Introduction

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Introduction

Topic 1 - Overview

I.1.0 Introduction (rev 3/11)

The Department of General Services (DGS) has statutory responsibility (Public Contract Code sections [PCC] 12100 et seq.) for procurement of all information technology (IT) goods and services, including approval of the acquisition methods used and the establishment and interpretation of related procedures. The Procurement Division (PD) was established within the DGS to provide oversight, guidance, and direction to departments in all aspects of IT procurement.

The DGS also has statutory authority (PCC section 12101(c)) to grant purchasing authority to those departments demonstrating the capability to make purchases that adhere to State statutes, regulations, policies, and procedures.

Pursuant to PCC section 12104 the DGS is required to set forth all policies, procedures, and methods that the DGS will use when soliciting bids for IT procurements in the State Contracting Manual (SCM), including any policies contained in the State Administrative Manual (SAM).

I.1.1 Definition of IT

IT is defined in the SAM (Section 4819.2) 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. The term "information technology" is commonly abbreviated as "IT".

Note: A definition is also contained within the IT General Provisions (GSPD-401IT) provided by the DGS/PD.

I.1.2 Purpose of this manual

State Contracting Manual (SCM), Volume 3 (Vol. 3), is provided as a resource to those persons in California state government who are involved in the State's procurement of IT goods and services. It provides the policies, procedures and methods to promote sound business decision practices in securing necessary services for the State. The procedures are not intended to cover every situation which may be encountered during procurement. Interpretation and application of the procedures to unique situations is the responsibility of the DGS.

The DGS/PD's Office of Policies, Procedures, and Legislation should be contacted for assistance in interpreting any section of SCM Vol. 3 at PPO@dgs.ca.gov.

Note: If a department with purchasing authority elects to exceed any of the procedures documented in the SCM Vol. 3, then those additional departmental requirements should be documented within the department's internal policies and procedures. See Chapter 1 for assistance in developing a departmental policies and procedures manual.

I.1.3 Scope of this manual

SCM Vol. 3 contains purchasing authority requirements, including statutes, regulations, policies, procedures and best practices applicable to the acquisition of IT goods and services. Also included is information on competitive bidding, non-competitive contracting and leveraged procurement agreements (LPA), protests and post award activities, contract administration, and reporting requirements.

"Department" for the purpose of this manual refers to any entity of the executive branch of California government including, but not limited to, agency, department, board, commission, office, association or institution.

I.1.4 Other volumes of the SCM

See SCM Vol. 1 for non-IT services, consultant services contracts, legal services, subventions, grants, and corresponding interagency agreements. The DGS-OLS should be contacted for assistance in interpreting any section of Volume 1.

See SCM Vol. 2 for procurement of non-IT goods.

I.1.5 Table of Contents

There are twelve chapters in this manual. Each chapter has a table of contents unique to the individual chapter. The chapters included in this manual are:

Chapter 1 - Purchasing Authority
Chapter 2 - Procurement Planning
Chapter 3 - Socioeconomic and Environmental Programs
Chapter 4 - Competitive Solicitations
Chapter 5 – Non-Competitively Bid (NCB) Contracts
Chapter 6 - Leveraged Procurement Agreements
Chapter 7 - Protest and Post Award Disputes
Chapter 8 - Purchase Documents
Chapter 9 - Disbursements, Financing and Payment Programs
Chapter 10 -Receiving, Inspection, Acceptance Testing and Acceptance or Rejection
Chapter 11 - Contract Administration
Chapter 12 - Reporting Requirements

I.1.6 Guide to usage

Below is a guide for interpreting terminology presented in SCM Vol. 3.

- **In reference to Words**
  - Requirement: "must", "shall", "mandatory" or "required"
  - Limited Discretion: "should"
  - Full Discretion: "may", "guidelines", "recommended practice" or "examples"

- **In reference to Source**
  - Requirement: Statutes, regulations, state policies, the DGS/PD policies
  - Limited Discretion: The DGS/PD policies related to requirements or Considered to be good business practice
  - Full Discretion: Policies, procedures and guidelines presented as helpful aids

- **In reference to Documentation:**
  - Requirement: Documentation required
  - Limited Discretion: Brief notation in file documentation sufficient
  - Full Discretion: None

I.1.7 Navigating within the manual and to other documents or websites

This manual contains hyperlinks (colored and underlined text or text where the hyperlink hand symbol appears) that you click to go to another document or web site.

I.1.8 Availability of the manual

The SCM Vol. 3 and any updates to the manual will be made available via electronic mail (e-mail) broadcasting to department prime contacts. Department prime contacts are usually the Procurement and Contracting Officer (PCO), Purchasing Authority Contact (PAC), and department Small Business Advocate. To subscribe to the (e-mail) broadcast bulletins type your e-mail address at the bottom of this link.

The SCM Vol. 3 is available at http://www.dgs.ca.gov/pd/Resources.aspx under the Policies Manuals and Handouts tab.

I.1.9 Role of the PCO

The PCO acts as the single point of contact for the DGS/PD on procurement matters ensuring all procurement and contracting activities within the department fully comply with State law, appropriations, regulations, executive orders, policies, procedures, best practices, and the SCM and is responsible for:

- All procurement and contracting within the department except for Public Works, Architectural & Engineering and Real Estate contracts.
- For and directly accountable for the department's purchasing authority.
- Providing the necessary resources to ensure all staff are properly qualified and trained in all aspects of the procurement process.
- Reviewing and approving the department's purchasing authority application(s) prior to submission to the DGS/PD.
- Serving as the department signatory on purchasing program compliance review reports.
- Serving as the agency officer in accordance with PCC section 10333.

I.1.10 Role of the PAC

The PAC interfaces and communicates with the DGS/PD, the PCO and subordinate staff overseeing day-to-day procurement activities conducted under the purchasing authority, ensuring that the department's policies & procedures are consistent with current law, regulations, executive orders, policies, procedures, best practices, and the SCM, and is responsible for:

- Distributing the SCM and any SCM revisions to the appropriate departmental staff.
- Coordinating procurement activities with the department's small business advocate, if the department is required to designate a small business advocate.
- Informing the department's CAL-Card Coordinator of purchasing authority requirements, if the department participates in the State's CAL-Card Purchase Program.

Note: Departments may choose not to designate a PAC. If the department does not, then the PAC role reverts to the PCO.

I.1.11 Role of the department's Small Business Advocate

The department's Small Business Advocate assists purchasing staff in identifying potential small, micro and DVBE businesses and is responsible for:

- Promoting SB and DVBE business contracting participation.
- Making solicitation information available to small, micro and DVBE businesses.
- Ensuring prompt payment to small businesses.

I.1.12 Revisions to the SCM, Vol. 3

The SCM, Vol. 3 will be updated as needed.

I.1.13 Statutory regulatory and procedural requirements

In addition to the SCM Vol. 3, departments must adhere to applicable provisions of State law, including, but not limited to:

- Public Contract Code
- Government Code
- Military and Veterans Code
- Labor Code
- Revenue and Taxation Code
- Food and Agriculture Code

Departments must also adhere to applicable procurement-related regulations contained in the California Code of Regulations. The following manuals also provide procurement-related policies and procedures and should be referenced as applicable:

- State Administrative Manual (SAM) provides statewide policies
  Click here to access SAM

- Statewide Information Management Manual (SIMM) provides instruction and guidelines, samples and model forms, and certification and transmittal letters related to IT policy.
  Click here to access SIMM

- State Telecommunications Management Manual (STMM) provides guidelines, directives, procedures and service information to assist departments with telecommunications management.
  Click here to access STMM

- SCM Vol. 1. provides policies, procedures and guidelines related to the state's contracting process for non-IT services including consultant service contracts and corresponding interagency agreements. Also includes information relating to public works, architectural & engineering and legal services contracting.
  Click here to access SCM, Vol. 1

- SCM Vol. 2 provides policies, procedures and guidelines related to delegated purchasing authority, including the State's acquisition process
  Click here to access SCM, Vol. 2

I.1.14 Additional reference material

The following the DGS/PD publications are provided as reference summaries of State and federal statutes and State regulations relevant to State procurement practices:

Click here to find California Codes.

Click here to find California Code of Regulations.

Click here to access the California Acquisition Glossary.

Click here to access a List of Acronyms.

I.1.15 List of acronyms

The following list of acronyms are used in this manual:

A

ACD	Automatic Call Distributor
ADA	Americans with Disabilities Act
APP	Alternative Protest Process

B

BOE	Board of Equalization

C

CALNET	California Integrated Telecommunications Network
CARI	California Alliance of Rehabilitation Industries
CCCV	California Code of Civil Procedures
CCR	California Code of Regulations
CCPCP	CAL-Card® Purchase Card Program
CIIN	California Integrated Information Network
CIWMB	California Integrated Waste Management Board
COTS	Commercial-off-the-shelf
CMAS	California Multiple Awards Schedules
CRP	Community-based Rehabilitation Program
CSCR	California State Contracts Register
CUF	Commercially Useful Function

D

DGS	Department of General Services
DMCP	Desktop and Mobile Computing Policy
DOF	Department of Finance
DRS	Dispute Resolution Section, the DGS/PD
DVBE	Disabled Veteran Business Enterprise
DPA	Department of Personnel Administration

E

EZA	Enterprise Zone Act

F

FEMP	Federal Energy Management Program
FOB	Free on Board
Form 42	Authorization to Exceed Monetary Limits
FRT.PPD	Freight Pre-paid
FSR	Feasibility Study Report

G

GC	Government Code

H

HIPPA	Health Insurance Portability and Accountability Act

I

I/A	Interagency Agreement
IFB	Invitation for Bids
IPO	Independent Project Oversight
IT	Information Technology
IVV	Independent Verification and Validation

L

LAMBRA	Local Military Base Recovery Area Act
LAPAER	Leveraged Procurement Agreement Exemption Request
LC	Labor Code
LCC	Life Cycle Cost
LPA	Leveraged Procurement Agreement

M

MA	Master Agreement
MB	Microbusiness
MM	Management Memo
MOU	Memorandum of Understanding
MPA	Master Price Agreement
MRA	Master Rental Agreement
MSA	Master Service Agreement
MVC	Military and Veterans Code

N

NCA	Notice of Contract Award
NCB	Non-Competitively Bid Contract Justification
NS	Non-small business
NSP	Not Specifically Priced Items
NVSA	Nonprofit veteran service agency

O

OAH	Office of Administrative Hearings
OCIO	Office of the State Chief Information Officer
OHI	Office of HIPPA Implementation
OLS	Office of Legal Services, the DGS

ORP	Operational Recovery Plan
OSDS	Office of Small Business and DVBE Services, the DGS/PD
OSP	Office of State Publishing, the DGS

P

PA	Purchasing Authority
PAC	Purchasing Authority Contact
PC	Personal Computer
PCC	Public Contract Code
PCD	Personal Communications Device
PCO	Procurement and Contracting Officer
PD	Procurement Division, the DGS
PDA	Personal Digital Assistants
PIER	Post Implementation Evaluation Report
PIN	Purchasing Information Network
PRC	Public Resources Code

R

RFI	Request for Information
RFI	Request for Interest
RFO	Request for Offer
RFP	Request for Proposals
RFQ	Request for Qualifications

S

SAM	State Administrative Manual
SB	Small Business
SC	Statewide Contract
SCM	State Contracting Manual
SCPRS	State Contract and Procurement Registration System
SCR	Special Category NCB Request
SCO	State Controller's Office
SFM	State Financial Marketplace
SIMM	Statewide Information Management Manual
SLP	Software Licensing Program
SOW	Scope of Work
SPB	State Personnel Board
SPR	Special Project Report
SS/SC	Strategically Sourced Statewide Contract
STD.	Standard Form
STMM	State Telecommunications Management Manual

T

TACPA	Target Area Contract Preference Act
TAS	Technology Acquisitions Section, the DGS/PD
TD	Telecommunications Division, the DGS
TMU	Transportation Management Unit, the DGS/PD

U

UC	University of California
USC	United States Code

V

VCGCB	Victim Compensation and Government Claims Board

W

WAN	Wide Area Networks
WIC	Welfare and Institutions Code
WSCA	Western States Contracting Alliance

Chapter 1

Purchasing Authority

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Chapter 1

Purchasing Authority

Overview

Introduction This chapter describes the purchasing authority requirements and the purchasing authority application (PAA) process. This chapter also provides tips to developing procurement policies and procedures.

Contents This chapter contains the following Sections:

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Section A

General Purchasing Authority Information

Overview

Introduction This section describes what is included and not included under purchasing authority, what the program requirements are, and what is necessary to obtain and maintain purchasing authority.

Contents This section contains the following topics:

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Topic 1 – Purchasing Authority Basics

1.A1.0 Authority to delegate purchasing authority

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). The DGS also has statutory authority to grant purchasing authority to those departments demonstrating the capability to make purchases that adhere to State statutes, regulations, executive orders, policies, procedures, sound business practices, and cost effectiveness that are in the best interest of the State.

The DGS is accountable and responsible for the purchasing authority it grants. The PAA is designed to provide the DGS with the information needed to determine if a department has the expertise, experience, knowledge, and internal procurement policies and procedures to support the type(s), category(ies), and dollar thresholds of authority requested.

1.A1.1 Program oversight

The Purchasing Authority Management Section (PAMS) within the DGS Procurement Division (PD) is responsible for oversight of the purchasing authority program on a statewide basis, including review and approval of PAAs requesting purchasing authority and monitoring of departments granted purchasing authority. Departments are required to make purchasing authority documentation and information available to the DGS/PD upon request and may not withhold such documentation and/or information.

1.A1.2 Purchasing authority types

There are two types of purchasing authority available to State departments. The table below identifies the types of purchasing authority available and the respective Public Contract Code (PCC) sections authorizing the delegation of the authority:

If the purchasing authority is for	Then the delegation of the purchasing authority is governed by PCC section(s)	And SAM section(s)
Non-information technology (non-IT)	10308,10309, 10331 through 10333	3506
Information technology (IT)	12100 et seq.	N/A

1.A1.3 Purchasing categories or sub-categories

Once a purchasing type(s) has been selected, a department must then decide what purchasing categories or sub-categories to use in conducting their purchasing activities. A department may select one or more of the following purchasing categories or sub-categories as applicable to their selected purchasing authority type:

- Competitive solicitations (informal and formal).
- Community-Based Rehabilitation Program (CRP).
- Non-competitively bid (NCB) contract approval.
- Small Business (SB)/Disabled Veteran Business Enterprise (DBVE) Option (competitive solicitations conducted under Government Code (GC) 14838.5 with a value of $5,000.01 through $249,999.99).
- Leveraged Procurement Agreement (LPA) orders are further sub-categorized into the following:
    - California Multiple Awards Schedule (CMAS) contracts
    - Software License Program (SLP) contracts
    - Master Agreements (MA), including Western States Contracting Alliance (WSCA)
    - State Price Schedules (SPS)
    - Statewide Contracts (SC)
    - Cooperative Agreements

Note: Purchasing authority also provides departments the ability to participate in the CAL-Card Purchase Card Program. Only departments granted purchasing authority will be considered for participation in the CAL-Card Purchase Card Program.

1.A1.4 Dollar thresholds and exempt contracts

The requirements for obtaining purchasing authority for any category are commensurate with the applicable dollar threshold. Purchasing authority for contracts identified as exempt by statue or by policy will be granted at the same dollar threshold granted for competitive solicitations.

1.A1.5 Levels of competitive purchasing authority (rev 6/13)

The purchasing authority categories or sub-categories and dollar thresholds available to departments are described in Topic 2 of this section. For each category or sub-category, except competitive, departments may only apply for the dollar threshold(s) listed or may elect to not apply for a category(ies). For competitive, the department has the following choices, as well as "None":

Competitive Purchasing Authority Level	Characteristics
Minimum	• Lowest dollar threshold of authority available. • Departments that conduct very few, small procurements should request this authority level.
Standard	• General dollar threshold of authority available. • Informal solicitations. • Departments must be granted this level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct formal procurement activities. • Prior to being granted full authority at this level, the department may be required to conduct a single competitive procurement. Refer to Topic 2 "Requesting Purchasing Authority" of this section.
Formal	• No set dollar threshold. • Dollar threshold for formal solicitations is granted on a case-by-case basis. • Prior to being granted full authority at this level, the department will be required to conduct a single competitive procurement. Refer to Topic 2 "Requesting Purchasing Authority" in this section.

1.A1.6 Must departments have purchasing authority?

Departments without approved purchasing authority are prohibited from conducting any of the following purchasing activities:

- Non-IT goods exceeding $100.00 as stated in PCC section 10308.
- IT goods and services of any dollar value, including IT Inter-Agency Agreements (IAA).
- Using any of the purchasing categories or sub-categories referenced in this Chapter.
- Participation in the CAL-Card Purchase Card Program.

Note: Departments should review their business needs before making the decision not to apply to the DGS/PD for purchasing authority.

1.A1.7 Departments with purchasing authority

Click here to access a current listing of departments with approved purchasing authority.

1.A1.8 Contact PAMS

Departments are encouraged to use the PAMS as the first point of contact to assist in answering questions or discussing concerns regarding any aspect of purchasing authority and/or any purchasing activities authorized under the program.

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

Topic 2 – Scope of Purchasing Authority

1.A2.0 Categories or sub-categories and dollar thresholds (rev 6/13)

The table below illustrates the purchasing authority options available to departments when considering what purchasing type(s), category(ies) or sub-categories, and dollar threshold limits are available and what will best satisfy the needs of an individual department. Dollar thresholds identified in this table as well as 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.

***Note:** Limits unless otherwise stated in the individual LPA User guide or with approved exemption.

Purchasing Authority Category or Sub-category	Non-IT goods: dollar thresholds	Non-IT Services: Dollar Thresholds	IT Goods and Services: Dollar Thresholds
Competitive Levels: Minimum	$4,999.99	OLS oversight Refer to SCM, Vol. 1	$4,999.99
Competitive Levels: Standard	$100,000.00	OLS oversight Refer to SCM, Vol. 1	$1,000,000.00
Competitive Levels: Formal	Over $100,000.00	OLS oversight Refer to SCM, Vol. 1	Over $1,000,000.00
Single Competitive Solicitation	As Authorized	OLS oversight Refer to SCM, Vol. 1	As Authorized
NCB Contract Approval	Equal to approved competitive level, but not to exceed $25,000.00	OLS oversight Refer to SCM, Vol. 1	Equal to approved competitive level, but not to exceed $25,000.00
SB/DVBE Option per GC section 14838.5(a)	$5,000.01 through $249,999.99	OLS oversight Refer to SCM, Vol. 1	$5,000.01 through $249,999.99
LPA Orders: CMAS	$100,000.00*	$250,000.00*	$500,000.00*
LPA Orders: Master Agreements	$500,000.00*	$500,000.00*	$1,500,000.00*
Orders: Software License Program	N/A	N/A	$2,000,000.00*
LPA Orders: Statewide Contracts	Unlimited	N/A	Unlimited
LPA Orders: State Price Schedules	$100,000.00	N/A	$100,000.00
LPA Orders: Cooperative Agreements (e.g. WSCA, NASPO)	$500,000.00*	$500,000.00*	Unlimited

1.A2.1 Incidental services on non-IT goods

Non-IT incidental services (i.e. set-up and installation) may be acquired during the original purchase of non-IT goods but the services must be subordinate to the overall purchase and not exceed a dollar threshold of $4,999.99. If the service portion of a non-IT goods purchase exceeds $4,999.99, then the service portion must be separated from the non-IT goods purchase and executed as a contract in accordance with the SCM, Volume 1. This requirement does not apply to LPA orders for non-IT goods.

1.A2.2 Exclusions

The activities described below are outside the scope of purchasing authority as authorized by the DGS/PD:

Activity	Basis for exclusion:
Non-IT goods valued at $100.00 or less	Defined in PCC section 10308, departments have statutory authority to purchase non-IT goods valued at $100.00 or less without the DGS/PD oversight. **Warning:** This statute pertains only to non-IT goods. Departments without IT goods and services purchasing authority may not procure IT goods and services in any dollar amount.
Non-IT services, other than LPA orders	Personal services that are not defined as IT. Primarily labor related, rather than providing a tangible product. For assistance, refer to the State Contracting Manual (SCM), Vol. 1. **Note:** Non-IT service LPA's, i.e. CMAS or MA, are within the scope of purchasing authority authorized by the DGS/PD.
Inter-Agency Agreements (IAA) for Non-IT services	Defined in GC section 11256 as an agreement between two or more state agencies. Non-IT services IAAs valued at $50,000.00 and over must be approved by the DGS/Office of Legal Services (OLS). For assistance, refer to the SCM, Vol. 1. **Note:** IAA for IT goods and services and IAAs for consolidated data center services are processed under IT purchasing authority or DIA authority, respectively. Refer to 1.A2.3 of this section, and the SCM, Vol. 3, Chapter 8 for additional information. Refer to the SCM, Vol. 1 for non-IT services.
Public Works	Defined in PCC section 1101 as an agreement for the erection, construction, alteration, repair or improvement of any public structure, building, road, or other public improvement of any kind. For assistance, refer to the SCM, Vol. 1 and/or contact the DGS/OLS.
Architectural, engineering and environmental services (A & E)	Defined in GC section 4525 et seq. as professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction project management firms. For assistance, refer to the SCM, Vol. 1.

1.A2.2 Exclusions (continued)

Memberships in professional organizations for represented and non-represented employees	Memberships in professional organizations for represented employees are governed by the collective bargaining agreements. Memberships in professional organizations for non-represented employees are governed by the Department of Personnel Administration (DPA) rules. For assistance, refer to the SCM, Vol. 1 or contact the employee's department's labor relations' office.
Non-IT departmental memberships in professional organizations	Departmental memberships in professional organizations are considered a personal service. Non-IT departmental memberships valued at $50,000.00 and over must be approved by the DGS/Office of Legal Services (OLS). For assistance, refer to the SCM, Vol. 1. **Note:** IT departmental memberships are included within IT purchasing authority. If an IT membership purchase exceeds a department's approved purchasing authority dollar threshold, then the acquisition must be submitted to the DGS/PD Technology Acquisitions Branch (TAB). For assistance, contact: technologyprocurements@state.ca.gov.
Legal services	Services rendered by an attorney must be authorized by the Attorney General's Office. For assistance, refer to the SCM, Vol. 1.
Opportunity purchases	In accordance with PCC section 10321, opportunity purchases are not within purchasing authority and are applicable only to District Agricultural Associations (DAA). **Note:** This exclusion from purchasing authority is only applicable to non-IT goods transactions.

1.A2.3 IT Interagency agreements

Executing interagency agreements (IAA) for IT goods and services is part of a department's approved IT purchasing authority and is granted at the same dollar level as IT competitive purchasing authority. Departments must submit an IT/IAA to the DGS/PD's Technology Acquisition Branch (TAB) for review and approval if the department does not have IT competitive purchasing authority or if an IT/IAA exceeds the department's IT competitive purchasing authority dollar level.

Exception:
Routine computer processing and related IT services provided by the data center to "customer" departments are processed under the data center's authorized DIA delegation without dollar limits.

1.A2.4 Exceeding purchasing authority thresholds

Departments may not execute a solicitation, request for offer (RFO), NCB contract or exempt contract that exceeds or is expected to exceed the department's approved purchasing authority by type, category/sub-category, or dollar threshold, except in an emergency as defined in PCC sections 10340 and 12102(b) (2).

Note: An exemption may be obtained for IT Master Agreements above $1,500,000 by completing and submitting a Leveraged Procurement Agreement request for exemption. Refer to the SCM, Vol. 3, Chapter 6 for additional information.

Any transaction that exceeds or is expected to exceed a department's purchasing authority, by type, category/sub-category, or dollar threshold, must be submitted to the DGS/PD on a Purchase Estimate (STD.66) for non-IT and IT goods and by memo for IT services.

Procurements for non-IT goods will be conducted by the DGS/PD Acquisitions and Contracts Section (ACS). Procurements for IT goods and services will be conducted by the DGS/PD Technology Acquisitions Branch. (TAB).

The DGS/PD is also available, at a department's request, to conduct any procurement that is within the departments purchasing authority.

Note: Contact technologyprocurements@state.ca.gov for instructions on submitting IT service procurement requests.

1.A2.5 Order splitting

PCC section 10329 for non-IT goods and by policy for IT goods and services state that "no person shall willfully split a single transaction into a series of transactions for the purpose of evading the bidding requirements of this article."

Departments also may not split orders to circumvent approved purchasing authority dollar threshold limits.

1.A2.6 Emergency purchases

Departments may contract for emergencies (as defined by PCC sections 10340 and 12102(b)(2) regardless of dollar limits but must adhere to the purchasing processes applicable to the classification of the emergency (Refer to Chapter 2).

