 percent of its total content derived from recycled used tires. (PRC section 42890.)

Topic 5 – Evaluation and Award Specific to IT Value Effective Evaluations

4.C5.0 Value Effective Acquisitions

For IT goods and/or services transactions valued at over $100,000, bids should be evaluated based on a value-effective methodology, where factors other than cost are of considerable value to the department, unless the procurement is straight-forward and requirements are known, detailed, and clear such that the evaluation and selection can be based on lowest net cost meeting all other bid specifications.

All requirements must be clearly identified associated points clearly identified in the evaluation section of the solicitation (or denoted non-scorable). The method for determining the winning bid must be clearly stated.

Example
"Award may be made to the supplier achieving the highest cumulative number of points from the administrative requirements, technical requirements, and cost proposal evaluation phases."

4.C5.1 Two-envelope evaluation procedure

Whenever a value-effective evaluation methodology is used to evaluate IT goods and/or services bids, the following process must be followed:

1. Cost proposal must be sealed in its own envelope and clearly labeled as "Cost."
2. The Administrative and Technical proposals must be submitted together in a sealed envelope and clearly labeled as "Administrative and Technical."
3. Administrative and Technical proposals will be evaluated to determine responsiveness of the bidder. (Cost proposals are not to be opened. See step 5 for when cost proposals are opened.)
4. All bidder responses will be kept sealed and under lock and key until evaluation of all technical and administrative criteria is completed and the results published.
5. The sealed cost proposals for responsive proposals shall then be opened at the time and place designated in the solicitation and the remainder of the evaluation completed. (Cost proposals of non-responsive bids/proposals will not be opened.)

Evaluators must verify all mathematical calculations.

Example:
Verify that line extensions are computed correctly and when all lines are added together, they total the final bid total.

4.C5.2 Purpose of the Cost Proposal Certificate

The Cost Proposal Certificate is the State's confirmation that all proposals have been maintained sealed and under lock and key until the time cost proposals are opened. This certification is retained within the procurement file and certified by the buyer that the information is correct.

Section D

Informal Open Competition

Overview

Introduction

Placeholder

Topic 1 – Solicitation Approaches

4.D1.0 Informal vs. Formal

Solicitations are documents used to request quotes, offers, bids, or proposals from suppliers and are characterized as either informal or formal.

Informal solicitations are generally straightforward or uncomplicated and usually of lower dollar value and may be conducted using a solicitation vehicle such as the Request for Quotations (RFQ) or Invitation for Bids (IFB), depending on the degree of specific language needed.

The following table provides the dollar thresholds for identifying the informal dollar thresholds:

Procurement Type	Informal Solicitation
Non-IT goods	$100,000.00 and less
IT Goods	$1,000,000.00 and less
IT Services	$1,000,000.00 and less

Warning: IT goods and/or services informal solicitations valued from $100,000.01 to $1,000,000 require specific solicitation language for protest and award procedures. See Topic 2 of this section for additional information.

4.D1.1 Phone Quotes

Informal solicitations for goods valued less than $50,000.00 or for services valued less than $4,999.99 may be conducted by phone.

The phone quote solicitation method requires preparation of a “script” or narrative of the requirements so that each bidder is informed equally and quotes can be evaluated fairly. The “script” must include referring bidders to the PD web page to read the current bidder instructions and applicable general provisions associated with the purchase. The quotes received over the phone are documented using the recommended Bid/Quote Worksheet. Both the script and the bid/quote worksheet must be retained in the procurement file.

A phone quote would **not** be an acceptable method for conducting a solicitation if the service portion (set-up, installation, etc.) of the purchase exceeds $4,999.99 or if the combined purchase amount (goods and services) exceeds $50,000.

Refer to Section F, Resources, at the end of this chapter for a sample Bid/Quote Worksheet.

4.D1.2 Written Solicitations

Informal solicitations may be conducted using written solicitation formats. There are instances where an informal solicitation must be written such as:

Any solicitation that is advertised in the CSCR.
Any goods transaction that exceeds $50,000.00.

Any IT service transaction that exceeds $4,999.99.

Written solicitations may be distributed by fax, mail, electronically or by other means such as a supplier picking up the solicitation in person. It is recommended that whatever delivery method is used, the activity is documented in the procurement file.

Refer to Section F, Resources, at the end of this chapter for sample templates of the RFQ.

4.D1.3 Mailing List

Mailing lists may be established using a variety of means to locate potential suppliers. The selection of suppliers should be varied to broaden the supplier base and increase competition. Certified SB's and certified DVBEs should be solicited whenever possible. Resources available to identify and/or establish lists are:

- Phone books
- Referenced supplier/manufacturer
- Other agencies who uses similar products
- Federal, State, Counties, Cities SB and DVBE databases
- Request for Information (RFI)
- Internet search
- Local trade unions
- Chamber of commerce
- Industry listings
- LPA databases
- Certified SB and DVBE firms database
- Recommendations from customers

Lists are generally used for informal solicitations. However, mailing lists may be used in addition to advertising for formal solicitations.

4.D1.4 Faxing Bid Responses

The following paragraph must be included in all written competitive acquisition methods when suppliers are allowed to fax their bids:

"Facsimile machine bids will be considered only if they are sent to (insert office fax number) for solicitations originating from the (department office location). Bids sent to any other (department unit name) fax number will not be considered. To be considered, all pages of the faxed bid that are received prior to the bid opening time specified in the bid will be considered "the complete bid". Please be advised that there is a heavy demand placed on the fax machine receiving bids. The State assumes no responsibility if a supplier cannot transmit their bid via fax or if the entire bid is not received prior to the bid opening time."

When a buyer receives a faxed bid, the buyer must directly enter the information into the FI$Cal System.

Topic 2 – Request for Quotation

4.D2.0 Request for Quote (RFQ)

The most common written solicitation format used to conduct informal competitive acquisitions is the Request for Quotation (RFQ). The RFQ is a straightforward procurement format that identifies what is needed or requests a proposed solution and tends to be low in risk.

Formal, Invitation for Bid (IFB) format should be used for informal IT competitive acquisitions that tend to be higher in risk.

4.D2.1 RFQ Solicitation Formats and Elements of the RFQ

Refer to Section F, Resources, at the end of this chapter for sample solicitation templates and to obtain Elements of the RFQ.

When conducting a RFQ solicitation that has both goods and services use the RFQ Goods solicitation format.

4.D2.2 Required Language

The following solicitation language must be considered and addressed as applicable in a solicitation using the RFQ format:

- Bidder Instructions and applicable General Provisions for the solicitation.
- Identify requirements of faxing bid responses.
- Include language addressing the socioeconomic and environmental programs as applicable (SB, DVBE, EPP, TACPA, etc.)

Required Language Specific to IT Solicitations
When using the RFQ format for IT solicitations over $100,000, use the language specified below for protest and contract award.

Award of Contract
Award of contract, if made, will be in accordance with the RFQ information on Evaluation to a responsible bidder whose bid complies with all the requirements of the RFQ documents and an addenda thereto, except for such immaterial defects as may be waived by the State. Award, if made, will be made within forty-five (45) days after the scheduled date for Contract Award as specified in the RFQ; however, a bidder may extend the offer beyond 45 days in the event of a delay of contract award.

The State reserves the right to determine the successful bidder(s) either on the basis of individual items or on the basis of all items included in its RFQ, unless otherwise expressly provided in the State's RFQ. Unless the bidder specifies otherwise in its bid, the State may accept any item or group of items of any bid. The State reserves the right to modify or cancel in whole or in part it's RFQ.

Written notification of the State's intent to award will be made to all bidders. If a bidder, having submitted a bid, can show that its bid, instead of the bid selected by the State, should be selected for contract award, the bidder will be allowed five (5) working days to submit a Notice of Intent to Protest,

according to the instructions contained in the paragraph titled “Protests” of this RFQ.

Protests
Any bidder’s issues regarding solicitation requirements must be resolved (or attempts to resolve them must have been made) before a protest may be submitted according to the procedure below. These issues will first be resolved by the contact for the solicitation or if they result in a protest, the protest will be submitted to DGS Procurement Division Deputy Director to hear and resolve issues and whose decision will be final.

If a bidder has submitted a bid which it believes to be responsive to the requirements of the RFQ and to be the bid that should have been selected according to the evaluation procedures in the solicitation and the bidder believes the State has incorrectly selected another bidder for award, the bidder may submit a protest of the selection as described below. Protests regarding selection of the “successful bidder” will be heard and resolved by the Victim Compensation and Government Claims Board whose decision will be final.

All protests of award must be made in writing, signed by an individual authorized to bind the bidder contractually and financially, and contain a statement of the reason(s) for protest; citing the law, rule, regulation or procedure on which the protest is based. The protester must provide facts and evidence to support the claim. Protests must be mailed or delivered to:

Street and Mailing Address:
Deputy Director
Procurement Division
707 Third Street, Second Floor South
West Sacramento, CA 95605
Facsimile No.: (916) 375-4611

All protests to the RFQ or protests concerning the evaluation, recommendation, or other aspects of the selection process must be received by DGS Procurement Division Deputy Director as promptly as possible, but not later than the date indicated in the Notification of Intent to Award. Certified or registered mail must be used unless delivered in person, in which case the protester should obtain a receipt of delivery

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4.D2.3 Documenting the results

The buyer must document quotes received by using the recommended Bid/Quote Worksheet or using a document containing similar information. The bid/quote worksheet or similar document must be retained in the procurement file.

Refer to Section F, Resources, at the end of this chapter for the Bid/Quote Worksheet.

4.D2.4 Contract award

Contract award resulting from the RFQ process will be to the responsive, responsible bidder with the lowest cost or highest score (as defined in the evaluation portion of the solicitation) after application of any preference

requirements (SB, TACPA, recycle, etc.) incentive (DVBE) or discounts, if applicable.

Topic 3 – SB/DVBE Option

4.D3.0 SB/DVBE Option

The SB/DVBE Option is allowed by GC section 14838.5 (a) and (b). When using the SB/DVBE Option, contracts may be awarded for goods, services or IT valued from $5,000.01 to $249,999.99 to a certified SB, including microbusiness or a DVBE, without advertising as long as price quotations are obtained from two or more certified SB/MBs or two or more DVBEs.

4.D3.1 Using the SB/DVBE Option

Competitive acquisitions using the SB Option or the DVBE Option are to be conducted as follows:

- Create the solicitation (verbal or written)
- Verify SB or DVBE certification status through FI$Cal (certification status is maintained in “real-time” in FI$Cal).
- Release the solicitation only to California certified SBs/MBs or DVBEs.
- Contract award may be made upon receipt of responsive price quotations from at least two (2) responsible California certified SB/MBs **or** DVBEs and award must be made based upon the solicitation format used.

The procurement file must be documented to support the contract award and the action taken.

Topic 4 – Bidder Instructions and Required Contract Language

4.D4.0 Required Clauses for Transactions Less than $5,000 and Supplier's Written Acceptance

The State's General Provisions should be used on transactions valued less than $5,000.00.

If an election is made not to include and/or reference the General Provisions, then written confirmation must be obtained before award is made that the supplier will abide by the following required contract provisions:

- Americans with Disabilities Act (ADA)
- Non-Discrimination and Statement of Compliance
- Drug-Free Workplace Certification
- Forced, Convict & Indentured Labor
- National Labor Relations Board Certification
- Darfur certification (Non-IT only)
- Sweat Free Code (see the General Provisions)
- Expatriate PCC 10286
- Recycling
-
- Electronic Waste
- Use tax

This documentation shall be uploaded in FI$Cal and maintained as part of the procurement file.

4.D4.1 Non-IT Goods and IT Goods and Services Transactions Valued from $5,000 to $50,000.00

Achieving competition within this dollar range is defined as receiving responsive bids from at least three (3) responsible bidders, if the solicitation is not advertised. See Section A, Topic 2, of this chapter for advertising requirements and dollar requirements by classification.

Whenever solicitations are advertised and distributed amongst interested bidders, bidder participation is not controlled, thus the solicitation may result in only one bid response. If the sole bid response is considered responsible and responsive then the contract may be awarded. If not, then the solicitation must be canceled and re-issued.

4.D4.2 Non-IT Goods Transactions Valued from $50,000.01 to $100,000.00 <u>And</u> IT goods and/or services Transactions Valued from

Competitive acquisitions conducted for non-IT goods and IT goods and/or services valued in this dollar range are considered "informal" but must:

- Be a written document
- Include a provision for notice of Intent to Award
- Provide language regarding protest procedures
- Be advertised

For RFQs required to be advertised (see Section A, Topic 2) Award of Contract and Protests language must be included (see Section B, Topic 3 of this chapter).

$100,000.01 to $1,000,000	Whenever solicitations are advertised (see Section A, Topic 2) and distributed amongst interested bidders, there is no control over bidder participation, thus the solicitation may result in only one bid response. If the sole bid response is considered responsible and responsive then the contract may be awarded. If the sole bid response is not considered responsible and responsive then the solicitation must be canceled and re-issued

Topic 5 – How to Determine Fair and Reasonable Pricing

4.D5.0 Techniques

In accordance with GC section 14838.5 (c), if the estimated value of a transaction is under $5,000, at least two price quotations shall be obtained from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

Provided below are five techniques that a buyer may use to determine whether or not a supplier's price can be determined to be fair and reasonable:

- **Price comparison:** Quotes or offers have been obtained and documented within the last 12-18 months period from other responsible suppliers that provides evidence that the price obtained is deemed fair and reasonable.
- **Catalog or market pricing:** The price offered is supported by an established and verifiable catalog or market pricing media issued by a responsible supplier and/or through an established reputable forum. In addition, the pricing structure provided is one that would be accepted as a reasonable representation of existing market value.
- **Controlled pricing:** The price offered is set by law or regulation; competitively bid master or statewide contracts, etc.
- **Historical pricing:** It can be demonstrate that other transactions occurring in the past (within a 12 – 18 month period) exist that shows that historical prices for similar acquisitions have yielded no material change in cost. (The definition of "material" for this technique is deemed to be greater than a 15% increased difference between current and historical pricing.)
- **Cost/benefit analysis:** A buyer can demonstrate that his/her level of experience in the procurement field provides a sufficient knowledge base which clearly indicates that the acquisition cost is so low that the cost to the State of verifying the pricing fairness would most likely be more than any potential benefit that could be reasonably gained from searching out the market place for lower price comparable acquisitions.

4.D5.1 Compare Identical Situations

When evaluating fair and reasonable pricing using price comparisons, catalog/market price and/or historical pricing the comparisons must be based on identical situations or those with little variance that does not impact the price. Comparable includes quantity of items, complexity of the procurement, timing of the acquisition and the marketplace (price inflation and/or reduction).

4.D5.2 File documentation

The procurement file must contain sufficient documentation to support the technique used to determine the pricing received is fair and reasonable.

Topic 6 – Supplier Selection Basics

4.D6.0 Bid/Quote Evaluations for Phone Quotes and RFQs

The Bid/Quote Worksheet should be used to document the bids received resulting from informal phone quotes and RFQs. The worksheet provides a means to easily compile and evaluate the bids received and assists in final selection. This worksheet must be retained in the procurement file.

The evaluation and selection process for contract award as outlined below must be used for the RFQ solicitations format for IT transactions exceeding $100,000.00 and for non-IT transactions exceeding $50,000.00.

Refer to Section F, Resources, at the end of this chapter for templates and sample form.

4.D6.1 Fair and Reasonable Evaluation

Fair and reasonable evaluations must be conducted and documented in the procurement file for all transactions under $5,000 whenever two (2) price quotes from responsible suppliers are not obtained regardless of:

- Purchasing authority type
- Acquisition method or
- Method of payment (direct charge, Cal-Card®, revolving fund, etc.)

See Section D, Topic 5, of this chapter for the technique available to determine fair and reasonable pricing.

Section E

Formal Competitive Acquisition Methods

Overview

Topic 1 – Solicitation Approaches

4.E1.0 Informal vs. Formal

Solicitations are documents used to request quotes, bids, or proposals from suppliers and are characterized as either informal or formal.

Formal solicitations are typically more complicated, higher in risk and usually of higher dollar value and may be conducted using the Invitation for Bid (IFB) or Request for Proposal (RFP), depending on the degree of specific language needed.

The following table provides the dollar thresholds for identifying the formal dollar thresholds:

Procurement Type	Formal Solicitation
Non-IT goods	More than $100,000.00
IT Goods	More than $1,000,000.00
IT Services	More than $1,000,000.00

4.E1.2 Written Solicitations

All formal solicitations must be written and posted on the CSCR.

Written solicitations may be distributed by fax, mail, electronically or by other means such as a supplier picking up the solicitation in person. It is recommended that whatever delivery method is used, the activity is documented in the procurement file.

Refer to Section F, Resources, at the end of this chapter for sample templates of the IFB and RFP.

4.E1.3 Key Action Dates for Solicitations

Most formal, written solicitations, such as IFBs and RFPs, containing phased approaches leading to final bid submittal will include key action dates. Key action dates provide suppliers with a schedule for required actions during the solicitation process.

Examples of key action dates include:

- Intent to Bid letters
- Last day to submit questions for clarifications of IFB or RFP
- Last day to protest requirements
- Technical Proposal or Conceptual Proposal submittal due date (RFP only)
- Draft bid due date

- Final bid due date

The interval between each key action date must provide enough time to establish a sufficient supplier pool and provide suppliers with sufficient opportunity to act or respond.

4.E1.4 Faxing Bid Responses

The following paragraph must be included in all written competitive acquisitions when suppliers are allowed to fax their bids:

"Facsimile machine bids will be considered only if they are sent to (insert office fax number) for solicitations originating from the (department office location). Bids sent to any other (department unit name) fax number will not be considered. To be considered, all pages of the faxed bid that are received prior to the bid opening time specified in the bid will be considered "the complete bid". Please be advised that there is a heavy demand placed on the fax machine receiving bids. The State assumes no responsibility if a supplier cannot transmit their bid via fax or if the entire bid is not received prior to the bid opening time."

When a buyer receives a faxed bid, the buyer must directly enter the bid information into the FI$Cal System.

Faxing is not allowed for formal IT solicitations when using the two envelope approach. The individual solicitation shall identify if faxing is a viable option.

4.E1.5 Risk Guidelines for IT

Risk guidelines and financial protection measures to protect the best interests of the State are to be applied to all information technology (IT) goods and services solicitations valued more than $1,000,000. Solicitations valued $1,000,000 or less may comply with the risk evaluation guidelines and financial protection measures.

Any contract that allows for progress payments when the IT goods or services are manufactured or performed by a contractor, specifically for the State and are not suitable for sale to others in the normal course of the contractor's business operations, shall have a withhold of no less than 10% until final delivery and acceptance of said goods or services.

Departments are to submit documentation of each risk analysis and the rationale for the selection of appropriate risk protection to the Department of General Services, Procurement Division (DGS-PD) Deputy Director or his designee for written approval. Should a department determine that the risk protection methods identified in the guidelines do not meet the needs of a particular transaction, DGS-PD must be contacted.

Refer to Section F, Resources, at the end of this chapter for more information about risk evaluation guidelines and financial protection measures.

Topic 2 – Request for Proposal for IT Solicitations

4.E2.0 Request for Proposal (RFP)

The Request for Proposal (RFP) is a written solicitation document required for IT goods and/or services acquisitions complex in nature or of elevated risk The RFP format is structured like the IFB to allow organization of requirements by type such as administrative/technical specifications, evaluation methodology, bid preparation instructions and contract language.

The RFP states the solicitation requirements or specifications in a more general nature describing the problem to be solved or the goal to be achieved. Suppliers "propose" a business solution to the State's described needs, free of any precise imposed mix of hardware, software, etc.

The risk assessment process is completed in the planning stage of the procurement. It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process as conditions change.

Refer to Section F, Resources, at the end of this chapter for sample solicitation templates and to obtain Elements of the solicitation.

4.E2.1 Changes to RFP Rules and Requirements

Pursuant to Public Contract Code (PCC) section 12104.5, any changes to the rules and requirements governing that RFP shall be communicated in writing to all vendors that have expressed intent to bid and shall be posted in a public location.

4.E2.2 Documentation of IT Project Information Pertinent to Creation of an RFP

Information technology purchases for which it is determined that an RFP is appropriate, if the following information is not already identified and documented in the Project Approval Lifecycle (PAL) document the department shall identify and document the following, with respect to IT procurements, prior to releasing the RFP.

- Legislative mandate, State business, or operational reason for the IT procurement
- Existing business processes currently used to accomplish the legislative mandate, State business, or operational reason.
- Most important priorities for the IT project to accomplish
- What current technology is being used and how it is being used
- If the data used in a proposed IT system comes from multiple sources, the existing business processes or technical systems that produce and maintain the source data to ensure interoperability
- How the new IT project leverages existing technology investments while accomplishing its business objectives

4.E2.3 Availability of Pertinent IT RFP Project Information

To ensure prospective bidders have access to Information related to IT projects/procurements during the procurement process, departments shall post the related PAL or SPR with the RFP Bid Package to the California State Contracts Register (CSCR). If the IT project/procurement is to be conducted by DGS/PD, the department for which the IT project/procurement is being conducted shall ensure that the most current approved PAL/SPR is provided to DGS/PD.

Information on an PAL/SPR that could impact the department or the State's security shall be censored on the copy placed on the CSCR.

If there is no related PAL or SPR, a statement indicating this shall be included in the RFP.

4.E2.4 DGS/Office of Legal Services (OLS) Review of RFPs

Effective January 1, 2011, pursuant to PCC section 12104(c) all IT RFPs shall be reviewed by the California Department of Technology (CDT) prior to release to the public.

Upon request of any department or as deemed necessary by DGS/PD, DGS' Office of Legal Services (OLS) will review RFP documents. In these cases, RFPs shall be submitted to DGS/OLS a minimum of 10 working days prior to anticipated release of the RFP to allow DGS/OLS sufficient time for review and information exchange with the department as needed in the review process. However, for complex RFPs, departments are strongly encouraged to submit the RFP well in advance of the planned release date to allow sufficient time for review and to correct any problems.

4.E2.5 Contract Award

The evaluation criteria governing contract award is based on value-effective factors that includes cost. These factors are weighted; generally the administrative and technical requirements equal 50% and cost equals 50%.

If a weighting other than 50/50 is chosen, it must be approved by DGS/PD before the solicitation is released. All factors for evaluation must be detailed in the evaluation section of the RFP.

Contract award if made, will be to the responsive/responsible supplier who scores the highest points in accordance with the evaluation methodology as described in the solicitation document. Contact DGS/PD for advice on preparation of value effective acquisition methodologies.

4.E2.6 Evaluation and Selection Report Team Procedures

When using the RFP format, an Evaluation and Selection Report Team procedures document is to be used. This document provides information on how the RFP evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation and selection process used for contract award. The Evaluation includes templates of letters and the Selection Report. These items, along with all RFP transmittal documents to bidders, including the Intent to Award Letter, must be completed and uploaded in FI$Cal.

Refer to Section F, Resources, at the end of this chapter for the sample Evaluation and Selection Report Team Procedure document.

4.E2.7 Evaluation and Selection Report

When using the RFP format, an Evaluation and Selection Report must be used to document the evaluation and selection process used for contract award. The Evaluation and Selection Report must be completed in FI$Cal for all RFPs.

Refer to Section F, Resources, at the end of this chapter for the Evaluation and Selection Report template.

4.E2.8 Review of IT goods and/or services for Solicitations Exceeding $1,000,000

Per ITPL 11-03, all solicitations (IFB/RFP) for IT goods and/or services exceeding $1,000,000 must be submitted to the CDT for review no later than 45 business days prior to the planned date for release to the public. Review of informal IT solicitations (less than $1million) is delegated to the department. Review and approval is in addition to and done concurrently with DGS review and approval of procurement documents.

Topic 3 – Supplier Selection Basics

4.E3.0 IFB/RFP Evaluation Documentation

Buyers using the IFB or RFP format non-IT goods or IT goods and/or services must use the Evaluation and Selection Team Procedures for contract award. This document provides information on how the RFP evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation.

This document will also provide a chronology of the events that occurred during the solicitation process such as:

- Date of advertisement,
- Names of bidders responding,
- Date solicitation released, etc and
- Refer to Section F, Resources, at the end of this chapter for access to the Evaluation and Selection Team Procedures.