1.A2.7 CAL-Card usage

Departments granted purchasing authority may apply for and participate in the State's CAL-Card Purchase Card Program. The Department's Purchasing Authority Contact (PAC) is responsible for distributing the SCM to the department's CAL-Card Coordinator and is the responsible party for questions related to the department's purchasing program.

Warning:
CAL-Card usage does not exempt a department from following all applicable acquisition laws, regulations, executive orders, policies, procedures, and best practices. Departments are strongly reminded that CAL-Card is a payment mechanism, not a procurement method.

Note: It is State policy that only departments granted purchasing authority are qualified to participate in the CAL-Card Program.

Click here to access the CAL-Card Purchase Card Program for more information.

Topic 3 – Purchasing Authority Requirements

1.A3.0 Requirements and responsibilities

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.

Departments must adhere to the following purchasing authority requirements and responsibilities:

The department will	The requirement or responsibility includes
Designate a Procurement and Contracting Officer (PCO)	• Approval for the department of the department's PAA . • Accountability and direct responsibility for the department's purchasing authority. • Developing and maintaining a listing of all departmental staff with authority to execute any purchase documents. • Ensuring that all procurement and contract staff receive the appropriate training and obtain the appropriate certification. • Ensuring the department's adherence to and compliance with the SCM.

1.A3.0 Requirements and responsibilities (continued)

Designate a Procurement and Contracting Officer (PCO) (continued)	• Ensuring all departmental purchase documents, including any and all leveraged procurement agreement (LPA) orders, are available for review and providing the department's response to any audit or review findings. • Signatory for the department on all compliance reviews of the department's purchasing program. • Monitoring the department's progress in meeting and/or exceeding purchasing authority standards and continuous improvement of the department's purchasing program. • Serve as the agency officer in accordance with PCC section 10333.

1.A3.0 Requirements and responsibilities (continued)

Establish and maintain written departmental procurement policies and procedures.	• Ensuring and documenting competitive purchasing. • Complying with purchasing standards established by applicable PCC sections and approved purchasing authority. • Inspecting purchased products for compliance with specifications. • Documenting supplier delivery performance. • Complying with applicable provisions of law and with applicable regulations. • Complying with policies, procedures, and best practices as the DGS/PD may require.
Establish procedures for complying with provisions of the Small Business Procurement and Contract Act (GC section14835 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.
Establish policies for training personnel (Departmental and Cal-PCA training when available).	• Purchasing law, regulations, policies, procedures, and best practices. • Controlling and reviewing purchasing practices. • Auditing purchasing activities. • Purchasing authority within the department.

1.A3.0 Requirements and responsibilities (continued)
(rev 7/11)

Submit procurement reports as required and on a timely basis.	• Annual purchasing authority renewal. • PAA deficiencies. • Monthly procurement activity reporting. • Purchasing program compliance review report commitments to resolve findings. • Other reports as required by statute or by the DGS/PD, refer to Chapter 12.
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.A3.0 Requirements and responsibilities (continued)

Establish procedures for complying with the provisions of the California Prompt Payment Act, GC 927, and et seq.	• Date stamping supplier invoice upon initial receipt by department.
	• Maintaining, in the purchase file, documentation as to when goods and services are received.
	• Paying properly submitted undisputed invoices in accordance with the purchase document.
	• Submitting invoices to the SCO for payment within 30 days or paying invoices via the revolving fund process within 45 days from the later of:
	  o The date of acceptance of goods or performance of services or
	  o Receipt of an undisputed invoice.
	• Automatically authorizing and paying late payment penalties whenever an undisputed invoice is not paid within required time frames.
	• Reporting to the DGS/PD all late payment penalties paid by the department each fiscal year, refer to Chapter 12.

1.A3.0 Requirements and responsibilities (continued)

Designate a department SB advocate, when the department's contracting activities exceed $100,000.00 annually. **Note:** Contracts, includes all purchasing authority related procurement activities and excluded activities.	• Identifying potential SB and DVBE subcontractors and potential subcontracting opportunities. • Making information regarding pending solicitations available to and consider offers from certified SB and DVBE business suppliers capable of meeting the state's business need. • Ensuring that payments due on purchases with SB and DVBE suppliers are promptly made as provided by GC section 927.

Maintain signed Conflict of Interest (COI) statements for every staff person involved in the procurement process.
Click here to view a sample COI statement.
Note: A department may use its own certification document such as an incompatible activity statement, ethics statement, and COI statement or use the above sample.
	• Staff involved in:
	  o Soliciting bids.
	  o Preparing procurement documents.
	  o Approving procurement documents.
	  o Receiving goods/services.
	  o Approving payment.
	  o Making the payment.
	• A reference to or inclusion of GC section 19990.
	• Ensuring the employee signs a COI at least once during his/her tenure with the department.

1.A3.0 Requirements and responsibilities (continued)

Whenever an acquisition warrants, secure, and document any approval required by: • California Technology Agency • CALPIA • DGS/PD • OTech/STND • DGS/Office of Fleet Administration (OFA) • DGS/OLS • DGS/Office of Records & Information Management (CalRIM) 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.

Topic 4 – Purchasing Authority Roles and Responsibilities

1.A4.0 Roles and responsibilities

The following table defines the roles and responsibilities of individuals involved in a department's purchasing authority activities:

If assigned as the	Your role is to
Procurement and Contracting Officer (PCO) **Important:** • To fulfill this requirement the designated PCO must be the same person for all purchasing authority held by the department. • A PCO may assign responsibility for the department's day-to-day procurement activities to a Purchasing Authority Contact (PAC) but in doing so, is not relieved of any purchasing authority accountability and responsibility. • PAMS must be notified within 30 days of any change in designation of a PCO. • Notification of changes must be made by completing and submitting Part A of the PAA. Refer to Section B of this Chapter, Topics 1 and 2. • Failure of the department to promptly notify the DGS of a PCO change may result in the department not receiving notification of purchasing authority requirements for which it will be held responsible.	• Act as the single point of contact for the DGS/PD on procurement matters. • Be responsible for all procurement and contracting within the department except for non-IT services, Public Works, Architectural & Engineering, and Real Estate contracts that are based on SCM, Vol. 1. • Be responsible and directly accountable for the department's purchasing authority. • Ensure all procurement and contracting activities within the department fully comply with State law, appropriations, regulations, executive orders, policies, procedures, best practices, and the SCM. • Provide the necessary resources to ensure all staff are properly qualified and trained in all aspects of the procurement process. • Review and approve the department's PAA(s) prior to submission to the DGS/PD. • Serve as the department signatory on purchasing program compliance review reports. • Serve as the agency officer in accordance with PCC section 10333.

1.A4.0 Roles and responsibilities (continued)

Purchasing Authority Contact (PAC) (formerly the: Delegation Contact) **Important:** • PAMS must be notified within 30 days of any change in designation of a PAC. • Notification of changes must be made by completing and submitting Part A of the PAA. Refer to Section C of this Chapter Topics 1 and 2). • Failure of the department to promptly notify the DGS of a PAC change may result in the department not receiving notification of purchasing authority requirements for which it will be held responsible. **Note:** Departments may choose not to designate a PAC. If the department does not, then the PAC role reverts to the PCO.	• Interface and communicate with the DGS/PD, the PCO, and subordinate staff. • Oversee day-to-day procurement activities conducted under the purchasing authority. • Ensure that the department's policies & procedures are consistent with current law, regulations, executive orders, policies, procedures, best practices, and the SCM. • Distribute SCM and any SCM revisions to the appropriate departmental staff. • Coordinate procurement activities with the department's small business advocate, if the department is required to designate a small business advocate. • Inform the department's CAL-Card Coordinator of purchasing authority requirements, if the department participates in the State's CAL-Card Purchase Program.
Buyer (formerly the procurement and/or contracting staff)	• Perform the day-to-day purchasing and contracting activities. • Interface and communicate with the PAC. Should report to or be in a clear line of communication with the PAC. • Mentor less experienced purchasing staff. • Be knowledgeable of procurement laws, regulations, executive orders, policies, procedures, best practices, and the SCM. • Maintain the procurement file and related documentation.

1.A4.0 Roles and responsibilities (continued)

Payment Officer	• Ensure timely payment of invoices. • Ensure proper internal approvals have been secured prior to processing payment. • Adhere to GC section 927 et seq.
SB Business Advocate	• Promote SB and DVBE business contracting participation. • Assist purchasing staff in identifying potential small, micro, and DVBE businesses. • Make solicitation information available to small, micro, and DVBE businesses. • Ensure prompt payment to small businesses.
ADA Coordinator	• Assist and respond to questions or concerns regarding reasonable accommodation needs.
CAL-Card Coordinator	• Provide written CAL-Card procedures for the department. • Ensure compliance with the DGS/PD and department CAL-Card procedures and contract terms. • Coordinate CAL-Card training. • Administer new account reporting and payment processes for CAL-Card. • Add, delete, and/or alter card restrictions/limits. • Review billing reports to monitor payments and disputes. • Coordinate procurement and contracting activities that use CAL-Card as the payment mechanism with the PAC.

1.A4.0 Roles and responsibilities (continued)

Receiving Staff	• Receive or acknowledge deliveries. • Inspect goods. • Complete stock received reports and ensure • notification of stock received information to both the buyer and to the Accounting office. • Inventory and control assets. • Tag assets.

1.A4.1 Department obligations

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 or it's PCO. Responsibility also resides with all departmental staff involved in the procurement process.

Departments are required to ensure that personnel involved in procurement activities complete ethics training and should regularly remind personnel of the importance of maintaining professional and ethical standards when conducting state procurements.

Consequently, 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 the DGS/PD policies, procedures, and best practices.

1.A4.2 Rescission or reduction of authority

Departments are held accountable for the procurement activities conducted under any type and/or category/sub-category of an authorized purchasing authority.

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

1.A4.3 Ethics and conflicts

Department personnel involved in procurement activities are either directly or indirectly spending public funds and are subject to public scrutiny. Consequently, the DGS/PD reminds personnel involved in procurement activities to:

- 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.

Click here to access the Fair Political Practices Commission's web page for additional information.

1.A4.4 Separation of duties

Departments with any type of purchasing authority must always be mindful to maintain sufficient separation of duties in order to reduce the risk of error or fraud in the department's purchasing program.

Key duties and responsibilities should be segregated to separate the responsibilities for: conducting the procurement, approving purchase documents, acknowledging and receiving goods and services, approving invoices, and preparing payments.

Note: No one person should control more than one of the key aspects of a procurement activity.

Topic 5 – Applying for Purchasing Authority

1.A5.0 Which types and category(ies) or sub-categories of authority should the department request?

It is the department's decision whether to request authority for one or both types of authority, as well as whether to request authority for all, some or none of the categories or sub-categories of authority. The DGS/PD cannot make this decision for the department. The department must specify the type(s), category(ies) or sub-categories, and dollar threshold limits for which it is requesting authority. See Topic 2 of this section.

Note: Departments must submit a single PAA if applying for both non-IT and IT purchasing authority.

1.A5.1 Requesting new purchasing authority

A department must complete and submit a PAA when it is requesting new purchasing authority. The PAA review and approval processing time is approximately 60 days.

The PAA consists of 5 parts as follows:

- Part A identifies the department, the current purchasing authority numbers, the PCO, and PAC(s).
- Part B identifies that one department is requesting authority to procure for another department, identifies the other department and its PCO, and documents the agreement and understanding of the other department's PCO.
- Part C identifies the type(s), category/sub-category(ies), and dollar threshold levels of purchasing authority the department is requesting.
- Part D obtains documents necessary for the DGS to evaluate the department's PAA.
- Part E obtains information necessary for the DGS to evaluate the department's PAA and to verify that the department is aware of the specific purchasing authority requirements.

The PAA is designed to support the DGS approval of a department's PAA and to enable a department to expand its purchasing authority program as staff develop their expertise and/or become certified under the DGS/PD Cal-PCA training certification program. The PAA also allows departments to continue to procure as previously authorized.

1.A5.2 Renewing existing purchasing authority

Effective January 1, 2010, the DGS began transitioning to a new streamlined process for departments to renew their delegated purchasing authority. Departments shall submit either a PAA or a Purchasing Authority Verification Form (PAVF) to renew their delegated purchasing authority.

Departments that were selected to submit a PAA during the 2010 transition year should submit a PAVF in 2011 by the 15th day of the month which precedes their purchasing authority expiration month. Departments would then alternate between submitting the PAA and the PAVF each year.

Departments that were selected to submit a PAVF during the 2010 transition year should submit a PAA in 2011 by the 15th day of the month which precedes their purchasing authority expiration month. Departments would then alternate between submitting the PAVF and the PAA each year.

Click here to access the: PAVF.

For questions, contact PAMS.

Warning:
A department's failure to submit a renewal PAA or PAVF on a timely basis will result in a lapse of purchasing authority and, subsequently, the inability to conduct procurement activities until the department has submitted the renewal PAA or PAVF and PAMS has completed its review and approval.

1.A5.4 Requesting increased authority

Departments interested in requesting an increase in competitive purchasing authority may request an increase by:

- Completing the Purchasing Authority Increase Request Form (PAIR).
- Submitting the PAIR to the PAMS.

Once the PAIR is received by the PAMS, the department may be asked to complete the following:

- Request for One-Time Procurement to Increase Authority, Non-IT Goods
- Request for One-Time Procurement to Increase Purchasing Authority, Information Technology

Departments requesting an increase to the formal competitive dollar thresholds may be required to conduct a single competitive solicitation under PAMS oversight, including submission of specified documentation during the procurement process for PAMS concurrence. Upon successful completion of the single procurement, the department will be granted the general increase in competitive purchasing authority.

It is recommended that the department discuss such a request with PAMS prior to completing the Request. The PAMS encourages the departments to submit the PAIR with their renewal package to reduce workload for the department and for the DGS/PD.

1.A5.5 Request for One-Time Procurement format

The request to increase purchasing authority for a One Time Procurement is available in two formats. One format requests authority to procure non-IT goods valued greater than $100,000.00. The second format requests authority to procure IT goods and services greater than $1,000,000.00. The request enables the DGS' approval of a department's request to expand its purchasing authority program for one purchase while staff develop their expertise and/or become certified under the DGS/PD Cal-PCA training certification program.

Click here to access:
The Request for One-Time Procurement to Increase Purchasing Authority, Non-IT Goods in Word format

The Request for One-Time Procurement to Increase Purchasing Authority, Non-IT Goods in PDF format

The Request for One-Time Procurement to Increase Purchasing Authority, IT Goods and Services in Word format

The Request for One-Time Procurement to Increase Purchasing Authority, IT Goods and Services in PDF format

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Topic 6 – Assigning Purchasing Authority Numbers

1.A6.0 What is the purpose of the purchasing authority number?

The purchasing authority number identifies the department's authority to conduct a solicitation and/or execute a purchase document for specific types, categories or sub-categories, and dollar thresholds of goods and/or services. The purchasing authority number also informs the State Controllers Office (SCO) that the department has the authority to execute purchase documents, enabling the SCO to process payments to suppliers.

1.A6.1 How does the DGS/PD differentiate between the two types of purchasing authority?

Upon purchasing authority approval, PAMS will assign departments a purchasing authority (PA) number(s), identifying the type of purchasing authority activity, non-IT and/or IT, the department has been approved to conduct. The numbering format for the two types of purchasing authority is similar, while allowing for differentiation.

For both PA types, the numbering format is limited to a maximum of 12 alpha/numeric characters and hyphens as follows:

- The first character is always a "9" which denotes purchasing authority.
- The second character is normally either a *"G" for non-IT* or an *"I" for IT*, followed by a hyphen. However, purchasing authority for procurement activities conducted by a data center and associated with data center services, is identified by a "D"
- The next four characters identify the purchasing authority expiration month and year, followed by a hyphen. Purchasing authority always expires on the last day of the month.
- The next three characters identify the department by a representative acronym, followed a hyphen. This is the department that has been granted the purchasing authority.
- The remaining three characters identify whether the authority is a headquarters location or another location other than headquarters.

1.A6.2 Example #1 non-IT PA number

Purchasing Authority Number:
9G-0611-DGS-HQ1
Translation:
Department of General Services, headquarters location, non-IT purchasing authority, expires June 30, 2011.
Definition
9 = Purchasing authority
G = Non-IT purchasing authority type
06 = Purchasing authority expires June 30
11 = Purchasing authority expires 2011
DGS = Department of General Services
HQ1 = Headquarters location

1.A6.3 Example #2 IT goods and services PA number	Purchasing Authority Number 9I-0611-DGS-HQ1 **Translation:** Department of General Services, headquarters location, IT purchasing authority, expires June 30, 2011. **Definition**: 9 = Purchasing authority I = IT purchasing authority type 06 = Purchasing authority expires June 30 11 = Purchasing authority expires 2011 DGS = Department of General Services HQ1 = Headquarters location
1.A6.4 Example #3 non-IT PA number assigned to a location other than a headquarters site	Purchasing Authority Number 9G-0611-DGS-FLT **Translation:** Department of General Services, Office of Fleet Administration, non-IT purchasing authority, expires June 30, 2011. **Definition** 9 = Purchasing authority G = Non-IT purchasing authority type 06 = Purchasing authority expires June 30 11 = Purchasing authority expires 2011 DGS = Department of General Services FLT = Office of Fleet Administration
1.A6.5 Example #4 IT PA number assigned to a data center to procure for another department related to data center services	Purchasing Authority Number 9D-0611-DTS-DGS **Translation:** Department of Technology Services, IT purchasing authority, to procure for the Department of General Services related to data center services, expires June 30, 2011. **Definition** 9 = Purchasing authority D = IT purchasing authority type 06 = Purchasing authority expires June 30 11 = Purchasing authority expires 2011 DTS = Department of Technology Services DGS = Department of General Services

1.A6.6 When is the PA number used?

The PA number must be entered on every purchase document a department executes, regardless of dollar value, under approved purchasing authority. This number is in addition to any other purchasing category/sub-category contract numbers required by the DGS/PD policies and procedures.

Departments authorized both types of purchasing authority (non-IT and IT) will be assigned a separate PA number for each purchasing authority type. Care must be taken to ensure the applicable PA number is entered on the purchase document in accordance with the applicable purchasing authority type.

Section B

Purchasing Authority Application

Overview

Introduction

In accordance with the PCC sections 10333 and 12100, the DGS may delegate its purchasing authority to departments. The DGS is accountable and responsible for the purchasing authority it delegates. The PAA is designed to provide the DGS with the information it needs to determine if a department has the expertise, experience, knowledge, and internal procurement policies and procedures to support the type(s), category/sub-category(ies), and dollar threshold limits of authority requested.

This section describes how to complete the PAA. The Department should also refer to Section A of this chapter for general information regarding purchasing authority.

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Topic 1 – Part A: Department Information and Approvals

1.B1.0 Introduction

This topic describes how to complete Part A of the Purchasing Authority PAA.

1.B1.1 What is the purpose of Part A?

The purpose of Part A is to:

- Identify the department requesting the purchasing authority.
- Identify the department's current purchasing authority, if applicable.
- Identify the PCO and the PAC(s).
- Obtain the PCO and PAC commitment to adhere to the purchasing authority requirements contained in the SCM.

1.B1.2 When is Part A submitted?

Part A must be submitted when the department is:

- Requesting new purchasing authority.
- Designating a new PCO or changing any of the PCO's information.
- Designating a new PAC or changing any of the PAC's information.

1.B1.3 PAA Part A

Click here to access:
the Purchasing Authority Application, Part A in Word format
the Purchasing Authority Application, Part A in PDF format

1.B1.4 Department information

The area of Part A that identifies the department requesting purchasing authority is titled "Purchasing Authority is Requested for Procurement Activities Conducted by". This refers to the department that will be granted the purchasing authority.

"Agency" is the cabinet-level entity to which the department reports (e.g. Resources Agency, Health, and Human Services Agency). If the department reports directly to the Governor, enter "Direct Report to the Governor". If a department's executive officer is a constitutional officer, enter "Constitutional Officer".

"Department" is a department, board, commission, or office (e.g. Department of Aging, Air Resources Board, Commission on the Status of Women, Office of Emergency Services). A department reports to one of the following as identified in the previous paragraph:

- An agency
- The Governor
- A constitutional officer

"Sub-Department" is an area within a department previously granted purchasing authority that is separate from and in addition to the purchasing authority granted to the department's headquarters (e.g. veterans home, developmental center, mental hospital, district agricultural association).

Note: The DGS/PD no longer grants new purchasing authority at the sub-department level. If a department has a business need for purchasing authority at the sub-department level, the department should discuss the department's business need with PAMS prior to preparing and submitting an PAA.

1.B1.5 Current purchasing authority

The area of Part A that identifies the department's current purchasing authority is titled "Current Purchasing Authority Numbers, if Applicable." Enter all of the department's current purchasing authority numbers, separating each number by a comma. The following are examples of current types of purchasing authority:

- Non-IT
- IT
- Goods base
- Goods expanded

If the department does not currently have purchasing authority, enter "None" or "N/A".

Note: The DGS/PD now grants two types of purchasing authority-non-IT and IT. A separate PAA is no longer required for base vs. expanded authority. A separate PAA is also not required to apply for authority to use the LPAs. See Section A of this Chapter for more information.

1.B1.6 PCO and PAC information

The area of Part A that identifies the department's PCO and/or PAC(s) encompasses the majority of Part A. The following is an explanation of how to complete this area.

- All PCO information must be completed, including the PCO's signature. The signature must match the PCO "Name".
- If the department is designating a PAC, all PAC information must be completed for each purchasing authority type(s) requested (non-IT and/or IT), including the PAC's signature. The signature must match the PAC "Name".
- Addresses, mailing, and physical, must include the street address or P.O. Box as applicable, city, state, and zip code. A P.O. Box may not be entered for the physical address. Phone and fax numbers must include the area code.
- If the department is designating a new PCO and/or PAC or revising the PCO and/or PAC information, the appropriate box in the applicable shaded header area must be marked and the PCO and/or PAC information must be completed.

Topic 2 – Part B: Procuring for another Department

1.B2.0 Introduction

Departments must obtain the DGS/PD approval to purchase on behalf of another department. Submission of Part B of the PAA is required to request the DGS/PD approval.

1.B2.1 What is the purpose of Part B?

The purpose of Part B is to:

- Identify that the department requesting purchasing authority (referred to as Dept. A) will conduct procurement activities for another department (referred to as Dept. B).
- Identify Dept. B and Dept. B's PCO.
- Document Dept. B's authorization for Dept. A to conduct procurement activities for Dept. B.

Document the understanding of Dept. B's PCO that Dept. A will be granted the purchasing authority, not Dept. B.

1.B2.2 When is Part B submitted?

Part B must be submitted when:

- Dept. A is renewing existing purchasing authority to procure for Dept. B.
- Dept. A is requesting new purchasing authority to procure for Dept. B.
- Dept. B designates a new PCO or any of Dept. B's PCO information changes.

Dept. A must submit a separate Part B for each department for which it will procure. Part B must normally be submitted with Dept. A's renewal PAA. The submission of Part B during the term of Dept. A's purchasing authority for a newly identified Dept. B will be on an exception basis only.

1.B2.3 PAA Part B

Click here to access:
the Purchasing Authority Application, Part B in Word format
the Purchasing Authority Application, Part B in PDF format

1.B2.4 Authority to procure for another department

To assist primarily small departments and data center customers with their business needs, the 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.B2.5 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.B2.6 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, unless the procuring department is a data center or the department for which procurement activities will be conducted does not reside organizationally within an Agency.
- If the procuring department is a data center:
  - The data center must have approved Data Center Interagency Agreement Purchasing Authority (DIA).
  - The data center must have an interagency agreement with the department to provide the department with data center services.
  - The acquisition(s) must be directly related to the data center services provided under the interagency agreement.
  - The acquisitions may be for only IT goods and services.
- If the department for which procurement activities will be conducted does not reside organizationally within an Agency, a justification must be submitted supporting the business need for the procuring department conducting procurement activities for the other department, as well as the reason(s) for not submitting the procurement activities to the DGS/PD.
- 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.

Note: The department for which procurement activities will be conducted may request purchasing authority that is separate and in addition to the authority granted to a procuring department.

1.B2.7 Dept. A and Dept. B information

The area of Part B that identifies Dept. A is titled "Purchasing Authority is Requested for Procurement Activities Conducted by". This refers to the department that is requesting and will be granted purchasing authority.

The area of Part B that identifies Dept. B is titled "Procurement Activities to be Conducted for". This refers to the department for which Dept. A will conduct procurement activities. Approval of the PAA does not grant Dept. B purchasing authority.

For both Dept. A and Dept. B, "Agency" is the cabinet-level entity to which the department reports (e.g. Resources Agency, Health, and Human Services Agency). If the department reports directly to the Governor, enter "Direct Report to the Governor". If a department's executive officer is a constitutional officer, enter "Constitutional Officer".

For both Dept. A and Dept. B, "Department" is a department, board, commission, or office (e.g. Department of Aging, Air Resources Board, Commission on the Status of Women, Office of Emergency Services). A department reports to one of the following as identified in the previous paragraph:

- An agency
- The Governor
- A constitutional officer

For Departments A and B, purchasing authority for one department to procure for another is not allowed at the sub-department level.

1.B2.8 Current purchasing authority

The area of Part B that identifies Dept. A's current purchasing authority to procure for Dept. B is titled "Current Purchasing Authority Numbers, if Applicable." Enter all of the department's current purchasing authority numbers, separating each number by a comma. If the department does not currently have purchasing authority, enter "None" or "N/A".

1.B2.9 PCO and PAC information

The first area of Part B related to PCO and PAC information is the area that identifies Dept. B's PCO and documents Dept. B's authorization for Dept. A to conduct procurement activities for Dept. B. The next area of Part B related to PCO and PAC information is the area that documents Dept. A's PCO and PAC's understanding of Dept. A's responsibilities in conducting procurement activities for Dept. B. The following is an explanation of how to complete these areas.

- All PCO information for Dept. B must be completed, including the PCO's signature. The signature must match the PCO "Name".
- The PCO information for Dept. A must be completed only if Part B is not submitted with Dept. A's purchasing authority renewal (Dept. A has already provided this information in Part A). If it is necessary to complete Dept. A's PCO information in Part B, all PCO information must be completed, including the PCO's signature. The signature must match the PCO "Name".
- The PAC information for Dept. A must be completed only if Part B is not submitted with Dept. A's purchasing authority renewal (Dept. A has already provided this information in Part A). If it is necessary to complete the Dept. A's PAC information in Part B, all PAC information must be completed for each purchasing authority type(s) requested, including the PAC's signature. The signature must match the PAC "Name".
- Addresses, mailing, and physical, must include the street address or P.O. Box as applicable, city, state, and zip code. A P.O. Box may not be entered for the physical address. Phone and fax numbers must include the area code.

If Dept. B is designating a new PCO or changing the current PCO information, Dept. A must submit a new Part B that includes the required information as stated previously. The appropriate box in the shaded header area for the Dept. B PCO must be marked.

Topic 3 – Part C: Purchasing Authority Types, Categories or Sub-Categories, and Dollar Thresholds Requested

1.B3.0 Introduction

This topic describes how to complete Part C of the PAA.

1.B3.1 What is the purpose of Part C?

The purpose of Part C is to identify the types, categories or sub-categories, and dollar thresholds of purchasing authority the department is requesting.

1.B3.2 When is Part C submitted?

Part C must be submitted when the department is:

- Renewing existing purchasing authority
- Revising existing purchasing authority
- Requesting new purchasing authority

If the department that is requesting the purchasing authority will conduct procurement activities for another department, it is not necessary to submit a separate Part C for the other department.

1.B3.3 PAA Part C

Click here to access:
the Purchasing Authority Application, Part C in Word format
the Purchasing Authority Application, Part C in PDF format

1.B3.4 Non-IT table vs. IT table

While the categories or sub-categories within each of the non-IT and IT tables are not identical, they are very similar. Therefore, the general instructions that follow are the same for both tables. If the department is requesting both types of purchasing authority, complete both tables. If the department is requesting only one type of purchasing authority, complete only the applicable table.

A primary difference between the two tables is the ability under the non-IT purchasing authority to request formal competitive solicitation authority for a specific category/sub-category(ies) of goods, rather than a general expansion of authority. If the department is requesting this type of authority, the related box under the non-IT table must be completed. The ability to request this authority for a specific category/sub-category(ies) is not available for IT purchasing authority.

1.B3.5 Which types and category(ies) or sub-categories of authority should the department request?

It is the department's decision whether to request authority for one or both types of authority, as well as whether to request authority for all, some or none of the categories or sub-categories of authority. The DGS/PD cannot make this decision for the department. The department must specify the type(s), category(ies) or sub-category(ies), and dollar threshold(s) for which it is requesting authority.

1.B3.6 New or renewal PAA

The shaded header in each table provides selections for the department to identify whether the PAA is for new purchasing authority, to renew existing purchasing authority or to revise existing purchasing authority. The department must select and check one of these boxes in each table, as applicable.

1.B3.7 Available dollar thresholds (rev 6/13)

The dollar values in the "Available Dollar Thresholds" column reflect the dollar thresholds currently available to departments. This information is provided for ease of reference by the department. For each category/sub-category, except competitive, the department may apply for the dollar thresholds listed or may elect to not apply for a category/sub-category(ies). For competitive, the department has the following choices:

- Minimum, which is the lowest dollar threshold of authority available
- Introductory, which is the entry dollar threshold for IT purchasing authority. This threshold is for informal solicitations. This choice is not available for non-IT purchasing authority.
- Standard, which is the general dollar threshold of authority available, this threshold is for informal solicitations.
- Formal, which does not have a dollar threshold. The threshold for formal solicitations is considered and granted on a case-by-case basis

The requirements for obtaining purchasing authority for any category/sub-category are commensurate with the applicable dollar threshold. Purchasing authority for contracts identified as exempt by statute or by policy will be granted at the same dollar threshold granted for competitive solicitations.

1.B3.8 Current approved dollar thresholds

The dollar values entered in the "Current Approved Dollar Thresholds" column reflect the department's current authority for each category/sub-category. The department must make an entry in this column for each category/sub-category. If the department does not have current authority for a category/sub-category(ies), enter "None". Completion of this column will help to ensure that the department requests authority commensurate with its current authority or that the department requests an increase that is relative to its current authority.

1.B3.9 Dollar thresholds requested

The dollar values entered in the "Dollar Thresholds Requested" column reflect the authority for each category/sub-category for which the department is requesting authority. The department must make an entry in this column for each category/sub-category for which it is requesting authority. If the department is not requesting authority for a category/sub-category (ies), enter "None".

The department may enter only the dollar value choices identified in the column titled "Available Dollar Thresholds" or "None". Entry of any other dollar value or multiple dollar values for a specific category/sub-category will result in authority granted commensurate with the "Available Dollar Thresholds" column or as determined by review of the department's complete PAA.

Note: The department should review Section A of this Chapter prior to completing this column to gain a clear understanding of purchasing authority types, categories or sub-categories, and dollar thresholds.

1.B3.10 Request for increased purchasing authority

Departments interested in requesting an increase in competitive purchasing authority may request an increase by:

- Completing the Purchasing Authority Increase Request Form (PAIR).
- Submitting the PAIR to the PAMS.

Once the PAIR is received by the PAMS, the department may be asked to complete the following:

- Request for One-Time Procurement to Increase Authority, Non-IT Goods
- Request for One-Time Procurement to Increase Purchasing Authority, Information Technology

Departments requesting an increase to the formal competitive dollar thresholds will be required to conduct a single competitive solicitation under PAMS oversight, including submission of specified documentation during the procurement process for PAMS concurrence. Upon successful completion of the single procurement, the department will be granted the general increase in competitive purchasing authority.

It is recommended that the department discuss such a Request with PAMS prior to completing the Request.

See Topic 5 of section A for the applicable Request for One-Time Procurement.

Topic 4 – Part D: Required Attachments

1.B4.0 Introduction

This topic describes how to complete Part D of the Purchasing Authority PAA.

1.B4.1 What is the purpose of Part D?

The purpose of Part D is to obtain information necessary to evaluate the department's PAA.

1.B4.2 When is Part D submitted?

Part D must be submitted when the department is:

- Renewing existing purchasing authority.
- Requesting new purchasing authority.

1.B4.3 PAA Part D

Click here to access:
the Purchasing Authority Application, Part D in Word format
the Purchasing Authority Application, Part D in PDF format

1.B4.4 Policies and procedures

The department must submit current procurement policies and procedures relevant to the type(s), category/sub-category(ies), and dollar levels for which authority is requested. A department must submit its own procurement policies and procedures. It may not submit another department's procurement policies and procedures or a copy of this Manual to fulfill this requirement.

The department's policies and procedures must be included with the department's PAA and identified as Attachment D1.

1.B4.5 Conflict of interest statement

The department must indicate whether it uses the sample conflict of interest statement provided in Section A of this chapter or a conflict of interest statement created by the department. If the department does not use the sample conflict of interest statement provided in Section A of this chapter, the department must submit the department's conflict of interest statement with the PAA. The department's conflict of interest statement must reference or include GC section 19990.

Do not submit signed statements with the PAA. Signed statements must be retained by the department and made available upon request by the DGS/PD.

If applicable, the department's conflict of interest statement must be included with the department's PAA and identified as Attachment D2.

1.B4.6 Audits

If there has been an audit(s) of the department's procurement and/or contracting program(s) since submission of the department's last PAA, provide copies of the relevant pages of the audit report(s). Relevant pages include the cover page, table of contents, and pertinent pages that relate to the department's procurement and contracting program, including audit findings and departmental responses. For findings that are not documented as resolved, attach a description of the status of actions the department has taken or plans to take to correct the findings.

Reports include, but are not limited to, those prepared by the DGS Office of Audit Services, Bureau of State Audits, and departmental internal audits. A copy of the relevant pages of the audit(s) must be included with the department's PAA and identified as Attachment D3.

1.B4.7 Reporting
(rev 7/11)

Review of the department's PAA includes verification of the department's transaction reporting, see Chapter 12. If the department is aware of unreported transactions, the department must submit those transactions with its PAA. A copy of the unreported transactions must be included with the department's PAA and identified as Attachment D4a.
Review of the department's PAA includes verification of the department's Prescription Drugs Purchased Outside of the Prescription Drug Program Quarterly Reporting, see Chapter 12. In accordance with GC section 14977.5 the following departments are required to participate in the DGS/PD prescription drug bulk purchasing program:

- Corrections and Rehabilitation
- Developmental Services
- Mental Health

Any other department may elect to participate in the prescription drug bulk purchasing program.

The unreported Prescription Drugs Purchased Outside of the Prescription Drug Program Quarterly Report(s) must be included with the department's PAA and identified as Attachment D4c.

1.B4.8 STD.65 alternate version

The department must identify whether it uses:

- The State's Purchasing Authority Purchase Order (STD.65)
- An alternate version of the STD.65 approved by the DGS/PD's Forms Coordinator
- An alternate version of the STD.65 and approval to use the alternate version has not been requested from the DGS/PD's Forms Coordinator

If the department uses an alternate version of the STD.65, and the department has not requested approval from the DGS/PD's Forms Coordinator to use the alternate version, even if the department considers it to be an exact replica of the STD.65, the department must submit a copy of the alternate version with its PAA. The department must request new approval of its alternate version if the State's STD.65 is revised. The alternate version of the STD.65 must be included with the department's PAA and identified as Attachment D5.

Note: If the department uses the DGS/PD's PIN system, the department should state that it uses the State's STD.65.

1.B4.9 The DGS Bill Codes

The department must submit a list of all the DGS Bill Codes (Customer Account Numbers) the department will charge against under its purchasing authority.

Note: The department must notify PAMS of any changes to this list prior to using additional bill codes under its purchasing authority. The bill code list must be included with the department's PAA and identified as Attachment D6.

Topic 5 – Part E: Required Responses

1.B5.0 Introduction

This topic describes how to complete Part E of the PAA.

1.B5.1 What is the purpose of Part E?

The purpose of Part E is to obtain information necessary to evaluate the department's PAA and to verify that the department is aware of specific purchasing authority requirements.

1.B5.2 When is Part E submitted?

Part E must be submitted when the department is:

- Renewing existing purchasing authority
- Requesting new purchasing authority

1.B5.3 PAA Part E

Click here to access:
the Purchasing Authority Application, Part E in Word format
the Purchasing Authority Application, Part E in PDF format

1.B5.4 Responses

The department must provide thorough and complete responses. The responses must be entered into Part E.

The completed Part E must be included with the department's PAA.

Topic 6 – PAA Submission

1.B6.0 When to submit

Renewal PAAs must be submitted to and received by the 15th of the month preceding the month the department's purchasing authority expires. Late submission will result in a lapse of the department's purchasing authority. PAAs for new purchasing authority may be submitted at any time. See Section A of this Chapter.

1.B6.1 Where to submit

Submit the PAA to:

By IMS:
Z-1
DGS/Procurement Division
Purchasing Authority Management Section
Attn: PAA
707 Third Street, Second Floor South MS 2-208
West Sacramento, CA 95605

By Mail:
DGS/Procurement Division
Purchasing Authority Management Section
Attn: PAA
707 Third Street, Second Floor South MS 2-208
West Sacramento, CA 95605

Hand Delivered:
DGS/Procurement Division
Purchasing Authority Management Section
Attn: PAA
707 Third Street, Second Floor South MS 2-208
West Sacramento, CA 95605

Topic 7 – Approvals

1.B7.0 Approvals

The department will be notified of approval of its PAA prior to expiration of its current purchasing authority if the PAA is submitted on time. The department will be notified of approval of a new PAA or of a PAA to renew its purchasing authority prior to the department's new effective date or renewal date. Incomplete and insufficient PAAs will be returned to the requesting department.

Approval notifications 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. It is Dept. A's responsibility to notify Dept. B of the approval.

The DGS/PD also notifies the following entities of an PAA approval:

- State Controllers Office
- DGS Office of Audit Services
- DGS/PD, Acquisitions Branch
- DGS/PD, CAL-Card Program

Section C

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.

Contents

This section contains the following topics:

Topic	See Page
Topic 1 – Purpose of Department Procurement Policies and Procedures	49
Topic 2 – Characteristics of Good Policies and Procedures	54

Topic 1 – Purpose of Department Procurement Policies and Procedures

1.C1.0 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.C1.1 Purpose

The purpose of a department purchasing authority policy and procedure manual, hereafter, referenced as a procurement manual, is to familiarize department employees (whether a buyer or a department 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.C1.2 Policy vs procedure

A department 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

1.C1.3 Benefits

A department procurement manual serves as a daily desktop manual to identify and instruct personnel on how to properly conduct a purchasing activity in accordance with the department's authorized purchasing authority(ies) type(s), category/sub-category(ies), and dollar thresholds from the initial request through closing of an activity.

The procedure manual may also include procedures for how the department processes purchase requests that exceed the department's purchasing authority but is within the DGS/PD authority.

Example:
A procedure on how to prepare, route for signature, and submit the DGS/PD purchase estimate.

Copies of the department procurement manual should be at the desk of each buyer and made available to all participants in the procurement process.

The table below presents some of the benefits that can be realized when a department develops its own procurement manual:

A department procurement manual provides for	That benefits the department by
Codes, regulations, and requirements	• Meeting the statutory requirement that departments have written policies and procedures specific to its authorized purchasing authority(ies). • Complying with purchasing authority requirements and ensuring the consistent quality of your department's purchasing activities.

1.C1.3 Benefits (continued)

Accountability	• Providing clearly written procurement polices and procedures for both buyers and department customers that are held accountable for adherence to policies and procedures. • Identifying the players in the organization and their role in the procurement process. • Communicating your rules and expectations to participants in the procurement process as it relates to your purchasing authority.
Ease of Access	• Providing users with what is important and what isn't important in conducting a purchasing activity. • Eliminating information overflow in establishing a single source for buyers and department users to make informed decisions within the parameters of their department's authorized purchasing authority.
Advantages	• Providing further instructions beyond the SCM that specifically address department procurement business practices. • Helping to make staff more effective, efficient, and consistent in managing the challenges of the department's procurement activities. • Providing standardized processes and improve overall workflow efficiency.
Compliance reviews	• Describing what to look for when conducting quality assurance reviews and how to evaluate results for compliance. • Supporting purchasing actions that may require clarification for a compliance finding. • Providing instruction on how the official procurement file is set up. • Explaining any exception that is outside of or in addition to the SCM requirements. • Providing a resource for internal audit processes.
Training	• Instructing all levels of a department on how to conduct specific purchasing activities as it relates to a department's authorized purchasing authority(ies). • Providing necessary information for new staff.

Topic 2 – Characteristics of Good Policies and Procedures

1. C2.0 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.C2.1 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 (Part A), review Section A of this chapter to determine what minimum requirements must be included in their department's procurement manual.

Note: 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.C2.2 Key features

Key features of the department procurement manual are:

- Title page
- Table of contents for the entire manual
- A table of contents for each section of manual
- Introduction
- Simple numbering system - chapter, section, page, etc.
- Provide for a clear distinction in policies and types of purchasing authorities if the department holds both types of purchasing authority
- Provide information on how updates to the manual will occur
- Set a standard schedule to review and update the procurement manual at a frequency that supports your business processes and coincides with preparing the department's purchasing authority renewal schedule
- Provide information on the availability of the manual
- Create a glossary of terms that may be unique to the department.

Note: Procurement terminology and definitions should be consistent with the Cal-PCA glossary

- Create an acronym list typical to the department terminology
- Include in the procurement manual any applicable forms and instructions that are used or referenced in the procurement manual.

1.C2.3 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.

Click here to view a sample policy format.

1.C2.4 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.

A good procedure section should also include topics such as:

- Stating normal lead times for different types of purchases, purchasing authority categories or sub-categories and their respective procurement approaches, and include an emphasis that the lead times must be taken into account in planning for the receipt of goods and services
- Purchasing entities organizational structure
- Signature authorization listing, who can sign what and when
- Required approvals, both internal, and external
- Certification of availability of funds
- Approval and payment of invoices
- Receiving
- Setting up official procurement files

1.C2.5 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.C2.6 Tips for a useful manual
(rev 6/14)

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.

Click here to access a list of tips for developing a procurement manual.

Click here to access documentation used by PAMS in reviewing department's policies and procedures.

Chapter 2

Procurement Planning

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Chapter 2

Procurement Planning

Overview

Introduction

The purpose of this chapter is twofold. The first is to describe the role of the buyer, including conduct, ethics and good business practices during and after the procurement process. The second is to describe the preliminary considerations and activities that ensure the success of any procurement effort. These considerations include determining that the transaction is appropriately classified as information technology, identifying pre-procurement approval requirements and processes, and selecting the appropriate acquisition approach for a purchase.

Contents

This chapter contains the following sections:

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Section A

Getting Started

Overview

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
- Pay attention to details.

Contents

This section contains the following topics:

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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 and to place the State's interest above their own interests. Additionally buyers have a fiduciary responsibility to safeguard the States 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 State 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

GC 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. In accordance with GC section 19990(f) 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
(rev 3/11)

In accordance with the California State Constitution, Article 16, section 6, any gift of public funds is strictly prohibited. To not be considered gifts of public funds, all expenditures must support the department's mission (function and purpose) and benefit the State.

This includes any advance payments or pre-payments made to a contractor before work has been performed or to a supplier before all products or services have been received. See Chapter 9 for additional information.

Note: Per the Governor's memo 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 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, the agreement must be documented by execution of a purchase document.

2.A2.4 Consider before accepting

Before accepting any suppliers' goods and/or services offered at no cost or obligation the perception of the acceptance to other suppliers must be considered, i.e., how does the department remain fair and impartial if a decision is eventually made to solicit the product?

Warning: If a decision is made to accept free equipment, the purchase document must state that by accepting the equipment at no cost, the State has no further obligations or hidden costs associated with acceptance.

Section B

Formulating the Acquisition Approach

Overview

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 goods or services)
- What pre-procurement review and approvals are necessary either by State purchasing policies or departmental policies and procedures
- The most appropriate acquisition approach (i.e. competitive, noncompetitive, an existing source such as a leveraged procurement agreement [LPA] order)

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

Contents

This section contains the following topics:

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Topic 1 – Classifying the Purchase

2.B1.0 Importance of properly classifying purchases

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

- Apply the appropriate laws, regulations, policies, and procedures (e.g., selection of the correct solicitation type, identification of the correct advertising threshold)
- Identify whether or not the department has the applicable purchasing authority to conduct the purchase activity or if it requires purchase by the DGS/PD
- Secure additional approvals and/or waivers as applicable

The impact of not correctly classifying a purchase may result in:

- Delaying a department's program or project
- Waste of time and effort, ultimately wasting taxpayer money
- Loss of funding
- Disputes, protests, and/or lawsuits
- Illegal contracts

2.B1.1 Examples of IT purchases

IT goods and/or services are tangible products or services used mainly for information technology.

Examples:

Personal computers, mainframes, software development or independent verification and validation services. Refer to "Topic 2-Understanding Information Technology Goods and Services" of this chapter for additional information regarding IT goods and/or services.

2.B1.2 Determine the main purpose

When determining whether a contract is for IT, one must consider the predominant purpose or value of the activity, and whether information technology 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, e.g. contract to manage a health benefits program may utilize software and computer hardware to fulfill services required.

Example: A contract for installing cable for a local area network includes purchase of the wiring and plugs, but also includes installation. The primary value is getting the cable installed, so this would most likely be a service or Public Works contract if it were being done in a public structure.

2.B1.3 Example

Ten personal computer (PC) keyboards are purchased for replacement stock to issue when an existing keyboard fails. The purchase of PC keyboards is considered 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.

2.B1.4 Non-IT vs. IT

Many items require IT technologies to function, yet they may not be considered to be IT. If the item is determined to be a non-IT good, the transaction will be treated as a "non-IT good" and be acquired under non-IT goods purchasing laws. See SCM Vol. 2 for information on non-IT goods purchasing.

2.B1.5 Distinguishing IT goods from IT services

When determining if an acquisition is for IT goods only, 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? If the main value is an IT good with minimal or no IT services, it is handled as an IT good.
- What is the main value of the contract – the good or the service? If the main value is the IT service, the transaction should be treated as an IT service contract.

Note: Large-scale system integration projects do not need to be distinguished as either goods or services but the acquisition for such projects must be conducted using a value-effective approach.

2.B1.6 Example of IT goods vs. IT services

<u>Example:</u>
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.

2.B1.7 Help for classifying purchases

Departments that need assistance to determine the classification of a purchase 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: The DGS/PD/PAMS
- Purchases conducted by the DGS/PD: DGS/PD/TAB
- Purchases that may require a feasibility study report (FSR): The California Technology Agency (Technology Agency)

Note: The ultimate decision for the classification of IT acquisition resides with the DGS Deputy Director, Procurement Division.

Topic 2 – Understanding Information Technology Goods and Services

2.B2.0 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:
  - Feasibility study preparation
  - 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.B2.1 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.B2.2 IT supplies

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

- Documents, i.e., standards and procedures manuals, contractor supplied systems documentation and educational or training manuals.
- Equipment supplies, i.e. 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.B2.3 IT goods not considered supplies

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

<u>Note</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.B2.4 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 3 – Acquisition Planning

2.B3.0 Start planning early

Acquisition planning commences with a legislated directive or when a concept or a need surfaces. It includes identification of what is needed, when it is needed, how it will be acquired and by whom, and determination of needed approvals (e.g., creation of a feasibility study report. 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 goods or IT 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).

Note: Departments are advised to involve the DGS/PD early in the acquisition process regarding IT procurement strategy. Examples include when a feasibility study report is being created and prior to the creation of an Information Technology Procurement Plan (ITPP), before an evaluation or assessment methodology is formalized.

2.B3.1 Initial review

The first step in conducting a procurement is the initial review of a purchase request (purchase requisition, purchase estimate, 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 approval 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, Topics 1 - 8 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.B3.2 Legal participation (rev 12/12)

Legal participation should be sought as early in the project 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.B3.3 Acquisition approach to meet needs

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

- What is the Statement of Work (SOW)?
- Is the acquisition an emergency purchase as defined by PCC section 12102(a)(2)?
- Can civil servants, as opposed to private companies, satisfactorily perform the services?
- Can another State department provide the product or service through an interagency agreement or alternate contracting means?
- Does the purchase require the use of any mandatory purchasing processes such as use of existing telecommunications contracts?
- Is the request within the scope of the department's approved purchasing authority?
- Can you consolidate other requests for like equipment into a single purchase?
- 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?
- What available purchasing approach can effectively meet the department's needs at the least cost in terms of time and resources?
- Can the functional requirements of the request be met through an LPA (i.e., CMAS, Master Agreement, Statewide Contract or State Price Schedule)?
- Are there certified small businesses, microbusinesses or certified DVBEs that can be solicited to provide the IT good and/or service?
- Can the department's procurement needs and purchasing goals both be met by conducting a small business (SB) and DVBE procurement based upon GC section 14838.5 (SB/DVBE Option)?
- Is there a known supplier market and can the acquisition best be met through open competition?
- 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?
- What risk factors are inherent to the purchase and what steps can be taken in advance to mitigate them?

2.B3.4 Hybrid RFP Procurement Process and Development (added 9/11)

As warranted, and generally only for the most complex, risk sensitive IT procurements, the DGS/PD will consider using a hybrid RFP procurement process that includes a mixture of techniques from the traditional ten section RFP process and some or all of the following elements:

- Accelerated RFP development sessions
- Solution based requirements
- Multiple proposal stages

Due to the complexity of the hybrid processes, only the DGS/PD has the authority to conduct such procurements. Departments that wish to partner with the DGS to use any of the elements of the hybrid RFP processes, including use of a multiple proposal stages approach, are encouraged to contact the DGS/PD/Technology Acquisitions Branch (TAB) early to discuss their requirements.