Topic 4 – Evaluation and Award

4.E4.0 Bid Submissions

Generally, bid submissions will be handled as follows:

- Bids will be submitted electronically whenever possible. If not possible, bids may be hand-delivered or sent by mail unless the solicitation stated another method, i.e., fax
- Bids are due by the close of the business day, which is considered 5:00 pm Pacific Standard/Daylight Time on the date indicated unless otherwise stated in the solicitation
- To be considered for award, when sealed bids are required:
  - The "cost" portion must be sealed in a separate envelope and contained inside the bid envelope (for point based bids only, such as value-effective RFPs when using the 10 section format RFPs)
  - It must be received at the location and by the closing time and date specified
  - Any forms required to have a signature should be signed by the bidder
- Electronic bids will be date and time stamped upon receipt by the system.
- Buyers are advised to create a bidder response list:
  - Record the date and time bids are submitted
  - Include the bidder's company name
  - Include the bidder's contact person (if listed on the exterior of the envelope or obtained from an in-person submission, or from within the bid if opened publicly)
  - Record the cost amount (only if this is a low-cost based bid with a public opening, otherwise this information should not be contained in the initial bidder response list
- Bids must be kept in a secured area and remain confidential until bid opening
- Bids submitted after the closing time and date will be considered non-responsive

Solicitations using the value effective evaluation for contract award require a cost submission and require evaluation and scoring of all submissions <u>prior</u> to opening the cost envelope to determine the overall score of the bid responses. Only the cost factors of responsive bids are to be viewed.

4.E4.1 Submission of Fax Bids

Any solicitation that requires a sealed cost submission cannot be faxed.

4.E4.2 Intent to Award

For IT goods and/or services solicitations over $1,000,000.00, all bidders must be notified of intent to award a contract at least 5 working days prior to award. This notification period may be shorter when the Alternative Protest Process is used – see Chapter 7, of this manual.

For non-IT goods formal solicitations (those exceeding $100,000.00) departments are required, upon receiving a written request from a bidder or when the lowest bid is rejected, to notify the bidder of the proposed award 24 hours prior to award of the contract.

Refer to Section F, Resources, at the end of this chapter for a sample Letter of Intent to Award.

Section F

Resources

4.F1.0 Chapter 4 Resources Listed Alphabetically

B

Bidders Instructions (GSPD-451)…… Link to Webpage
Bid/Quote Worksheet …….. Word PDF
Board of Equalization's Webpage…….. Link to Webpage

C

California State Contracts Register (CSCR) Link to Webpage
CalRecycle Webpage……Link to Webpage
Cloud Computing Checklist…… Link to Webpage
Cloud Computing SaaS Special Provisions
Cloud SaaS Special Provisions
Cloud Computing Webpage (DGS/PD)…… Link to Webpage
Confidentiality Policy…….. Word PDF
Confidentiality Statement (sample) …… Word PDF
Contract Advertising Exemption Request (STD.821) … Link to Webpage

D

Deviation Worksheet…….. Word PDF
Disabled Veterans' Business Enterprise Waiver Form…… DVBE Waiver form

E

Elements of the RFQ Solicitation for: …….. IT Goods or IT Services
IT goods and/or services
Non-IT Goods
Evaluation and Selection Report …… Word
Evaluation and Selection Team Procedures…… Word

F

File Documentation list for: …… IT Goods
IT Services
Limited to Brand (LTB)
Transactions Under $5,000.00

G

General Provisions (IT and Non-IT)…….. Link to Webpage

I

Information Technology (IT) Policy Letter…… ITPL 11-03
Invitation for Bid (IFB)…… IT Goods Only Format
IT goods and/or services Format
Non-IT goods: Word PDF

L

Letter of Intent to Award…… Word PDF
Limited To Brand (LTB) Contract Statement…….. Word PDF

P

Procurement Summary Document…… Word PDF

R

Request for Proposal (RFP) for IT Goods Services…… Word

Request for Quote (RFQ) for: ……IT goods and/or services

IT Goods Only

Non-IT Goods: Word PDF

Risk Evaluation Guidelines and Financial Protection Measures…… Word

Chapter 5

Acquisition Methods

Leveraged Procurement Agreements

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Chapter 5

Leveraged Procurement Agreements

Overview

Introduction

This chapter describes the various types of the State's leveraged procurement agreements (LPAs) that provide for all goods and services and how to use them. The categories of LPAs include:

- Statewide Contracts (SC)
- California Multiple Award Schedules (CMAS)
- Software Licensing Program (SLP)
- State Price Schedules
- Master Agreements (MA),
- Cooperative Agreements COOPERATIVE AGREEMENTS CA 1122 Public Safety Procurement Program
- CA 1122 Public Safety Procurement Program

Some of the topics discussed include using LPAs to order goods and services, order limits, obtaining offers, best value determination and amending orders.

Unless identified as a mandatory contract, the use of LPAs is optional, although departments are encouraged to take advantage of the benefits of these pre-established contracts.

Departments must have approved purchasing authority for the applicable category in order to place orders against that category. Refer to Chapter 1 for information on how to obtain purchasing authority to use LPAs. The requirement for purchasing authority does not apply to DGS/PD when conducting procurements on behalf of customers.

Section A

Leverage Procurement Agreement (LPA) General Usage

Overview

Introduction

LPAs are established by DGS/PD as set forth in Public Contract Code (PCC) sections 10290 et seq. and 12101.5, which enable streamlined State purchases by removing repetitive, resource intensive, costly and time consuming bid processes by departments. State Departments are authorized by these same laws to use LPAs (not create them) while adhering to policy and procedure.

LPAs commonly include “user guides” or “ordering instructions” that are unique to a particular LPA program and/or contract. These instructions, for the purposes of this chapter and throughout SCM-F will be commonly referred to as “user instructions.” Buyers, in addition to reading this chapter, should always refer to the user instructions for the specific LPA being utilized.

Buyers must also be aware of the importance of reading this chapter in its entirety as the chapter was created to consolidate like processes throughout the various LPAs into the beginning section of the chapter.

Topic 1 – LPA Basics

5.A1.0 LPA Prices

LPA prices for products and services vary from category to category. Some LPA prices are listed as maximums and negotiating for lower prices is recommended. Others are at a fixed price for which negotiation is not allowed.

Because of these variables, buyers are required to confirm that the products, services and prices are included in the contract and that the prices in the department’s order are at or below the contract rates. This is accomplished by obtaining a complete copy of the LPA before executing any purchase documents. The contract’s user instructions describe the tasks necessary to solicit offers for the order.

5.A1.1 Solicitation Event Document

Some LPAs require the department to prepare and distribute a Request for Offer (RFO) using an authorized supplier pool. An RFO is a document sent to LPA contractors which contains requirements for a specific transaction and requests a specific response or offer. The individual user instructions will indicate whether additional offers are required.

5.A1.2 Purchases less than $5,000

Orders valued less than $5,000 may be executed without obtaining multiple offers if fair and reasonable pricing has been established and documented. Examples of fair and reasonable pricing methods are described in Chapter 4.

Documentation to support fair and reasonable pricing must be retained in the procurement file.

Refer to the Section J, Resources, at the end of this chapter to access file documentation for orders less than $5,000.00

5.A1.3 Establishing LPAs

LPAs are established by the DGS/PD as follows:

If the LPA is	Established by
Statewide Contract Contract number leads with a "1" or "8". SC numbers that begin with "8" are restricted to CalPIA use only.	Statewide competitive bid for • Specified goods/IT goods • Specified period of time • Price analyzed • Awarded to single supplier or multiple suppliers • Some require mandatory use • Exempt from requirement to obtain 3 offers • Reviewed and verified for EPP compliance. • Identify EPP attributes and SABRC categories within FISCAL for tracking. • All certified SB or DVBE purchases made through the SC are reported monthly by the contract holder and are credited to the purchasing department.
State Price Schedule Contract number leads with "2"	Non-Competitively Bid agreement for • Orders for goods at a fixed price • Specified period of time • Tend to be proprietary supplies and parts
California Multiple Award Schedule Contract number leads with "3" for IT and "4" for non-IT.	Competitively assessed, negotiated or bid • Contractor offers products and/or services and prices from an existing competitively assessed, cost compared, multiple award contract. • Primarily based on Federal General Services Administration multiple award schedule-based • California terms and conditions are incorporated into the contract
Master Agreements Contract number leads with "5"	Statewide competitively bid (generally) with award to all responsive bidders • Products • Services • Rental of equipment • May include EPP certifications.
Cooperative Agreements Contract number leads with "7"	Multi-state cooperative purchasing agreements for • Products • Services • Rental of Equipment

5.A1.4 Where to find LPA information?

Refer to the Section J, Resources, at the end of this chapter for LPA information.

5.A1.5 Why do departments need a copy of the LPA contract?

Departments must obtain a copy of the LPA to be used in order to:

- Validate the contractor is authorized to sell specific products and/or services.
- Determine warranties, guarantees, maintenance provisions, product return policies, bond requirements, travel costs, etc.
- Determine if products and services are available on the LPA.
- Determine which products and/or services are specifically excluded.
- Determine if prices quoted are at or below LPA rates.
- Determine if additional approvals, forms, filings, etc. are required.
- Substantiate the contractor is CA certified as a SB or a DVBE (if applicable).
- Substantiate the contractor has a valid contractor's license (if applicable).
- Substantiate the contractor has a valid seller's permit (if applicable).

5.A1.6 What LPAs offer

LPAs offer goods and services that have been competitively assessed, negotiated or bid, and are structured to comply with California procurement codes, policies, and guidelines, providing for maximum contractual protection.

Architectural, engineering, and environmental services, legal services, and public work activities are not available on LPAs.

5.A1.7 What is required to use LPAs

In order to use LPA contracts, departments must:

- Obtain a complete copy of the LPA contract to be used
- Read through the specific LPA contract and corresponding user instructions to understand the parameters for using a particular LPA. The user instructions include limitations and/or restrictions (if any), the contracting process, requirements, how to secure pricing, and how to ultimately execute the proper purchase document to complete a transaction.

Departments must have purchasing authority to use LPAs for goods and services. See Chapter 1 for information on obtaining and maintaining delegated purchasing authority.

5.A1.8 Applicable codes, policies and procedures

The use of LPAs does not exempt adherence to all applicable laws, regulations, codes, and policies relative to State contracting and procurement requirements. This includes but is not limited to: conducting and executing all applicable planning activities, pre-procurement approvals, Government Code section 19130 civil service considerations, contract approvals, prompt payment requirements and receiving activities as established by this manual.

5.A1.9 Standard purchase document

Most LPA orders are executed using a Purchase Order (PO). Some LPA user instructions provide options for executing orders using a system generated contract (for goods and services). Buyers must read the user instructions provided for the individual LPA to determine the appropriate purchase document to be utilized.

5.A1.10 LPA contract provisions

Departments may add requirements but not delete any LPA terms and conditions without prior written approval from DGS/PD.

5.A1.11 Mixing LPAs

Offers cannot be mixed using different types of LPAs to execute a single order. LPA categories (CMAS, MA, SC, and SLP) cannot be combined to obtain offers to select a supplier.

Example:
An IT consultant is needed. The department has LPA IT purchasing authority for CMAS and Master Agreements. Offers cannot be obtained from both CMAS contractors and the Masters contractors to meet the department's need and the requirement to obtain offers.

5.A1.12 SB and DVBE consideration

When placing orders against LPAs, offers must be considered from certified SB and/or certified DVBE, when available. The certified prime must perform a commercially useful function in the resulting purchase document. Most LPA processes provide departments with a means to claim contracting dollars toward SB or DVBE participation goals.

5.A1.13 SB and DVBE sub-contracting participation tracking

Subcontracting dollars towards departmental SB or DVBE participation goals may be claimed whenever an LPA contractor subcontracts a commercially useful function to a certified SB or DVBE business. The LPA contractor will provide the ordering department with the name and address of the certified SB or certified DVBE business used and the dollar amount that may be applied towards the SB or DVBE participation goal. The buyer must enter the information in the FI$Cal system for tracking purposes.

5.A1.14 Specifications and EPP consideration

When placing orders against LPAs all offers considered must meet the performance and environmental administrative and specifications requirements, including certifications, in the resulting purchase document. The LPA contractor must provide the ordering department information that validates EPP and SABRC compliance. When EPP and SABRC criteria are to be considered for LPA tracking purposes, the purchasing department must submit the information to DGS Procurement Division for the information to be entered into the FI$CAL system.

5.A1.15 CAL-Card usage

Individual LPA contracts will provide direction as to whether or not the contract allows for credit card payments. Payment may be made for goods and services with a CAL-Card, as long as the contractor accepts a VISA card. CAL-Card is a payment mechanism, not a procurement approach. Consequently, an LPA order must be executed on a purchase document regardless of dollar amount when using CAL-Card for payments.

Refer to Chapter 9 for additional information.

5.A1.16 Disputes

If a supplier dispute occurs, the department shall first attempt to resolve complaints or disputes informally. If the dispute cannot be resolved by the department, the dispute may be elevated to the DGS/PD contract administrator as identified in the individual LPA contract or to the DGS/PD Dispute Resolution Unit.

5.A1.17 Categories and dollar thresholds

Refer to Chapter 1 for acquisition methods and dollar thresholds.

5.A1.18 Exemptions from dollar thresholds

Exemptions to the dollar threshold for LPAs may be considered if a department meets the necessary requirements. Refer to Chapter 1, Purchasing Authority, for information on how to request an exemption to the dollar threshold on a transactional basis.

5.A1.19 Contractor evaluations

Pursuant to PCC Sections10367 and 10369, each contractor providing consultant services of $5,000 or more shall be advised in writing on the standard contract that the performance will be evaluated.

- One Contract/Contractor Evaluation, form STD 4, must be prepared within 60 days of the completion of the contract. The form shall be uploaded into FI$Cal and kept as part of the procurement file.
- The agency shall document the performance of the contractor in doing the work or in delivering the services for which the contract was awarded.
- The evaluations shall remain on file by the agency for a period of 36 months. If the contractor did not satisfactorily perform the work or service specified in the contract, the agency conducting the evaluation shall place one copy of the evaluation form in a separate agency contract file and send one copy of the form to DGS/OLS within five working days of the completion of the evaluation. (SCM Volume 1, section 3.02.5)
- On filing an unsatisfactory evaluation with DGS/OLS, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have 30 days to prepare a statement defending his or her performance under the contract and to send it to the agency and the department. The contractor's statement shall be filed with the evaluation in the agency's separate contract file and in DGS/OLS's files.

The evaluations and contractor responses on file with the agencies and DGS/OLS are not public records; they should be maintained in a separate file.

5.A1.20 Administrative fees

LPA Administrative Fees, if applicable, are identified within the DGS State Price Book and/or described within the LPA user instructions.

Refer to Section J, Resources, at the end of this chapter for access to the DGS State Price Book.

Topic 2 – Achieving Best Value Using LPAs

5.A2.0 Seeking multiple offers

Multiple offers must be sought whenever multiple suppliers are known to exist unless otherwise directed by individual contract user instructions, policies and/or statutes or identified as an "exempt" contract. "Multiple offers" is defined to be a minimum of three (3) offers, including one CA certified SB and/or DVBE (if available).

See individual LPA topics within this chapter for additional instructions.

5.A2.1 Choose your words carefully

Avoid using words:

- That imply competitive bids when using LPA categories such as MA and CMAS
- "Bid", "quote", "solicitation" and/or "evaluation" when conducting a supplier comparison or requesting offers. Clarify that there will be a comparison of offers to determine best value.

Do not include language regarding SB preference, DVBE incentive, protest language, intents to award, evaluation criteria or advertising requirements when procuring through the LPA program. When obtaining offers using a written document, the document is referred to as a Request for Offer (RFO).

Since RFOs are not considered competitive solicitations, departments must not use the two-envelope evaluation process.

5.A2.2 Best value

Most LPAs require a supplier be selected based upon a "value effective" is high score and not the same as best value concept or as commonly referred to within the LPA processes as "best value", when there are multiple providers of products and services. "Best value" relates to requirements and supplier selection criterion or other factors for a particular transaction that are established to ensure that business needs and goals are effectively met and that the State obtains the best value. For the purposes of this chapter, best value will refer to consideration of factors deemed a priority to the department.

Buyers must know what is important to the program for which the procurement is being made, document those needs and requirements, and then canvas suppliers, either using a pre-qualified supplier group in an MA or searching CMAS contractors who possess the products or skills. Canvassing may take the form of a written RFO outlining the requirements. The best value criteria must be included in the procurement file.

LPAs that have been identified as "exempt" from obtaining multiple offers are not required to document best value, unless otherwise directed by the individual user instructions.

5.A2.3 Possible criteria

Best value can be determined using any one or all of the following criteria as applicable to the effort:

- The price of the product or service
- The operational cost that the State would incur if the offer is accepted
- The quality of the product or service, or its technical competency
- The reliability of delivery and implementation schedules
- SB/DVBE participation as prime or subcontractor (advertising and DVBE forms not required for LPAs) to meet department goals
- Environmentally Preferable Purchasing (EPP) criteria
- The maximum facilitation of data exchange and system integration
- The warranties, guarantees,return policy and take-back for reuse or recycling
- The supplier financial stability
- The consistency of the proposed solution with the State's planning documents and announced strategic program direction
- The quality and effectiveness of business solution and approach
- The industry and program experience
- The prior record of supplier performance
- The supplier expertise with engagements of similar scope and complexity
- The extent and quality of the proposed participation and acceptance by all user groups
- The proven development and methodologies and tools
- The innovative use of current technologies and quality results

Regardless of other criteria being used to accept an offer, price must always be used as best value criteria.

5.A2.4 Supplier Contract award using best value

To determine supplier selection using best value, the following minimum steps are required. Departments shall:

- Define business requirements (for example, in a Statement of Work for services) for inclusion in the RFO
- Obtain a copy of the LPA contract from each contractor contacted
- Review the contracts in context with the department's requirements and contractor offers
- Compare contracts and offers with those from other contractors
- Select the offer with documented "best value" meeting requirements

Include the supplier selection rationale and the related documentation that supports the selection in the procurement file.

5.A2.5 Conduct a supplier comparison

Unless otherwise directed by the individual LPA user instructions or when using an exempt contract, multiple offers are required. Contact a minimum of three (3) suppliers who can provide the requested goods and/or services.

This supplier comparison can be in the form of a verbal or written RFO, identifying the department's needs and requesting contractors to offer their best price and/or offer to meet requirements. An RFO process may be conducted by phone, fax, email, or by other means such as a supplier picking up the RFO in person. Buyers shall refer to applicable user instructions to

confirm any special requirements regarding the supplier comparison format.

Departments must document in the procurement file all LPA contractors that were contacted, provide a recap of their offers, and record how the selection was made, including criteria for determining “best value”.

Refer to Section J, Resources, at the end of this chapter for the RFO Templates.

5.A2.6 Contacting more than 3 suppliers

Departments that contact more than 3 suppliers and obtain more than 3 offers shall document their files with all responses, determine best value, and then proceed with the purchase document execution.

5.A2.7 Fewer than 3 offers

Unless otherwise directed by either the LPA user instructions or it has been determined that the LPA being used is exempt from obtaining 3 offers, the procurement file must be documented in sufficient detail to support the supplier selection.

If a department contacts 3 sources and receives	Then the department shall document the procurement file with the reasons why
1-offer	The other two (2) suppliers did not respond.
2-offers	The third supplier did not respond.

5.A2.8 Only one source known

The LPA user instructions will determine the number of offers that have to be obtained. If only one source is known within an LPA type and category (CMAS, MA, SLP, etc.), and thus multiple offers cannot be obtained:

- Conduct a competitive solicitation, if suppliers are known to exist outside of the LPA programs or
- Execute the response as an NCB contract if no other sources are known outside of the LPA program being used. See Chapter 6 for NCB processing requirements or
- Execute the response as a transaction that is exempt from obtaining multiple offers by either statute or policy and document the procurement file in sufficient detail to support the basis of the exemption. (Examples: authorized dealer letter, proof of copyrighted material, officially licensed good or patented product)

Refer to Chapter 6, for information on purchases exempt from obtaining multiple offers either by statute or policy.

Topic 3 – Documenting the Results of an LPA Offer

5.A3.0 Documenting the results

Departments must document all LPA suppliers that were contacted, provide a recap of their offers and record how the selection was made, including criteria for determining "best value".

Departments have the option to use the Best Value Determination Worksheet (available in Section J, Resources at the end of this chapter) or the department's own form to document the results, or if using an MA LPA defer to the requirements of the user instructions.

The Best Value Determination Worksheet facilitates easy compilation of offers received and supplier selection rationale. Regardless of the format used, the information must be retained in the procurement file.

5.A3.1 LPA file documentation

Refer to Section J, Resources, at the end of this chapter to access the LPA file documentation requirements.

Topic 4 – Amending an LPA Purchase Document

5.A4.0 Amendments for goods and services

Original orders, which include options for changes (e.g., quantity or time), that were assessed and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Amendments may be executed without NCB approval for incidental omissions such as:

- Transposition of numbers from the RFO response to the purchase document or
- Inadvertent failures to include such things as contact names or for mistyped addresses.

This does not apply to changes in quantity or time.

Amendments must also be executed for contractor name changes that have been authorized in the LPA contract.

5.A4.1 Amendments unique to non- IT services

If the original contract permitted amendments, but did not specify the changes, (e.g., quantity or time), it may be amended. Per PCC 10335(d)(1), a contract may only be amended once under this exemption. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed $250,000.00. If the original contract did not have language permitting amendments, the NCB process must be followed.

For more information regarding the NCB process, refer to Chapter 6.

5.A4.2 Original transaction valued less than $5,000

Unless otherwise directed by LPA user instructions, the NCB process must be followed if an amendment will cause the original transaction amount to exceed $4,999.99 and the original transaction was established based on fair and reasonable methodology.

Refer to Chapter 6.

Section B

Statewide Contracts (SC)

Overview

Introduction

Statewide Contracts (SCs) are competitively bid and awarded contracts established by the DGS/PD to take advantage of lower costs passed on by suppliers bidding on large quantities of goods repetitively used by multiple State departments. These contracts have unlimited dollar thresholds unless otherwise noted in the specific contract user instructions. Departments must use mandatory SCs if so designated in the user instructions.

The DGS/PD has successfully integrated sourcing into its regular operations. Therefore, all LPAs previously referred to as California Strategically Sourced Contracts (CSSI) are now called SCs.

Topic 1 – Statewide Contract (SC) Basics

5.B1.0 When to use SCs

SCs are established to reduce the need for individual departments to conduct repetitive bids for like products. Use of most SCs, is mandatory, but the use of some SCs is non-mandatory. Buyers must verify the mandatory or non-mandatory status of a contract by reviewing the user instructions for each contract.

5.B1.1 SC limitations

SC's do not have dollar limits or limitations to their use unless otherwise noted in the specific contract and/or user instructions.

5.B1.2 Contract price is maximum

Contract pricing identified within SCs is the maximum allowed.

5.B1.3 Distinguishing SC contracts

SCs are identified in most cases with a numbering system beginning with "1" although there may be some exceptions, e.g., some contracts previously known as CSSI contracts will retain their original CSSI number beginning with a "1S" until the contract is renewed. In addition, there are some SC contracts that begin with an "8". SC numbers beginning with an "8" are restricted to CALPIA use only.

5.B1.4 Using SCs

The following must be verified before executing an SC order:

- Departments must have the appropriate purchasing authority.
- Is the contract mandatory or non-mandatory?
- Does the order require any CALPIA waivers?
- Does the order require additional review and approval prior to issuing the order (i.e., , Fleet etc.)?
- Obtaining multiple offers is not required since these SCs are established as a result of competition.
- Each SC provides a set of user instructions unique to each contract. This includes instructions to departments for obtaining DGS written approval for any exemption to conduct a purchase outside of an authorized SC.
- The FI$Cal system will identify the SC numbers on the purchase document.
- Procurement files must be documented in sufficient detail to support the purchase transaction in the same fashion as any other LPA purchase activity.
- Purchasing dollar thresholds, although unlimited, must remain within the department's approved purchasing authority dollar threshold for SCs.
- That all certified SB or DVBE purchases made through the SCs will be reported monthly by the contract holder and be credited to the purchasing department.

Contracts are accessible under "LPAs" in Section J, Resources, at the end of this chapter.

5.B1.5 SB/DVBE Off-Ramp Policy for Mandatory SC

Mandatory SC awarded by the DGS for goods may have a Small Business/Disabled Veteran Business Enterprise (SB/DVBE) Off-Ramp, meaning departments will be permitted to purchase equivalent products at the same or lower price from other sources that are certified SBs or DVBEs. To determine whether a particular mandatory contract has an SB/DVBE Off-ramp, consult the user instructions for that contract or refer to the State Contracts Index Listing, accessible in Section J, Resources, at the end of this chapter.