For additional information on the hybrid RFP procurement process, refer to Chapter 4.

2.B3.5 Specifications development

Specifications (or the State's needs) for procurements conducted using a Request for Proposals (RFP) are more general in nature than those used in Invitation for Bids. Rather than specifying a specific product design, an RFP describes a problem to be solved or the goal to be achieved thus allowing bidders to propose a solution.

2.B3.6 Specifications development assistance

The DGS/PD Engineering Services is available to assist departments in providing technical knowledge and assistance in planning efforts and specification preparation.

Click here to access the DGS/PD Engineering Services web page.

Topic 4 – Other Considerations Affecting the Planning Process

2.B4.0 Promotional materials

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

2.B4.1 Requests for reasonable accomo-dation 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.B4.2 Installation of physical layer cable

Installation of physical layer cable (all electrical and mechanical aspects relating to the connection of a device to a transmission medium, i.e., connection of a workstation to a LAN) is considered 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.

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

2.B4.3 Contracted services (rev 7/12)

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 GC section 19130 (a) or (b) are met.

GC 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.

GC section 19130 (b) permits contracting for personal services when any of the requirements of GC section 19130 (b) are met.

Contracts awarded on the basis of GC section 19130 (b) are subject to review at the request of an employee organization representing state employees.

- Departments must provide the designated exclusive representative copies of personal services contacts, RFPs, IFBs, STD. 215/agreement summary or the department's equivalent that call for personal services found in the bargaining unit. The designated exclusive representatives are found in the Policy Memo - "Contracting Out Update" on DPA's website.
- When a department requests approval from the DGS for a contract let under GC 19130(b), the department shall include with its contract transmittal a written justification (STD.215 or department's equivalent form) that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in GC 19130(b) See www.spb.ca.gov.
- 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 GC 19130 in the event that the SPB's review is requested. For standards of review see PCC 10337.

GC 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 GC section 19135, if a contract is disapproved by the SPB or its delegate, a department shall immediately discontinue that contract unless ordered otherwise by the SPB or its delegate. The department shall not circumvent or disregard the SPB's action by entering into another contract for

the same or similar services or to continue the services that were the subject of the contract disapproved by the board or its delegate. A department ordered to discontinue a contract shall serve notice of the discontinuation of the contract to the vendor within 15 days from the SPB's final action unless a different notice period is specified. A copy of the notice also shall be served on the SPB and the employee organization that filed the contract challenge.

Click here to access California Law.

2.B4.4 Leasing equipment

IT equipment may be acquired by departments 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.B4.5 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. The terms of such contract should be equal to the predicted "contract or program life."
When such analyses indicate purchase is the least costly method, agencies 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.

Click here to access the Lease versus Purchase Analysis form. Word PDF
Click here to access a legible copy of the lease versus purchase analysis form as shown in SAM section 3700 Appendices (A-1).

Note: Use of any financing arrangement other than GS $Mart is prohibited without prior approval from Finance per Budget Letter 06-27. See Chapter 9, California's Financial Marketplace.

2.B4.6 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.B4.7 Lease purchase financing

All State departments and tax funded agencies, i.e., local government, 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 the DGS/PD’s financial marketplaces – “GS $Mart®” or “Lease $Mart®.”

See Chapter 9 for more information on the State of California’s Financial Marketplace.

2.B4.8 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 the 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 the DGS/PD to initiate a new competitive procurement.

2.B4.9 Shipping charges

Shipping terms shall be determined during the acquisition planning phase. The preferred shipping method is "Free on Board" (FOB) Destination Freight Pre-paid (FRT. PPD) where the supplier is responsible for freight charges and costs as well as owning the goods while in transit.

Should it be determined that another method of shipping is more appropriate in meeting needs and the weight of the purchase is 100-lbs or more, then the Transportation Management Unit (TMU) shall be contacted to provide the cost of freight charges from pre-established shipping agreements. For purchases weighing less than 100 lbs., TMU need not be contacted.

Note: If shipping charges for purchases weighing less than 100 lbs. appear to be excessive (e.g., $500 for a 5 lb. package where the shipping charge is a percentage of the cost of the item being purchased), departments are encouraged to contact the TMU for help to obtain more appropriate pricing.

Refer to Chapter 4 - Competitive Solicitations and Chapter 8 – Purchase Documents for additional information.

Click here to access the TMU web page.

2.B4.10 State contracts for IT goods and/or services, loss leader
(rev 7/12)

Pursuant to PCC section 12104.5(b)(1) all RFPs for IT goods and/or services 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 an RFP even if the statement is inadvertently omitted from the RFP (PCC § 12104.5(b)(4)).

2.B4.11 Excluded acquisitions, loss leader
(rev 7/12)

The following acquisitions do not require loss leader language:
- RFOs for acquisitions from Leveraged Procurement Agreements
- Acquisitions made using Fair and Reasonable pricing
- Acquisitions made using the SB/DVBE Option.

2.B4.12 Non-discrimination

Any employer who wishes to contract with the State for non-IT goods is subject to the provisions of GC 12990 relating to discrimination in employment. Contractors that do not meet the provisions of GC 12990 are not eligible to contract with the State for non-IT goods. Ineligible contractors can be found in the California Regulatory Notice Register. To access the California Regulatory Notice Register, use this link.

2.B4.13 Exception

The requirements of GC 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.

(deleted 11/13)

(deleted 12/16)

2.B4.15 Iran Contracting Act
(added 9/11)

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 the 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 the 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 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. This sample or a similar code-compliant document should be used to satisfy the Act's certification requirements. 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 PCC sections 2203(c) and (d) for additional information regarding the exceptions.

2.B4.16 Certification for PCC 2010 (added 1/17)

Pursuant to PCC 2010, a person that submits a bid or proposal or proposes to renew a contract with, a state agency in the amount of one hundred thousand dollars ($100,000) or more shall certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed, all of the following:

- That they are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code).
- That they are in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).
- Supplier discrimination policies:
  - (1) That any policy that they have against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).
  - (2) Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code.

Application is required regardless of the procurement approach, method, or solicitation format, including, but not limited to: Formal Bids, Informal Bids, Request for Proposals, Invitation for Bids, Non-Competitive Bids and the SB/DVBE Option. When renewing a contract either by utilizing an option to extend or an amendment to add time or funding to an existing contract, the supplier must re-certify.

This sample or a similar code-compliant document should be used to satisfy this certification requirement.

Topic 5 – Statement of Work (SOW)

2.B5.0 Determining the need for an SOW

An SOW must be included for all IT service transactions and for IT goods transactions when appropriate. A full and complete SOW protects the State and the contractor by identifying and documenting the details of the work to be performed.

2.B5.1 What to include in an SOW

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

- A detailed statement of the purpose, objective or goals to be undertaken by the contractor
- The job classification or approximate skill level of the personnel to be made available by the contractor
- An identification of all significant material to be developed by the contractor and delivered to the State
- An identification of all significant materials to be delivered by the State to the contractor
- An estimated time schedule for the provision of these services by the contractor
- Completion criteria for the work to be performed
- An identification of maintenance that will be provided
- An identification of support that will be provided
- The name or identification of the contractor personnel to be assigned.
- The contractor's work hours required to accomplish the purpose, objective or goals
- The contractor's billing rates per work hour (as provided in the contract documentation)
- The cost per deliverable
- Invoice procedures
- Contractor's total cost, including any applicable taxes
- Product specifications
- Description of when and where product is to be delivered
- Palletization requirements
- Delivery personnel requirements

2.B5.2 Additional Considerations for Cloud Computing (added 9/14)

Additional considerations must be provided for when acquiring Cloud Computing services. Guidance has been developed to assist with identifying service level expectations and writing the SOW. You can access the Cloud Computing Contract Checklist for (SaaS) document here.

For additional tools and information, refer to the DGS/PD Cloud Computing webpage.

Topic 6 – Requirements Specific to IT Goods and/or Services

2.B6.0 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 the Technology Agency. Written approval of an exception must be received the Technology Agency 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 the Technology Agency 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.B6.1 Low power office computing policy

When purchasing IT equipment, departments shall follow the Low Power Office Computing policy outlined in IT Policy Letter (ITPL)10-04. Click here to access ITPL 10-04.

2.B6.2 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.

Click here to access the IFB/RFP solicitation format.

2.B6.3 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.

PCC 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 PCC section 10365.5 and this section are applicable to any IT contract that includes a consulting component as articulated in PCC 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 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 born 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 36 months in accordance with PCC section 12102(j).

2.B6.4 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.B6.5 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 PCC 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 PCC 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

Note: 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 (PCC section 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. PCC 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.

Note: 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.B6.6 Consider potential contracting opportunities

Since the determination of follow-on issues is dependent on the 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 PCC section 10365.5.

Note: 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.B6.7 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 the DGS, or pursuant to purchasing authority delegated by the DGS, or which are subject to the approval of the 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 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. The DGS may, in its discretion, consider requests made after the expiration of the time period. For its part, the DGS will make every effort to provide an expeditious response. If the inquiry is from the contracting department, that department shall reimburse the 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 the 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 the DGS. The provision of this informal advice shall not constrain any subsequent determination under law, nor will the DGS be restricted from the full exercise of its contract review responsibilities, including further review of issues related to PCC section 10365.5 based on factors discovered by the DGS subsequent to the initial determination.

Note: 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 the DGS/PAMS for advice regarding consistent application of the policy.

2.B6.8 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.B6.9 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.

PCC 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.B6.10 IT risk criteria guidelines and financial protection measures
(rev 09/12)
(rev 12/12)

The risk evaluation guidelines and financial protection measures have been developed to protect the best interest of the State pursuant to PCC 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.B6.11 Reporting IT projects, software licensing agreements and amendments to the legislature
(rev 12/14)
(rev 09/12)

Pursuant to the Budget Act, 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.
Refer to Budget Letter 14-19 for details.

2.B6.12 Cloud Computing
(added 9/14)

The State Administrative Manual (SAM) Section 4819.2 provides definitions for three distinct Cloud Computing services:

- Cloud Software as a Service (SaaS)
- Cloud Platform as a Service (PaaS)
- Cloud Infrastructure as a Service (IaaS)

Requirements found in SAM 4983-4983.1must be followed when contracting for Cloud Computing services.

Topic 7 – Desktop and Mobile Computing Purchases

2.B7.0 Requirements (rev 7/12)

The Technology Agency delegates authority in lieu of requiring submittal of a Feasibility Study Report (FSR) 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 the Technology Agency,
- 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.

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

2.B7.1 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 for additional desktop and mobile computing definitions.

2.B7.2 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.B7.3 File documen-tation

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.

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

Topic 8 – Emergency Purchases

2.B8.0 Definition

An emergency as defined by PCC 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.”

Departments are not required to conduct competitive acquisition of IT goods and/or services when the determination has been made that IT 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 which ultimately effects how the purchase activity will be processed:

- An emergency purchase in response to a natural disaster, i.e. fire, flood, earthquake.
- An emergency purchase not in response to a natural disaster.

2.B8.1 Required documen-tation

Regardless of the classification of the emergency, the procurement file must be documented and/or the following information provided to the 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.

2.B8.2 Responding to a natural disaster

The following provides the process for executing an emergency purchase in response to a natural disaster when a response requires immediate action. If the purchase activity:

- Is within a department’s authorized non-competitively bid (NCB) contract purchasing authority dollar threshold, proceed with the purchase:
  - Document the circumstance of the emergency purchase.
  - Issue the purchase document, identifying the department’s Purchasing Authority (PA) number in the PA number box on the purchase document.
- Exceeds a department’s authorized NCB contract purchasing authority threshold or if a department does not have delegated purchasing authority, proceed with the purchase:
  - Document the circumstance of the emergency purchase.
  - Issue the purchase document, leaving the PA number box on the purchase document blank.

2.B8.3 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 for IT goods and/or services, proceed with the purchase:
  - Document the circumstance of the emergency purchase.
  - Document names and quotations of suppliers contacted.
  - Issue the purchase document, identifying the department's PA number in the PA number box identified on purchase document.
- Exceeds a department's authorized NCB contract purchasing authority threshold or if a department does not have delegated purchasing authority, proceed with the purchase:
  - Contact the DGS/PD, Technology Acquisitions Branch (TAB) immediately or within the next business day to provide the circumstance of the emergency at (916) 375-4381.
  - The DGS/PD contact will review the circumstance and if approved, assigns the transaction an Authorization to Exceed Monetary Limits (Form 42) number.
  - Document the circumstance of the purchase.
  - Record the Form 42 number in the PA number box on the purchase document prior to issuing the purchase document.

2.B8.4 Examples of IT emergency purchase

PCC section 12102(a)(2) allows for emergency purchases of IT goods and/or services where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

- Example: 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 of a 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.

Warning: Poor planning is not an emergency.

Section C

Pre-Procurement Reviews and Approvals

Overview

Introduction

As mentioned earlier in this chapter, 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.

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Topic 1 – Surplus Property Program

2.C1.0 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.
- GC sections 14674-14675 authorizes the Director of the 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 the 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 Property Survey Report (Standard Form [STD.] 152) to the DGS Property Reutilization Unit 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 Technology Agency.

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.C1.1 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 a Property Survey Report (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 Property Survey Report.

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.

2.C1.2 Contact information

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

Departments may contact the Office of Surplus Property Reutilization at: 1700 National Drive, Sacramento, CA 94834, (916) 928-4630, (916) 928-0304 fax.

2.C1.3 Electronic surplus property system

The 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),
- Transfer of Location of Equipment Reports (STD.158) and
- A real time listing of current property that is available at the National Drive warehouse.

Click here to access the Surplus Property Program web page.

Topic 2 – Community-based Rehabilitation Program (CRP)

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.

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

Topic 3 – Information Technology

2.C3.0 Technology Agency approval of IT activities

GC section 11545 establishes the Technology Agency and gives the Technology Agency 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 the Technology Agency's approval of proposed information technology expenditures.

All departments must obtain the required approvals from the Technology Agency BEFORE initiating any IT procurement activity or encumbering any funds.

Click here to access SAM. See specifically SAM sections 4500 et seq.- telecommunications, 4800 et seq. – information technology, 4989 - Desktop and Mobile Equipment Computing Policy, 5200 – IT procurement (Note: 5200 was incorporated into this manual) and 6700 – 6780 IT expenditures. Click here to access the SIMM for additional information. Information.

2.C3.1 Project approval

The mechanisms to obtain approval for IT projects that provide the necessary authorization to acquire IT goods and/or services from the Technology Agency are listed below:

- Feasibility Study Reports (FSR): An FSR documents the results of a feasibility study conducted to address a business problem or opportunity, and identifies measurable business objectives and functional business requirements. The FSR is used to present the business case for investing in an information technology project. Once approved, the FSR establishes an agreement between the department and the Technology Agency as to how the project is to proceed. The FSR identifies the proposed solution's logical and technical design requirements. It also establishes the requirements used to define the procurement documents that successful proposals from suppliers must meet.
- FSR for a Business-Based Procurement: An FSR for a business-based procurement differs from a typical FSR in that it does not include a proposed solution. Suppliers will propose the solution during the procurement process (i.e. no specific technical solution is required by the department). For those proposals that initially recommend a business-based procurement and the proposed technical solution is not determined in the FSR, the department must submit a Special Project Report to the Technology Agency for review and approval prior to contract award.
- Special Project Report (SPR): An SPR is a detailed project change proposal. An SPR is required any time a project changes in costs, benefits or schedule by ten percent or more (or other amount as determined by the Technology Agency), or if a significant change occurs in the project's scope or methodology. Approval of an SPR constitutes a new approval agreement between the department and the Technology Agency.
- Compliance with the DMCP (see Section B of this chapter)
- Post Implementation Evaluation Report (PIER) — A PIER is developed after the project has been completed and in production a sufficient period of time to assess its functionality and productivity (typically one year or one business cycle). Objectives, costs and benefits are compared against the estimates presented in the last approved project document (FSR or SPR). A PIER is the final reporting requirement for a project. Once the PIER is approved, the project is officially complete and the system is considered a production system (application).
- Identifying that a project or acquisition is excluded under SAM section 4819.32.

Note: There are other conditions to justify the acquisition of IT goods and/or services, and departments are advised to review SAM section 4819.32 to ensure procurement compliance

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2.C3.2 Technology Agency review of procurement documents

The Technology Agency may decide to review specifications in procurement documents before they are advertised to ensure that the specifications are consistent with the functional specifications and system design in the FSRs or SPRs for the projects. The Technology Agency's decision to review the procurement documents will be based on whether it believes projects require special oversight during the procurement process. Procurement documents that the Technology Agency determines are subject to its oversight under this section may not be released until the Technology Agency has approved their release. The Technology Agency will inform departments of its intention to review the procurement documents for a project in its approval letters for FSRs and SPRs.

2.C3.3 Technology Agency's technology letters (rev 7/12)

Technology Letters (TL) are issued by the Technology Agency to disseminate new or changes to existing IT policies, standards, and procedures. Departments should review the Technology Agency'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 Technology Agency Manager.

2.C3.4 Technology Agency's telecommun-ication approvals

The purchase of public safety radio and related electronic equipment requires the Technology Agency's technical review and approval prior to initiating a procurement activity. Radio and microwave equipment and services are not delegated.

Additionally, the use of the state consolidated network for voice and data services is mandatory unless a waiver is granted by the Technology Agency.

2.C3.5 Office of Technology Services (OTECH), Statewide Telecommuni-cations and Network Division (STND), contracts

Departments are required to use contracts issued by OTECH/STND or mandatory-use strategically sourced LPAs issued by the DGS/PD to obtain voice and data services. In particular, departments must use OTECH/STND contracts that offer voice, data, video and internet services.

2.C3.6 Personal communi-cations device (PCD)

The use of LPA contracts issued by the DGS 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.

2.C3.7 Desktop and mobile equipment

Refer to Section B of this chapter for information on desktop and mobile equipment purchases.

Topic 4 – FSR Requirements for Information Technology Procurement Plan (ITPP)

2.C4.0 Purpose of the FSR/ITPP
(rev 11/12)
(rev 12/12)

The FSR/ITPP is the document used to provide information to assess a project's readiness for procurement. The FSR/ITPP Sections 1-5 describe the overall strategy necessary to accomplish and manage an IT procurement by formally documenting the proposed approach and how the procurement satisfies State requirements.

2.C4.1 Department interface with PD
(rev 11/12)

Departments are advised to involve the DGS/PD early in the acquisition process regarding IT procurement strategy. The DGS/PD should be consulted when an FSR/ITPP is being created that requires the DGS/PD review and approval.

2.C4.2 Requirements to submit to the DGS/PD
(rev 11/12)
(rev 12/12)

For the DGS/PD to evaluate and approve a proposed IT procurement strategy, departments may be required to submit a copy of the FSR/ITPP Sections 1-5, to the DGS/PD.

A copy of the FSR/ITPP Sections 1-5 is not required to be submitted to the DGS/PD for review and approval if the estimated dollar value of an IT procurement is within the department's purchasing authority dollar threshold for the applicable category (e.g. competitive, non-competitive, LPA), except as noted below in the last two bullets.

After approval of the FSR/ITPP by the Technology Agency and the Department of Finance. departments are required to submit a copy of the FSR/ITPP Sections 1-5 in the following instances:

- When the estimated dollar value of an IT procurement exceeds the department's purchasing authority dollar threshold for the applicable category (e.g. competitive, non-competitive, LPA) and the estimated dollar value of the IT procurement is greater than $1,000,000.00. This includes all LPA procurements for IT goods and services. For Leveraged Procurement Agreement Exemption Requests (LPAER), a copy of the FSR/ITPP Sections 1-5 approval must be received before the department submits the LPAER to the DGS/PD.
- For departments with delegated purchasing authority above $1,000,000.00, a copy of the FSR/ITPP Sections 1-5 is only required to be submitted to the DGS/PD when it exceeds the department's purchasing authority dollar threshold for the applicable category (e.g. competitive, non-competitive, LPA).
- When the department does not have applicable purchasing authority and the IT procurement exceeds $1,000,000.00.
- All IT procurements that the Technology Agency has assessed the

Risk/Criticality as "high," regardless of the dollar value.

- All competitive IT procurements that will use an RFP, regardless of the dollar value. Per PCC 12104(c), all RFPs for IT goods and services must be reviewed by the DGS prior to release to the public.

2.C4.3 Requests for the DGS/PD to conduct an IT procurement
(rev 11/12)
(rev 12/12)

The DGS/PD conducts IT procurements for departments that do not have the applicable purchasing authority or when the IT procurement exceeds the department's purchasing authority dollar threshold for the applicable category (e.g. competitive, LPA, NCB). When the estimated dollar value of the IT procurement exceeds $1,000,000.00, the department must provide a copy of the FSR/ITPP Sections 1-5 to the DGS/PD for evaluation and approval before the department submits a requisition to the DGS/PD to conduct the procurement.

2.C4.4 FSR/ITPP Approval is required
(rev 11/12)
(rev 12/12)

The FSR/ITPP Sections 1-5 must be approved by the DGS/PD prior to the creation of any IT procurement documents (solicitation, Request for Offer, etc.). An IT acquisition cannot commence until the department receives the approval from the DGS/PD. Approval is conveyed via a letter to the department.

2.C4.5 Where and how to submit
(rev 11/12)
(rev 12/12)

A copy of the FSR/ITPP Sections 1-5 must be submitted electronically to the following email address: TABFSRs@dgs.ca.gov.

It must be accompanied by a cover letter and associated documentation that authorizes the IT procurement (e.g., Technology Agency's approval letter, FSR, SPR). Authorizing documentation must be submitted to the DGS/PD regardless of whether the project is reportable to the Technology Agency.

2.C4.6 Cover letter
(rev 11/12)
(rev 12/12)

The FSR/ITPP Sections 1-5 cover letter is to identify all accompanying documentation. The cover should also include a statement regarding the anticipated sensitivity of solicitation requirements. Sensitivity pertains to:

- Items that if disclosed might impact security or
- Items characterized as having a confidential nature

2.C4.7 FSR/ITPP Preparation Instructions
(rev 11/12)

The FSR/ITPP instructions are located in the State Information Management Manual - SIMM.

Click here for the FSR/ITPP Preparation Instructions.

Topic 5 – Negotiation Process Guidelines and Procedures Under Public Contract Code 6611

2.C5.0 Authority over negotiations (rev 4/13)

Public Contract Code Section 6611 (PCC 6611) sections (a) and (b) set forth the conditions under which the DGS may use negotiations for new and existing contracts and/or procurements. PCC 6611(e) also allows the California Technology Agency (CTA) to use the negotiation procedures and guidelines developed by DGS for procuring information technology and telecommunications goods and services on behalf of state departments. DGS has provided a Negotiation Process Guide for IT goods & services under PCC 6611. For procedures and guidelines related to non-IT services, see SCM Volume 1; for non-IT goods, see SCM Volume 2.

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

1. At the outset of a procurement,
2. During a competitive procurement, or
3. When no responsive bids are received

PCC 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 the DGS or the Secretary of the CTA or their designee is required in advance, and negotiations must be conducted by the DGS or the CTA (for technology projects). The actual negotiations will be conducted in partnership with the procuring agency.

The DGS recommends that 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 the DGS for assistance in determining applicability of PCC Section 6611(a) and developing the framework for the negotiation process.

2.C5.1 How to make a request to the DGS (rev 4/13)

In order to implement negotiations pursuant to PCC Section 6611(a), using this template, state Agencies and Departments shall submit a written request to the 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 the Deputy Director Procurement Division, DGS. The DGS will respond to the requesting department in writing, with a determination regarding the request to use a negotiation process. If approved, the DGS will stipulate any conditions on the use of a negotiation process. The CTA may engage in negotiations as specified in PCC 6611(e) without making this request.

2.C5.2 Bases for negotiations PCC section 6611(a) (rev 4/13)

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

1. The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process (PCC 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 (GC) Section 19130.

2. 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 (PCC 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.

3. The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high (PCC 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.

2.C5.2 Bases for negotiations PCC section 6611(a) (continued)
(rev 4/13)

4. 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 (PCC 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.C5.3 Basis for negotiations (PCC section 6611(b))
(rev 4/13)

When a critical business need develops and it is in the best interests of the state, the 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. Use the template in Section 2.C5.1 to request this negotiation.

Note: This Section is not intended to circumvent the NCB amendment process in Chapter 5.

2.C5.4 Participants and roles (rev 4/13)

While the DGS (and the CTA when applicable) is responsible for the administration of the negotiating authority, successful negotiations require the cooperation of three key stakeholders: the DGS, the CTA, 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. Departments are advised to ensure that all state participants are free from economic conflicts of interest before beginning work on a PCC 6611 negotiation project. See GC Section 81000 et seq. (Political Reform Act); see also GC Section 1090. Not all participants listed in the table below are required in all situations.

State Participants	
Participant	**Roles**
Procurement Official (DGS or CTA)	▪ Conducts the procurement in accordance with the laws of the State of California; ▪ Coordinates contract negotiations sessions; ▪ Coordinates the 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 CTA, 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.
CTA (where DGS is the procurement official)	▪ Ensures negotiations meet all applicable IT architecture, technical, and project standards.

2.C5.4 Participants and Roles (continued)
(rev 4/13)

Bidder Participants	
Participant	**Role**
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.C5.5 Procedure when conducting negotiations from the outset of a procurement
(rev 4/13)

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

1. With the exception of the CTA, obtain approval from the DGS to utilize negotiations (see Section 2.C5.1 above).
2. Craft a solicitation under the authority of PCC 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.C5.1 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 PCC 12100 et seq. 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.

2.C5.5 Procedure when conducting negotiations from the outset of a procurement (continued) (rev 4/13)

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 the DGS and the requesting department, and other state representatives as appropriate. The table in 2.C5.4 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:
   f. 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.
   g. 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. The DGS or the CTA, as applicable, may terminate negotiations and/or the solicitation at any time.

2.C5.6 Procedure when conducting negotiations during a procurement (rev 4/13)

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 the DGS to utilize negotiations (see Section 2.C5.1 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.C5.5 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. The DGS or the CTA, as applicable, may terminate negotiations and/or the solicitation at any time.

2.C5.7 Procedure when no responsive bids are received (rev 4/13)

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 the DGS or the CTA, as applicable, to use negotiations. See Section 2.C5.1. 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.C5.2 will apply.
2. If any responsive, responsible bids have been received, buyers must follow the procedures in 2.C5.5 or 2.C5.6.

2.C5.7 Procedure when no responsive bids are received (continued) (rev 4/13)

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.C5.5 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.
7. 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.C5.8 Question & Answer Process (rev 4/13)

The DGS or the CTA, as applicable, may terminate negotiations and/or the solicitation at any time. PCC 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 the 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.

The DGS shall acknowledge the receipt of questions and shall provide a written response or explanation. The 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 the DGS.

Topic 6 – Certificate of Compliance with State IT Policies

2.C6.0 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 retained within the procurement file. If the procurement is being submitted to the DGS/PD for processing, a certification must be part of the submitted procurement package.

Click here to access the certification of compliance with State IT policies.

2.C6.1 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 and/or preparing the feasibility study report (SAM sections 4927 and 4928);or
- Procurements of excluded activities as described in SAM section 4819.32.

2.C6.2 Under $100,000 documen-tation 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 FSR Transmittal from the Technology Agency for non-delegated projects
- Approved FSR Transmittal 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.

Topic 7 – Additional Pre-Procurement Reviews and Approvals

2.C7.0 State personnel board (SPB)

Every personal services contract must be documented to support the need to contract out work. GC section 19130(b) establishes acceptable exemptions from the Civil Service provision of the California Constitution for the use of personal services contracts.

In accordance with GC section 19131, departments proposing to execute a personal services contract pursuant to GC section 19130(a) must notify the State Personnel Board (SPB) of its intention prior to contract award.

Click here to access the SPB web site.

2.C7.1 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 DGS California Records and Information Management (CalRIM) manual.

Click here to access the DGS/PD CalRIM web page.

2.C7.2 NCB requirements

See Chapter 5 of this manual.

Topic 8 – Purchase Requisition

2.C8.0 General use of the purchase estimate (STD. 66)

The Purchase Estimate (STD. 66) is the standard requisition used by departments to request the DGS/PD conduct competitive and/or non-competitive informal procurements of IT goods and/or services.

Note: For formal procurements requests for the DGS/PD to conduct the acquisition, instead of the STD. 66 submit a memorandum to the DGS/PD/TAB. In some situations prior to issuance of the purchase document, the DGS/PD may subsequently request a STD. 66.

2.C8.1 STD. 66 instructions

Refer to the instructions provided on the last page of the STD. 66 to ensure complete and accurate information is provided. If you need help completing the form refer to the Purchase Estimate Preparation Check List on the DGS/PD web site.

Click here for the Purchase Estimate Preparation Check List
Click here for the Purchase Estimate (PE) (STD. 66).

2.C8.2 Where to send the STD. 66

The completed STD. 66 should be submitted to the DGS/PD a minimum of 45 days prior to the anticipated delivery date and may be sent electronically, by hardcopy or facsimile as follows:

- Attach it to an e-mail and send it to purchaseestimate@dgs.ca.gov (Additional descriptive information and specifications may be attached.)
- Fax the form to (916) 376-6315
- Mail a copy to:
  DGS/Procurement Division
  Attn: Technology Acquisitions Branch
  707 3rd Street, 2nd Floor
  West Sacramento, Ca. 95605

Note: Receipt of Purchase Estimates for fiscal year end deadlines may be different

2.C8.3 Amendments

The Purchase Order/Estimate Change Request (STD. 96) is used to request a change to a Purchase Estimate (STD. 66) submitted to the DGS/PD or to a purchase order issued by the DGS/PD.

The STD. 96 may not be used to create an amendment to an IT transaction executed on a STD. 65.

Click here for the Purchase Order/Estimate Change Request (STD. 96)
(Also, see Chapter 8, for further information on amending purchase documents.)

Section D

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.

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This section contains the following topic:

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Topic 1 – Documenting the Decisions

2.D1.0 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.D1.1 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.D1.2 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.D1.3 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.

Click here to access a sample discussion note form. Word

2.D1.4 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.

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 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 requirements for promoting the purchase of products that are energy efficient and have other preferable environmental attributes.

Most of the purchasing authority categories provide a means of claiming contracting dollars toward compliance with the 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. However, if departments need assistance with the application of the preferences and/or incentives for IT goods and services, contact the 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.

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Topic 1- Americans with Disabilities Act (ADA)

3.1.0 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.

3.1.1 Provide reasonable accommo-dation

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.

3.1.2 The DGS/PD assistance available

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

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

3.1.3 Contact numbers for TTY/TDD and California relay service

The 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

3.2.0 Opportunity

Pursuant to the Small Business Procurement and Contract Act (Government Code [GC] 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.

3.2.1 Annual statewide participation goals

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

These 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 annual reporting(s). Refer to Chapter 12, Reporting Requirements.

3.2.2 SB/DVBE Advocate

In accordance with GC section 14846, and M&VC section 999.12, 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 GC section 927 et seq.

Click here to access the SB and DVBE Advocate Directory.

3.2.3 Available acquisition approaches to achieve goals

All acquisition approaches can be used to achieve participation goals. Examples include competitive solicitations, such as the SB/DVBE Option and use of existing sources such as leveraged procurement agreements (LPAs). Refer to Chapter 6, Leveraged Procurement Agreements (LPA), for information on the process of claiming SB and DVBE contracting dollars under an LPA purchasing category.

3.2.4 SB/DVBE option

GC section 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, Competition Solicitations, for detailed information regarding the SB/DVBE Option process.

Note: Buyers conducting a competitive solicitation utilizing the SB/DVBE Option need to verify if there are mandated or sourced contracts associated to the product or services.

3.2.5 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 the DGS/PD web page. California SB and DVBE certification status shall be verified before a contract award regardless of the acquisition approach. This verification can be obtained by accessing the SB and DVBE Services certified firm inquiry database located on the DGS/PD web page.

Click here to verify the certification status of SB and DVBE Services.
Click here to access list of suspended firms.

3.2.6 Authority for Commercially Useful Function

In accordance with GC 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 five percent (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.

Click here to access the DVBE and SB Program Violations and Sanctions web page.

Note: Refer to Chapter 9 for CAL-Card requirements.

3.2.7 Definition of CUF
(rev 9/12)
(rev 12/12)

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 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.

3.2.8 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 GC section 14842 . Awarding departments are reminded of their responsibilities under these sections, particularly with respect to receipt of complaints, investigations, and reporting responsibility to the DGS/PD's Office of Small Business and DVBE Services (OSDS).

Click here to access the DVBE and SB Program Violations and Sanctions web page.

3.2.9 Reporting requirements

Refer Chapter 12 for SB and DVBE participation reporting requirements.

3.2.10 Contact the DGS/PD's OSDS

Click here to access the SB and DVBE Services web page.

Topic 3 – Disabled Veteran Business Enterprise Participation Program Requirements

3.3.0 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.

3.3.1 Waiving the requirement

A department director or designee has the discretion to waive the inclusion of DVBE participation from individual solicitations; however, the 3% annual goal still applies. When this occurs, the procurement file should document the reason for exclusion of the DVBE Program Requirement.

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

3.3.2 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 exempt from a solicitation.

3.3.3 Meeting DVBE program requirements (rev 10/11)

If DVBE participation is a requirement of the competitive solicitation then a bidder must document commitment to full DVBE participation, i.e., locate and commit to using certified DVBE firms who will perform the percent of work specified by the solicitation.

Refer to Topic 2 of this chapter for CUF requirements.

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

Click here to access the DVBE Resources

3.3.4 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.

3.3.5 Additional DVBE information

Click here to access the DGS/PD DVBE Participation web page.

3.3.6 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.

3.3.7 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.

3.3.8 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. 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.

Click here for form STD. 843, Disabled Veteran Business Enterprise Declaration

3.3.9 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).
- Purchase documents submitted to PD in conjunction with emergency acquisitions must include a copy of the Std. 843(s)]

3.3.10 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

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3.3.11 Notify OSDS

Notify the OSDS, Compliance Unit (375-4940), 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)

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

3.3.12 OSDS role

The OSDS reviews and certifies DVBEs. To support the requirements of M&VC sections 999.2(b) through 999.9, the 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.

3.3.13 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 three percent (3%) participation credit for any funds expended involving the DVBE

3.3.14 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)).

Topic 4 – DVBE Incentive and Competitive Solicitations

3.4.0 Authority

M&VC section 999.5 et seq. authorized the 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 1896.98, 1896.99.100, and 1896.99.120 and available at the following link.
.

3.4.1 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.

3.4.2 Opportunity

Departments must offer procurement opportunities to California (CA) certified 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.

3.4.3 Applicability (rev 12/11)

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 the DGS provided CA DVBE Program Requirements whenever conducting competitive solicitations.

3.4.4 DVBE incentive exemption provision (rev 8/11)

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. Buyers must complete and document the form as directed.

Departments having met or exceeded the DVBE 3 percent 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 the DGS annual reports are used to document a department's DVBE participation goal.

Click here to access the DVBE Incentive Exemption List web page.

3.4.5 Incentive percentages (rev 1/12)

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. 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.

Note: 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 the DGS Procurement Division 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.

3.4.6 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.

3.4.7 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.

Click here to access the Bidder Declaration Narrative.

Click here to access the Bidder Declaration, GSPD 05-105 – Written Version

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.

Click here to access the Bidder Declaration, GSPD 05-106 –Verbal Version..

3.4.8 Documenting the results (rev 12/11)

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

Click here to access the Participation Worksheet Participation Worksheet.
Click here to access the Participation Worksheet Instructions.

If PD is conducting an IT procurement and the application of the DVBE incentive resulted in an award, a statement to that effect will be included in a

contract cover letter. (See sample 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.

3.4.9 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, including a Commercially Useful Function being performed by the DVBE(s). 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, the small business preference is applied first followed by the recycle preference. The DVBE incentive is calculated next with other preferences subsequently applied. However, for low cost awards, application of the DVBE incentive cannot displace award to a #1 ranked small business. **Note:** 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.

3.4.10 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.

3.4.11 Low price awards (rev 1/12)

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 small business 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.

3.4.12 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 in Section IX.

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.

3.4.13 High point award example

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

3.5.0 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.

3.5.1 Post award audits

Awarding agencies must investigate and report program violations as follows to the DGS/OSDS. The OSDS may suspend the violator and will 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.

3.5.2 Prepare written report

Prior to reporting an alleged violation of PCC Section 10115.10 to the 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 the 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."

3.5.3 Awarding department and prime contractor (rev 8/14)

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.

The prime contractor will use the Prime Contractor's DVBE Subcontracting Report to submit the information above to the awarding department 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. Click on the following link to access the DVBE Subcontracting Forms & Instructions. Refer to Chapter 12 for awarding department annual reporting requirements.

3.5.4 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 the DGS, replace a DVBE identified by the prime contractor in its bid, with another DVBE pursuant to Military and Veterans Code Section **999**.10 (a).

3.5.5 Situations allowing substitution

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 set forth in 2 CCR section1896.73 when a prime contractor requests the

of sub-contractors (rev 11/13)

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 the DGS.

3.5.6 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.

3.5.7 Written request to the DGS

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. Click on the following link to access the "DVBE Substitution" Form and Instructions: DVBE Substitution Form and Instructions.

Topic 6 – Small Business Preference and Competitive Solicitations

3.6.0 Preference amount

A five percent (5%) preference shall be offered to California certified SBs when a competitive solicitation is being conducted. 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/DVBE Option as the procurement approach in accordance with GC 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.

3.6.1 Applying the preference

1. If SB preference is claimed, it shall be 5% of the net bid price of the lowest responsible bidder meeting specifications. Also see Topic 2 of this chapter for CUF requirements.
   Note: 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 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. **Note:** 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).

3.6.2 Awards based on high point

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

To apply the preference:

1. Identify the 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 GC 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.

3.6.3 Maximum preference allowed for low price awards (rev 12/13)

For awards based on low price, the maximum bid preference allowed individually may not exceed $50,000 for any bid, and the combined cost of preferences granted may not exceed $100,000.00 total. 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, more than $100,000.00 per bid, whichever is less.

3.6.4 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 GC section 14838 (f).Note: Only the recycle preference* can preclude award to a small business that is either ranked #1 or moves into the #1 rank following application of the small business preference. However, one small business can displace another small business 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 small business.

3.6.5 SB reporting

Refer to Chapter 12, Reporting Requirements for SB participation reporting requirements.

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

3.7.0 Preference amount

A five percent (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 GC 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 GC section 14838(f).

Exception: The non-SB preference is not applicable when the solicitation is being conducted using the "SB/DVBE Option" procurement approach or if the acquisition is less than $5,000 and price has been documented to be fair and reasonable. See Chapter 4 – Competitive Solicitations for detailed information regarding the SB/DVBE Option process and fair and reasonable pricing and evaluation.

3.7.1 Documenting the commitment

An non-SB claiming 25 percent (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.
Note: Each listed California certified SB must perform a "Commercially Useful Function" in performance of the contract as defined in GC section 14837(d)(4).

3.7.2 Required solicitation language

Buyers must include non-SB preference language in all written solicitations, except those solicitations conducted as a "SB/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.
Click here to access the required non-SB solicitation language.

3.7.3 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.
   Note: 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.
   Note: 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.

3.7.4 Award based on high point awards

Small business 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 GC 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.

3.7.5 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.

3.7.6 Maximum preference allowed for low price awards (rev 12/13)

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.

3.7.7 SB reporting

Refer to Chapter 12, Reporting Requirements, for SB participation reporting requirements.

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

3.8.0 Preference amount

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

3.8.1 Eligibility

NVSA suppliers will be designated as NVSA certified and identified on the OSDS website

3.8.2 Verifying certification status

California NVSA certification status can be verified by accessing the SB and DVBE Services certified firm inquiry database located on the DGS/PD web page.

The database printout in support of the NVSA must be maintained in the procurement file.

Click here to access the SB and DVBE Services web page.

3.8.3 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.

Note: "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 NVSA are applicable, re-rank bids to determine which bidder has the low responsive bid.
   Note: 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.

Example:
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).

3.8.4 SB/DVBE option

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

3.8.5 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 the DGS/PD broadcast bulletins and the information posted to the OSDS website.

Click here to access the DVBE and Small Business Program Violations and Sanctions web page.

3.8.6 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 12 for SB reporting requirements.

Topic 9 –TACPA Competitive Solicitations

3.9.0 TACPA preference
(rev 12/13)

The Target Area Contract Preference Act (TACPA) preference program attachment shall be included with 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 in distressed areas.

- Bidders may also apply for additional work force preference of one to four percent if the bidder agrees to hire certain identified persons equal to a percentage of its work force during the contract performance period (See GC sections 4534.1, 7084(c), and 7118(c).)

3.9.1 Dollar value to include language and preference forms

The DGS/PD buyers shall include preference attachments with all competitive solicitations valued at $85,000 and greater. For departments with purchasing authority, the DGS/PD strongly recommends that the preference forms be included in all IT 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.

3.9.2 TACPA solicitation language
(rev 12/13)
(rev 5/11)

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

Bidders wishing to take advantage of these preferences are required to submit the following applications/forms:

- TACPA (Std. 830)
- Bidder's Summary of Contract Activities and Labor Hours (DGS/PD 525)
- Manufacturer Summary of Contract Activities and Labor Hours (DGS/PD 526).

3.9.3 Program description
(rev 12/13)

An overview of the TACPA preference program is provided below:

- TACPA
  - Pursuant to GC section 4530 – 4535.3
  - Encourages and facilitates job maintenance and job development in distressed and declining areas found in California cities and towns.

Click here to access the TACPA preference request (STD.830).
Click here to obtain information on Census Track and Block Group Number.

Contracts excluded from this Preference Program include construction contracts and contracts with designated worksite.

3.9.4 Preference procedures (rev 12/13)

The DGS, Procurement Division reviews all TACPA applications. Departments must submit the following to the DGS, Preference Unit for review:

- Copies of the TACPA (STD. 830), application
- Bidder's Summary of Contract Activities and Labor Hours (goods and services)
- Manufacturer's Summary of Contract Activities and Labor Hours (goods)
- Copy of Solicitation
- Delivery Schedule (if applicable)

Preference requests are reviewed and processed within 5 working days and a recommendation memo (approval/denial) will be faxed to the originating department's contract analyst.

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:

(A) 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;
(B) In addition to the amount specified in (A) above, be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved; and
(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

Note: Prior to the imposition of any sanction under this chapter, the contractor or vendor 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.

3.9.5 Maximum preference allowed for low price awards (rev 12/13)

The maximum preference allowed for TACPA is 9 percent of the bid amount but may not exceed $50,000 for any bid. In combination with any other preference (TACPA, SB, non-SB subcontracting participation, recycled, etc.), the maximum limit of the combined preference is 15 percent of the bid amount and, in no case, shall be more than $100,000.00 per bid, whichever is less.

3.9.6 Sample participation worksheet

Sample participation worksheet for departments with purchasing authority:
Click here to access the Participation Worksheet revised 12/05/07.
Click here to access the Participation Worksheet Instructions revised 12/2007.

The use of this form is required for the DGS/PD, but optional (to be used as an example of how participation data can be collected) for departments with purchasing authority.

3.9.7 Preference program contact and information

The DGS/PD/Dispute Resolution and Preference Program administer the bid preference programs.

Click here to access the Dispute Resolution and Preference Program web page.

Topic 10 – State Agency Buy Recycled Campaign (SABRC) Program

3.10.0 Using recycled content products (rev 12/13)

Public Contract Code (PCC) section 12203 requires departments to utilize recycled content products (RCP). A minimum of 50 percent of funds expended in each of the targeted categories must be products meeting the requirements of an RCP. The required RCP varies by SABRC product category.

3.10.1 Department Recycled Content Product purchasing requirements (rev 12/13)

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 CalRecycle website:
http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/Buying.htm

3.10.2 Recycle preference and competitive solicitations (rev 12/13)

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. 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.

3.10.3 Non-compliant trash bag manu-facturers 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 either 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 percent of the weight of the regulated bags.
- Ensure that at least 30 percent 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 at: http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/.

3.10.4 Supplier certification (rev 12/13)

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.

Click here to access the Post-Consumer Recycled-Content Certification form (CIWMB 74).

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.

For additional information contact CalRecycle at (916) 341-6199 or SABRC@CalRecycle.ca.gov.

3.10.5 Tire Recycle Preference (rev 12/13)

Per Public Resources Code (PRC) section 42890 et seq., a 5 percent (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 percent recycled used tires.

3.10.6 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).

Note: Virgin products refer to products not qualified as a recycled product.

3.10.7 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 percent 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 percent or $100,000.

3.10.8 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).

3.10.9 Reportable purchases

The reportable product category applicable to IT goods would be plastics products including printer or duplication cartridges that:

- Plastic Products that are 10 percent (10%) postconsumer, by weight
- Printer or duplication cartridges that:
  - Have 10 percent (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

Note: 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.

3.10.10 Reporting (rev 12/13)

All departments must comply with PCC Section 12211(a), which requires State agencies to report annually to CalRecycle the results of their RCP purchases within specific categories of material types.

Refer to Chapter 12- Reporting Requirements for further information on reporting RCP.

Topic 11 – Environmentally Preferable Purchasing (aka: Sustainability or Buy Green

3.11.0 Definition

"Environmentally preferable purchasing" as defined in PCC section 12400 means 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.

This comparison 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.

3.11.1 Policy (rev 12/13)

State Departments are to consider the health and environmental impacts of goods and services in all their procurements and acquisitions and, comply with the Environmentally Preferable Purchasing (EPP) Act as mandated by PCC sections 12400-12404.

When purchasing IT equipment, departments shall follow the Low Power Office Computing policy outlined in Technology Letter (TL) 12-3. Click here to access TL 12-3.

3.11.2 Department Environmentally Preferable Purchasing requirements (rev 12/13)

The State of California promotes the procurement of sustainable products that are designed to reduce adverse impacts to the environment and human health. Departments shall consider all health and environmental factors as early as possible in their acquisition planning and decision-making processes.

Pursuant to Executive Order B-18-12, departments shall purchase and use environmentally preferable products when compared with competing goods that serve the same purpose, whenever applicable, perform well, and are cost-effective. When available, departments are required to purchase commodities that meet DGS Purchasing Standards on the DGS Buying Green website.

Departments are required to purchase Energy Star products (e.g., PC goods and multi-functional devices), when available, in accordance with current DGS statewide contract EPP specifications.

Access the DGS Buying Green Guide:
http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/buyinggreen

3.11.3 EPP best practices

The DGS EPP Buying Green Guide provides best practices, guidelines and specifications including third party certification requirements and procedures for the comparison of the overall values of goods or services. Departments should use the EPP Buying Green Guide to assist procurement staff in making environmentally preferable purchases.

Click here to access the California Environmentally Preferable Purchasing Web page for the EPP Buying Green Guide

Chapter 4

Competitive Solicitations

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Chapter 4

Competitive Solicitations

Overview

Introduction

This chapter describes the requirements relative to conducting competitive solicitations for Information Technology (IT) goods and services. Discussion points include supplier treatment, advertising requirements, acquisition methodologies, and developing solicitations. Also included are descriptions of evaluation and selection methods and using the Small Business (SB)/Disabled Veterans Business Enterprise (DVBE) Option for acquiring goods and/or services.

Chapter 4 only addresses those solicitation methods for competitive bids.

This chapter does not address non-IT service competitive solicitations. See State Contracting Manual (SCM), Vol. 1 for acquisitions of non-IT services outside of the Leveraged Procurement Agreement (LPA) framework. Competitive solicitations for non-IT goods are also not addressed. See SCM, Vol. 2 for acquisitions of non-IT goods.

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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, distributed by fax, electronic mail or regular mail, depending on the procurement value. Unless otherwise provided by law, procurement activities must be conducted in an open and fair environment that promotes competition among prospective suppliers.

The competitive solicitation approaches described in this chapter are applicable to acquisitions of IT goods and services including telecommunications.

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Topic 1 – General Requirements

4.A1.0 Procurement standards

Departments granted purchasing authority to conduct competitive procurements for IT goods 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 solicitation 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 IT goods and services may not exceed the dollar thresholds as authorized by DGS/PD to the individual department. Dollar thresholds exclude sales and use tax, finance charges, postage and handling.

Shipping charges are included in the dollar threshold limits in the evaluation when the freight terms are FOB Origin, Freight Collect or FOB Destination, Freight Prepaid/Add.

When a transaction exceeds or is expected to exceed a department's approved authority threshold, the department must prepare and submit a Purchase Estimate (STD.66) or a memo, if the transaction is for IT services, to the DGS/PD for processing.

Departments that have applied for increased purchasing authority during their annual renewal may use a Request for One-Time Procurement to Increase Purchasing Authority Information Technology form to request increased authority to conduct a single competitive solicitation under PAMS oversight.

For more information on purchasing authority, see Chapter 1.

4.A1.3 Confidentiality of Information

The general premise for confidentiality is that during the development and management of the competitive solicitation and throughout the evaluation and up to award process all information must remain confidential and secured.