5.B1.6 SB/DVBE Off-Ramp usage rules

In order to utilize the SB/DVBE Off-Ramp, departments must document in the procurement file that the goods being purchased are:

1. Equivalent to the goods available from the SC including product description, functional requirements and manufacturer warranties as provided in the SC and
2. Equal to or less expensive pricing than the pricing offered from the SC for the same product based on the total order value before taxes.

Additional rules for the SB/DVBE Off-ramp are:

- Departments must have applied for and received purchasing authority granted by DGS/PD in order to utilize the SB/DVBE Off-ramp as identified by the user instructions.
- Transactions must be less than $250,000 including sales and use tax,

finance charges, postage, and handling charges;
  - For purchases greater than $0 and less than $5,000, departments must document in the procurement file that the price is less than or equal to the pricing on the statewide mandatory contract unless otherwise stated in the user instructions;.
  - For purchases of $5,000 and up to $249,999.99 departments must obtain price quotations from two or more certified SBs or two or more certified DVBEs (must be the same certification type) unless otherwise stated in the user instructions;
- SB/DVBE Off-ramp purchases must be made from a supplier with a current California SB or DVBE certification.
- Other rules as specified in the user instructions.

5.B1.7 Purchase documents

Unless otherwise directed by individual SC user instructions, the common purchase document used to issue SC orders is the purchase order within FI$Cal. When utilizing the SB/DVBE Off-ramp, the system will generate the word "Off-ramp" on the Purchase Order. Buyers must ensure their purchase is an exact match, make and model, when a product is identified as meeting one or more EPP criteria, meeting all applicable specifications and certifications of the original LPA. Departments within their purchase order shall track EPP and SABRC information as it is noted within the FI$Cal Item Master ID list.

5.B1.8 Exemptions

Occasionally, a department will need to purchase a product type other than what is available through the mandatory IT Hardware Statewide contracts. In these instances, the department must obtain an exemption from the use of the contract from the Department of General Services Procurement Division (DGS-PD), Contract Administrator.

Refer to Section J, Resources, at the end of this chapter to access the Exemption Form and Instructions.

If you have additional exemption process questions, please contact your contract administrator.

5.B1.9 Body armor purchases

Departments shall purchase body armor (stab resistant and/or bullet proof vests) from the mandatory SC. If the products do not meet the department's requirements, then the department must submit to DGS/PD a requisition for DGS/PD to procure the goods on behalf of the department.

5.B1.10 Statewide Pharmaceutical Program

DGS implements and administers a Statewide Pharmaceutical Program, also referred to as the Prescription Drug Bulk Purchasing Program, established by Government Code §14977-14982. The California State Departments of Corrections and Rehabilitations (CDCR), Department of State Hospitals (DSH), and Developmental Services (DDS) and other state agencies under DGS authority are mandated to participate in this program. Other state, district, county, city, municipal, or public agency governmental entities may elect to participate in this program.

DGS works in conjunction with California Pharmaceutical Procurement Collaborative (CPPC) to implement and administer a Statewide Pharmaceutical Program and strategies to manage escalating prescription drug costs. Representation on the CPPC is appointed by the entities participating in the Statewide Pharmaceutical Program.

Refer to Section J, Resources, at the end of this chapter for access to DGS/Pharmaceutical Acquisitions Section Website.

Section C

California Multiple Award Schedule (CMAS)

Overview

Introduction

The California Multiple Award Schedule (CMAS) program was established in May 1994 and incorporated in PCC sections 10290 et seq. and 12101.5. CMAS contracts are established for products and services that have been competitively assessed, negotiated, or bid primarily, but not exclusively, by the Federal General Services Administration. The program enables the State to streamline purchases by removing repetitive, resource intensive, costly, and time-consuming bid processes.

Topic 1 – CMAS Basics

5.C1.0 Products and services

The CMAS program offers primarily Federal GSA multiple award schedules pricing with California terms and conditions with suppliers that provide goods and services.

Not all products and services listed on a GSA contract comply with California laws and regulations. Departments are responsible for checking compliance prior to purchasing.

5.C1.1 Contract price is maximum

Contract prices for products and/or services must be equal to or lower than the prices set in the base contract. Negotiating lower prices and seeking competition is strongly encouraged.

5.C1.2 Who can sell on CMAS

Only the prime CMAS contractor and resellers who are explicitly listed in the CMAS contract can sell the goods and/or services using CMAS terms and conditions listed in their CMAS contract.

5.C1.3 CMAS dollar thresholds

CMAS dollar thresholds are maximums. No CMAS order may be executed that exceeds a department's CMAS purchasing authority threshold or CMAS maximum dollar threshold, without an approved exemption.

See Chapter 1 of this manual which describes the maximum dollar threshold per LPA purchasing category.

Topic 2 – Achieving Best Value Using CMAS

5.C2.0 Make a valid attempt to seek offers

A valid attempt must be made to secure offers from viable contractors who are able to supply the goods and/or provide the services. Neither a lack of sufficient CMAS contractors nor the use of restrictive requirements meets the intent for obtaining offers.

5.C2.1 CMAS purchases exceeding $5,000

For CMAS orders for goods and services exceeding $5,000:

- Obtain 3 offers, including one CA certified SB and/or DVBE (if available)
- Document responses in accordance with Section A, Topic 4, of this chapter
- Execute Purchase Document per the contract user instructions

CMAS ORDER IS FOR	AND DOLLAR AMOUNT IS	THE BUYER MUST
Non-IT goods	$5,000 - $100,000	• Obtain 3 offers, 1 from SB or DVBE if available. • Document responses • Execute purchase document
Non-IT services	$5,000 - $50,000	• Obtain 3 offers, 1 from SB or DVBE if available. • Document responses • Execute purchase document
Non-IT services	$50,000.01 and above	See next info block for special requirements

5.C2.2 Review process for CMAS non-IT services exceeding $50,000

The following requirements are specific to non-IT services CMAS transactions.

Prior to executing a CMAS purchase order (PO) for non-IT services over $50,000, departments need DGS/PD approval. Departments will process the PO and before final execution, the PO will need to be workflowed in FI$Cal to DGS/PD. DGS/PD will review the following items within the system:

- Completed purchase document and applicable attachments
- The RFO
- Listing of CMAS contractors contacted
- All supplier responses to RFO
- Complete copy of awarded supplier's CMAS contract
- Assessment and selection documents (document assessing costs and best value criteria, assessment showing the response meets the RFO requirements up to and including how the selection was determined)
- Identify if service and/or goods used to perform service meet all applicable building, operational and purchasing policies and standards
- Certification for Expenditure of Funds, signed by your Agency's Secretary or Department's Director. See Chapter 2, Section B, Topic 3, Mission Critical information for the DGS, for the required certification language.

Once the purchase document is approved by DGS/PD, it will be routed via workflow back to the department for issuance to the contractor. CMAS contractors are directed not to accept these POs for non-IT services over $50,000 without DGS/PD/CMAS approval.

Topic 3 - Not Specifically Priced Items (NSP)

5.C3.0 Open market, incidental, non-contract items

The only time that open market/incidental, non-contract items, may be included in a CMAS purchase order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision.

If the NSP provision is not included in the CMAS contract, or the products and/or services required do not qualify under the NSP parameters, the products and/or services must be procured separate from CMAS.

5.C3.1 Non-contract products and services that are subordinate and peripheral

The NSP Items provision enables the department to include in the purchase order non-contract products and services that are subordinate and peripheral to the other purchase order items, under the following conditions:

- An order containing NSP items may be executed only if it results in the best value alternative to meet department needs.
- Any product or service already specifically priced and identified in the contract may not be identified as an NSP item in an order.

All NSP items included in an order executed against a CMAS contract are subject to all the terms and conditions set forth in the contract.

5.C3.2 Dollar limits

Maximum Dollar Limitation:

- Purchase orders $250,000 or less: Total dollar value of all NSP items must not exceed $5,000.
- Purchase orders exceeding $250,000: Total dollar value of all NSP items must not exceed 5% of the total cost of the purchase order, or $25,000, whichever is lower.

5.C3.3 NSP not available

Not all contracts include the NSP provision. The NSP provision is included at the option of the contractor and the CMAS Unit. Review your CMAS contract for the NSP provision.

The NSP provision is not included in contracts that are only for services or only for software.

Department orders for NSP items only are prohibited.

5.C3.4 Manufacturer authorization required

Departments must substantiate (through manufacturer authorizations) that the contractor is an authorized provider of the products and product-related services (maintenance, repair) that are offered under the NSP provision.

5.C3.5 Clearly identify NSP

The NSP items must be separately listed and clearly identified on the order.

5.C3.6 Items specifically excluded

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under the contract:

- Items that are not intended for use in direct support of the CMAS priced items identified in the same purchase order. A NSP item must be subordinate to the specifically priced item that the NSP item is supporting.
- Supply type items, except for the minimum amount necessary to provide initial support to the priced CMAS items included in the same purchase order.
- Items that do not meet the Productive Use Requirements for information technology products (See Chapter 2).
- Any other items or class of items that are specifically excluded from the scope of the CMAS contract.
- Public Works components that are NOT incidental to the overall project requirements. See CMAS Agency Packet, Section 16, Public Works Projects.
- Products or services the Contractor is NOT factory authorized or otherwise certified or trained to provide.
- Follow-on consultant services.

Trade-ins and upgrades, involving the swapping of boards, are permissible where the CMAS contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

Topic 4 – Executing a Purchase Document for CMAS

5.C4.0 Recording the CMAS number on the purchase document

The FI$Cal system will automatically populate the CMAS contract number on each purchase order executed when using a CMAS contract.

5.C4.1 Multiple contracts on one purchase document

Departments wishing to include multiple CMAS contracts on a single order must adhere to the following:

- All contracts must be for the same CMAS contractor
- The purchase order must be for one contractor location
- Type the word “CMAS” in the space labeled “Leveraged Procurement Agreement No.” on the Purchase Order. The word “CMAS” signifies that the purchase order contains items from multiple CMAS contracts.
- The purchasing department may only use one DGS bill code.
- For each individual contract (as differentiated by alpha suffix), the department must identify and group together the contract number with the line items and subtotal per contract number (do not include tax in the subtotal), AND sequentially identify each individual contract as Sub #1, Sub #2, Sub #3, etc. This facilitates accurate billing of administrative fees by DGS/PD. The total of all items on the purchase order may not exceed the CMAS order limit.
- Do not combine items from non-IT goods with IT CMAS contracts The purchase order limits are different for these two types of contracts.

Section D

Software Licensing Program (SLP)

Overview

Introduction

The Software Licensing Program (SLP) was established in January 1994 and is administered by DGS/PD. Extensive software discounts are negotiated with major software publishers and those discounts are passed on to the State through the SLP contracts established with authorized participating resellers.

Topic 1 – Software License Program Basics

5.D1.0 When to use SLP contracts

SLP contracts are established to reduce the need for individual departments to conduct repetitive acquisitions for proprietary software licenses and software upgrades. SLP contracts take advantage of the large volume discounts offered by the software publishers.

5.D1.1 What is required to use SLP contracts

The department must verify the execution of the order is authorized under the department's purchasing authority.

This is a requirement for departments with purchasing authority and does not apply to the DGS/PD when conducting procurements on behalf of customers.

A minimum of three (3) suppliers must be contacted to obtain offers. Purchase documents are executed based upon best value criteria as determined by the needs of the individual department. The SLP contractor must be contacted directly to obtain a copy of the specific SLP contract. Conducting a purchase activity using the SLP contracts is no different than for other LPAs (CMAS and MA).

5.D1.2 List of SLP contractors

For a current list of authorized participating resellers/contractors with SLP contracts, refer to Section J, Resources, at the end of this chapter.

5.D1.3 Contract price is maximum

SLP contract pricing is the maximum allowed. Buyers are strongly encouraged to negotiate lower prices.

5.D1.4 Exemption from the dollar threshold

In order to obtain approval to execute a purchase document that exceeds the SLP dollar threshold of $2,000,000, a Purchasing Authority Change Request (PACR) must be completed and submitted to DGS/PD/ Purchasing Authority Unit (PAU).

The following information must be documented and forwarded to DGS/PD/PAU:

- A statement indicating this purchase is "mission critical" to the department, signed by the department CIO;
- A clear statement of what is being purchased including all line items and the estimated dollar amount;
- Identification of the savings that will be realized by this purchase (e.g. list price compared to SLP price);
- The consequences that will occur if the department is unable to make the purchase;
- A statement that this purchase, in this amount, is consistent with the department's IT Strategic Plan (attach an excerpt of the appropriate section pertaining to this purchase); and
- A copy of the California Department of Technology (CDT) approved ITAP reflecting this purchase.

Upon review and approval of the documentation submitted, DGS/PD will issue an approval letter concurring with the request. Upon receiving approval from DGS/PD, the department may proceed to initiate the RFO approval process.

5.D1.5 Cloud Computing SaaS Special Provisions

For Cloud Computing Software as a Service (SaaS) solutions, include the Cloud Computing Contract Special Provisions SaaS with a Statement of Work in addition to the General Provisions. Refer to the LPA user instructions for further information.

For additional information and helpful tools, refer to DGS/PD Cloud Computing webpage accessible in Section J, Resources, at the end of this chapter.

Section E

State Price Schedule

Overview

Introduction

State Price Schedules (SPS) are non-competitively bid agreements for goods at a fixed price for a specified period of time. These agreements are established by DGS/PD for use by State departments.

Topic 1 – State Price Schedules Basics

5.E1.0 State Price Schedules

State Price Schedules (SPS) are non-competitively bid agreements for goods at a fixed price for a specified period of time. SPS agreements are established for unique and unusual items that preclude competitive bidding.

Departments are limited to a $100,000.00 threshold on non-mandatory SPS orders. However, the department must verify whether the execution of the order is authorized under the department's purchasing authority.

This is a requirement for departments with purchasing authority and does not apply to the DGS/PD when conducting procurements on behalf of customers.

5.E1.1 How do departments use SPS?

Departments must verify the following, prior to executing an SPS order:

- Is execution of the order authorized under the department's purchasing authority?
- Is there a need to obtain a CALPIA waiver?
- Is the purchase for special adaptive equipment where pricing is required from other providers?
- Are there any pre-approval requirements?

5.E1.2 SPS for adaptive equipment requires special attention

DGS/PD has established a SPS agreement, with an IT component, for Adaptive Equipment and Services for Persons with Disabilities.

Departments executing orders against this SPS must apply all the required approval and documentation requirements as applicable to an IT acquisition.

Example:
A reading system purchased for a visual and/or reading impaired person may include a personal computer, scanner, sound card and reading software. This is considered an IT acquisition.

The use of the Adaptive Equipment and Services for Persons with Disabilities SPS requires departments to obtain offers from a minimum of 3 suppliers listed on the SPS agreement.

Buyers using this SPS must review and adhere to the user instructions unique to this LPA. Documentation requirements, unless otherwise described in the SPS user instructions, will follow the requirements of any LPA activity as outlined in Section A of this Chapter.

Section F

Master Agreements (MAs)

Overview

Introduction

Master Agreements (MAs) are one of the State's main procurement vehicles for leveraging its buying power. Departments shall use MAs whenever the functional requirements for which the contract was awarded are substantially the same as the departments' requirements.

Criteria for Use of MAs

- State departments must obtain equipment from an existing MA if the functions to be performed can be satisfied by the functional requirements and specifications under which the MA was awarded.
- State departments may not acquire equipment from a MA for functional requirements other than those for which the MA was awarded.
- State departments may use equipment acquired from the MA for auxiliary functions only if such functions are incidental to the principal function for which the equipment was justified and is being used.
- State departments must initiate individual competitive procurements to acquire equipment or services under the following situations:
  - The functional requirements are different from those for which the MA contract was awarded; or
  - The functional requirements are consistent with the MA but the specifications cannot be met by the MA.

Topic 1 – Master Agreement (MA) Basics

5.F1.0 Review the MA

The MA must be reviewed in its entirety (contract, supplements and user instructions) to determine what requirements are applicable to the department's business need. Most often, an MA will have the requirement to seek offers from authorized suppliers to determine and obtain best value. There are MAs that have been designated "exempt" either by statute or policy from obtaining multiple offers. Buyers should reference the MA user instructions for guidelines.

5.F1.1 What is required to use an MA

The following must be verified before executing an MA order:

- Whether execution of the order is authorized under the department's purchasing authority.

This is a requirement for departments with purchasing authority and does not apply to the DGS/PD when conducting procurements on behalf of customers.

- Whether the execution of the order requires prior approval?
- What additional requests for offers from other authorized providers identified within the contract are required
- Whether the estimated dollar amount requires prior DGS review and approval before issuing an award.

5.F1.2 User instructions

Individual MAs provide user instructions unique to each agreement. User instructions include information such as whether or not the MA requires multiple offers, whether selection of an offer shall be based on "best value and reports that may be required.

Consequently, the user instructions must be read thoroughly in order to properly execute an order and complete any reports required by the individual agreement.

5.E1.3 Dollar threshold limitations

Departments may not execute a non-IT services MA transaction in excess of $500,000.00. Additionally, departments executing a non-IT services transaction of $50,000 or more from a non-IT MA must obtain DGS/Office of Legal Services (OLS) review and approval prior to executing the purchase document. Refer to the individual non-IT services MA user instructions for further requirements regarding the OLS review and approval process. (See SCM Vol. 1)

Topic 2 – Achieving Best Value Using MA

5.F2.0 Valid attempt to seek offers	A valid attempt must be made to secure offers from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient MAs nor the use of restrictive requirements meets the intent for obtaining offers.
5.F2.1 Minimum RFO requirements	Departments shall solicit offers from a minimum of three (3) suppliers, including one SB and/or DVBE when available, unless otherwise instructed by the individual MA user instructions, and the responses shall be documented. Buyers must read the User Instructions of an individual MA to verify whether or not the MA contains a specific format
5.F2.2 Documenting the results	Responses shall be documented in accordance with individual MA user instructions that may provide an evaluation format. Otherwise, the Best Value Determination Worksheet or the department's own form to document the results of a MA offer may be used.
5.F2.3 Contacting more than 3 suppliers	When more than three (3) suppliers are contacted and the minimum 3 responses are not received, suppliers need to be contacted to determine why they did not respond. The rationale for proceeding with less than 3 responses must be documented in the procurement file.

5.F2.4 Transactions over $1,500,000

MA transactions with an estimated value in excess of $1,500,000 must have DGS/PD approval before obtaining offers. Departments must forward a Purchasing Authority Change Request (PACR)for review and approval to DGS/PD/PAU. The following steps must be followed to obtain an exemption for these transactions.

Step	Description
1.	Submit a PACR to DGS/PD/PAU. The PACR must be completed in its entirety and signed by the PCO. Refer to Section J, Resources, for access to the PACR form.
2.	If the request is approved, an approval letter will be issued and must remain in the procurement file.
3.	The RFO must be submitted to DGS/PD for review and approval before the RFO is released to MA contractors. This process is repeated each time there is a need to modify the RFO.
4.	Upon receiving RFO approval, the RFO may be released to MA contractors and the department may proceed with the selection process.
5.	All qualified MA suppliers must be contacted, unless otherwise specified within the respective MA user instruction.
6.	Before contract award the following documentation shall be submitted to DGS/PD: • The final RFO including all addenda; • All RFO responses submitted; • The purchase document; and, • The Evaluation and Selection Report for concurrence of intended awardee.
7.	Upon review and approval of the MA intended awardee, an approval letter will be issued by DGS/PD concurring with the supplier selection recommendation.
8.	Upon receiving the approval letter from DGS/PD, the selection may be made and the order executed.
9.	All documentation must be retained in the procurement file.
10.	Departments are responsible for sending a copy of the revised approval letter to the State Controller's Office with a copy of the PO.

Section G

Cooperative Agreements

Overview

Introduction

PCC sections 10298 – 10299 allow the DGS/PD to enter into cooperative purchasing agreements with other states.

Topic 1 – Cooperative Agreements

5.G1.0 Authority to use Cooperative Agreements multi-state contracts

Cooperative Agreements establishes cooperative multi-state contracts where participating states may join together to achieve cost-effective and efficient acquisition of quality products and services.

5.G1.1 How to use Cooperative Agreements

When executing orders using the Cooperative Agreements program, departments are not required to obtain three offers or document best value, but conducting price comparisons among the Cooperative Agreements suppliers, if available, is encouraged. Refer to the user instructions of each contract

To use Cooperative Agreements:

- Define the project scope to determine which - goods and services are needed and meet all California laws, regulations and policies
- Obtain a complete copy of the Cooperative Agreements agreement (Cooperative Agreements base contract, CA participating addendum, CA terms and conditions and ordering instructions)
- Check the electronic catalog and print a copy of an e-quote supporting the order
- Obtain the proper approval for IT orders in accordance with SAM section 5230.1
- Execute the order using the PO, unless otherwise directed within the specific Cooperative Agreements user instructions.
- Retain all documentation in the procurement file.

5.G1.2 Cooperative Agreements pricing

The basis for Cooperative Agreements pricing varies. Some are fixed for the duration of the contract, while some have cost of living adjustments and others are discounted from the manufacturer's suggested retail price. For an explanation of the pricing for a specific Cooperative Agreements contract, refer to the user guide for that contract. Pricing referenced in the user guide establishes the maximum, but not necessarily the minimum, price that can be charged. For large orders, users are encouraged to negotiate discounts if possible.

5.G1.3 Cooperative Agreements contract numbers

Many of the Cooperative Agreements contracts use the original Cooperative Agreements contract number from the Cooperative Agreementslead state. However, contracts established beginning in 2008 use the number "7" at the start of the contracts.

5.G1.4 Orders over $500,000.00

Departments executing Cooperative Agreements orders over $500,000.00 for non-IT goods must obtain the DGS/PD approval prior to executing the purchase document. The following information must be documented by the department and submitted to the DGS/PD:

- Identify the need for the goods and/or services and the dollar value of the impending purchase document.
- Explain how the department has determined that issuance of a purchase document to this particular contractor makes good business sense and how best value for the department has been achieved.

Upon review and approval of the documentation submitted, the DGS/PD will issue an approval letter concurring with the department's request. Upon receiving approval from the DGS/PD, the department may proceed to execute the order.

5.G1.5 Amendments

Unless otherwise instructed by the user instructions, Cooperative Agreements orders that require changes can be amended without submitting NCB contract justification documentation. Any amendment should contain the same degree of detail for changes that the original order contained.

Section H

CALNET 2

Overview

Introduction

CALNET 2 is comprised of four (4) separate telecommunications contracts or master service agreements (MSAs) that were competitively bid and awarded by the Department of General Services (DGS) Procurement Division (PD) to both AT&T and Verizon Business in January 2007 as noted below:

MSA 1 – Legacy Voice, Data, and Video Services (AT&T)
MSA 2 – Legacy Long Distance and Network Based Services (AT&T)
MSA 3 – Internet Protocol (IP) Voice, Data, and Video Services (Verizon Business)
MSA 4 – Broadband Fixed Wireless Access, Data Services (Verizon Business)

Each of the MSAs noted above carry a five-year term with two (2) optional one year extensions. There are both mandatory and non-mandatory services as well as non-mandatory equipment items on all of the CALNET 2 contracts.

Topic 1 – CALNET 2

5.H1.0 Consolidation of telecommunications services

The State's telecommunications policies and procedures are based on SAM Sections 4500-4555 and Government Code Section 11541. The CDT has authority to develop statewide policy on the use of business telecommunications systems and services by departments. As such, the CDT /Statewide Telecommunications and Network Division (STND) manages the CALNET 2 Contracts, Inmate Ward Telephone System (IWTS) Contract, and Telecommunications Consulting Services Contract and has broad authority to direct the consolidation and joint use of telecommunications system resources used by departments.

5.H1.1 Required use of California Department of Technology /STND contracts

Departments must use the CALNET 2 contracts to obtain mandatory voice and data services unless an exemption is granted by the CDT/STND. Items deemed as mandatory must be procured from the appropriate CALNET 2 contracts unless a department obtains an exemption. There is no dollar value limit for any mandatory purchase made from any CALNET 2 contract. Items deemed as non-mandatory, both equipment and services, must be obtained through DGS established State Procurement Process.

CDT/STND is responsible for managing all CALNET 2 contracts to ensure compliance with CDT policy. DGS/PD has oversight procurement responsibilities pertaining to all CALNET 2 purchases. In the future, find out more about the CALNET 2 purchasing process by checking the CALNET 2 User Instructions to be made available on the CDT /STND website.

5.H1.2 Use of other LPAs for telecommunications equipment/service purchases

Once approval is obtained from the CDT /STND, telecom equipment and any service on CALNET 2 that have been deemed non-mandatory may be procured through any approved LPA or any other authorized procurement category by departments with IT purchasing authority.

All non-mandatory offerings available on CALNET 2 may be obtained by following the guideline noted in the CALNET 2 User Instructions that are currently being developed and will be placed on the CDT /STND website when complete.

5.H1.3 State Telecommunications Management Manual

For additional information regarding CALNET 2 Mandatory Services, delegations, and/or exemptions, refer to the State Telecommunications Management Manual located in Section J, Resources, at the end of this chapter.

Section I

CA 1122 Public Safety Procurement Program (CPSPP)

(GSA Component Only)

Overview

Introduction

Prior to utilizing this program, State departments must exhaust all procurement methods refer to 6.I3.0.

In order to use the 1122 procurement method, departments must have delegated purchasing authority under the CA 1122 Public Safety Procurement Program category. This will be indicated on the department's Purchasing Authority Approval Letter.

The CA 1122 Public Safety Procurement Program is derived from the National Defense Authorization Act (Section 1122) established in FY 1994, revised in FY 2009 and became law under Title 10 Section 381. This law allows for state and local governments to purchase equipment for counter drug (CD), homeland security (HS) and emergency response (ER) activities from specific federal sources. This program establishes sources for non-IT commodities that have been competitively assessed, negotiated, or bid by the Federal General Services Administration (GSA). The program enables State departments with delegated purchasing authority granted by DGS to purchase from Federal GSA schedules. The California Governor's Office of Emergency Services (CalOES) has been appointed by the Governor as the designated State Point of Contact (SPOC) to certify eligible State agencies. The Department of General Services (DGS) Procurement Division is responsible for developing statewide procurement policies and procedures for this program.

Topic 1 – 1122 Basics – Contracting with GSA Suppliers

5.I1.0 Products	The CA 1122 Public Safety Procurement Program offers primarily Federal GSA multiple award schedule pricing with suppliers that provide non-IT goods.
5.I1.1 Contract price is maximum	Contract prices for products and/or services must be equal to or lower than the prices set in the base GSA contract. Departments are strongly encouraged to negotiate lower prices and seek competition.
5.I1.2 1122 GSA Suppliers	Only the prime GSA 1122 contractor and resellers who are explicitly listed in the GSA contract s can sell the goods listed in their GSA 1122 contract.
5.I1.3 How to apply for 1122 delegated authority	To become certified for participation in the CA 1122 Public Safety Procurement Program, a department must apply with CalOES http://www.calema.ca.gov/PublicSafetyandVictimServices/Pages/1122-Program.aspx. The requesting department submits a letter to CalOES requesting certification in CD, HS, and/or ER. Prepared letters are reviewed and if approved, a confirmation letter is sent to the department authorizing their participation in the selected activity. The approval letter from CalOES to the state department must accompany the Purchasing Authority Change Request (PACR) to be considered for delegated purchasing authority by DGS.
5.I1.4 Purchasing authority dollar thresholds	No 1122 order (Purchase Order/Contract) may be executed by a department that exceeds the department's 1122 purchasing authority dollar threshold or 1122 maximum dollar threshold. Exemption requests shall be considered by the DGS/PD on a case by case basis.

Topic 2 – Achieving Competition

5.I2.0 Making a valid attempt in seeking offers

Departments must make a valid attempt to secure offers from viable contractors who are able to supply the goods. A lack of sufficient 1122 contractors or the use of restrictive requirements to select a single vendor will not meet the intent for obtaining offers.

5.I2.2 Contacting suppliers

Departments shall solicit offers from a minimum of three (3) suppliers.

Departments must document the procurement file in sufficient detail to support the supplier selection as follows:

If a department contacts 3 sources and receives:	Then the department shall document the procurement file with the reasons why:
1-offer	The other two (2) suppliers did not respond.
2-offers	The third supplier did not respond.

Departments that contact more than 3 suppliers and obtain more than 3 offers shall document their files with all responses, determine best value and then proceed with the purchase document execution.

5.I2.3 Documenting the results

Departments must document all suppliers that were contacted, provide a recap of their offers and record how the selection was made, including criteria for determining “best value”.

The recap documentation must be uploaded in FI$Cal and retained in the procurement file.

If the complete GSA 1122 contract is not maintained in the procurement file, buyers shall document, within the procurement file, where the complete contract is located.

5.I2.4 Only one source known

If a department knows of only one source that meets its needs (i.e. multiple offers cannot be obtained) the department shall:

- Conduct a competitive solicitation, if suppliers are known to exist outside of the LPA programs or
- Execute the response as an NCB contract if no other sources are known outside of the LPA program being used. Refer to Chapter 6 for NCB processing requirements or
- Execute the response as a transaction that is exempt from obtaining multiple offers by either statute or policy and document the procurement file in sufficient detail to support the basis of the exemption. (Examples: authorized dealer letter, proof of copyrighted material, officially licensed good or patented product)

Refer to Chapter 6, for information on purchases exempt from obtaining multiple offers either by statute or policy.

5.I2.5 Purchases $5,000.00 - $100,000.00

The ordering department must solicit a minimum of 3 written offers.

The department must ensure the State's current Terms and Conditions are agreed upon and accepted by the supplier and their acceptance must be documented in the procurement file.

The ordering department must use the PO generated from the FI$Cal system.

Topic 3 – Procurement Procedure

5.I3.0 Procurement procedure for transactions greater than $5,000.00

- Department determines the need.
- Department must exhaust the following procurement methods in the following order:
  - Surplus Property
  - Prison Industry Authority
  - Mandatory LPAs
  - California Certified Small Business/Disabled Business Enterprise (either using fair and reasonable or the SB/DVBE Option).
- Department researches available goods on GSA Advantage (refer to the Resources section at the end of this chapter under LPA/1122)Department develops the Request for Offer (RFO) with the state's current terms and conditions attached to be agreed upon by the supplier when they submit their bid/quote/offer. The RFO must request the supplier provide Retail Price along with their offer.
- Department receives and evaluates the offer, then awards the contract.
- The department that has been granted the delegated purchasing authority must use the PO generated from FI$Cal which includes:
  - Contracting directly with the awarded supplier (GSA contractor)
  - The system will identify "1122 -GSA" as the Leveraged Procurement Agreement Number
  - Ensuring appropriate approvals been received for the PO and the funding verification.
- The front of the PO must include the following language: "This order is placed pursuant to the CA 1122 Public Safety Procurement Program, in support of counter-drug, homeland security, or emergency response activities, under the authority of CalOES, the State Point of Contact (SPOC) for the State of California." Following this statement on the front of the PO, there must be a line for the SPOC's signature, to approve the purchase
- The Department sends the following to CalOES for approval:
  - Completed and signed PO
  - The cost sheet from the awardee that lists the retail price and the current bid/quote/offer
  - The supplier's profile print out from GSA Advantage 1122
- Upon receipt, CalOES reviews and approves/signs the PO on the designated line labeled for the SPOC.
- CalOES places the order on behalf of the requesting department by sending the approved PO to the supplier. CalOES simultaneously notifies the department their request has been approved and submitted.
- The goods are shipped directly to the requesting department. Once the good(s) are received, the department follows the Acceptance and Testing period outlined in the state's current terms and conditions or as specified in the SOW. Upon acceptance, the department completes the receiving in FI$Cal.
- After good(s) are received the department will issue payment directly to the contractor through the FI$Cal system

5.I3.1 DGS Fees

DGS has waived their administrative fees for all 1122 transactions.

Section J

Resources

Chapter 5 Resources

A

Authorized resellers/contractors with SLP contracts	Link to Webpage

B

Best Value Determination Worksheet	Word	PDF
Bidder Instructions	Link to Webpage	

C

Cloud Computing	Link to Webpage

D

Dispute Resolution Unit	Link to Webpage
DGS Standards	Link to Webpage

E

Environmentally Preferable Purchasing	Link to Webpage
Exemption form and Instructions (for SC contracts)	Link to Webpage

F

File documentation for orders less than $5,000	PDF

G

General Provisions (GSPD-401 (non-IT) /GSPD-401IT (IT))	Link to Webpage

L

LPAs	Link to Webpage
1122 CA 1122 Public Safety Procurement Program	Link to Webpage
California Multiple Award Schedule	Link to Webpage
Master Agreements	Link to Webpage
State Price Schedule	Link to Webpage
Statewide Contracts	Link to Webpage
Software License Program	Link to Webpage
Cooperative Agreements	Link to Webpage
LPA File Documentation Checklist	PDF

O

OAH Arbitration Regulations (CCR Title 2, Division 2, Chapter 1, sections 870.1 – 874.1	Link to Webpage

P

Pharmaceutical Acquisitions	Link to Webpage
Price Book	Link to Webpage

R

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Chapter 6

Acquisition Methods:

Non-Competitive Bid (NCB) Approach

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Chapter 6

Non-Competitive Bid (NCB)

Overview

Introduction

The State is committed to a policy of competitive procurement and contracting that promotes and provides for open and fair competition when competition is known to exist. This chapter describes the process that must be followed when seeking to execute a contract or amendment without competition. Also described in this chapter is the purchasing authority necessary before executing a Non-Competitively Bid (NCB) contract, what requirements shall be followed at the various dollar thresholds, what forms are necessary, and what is involved when a department has a significant number of repeat NCB contracts for a particular category of goods and services. When executing a transaction that limits competitive bidding to a specified brand or trade name (LTB) and more than one supplier is available, departments are required to follow the LTB process in Chapter 2, Procurement Planning. .

Topic 1- Non-Competitive Bid (NCB) and Purchasing Authority

6.1.0 NCB contracting

NCB contracts are limited by statute in accordance with PCC sections 12102 for IT goods and services and sections 10301 and 10302 for non-IT goods to the following conditions:

- Proposed acquisition of Goods and Services are the only Goods and Services that meet the State's need, or;
- Emergencies, where immediate acquisition is necessary for the protection of the public health, welfare or safety.

6.1.1 NCB justification and contract purchasing authority

A department must have delegated purchasing authority to process NCB justifications and contracts in each of the respective acquisition type categories.

6.1.2 NCB contract justification events

There are three events to justify NCB contracts as follows:

- NCB contract justifications executed on an individual basis.
- Special Category NCB Request (SCR), where it is determined that a significant number of repeat NCB contracts for a particular category of goods and/or services will occur during a specified period of time.
- LTB contract justifications executed on an individual basis.

See Chapter 2, Procurement Planning for additional details regarding SCR and LTB contracts.

6.1.3 NCB justification documents

The NCB Justification (GSPD-09-007) must be completed and attached in FI$Cal. Users can click on a link on the *Requisition* page which will open a new page. The new page will allow users to select the Attachment Type and add a description as well as the attachment. By appropriately selecting the type of attachment, the requisition and the attachment will accurately workflow the document to DGS/PD for review and approval as well as assist with reporting. No substitute NCB justification format will be accepted.

Refer to Topic 8, Resources, at the end of this chapter for access to the NCB Justification.

6.1.4 Less than $5,000

Departments with purchasing authority may solicit a bid from a single source for transactions less than $5,000 when pricing is determined to be fair and reasonable. In this case, an NCB justification is not required if fair and reasonable pricing is established and documented. Examples of fair and reasonable pricing methods are described in Chapter 4. Documentation to support fair and reasonable pricing must be retained in the procurement file.

6.1.5 NCB Justification dollar threshold maximum

For **non-IT goods** and **IT goods and services**, a department's NCB justification dollar threshold is set at $25,000.00 per transaction. The dollar threshold maximum excludes sales tax and use tax, finance charges, postage and handling. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as Free on Board (FOB), Origin, Freight Collect, or FOB Destination.

For **non-IT services**, the NCB justification threshold for all departments is $4,999.99 per transaction. NCB justifications for non-IT services valued at $5,000 and above must be sent to DGS/PD/Depute Resolution Unit (DRU) for review and approval.

Departments without approved purchasing authority, or when the dollar value of the NCB justification exceeds a department's approved dollar threshold, departments must submit the required NCB justification form and purchase documents to DGS/PD/One Time Acquisitions (OTA) for processing.

Contact information for DGS/PD/DRU and DGS/PD/OTA can be found in Topic 8, Resources.

6.1.6 NCB Contract

Once the **NCB Justification** has been approved by DGS/PD, a department may execute the **NCB Contract** up to the approved dollar amount as indicated on the department's Purchasing Authority Approval Letter.

6.1.7 Approval authority

Buyers shall secure the proper approvals on the NCB Justification. The NCB justification requires the specified approval(s) regardless of whether or not the justification is submitted to DGS/PD for approval. Once the proper approvals are received, the NCB Justification must be attached to the Requisition and sent to DGS/PD electronically, whenever possible. The original document does not need to be sent to DGS/PD.

Approval Authority for Agencies with an Agency Secretary
The NCB Justification form requires approval by Agency Secretary or Agency Undersecretary and the department director or designee. The Agency Secretary may designate one person, in addition to Agency Undersecretary, to approve on his/her behalf, of cabinet officer level (e.g., Assistant Undersecretary, Deputy Secretary, etc., the actual title is dependent upon the Agency's organizational structure). The department director may delegate review and approval authority to his/her deputy directors and/or the Procurement and Contracting Officer. The director's designee shall send ratification notification to their director upon the designee's approval of the NCB transaction. The typed name and signature must match for both signatures.

Approval Authority for Agencies that do not have an Agency Secretary
The NCB Justification form requires approval by the highest ranking executive officer or designee. The highest ranking officer may designate one person to approve on his/her behalf subject to DGS/PD approval. The highest ranking officer may delegate review and approval authority to his/her deputy

directors and/or the Procurement and Contracting Officer. The designee shall send ratification notification to their highest ranking executive officer upon their approval of the NCB. The typed name and signature must match.

DGS/PD will maintain a file of the names and titles of designees.

6.1.8 File documentation

Refer to Topic 8, Resources, for a list of file documentation required for NCB contracts.

6.1.9 NCB denied

If the NCB contract justification is denied, DGS/PD will contact the department and discuss the following options:

WHEN THE PURCHASE	THEN DGS/PD WILL
Exceeds the department's NCB Justification dollar threshold but is within the department's approved competitive purchasing authority threshold.	• Advise the department to conduct a competitive solicitation or, • Cancel the request.
Is requested by a department without any type of purchasing authority.	• Conduct a competitive solicitation to acquire the same or equivalent product on behalf of the department or, • Cancel the request.

6.1.10 LPA transactions and NCB

Department buyers must carefully review individual LPA user instructions to determine if the LPA is exempt from competitive bidding.

As a general rule, LPAs do not require an NCB. However, Departments granted LPA purchasing authority must adhere to the NCB contract approval process if only one supplier is known to sell the goods or services needed and offers cannot be obtained within the LPA contracts available.

Exception: The NCB justification process is not required if the individual LPA user instructions state that the contract is exempt from obtaining three (3)-offers or if the value of the transaction is under $5,000.00 and fair and reasonable pricing has been established and documented.

Refer to Chapter 5 for further information.

6.1.11 Known suppliers outside LPAs

Departments must conduct a competitive solicitation if suppliers are known outside of non-mandatory LPA contracts that can meet the department's requirements.

If only one LPA source is known (competing offers cannot be obtained), the NCB contract approval process must be followed.

6.1.12 NCB Timeframe

Departments submitting NCB requests should be allowing a minimum of 45 working days for the review, plus sufficient additional time for subsequent procurement, contract or amendment document review and approval if required. Any work performed prior to the approval or non-approval date will require submittal to the Victim Compensation and Government Claims Board for compensation. In addition, to ensure the State's interests are adequately protected, NCB requests will not be approved when the identified start date of the contract or effective date of an amendment has passed, except under exceptional circumstances such as the underlying contract:

- Is necessary to avoid an unexpected and emergent risk to persons or property and the NCB was processed expeditiously upon discovery of the risk
- Or amendment is the subject of a judicial order.

In no case will an approval be given for work that commenced more than 30 days prior to submission to DGS/PD.

Urgent risk and good cause late submittals will be evaluated on a case-by-case basis upon a review of the facts and the written justification provided by the department. In some cases an NCB request may be approved prospectively, but not approved for the period that preceded the submittal of the NCB.

Topic 2 – Purchase Document Amendments and the NCB Justification

6.2.0 When NCB process is applicable

If the original transaction, either competitive or LPA, did not include and evaluate option(s) for changes, then the amendment must comply with the NCB process. This includes amendments for increases and decreases to quantity, dollar amount and/or time.

6.2.1 When an amendment does not require an NCB

Amendments to existing purchase documents are not subject to the NCB requirements if the following occurred:

- Competitively bid contracts:
  - Which included option(s) for changes (e.g., quantity and/or time) may be amended consistent with the terms of the original contract providing for such amendment(s) if such options were evaluated during the solicitation process.

- LPAs for goods and services:
  - Original orders, which include options for changes (e.g., quantity and/or time), that were evaluated and considered in the selection for award during the Request for Offer (RFO) process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments.

- Competitive contracts and LPA orders amended for incidental omissions such as:
  - Transposition of numbers from the solicitation bid response or Request for Offer (RFO) response to the purchase document, or for inadvertent failures to include such things as contact names or for mistyped addresses. This does not apply to changes in quantity or time.

6.2.2 Amendment requirements based on cumulative dollar value

The requirements for amending existing purchase documents are based on the cumulative dollar value of the purchase after including the amendment.

Example:
A $200,000.00 contract plus a $60,000.00 amendment shall be considered a $260,000.00 contract. The processing of an amendment through the NCB approval cycle is based upon the amended total value of the contract.

6.2.3 Original transaction valued less $5,000.00

The NCB process must be followed if an amendment will cause the original transaction amount to exceed $5,000.00 and the original transaction was awarded using fair and reasonable methodology. This also applies to LPAs unless otherwise instructed by individual user instructions.

Topic 3 – Special Category NCB Request (SCR)

6.3.0 Approved Special Category NCB Request	If a department received approval for a Special Category NCB Request (SCR) during the procurement planning phase of the acquisition as outlined in Chapter 2, the NCB process must be followed.

Topic 4 – Proprietary Software Purchases (IT Only)

6.4.0 Existing proprietary software maintenance/ upgrade renewal contracts

The following provides the process that departments will follow to acquire existing proprietary software maintenance and/or upgrade renewal contracts. Regardless of how the software purchase is executed, the procurement files shall include all documentation as required and a detailed statement that supports why the transaction is exempt from competitive solicitation and NCB justification. Existing proprietary software does not require agency secretary approval if the dollar limitation would be within the department's delegated purchasing authority.

If the software purchase:

- Is within the department's approved IT purchasing authority, the department may execute the purchase as follows:
    - NCB justification is not required.
    - Obtain a signed letter from the software publisher/manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase)
    - Obtain approval of the department director (or next ranking official) prior to award for any transaction that exceeds $250,000.
- Exceeds the department's approved IT purchasing authority, the department:
    - Must submit the transaction to DGS/PDOTA using a requisition in FI$Cal and workflow it to DGS/PD/OTA for DGS/PD/OTA to conduct the procurement and execute the contract.
    - Must attach additional documents to the requisition as indicated on the proprietary software submission checklist.
    - Must obtain and provide the necessary documentation to DGS/PD in support of the purchase documents, and the non-competitive status of the contract.
    - Type of information required:
        - Obtain a signed letter from the software publisher/manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase)
        - Obtain approval of the agency secretary and the department director (or next ranking official) prior to submitting the request for any transaction that exceeds the department's IT purchasing authority.
        - If over $250,000, proprietary justification is required.
        - DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

- Is requested by a department without IT purchasing authority then the department:
    - Must submit the transaction to DGS/PD on a requisition for DGS/PD to conduct the procurement and execute the contract.
    - Must include/attach additional support documents, to the requisition as indicated on the proprietary software submission checklist in support of the purchase and the non-competitive status of the contract.
    - Type of information required:
        - Obtain a signed and dated letter on official letterhead from the software publisher/manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase, i.e. proprietary product). Email communications are not acceptable.
        - Obtain approval of the agency secretary and the department director (or next ranking official) prior to submitting the requisition for any transaction that exceeds $250,000.
        - If over $250,000, proprietary justification is required.
        - DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

6.4.1 New proprietary software

The following provides the process to follow in acquiring new proprietary software, which may also include software maintenance, and is available from only one supplier. Regardless of how the software purchase is executed, all documentation as required and a statement that supports why the transaction is exempt from competitive solicitation and NCB contract justification must be included in the procurement file.

If the software purchase:

- Is within the department's approved IT purchasing authority, the department may execute the purchase as follows:
    - NCB justification:
        - Not required for transactions valued at $250,000 or less.
        - Required for transactions exceeding $250,000 and must be approved by agency secretary and department director or next ranking official, uploaded and submitted to DGS/PD for approval through workflow in FI$Cal.
    - Obtain a signed letter from the software publisher/ manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase.)
    - Obtain approval by the agency secretary and the department director (or next ranking official) prior to award for any transaction that exceeds $250,000.

- Exceeds the department's approved IT purchasing authority, the department:

- Must submit the transaction to DGS/PDOTA on a requisition for DGS/PD/OTA to conduct the procurement and execute the contract.
- Type of information required:
  - Must obtain and include/attach the necessary documentation and requisition to DGS/PD in support of the non-competitive status of the contract. If over $250,000 – an NCB is required.
  - Obtain a signed letter from the software publisher/ manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase.)
  - Obtain approval by the agency secretary and the department director (or next ranking official) prior to award for any transaction that exceeds $250,000.
    - If over $250,000, NCB is required.
  - DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority.

- Is requested by a department without IT purchasing authority, the department:
  - Must submit the transaction to DGS/PD on a requisition for DGS/PD to conduct the procurement and execute the contract.
  - Must obtain and include/attach the necessary documentation to DGS/PD in support of the non-competitive status of the contract.
  - Type of information required:
    - Obtain a signed letter from the software publisher/manufacturer stating that the product/service being acquired is not available through any other source. (This serves as documentation to support the non-competitive status of the purchase.)
    - Obtain approval of the agency secretary and the department director (or next ranking official) prior to award for any transaction that exceeds $250,000.
      - If over $250,000, NCB is required
  - DGS/PD will be the repository for all of the software publisher/manufacturer letters when DGS/PD is the approving authority

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6.4.2 Obtaining software letters

The requirement to obtain a signed letter from the software publisher and/or manufacturer stating the proprietary nature of the product is applicable for acquisitions of existing proprietary software maintenance or acquisitions of new proprietary software, software maintenance, and/or upgrades purchases. Proprietary in this sense means there are no other available known sources to obtain the software.

6.4.3 Reasonable Cost reasonable documentation	As indicated by SAM section 1233, purchases although exempt by statute or policy, must still be reasonable in cost and justification. Procurement files shall include documentation to support fair and reasonable pricing for all proprietary software, software maintenance and/or upgrade purchases, regardless of value.

Topic 5 – Purchases Exempt from the NCB Contract Process

6.5.0 Purchases exempt by statute

Purchases may be awarded without advertising or competitive bidding as a result of being exempt by statute. For purchases that exceed a department's purchasing authority or for departments without any type of purchasing authority, purchase requisitions must be workflowed to DGS/PD for review, approval, and execution of the purchase.

The following purchases may be awarded without advertising or competitive bidding subject to the restrictions noted:

- Emergency contracts, which are necessary for the immediate preservation of life or state property, are exempt from the Non-Competitive Bid Contract (NCB) justification process. Contracts issued as a result of an emergency may be entered into immediately. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements.
- IT Goods and services for which the state has entered into an LPA.

  This is limited to those LPAs that have been competitively bid or that have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the IT goods/services offered.
- IT Interagency Agreements (refer to topic 7 in this chapter).

6.5.1 Purchases exempt by DGS policy

There are purchases that may be awarded without advertising or competitive bidding and without an NCB, as a result of being exempt by DGS policy. Although exempt by policy, the purchasing authority dollar thresholds still apply. For purchases that exceed a department's purchasing authority or for departments without any type of purchasing authority, requisitions must be workflowed to DGS/PD for review, approval, and execution of the purchase.

The following purchases may be awarded without advertising or competitive bidding subject to the restrictions noted:

- Proprietary subscriptions, proprietary publications, and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to $250,000.00.
- Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services. This exception applies only in circumstances where services to be provided are less than $250,000; if over $250,000 – an NCB is required.
- Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Exception does not apply to contracts justified pursuant to GC section 19130(a).
- Amendments to existing purchase documents under the same terms

and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new purchase document can be executed, but in no case shall this exemption extend beyond six (6) months for a particular amendment.