When there is a public bid opening, the price bid becomes public. In some cases, such as the Alternative Protest Process (APP), final bids 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 bid marked "Confidential" or "Proprietary" may be rejected, which does not keep that document from being released as part of the public record following issuance of the notice of intent to award for formal bids or award of informal bids. 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.

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

In addition to the buyer, competitive solicitations 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, and 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
- Agrees to follow any instructions provided by the Project relating to the confidentiality of Project information.

The person signing the confidentiality statement should also provide the following information:

- Date
- Signature
- Printed Name
- Title
- Organization
- Telephone Number
- Fax Number

Click here for Sample Confidentiality Statement

4.A1.5 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.

4.A1.6 File Documen-tation for Competitive Solicitations

Click here to access the recommended file documentation list for IT goods competitive solicitations.

Click here to access the recommended file documentation list for IT services competitive solicitations.
Click here to access the file documentation list for transactions under $5,000.00.

4.A1.7 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
- Internet search
- Local trade unions
- Chamber of commerce
- Industry listings
- LPA databases
- Certified SB and DVBE firms database
- Recommendations from customers

Note: Since advertising is required for IT goods exceeding $100,000 and IT services solicitations that exceed $5,000, mailing lists are generally used for informal solicitations below those dollar levels. However, mailing lists may be used in addition to advertising.

4.A1.8 Request for Interest

A Request for Interest may be used to separate those suppliers who intend to participate in an upcoming solicitation from those who have no interest in participating.

4.A1.9 Purpose of the Request for Interest

The Request for Interest establishes the mailing list to be used when distributing a solicitation. Buyers should keep track of the suppliers who respond and when ready and to the extent possible, mail the solicitation to them. The Request for Interest and the mailing list become part of and must be retained in the procurement file.

4.A1.10 Request for Interest Components

The Request for Interest should:

- Be short, concise and to the point,
- Include the solicitation number and title,
- Include a general description of the equipment or services to be solicited,
- Include estimated quantities, features, general time frames, any pertinent geographic information, buyer's name and telephone number, etc.
- Not provide or ask for any cost information as such information could create an unfair bidding environment,
- Provide space for interested bidders to provide contact name, address, telephone number and submittal date, and
- Include where and how to submit the response to the Request for Interest.

4.A1.11 Request for Information

A Request for Information may also be used to survey the marketplace to understand what products or services may be available and to approximate the dollars that may be needed for a procurement**.**

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.

Click here to access the California State Contracts Register web page.

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:

- IT goods in excess of $100,000
- IT services in excess of $4,999,99
- IT goods and services in excess of $4,999.99 on the service portion only

4.A2.2 Publish Date vs. 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.

Note: It usually takes at least two days for the CSCR to post solicitations after they are downloaded. The solicitation will be released simultaneous to the posting of the contract advertisement, if the solicitation document is attached and submitted with the contract advertisement.

4.A2.3 Publish Date vs. Bid or Proposal Due Date

Bid opportunities must be advertised for at least 10 working days prior to the bid due date per GC 14827.2. Agencies shall not release an Invitation for Bid (IFB) or Request for Proposal (RFP) prior to publication in the CSCR.

- Departments with IT delegated purchasing authority requesting a shorter timeframe must submit written justification, signed by their purchasing authority contact over the day-to-day purchasing activities, to the CSCR staff.
- DGS/PD IT buyers requesting shorter timeframe must submit written justification, signed by the Technology Acquisitions Manager, to the CSCR staff.

4.A2.4 SB/DVBE Option

GC section 14838.5(a) eliminates the advertising requirement for transactions valued from $5,000.01 to $249,999.99 awarded to a certified SB or a certified DVBE when conducting a SB/DVBE Option solicitation. See Section B, Topic 7, of this chapter for additional information.

4.A2.5 Contract Advertising Exemption

An exemption from advertising in the CSCR may be obtained if a Contract Advertising Exemption Request (STD.821) is submitted to the DGS/PD for review and approval. This form is used when a competitive solicitation is:

- Requested to be exempted from advertising or,
- Neither feasible nor possible.

When a competitive solicitation for IT services will be conducted, but an advertising exemption is being requested, 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.

A Non-Competitively Bid (NCB) contract justification is not required.

An NCB contract justification must be submitted with the STD.821 when a competitive solicitation for IT services will not be conducted and the department is requesting an advertising exemption. See Chapter 5 of this manual for information on Non-Competitively Bid Contracts.

Click here to access the STD.821.

4.A2.6 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 5 of this manual.

Section B

The Solicitation

Overview

Introduction

The 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.

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Topic 1 – Solicitation Approaches

4.B1.0 Informal vs. Formal
(rev 9/12)
(rev 11/12)

Solicitations are documents used to request quotes, 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 Request for Quotations (RFQ) or Invitation for Bids (IFB), depending on the degree of specific language needed. Formal solicitations are more complicated, higher in risk and usually of higher dollar value and may be conducted using the IFB or Request for Proposal (RFP), depending on the degree of specific language needed.

The risk assessment process is completed in the planning stage of the procurement. Risk evaluation guidelines and financial protection measures for formal solicitations valued more than $1,000,000 are established in info block 4.B2.13. It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process in case conditions change.
The following provides the dollar thresholds for distinguishing between informal and formal IT goods and services solicitations:

- Informal Solicitation: $1,000,000 or less
- Formal Solicitation: More than $1,000,000

Warning: IT goods and services informal solicitations valued from $100,000.01 to $1,000,000 require specific solicitation language for protest and award procedures. See Topic 3 of this section for additional information.

4.B1.1 Phone Quotes
(rev 12/11)

Informal solicitations valued less than $50,000 may be conducted by phone. This solicitation method requires preparation of a “script” or narrative of the quote 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.

Note: Phone quotes would not be an acceptable method for conducting solicitations if the service portion (set-up, installation, etc.) of the purchase exceeds $4,999.99 or more for IT goods or over $50,000 in all cases and services because of the advertising requirements described in Section A of this chapter.

Click here to access the Bid/Quote Worksheet.

4.B1.2 Written Solicitations (rev 12/11)

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 IT service transaction that exceeds $4,999.99.
- Any IT goods transaction valued at $100,000.01 to $500,000
- Any IT goods and services transaction where the service portion exceeds $4,999.99.
- Any IT goods and services transaction valued at greater than $50,000.

Note: 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.

See examples of RFQ, IFB, and RFP found in this chapter. Also refer to Section A, Topic 1, of this chapter for file documentation requirements.

4.B1.3 Supplier Signatures

For any written solicitation, supplier quote and/or bid responses regardless of dollar value; solicitation format or delivery method (i.e., fax, electronically, mailed or delivered in person) must include the signature of an authorized supplier representative of the bidder.

“Faxed” signatures are acceptable for solicitation as allowed by the pertinent delivery method. Faxing would not apply in a formal IT value-effective solicitation response that requires separate volumes for administrative/technical and cost (which must be separately sealed until the administrative and technical requirements are evaluated).

For phone quote solicitations, supplier signatures are not required; however, the supplier representative name providing the quote must be documented in the procurement file.

Topic 2 – Developing the Competitive Solicitation

4.B2.0 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 requirements sometimes referred to as desirable requirements.

4.B2.1 Avoid Writing Restrictive Requirements

Requirements restricting the bidding to a single supplier may not be included in competitive solicitations. 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 to one manufacturer, except for reference purposes
- Not dictating detailed design solutions prematurely
- Allowing sufficient time from the solicitation mail date to the bid due date or first key action date to provide suppliers time to review and consider the requirements, prepare a response, and mail the response back

4.B2.2 Common Elements of Written Solicitations (rev 12/13)

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 forms
  - Post Consumer Content Form
- Administrative requirements, as applicable
- Technical requirements, as applicable
- Cost forms or clear indication of cost placement in the solicitation
- Evaluation information (basis for award)

The IFB model referenced in Section B, Topics 4-5, of this chapter may be modified and used to suit departments' needs.

4.B2.3 Key Action Dates for IT Solicitations (rev 12/13)

Most IFBs and all RFP written IT solicitations are phased approaches, leading to final bid submittal and always 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.

Click here to access the IFB/RFP solicitation format.

4.B2.4 Faxing Bid Responses

The following paragraph must be included in all written IT competitive solicitations 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."

Note: Faxing is not allowed for IT solicitations that:

- Use the IFB (when services are included that must be evaluated for value-effectiveness)
- Use the RFP format and require cost to be separately sealed
- Are valued over $500,000 and being evaluated for low net cost

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4.B2.5 Acceptance of Fax bids

Fax bids will only be accepted when:

1. The solicitation specifically states they will be allowed;
2. Received on the fax machine designated by phone number in the solicitation document); and,
3. Completely received prior to the bid opening time indicated on the solicitation.
    a. The internal clock of the receiving fax machine will be the time by which the official time of receipt will be determined.
    b. Fax bids will be determined to be complete only when they:
        i. Contain all information necessary to evaluate the bid and
        ii. Meet all requirements of the solicitation.

4.B2.6 Seal FAX bid immediately

The Fax bid will be sealed immediately upon receipt and remain sealed until bid opening. The State will not assume responsibility for a bidder's inability to fully transmit their Fax bid. The bidder assumes full responsibility for timely transmission and receipt by the State prior to the bid opening time. Inability to transmit a bid because of usage and/or possible mechanical problems of the receiving fax machine (which can be unpredictable) will not relieve a bidder of this responsibility.

4.B2.7 Preference Programs (rev 12/13)

The TACPA business participation program requirement must be included in competitive solicitations 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 IT 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. For more information on preference programs, see Chapter 3 of this manual.

4.B2.8 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 the DVBE Waiver form 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 or send the form to DGS-PD along with the requisition, if the solicitation is to be conducted by DGS-PD. When exemption to DVBE participation program requirements occurs, the solicitation should state that the DVBE program requirements are waived.

Note: 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 SB/DVBE Option procurement approach is used.

4.B2.9 DVBE Incentive

The DVBE incentive applies to all competitive solicitations 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.B2.10 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 NS subcontractor preference in all solicitations, except when soliciting California certified SBs and DVBEs under the SB/DVBE Option. 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.B2.11 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.B2.12 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.

Note: 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.

In addition to communicating in writing to all suppliers that have expressed an intent to bid, addenda for RFPs must be posted in a public location.

4.B2.13 Risk Guidelines
(rev 9/12)
(rev 11/12)

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.

Please note that a withhold of not less than 10% is still required, until final delivery and acceptance of the goods or services, for any contract that provides for progress payments in a contract for IT goods or services to be manufactured or performed by a contractor especially for the State and not suitable for sale to others in the ordinary course of the contractor's business.

Click here to access the risk evaluation guidelines and financial protection measures.

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.

4.B2.14 Cloud Computing Considerations
(added 9/14)

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. You can access the Cloud Computing Contract Checklist for (SaaS) document here.

For tools and helpful information, refer to the DGS/PD Cloud Computing webpage.

Topic 3 – Request for Quotation for IT Solicitations

4.B3.0 Request for Quote (RFQ) – IT Specific

The most common written solicitation format used to conduct informal IT competitive solicitations 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.

Note: Invitation for Bids (IFBs) may also be used for informal IT competitive solicitations that tend to be higher in risk.

When using the RFQ format for IT solicitations over $100,000, the language specified below for protest and contract award must be used. When the RFQ is used that includes protest and 5-day intent language in the solicitation, the Bidder's Instructions must be modified to delete conflicting language.

Following is the required language for IT RFQs that exceed $100,000:

- ***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 vendor" 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 the 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.

4.B3.1 RFQ Solicitation Formats
(rev 12/13)

Click here to access the RFQ for IT Services solicitation format.

Note: When conducting a RFQ solicitation that has both goods and services use the RFQ Goods solicitation format.

Click here for the RFQ Goods solicitation format.

4.B3.2 Required Language
(rev 12/13)
(rev 11/12)

The following solicitation language must be considered and addressed as applicable in a solicitation using the RFQ format:

- Identify Bidder Instructions and applicable General Provisions for the solicitation. See Section B, Topic 8, of this chapter
- Identify requirements of faxing bid responses. See Section B, Topic 2, of this chapter.
- Include language addressing the socioeconomic and environmental programs as applicable (SB, TACPA, etc. See Chapter 2, of this manual for information on these programs.)
- Identify the requirements for protest and contract award when using the RFQ format for IT $1,000,000 or less. Refer to the above information contained in information block 3.B3.0.

4.B3.3 Elements of the RFQ Solicitation (rev 12/13)

- Click here for IT Goods
- Click here for IT Services
- Click here for IT Goods and Services

Topic 4 – Invitation for Bid for IT Solicitations

4.B4.0 Invitation for Bid (IFB)
(rev 9/12)
(rev 11/12)

The Invitation for Bid (IFB) is a written acquisition method used to solicit bid responses for IT goods alone or for IT goods and services where suppliers are asked to provide a bid to the State's known and detailed, clear requirement. An IFB can be used for informal and formal solicitations identified in the IFB formats below. Formal IFBs are more complex solicitations of a higher dollar value more than $1,000,000 and are higher in risk.

The risk assessment process is completed in the planning stage of the procurement. Risk evaluation guidelines and financial protection measures for formal solicitations valued more than $1,000,000 are established in 4.B2.13. It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process in case conditions change.

Note: Increased dollar threshold levels for informal and leveraged procurement agreements solicitations are NOT automatic for those departments without a current approved $1,000,000 delegation authority dollar threshold. Departments must apply for DGS approval to obtain a competitive purchasing authority increase to the $1,000,000 dollar threshold.

In contrast, a Request for Proposal (RFP) would be used when the State's requirements are written in general terms describing a problem to be solved or a goal to be achieved.

RFQs are used for informal procurements ($1,000,000 or less)

4.B4.1 Two IFB Formats (rev 12/13)

There are two IFB formats available for IT purchases. The characteristics of the purchase will determine which format best suits the purchasing activity. The following bullets below describe the elements to consider in determining which IFB format to use.

- If the purchase is for **IT goods only** (i.e., Hardware and/or Software containing straightforward requirements, considered to be a low risk purchase, 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 that includes Contract Award and Protest language
    - Eliminating the need to include Section II – Rules Governing Competition as well as the remaining solicitation sections (ten total) of a formal IFB solicitation for more complex purchases.
  - Bidder Instructions (GSPD-451) see Note below
  - IT General Provisions

  Click here to access the IFB for IT Goods Only format.

- If the purchase is for **IT goods and services** (i.e., Hardware, Software, Services, then the solicitation will be developed using the:
  - Formal IFB solicitation format, including all ten sections of a solicitation.*
  - Section II – Rules Governing Competition replaces the Bidder Instructions (GSOP-451)
    Contact the Technology Acquisitions Branch to obtain the most current version of Section II
  - IT General Provisions

  Click here to access the suggested IFB format for IT goods and services.

  *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. In such cases, there may be only one step.

Note: High risk purchases such as large scale integration projects are usually conducted using the RFP format.

4.B4.2 Questions (rev 12/13)

- Click here for IT Goods
- Click here for IT Services
- Click here for IT Goods and Services

4.B4.3 Allows for Phased Approach

The IFB solicitation format using the multi-step procurement procedure is more structured than the RFQ and allows requirements 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 (see 4.B4.5 below) results will be documented using an Evaluation and Selection Report (see 3.B.4.6).

4.B4.4 Contract Award (rev 12/13)

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. See Section C, of this chapter for a discussion regarding evaluation of deviations and the handling of cost envelopes.

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.B4.5 Evaluation and Selection Team Procedures

When using the IFB phased approach format for IT procurements the Evaluation and Selection Team procedures provided in the link below must 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.

Click here to access the Evaluation and Selection Team Procedure document.

4.B4.6 Evaluation and Selection Report

When using the IFB format for IT procurements an Evaluation and Selection Report provided in the link below must be used to document the evaluation and selection process used for contract award. An Evaluation and Selection Report must be completed for all IFBs for IT including telecommunication goods and services.

Click here to access the Evaluation and Selection Report template.

Topic 5 – Request for Proposal for IT Solicitations

4.B5.0 Request for Proposal (RFP)
(rev 9/12)
(rev 11/12)

The Request for Proposal (RFP) is a written solicitation document required for IT goods and services acquisitions more than $1,000,000. 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 during the planning stage of the procurement. Risk evaluation guidelines and financial protection measures for formal solicitations valued more than $1,000,000 are established in 4.B2.13. It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process in case conditions change.

Note: In contrast, an IFB is for IT goods alone or for IT goods and services where suppliers are asked to provide a bid to the State's known and detailed, clear requirement.

4.B5.1 Elements of the RFP Solicitation

- Click here for IT Goods
- Click here for IT Services
- Click here for IT Goods and Services

4.B5.2 Phased Approach

A RFP allows phases to the procurement effort by establishing dates for suppliers to provide specified required documents, such as Intent to Bid letter, Conceptual Proposal, Detailed Technical Proposal, Draft Bid, and Final Bid. The RFP requires cost to be submitted in a separately sealed envelope and requires technical and administrative evaluation to occur prior to opening the cost envelope. Cost envelopes will not be opened for bid responses containing material deviations. See Section D, Topic 5, of this chapter for a discussion regarding evaluation deviations and handling of cost envelopes.

Click here to access the IFB/RFP solicitation format.

Note: 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 Chapter 7, Topic 3, of this manual or PCC 12125 et seq.

4.B5.3 Changes to RFP Rules and Requirements

Any changes to RFP rules and requirements are to be communicated in writing to all vendors/suppliers who have expressed intent to bid. In addition, these changes must be posted in a public location. This is pursuant to Public Contract Code (PCC) section 12104.5.

4.B5.4 Documen-tation of Project Information Pertinent to Creation of an RFP

If the following information is not already identified and documented in the Feasibility Study Report (FSR) beginning January 1, 2007, pursuant to PCC section 12103.5, departments shall identify and document the following for IT purchases conducted using the RFP approach in an Information Technology Procurement Plan (ITPP) before the RFP is released.

- 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

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4.B5.5 Availability of Pertinent RFP Project Information

To ensure prospective bidders have access to FSR's and Special Project Reports (SPR) related to IT projects/procurements during the procurement process, departments shall post the related FSR or SPR with the RFP Bid Package to the California State Contracts Register (CSCR). If the IT project/procurement is to be conducted by the DGS/PD, the department for which the IT project/procurement is being conducted shall ensure that the most current approved FSR/SPR is provided to the DGS/PD.

Information on an FSR/SPR that could impact the department or the State's security shall be censored on the copy placed on the CSCR.

Note: If there is no related FSR or SPR, a statement indicating this shall be included in the RFP.

4.B5.6 DGS/Office of Legal Services (OLS) Review of RFPs
(rev 11/12)
(rev 12/12)

Effective January 1, 2011, pursuant to PCC section 12104(c) all IT RFPs shall be reviewed by the California Technology Agency and the DGS 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 the DGS/OLS a minimum of 10 work days prior to anticipated release of the RFP to allow the 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.B5.7 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 percent (50%) and cost equals 50 percent (50%).

If a weighting other than 50/50 is chosen, it must be approved by the 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.B5.8 Evaluation and Selection Team Procedures

The Evaluation and Selection Team Procedures provided in the link below must be used when using the RFP format for IT procurements. This document provides information on how an RFP evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation.

Click here to access the Evaluation and Selection Team Procedure document.

4.B5.9 Evaluation and Selection Report

When using the RFP format for IT procurements an Evaluation and Selection Report (format provided in the link below) must be used to document the evaluation and selection process used for contract award. An Evaluation and Selection Report must be completed for RFPs for IT (including telecommunication goods and services).

Click here to access the Evaluation and Selection Report template.

Topic 6 - Hybrid RFP Procurement Process

4.B6.0 Hybrid RFP Procurement Process
(added 9/11)

While the preceding techniques are appropriate for most acquisitions, some business problems offer unique challenges where the use of different procurement techniques, within a competitive framework, may better meet the State's needs. As warranted, and generally only for the most complex, risk sensitive IT procurements, the DGS will consider using an RFP procurement process that includes a mixture of techniques from the traditional ten section RFP process and some or all of the following elements:

- Accelerated RFP development sessions
- Solution based requirements
- Multiple proposal stages

For the targeted projects, the techniques will 1) maximize the State's ability to obtain the best value solution, 2) ensure that all participants are in agreement as to the activities necessary to successfully deliver the solution, and 3) reduce processing time for some projects when supported by customer departments.

NOTE: Due to the complexity of the RFP procurement process, only the DGS/PD has the authority to conduct such procurements.

4.B6.1 Accelerated RFP
(added 9/11)

The accelerated RFP may be considered for any formal RFP procurement that includes a critically constrained timeframe in which to complete the procurement and may include some or all of the following elements:

- Accelerated RFP development sessions where representatives from the Department, the DGS/PD, the DGS/OLS and the California Technology Agency (CTA) are committed to meet for consecutive days to write the RFP requirements and evaluation criteria.
- Smaller procurement teams
- Parallel reviews of the solicitation documents (the Department, the DGS and the CTA representatives).
- Request for Information (RFI) required prior to the development of the solicitation document to enable the bidder to determine merit of participating, and whether funding levels are appropriate. The RFI is also used by the department to determine what is available in the marketplace, and if their requirements can be met by the bidder community.
- Expanded use of Confidential Discussions during the solicitation process, prior to submission of Final Proposals.
- Phased implementation and progress payments
- Use of Alternative Protest Process

4.B6.2 Solution Based Requirements (added 9/11)

Solution based requirements (PCC Section 12103-5(d)) may be considered for any formal RFP procurement, and describe, in general terms, the State's problem to be solved or a goal to be achieved, as opposed to a known, detailed and clear requirement used in the IFB. The State outlines the business problem and describes the results that are required and the bidders propose business solutions.

Confidential discussions, that are iterative in nature, are conducted throughout the solicitation process to encourage dialogue between the State and bidders. This is critical to ensure that the State's business requirements and goals are clearly stipulated in the procurement document and the contractor is qualified and capable of meeting the requirements prior to entering into a contract.

4.B6.3 Multiple Proposal Stages
(added 9/11)

The multiple proposal stages approach is used for only the most complex and risk sensitive IT procurements. It will generally include most elements of the accelerated process and solution based requirements outlined above, and the following 2 stage process:

- Stage 1 is the contractor pre-qualification that results in separate contracts for 1) the proposal submittal stage and 2) the solution implementation stage.
- Two or more contractors are pre-qualified in Stage 1
- Contract language for Stage 1 contracts is standard, and not negotiable. Contract language for Stage 2 contracts can be negotiable.
- A contractor's Stage 1 and 2 contracts are separate documents, but part of an overall single procurement.
- Contractors may be paid for both Stage 1 and Stage 2 deliverables

The multiple proposal stages approach is conducted under PCC 6611 and provides for negotiations for which only the DGS has authority, instead of PCC 12100. For information regarding PCC 6611, refer to Chapter 2.

PCC 10365.5, with specified exceptions, prohibits any person, firm, or subsidiary thereof who has been awarded a consulting services contract from submitting a bid for, or being awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. PCC 10430 provides that this prohibition does not apply to incidental advice or suggestions made outside of the scope of a consulting services contract with regard to certain contracts for the acquisition of information technology goods and services, as specified.

Per PCC 10430, also exempt from this authorization are contracts that are part of a single competitive procurement conducted in more than one stage for information technology goods or services, when the Director of the DGS and the CTA Secretary determine that there is no conflict of interest, as specified, and that it is in the best interest of the state to utilize this procurement method. The DGS is required to annually post a report on its Internet Web site describing each determination, as specified, and to provide notice to the Joint Legislative Budget Committee within 30 days of the posting of the report.

4.B6.4 Contact DGS/PD to Start
(added 9/11)

Departments that wish to partner with the DGS to use any of the elements of the hybrid RFP processes, including use of a multiple proposal stages approach, are encouraged to contact the DGS/PD/TAB early to discuss their requirements. Techniques such as these require advanced planning and a focused commitment by all parties involved.

EXECUTIVE SPONSORSHIP AND COMMITMENT IS CRUCIAL TO THE SUCCESS OF THESE PROCUREMENT APPROACHES. RESOURCES MUST BE FULLY DEDICATED BY BOTH THE DEPARTMENT AND THE DGS/PD. THE ACCELERATED RFP DEVELOPMENT APPROACH REQUIRES 30-60 BUSINESS DAYS OF ATTENDANCE OF THE CORE PROJECT TEAM TO DEVELOP THE RFP AND SUBJECT MATTER EXPERTS MUST BE AVAILABLE TO ANSWER QUESTIONS AND DEVELOP REQUIREMENTS. THE MULTIPLE PROPOSAL STAGES APPROACH REQUIRES WEEKS OR MONTHS OF NEGOTIATIONS AND IS RESOURCE DEPENDENT.

Once a collaborative decision has been made to go forward, the Department is required to submit a written request to the DGS/PD/TAB that minimally includes the following:

- Problem(s) to be solved
- Reasons why a hybrid procurement approach may be appropriate
- Description of the RFP procurement model in the Acquisitions Methodology Steps section of the Information Technology Procurement Plan (ITPP), in addition to all other ITPP requirements such as market research, risk management (bonds/payment holdback), and contract management approach. See SAM 4819.31.

In addition, when utilizing the multiple proposal stages approach, the following is required:

- Approval letter from the CTA and the DGS/PD to utilize the Hybrid RFP procurement process(es). This is in addition to the CTA approval of the FSR/SPR.

A letter requesting the DGS to release the solicitation under Public Contract Code (PCC) 6611. The DGS/PD will review the request and either approve or deny the request.

NOTE: Due to the complexity of the hybrid processes, only the DGS/PD has the authority to conduct such procurements.

Topic 7 – SB/DVBE Option

4.B7.0 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 IT goods or services valued from $5,000.01 to $249,999.99 to a certified SB, including microbusiness or a DVBE, as long as price quotations are obtained from two or more certified SB/MBs or two or more DVBEs.

4.B7.1 Using the SB/DVBE Option
(rev 7/12)

Competitive solicitations using the SB/DVBE Option are to be conducted as follows:

- Create the solicitation (verbal or written)
- Release the solicitation only to California certified SB or DVBEs
- Verify SB or DVBE certification status through the OSDS Internet site
- Contract award may be made upon receipt of responsive price quotations from at least two (2) responsible California certified SB 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, and include copies of SB or DVBE certification printed from the OSDS search database.

Note: 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 SB/DVBE Option procurement approach is used.

Topic 8 – Bidder Instructions and Required Contract Language

4.B8.0 Bidder Instructions (rev 11/12)

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 solicitations (written or verbal) for IT goods and services, except when conducting IT solicitations more than $1,000,000 for which evaluation is being based on value effective.

Most IT solicitations more than $1,000,000 use the 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.

Click here to access the State's Bidder Instructions (GSPD-451).

4.B8.1 General Provisions

The State's General Provisions (GSPD-401IT, as applicable) shall be used or incorporated by reference in all competitive solicitations and purchase documents for IT goods and services (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.

Click here to access the State's General Provisions (GSPD-401IT).

4.B8.2 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.

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
- Sweat Free Code (see the General Provisions)
- Recycling
- Electronic Waste
- Use tax

The procurement file must include this documentation.

4.B8.3 IT Contract Modules (rev 12/13)

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.B8.4 IT Goods and Services Solicitations Exceeding $1,000,000 (rev 11/12)

All competitive IT goods and services solicitations valued more than $1,000,000 shall use the IFB/RFP solicitation format provided in the link below which includes the DGS/PD-developed IFB/RFP Section II, Rules Governing Competition.

Exception:
The State's Bidder Instructions may be used if the procurement is straight-forward and the evaluation and selection is based on lowest net cost meeting all other bid specifications.

Click here to access the IFB/RFP solicitation format.

Note: In rare instances, modification of Section II may be deemed necessary. In such an instance, departments must request, justify and obtain DGS/PD approval when requesting the copy of Section II for use in an IFBs/RFPs. Any changes, if approved, will be made by the DGS/PD.

4.B8.5 Review of IT Goods and Services for Solicitations Exceeding $1,000,000 (added 5/11)

Per ITPL 11-03, all solicitations (IFB/RFP) for IT goods and services exceeding $1,000,000 must be submitted to the Technology Agency for review no later than 45 business days prior to the planned date for release to the public. Review of informal IT solicitations is delegated to the department. See ITPL 11-03 for details.

The Technology Agency review and approval is in addition to and done concurrently with DGS review and approval of procurement documents.

4.B8.6 Obtaining Seller's Permit (rev 10/11)

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 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. 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

Note: 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 provided at the link below and print the validation page to include in the purchase file documentation.

Click here to access the Board of Equalization website.

4.B8.7 Cloud Computing Special Provisions SaaS (added 9/14)

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 solicitations and purchase documents for Cloud Computing SaaS.

Except where the Cloud Computing SaaS Special Provisions refer to specifics in the Statement of Work, no changes can be made to the Cloud Computing SaaS Special Provisions without prior approval from DGS/PD.

Click here to access the State's Cloud Computing SaaS Special Provisions.

Section C

Rules for Achieving Competition

Overview

Introduction

This section describes the dollar thresholds and the rules to be used to determine whether competition has been achieved. Also described within this section is how to determine fair and reasonable pricing.

Contents

This section contains the following topics:

Topic	See Page
Topic 1 – Dollar Thresholds	40
Topic 2 – How to Determine Fair and Reasonable Pricing	42
Topic 3 – Limit to Brand or Trade Name Contracts	43

Topic 1 – Dollar Thresholds

4.C1.0 Transactions under $5,000

Competition is always the preferred method of acquisition. However, IT goods and services valued less than $5,000 may be acquired without receiving alternate quotes if fair and reasonable pricing can be established. Examples of fair and reasonable pricing methods include:

- Price Comparison
- Verifying established catalog/market pricing
- Prices set by law or regulation
- Historical comparison
- Cost/benefit analysis

See Section C, Topic 2, Fair and Reasonable Pricing for detail. The procurement file must contain documentation that supports fair and reasonable pricing.

4.C1.1 IT Goods and Services Transactions Valued from $5,000 to $100,000

Achieving competition within this dollar range is defined as receiving responsive bids from at least two responsible bidders, if the solicitation is not advertised. See Section A, Topic 2, of this chapter for advertising requirements.

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.C1.2 IT Goods and Services Transactions Valued from $100,000.01 to $1,000,000

Competitive solicitations conducted for IT goods and 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

Note: For RFQs that exceed $100,000 the RFQ Award of Contract and Protests language must be included (see Section B, Topic 3 of this chapter).

Whenever solicitations are advertised (see Section A, Topic 2, of this chapter for advertising requirements) 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

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Topic 2 – How to Determine Fair and Reasonable Pricing

4.C2.0 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 a 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. (Note: 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 reasonable gained from searching out the market place for lower price comparable acquisitions.

4.C2.1 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).

Topic 3 – Limit to Brand or Trade Name Contracts

4.C3.0 LTB contracting

LTB contracts are limited by statute in accordance with PCC Sections 12102(b) for IT goods, to the following conditions:

- Emergencies, where immediate acquisition is necessary to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
- The contracting agency and the DGS agree that the proposed acquisition of goods which are the only goods that meet the State's need.

4.C3.1 $25,000.00 LTB contract purchasing authority dollar threshold

A department's LTB contract purchasing authority dollar threshold will be authorized a maximum not to exceed $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.

4.C3.2 Acquisitions requiring LTB

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

4.C3.3 LTB contract process

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

Stage	Who	Does What
1	Department	Determines a need to acquire a specified brand or trade name product. Completes an LTB Statement (GSPD-08-001) form, securing approval signatures from the department Procurement and Contracting Officer or next highest-ranking official.

<table>
<tr><td>2</td><td>Department</td><td>Creates the purchase package as follows:
<table>
<tr><th>If the purchase is</th><th>Then the department</th></tr>
<tr><td>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 document (STD.65)</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>Submits the LTB Statement to DGS/PD for review and approval. Since this purchase is within the department’s approved purchasing authority, once the LTB Statement is approved, the 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>Submits to DGS/PD for review, approval, and processing, the following:
• LTB Statement.
• Purchase Estimate (STD.66)</td></tr>
<tr><td>Requested by a department without IT goods and services purchasing authority.</td><td>Submits the following to DGS/PD for review, approval, and processing:
• LTB Statement.
• Purchase Estimate (STD.66)</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 DGS/PD will</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>• Review and approve or deny the LTB Statement.
• If approved, return LTB Statement to the department for processing.
Or
• If denied, return LTB Statement to the department advising them to conduct a competitive solicitation not restricting the solicitation to a brand or trade name.</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>• Review and approve or deny the LTB Statement and Purchase Estimate (STD.66).
• If approved, conduct the appropriate procurement method and execute a purchase document on behalf of the department.
Or
• If denied, conduct a competitive solicitation not restrictive to trade name or brand and execute a purchase document on behalf of the department or cancel the request if directed by the department.</td></tr>
<tr><td>Requested by a department without IT goods and services purchasing authority.</td><td>• Review and approve or deny the LTB Statement and Purchase Estimate (STD.66).
• If approved, conduct the appropriate procurement method and execute a purchase order on behalf of the department.
Or
• If denied, conduct a competitive solicitation without restricting to a specified brand or trade name, and execute a purchase document on behalf of the department or cancel 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>

4.C3.4 LTB Statement (rev 7/12)

The LTB Statement (GSPD-08-001) is used for the purchase of IT 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 IT goods there are unique performance factors necessary to achieve a department's program objectives.

4.C3.5 LTB Statement documents

Departments must use the LTB Statement (GSPD-08-001) when submitting an LTB request to the DGS. No substitute format will be accepted.

Click here to access the LTB Contract Statement: Word PDF

4.C3.6 Signature authority

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

Note: LTB signature approval authority may not be delegated further than the next highest-ranking official. All signatures must be originals.

4.C3.7 File documentation list recommended

Click here to access the file documentation list for LTB contracts. Use of this documentation list is highly recommended.

Section D

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.

Contents

This section contains the following topics:

Topic	See Page
Topic 1 – Supplier Selection Basics	47
Topic 2 – Determining Responsive Bid and Responsible Bidder	50
Topic 3 – Ineligible Businesses	52
Topic 4 – Material Deviations	54
Topic 5 – Evaluation and Award	56
Topic 6 – Evaluation and Award Specific to IT Goods and Services	58

Topic 1 – Supplier Selection Basics

4.D1.0 Evaluator's Responsibility

Evaluators are expected to:

- Be unbiased and to evaluate all bids fairly
- Excuse themselves from participating in an evaluation if the evaluator or a family member has a personal involvement with the bidder or firm (see Section A, Topic 1, Sections 3.A1.1 and 3.A1.2 of this chapter)

Example:
Evaluator's spouse is an employee of the bidder.

4.D1.1 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.

Note: 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.

Click here to access the Bid/Quote Worksheet.

4.D1.2 IFB/RFP Evaluation Documen-tation (rev 11/12)

Buyers using the IFB or RFP format for IT goods, IT services, or IT goods/services for more than $1,000,000 must use the Evaluation and Selection Team Procedures for contract award provided in the link below. 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.

Click here to access the Evaluation and Selection Team Procedure document.

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
- Analysis of all deviations discovered during bid evaluation.

Click here to access the Evaluation and Selection Report template.

4.D1.3 Evaluation Criteria Revisions

Evaluation criteria may not be changed once bids have been submitted.

4.D1.4 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 C, Topic 2, of this chapter for the technique available to determine fair and reasonable pricing.

4.D1.5 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.D1.6 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.

Note: 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 Chapter 6, Topic 4, of this manual or 1 CCR [California Code of Regulations] section 1404).

4.D1.7 Bid Response/Award Availability

Where notices of intent to award are not used bid response/award information after award is complete shall be made available to any requestor. 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.D2.0 Responsive and Responsible Definition

A supplier who is responsible and submits a responsive bid is one who clearly indicates compliance without material deviation from the solicitation's terms and conditions and who possesses the experience, facilities, reputation, financial resources and other factors existing at the time of contract award.

4.D2.1 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.

Note: 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.D2.2 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 4 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.D2.3 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 or not responsible.

After carefully documenting the rationale, the award may be made.

4.D2.4 Non-participation Due to Concerns with Bid Specifications

If there was lack of participation resulting in only one responsive bid received due to concerns with the bid specifications, three options must be considered:

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 departments needs, the procurement file must be documented that the solicitation has been determined to be an NCB and then award may be made, following the procedures outlined in Chapter 4 of this manual.

Topic 3 – Ineligible Businesses

4.D3.0 Authority

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.

4.D3.1 Ineligible Businesses

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). See Chapter 3 of this volume for additional information.

4.D3.2 CalRecycle Website

A listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the CalRecycle website at: http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/.

4.D3.3 Check for Ineligible Businesses

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. Check the CalRecycle website 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.

4.D3.4 Document the File

If a supplier or bid is rejected due to ineligibility, the file must be documented identifying the reason with a printout of the CalRecycle web list included in the file.

4.D3.5 GC 12990 and non-discrimination

Any employer who wishes to contract with the State for IT goods is subject to the provisions of GC 12990 relating to discrimination in employment. Contractors that do not meet the provisions of GC 12990 are not eligible to contract with the State for IT goods. Ineligible contractors are found in the California Regulatory Notice Register. To access the California Regulatory Notice Register, use this link.

4.D3.6 Credit card purchases

The requirements of GC 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.

Topic 4 – Material Deviations

4.D4.0 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.D4.1 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 such a desirable feature, even if material will not in itself cause rejection of the bid.

4.D4.2 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.D4.3 Determining Responsiveness

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.

4.D4.4 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.D4.5 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, 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 cannot be accepted by the State because by accepting it, the response will provide the bidder with an advantage over other bidders either for cost, quantity or quality.
  Example:
  The solicitation required a system that would serve 500 users and the bidder only offered a system that would serve 250 users.

Click here to access a Deviation Worksheet. Word PDF

Topic 5 – Evaluation and Award

4.D5.0 Bid Submissions

Generally, bid submissions will be handled as follows:

- Bids will 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 PST on the date indicated unless otherwise stated in the solicitation
- When sealed bids are required, each bid must be:
  - Separately sealed inside an envelope
  - Received by the closing time and date specified
  - Signed on all forms furnished in the solicitation to be considered for award
- Bids must be date and time stamped upon receipt
- Buyers are advised to create a bidder response list recording date and time bids are submitted along with the bidder's company name, the bidder's contact person submitting the bid response and the amount quoted
- 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

Note: IT solicitations using the value effective evaluation for contract award require a separately sealed cost envelope and require evaluation and scoring of all submissions prior to opening the cost envelope to determine the overall score of the bid responses. Only the cost envelopes of responsive bids are opened. See Topic 6 in this section.

4.D5.1 Submission of Fax Bids

Any solicitation that requires a sealed cost submission cannot be faxed. For additional information regarding fax bids, see 4.B2.4 et seq.

4.D5.2 Procurement Summary Document

The evaluation process and resulting source 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 provides the history of those particular procurement transactions by explaining the significant facts, events and decisions leading up to the contract award.

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 Bid/Quote Worksheet or the Evaluation and Selection Report

Click here to access the Bid/Quote Worksheet

Click here to access the Evaluation and Selection Team Procedure document.

4.D5.3 Intent to Award

For IT goods or goods and services solicitations exceeding $100,000, all bidders must be notified of an 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.

4.D5.4 Sample Language for Letter of Intent to Award

NOTIFICATION OF INTENT TO AWARD

RFP PAM-001
CLEARINGHOUSE OPERATOR

According to the provisions of RFP ABC-001, the (Department Name) intends to award a contract on (Date) to:

(Supplier Name)

This Notification of Intent to Award should not be considered as a binding commitment by the (Department Name). The last day to protest this award is (Date – 5 days from posting date).

Inquiries should be addressed to (Buyer's Name), (XXX) XXX-XXXX. Thank you for your continued interest in responding to the needs of the State.

Sincerely,

XXXX XXXXX
Manager (Name of Procurement Officer)
(Section Title)

4.D5.5 Tie Bids (added 9/11)

In the event of a tie, Departments should allow for a tiebreaker in the solicitation document, indicating how the contract award will be made. 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.

Note: In the event of a precise tie between suppliers claiming the incentive, the bid of an SB and the bid of a DVBE that is also a SB, the award shall go to the DVBE that is also an SB. (Reference Chapter 3 and GC section 14838 (f) and 2 CCR section 1896.8(f)).

Note: Recycled tire product contracts 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 6 – Evaluation and Award Specific to IT Value Effective Evaluations

4.D6.0 Value Effective Acquisitions (rev 11/12)

For IT goods and 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. Value-effective evaluation methodology is required for all IT goods and services transactions more than $1,000,000, 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 specifications must be clearly identified and the points to be scored (or denoted non-scorable) must be clearly identified in the evaluation section. The method for determining the winning bid must be clearly stated.

Example
"Award may be made to the supplier achieving the highest number of points from amongst the administrative, technical requirements including cost."

4.D6.1 Two-envelope evaluation procedure

Whenever a value-effective evaluation methodology is used to evaluate IT goods and services bids, the following process must be followed:

1. All bidder cost information must be submitted in an envelope separate from the technical and administrative proposals.
2. 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.
3. 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.

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.D6.2 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.

4.D6.3 Sample Language for Cost Proposal Certificate

COST PROPOSAL CERTIFICATION

For

RFP #_____

I certify under penalty of perjury that I have kept the cost proposal, contract containing cost information and any other bid material containing cost information received for the RFP identified above sealed and under lock and key from its receipt on ____(date)____ to the proposal opening on _____(date)_____..

_____

_____

(Buyers Name) (Date)

Chapter 5

Non-Competitively Bid (NCB) Contracts

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Chapter 5

Non-Competitively Bid (NCB) Contracts

Overview

Introduction
(rev 5/11)

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 IT 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 4, Info block 4.C3.0.

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Topic 1- Non-Competitively Bid (NCB) Contracts

5.1.0 NCB contracting

NCB contracts are limited by statute in accordance with PCC section 12102 for IT goods and services to the following conditions:

- Proposed acquisition of goods and services are the only goods and services that meet the State's need (PCC section 12102 (b)(1)), or;
- Emergencies, where immediate acquisition is necessary for the protection of the public health, welfare or safety (PCC section 12102 (b)(2))

5.1.1 NCB contact purchasing authority and dollar threshold maximum

A department's NCB contract purchasing authority for IT goods and services is typically authorized at the same dollar threshold as the department's approved competitive purchasing authority for IT goods and services or at a maximum dollar threshold not to exceed $25,000.00 per transaction, whichever is less. The dollar threshold will vary according to a department's individual IT purchasing authority approval documentation issued by the DGS/PD. 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.

Departments without approved purchasing authority for IT goods and services must submit the required NCB request forms and purchase documents to the DGS/PD for processing.

NCB contract request forms and purchase documents for purchases exceeding the department's approved NCB contract purchasing authority for IT goods and services must be submitted to the DGS/PD for review and approval.

Note: See Chapter 1 for the requirements of applying for IT purchasing authority.

5.1.2 NCB contract justification methods

There are two methods 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 IT goods and/or services will occur during a specified period of time.

See Topic 4 of this chapter for additional details regarding SCR.

5.1.3 NCB justification documents

The following forms must be used when submitting NCB contract justification documents and/or SCR documents. No substitute format will be accepted.

Click here to access the NCB Contract Justification Word PDF

Click here to access the Contract Advertising Exemption Request (STD.821). This form must accompany all NCB requests for IT services.

5.1.4 Less than $5,000

Departments with IT goods and services 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.

5.1.5 Signature authority

Buyers shall secure the proper signature approvals on the NCB Contract Justification. The NCB contract justification requires the specified signature(s) regardless of whether or not the justification is submitted to the DGS/PD for approval. All signatures must be originals.

Signature Authority for Agencies with an Agency Secretary
The NCB Contract Justification form requires signature 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 sign 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.

Signature Authority for Agencies that do not have an Agency Secretary
The NCB Contract Justification form requires approval by the highest ranking executive officer or designee. The highest ranking officer may designate one person to sign on his/her behalf subject to the DGS 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.

The DGS/PD will maintain a file of the names and titles of designees.

5.1.6 File documen-tation

Click here to access the file documentation list for NCB contracts.

5.1.7
(deleted 6/11)

Topic 2 – NCB Contract Justification Process

5.2.0 NCB contract process (rev 6/11)

The following chart describes the NCB contract justification process for IT goods and services. This process is also applicable to NCB purchases processed as an LPA and when executing amendments to purchase documents.

<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 product from a supplier who is the only known source. Completes an NCB contract justification, securing approval signature(s).</td></tr>
<tr><td>2</td><td>Department</td><td>Creates the purchase package for IT goods and services as follows:
<table>
<tr><th>If the purchase is</th><th>Then the department</th></tr>
<tr><td>Within the department's IT purchasing authority for NCB contract approval threshold and the department's approval limits for the IT purchasing authority category.</td><td>• Retains the approved NCB contract justification within the procurement file.
• Executes the applicable purchase document</td></tr>
<tr><td>Exceeds the department's IT NCB contract approval threshold <u>but is within the department's approval limits for the IT purchasing authority category.</u></td><td>• Submits to the DGS/PD for review and approval the following:
• NCB contract justification.
• Executes the applicable purchase document upon the DGS/PD approval of the NCB contract justification.</td></tr>
<tr><td>Exceeds both the department's IT NCB contract approval threshold and the approval limits for the IT purchasing authority category.</td><td>Submits to the DGS/PD for review and approval the following:
• NCB contract justification.
• Purchase Estimate (STD.66).</td></tr>
<tr><td>Requested by a department without IT purchasing authority.</td><td>Submits to the DGS/PD for review and approval the following:
• NCB contract justification.
• Purchase Estimate (STD.66).</td></tr>
</table></td></tr>
</table>

<table>
<tr><th>Stage</th><th>Who</th><th>Does What</th></tr>
<tr><td>3</td><td>The DGS/PD</td><td>Processes the transaction as follows:
<table>
<tr><th>If the purchase</th><th>Then the DGS/PD will</th></tr>
<tr><td>Exceeds the department's NCB contract approval threshold <u>but is within the department's approval limits for the IT purchasing authority category.</u></td><td>• Review and approve NCB contract justification.
• Return approved NCB to department for purchase document execution.</td></tr>
<tr><td>Exceeds both the department's NCB contract approval threshold and the department's approval limits for the IT purchasing authority category.</td><td>• Review and approve the NCB justification.
• Conducts the appropriate procurement method.
• Process and execute a purchase document on behalf of the department.</td></tr>
<tr><td>Requested by a department without IT purchasing authority.</td><td>• Review and approve the NCB justification.
• Conducts the appropriate procurement method.
• Process and execute a purchase order on behalf of the department.</td></tr>
</table></td></tr>
</table>

5.2.1 NCB denied

If the NCB contract justification is denied, the DGS/PD will contact the department and discuss the following options:

When the purchase	Then the DGS/PD will
Exceeds the department's NCB purchasing authority <u>but is within the department's approved competitive purchasing authority threshold.</u>	• 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 or, • Cancel the request.

5.2.2 LPA transactions and NCB

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 IT good or services needed and offers cannot be obtained within the LPA contracts available.

Exception: The NCB contract justification process is not required if the individual LPA user instructions state that the contract is exempt from obtaining 3-offers or if the value of the transaction is under $5,000.00 and fair and reasonable pricing has been established and documented.

Buyers are reminded to always refer to individual LPA user instructions and all LPA supplements prior to initiating any LPA purchase. Refer to Chapter 6 for further information.

5.2.3 Known suppliers outside LPAs

Departments must conduct a competitive solicitation if suppliers are known outside of the 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.

5.2.4 Review LPA user instructions

Departments must carefully review individual LPA user instructions to determine if the LPA is exempt from competitive bidding.

Note: Departments submitting NCB requests should be allowing a minimum of 45 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. 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 the DGS.

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 3 – Purchase Document Amendments and the NCB Contract Justification

5.3.0 When NCB process is applicable

If the original transaction, either competitive or LPA, did not 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.

5.3.1 When an amendment does not require an NCB

Amendments to existing purchase documents are not subject to the NCB contract 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 IT 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.

5.3.2 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.

5.3.3 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 above and the original transaction was awarded using fair and reasonable methodology. This also applies to LPAs unless otherwise instructed by individual user instructions.

Topic 4 – Special Category NCB Contract Request (SCR)

5.4.0 Special Category NCB Contract Request definition

A Special Category NCB Contract Request (SCR) represents categories of contracts for the purchase of IT goods and services necessary to achieve a department's program objectives in a timely manner, where the DGS has determined in advance and in writing, that for a specific type of category of 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 IT goods and services are required.

All SCRs must use the Special Category NCB Request form. Requests for IT services must be accompanied by a STD.821, Contract Advertising Exemption Request.

Click here to access the SCR. Word PDF

Click here to access the Contract Advertising Exemption Request (STD.821).

Refer to Topic 1 of this chapter for approval signature requirements.

5.4.1 Individual SCR for each category

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

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

5.4.2 SCR dollar threshold and duration

All SCRs have a maximum authorized dollar limit and a maximum "window of approval" not to exceed three (3) calendar years from the date of the 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 the DGS Use Only" on the SCR form.

5.4.3 SCR reference number assigned

Each approved SCR will be assigned an SCR reference number by the DGS/PD. This SCR number must be recorded on any purchase document executed under the SCR approval. This is in addition to the department's approved purchasing authority number.

5.4.4 Executing the purchase

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

The 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 purchase requests on a Purchase Estimate (STD.66)

for IT goods and services and by submitting a memo to the DGS/PD.

Note: 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.