- Amendments to existing contracts which were originally competitively bid subject to the following restrictions:
  - Competitively bid contracts for IT goods and services, which included options for changes (e.g., quantity or time), may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the solicitation process.
  - Contracts for IT services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the following requirements and limitations:
    - Contracts/amendments providing for a contract value between $500,000 and $5 million for IT services are reviewed by the Office of HIPPA Implementation (OHI) and approved by DGS.
    - Contracts/amendments providing for a contract value greater than $5 million are reviewed by OHI and DGS and approved by the Department of Finance.
  - Amendments to the CALNET II MSA for mandatory services defined as Lineside, Voice Network, Data Services, and Billing Services.

6.5.2 Supporting statement

When buyers select the "NCB – Exempt by policy" or "NCB – Exempt by Statute" acquisition method, they will be prompted to enter the reference indicating the basis for exemption from advertising or competitive bidding either by policy or statute.

<u>Example #1</u>
"This purchase is exempt from advertising and/or competitive bidding based on DGS policy as identified in SCM FI$Cal, Chapter 5.

<u>Example #2</u>
"This purchase is exempt from advertising and/or competitive bidding based upon the use of the LPA #_____ that has been competitively bid and identified as such in the LPA user instructions."

6.5.3 Cost reasonableness

Purchases although exempt by statute or policy, must still be reasonable in cost and justification. It is recommended that procurement files include documentation to support fair and reasonable pricing.

Topic 6 – Procurement Approach for Exempt and NCB Contract Activities

6.6.0 Acceptance of State T&C

When conducting non-IT goods and IT goods and services purchasing activities that are exempt from competitive bidding or advertising or that are NCB contract purchases, a written offer and acceptance of the State's terms and conditions shall be obtained when transacting business with the only known supplier.

6.6.1 Creating a solicitation

The written offer and acceptance may be obtained by having the supplier respond to a solicitation document that is only provided to the one supplier, using the RFQ format (Refer to Topic 8, Resources, at the end of Chapter 4). A buyer also has the option to develop their own solicitation document that contains the following elements:

- Date and time the response is due
- Details of the purchase, including quantities, description, support coverage, coverage dates, etc.
- Fill-in space or a cost sheet for the supplier to provide pricing, purchasing standard, EPP and SABRC (see chapter 3 for - Socio-Economic)
- Request for the signature of the authorized supplier representative that can bind the company contractually
- Reference or hardcopy the applicable state General Provisions and any additional contract modules (specific to non-IT goods or IT goods and services) or special provisions applicable to the department

When using this solicitation approach to conduct business with the only known supplier, the supplier must be provided with an opportunity to review and accept the State's terms and conditions prior to the State executing the purchase document. This practice avoids the possibility of a dispute with suppliers once the purchase document is executed.

6.6.2 Supplier contracts and forms

Contract forms, license agreements, or ordering forms provided by suppliers shall not be signed by State employees. These most often contain inconsistent terms and conditions and results in conflict with the State's contract terms and conditions.

Buyers must seek department legal advice and contact DGS/PD for assistance.

6.6.3 Signing suppliers' software licenses is prohibited (IT Only)	Signing a supplier's software license agreement is prohibited. A review of the supplier's software license must take place before a supplier's software license agreement may be considered for incorporation into a purchase document. Buyers must seek department legal advice and contact DGS/PD for assistance.

Topic 7 – Interagency Agreements

6.7.0 Introduction

An Interagency Agreement (IAA) is an agreement between two or more State departments (GC § 11256) with one furnishing services, materials or equipment to, or performing work for the other State department(s). This topic provides information on when IAAs are used, special provisions and requirements.

6.7.1 When IAAs are used

IAAs are used when contracting with:

- Another State department
- A California State University
- A University of California campus (UC) if the UC agrees to calculate cost based upon the provisions of the State Administrative Manual (SAM)

6.7.2 Unique considerations

IAAs:

- Are exempt from
  - Advertising in the California State Contracts Register
  - Competitive bidding
- Do not include the DVBE participation requirement if the department is using its own personnel
- May provide for advancing of funds (GC §§ 11257 – 11263 and the SAM section 8758.1)

6.7.3 When IAAs are not used

IAAs may not be used for contracts with:

- Campus Foundations
- The federal government
- Local entities
- Other states

Additionally:

- Agencies shall not use IAAs to obtain third party goods or services from any third parties (for example: State Agency A and B need to purchase new computers. State Agency A cannot purchase the computers for both Agencies then enter into an IAA to sell them to Agency B.);
- Agencies shall not use IAAs to circumvent any State law or contracting requirements.

6.7.4 Dollar Thresholds

Routine computer processing and related IT services that the California Department of Technology (CDT) is required to provide to "customer" departments are without dollar limits.

Departments should refer to their approved purchasing authority approval letter for the dollar threshold applicable to all other IT IAAs.

Please contact the Purchasing Authority Unit at: pams@dgs.ca.gov for assistance.

6.7.5 Authority to conduct purchasing activities using IAAs

Executing IAAs for services is part of a department's approved purchasing authority. Departments with IAA purchasing authority may execute an IAA subject to the following:

- The current General Terms and Conditions for Interagency Agreements (GIA), including SAM 8752 and 8752.1 cost provisions, are used without modification and
- The agreement has no direct or indirect subcontracting (GC 11256).

Although these acquisitions can be conducted under purchasing authority, review/approval services are available on request for any contract, regardless of value or complexity.

If the department does not have purchasing authority or if an IAA exceeds the department's approved purchasing authority dollar threshold, and is not part of a reportable IT project, departments must workflow the IAA to DGS/PD One Time Acquisition Unit for review and approval.

When the contract is part of a reportable IT project and exceeds the delegated purchasing authority dollar threshold issued by DGS/PD, the state department must contact the California CDT in accordance with PCC § 12100.

6.7.6 Requirements for executing

The requirements to execute an IAA are:

- Departments must use the current General Terms and Conditions for Interagency Agreements.
- The department requesting and paying for the services shall be the "State Agency" and the department rendering the services shall be the "Contractor".
- The Purchasing Authority number and the contract number shall be that of the State Agency.

6.7.7 Additional IT Considerations

All pre-procurement rules must be followed including the signed Certificate of Compliance with State IT Policies if the cost is $100,000 or more and is in support of a development effort, in accordance with SAM §§ 4819.41 and 4832.

If the IT/IAA is to procure services from a consolidated data center in support of multiple projects, the following must be certified (SAM § 4832):

- The funding level is appropriate for the nature and scope of the services to be supplied;
- The services are consistent with CDT policy; and
- Project reporting for the various projects is current.

Topic 8 – Resources

Chapter 6 Resources	**C**	
	Contact Us	
	DGS/PD/ Dispute Resolution Unit	Link to Website
	DGS/PD/ One Time Acquisition	Link to Website
	F	
	File Documentation – NCB Contracts	PDF
	Forms:	
	Contract Advertising Exemption (STD. 821)	
	NCB Justification (GSPD-09-007)	Word
	NCB, Special Category Request (GSPD-09-008)	Word
	P	
	Proprietary Software Submission Checklist	PDF

Chapter 7

Protests

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Chapter 7

Protests

Overview

Introduction

This chapter describes the processes and possible outcomes when a supplier/bidder protests:

- requirements during a competitive solicitation or challenges the contract award for Information Technology (IT) goods and services solicitations; or
- the contract award for non-IT goods solicitations

Refer to the SCM, Vol. 1, for protests of non-IT services that are not procured through an LPA.

Topic 1 – Protest Basics

7.1.0 Definition

A protest is a challenge brought by a supplier/bidder during the competitive solicitation process, asserting that the solicitation requirements are restrictive or unclear or that the protestant should have been selected for award.

Although referred to by different names (complaint, exception, initial protest, protest of the requirements, and protest of proposed award) there are basically two types of protests. For the purposes of this chapter, protests will be referred to as either an “initial protest” or a “protest of proposed award. “

Initial Protest (also known as protest of requirements): is a challenge by a supplier against the technical, administrative, or cost requirements described in a formal IT competitive solicitation.

Protest of proposed award: is a challenge by a participating bidder against the proposed contract award for non-IT goods or IT goods and services.

7.1.1 Protest statutes

Applicable protest statutes and regulations regarding challenges and protests are contained within the following:

- Initial protests and protest of proposed awards for IT goods and service contracts – Public Contract Code (PCC) section 12102.2 (g).
- Protest of proposed award for non-IT procurements (PCC section 10306). Victims Compensation and Government Claims Board (VCGCB) – Board Hearing Regulations, California Code of Regulations (CCR), Title 2, Division 2, Chapter 1, Article 17, Bid Protest, Subarticle 1, General Provisions; sections 870.1 – 877
- Alternative Protest Process (APP) - PCC section 12125 et seq.
- Office of Administrative Hearings (OAH) – Arbitration Regulations - CCR, Title 1 Division 2, Chapter 5, Article 1, General Provisions

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7.1.2 Authority and role over protests

The director of the Califnoria Department of Technology (CDT), or a person designated by the director, may consider and decide on initial protests of bids for information technology projects conducted by the (CDT) and telecommunications procurement made pursuant to Section 12120. The Director of the Department of General Services, or a person designated by the director, may consider and decide on initial protests of all other information technology acquisitions and non-it goods.
VCGCB must review and render a final decision for protests of solicitations conducted under PCC section 10306 and 12102.2(g), also known as a traditional protest of proposed award, when they are not withdrawn.

OAH arbitrates and renders a final decision for protests of solicitations conducted under PCC section 12125 et seq., also known as the Alternative Protest Process (APP)*, which requires protestants to meet regulatory filing requirements and potential bond submissions to retain the right to continue into a hearing.

DGS/PD and (CDT) cannot delegate its authority to manage protests. Therefore, whenever a department is notified of a protest of non- IT goods or IT goods and services, regardless of the PCC or CCR under which the solicitation is conducted, the department shall contact DGS/PD/Dispute Resolution (DRU) or the (CDT), whichever agency has oversight for the procurement immediately (the same day or within 24 hours). Refer to Topic 4, Resources, at the end of this chapter for contact information for DGS/PD/Dispute Resolution Unit (DRU) and the (CDT).

See SCM, Vol. 1 for information regarding protests of non-IT services solicitations that are not an LPA transaction. When conducting LPA Request for Offers (RFO), buyers must **not** include competitive solicitation language regarding small business preference, protest language, intents to award, evaluation criteria or advertising requirements.

*As of the date of publication of this manual, current policy restricts the use of the APP process to DGS/PD and the (CDT) only.

7.1.3 Ability to award during protest

Unless the purchase is conducted under APP, no awards may be made until the protest is withdrawn, the State cancels the solicitation thereby ending the protest, or it is resolved by VCGCB.

If the purchase is conducted under APP, the (CDT) or DGS Director may authorize an award(s) while the proposed award is under protest and pending resolution at OAH.

7.1.4 Dispute resolution unit (DRU)

DGS/PD/DRU facilitates resolution of protests against IT solicitation requirements, proposed awards for non-IT goods and IT goods and services, and contract disputes.

7.1.5 Protest provisions in standard solicitation language

DGS/PD solicitation documents provide suppliers with the information for initial protests or protest of proposed awards for competitive solicitations. This language is found in the following:

- Bidder Instructions, Article # 12 – Specification Concerns
- Bidder Instructions, Article # 21 – Protests (PCC section 12102.2(g))
- Alternative Protest Process (PCC section 12125 et seq.)
- Section II, Rules Governing Competition (IT Formal Solicitation)
- Required language for IT RFQs that exceed $100,000

To view the Bidder Instructions, refer to Topic 4, Resources, at the end of this chapter.

7.1.6 Solicitation identifies key action dates

When applicable, the competitive solicitation will provide key action dates that notify bidders of specific times and dates to which bidders must adhere to file initial protests and protests of the proposed award for either IT goods and services or non-IT goods valued over $25,000.00.

Topic 2 – Protests: Non-IT Goods and IT Goods and Services

7.2.0 Terminology for Initial Protest and protest of proposed award

An initial protest (also known as a protest of requirements) is a supplier's challenge or objection to any administrative, technical or cost specification/requirement(s) contained in a formal IT competitive solicitation.

A protest of proposed award is a challenge by a participating bidder against the proposed contract award of a non-IT goods contract under PCC 10306 or an award of a IT goods and services contract. under PCC 12102.2(g).

7.2.1 Who may file and when to file a protest

Any supplier who submitted a bid may file an initial protest of IT requirements for solicitations conducted under PCC section 12102.2(g) or solicitations conducted under PCC section 12125 et seq. that contain provisions for protests of requirements. Protests of requirements must be received in writing by the soliciting department by the date and time established in the solicitation document.

For non-IT goods, a bidder may file a protest of proposed award conducted under PCC Section 10306 for non-IT goods, prior to award, with the department against the awarding of the contract or purchase order on the grounds that he or she is the lowest responsible bidder meeting specifications.

When a contract or purchase order is not to be awarded to the lowest bidder, the bidder must be notified 24 hours prior to awarding the contract or purchase order. If protested, the award shall not be made until either the protest has been withdrawn or the VCGCB has made a final decision as to the action to be taken relative to the protest. The 24 hour period excludes Saturdays, Sundays and legal holidays.

For IT goods and services, any supplier that submits a final bid (called a participating bidder) may protest the proposed award of a contract.

For procurements conducted under PCC 12102, the protestant may protest on the grounds that their bid is responsive to the requirements of the solicitation and that their bid should have been selected for award in accordance with the selection criteria in the solicitation document. Protests of proposed award under 12102.2(g) shall be filed during the five (5) day period (must exclude Saturday, Sunday, and legal holidays) specified in the public posting of the "Intent to Award" notice.

For Major Information Technology Acquisition procurements conducted under PCC 12125, the protestant may protest on the grounds that there was a violation of the solicitation procedures and their bid should have been selected. For all other acquisitions conducted under PCC 12125 et seq., the protestant may protest on the grounds their bid or proposal was responsive

to the requirements and should have been selected in accordance with the selection criteria in the solicitation. Protests of proposed award under 12125 et seq. shall be filed during the timeframe specified in the solicitation document which will be no less than 1 and no more than 5 working days after the posting of the Notice of Intent to Award.

7.2.2 Handling a protest

When a buyer receives an initial protest or a supplier/bidder has notified the buyer of their intent to submit an initial protest or protest of proposed award:

1. A supplier/bidder shall submit a protest in written format via facsimile, e-mail, or letter to the buyer identified in the solicitation by the time and date identified in the solicitation. If a supplier/bidder notifies the buyer verbally via telephone or in person of intent to protest, the buyer must notify the supplier/bidder that a written protest is required to start the resolution process. The buyer will check the "protest flag" in the FI$Cal system. When the protest flag is checked, the system will put the event (e.g. the solicitation or the award) on hold and will not allow the buyer to move forward. The protest flag also triggers a protest notification to the buyer and DGS/PD/DRU. If prior to receiving the written version of a verbal protest, a buyer has reason to believe the protest has merit or should be investigated prior to opening the bids, the buyer shall advise management.

2. A new protest information hyperlink will be added in FI$Cal which will open a new protest information page. DRU will add the protest information, including:
    - Reason code for protest
    - Protest Date
    - Check received check box to track if a check is received for the protest
    - Check Number
    - Check Amount
    - Check Deposited
    - Comments
    - Protest resolved check box to track that protest is resolved
    - Protest Resolved Date

3. Any further action on the procurement will stop until the initial protest/protest of proposed award has been resolved either through a withdrawal of the protest, a written final determination by DGS, or resolution by VCGCB.

4. DGS/PD/DRU staff shall acknowledge the protest, conduct an independent review of the initial protest in relationship to the solicitation document, maintain communication with the buyer, assist with coordinating a response to the supplier, and respond to all inquiries from the VCGCB.

INITIAL PROTEST OF SPECIFICATIONS	PROTEST OF PROPOSED AWARD
5. The buyer and DGS/PD/DRU staff shall work together to resolve an initial protest of requirements by initiating and coordinating a response to the supplier. Issues to be considered are whether or not: • The solicitation's technical, administrative, or cost requirements can be defended <u>or</u> • The supplier has raised a valid issue and clarification or change to the solicitation can be provided through an addendum to the solicitation or • The concern raised by the supplier has merit and it is in the State's best interest to cancel the solicitation.	5. The buyer provides DRU with copies of all documents meeting the regulatory definition of the solicitation file including, though not limited to, the solicitation and all addenda, the evaluation and selection analysis, the bidder recap, the recommendation for award, and any other documentation or information used to determine the proposed award. DRU works with the buyer to validate documents to be submitted to the VCGCB.
6. The buyer will draft a written response to the supplier, and DGS/PD/DRU will assist in the draft, review, and comments as necessary to ensure the response appropriately reflects the concurrence that is reached. The buyer will send the approved response to the supplier and to DGS/PD/DRU.	6. DRU staff prepares and transmits all required formal documentation to meet regulatory notification and submission of the protest to the VCGCB.
7. Dependent upon the resolution, the buyer: • Continues with the competitive bid process through contract award without amendment when the initial protest is resolved by DGS/PD Deputy Director, or • Cancels the solicitation, or • Amends the solicitation to change the solicitation to reflect the initial protest in part or in whole.	7. Within ten calendar days after filing the intent to protest of the proposed award, the bidder/protestant, in their detailed statement of protest, must provide relevant facts and evidence to support their claim. The detailed statement should include citations to pertinent laws, rules, regulations, or procedures on which the protest is based.
	8. The DRU, buyer, and legal counsel ensure that the State's

	response is drafted to represent the facts and legal standing of the State's decision to defend its proposed award. The DRU ensures that all deadlines and milestones are met.
	9. The DRU, buyer and legal counsel review the protestant's rebuttal to prepare for a potential hearing or next steps.
	10. The VCGCB reviews all submitted documentation and will determine notification and hearing dates to be scheduled as necessary. The hearing officer prepares his/her proposed decision which is decided by the three-member board, resulting in a final administrative decision regarding the protest.

Lastly, DGS/PD/DRU will uncheck the Protest Flag checkbox when all the protests have been resolved. When the checkbox is unchecked, the system releases the hold and the buyer may continue with the procurement. The system also sends a Protest Resolved Notification to the buyer and DGS/PD/DRU.

7.2.3 Adjustment of bid due date may be required

If a resolution of the initial protest results in an addendum to the solicitation and the addendum requires additional time for suppliers to respond, the solicitation due date shall be adjusted to allow additional time for suppliers to respond to the changed solicitation.

Topic 3 – Alternative Protest Process

7.3.0 Procurements eligible for participation in the APP

The APP was implemented in 1998 in accordance with PCC section 12125 et seq., to speed the resolution time of IT protests and to decrease the number of frivolous protests occurring in procurements.

Pursuant to PCC section 12125 et seq., any non-IT goods or IT goods and services competitive solicitation may include the APP*

An APP Application must be completed and submitted for approval in order to be conducted under the APP.

*As of the date of publication of this manual, current policy restricts the use of the APP process to DGS/OTA only
For additional information, refer to OAH Arbitration Regulations refer to Topic 4, Resources, at the end of this chapter.

Topic 4 – Resources

Chapter 7 Resources

B

Bidder Instructions — Link to Webpage

C

Contact Us

- DGS/PD/Dispute Resolution Unit — Link to Website
- California Department of Technology — Link to Website

G

General Provisions (GSPD-401 (non-IT)/GSPD-401IT (IT)) — Link to Webpage

O

OAH Arbitration Regulations (CCR Title 2, Division 2, Chapter 1, sections 870.1 – 874.1 — Link to Webpage

Chapter 8

Disbursements, Financing and Payment Programs

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Chapter 8

Disbursements, Financing and Payment Programs

Overview

Introduction

This chapter describes the policies, processes, and programs applicable to invoice submittals and payments, state financing, prompt payment, and the CAL-Card Purchase Card Program.

Section A

Disbursements

Overview

Introduction

This section provides general payment information including when payment should be released, what is required prior to invoice payments, and what are acceptable and unacceptable payment practices.

Topic 1 – Payment Fundamentals

8.A1.0 Basic requirements

Payment shall not be processed or released to any supplier for any goods and/or services without having in its possession all of the following:

- A properly authorized purchase document.
- Documentation verifying the goods/services were satisfactorily received and/or performed.
- An accurate and correct supplier invoice.

8.A1.1 Required payment date

State departments granted purchasing authority are expected to establish procedures and adhere to the provisions of the California Prompt Payment Act (GC section 927 et seq).

Payments to supplier are to be made in accordance with the provisions of the California Prompt Payment Act. The Act requires departments (unless expressly exempted by statute) to pay properly submitted, undisputed invoices, refunds or other undisputed payments due not more than forty-five (45) days after:

- The date of acceptance of goods or performance of services; or
- Receipt of an undisputed invoice, whichever is later.

If the requirement is not met, state departments must automatically calculate and pay the appropriate late payment penalties as specified in Government Code section 927, et seq.

Refer to Section C, Resources, at the end of this chapter for access to the Prompt Payment Program.

8.A1.2 Allocation of payment approval process time

Thirty (30) of the forty-five (45) calendar days allowed to pay invoices are allocated to a department's payment approval process. The remaining fifteen (15) calendar days are allocated to the State Controller's Office (SCO) claim audit and warrant generation process.

However, if a department elects to pay an invoice using the revolving fund process in order to take advantage of discounts or to avoid accruing late payment penalties, then the department can use the entire 45 day period.

8.A1.3 Administrative fee/billing

Department of General Service, Procurement Division (DGS/PD) charges each department an administrative fee for use of most purchasing authority transactions and categories (competitive bids, LPAs, NCB, etc.) based on the value of each purchase document. In most cases, DGS/PD may bill directly or rely on the contractor to collect the fee. Individual LPA contracts will describe any administrative fees associated with using the contract and how the fee will be collected.

IT transactions which are unusually complex in nature will be billed at an hourly rate. These include, preparation and evaluation of solicitations, contract negotiations, benchmark/equipment demonstrations, consultation at all levels of the procurement process, issuance of purchase orders and contracts for equipment, software or services, contract review and all NCB reviews.

8.A1.4 DGS price book

DGS/PD publishes a price book and directory of services that provides a listing of the services provided and prices charged by DGS.

Refer to Section C, Resources,at the end of this chapter to access DGS Price Book and Directory of Services

8.A1.5 Determining tax on purchases

The State does not pay federal taxes on purchases, only State sales tax and/or use tax. Taxes are assessed based upon where the products are physically received; therefore, it is recommended that a copy of the latest California Sales and Use Tax rate chart by county be obtained. This chart can be found on the Board of Equalization's web page.

Refer to Section C, Resources,at the end of this chapter to access the Board of Equalization web page

8.A1.6 Maintenance sales tax

The Board of Equalization (BOE) has ruled, in accordance with Regulation 1502 (IT) and 1546 (non-IT goods) of the Sales and Use Tax Regulations of the Business Taxes Law Guide, some supplies are taxable. See Regulation 1502, 1546 or contact BOE for additional information.

Refer to Section C, Resources,at the end of this chapter to access Regulation 1502 (IT) and 1546 (non-IT goods).

Topic 2 – Advance Payments

8.A2.0 Advance payment prohibited	California Constitution, Article XVI, section 3 and section 6, prohibits gifts/donations of public funds. An advance payment or pre-payment is considered a gift of public funds since the State has received no benefit and the subsequent receipt of goods/services cannot be guaranteed. Consequently, departments shall not pay for services or goods in advance of service performance or goods received. The only exceptions are noted in GC section 11019 and 11256.
8.A2.1 (IT) Software support and maintenance programs	Software support and maintenance programs can be paid upon receipt of an undisputed invoice. Software support or maintenance service typically includes access to a customer technical support phone line, correcting customized software programs, software upgrades via different types of media and documentation. It does not include consulting services to develop or assist in correcting customized software programs.
8.A2.2 Subscriptions	Subscriptions, magazines and periodicals can be paid upon receipt of an undisputed invoice.

Topic 3 – Progress Payments

8.A3.0 Definition of progress payments

A progress payment is a partial payment approach identified in a contract related to steps or phases toward the completion of the contract for goods and/or services. Use of this payment approach can require withhold of a percentage of payment pending completion of the entire contract and a bond. The portion of the payment withheld due to progress payments is paid upon final delivery or acceptance of goods or services.

8.A3.1 When progress payments are allowed

Pursuant to PCC section 12112 (IT goods and services), and PCC section 10314 (non-it goods), progress payments are allowable for work performed and costs incurred at the contractor's shop or plant if the purchase transaction is unique to State business, not suitable for sale to others in the ordinary course of business. In these instances, not less than 10 percent of the contract price is required to be withheld until delivery and acceptance of the final goods and/or services.

For IT goods and services, lessor withholding levels may be appropriate based on an evaluation of risk determined under PCC 12112(b). Under these circumstances, if the contract price is $10,000,000 or more, the department shall withhold no less than 5% of the contract price until final delivery or acceptance of final goods or services. If the contract price is less than $10,000,000 the department shall withhold no less than 3% of the contract price until final delivery or acceptance of final goods or services.

For non-IT goods, the contractor is also required to provide a faithful performance bond, acceptable to the department, in a sum of not less than one-half of the total amount payable under the contract.

8.A3.2 Consideration of progress payments

In the course of the procurement planning activities, it should be carefully evaluated whether progress payments are warranted and whether the contract administrator will have the expertise to properly monitor contract activities before entering into purchases that include progress payments.

8.A3.3 Recommendations regarding progress payments

The following should be conformed to when dealing with progress payments:

- Discourage progress payments whenever possible.
- Purchase documents shall require a withholding of each progress payment in accordance with 8.A3.1 above, pending satisfactory completion of the purchase transaction or a separate and distinct task.
- Establish a procedure to indicate the amount to be withheld on invoices.
- Do not allow progress payments on purchase documents with a term of less than three months
- If progress payments are to be made, they should be made not more frequently than monthly in arrears or at clearly identifiable stages of progress, based upon written progress reports submitted with the contractor's invoices
- Progress payments shall not be made in advance of delivery or acceptance of goods or services.
- Include a procedure in the purchase document for the contractor to request release of the amount withheld
- A written Statement of Work or Scope of Work should be developed to clearly define the tasks that constitute when a project is completed.

Topic 4 – Payee Data Record (STD. 204)

8.A4.0 Payee data record (STD. 204) is required

A completed Payee Data Record (STD. 204) must be obtained from a supplier prior to executing any procurement if the supplier is not a government entity and not identified in FI$Cal prior to any payment released. The STD. 204 provides, among other data, a supplier's taxpayer identification number and is used to determine when the payment(s) to the supplier is reportable (see SAM section 8422.190) and is needed in order to process payments of invoices.

The STD. 204 shall be submitted to the FI$Cal Change Management Office in order to obtain a vendor number. A supplier need only submit one STD. 204. Should any information change, a new form is required.

Refer to Section C, Resources,at the end of this chapter to access the Payee Data Record (STD. 204).

8.A4.1 LPA contracts and STD. 204

LPA contracts include the contractor's signed STD. 204 as part of the completed contract. Refer to LPA User Instructions for STD. 204 information.
.

8.A4.2 STD. 204 on file prior to any payments

Regardless of the procurement approach (competitive, NCB, LPA, etc.) or payment method (invoice payment, advance payment or progress payment, etc.) the department's accounting office must ensure a completed STD.204 is in the FI$Cal system prior to releasing any payments.

Topic 5 – Payment of Invoices

8.A5.0 Accurate invoice

Departments shall remind suppliers of the importance of submitting accurate and correct invoices to ensure timely payment for goods and/or services received. Departments must not pay for anything that is not in the procurement document (pallets, shipping, travel costs, etc.)

8.A5.1 Components of an accurate invoice

An accurate invoice provides the following:

- Purchase Order Number (FI$Cal PO) or Contract Number
- Identifies in detail the goods and/or services acquired, quantities, unit price, extension, description, etc.
- Sales tax and/or use tax as a separate line item from goods and/or services as applicable.
- Identifies all goods and/or services provided, service period, unit price (i.e. hourly, monthly) and quantity applicable to the service
- Accurate billing address as stated on the purchase order or contract
- Supplier invoice number
- Supplier invoice date
- Company name and remittance address
- Payment terms offered

8.A5.2 The clock starts ticking

A properly submitted invoice is:

- Submitted to the department address as identified in the purchase document as “billed to” or “invoice submitted to” for payment.
- Provides all the necessary information as identified in 8.A5.1 above
- Undisputed, see Chapter 9.

To accurately measure and track payment timeliness, all invoices must be:

- Date stamped or receipt date designated in ink on the front of the invoice (to accommodate photocopying) when first received at the “billed to” departmental location as identified in the purchase document.
- Promptly forwarded to the department’s accounting office if the invoice is received elsewhere in the department and the purchase document states the “bill to” address is the accounting office. It is recommended that the invoice be date stamped upon first arrival in the department, even if received at other than the “bill to” address on the purchase document.

8.A5.3 Invoice dispute notification (STD. 209)

Departments having a conflict or dispute with a submitted invoice shall immediately notify the supplier by phone and follow up in writing via an Invoice Dispute Notification (STD.209) within 15 working days. Buyers and contract administrators must consult with their department’s accounting office or other unit as determined by department policy and procedures to develop a plan of action for settling the dispute in a timely manner (see Chapter 9).

Refer to Section C, Resources,at the end of this chapter to access the Invoice Dispute Notification (STD.209).

8.A5.4 Discounts

Departments are encouraged to take advantage of prompt payment discounts on invoices when offered by suppliers. CCR, Title II, Section 1895.8 states discounts involving discount periods of less than 20 days shall not be included in the calculation of low bid. Cash discounts can only be taken when the department is able to pay within the number of days specified by the supplier.

Example
5% in 20 days (This will be shown in the Comments field in FI$Cal and be reflected within the body of the FI$Cal purchase order).

Cash discounts offered by bidders for prompt payment of invoices are not to be considered in evaluating bids and offers to determine the purchase order award.

8.A5.5 Maintain a Clear Separation of Duties

Departments should have departmental policies and procedures in place to ensure a clear separation of duties. Buyers should not be involved in receiving goods, approving invoices or making payments for goods or services that they procured.

Topic 6 – Other Payment and Invoice Considerations

8.A6.0 Travel provisions

All supplier travel and per diem expenses must be in relation to official State business, within contract parameters and incorporated into the executed purchase document. Travel and per diem rates paid to contractors shall be set in accordance with the rates of the Department of Personnel Administration (DPA) for comparable classes or verification supplied that such rates are not available to the contractor.

Necessary travel requirements must be settled before executing the purchase document because the detail and cost (only as allowed for in the contract) must be included in the purchase document to be payable.

All travel and per diem expenses authorized within LPA contract provisions must be verified.

Payments for travel and expenses of $25.00 or more must be supported by receipts.

8.A6.1 Freight bills must be audited by the Transportation Management Unit

In accordance with SAM section 3851, 3852, 1200 et seq., and 8422.1, all freight bills must be audited by the TMU before being scheduled for payment by the State Controller's Office (SCO). If a freight bill does not bear TMU's audit stamp, the invoice will be removed from the claim schedule by the SCO and returned to the department.

The TMU's freight bill approval is not required for the following items:

- The amount of the freight bill is $500.00 or less.
- The freight is included in the goods purchase and the freight bill amount matches that listed in DGS/PD LPA.
- Freight services performed under a contract pursuant to the requirements of SAM Section 1200 et. Seq., specifying the exact rates to be applied for the services.

8.A6.2 Training vouchers

It is acceptable to contract for training vouchers in advance of the training being performed "IF" the contractor does not invoice and the training services are not paid for before receiving the training.

8.A6.3 Purchase Order and invoice name must match

The supplier name as shown on the purchase order/CAL-Card Statement of Account and the invoice must match or the SCO will not approve payment. Do not process invoices if the supplier name varies between these documents.

8.A6.4 Non-LPA supplier name discrepancy

If there is a discrepancy in a supplier name between purchase order and invoice, the department shall notify the supplier immediately by phone and follow the dispute process identified in Chapter 9. The invoice shall be disputed until such time as one of the following occurs:

- The invoice is corrected to match the purchase document
- An amendment to the purchase order to change the supplier name is executed. This may, dependent upon the nature of the name change, require an Assignment Acknowledgement or a Contract Novation document (document that substitutes a new obligation for an old one) to be incorporated within the amendment documentation.

The amendment documentation must be retained in the procurement file.

A new Payee Data Record, STD. 204 may be required.

Department buyers requiring assistance in determining the proper documentation to effect a name change should seek legal advice from their department counsel; DGS/PD buyers should seek assistance from DGS/OLS.

8.A6.5 LPA supplier name discrepancy

Departments encountering a discrepancy in supplier names when conducting LPA purchases shall immediately contact DGS/PD to verify whether or not the contractor has processed the appropriate documentation to effect the change in name.

Invoices shall be disputed in the FI$Cal system until such time as the LPA contract has been updated with the name change via DGS/PD issued supplement or amendment to the contract and the department has in its possession an executed amendment to the purchase document. Documentation to support the name change (LPA supplement/amendment) must be retained in the procurement file regardless of the purchasing authority type of category used.

Section B

Finance and Payment Programs

Overview

Introduction

This section describes the different financing and payment programs available to departments with purchasing authority. Included in this section is a detailed description of the processes that shall be followed when executing these purchases and using CAL-Card as the method of payment.

Topic 1 – California's Electronic Financial Marketplace

8.B1.0 State Financial Marketplace (SFM)

All State departments and local governmental agencies are permitted to enter into either installment purchase agreements (commonly referred to in the industry as "lease purchases") or financed leases as described in the Uniform Commercial Code, Section 2A (commonly referred to as "operating leases"), via DGS's State Financial Marketplace (SFM) , which includes "GS $Mart" and "Lease $Mart."

Contact the SFM Managers prior to initiating a procurement that might involve financing.

Refer to Section C, Resources, at the end of this chapter to access the State Financial Marketplace (SFM).

8.B1.1 SFM compliance certification form

State departments will be required to complete a SFM Certification of Compliance Form and a Request for Rate Quote (RFRQ) Form when contemplating financing a transaction using the SFM program. The completed form must be sent to the SFM Managers for approval before the SFM will proceed with the financing process.

Refer to Section C, Resources, at the end of this chapter for the SMF Certification of Compliance Form and a Request for Rate Quote (RFRQ) Form.

8.B1.2 Tax exempt rates

GS $Mart offers tax-exempt rates which usually are less costly than commercial lending rates. For this reason, rates negotiated under GS $Mart tend to be the lowest obtainable. Also, loans are structured to comply with Internal Revenue Service (IRS) Tax Code. GS $Mart can be used for financed agreements as a matter of:

- Convenience;
- Efficiency; and
- Substantial cost savings.

8.B1.3 Financing conditions

Conditions for entering into a financed agreement include, but are not limited to, the following:

- Generally, the financed portion of an acquisition is a minimum of $50,000. This includes the cost of the tangible asset and, if applicable, sales tax. Financing an amount smaller than $50,000 may not be cost-effective. Contact the SFM for additional information regarding finance of lower dollar-value transactions.
- Acquisitions conducted under delegated purchasing authority that include financing must subscribe to the requirements identified in Chapter 1. For determination of whether the transaction is within a department's delegated purchasing authority limit, the cost of financing is not included.
- The term duration of the finance agreement may not exceed the projected useful life of the asset being financed.
- If a department wishes to consider a lender that is not participating in the GS $Mart program, contact the GS $Mart Managers *prior* to proceeding to learn how the desired lender can qualify for the GS $Mart program. Requirements to become a lender are found on the GS $Mart home page in Section C, Resources,at the end of this chapter.
- Any requested financing of an acquisition $10 million or larger must first be approved by the Department of Finance (DOF).

Current DGS-approved lenders and financing plans are posted on DGS' website in State Financial Marketplace (GS $mart).

8.B1.4 Applicability

The above conditions for financed agreements apply to the following:

- Orders for applicable items placed against Statewide Contracts, and Leveraged Procurement Agreements including, unless otherwise stated in user instructions;
- A competitive acquisition; or
- A non-competitively bid acquisition.

The above conditions do not apply to operating leases and rental agreements.

8.B1.5 Tangible assets

Purchased tangible assets that may be financed through GS $Mart include:

- Information technology equipment and necessary pre-integrated software (including mainframes, PCs, printers, network equipment, and storage)
- Software licenses
- Software development and integration (on a case-by-case basis by the California Technology Agency)
- Select services included with the procurement of assets (e.g., warranty, installation, and training)
- Copy machines
- Video conferencing systems
- Mailing equipment
- Telephone systems
- Most energy efficiency and sustainability equipment and systems (see "Capital Outlay" below)

"Tangible assets" that may not be financed through GS $Mart® include:

- Consultant and other services
- Capital outlay projects:
  - Capital outlay projects are those that alter the purpose or capacity of real property. Projects that keep real property functioning at its designed level service, or improve the efficiency of its operating systems—such as repair projects and most energy efficiency projects—are not capital outlay. Note, however, that some energy efficiency projects (e.g., photovoltaics) can involve significant facility engineering issues that make them capital outlay in nature or could be limited by covenants on debt-financed buildings. Such projects must receive prior approval by the DOF before securing financing.

8.B1.6 Energy efficiency projects

GS $Mart financing may also be used for energy efficiency and sustainability projects. However, the approval of these projects will be based on a cost-benefit analysis to substantiate that there is enough energy savings derived to repay all associated project costs including financing. A Life Cycle Cost (LCC) analysis model is available from DGS to conduct this evaluation. The LCC model must be used for this analysis, and DGS will not approve any GS $Mart financing for such projects unless the applicant department certifies that the model has been applied and the results justify the asset acquisition on a cost-benefit basis.

8.B1.7 DGS oversight

All State departments that use the SFM and are subject to DGS oversight must send a copy of each finance agreement to the GS $Mart Managers. The contract is reviewed to ensure compliance with IRS Tax Code requirements. The Managers also files the required IRS tax forms and reports on behalf of the department. No financing contract may be signed by a department without prior written approval by DGS.

8.B1.8 Assignments

Contact the GS $Mart Managers prior to initiating an assignment of a contract that was financed using the GS $Mart program.

8.B1.9 Refinancing

GS $Mart program posts the latest market information on the Internet, including DGS-approved lenders and finance rates. State departments are advised to review GS $Mart information periodically for refinancing opportunities and, if advantageous, to execute a refinancing contract to realize the cost savings. To ensure refinancing is executed properly, departments should contact the GS $Mart Managers before proceeding.

8.B1.10 Use of financing arrangements other than GS $Mart and budgetary conditions

Use of any financing arrangement other than GS $Mart, even utilizing baseline budget resources, is prohibited without prior approval from Finance. A department proposing such financing must request approval in writing and must provide an analysis to support the basis for selection of the financing to DGS Finance support unit. A proposed financing arrangement other than GS $Mart will be subjected to a rigorous evaluation that must demonstrate that it will provide the state with better terms than GS $Mart and will provide comparable financial security regarding such issues as tax exempt qualifications, financial health of the lender, and the financing's effects on the state's credit rating.

8.B1.11 Contact Financial Marketplace Managers

The State Financial Marketplace Administrator must conduct all leasing and financing solicitations. Departments considering financing options shall contact the State Financial Marketplace Administrator for assistance.

Refer to Section C, Resources,at the end of this chapter to access the State Financial Marketplace.

8.B1.12 DGS Office of Fiscal Services

For those departments under DGS purview, DGS Office of Fiscal Service (OFS), under the direction of DOF, and in conjunction with the California State Controller's Office, will have the money withdrawn from the using department's budget and OFS will make the finance or lease payments on the using department's behalf.

Topic 2 - CAL-Card Purchase Card Program

8.B2.0 About CAL-Card

"CAL-Card" is the registered name of the State's Purchase Card Program. The CAL-Card Program provides VISA card services to participating departments and local governmental agencies. The CAL-Card is a payment mechanism for non-IT and IT goods and services.

DGS/PD established a Purchase Card Services Master Agreement (MSA) with U.S. Bank to enable the State's CAL-Card Purchase Card Program.

Refer to Section C, Resources, at the end of this chapter for information on the CAL-Card Program.

8.B2.1 CAL-Card usage and purchasing authority

Only departments granted purchasing authority may participate in the State's CAL-Card Purchase Card Program.

8.B2.2 Payment mechanism only

CAL-Card is a payment mechanism, not a procurement approach and, therefore, does not relieve departments from adhering to all procurement laws, regulations, policies, procedures, and best practices. This includes but is not limited to the application of all sales and use tax laws, rules and policies as applicable to the purchase.

8.B2.3 Dollar threshold for CAL-Card use

CAL-Card is a payment mechanism for the acquisition of goods or services up to the delegated purchasing limits authorized for the department and individual cardholder.

Cardholder purchase limits are managed by the department's CAL-Card Program Administrator (or Alternate) through U.S. Bank. Cardholder purchase limits may not exceed the delegated purchasing authority threshold for the procurement approach used.

8.B2.4 Eligibility

A department will no longer be eligible for the State's CAL-Card Purchase Card Program if any of the following occurs:

- The department does not renew its purchasing authority or
- The department allows its purchasing authority to lapse or
- Purchasing authority is revoked by DGS/PD.

All privileges will be cancelled until the department has an approved purchasing authority.

8.B2.5 Splitting purchases

Departments will not split purchases to circumvent a cardholder's daily or monthly purchase limits. Also, cardholders will not split transactions to avoid competitive bidding limits or purchasing authority limits.

8.B2.6 Account suspension

Participating departments that maintain delinquent balances of 60 days or greater are subject to account suspension by the bankcard issuer. Each department shall work to eliminate potential late payment penalties and receive the full benefit of the prompt payment rebate revenue program.

8.B2.7 Limitations

CAL-Card limitations are as follows:

Stage	Description
1	CAL-Card must be used for state procurement only. CAL-Card use for personal activities will not be tolerated.
2	CAL-Card cannot be used for state travel-related expenses. This includes travel-related per diem expense, normally reimbursed to state employees on a travel expense claim. Travel is defined as airline tickets, ground transportation, vehicles rentals, restaurants, meals, lodging and gasoline for rental cars or personal cars used for official business.
3	CAL-Card can only be used by the assigned cardholder.
4	Only the department-designated Cardholder and Approving Official can approve CAL-Card charges and payments. Backup approval authority for the Cardholder, Approving Official and/or the Agency Program Administrator must be designated within the department procedures.
5	CAL-Card cannot be used to pay for past-due invoices.
6	CAL-Card cannot be used to pay late payment penalties.
7	Using the CAL-Card for an LPA order or other procurement does not relieve the department from executing a FI$CAL purchase order or other contract document as allowed by the LPA or other procurement.

Individual departments may establish additional limitations and/or prohibit transactions within their CAL-Card Programs.

Topic 3 – CAL-Card Program Participation Requirements

8.B3.0 Request to Participate (RTP) Form

Departments granted purchasing authority that are interested in participating in the State's CAL-Card Purchase Card Program are required to provide a completed Request to Participate (RTP) form to U.S. Bank.

Refer to Section C, Resources, at the end of this chapter to access the RTP form.

8.B3.1 Addendum to CAL-Card MSA

In addition to the RTP form, departments are required to execute an addendum to the CAL-Card MSA by signing a formatted FI$Cal system generated contract in accordance with the terms and conditions of the CAL-Card MSA. Two copies of the printed contract should be sent to U.S. Bank and request that one fully executed contract is returned to the agency for the contract file. Once the requesting department and U.S. Bank sign the contract, the formal implementation process is initiated.

Refer to Section C, Resources,at the end of this chapter to access the CAL-Card Standard Agreement.

8.B3.2 Staffing requirements

Departments that have met the initial CAL-Card participation requirements must also designate the following staff assignments to perform program administration responsibilities.

If you are the	Your administration responsibilities include:
CAL-Card Program Administrator (or Alternate)	• Overseeing the department's CAL-Card program. • Administrator for new and existing accounts. • Maintaining records of all account set ups and/or updates. • Maintaining audit file records for verification. • Monitoring system reports. • Providing program procedures and training and taking appropriate action related to account maintenance and payment process. • Coordinating CAL-Card procurement activities with the department's purchasing authority contact(s). • Monitor past due reports.

If you are the	Your administration responsibilities include:
Cardholder	• Authorizing the purchase with the assigned purchase card. • Ensuring that all transactions comply with purchasing authority requirements. • Complying with all state and departmental procurement policies and procedures. • Reconciling the CAL-Card statement transactions with receipts and supporting documentation. • Reviewing and approving the CAL-Card statement transactions. • Responsible for filing a Cardholder Statement of Questioned Item (dispute form) for billing issues unresolved with merchants. Refer to Section C, Resources, at the end of this chapter to access the dispute form. • Monitor disputes through resolution and closure.
CAL-Card Approver	• Budget expenditure approval. • Complying with all state and departmental procurement policies and procedures. • Reviewing and approving cardholder statements. • Maintaining familiarity with the duties and authorities of the authorized cardholders. • Timely submission of the CAL-Card statements to the billing office for payment.
Accounting/Billing Office Contact	• Receiving and reconciling CAL-Card statements to the corresponding monthly invoices. • Ensuring timely payment of the CAL-Card program invoices. • Monitoring invoice payments and past due reports through completion. • Reporting inconsistencies to the CAL-Card Agency Program Administrator.

Topic 4 – Executing Purchases Using CAL-Card as the Payment Method

8.B4.0 Executing purchases under $2,500.00

For purchases valued less than $2,500.00 and not acquired through an LPA, departments are not required to execute a purchase document. However, the procurement must be processed through the FI$Cal system for payment. When purchases to an individual supplier have reached $7,500.00 within a calendar year, a purchase order must be issued for the next purchase.

DGS/PD recommends that departments evaluate each non-LPA transaction less than $2,500.00 to determine whether it's in the State's best interest to execute a purchase document.

8.B4.1 Executing purchases $2,500.00 and over

All purchases valued at $2,500.00 and over that will be paid using CAL-Card must be executed on a purchase order.

8.B4.2 LPA orders

All LPA purchases paid using CAL-Card must be executed on a purchase order or other purchase document as referenced in the individual LPA user instructions.

8.B4.3 Purchase order requirements

Purchase orders must identify that payment will be made using CAL-Card and include all required terms, conditions, attachments or documentation applicable to the transaction.

Topic 5 – CAL-Card Statement Reconciliation and Documentation Requirements

8.B5.0 General

For departments that participate in the CAL-Card Program, all CAL-Card transaction reconciliation and payment processing will occur within the FI$Cal system.

8.B5.1 Documentation Requirements

Departments must provide all state-acquisition required back-up documentation within FI$Cal for every CAL-Card transaction, regardless of dollar value.

Reconcilers are required to attach the CAL-Card receipt and add transaction line details within FI$Cal for all CAL-Card transactions. Transaction line details include entering, at a minimum, the following for all items in accordance with the purchase receipt:

- United Nations Standard Products and Services Codes (UNSPSC)
- Vendor Information (when merchants are registered vendors within FI$Cal)

If a purchase order was executed in FI$Cal for the purchase, transaction line details should be outlined on the purchase order.

8.B5.2 Additional supporting documentation

For those transactions that don't require a purchase document to be created, the following additional documentation (as applicable), must be uploaded in support of the transaction into FI$Cal:

- An itemized detailed original invoice/receipt
- Documentation to support fair and reasonable pricing for the purchase transaction or responsive bids from at least two responsive and responsible suppliers
- Stock received information including the date received and by whom.
- Any other applicable documentation to support the transaction.

8.B5.3 Reconciliation requirements

The State Controller's Office (SCO) will audit and return requests for CAL-Card payment to departments whose CAL-Card statement transactions do not include the required back-up documentation.

Further, DGS reserves the right to terminate, or deny the renewal of, the department's purchasing authority for non-compliance with the reconciliation and documentation policies.

Section C

Resources

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C	
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Cal-Card Standard Agreement	Link to Website
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D	
Dispute Form	PDF
DGS Price Book & Directory of Services	Link to Website
G	
GS $Mart	Link to Website
I	
Invoice Dispute Notification (STD.209)	PDF
P	
Payee Data Record (STD.204)	PDF
Prompt Payment Program	Link to Website
R	
Regulation 1502 (IT) and 1546 (non-IT goods)	Link to Website
Request for Rate Quote (RFRQ) Form	Word
Request to Participate (RTP) Form	Word
S	
State Financial Marketplace (SFM)	Link to Website

Chapter 9

Post Award Activities

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Chapter 9

Overview

Introduction

This chapter describes:

- The forms/documents used for competitive and non-competitive purchase of non-IT goods and IT goods and services.
- The difference between a contract and purchase order (PO) in FI$Cal.
- The process for handling disputes
- How to receive and accept or reject in the system
- The policies and procedures for post award reporting requirements

Section A

Purchase Documents

Introduction

DGS is the "owner" of the system-generated documents related to procurement and contracting functionality. FI$Cal functionality has replaced the need to fill out several forms that have been familiar to department buyers (e.g. STD. 65 and STD. 213).

Topic 1 – Contract/POs

9.A1.0 State Standard Contracting Forms

State standard forms are not used in the system and therefore are not referenced on documents that are produced by the system.

In FI$Cal, a contract is defined as an agreement with a vendor based on an awarded solicitation.

A Purchase Order (PO) is the encumbrance mechanism and the order document sent to a vendor containing information on ordered goods and/or services.

9.A1.1 Contracts for Services

The system generates a Contract but without a standard number referenced (STD 213 is not used in the system). At the end of the acquisition process, the system will generate the Contract document. The buyer shall print the contract and obtain the necessary signatures from the department and the vendor. The signed document shall be uploaded into the FI$Cal system and appropriately work-flowed to any additional entities that need to review/approve the contract. Additional approvals shall occur in the system whenever possible.

9.A1.2 Contracts for goods

The system generates a Purchase Order (PO) but without a standard number referenced (STD 65 is not used in the system). The buyer has the option to either print the PO and mail or fax it to the vendor OR the buyer can email the PO directly to the vendor from the system.

9.A1.3 Agreement Summary for Service Contracts

The projected encumbrance of funds formerly facilitated by the STD. 215 Agreement Summary will occur in the system. Most fields from the STD. 215 are captured automatically as part of the Contract and PO forms. Fields that are not automatically captured are to be completed on the extension page that is linked to the transaction. Although the STD. 215 does not exist within the FI$Cal System, a report containing the same information will be available.

9.A1.4 Attachments Related to the Contract/PO

There is a generic attachment form available on the Requisition screen and the Purchase Order Screen that will allow the user to scan and attach any necessary documents related to the Contract/PO and note what type of document is attached.

9.A1.5 Contract and PO Approvals and Signature Requirements

Acquisitions conducted in the system will be work-flowed to individuals that have been designated by departments as authorized approvers. Approval authority in the system varies depending on dollar thresholds, what is being purchased, the acquisition method, etc. Only authorized personnel who are delegated signature authority by department management will receive acquisition documents in the system for approval. System approvals replace "wet" signatures on system generated POs, but are still required for contracts.

Approval must also be secured from the department's accounting office verifying the availability and encumbrance of funds.

State Departments – Individuals Authorized to Approve and/or Sign Contracts and POs:

- Authority to sign contracts and POs is limited to those executive officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority. Each executive officer who has statutory authority to sign contract and Contract/POs shall ensure that his/her agency maintains a current written record of agency employees authorized to enter into, approve (in the system), and/or sign Contracts/PO documents on behalf of that agency. This written record shall be subject to DGS audit.
- Anyone who signs or approves a Contract and/or PO should have knowledge in the procurement laws, policies and procedures pertaining to the goods or services being procured. If an individual with signature authority does not possess sufficient procurement knowledge and expertise, the individual should, prior to approving/signing, have the transaction and/or documents reviewed by someone who possesses such knowledge and expertise.
- Delegation of signature authority is a selective process and should be commensurate with experience with principles of sound contracting and procurement policies, demonstrated familiarity with the process of Contract/PO document formation, execution, and administration, and completion of applicable training and/or certifications.
- State Board's and Commission's Contract/PO documents in excess of $5,000 must be accompanied (scanned and attached) by a copy of the resolution approving the execution of the Contract/PO, unless by statute the executive officer may sign the Contract/PO.

Local Governmental Entities - Authority

- Contract/POs to be signed by a county, city, district, or other local public body must be authorized by a resolution, order, motion or ordinance for the Contract/PO. A copy of the authorization should be sent to DGS/PD with the Contract/PO.

Where performance by the local governmental entity will be complete prior to any payment by the State a resolution is not needed.

9.A1.7 Executing Contract/POs

A Contract or PO is not fully executed, until all the necessary approvals and/or signatures have been obtained and secured either in the system or on the Contract document as applicable to the purchase.

9.A1.8 Handwritten changes are not allowed

Handwritten notations and/or corrections are not acceptable methods to make changes to system generated Contracts or POs. All corrections and changes must be formalized by an amendment properly processed in the system.

9.A1.9 Requesting Changes to Acquisitions Submitted to DGS/PD

To request a change to a requisition submitted to DGS/PD or to a Contract and/or Purchase Order issued by DGS/PD, use the standard FI$Cal amendment workflow to submit the Purchase Order/Estimate Change Request in the system.

9.A1.10 Contract and PO Numbering

To facilitate DGS/PD billing, supplier invoicing, and accurate tracking, each Contract and PO must have a unique number. The system will automatically generate a unique number when a transaction is saved. Change Order / Version Control numbers will be generated when applicable. The Change History will track any update made.

9.A1.11 "Bill to" Address

The "Bill to" address shown on the Contract and Purchase Order identifies where related invoices must be submitted for payment by the contractor. Most often, the address will be a department's accounting office. This address is particularly critical to ensure invoices are not misdirected and to ensure prompt payment of invoices to avoid prompt payment penalties.

9.A1.12 "Ship to" Address

The "Ship to" address located on the Purchase Order identifies the physical location of where goods are to be delivered. Information must include the name of the department and address.

Topic 2 – Amending Contracts and POs

9.A2.0 When Amendments are Necessary

Amendments to original Contracts and/or POs are necessary when there is any change or modification to the original Contract/PO as issued to the supplier. Examples of when amendments are required include:

- A change in shipping terms
- A change in supplier's name
- A change in subcontractor(s)
- An increase or decrease of pricing/extended pricing/overall costs
- An addition or cancellation of an item or multiple items
- A change in the description, specifications or substitution of any product

9.A2.1 When Amendments are Not Allowed

If the Contract/PO is the result of a competitive solicitation (including solicitations conducted under a Leveraged Procurement Agreement), the price may not be increased unless specifically allowed in the original solicitation and evaluated for award. If not specifically allowed, departments must follow the instructions for non-competitively bid contracts provided in Chapter 6.

Letters or verbal notification between buyers/contract managers and suppliers cannot be used to modify the terms (scope of work, pricing, etc.) of a Contract/PO. Changes/amendments must be formally executed in writing (written, signed/approved in system, approved) to modify a Contract/PO.

9.A2.2 Degree of detail of an amendment

Amendments should clearly show what has changed from the original Contract/PO. It should also contain the same degree of detail for changes that the original transaction contained (i.e., increase or decrease in quantity, corrected model number, performance and environmental specifications, third party certifications and revised delivery date or change in delivery location, changes to contract language, etc.).

What is being deleted and/or added and the impact of the action to the overall transaction shall be identified.

9.A2.3 General guidelines for amendments

Departments are advised to adhere to the following general guidelines regarding amendments:

- An amendment must be within the original scope of the solicitation and resulting Contract/PO; if it is not, it must be treated as a non-competitively bid transaction. Changes to quantity, pricing, products, performance, and environmental specifications or third party certifications, etc. are scope changes.
- An amendment must be issued in advance of contractor performance; this includes receiving any goods or services prior to an authorized amendment. Consequently, an amendment must be processed in a timely manner.
- An amendment that results in exceeding a department's purchasing authority dollar threshold for any given transaction must be submitted to DGS/PD for review, approval, and execution. (See Chapter 6 - Non-Competitive Bid (NCB) Contracts for additional information regarding amendments).
- An amendment to extend a contract term:
  - Must be processed, approved and issued before the contract expiration date, otherwise there is nothing to extend as the contract has expired.
  - Retains the original contract start date and will only change the end date.

  Example:
  Original term: 02/01/10 – 06/30/10
  Extended term: 02/01/10 – 12/31/10

9.A2.4 Amendment increasing or decreasing total amount

If the total amount of the Contract/PO is being altered, the original amount, the amount of the change, and the new total must be shown within the Contract/PO . Only the revised amount (either plus or minus) will be entered in the "Grand Amount" box. Lack of clarity in executing amendments may result in duplicate DGS administrative fee charges.

Example:

Original:	$2,000.00
Amd #1:	+100.00
Adjusted Total:	$2,100.00

Total Amount Box shows
$100

9.A2.5 Amending a Statement of Work

The following shall apply when amending a Contract/PO that includes a Statement of Work:

- The Purchase Order number, amendment number, supplier name, and the date of the amendment shall be identified in the document header of each page.

- The items of work covered by the amendment should be clearly written as part of the Contract/PO :
  Example:
  "Attachment X, Statement of Work dated (Original document issue date) is hereby deleted and replaced with Attachment X, Statement of Work dated (Amendment Date)."

- Paragraphs being amended should be clearly identified.
  Example:
  Paragraph X is hereby amended to read: "The total amount of this Contract/PO is …"

- Paragraphs being deleted should be clearly identified:
  Example:
  "Paragraph X is hereby deleted and replaced by Paragraph X dated (Amendment date). All other terms and conditions of Agency Order XX-XX remain unchanged and in effect."

9.A2.6 Canceling a Contract/PO

Canceling an executed Contract/PO requires issuing an amendment, with an amendment number.

The text on the Contract/PO must state what action is being taken by the amendment and address the expenditures as applicable to the action taken. If expenditures are being disencumbered as the result of the cancellation process, then negative values would be shown on the Contract/PO.

Amendment distribution is no different for a Contract/PO cancellation than a typical amendment.

A statement to the effect that the transaction is canceled in its entirety should also be included.

Example:
Amendment #XXX cancels Purchase Order #XXXXXX in its entirety effective 09/15/10.

Section B

Receiving, Inspection, Acceptance Testing and Acceptance or Rejection

Overview

Introduction

This section describes the policy and processes of receiving, inspecting, accepting and/or rejecting goods and services. Also included in this chapter is a discussion of asset management and the process of determining whether or not a service deliverable is acceptable.

Topic 1 – General Process for Taking Possession of Goods and Services Purchased

9.B1.0 Receiving process

Each department determines whether or not the goods and services received are acceptable and conform to all of the terms and conditions of the Contract/PO. The entire receiving process consists of:

Term	Definition	Example
Receiving	The act of taking possession of goods in order to stage them for inspection or place them into inventory. Caution: Placing goods into inventory without inspection may waive future inspection rights and remedies.	A worker on the receiving dock who signs for goods provides the acknowledgement that the goods were *delivered*, not that they were "accepted."
Inspecting	The act of examining goods that have been delivered to determine conformance to what was ordered via the Contract/PO. In some cases, the acquisition may require a person with specialized skills or expertise in examining the goods to determine conformance.	**For IT:** The Department inspects computer goods and provides a clearance that the computer goods received conform to what is ordered via the Contract/PO. **For Non-IT:** The U. S. State Department of Agriculture or the California Department of Agriculture inspects fresh produce and provides a certification of inspection to the purchasing institution.
Acceptance Testing	The act of testing what is purchased, either all items delivered, or the first item delivered or by random sampling of some or all items delivered. Testing is conducted using standard test methods and determines that the goods and services, purchased are in conformance to the contract requirements as stated in the solicitation and Contract/POs, the supplier's and/or manufacturers published technical specification and that the goods and services performs to a satisfactory level.	A department has purchased a printer. The solicitation document identified a 30-day acceptance-testing period, during which the printer would be required to run error-free from the first day of installation. A department purchases materials, submits samples to an independent third-party laboratory for testing where testing is performed in accordance with stated standardized test methods.

Acceptance	The legal act of documenting that the goods and services conform to the requirements of the Contract/PO terms and conditions.	After completing an inspection or performance test, the department provides written notification to the supplier confirming that the inspection/test has occurred, the equipment, materials or goods passed the inspection/test and the department accepts the product.
Rejection	The return by the buyer of the goods and the recovery of the price. This right to reject is revoked once the goods have been accepted.	After completing the inspection, the product did not pass testing. The buyer would return the good to supplier at the supplier's expense.

9.B1.1 Separation of Duties

Departments should maintain sufficient separation of duties in order to reduce the risk of error, fraud, or conflict of interest. No one person should control all key aspects of an entire transaction or event. FI$Cal enforces separation of duties in the system, based on user roles. Refer to Chapter 1, Purchasing Authority, Role Mapping, for more information.

9.B1.2 Shipping multiple containers

The General Provisions instruct a supplier shipping multiple containers to identify the shipments as follows:

- Identify the number of the container and the total number of containers in the shipment; and
- Identify the number of the container in which the packing slip has been enclosed.

9.B1.3 Release of purchasing documents

Upon completion of a Contract/PO, buyers must promptly notify appropriate personnel involved in post-award activities such as receiving shipments, accepting goods or authorizing payments. These personnel should have a current, complete and accurate Contract/PO (including but not limited to technical specifications, any questionnaires the supplier filled out, product literature, post-consumer content form if applicable, etc.) to compare shipments received to what was ordered.

9.B1.4 Substitution of goods

Receiving staff must notify the buyer when the products do not match the Contract/PO. Product substitutions, over shipments or under shipments must not be accepted without being properly documented. A Contract/PO amendment must be executed. Refer to Chapter 8, Contract/PO, for information on processing a Contract/PO amendment.

At a department's discretion, a receiver may be granted a PO View Role in FI$Cal which would allow the receiver to see the original PO quantity and is then able to notify the buyer of any over/under shipments. Without this role, the receiver counts the items received and enters the quantity into FI$Cal.

9.B1.5 Resolving disputes when state pays shipping

DGS/PD Transportation Management Unit (TMU) shall be contacted at (916) 376-1888 if a department encounters disputes with freight carriers or if filing lost, over, short or damaged shipment claims against shipping agents when the state pays for shipping. Refer to the State Administrative Manual (SAM) section 3861, accessible at the end of this chapter in the Resources Section.

9.B1.6 Follow-up on open orders

Departments' policies and procedures shall provide a means for buyers, contract administrators, and receiving staff to follow up on purchases of goods and services ordered and not yet received.

Topic 2 – Receiving Goods

9.B2.0 Questions to consider when receiving goods

In accordance with SAM section 3861, receiving staff should always consider the following questions before taking receipt of any shipment: Includes a packing slip identifying a Purchase Order.

- Is it for this department?
- Is it damaged?
- Is the piece count correct?

In addition, the following questions should also be considered when receiving goods on behalf of the department:

- Does the item require special handling or contain hazardous materials?
- Is delivery significantly late, unsatisfactory or incomplete?
- Does the item comply with the specifications and packaging requirements as defined by the contract, General Provisions or any special provisions of the purchase order?
- Does the delivery require further inspection by another more qualified person?
- Have all the terms listed on the Contract/PO been met and properly documented?
- Are there any take-back requirements when goods are received?

9.B2.1 Standard receiving package

A standard receiving package should, at a minimum, contain the following documentation and be accessible to both the accounting and purchasing offices for payment and procurement file documentation:

- The invoice or packing slip
- The receiving copy of the Contract/PO

If the freight terms required the consignee to pay the shipping costs (FOB Origin), the bill of lading/delivery receipt verifying shipping costs must be included as part of the receiving documentation.

9.B2.2 Packing slip

Packing slips must be included in all shipments received by a department. At a minimum and in accordance with the standard State's General Provisions, the supplier must provide the following information on the packing slip to ensure departmental receiving staff can verify products being acknowledged as received:

- Purchase Order number as issued by the system
- Item number
- Quantity and unit of measure
- Product part number
- Description of the goods shipped
- Material Safety Data Sheets

9.B2.3 Receiving stock

The FI$Cal system allows departmental receiving staff to receive stock directly in the system. The receiving process in FI$Cal is considered an approved Contract/PO to record receiving information at the time goods are received. The receiver will enter the date received, the quantity received, and note any defect in the condition of goods. Once the goods or services are received and accepted, the information must be entered into the system and work-flowed to the accounting office on the day the goods are received.

A completely filled order is determined by carefully checking the quantity, description, and condition of the goods.

9.B2.4 Department Receiving Processor

The staff responsible for receiving, inspecting, accepting, and rejecting goods will be assigned the following roles in the system: Department Receiving Processor. The system will track and identify who processed the department's receipt of the goods and services.

9.B2.5 Receiving partial deliveries

If a department elects to accept partial deliveries, the Department Receiving Processor will enter the items received from the Contract/PO into the system. The receiving processor staff inspecting and accepting the goods will fill in the:

- Date received
- Quantity received
- Note any defect in condition.

This process is followed for each partial shipment received through completion. The last stock received entry for an order must be marked or designated as "Complete" when the order is completely filled.

In no case shall payment(s) be processed for goods and services that have not been received. Services include take-back of goods as designated in Contract/PO.

DGS/PD recommends receiving staff notify the buyer whenever a purchase is received as a partial delivery, if the purchase transaction did not state whether or not partial deliveries are acceptable. Partial delivery documentation should be provided to the buyer on a timely basis to allow for any necessary communications between the buyer and the supplier to occur.

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9.B2.6 Receiving goods at field locations

Departments allowing goods to be delivered at locations other than a headquarters site shall develop policies and procedures to inform pre-determined field staff of their responsibilities.

Staff assigned Department Receiving Processor roles in outlying locations will be responsible for preparing/compiling and providing documentation of the following:

- Correct shipper's bill of lading and delivery receipt.
- Unit count noted on the bill of lading/shipping receipt matches the units actually delivered.
- When damage is evident, determine, if the supplier or the carrier caused it.
- Enter the following information in the system and workflow the data to the headquarters' contact person:
    - Contact name and phone number of person receiving goods.
    - Purchase Order number.
    - Documentation of what was actually delivered and inspected to verify compliance with the Contract/PO (including technical specifications), with clear notation and explanation of any discrepancies or partial shipments.
- Perform a timely inspection of received goods and report any issues according to departmental policies and procedures directly to the purchasing authority staff.

Buyers are advised to provide receiving staff in field locations with Contract/POs in a timely manner and review any special instructions directed by department policies and procedures to assist in accurately and efficiently receiving goods.

9.B2.7 Recommendations

DGS/PD recommends receiving personnel to:

- Keep Contract/POs open until suppliers have met all obligations and deliveries. This is particularly important when accepting any partial deliveries or staggered deliveries over a period of time or in future fiscal years.
- Report immediately to the buyer identified on the Contract/PO any problems or questions in delivery, receipt or discrepancies in equipment received inspected and accepted.

Topic 3 – Standard Inspection, Acceptance and Rejection Requirements

9.B3.0 Inspection, acceptance and rejection standards

The State has standard inspection, acceptance and rejection requirements as described in the General Provisions entitled “Inspection, Acceptance and Rejection” to ensure these activities are conducted in accordance with State requirements.

9.B3.1 Inspecting a shipment

Departmental receiving and/or designated staff (dependent upon the goods received and whether or not staff with specialized expertise is necessary), should, upon acknowledging delivery of an order, conduct an inspection for the following minimum conditions:

- Verify that what was ordered conforms to Contract/PO documentation (Statement of Work, specifications, attachments, etc.), including the product description, model, brand and product numbers.
- Verify the quantity ordered against the quantity shipped or delivered.
- Inspect for damage or breakage.
- Check for operability/functionality.
- Confirm instructions regarding special handling or packaging were followed.
- Verify that the unit of measurement count is correct (e.g. if the unit of measurement on the Contract/PO is one dozen, count 12 in the unit package).
- Verify that delivery documentation (packing slip, certifications, etc.) is acceptable.
- Verify that packaging integrity is preserved (no leakages, damages, etc.).
- Verify that perishable items are in good condition and expiration dates have not been exceeded.

9.B3.2 Conduct timely inspections

Inspections should be completed in accordance with the terms and conditions identified in the General Provisions or as specified in the Contract/PO. If a department knows that the inspection will not be immediate, then the Contract/PO must provide when the inspection will occur and how it will be accomplished.

9.B3.3 Partnering inspections

Departments determining that an authorized person(s) other than a State employee will inspect the goods on the state’s behalf (this may occur in shipments to multiple field locations and where set-up and/or installation services are required), will describe in the documentation what activities will be performed. Upon notification by the supplier that the final “turn-key” product installation has been completed as specified in the Contract/PO s, the State will then determine the final acceptance of the goods.

9.B3.4 Documenting the results

Departments are advised to document all inspection results and enter the results in the system, accessible to the department procurement office.

The document should, at a minimum, identify what action was performed and inspection procedures when applicable, who was in attendance, both department and supplier personnel by name and title, when and where the inspection occurred, and the inspection results.

Documentation shall be retained within the procurement file.

Topic 4 – Acceptance Testing and Inspection - Specialized

9.B4.0 Acceptance testing	Departments that require additional acceptance criteria over and above what is stated within the State's General Provisions must describe the acceptance criteria and any specialized skills criteria for acceptance personnel in the Statement of Work and/or the solicitation document.
9.B4.1 Documenting the criteria	An acceptance testing period may occur over a period of time and that span of time must be documented within the competitive solicitation (including Leveraged Procurement Agreement solicitations) to describe how the performance will be measured and how acceptance of the good or service will be defined and accomplished. The acceptance requirement must also be carried through the purchasing process into the executed Contract/PO document.
9.B4.2 Acceptance	Departments shall give written notice of rejection of goods delivered or services performed within the given timeframe identified in the General Provisions. If the department does not provide such notice of rejection the delivery of goods and services will be deemed to have been accepted.

Topic 5 – Rejecting Non-Conforming Goods

9.B5.0 Process for rejection of goods

The following process should be followed if the goods are not in conformance with any requirements of the Contract/PO (including technical specifications):

Stage	Description
1	The person rejecting the goods must immediately communicate the problem(s) and rejection, via the system, to the buyer.
2	The buyer is responsible for notifying the supplier within the specified timeframe identified in the General Provisions after delivery or tender under UCC 2602, making arrangements to hold the rejected goods somewhere protected from damage, and taking reasonable care of rejected goods until the supplier can take possession of the goods and remove them from the site.
3	The buyer is responsible for providing a notice of rejection letter to the supplier describing the defect(s) that renders the delivery as non-conforming to the Contract/PO, what the delivery and inspection criterion was, and how the delivered product does not conform.
4	The buyer can accept any unit of measure (e.g., lot, case, and pallet) and reject the rest (UCC 2601). <u>IT Example:</u> A department executed a Contract/PO for 50 desktop monitors, but the supplier shipped 75 desktop monitors. The receiving staff may either reject the entire shipment or accept the 50 desktop monitors in accordance with the provisions of the Contract/PO. The remaining 25 desktop monitors will be rejected and returned to the supplier. <u>Non-IT Example:</u> A department executed a Contract/PO for 50 cases of bond paper, but the supplier shipped 150 cases of bond paper. The receiving staff may either reject the entire shipment or accept the 50 cases of bond paper in accordance with the provisions of the Contract/PO. The remaining 100 cases of paper will be rejected and returned to the supplier.
5	If the supplier, within a reasonable time period or as stated in the Contract/POs, does not remove rejected goods, the department buyer may: • Ship products back to the supplier at the supplier's expense. • Store the rejected goods with reimbursement required from the supplier for any incurred costs.

9.B5.1 Return to Vendor

When the need arises to return a good to a supplier, departments will process a Return to Vendor (RTV) transaction in the FI$Cal System. The system will print a RTV label for the buyer to return the product. This shall be processed by the buyer and the buyer shall follow up with the supplier as necessary.

Suppliers may require buyers to obtain a return authorization before shipping goods back to the supplier.

Buyers should contact the supplier prior to returning goods to confirm and follow any return authorization processes as required by the supplier.

Refer to Section F, Resources, for a link to a job aid for processing a RTV.

Topic 6 – Receiving Service Deliverables

9.B6.0 Accepting or rejecting services

Buyers, in preparing Contract/POs for services, must develop a clear, concise, and detailed description of the services to be performed. An individual or individuals must be assigned to monitor supplier performance. Any deviations or unacceptable performance levels shall be documented and provided to the buyer to assist in problem resolution.

Staff accepting written deliverables must provide the supplier with written documentation accepting the deliverable.

9.B6.1 Maintenance services

Departments acquiring equipment maintenance services should develop a uniform method for recording data relating to the repair or maintenance of equipment, which includes essential data pertaining to incidents of repair or maintenance. Essential data includes documenting goods and services information required by policy i.e. EnergyStar appliances, third-party certified carpet, SABRC compliance, etc.

9.B6.2 Tracking maintenance services

The following essential data is required in resolving disputes between the supplier and the department with respect to performance:

- The time the maintenance provider was notified by the State,
- The time the maintenance provider personnel arrived to repair the malfunction,
- The time the component and/or system was returned to service,
- A description of the parts (including manufacture and part number), goods or equipment used in providing the repair or service
- A description of the malfunction or incident; and
- Signature of the maintenance provider and a representative of the State.

A maintenance form should be prepared whenever a system or component is inoperative and left open until the repair is completed.

9.B6.3 Creating history

Developing a process for tracking maintenance levels creates a performance history that assists contract administrators in reviewing contract performance, and provides necessary information to determine when a system, or component, is covered under warrantee or needs replacement (end of useful life).

Section C

Disputes

Overview

Introduction

This section provides information regarding bidder/supplier disputes once a non-IT good or IT contract has been executed.

Topic 1 – Post Award Disputes

9.C1.0 Definition

A post award dispute is a disagreement or conflict between a contractor and a department after a Contract/PO has been executed. Most often, contract disputes arise due to contract performance issues on the part of either the contractor or the State.

9.C1.1 Occurrences

Disputes can occur in any purchasing category. It makes no difference whether the Contract/PO was the result of a competitive solicitation, or a LPA order.

Disputes may also result from not having a clear understanding of the State's General Provisions, Contract/PO terms and conditions, Special Provisions, or when a Statement of Work is not clearly defined or contains conflicting provisions or ambiguities.

9.C1.2 Buyer responsibility

Department buyers are responsible for managing contract performance by monitoring compliance with contract requirements and communicating to department contract administrators the importance of communicating and documenting all performance issues. In the event of a dispute, documentation must be maintained of any performance problem, its resolution, or unresolved problems. The buyer is to use a cure notification process to start the resolution process.

9.C1.3 Dispute provisions

DGS/PD general provisions provide suppliers/bidders with the process for disputing after an award has been executed. This language is found in the General Provisions for Non-IT Commodities (GSPD-401), Article #38 Disputes, and for Information Technology (GSPD-401IT) Article #44. Disputes provide suppliers with the process for disputing contract administration after an award has been executed. For access to the General Provisions, refer to Section F, Resources, at the end of this chapter.

9.C1.4 Deal in good faith

Buyers should deal in good faith with suppliers/contractors when encountering a dispute and attempt to resolve potential disputes informally at the lowest level.

Whenever a dispute occurs, conflicts should be resolved as quickly and fairly as possible, as disputes are disruptive and can be expensive to all parties to the contract.

As stated within the General Provisions the contractor agrees to continue performance of the contract pending final resolution of the dispute. Failure to do so is considered a material breach of the contract (unless a stop work order is issued (non-IT goods)).

9.C1.5 Disputed Invoice

Disputes shall be documented in the procurement file. The most common form of a dispute that arises on the State's side are invoice disputes. When informal discussions and negotiations fail to render a satisfactory resolution for all parties the following steps must be taken:

1. The buyer or contract administrator will check the "new dispute flag" checkbox on the Purchase Order (PO) page in FI$Cal to indicate a dispute exists. When the new dispute checkbox is checked, the system will put the PO on hold and prevent any further processing until the dispute is resolved. The dispute flag will also generate a notification to the buyer, DGS and the Accounts Payable (AP) Processor indicating a dispute exists.
2. A dispute hyperlink will be added in FI$Cal which will open a dispute information page and allow the buyer to enter the dispute information, including:
    - Reason code for dispute (mandatory field – DGS Dispute Appeal Process)
    - Dispute Date
    - Comments
    - Dispute resolved check box to track that dispute is resolved
    - Dispute Resolved Date
3. Discussions shall occur with all principals (contractor, buyer, contract administrator, project manager, etc.) involved in the conflict.
4. Dispute language contained within the General Provisions along with any special or additional contract provisions that may impact the dispute shall be reviewed.
5. Every effort shall be made to reach an agreement that is acceptable to all participants.
6. Written summaries of the major points of the dispute shall be prepared
7. The State cannot gift public funds, and must ensure that any monies or settlement are reasonable, legal, and justifiable.
8. Department management and/or department legal counsel shall be involved, as appropriate. For DGS/PD buyer, DGS/OLS attorney and DGS/PD/DR staff shall be involved.
9. If the dispute resolution:
    - Requires clarification or change to the Contract/PO , an amendment to document the action shall be prepared and processed expeditiously
    - Is unsuccessful, then the contractor must submit a written demand for final decision to the department director or designee. The contractor's written demand must present all facts of the dispute and be signed by a company officer.
10. The department director or designee shall render a final decision not to exceed 90 days from receiving the supplier's/bidder's demand within a timely manner (for IT disputes a decision must be rendered within 30 days from demand receipt.)

9.C1.5 Resolving disputes (continued)

11. If the supplier/bidder is not satisfied with the department's final decision, then the supplier/bidder may appeal the decision to DGS/PD Deputy Director for resolution at any time in the process who shall render a decision.
    - For non-IT goods the complete dispute process must be finalized within 90 days after receipt of contractor's demand. For IT the PD Deputy Director must render a decision within 45 days of receipt of the appeal for a final decision.
12. Upon a satisfactory resolution, the buyer will uncheck the dispute flag checkbox and the system will release the PO for continued processing and send a notification to the buyer, DGS and the AP Processor that the dispute has been resolved.

Section D

Contract Administration

Overview

Introduction

Contract/Purchase Order administration concentrates on the relationship between the department and the vendor from contract award to contract closeout ensuring the supplier delivers the product and/or service in conformance with the Contract/PO requirements. The contract administrator must completely understand all aspects of the Contract/PO. This chapter describes the requirements and recommended practices associated with contract administration activities. The term “contract” used throughout this chapter is used broadly and also covers transactions that may have been executed as Purchase Order.

Topic 1 - Contract Administration Principles

9.D1.0 Contract Administrator

Personnel assigned to perform supplier performance and contract administration activities are often referred to as a “contract manager” or “contract administrator.” This chapter will refer to the person assigned to perform all contract administrative functions as a contract administrator.

9.D1.1 Buyers remain involved

Although contract administration assignments may be determined by departmental policies and procedures or the magnitude or complexity of the contract, it is critical that the buyer (aka “Procurement Official”) remains involved in the post award contract activities, including acting as the department’s contract administrator or as a liaison between the contracting parties and DGS as warranted.

9.D1.2 Expectations of the contract administrator

Regardless of the title used, the person assigned contract administration functions must be made aware of the expectations and requirements of the position. A contract administrator must:

- Have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract.
- Communicate with both the buyer and supplier on contractual issues.
- Maintain records or logs to turn over to the procurement office at the completion of the contract.

9.D1.3 Establish the fundamentals

Once a purchase document has been executed, the buyer should communicate the contract administration responsibilities with the person assigned to the role. Any additional contract administration activities specific to the transaction should also be reviewed.

9.D1.4 Communication is key

A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the purchase document, have the ability to communicate contractual obligations to all parties involved, and maintain control over the performance of the contract.

9.D1.5 Post award orientations

Buyers, prior to turning over contract administration functions, determine whether or not a post-award orientation with assigned contract administrators, project managers, and suppliers is warranted to achieve a clear and mutual understanding of all contract requirements and to identify and resolve potential problems prior to any contract performance.

9.D1.6 Post award orientation activities

Post award orientations should include the following activities:

- Providing a complete copy of the authorized Contract/PO with all attachments to the involved parties.
- Identifying the key department and supplier personnel contacts and their responsibilities and authority.
- Reviewing any internal policies and procedures with all parties.
- Reviewing any contract reporting requirements with the contract administrator and/or the supplier.
- Reviewing the contract payment process, including review time, and processing time requirements to avoid payment penalties.
- Reviewing any acceptance criteria and review process as required by the contract.
- Reviewing the process for requesting an amendment/addendum/supplement/change.
- Reviewing the communication process for resolving disputes or any other contract issue.
- Reviewing documentation requirements for the Contract/PO audit files and retention.
- Review and document supplier performance.

9.D1.7 Consider departments' processes

In addition to information contained in the SCM, departments are encouraged to develop contract administration policies and procedures that are unique to their department's business needs or processes.

Topic 2 – The Do's and Don'ts of Contract Administration

9.D2.0 Contract administration do's

Effective contract administration activities include:

- Notifying the contractor to begin work.
- Monitoring contract activities for compliance with:
  - Work progress to ensure services are performed according to the quality, quantity, objectives, timeframes, and manner specified within the contract.
  - SB and DVBE contractors and/or subcontractors to ensure attainment of approved contract participation goals.
  - Commercially Useful Function requirements by SB/DVBE subcontractors;
  - Regulations and policy changes impacting contract goods and services
  - Review progress reports, status reports, and timesheets as required.
- Approving the final product or services by submitting a written document accepting the deliverables within FI$Cal.
- Providing any documentation to the department's procurement office.
- Monitoring expenditures, ensuring funding availability when contract extends over multiple years.
- Verifying accuracy of invoices and approving invoices for payment.
- Requesting amendments/addendums/supplements/changes and/or contract renewals in a timely fashion as determined by departmental policies and complexity of the request (often three – six months in advance).
- Verifying all work is completed and accepted by the department prior to the contract expiration date.
- Performing contract close out activities:
  - Completing Contractor Evaluation Report (STD. 4) and uploading it into FI$Cal for consulting services or in accordance with department policies and procedures.
  - Notifying responsible parties when funds can be disencumbered.
- Reporting any contract disputes immediately to the department procurement office.
- Keeping an accurate auditable paper trail of contract administration.
- Knowing how to identify and address SB/DVBE Program abuse allegations;
- Involving early and working closely with the department SB/DVBE advocates when applicable.

9.D2.1 Contract administration don’ts

Contract administrators are not authorized to:

- Instruct the contractor to start work before the contract is fully executed.
- Change the scope of the contract without doing so through the formal Contract/PO amendment process.
- Direct the contractor to perform work that is not specifically described in and funded by the contract.
- Extend the time period of the contract without execution of an approved amendments/addendums/supplements/changes.
- Allow the contractor to incur any additional costs over the limit set by the contract.
- Sign a contract as the department’s authorized signatory unless authorized in writing.
- Sign any contractor’s contract form.
- Take any immediate actions against SB/DVBEs or prime contractors as a result of abuse allegations.

Topic 3 – Supplier Performance

9.D3.0 Documenting performance	Departments, upon confirming that goods received and inspected are either in conformance with the terms of the Contract/PO or are to be rejected, shall document the results of the delivery and inspection.
9.D3.1 Supplier Performance Report (SPR)	The SPR may be used by the receiving staff to report on the quality and timeliness of a contractor's delivery. Its purpose is to capture and track performance histories, preparing correction or cure notice(s), or use in future supplier development and subsequent source selection activities conducted by the department. Refer to the resources section at the end of this chapter for access to the Supplier Performance Report.
9.D3.2 Access to information	The purchasing staff should upload completed SPRs into FI$Cal, providing all buyers access to the information by retaining the documents within the procurement files.

Topic 4 - Ethical Decision Making and Contract Administration

9.D4.0 Work behaviors and awareness

Staff, other than buyers, that perform contract administration functions, not only need to understand how to administer a contract but are also expected to adhere to and conduct business by maintaining the same ethical standards as if they were a buyer.

9.D4.1 Review contract principles

Buyers that are turning over the contract administration functions to a person unfamiliar with the acquisition process should review with that person the principles of conduct governing the acquisition process and its impact to the role of the contract administrator.

Contract administrators must:

- Conduct themselves in a professional manner, refraining from mixing outside friendships with business, not engaging in incompatible activities, conflicts of interest, or unethical behavior.
- Accurately account for expenditures and property received.
- Involve the department's procurement and legal resources staff when questions arise regarding acceptable or unacceptable behavior when dealing with suppliers.

9.D4.2 Ethics review

Buyers and contract administrators are advised to review their department's statement of incompatible activities, SAM section 3504 on ethics and prohibited practices, and refer to Chapter 2 – Procurement Planning.

Complete Form 700, Conflict of Interest Form, and department's Statement of Incompatible Activities.

Additional information on ethics may also be found at the Fair Political Practices Commission. For a link to their website, refer to Section F, Resources.

Topic 5 – Record Retention and Contract Administration

9.D5.0 Good record keeping

Departments are responsible for maintaining records in sufficient detail to allow anyone to review documentation and understand how the procurement was requested, conducted, awarded, and administered.

Buyers shall provide contract administrators with the necessary instructions to maintain good record keeping activities and ensure the records are turned over to the procurement office at the completion of the contract term. The records maintained by the contract administrator are incorporated into the procurement file and retained for compliance and/or auditing purposes.

9.D5.1 Setting up a contract file

Contract administration responsibilities may also include establishing the department's procurement file dependent upon the department policies and procedures as to who performs the contract administration duties.

Consequently, contract administrators should organize documentation according to department procurement processes in addition to the DGS/PD recommendations.

The DGS/PD recommends creating files by:

- Developing a user-friendly filing system. File by Contract/PO number or supplier name.
- Establishing a separate hard copy file for each Contract/PO administered.
- Developing a log sheet for a diary of activities. This may include dates and times of discussion and subject matter discussed.
- Developing spreadsheets for tracking expenditures, invoices, and/or timekeeping for the life of the transaction.
- Creating file dividers for:
    - Original Contract/PO and all amendments/addendums/supplements/changes
    - Work Authorizations
    - Deliverables
    - Correspondence – acceptance letters, termination notices, etc.
    - Invoices

The above information is specific to post award contract administration. Department purchasing authority transaction files will include all of the above as well as file documentation as referenced in Chapters 4, 5, and 6 dependent upon the specific purchasing category.

9.D5.2 Record retention requirements

The Attorney General's Office has directed that in view of the need for purchase order and contract purchase files for antitrust litigation, such records should be retained for seven years from the end of the fiscal year in which encumbrance is liquidated. Destroy after the required seven years or when audited by the Bureau of State Audits or the Department of General Services, whichever comes first.

Since there are various sources that dictate records retention requirements (e.g. statute, policy, pending litigation, etc.) and the retention varies depending on document type and can vary by department, depending on their internal retention schedule, there is not a one size fits all retention rule. When in doubt, departments should retain for the longest period applicable.

Section E

Reporting Requirements

Overview

Introduction

The purpose of this chapter is to describe reporting requirements.

Topic 1 - Financial Information System for California (FI$Cal) State Contract and Procurement Registration System (SCPRS)

9.E1.0 Purpose of FI$Cal SCPRS

The purpose of FI$Cal SCPRS is to collect contracting and purchasing information. It provides the State of California with a centralized database with information on state contracting and purchasing transactions, and demonstrates visibility and accountability. Transactions subject to DGS oversight must be reported in this system.

9.E1.1 Reporting Transactions in FI$Cal SCPRS

Beginning in Winter 2015, departments that are transacting in FI$Cal will not have to enter contracting and purchasing information in the SCPRS module as FI$Cal will automatically capture the information, regardless of dollar value and acquisition method. Non-transacting departments refer to section 9.E1.2 FI$Cal SCPRS Additional Reporting Requirements.

9.E1.2 FI$Cal SCPRS Additional Reporting Requirements

Beginning January 1, 2016, departments are required to report additional information with in FI$Cal SCPRS to identify Environmentally Preferable Purchasing (EPP) goods and services. By identifying an EPP purchases and recording EPP attributes within FI$Cal, as described in *Chapter 3 Section B EPP*, departments will be able to monitor their progress through FI$Cal reports. When reporting Buyers must list goods separately by item and from labor costs and record the following elements by line item within SCPRS:

- UNSPSC
- DGS Purchasing Standard
- Third-Party Environmental Certification(s)
- SABRC Compliant Product
- SABRC Category
- Postconsumer Recycled Content (PCRC)
- Total Recycled Content (TRC)
- Take-Back Program

Applicable EPP purchases made from Statewide Commodity Contracts with a master items list shall have corresponding EPP/SABRC data updated as part of the master item update process. Buyers when reporting Statewide Commodity Contract purchases within SCPRS must include information as reflected within the master item fields when recording these purchases.

9.E1.3 FI$Cal SCPRS Internet Site

To access the FI$Cal SCPRS, refer to Section F, Resources, at the end of this chapter.

If you have questions or require assistance, contact the FI$Cal Service Center at fiscalservicecenter@fiscal.ca.gov or 1-855-FISCAL0

Topic 2 – Annual Contracting Activity Report (STD. 810)

9.E2.1 Reporting to DGS/PD/OSDS

The Department of General Services (DGS), Procurement Division (PD) Office of Small Business and DVBE Services (OSDS) is the centralized entity to which consolidated contracting activity reports are submitted. The report provides fiscal statistical information on each department's Small Business/Microbusiness (SB/MB) and Disabled Veteran Business Enterprise (DVBE) contracting activities to the Legislature. FI$Cal will capture the data and each department will be able to run reports as frequently as they want to ensure they are in line with their SB/DVBE participation goals. The reporting period is July 1 – June 30 and the report is due by August 1, each year. The table below provides more detail. Refer to Section F, Resources, at the end of this chapter to access the reporting forms and instructions.

Title	Description	Requirement
Contracting Activity Report (STD. 810)	Departments are required to award 3% of State purchasing to DVBEs and 25% of purchases to SBs.	PCC section 10111 and Military and Veterans Code sections 999 et seq. require departments to report these activities.
Improvement plan	When a department does not meet the required state contracting participation for SB/MB (at least 25%) or DVBE (at least 3%) an Improvement Plan must be developed and submitted with the Contracting Activity Report (STD. 810).	
Infrastructure Bond Activity (STD 810A)	This report provides statistical data on SB/MB and DVBE participation using the Infrastructure Bond funding.	GC 14838.1 and the Infrastructure Bond Acts of 2006
Consulting Services (STD 810C)	Departments are required to report all consulting services contracts that have been entered into, amended or completed during each fiscal year.	PCC Section 10111
SB/DVBE Option and DVBE Incentive (STD 810S)	Departments are required to report contracting activity using the SB/DVBE Option and the DVBE Incentive.	PCC section 10111(e)(7)
Ethnicity, Race and Gender, Sexual Orientation (ERGSO) (STD 810E)	Departments are required to report voluntarily submitted information by business owners by race, ethnicity and gender. This report captures the level of participation for goods, services and construction contracts. The ERGSO will be returned to the departments via paper copy. The buyer will enter the information for each purchase/contract in the system, and the department will compile the information and submit to DGS annually.	PCC section 10111 PCC section 10111(f)

	The report shall also contain the sexual orientation of the business owners for the types of aforementioned contracts.	
State Department's Contractor DVBE Subcontracting Consolidation Report (STD 810D)	Departments are required to collect information from a prime contractor that committed to subcontract with a DVBE firm upon completion of an awarded contract.	MVC 999.5 (d)

9.E2.1 Where to Submit

Departments are to submit these reports into the FI$Cal system, but will also have the option, for the first year after system implementation, to submit directly to the DGS Report Coordinator as follows:

By IMS:
DGS/Procurement Division
Office of Small Business and DVBE Services
Attn: Reports Coordinator
707 Third Street, First Floor, Room 400, IMS Z-1, MS 210
West Sacramento, CA 95605

By Mail to:
DGS/Procurement Division
Office of Small Business and DVBE Services
Attn: Reports Coordinator
707 Third Street, First Floor, Room 400, MS 210
West Sacramento, CA 95605

Hand Delivered to:
DGS/Procurement Division
Office of Small Business and DVBE Services
Attn: Reports Coordinator
707 Third Street, First Floor, Room 400
West Sacramento, CA 95605

Topic 3 - Late Payment Penalty Report

9.E3.0 Report Requirements

The Prompt Payment Act, GC section 927 et seq. requires departments to submit a late payment penalty report to DGS Director. This report provides information on late payment penalties paid during the fiscal year. This information will be captured in FI$Cal automatically for FI$Cal departments.

Refer to Section F, Resources, at the end of this chapter to learn more about the late Payment Penalty Program.

Topic 4 - Contract Award Report

9.E4.0 Requirement

Within 10 working days of a contract award, Title 2 California Code of Regulations (2 CCR) Section 11114 requires a department to report the award of each contract over $5,000 to the Department of Fair Employment and Housing (DFEH). FI$Cal is able to send DFEH the completed equivalent of the STD. 16.

Topic 5 – Report of Independent Contractor(s)

9.E5.0 Reporting on independent contractors

California's Unemployment Insurance Code section 1088.8 requires businesses and government entities to report specified information to the Employment Development Department (EDD) on independent contractors. The information gathered as a result of this report assists EDD in locating parents delinquent in child support obligations.

9.E5.1 How to report

EDD must be notified within twenty (20) days of either making payments totaling $600 or more OR entering into a contract for $600 or more with an independent contractor in any calendar year, whichever occurs first. Reports are currently generated by FI$Cal and sent to EDD every 15 days.

9.E5.2 Questions

Departments with questions regarding independent contractor determinations should contact either their department's human resources section or EDD for assistance. Departments should also review GC section 19130(c) for compliance.

Refer to Section F, Resources, at the end of this chapter for access to EDD's webpage.

Topic 6 - State Agency Recycled Campaign Procurement Report (SABRC)

9.E6.0 Report requirements

Departments are required by PCC sections 12200-12320 to report purchases annually to the Department of Resource Recycling and Recovery (CalRecycle) identifying total dollar amounts of all products purchased in each of the 11 reportable categories and the total amount spent on recycled-content products (RCP) in each reportable category.

9.E6.1 Reporting

Applicable SABRC purchases made from Statewide Commodity Contracts with a master items shall have corresponding SABRC data updated as part of the master item update process, and thus FI$Cal will automatically capture relevant SABRC activity on these types of purchases.

Purchases made without a master item will require the following SABRC fields to be populated:

1) SABRC reportable
2) SABRC category
3) SABRC subcategory
4) Postconsumer recycled content (PCRC)
5) Total recycled content
6) PCRC source

9.E6.2 Reporting tools

CalRecycle provides additional information, guidance, and tools to assist departments in reporting recycle content expenditures, Refer to the resources section at the end of this chapter for SABRC Reporting Guidance and SABRC Reporting Tools.

9.E6.3 Due date

Departments are to submit reports to CalRecycle by October 31st for the previous fiscal year purchasing activities and dollars spent, in the 11 reportable categories, for post-consumer recycled content products. SABRC Annual Report.

Topic 7 – Environmentally Preferable Purchasing Report (EPP)

9.E7.0 Report requirements

Departments are required to measure, monitor and report progress of EPP purchases pursuant to Executive Order B-18-12 Progress is measured by capturing purchases that meet DGS requirements as referenced in *Chapter 3 Socioeconomic and Environmental Programs Section B, Topic 2 Environmentally Preferable Purchasing.*

9.E7.1 Reporting

A report is generated from the FI$Cal system for designated FI$Cal departments. Exempt and deferred departments will submit their purchasing data during their SCPRS upload as described in section 9.E1.2 FI$Cal SCPRS Additional Reporting Requirements. By recording EPP attributes within FI$Cal EPP/SABRC section departments will be able to monitor their progress through FI$Cal reports.

EPP attributes are item and/or contract specific therefore Buyers must list goods separately by item and separate from labor cost . To document an EPP purchases Buyers shall identify the purchase as EPP and record all applicable information:

- UNSPSC
- DGS Purchasing Standard
- Third-Party Environmental Certification(s)
- SABRC Compliant Product
- SABRC Category
- Postconsumer Recycled Content (PCRC)
- Total Recycled Content (TRC)Take-Back Program

9.E7.2 Reporting tools

The Department of General Services provides additional information, guidance and tools to assist departments in reporting EPP expenditures.

Refer to Section F, Resources, at the end of this chapter for DGS Buying Green Website and DGS Purchasing Standards.

9.E7.3 Due date

Departments are to submit reports through FI$Cal by October 31st for the previous fiscal year on purchasing activities and dollars spent for EPP designated purchases.

Section F

Resources – Chapter 9

Chapter 9 Resources

A

Annual Contracting Activity Report Instructions	Link to Webpage	
Contracting Activity Report (FORM 810)	Form	Instructions
Infrastructure Bond Activity Report (FORM 810A)	Form	Instructions
Consulting Services Report (FORM 810C) (MS Word)	Form	Instructions
SB/DVBE Option and DVBE Incentive Report (FORM 810S)	Form	Instructions
Ethnicity, Race, Gender and Sexual Orientation (ERGSO) Report (FORM 810E)	Form	Instructions
	Voluntary Statistic Data Sheet	

C

Contact Us:

DGS – Buying Green	Link to Webpage
DGS – Purchasing Standards	Link to Webpage
DGS – Transportation Management Unit	Link to Webpage
Employment Development Department	Link to Webpage
Fair Political Practices Commission	Link to Webpage

F

FI$Cal SCPRS	Link to Webpage

L

Late Payment Penalty Program	Link to Webpage

S

SABRC Reporting Guidance	Link to Webpage
SABRC Reporting Tools	Link to Webpage
State Administrative Manual	Link to Webpage
Supplier Performance Reports	Word
Surplus Property	Link to Webpage