5.4.5 Tracking purchases

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

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

- Special Category (SCR) approval number issued by the DGS/PD.
- Purchase order number issued by the DGS, (GSOP-1) and/or agency order number
- Dates of transactions.
- Dollar amounts of transactions.
- Supplier names.

5.4.6 SCR usage oversight

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

Topic 5 – Proprietary Software Purchases

5.5.0 Existing proprietary software maintenance/ upgrade renewal contracts
(rev 1/11)
(rev 9/11)

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 on the purchase document (STD.65 or STD.213-Standard Agreement for IT goods and services) for any transaction that exceeds $250,000.
- Exceeds the department's approved IT purchasing authority, the department:
    - Must submit the transaction to the DGS/PD on a Purchase Estimate (STD.66) for the DGS/PD to conduct the procurement and execute the contract.
    - Must submit additional documents, along with the Purchase Estimate (STD.66), to the DGS/PD as indicated on this list.
    - Must obtain and provide the necessary documentation to the 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 Purchase Estimate (STD.66) for any transaction that exceeds the department's IT purchasing authority.
        - If over $250,000, proprietary justification is required.
        - The DGS/PD will be the repository for all of the software publisher/manufacturer letters when the DGS/PD is the approving authority.

- Is requested by a department without IT purchasing authority then the department:
    - Must submit the transaction to the DGS/PD on a Purchase Estimate (STD.66) for the DGS/PD to conduct the procurement and execute the contract.
    - Must submit additional documents, along with the Purchase Estimate (STD.66), to the DGS/PD as indicated on this list.
    - Must obtain and provide the necessary documentation to the 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 Purchase Estimate (STD.66) for any transaction that exceeds $250,000.
        - If over $250,000, proprietary justification is required.
        - The DGS/PD will be the repository for all of the software publisher/manufacturer letters when the DGS/PD is the approving authority.

5.5.1 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 and submitted to the DGS/PD for approval.
  - 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 on the purchase document (STD.65 or STD.213-Standard Agreement for IT goods and services) for any transaction that exceeds $250,000.

  Note: The purchase document may not exceed the department's IT purchasing authority.

- Exceeds the department's approved IT purchasing authority, the department:
  - Must submit the transaction to The DGS/PD on a Purchase Estimate (STD.66) for The DGS/PD to conduct the procurement and execute the contract.
  - Must obtain and provide the necessary documentation to the 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 on the purchase document (STD.65 or STD.213-Standard Agreement for IT goods and services) for any transaction that exceeds $250,000.
  - The DGS/PD will be the repository for all of the software publisher/manufacturer letters when The DGS/PD is the approving authority.

- Is requested by a department without IT purchasing authority, the department:
  - Must submit the transaction to The DGS/PD on a Purchase Estimate (STD.66) for the DGS/PD to conduct the procurement and execute the contract.

- Must obtain and provide the necessary documentation to the 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 on the purchase document (STD.65 or STD.213-Standard Agreement for IT goods and services) for any transaction that exceeds $250,000.
  - If over $250,000, NCB is required
- The DGS/PD will be the repository for all of the software publisher/manufacturer letters when The DGS/PD is the approving authority.

5.5.2 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.

5.5.3 Cost reasonable documen-tation

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 6 – Purchases Exempt from the NCB Contract Process

5.6.0 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 requests must be submitted to the 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. Note: 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.

5.6.1 Purchases exempt by the DGS policy (rev 5/11)

There are purchases that may be awarded without advertising or competitive bidding and without an NCB, as a result of being exempt by the 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, purchase requests must be submitted to the 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. Note: 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 the DGS.
    - Contracts/amendments providing for a contract value greater than $5 million are reviewed by OHI and the 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.

5.6.2 Supporting statement

Procurement files should include a statement indicating the basis for exemption from advertising or competitive bidding either by policy or statute. Documentation must be provided in sufficient detail to support how the

exemption is authorized.

Example #1
"This purchase is exempt from advertising and/or competitive bidding based on the DGS policy as identified in SCM Volume 3, Chapter 5.
Example #2
"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."

5.6.3 Cost reason-ableness

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 7 – Procurement Approach for Exempt and NCB Contract Activities

5.7.0 Obtaining pricing

When conducting IT 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 of the IT goods and/or IT services.

5.7.1 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 provided in 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
- 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 IT goods and service) 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.

5.7.2 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 the DGS/PD for assistance.

5.7.3 Signing suppliers' software licenses is prohibited

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 the DGS/PD for assistance.

Chapter 6

Leveraged Procurement Agreements

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Chapter 6

Leveraged Procurement Agreements

Overview

Introduction

This chapter describes the various types of the State's leveraged procurement agreements (LPAs) that provide for information technology (IT) goods and services and how to use them. The categories of IT LPAs include:

- California Multiple Award Schedules (CMAS)
- Software Licensing Program (SLP)
- Statewide Contracts (SC)
- State Price Schedules
- Master Agreements (MA),
- Cooperative Agreement – Western States Contracting Alliance (WSCA)

Some of the topics discussed include using LPAs to order IT good 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.

Note: 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 the DGS/PD when conducting procurements on behalf of customers.

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Section A

Leverage Procurement Agreement (LPA) General Usage

Overview

Introduction

LPAs are established by the 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.

LPA contracts 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 Vol. 3 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 contract being utilized.

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Topic 1 – The LPA Process

6.A1.0 Categories and dollar thresholds

The LPA categories and the maximum IT dollar thresholds available to departments are listed below. The dollar thresholds identified exclude sales and use taxes, finance charges, postage, handling and shipping charges unless otherwise identified within the individual LPA user instructions.

Category	Max IT Dollar Thresholds
California Multiple Award Schedule (CMAS)	$500,000
Software License Program (SLP)	$2,000,000
Statewide Contract (SC)	Unlimited
State Price Schedules	$100,000
• Master Agreements: Purchase/or Price Agreements (MPA)	$1,500,000
• Master Service Agreement (MSA)	$1,500,000
• Master Rental Agreement (MRA)	$1,500,000
Cooperative Agreements – WSCA	Unlimited

6.A1.1 Exemptions from dollar thresholds
(rev 12/10)
(rev 10/11)
(rev 6/13)
(rev 3/14)

Exemptions to the CMAS may be considered on a case by case basis. Exemptions to the SPS dollar thresholds are not allowed.

Exemptions to the SLP and MA maximum dollar thresholds may be considered as described within the individual SLP and MA user instructions and by obtaining the approval of the DGS/PD.

When requesting an exemption to the SLP maximum dollar threshold a Software License Program Exemption Request (SLPER) form must be completed and forwarded to the DGS/PD. See Section C of this chapter for further details.

When requesting an exemption to the MA maximum dollar threshold a "Master Agreement Exemption Request to exceed $1,500,000 Limit" (MAER) form must be completed and forwarded to the DGS/PD. See Section F of this chapter for further details.

6.A1.2 Where to find LPA information
(rev 10/11)

LPA information can be found on the DGS/PD's website.

6.A1.3 What LPAs offer

LPAs offer IT 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.

6.A1.4 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.

Note: Departments must have IT LPA purchasing authority to use LPAs for IT goods and services. See Chapter 1 for information on obtaining and maintaining delegated purchasing authority.

6.A1.5 Applicable codes, policies and procedures

The use of LPA contracts 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.

6.A1.6 Administrative fees

LPA Administrative Fees, if applicable, are identified within the DGS State Price Book and/or described within the LPA user instructions.

Click here to access the DGS State Price Book.

6.A1.7 Reporting requirements

LPA reporting requirements are described within the specific LPA contracts and corresponding user instructions.

Refer to Chapter 12 for the minimum LPA reporting requirements.

Topic 2 – LPA Basics

6.A2.0 LPA contract prices
(rev 10/11)

LPA contract prices for IT 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. 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.

Because of these variables, buyers are required to confirm that the IT 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 contract before executing any purchase documents. The contract's user instructions describe the tasks necessary to compete for the order.

6.A2.1 Standard purchase document

Most LPA orders are executed using a STD.65. Some MSA and MRA user instructions provide options for executing orders using other forms such as a STD. 213 (for IT goods and services), or provide department's with an option of executing orders using a STD.65, or a Master Service Agreement (GSOP-206), or Master Agreement Form (GSOP-191-2). Buyers must read the user instructions provided for the individual contract to determine the appropriate purchase document to be utilized.

6.A2.2 LPA contract provisions

Departments may add requirements but not delete any LPA terms and conditions without prior written approval from the DGS/PD.

6.A2.3 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.

6.A2.4 SB and DVBE consideration

When placing orders against LPA contracts 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.

6.A2.5 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 of the certified SB or certified DVBE business used and the dollar amount that may be applied towards the SB or DVBE participation goal.

6.A2.6 SB and DVBE verification

Inquiries through the Office of Small Business and DVBE Services (OSDS) database are to be performed to verify SB and DVBE certification status of all LPA contractors prior to issuing the order. The certification data (SB and DVBE reference number, status, term, business type, etc.) provided from an inquiry, when applicable, must be maintained within the procurement file.

Click here to access the OSDS web page.

6.A2.7 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 IT 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.

6.A2.8 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 Office.

6.A2.9 Cloud Computing SaaS Special Provisions (added 9/14)

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 the DGS/PD Cloud Computing webpage.

Topic 3 – Achieving Best Value Using LPAs

6.A3.0 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.

6.A3.1 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 competitive solicitation language regarding SB preference, DVBE incentive, protest language, intents to award, evaluation criteria or advertising requirements. When obtaining offers using a written document, the document is referred to as a Request for Offer (RFO).

Note: Since MA and CMAS RFOs are not considered competitive solicitations, departments must not use the two-envelope evaluation process or include protest language.

6.A3.2 Best value

Most LPAs require a supplier be selected based upon a "value effective" 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.

6.A3.3 Possible criteria (rev 10/11)

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
- The maximum facilitation of data exchange and system integration
- The warranties, guarantees and return policy
- 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

Note: Regardless of other criteria being used to accept an offer, price must always be used as best value criteria.

6.A3.4 Supplier selection using best value

The following minimum steps are required to determine supplier selection using best value:

- 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.

6.A3.5 Conduct a supplier comparison (rev 12/11)

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 IT 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.

Click here to access a Request for Offer template. Word PDF
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".

6.A3.6 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:

- 1 offer – document the procurement file with the reasons why, e.g., the other two (2) suppliers did not respond
- 2 offers – document the procurement file with the reasons why, e.g., the third supplier did not respond

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6.A3.7 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.

6.A3.8 Only one source known

The LPA user guide 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 5 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.

Topic 4 – Documenting the Results of an LPA Offer

6.A4.0 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 (link provided below) 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.

To access the Best Value Determination Worksheet, used to document the offers received, click Word or PDF.

6.A4.1 LPA file documentation

Click here to access the LPA file documentation requirements.

6.A4.2 Location of the entire contract

If the complete LPA is not maintained in the procurement file, the location of the complete contract must be documented in the procurement file.

Topic 5 – Amending an LPA Purchase Document

6.A5.0 Amendments for IT 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.

Note: 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.

6.A5.1 Original transaction valued less than $5,000

Unless otherwise directed by LPA user instructions, the NCB process (see Chapter 5) 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.

Section B

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 IT 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.

Contents

This section contains the following topics:

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Topic 1 – CMAS Basics	16
Topic 2 – Achieving Best Value Using CMAS	18
Topic 3 – Not Specifically Priced Items (NSP)	20
Topic 4 – Executing CMAS Purchase Documents	22

Topic 1 – CMAS Basics

6.B1.0 Products and services

The CMAS program offers primarily federal GSA multiple award schedules pricing with California terms and conditions with suppliers that provide IT goods and services. See SCM, Vol. 2, Chapter 6 for information on the CMAS program for non-IT goods and services.

6.B1.1 Contract price is maximum

Contract prices for IT 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.

6.B1.2 Who can sell on CMAS
(rev 10/11)
(rev 12/11)

Only the prime CMAS contractor and resellers who are explicitly listed in the CMAS contract can sell the IT goods and/or services using CMAS terms and conditions listed in their CMAS contract.

6.B1.3 Cloud Computing SaaS Special Provisions
(added 9/14)
(deleted 7/11)

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.

6.B1.4 CMAS dollar thresholds
(rev 6/13)

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 Section A, Topic 1 of this chapter, which describes the maximum dollar threshold per LPA purchasing category.

Topic 2 – Achieving Best Value Using CMAS

6.B2.0 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 IT goods and/or provide the IT services. Neither a lack of sufficient CMAS contractors nor the use of restrictive requirements meets the intent for obtaining offers.

6.B2.1 RFO template

Click here to access a Request for Offer template. Word PDF

See Section A, Topic 3 of this chapter for information regarding the development of an RFO.

6.B2.2 Documenting the results

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".

The Best Value Determination Worksheet (link provided (6.F2.2) below) or the department's own form to document the results may be used. The Best Value Determination Worksheet facilitates easy compilation of offers received and supplier selection rationale. Regardless of the format used the form must be retained in the procurement file.

6.B2.3 Contacting more than 3 suppliers

When more than 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.

6.B2.4 Only one source known

If only one source is known, where multiple CMAS 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 5 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.

6.B2.5 Purchases less than $5,000

CMAS 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.

Click here to access file documentation for orders less than $5,000.00

6.B2.6 CMAS purchases exceeding $5,000
(rev 6/13)

For CMAS orders for IT 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

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6.B2.7
(deleted 12/11)

6.B2.8
(deleted 12/11)

Topic 3 - Not Specifically Priced Items (NSP)

6.B3.0 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 IT products and/or services required do not qualify under the NSP parameters, the products and/or services must be procured separate from CMAS.

6.B3.1 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 IT 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.

6.B3.2 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.

6.B3.3 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.

6.B3.4 Manufacturer authorization required

Departments must substantiate (through manufacturer authorizations) that the contractor is an authorized provider of the IT products and product-related services (maintenance, repair) that are offered under the NSP provision.

6.B3.5 Clearly identify NSP

The NSP items must be separately listed and clearly identified on the order.

6.B3.6 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 CMAS Purchase Documents

6.B4.0 Recording the CMAS number on the purchase document

The CMAS contract number must be identified on each purchase order executed using a CMAS contract. This is in addition to the Purchasing Authority Number assigned by the DGS/PD.

Refer to Chapter 8– Purchase Documents.

6.B4.1 Multiple contracts on one purchase document

If multiple CMAS contracts are being included on a single order, the buyer 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 STD.65. The word "CMAS" signifies that the purchase order contains items from multiple CMAS contracts.
- The purchasing department may only use one the 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 the 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. IT contracts begin with the number "3." The purchase order limits are different for these two types of contracts. See Chapter 1 for purchasing authority limits.

6.B4.2 Send copy of purchase document to the DGS/PD

The ordering department is required to send a copy of each CMAS purchase document to:
Department of General Services
Procurement Division-Data Management Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605

See Chapter 8, Purchase Documents, for other instructions and requirements for completing and managing purchasing documents.

Section C

Software Licensing Program (SLP)

Overview

Introduction

The Software Licensing Program (SLP) was established in January 1994 and is administered by the 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.

Contents

This section contains the following topic:

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Topic 1 – Software License Program Basics	23

Topic 1 – Software License Program Basics

6.C1.0 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.

See Section A of this chapter to review LPA Basics.

6.C1.1 What is required to use SLP contracts

The department must verify the execution of the order is authorized under the department's purchasing authority.

Note: 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).

See Section A of this chapter for applicable processing requirements.

6.C1.2 List of SLP contractors

Click here to access a current list of authorized participating resellers/contractors with SLP contracts.

6.C1.3 Contract price is maximum

SLP contract pricing is the maximum allowed. Buyers are strongly encouraged to negotiate lower prices.

6.C1.4 SLP amendments

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. Except as identified below, all other amendments must follow the NCB process. See Section A of this chapter.

Amendments may be executed for incidental omissions such as:

- Transposition of numbers from the offer to the purchase document or
- Inadvertent failures to include such things as contact names or
- Mistyped addresses

Note: 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 SLP contract.

6.C1.5 Exemption from the dollar threshold
(rev 12/16)
(rev 12/10)

In order to obtain approval to execute a purchase document that exceeds the SLP dollar threshold of $2,000,000, a Software License Program Exemption Request (SLPER) must be completed and submitted to the DGS/PD/ Software License Program.

The following information must be documented and submitted to the DGS/PD/Software License Program:

- 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 Technology Agency-approved ITAP reflecting this purchase.

Upon review and approval of the documentation submitted, the DGS/PD will issue an approval letter concurring with the request. Upon receiving approval from the DGS/PD, the department may proceed to initiate the RFO approval process.

6.C1.6 Cloud Computing SaaS Special Provisions
(added 9/14)
(deleted 12/11)

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.

Section D

Statewide Contracts (SC)

Overview

Introduction
(rev 6/11)

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.

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.

Contents

This section contains the following topic:

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Topic 1 – Statewide Contract (SC) Basics

6.D1.0 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.

6.D1.1 Contract price is maximum

Contract pricing identified within SCs is the maximum allowed.

6.D1.2 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 know 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.

6.D1.3 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.

6.D1.4 Using SCs
(rev 6/11)

The following must be verified before executing an SC order:

- Departments must have the appropriate IT 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., IT project certification, 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 the DGS written approval for any exemption to conduct a purchase outside of an authorized SC.
- Purchasing authority numbers and SC numbers must be identified on the purchase document in the appropriate location.
- 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 available on PD's eProcurement web page at http://www.eprocure.dgs.ca.gov/default.htm or by contacting the PD contract manager for the specific contracts.

6.D1.5 SB/DVBE Off-Ramp Policy for Mandatory SC
(added 6/11)

Mandatory SC awarded by the DGS for IT 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 use this link.

6.D1.6 SB/DVBE Off-Ramp usage rules
(added 6/11)

In order to utilize the SB/DVBE Off-Ramp, departments must document in the procurement file that the IT goods being purchased are:

1. Equivalent to the IT 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 IT purchasing authority granted by the DGS/PD in order to utilize the SB/DVBE Off-ramp as identified by the SC (see Approved Purchasing Authority link);
- Transactions must be less than $250,000 excluding 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 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 cortication.
- Other rules as specified in the user instructions.

6.D1.7
(deleted 6/14)

6.D1.8 Purchase documents
(rev 7/12)

Unless otherwise directed by individual SC user instructions, the common purchase document used to issue SC orders is the STD.65. When utilizing the SB/DVBE Off-ramp, departments shall enter the word “Off-ramp” into the LPA number box on the STD.65. See Section A of this chapter and Chapter 8, Purchase Documents, for additional information on purchase documents.

6.D1.9 Exemptions
(rev 4/13)

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). Click here to access the Exemption Form and Instructions.

If you have additional exemption process questions, please contact your contract administrator.

6.D1.10 SC Availability

Click here to access the SC web page

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 the DGS/PD for use by State departments.

Contents

This section contains the following topic:

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Topic 1 – State Price Schedules Basics

6.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.
Note: This is a requirement for departments with purchasing authority and does not apply to the DGS/PD when conducting procurements on behalf of customers.

6.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?

SPS agreements are available on PD's eProcurement web page. Click here to access the web page.

6.E1.2 SPS for adaptive equipment requires special attention

The 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.

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Topic 1 – Master Agreement (MA) Basics

6.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. Refer to Chapter 5 for suggested statements.

6.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
  Note: 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 the DGS review and approval before issuing an award

MAs are available on PD's eProcurement web page at http://www.eprocure.dgs.ca.gov/default.htm or by contacting the PD contract manager for the specific contract.

6.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.

6.F1.3 Exemption from the dollar threshold (rev 3/14)

An exemption may be obtained from the LPA dollar threshold of $1,500,000 for IT MAs upon completion and submittal to the DGS/PD of a "Master Agreement Exemption Request for Exemption to $1,500,000 limit" (MAER) form.

The MAER form can be obtained using this link.

The following information must be documented 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 issuance of a purchase document to this particular contractor was determined to make good business sense and how best value for the department has been achieved.
- A copy of the Feasibility Study Report (FSR) approved by the California Technology Agency
- A copy of the Information Technology Procurement Plan (ITPP) approved by the Department of General Services.

Upon review and approval of the documentation submitted, the DGS/PD will issue an approval letter concurring with the request. Upon receiving approval from the DGS/PD, the department may proceed to initiate the RFO approval process.

Topic 2 – Achieving Best Value Using MA

6.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 IT goods and/or provide services. Neither a lack of sufficient MAs nor the use of restrictive requirements meets the intent for obtaining offers.

6.F2.1 Minimum RFO requirements

A minimum of three (3) offers shall be sought including one SB and/or DVBE when available, unless otherwise instructed by the individual MA user instructions, and the responses shall be documented.

Click here to access a Request for Offer template. Word PDF

Note: Buyers must read the User Instructions of an individual MA to verify whether or not the MA contains a specific format prior to using the above RFO template.

6.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.

Click here to access a Best Value Determination Worksheet. Word PDF

Regardless of the format used, the following must be documented in sufficient detail to support the supplier selection. If 3 suppliers are contacted and:

- 1 offer received – document the procurement file with the reasons why, e.g., the other two (2) suppliers did not respond
- 2 offers received – document the procurement file with the reasons why, e.g., the third supplier did not respond

6.F2.3 Contacting more than 3 suppliers

When more than 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.

6.F2.4 Only one source known

Refer to Section A, Topic 3 of this chapter for the process to follow when only one source is known.

6.F2.5 Purchases less than $5,000

MA transactions valued less than $5,000 may be executed without obtaining 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.

Click here to access file documentation for orders less than $5,000.

6.F2.6
(deleted 12/11)

6.F2.7 Transactions over $1,500,000 (rev 3/14)

MA transactions with an estimated value in excess of $1,500,000 must have the DGS/PD approval before obtaining offers. Departments must submit exemption requests for review and approval to the DGS/PD. The following steps must be followed to obtain an exemption for these transactions.

Step	Description
1	Submit a Master Agreement Exemption Request to $1,500,000 limit (MAER) form to exceed $1,500,000 to the DGS/PD. The MAER must be completed in its entirety and signed by both the PCO and PAC. The MAER form can be obtained using this link.
2	If the request is approved, a MAER number will be assigned that must appear on all RFO-related documentation.
3	The RFO must be submitted to the DGS/PD for review and approval before the RFO is released to MA contractors. **Note**: 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 the 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 the DGS/PD concurring with the supplier selection recommendation.
8	Upon receiving the approval letter from the DGS/PD, the selection may be made and the order executed.
9	The ordering department is required to send a copy of each MA purchase document to: Department of General Services Procurement Division-Purchasing Authority Management Section 707 Third Street, 2nd Floor, Second Floor South West Sacramento, CA 95605
10	All documentation must be retained in the procurement file.

6.F2.8 Amendments specific to IT

Original orders, which include options for changes (e.g., quantity or time), that were assessed and considered in the selection during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. Except as identified below, all other amendments must follow the NCB process.

Amendments may be executed for incidental omissions such as:

- Transposition of numbers from the offer response to the purchase document or
- Inadvertent failures to include such things as contact names or
- Mistyped addresses.

Note: 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 MA contract.

Section G

Cooperative Agreements

Overview

Introduction

PCC sections 10298 – 10299 allow the DGS/PD to enter into cooperative purchasing agreements with other states.

Contents

This section contains the following topic:

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Topic 1 – Western States Contracting Alliance (WSCA)

6.G1.0 Authority to use WSCA multi-state contracts

WSCA establishes cooperative multi-state contracts where participating states may join together to achieve cost-effective and efficient acquisition of quality products and services.

6.G1.1 What WSCA includes

The State's WSCA contracts are available to departments with approved IT LPA purchasing authority for Cooperative Agreement use. The following IT products/services are available on WSCA contracts:

- Computing system products and services
- Wireless voice and data services
- Wireless telecommunication services and equipment.

6.G1.2 How to use WSCA (rev 10/11)

When executing orders using the WSCA program, departments are not required to obtain three offers or document best value, but conducting price comparisons among the WSCA suppliers, if available, is encouraged. The only exception is if the purchase equals or exceeds 1.5 million dollars. For purchases which equal or exceed 1.5 million dollars the buyer should follow the process defined in the user instructions.

Click here to access the WSCA website and obtain supplier contact names and numbers.

To use WSCA:

- Define the project scope to determine which IT goods and services are needed
- Obtain a complete copy of the WSCA agreement (WSCA 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 STD.65, unless otherwise directed within the specific WSCA user instructions.
- Retain all documentation in the procurement file.

6.G1.3 WSCA pricing

The basis for WSCA 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 WSCA 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.

6.G1.4 WSCA contract numbers

Many of the WSCA contracts use the original WSCA contract number from the WSCA lead state. However, contracts established beginning in 2008 use the number "7" at the start of the contracts.

6.G1.5 Amendments

Unless otherwise instructed by the user instructions, WSCA orders that require changes can be amended without submitting NCB contract justification documentation, provided that the order as amended remains within the scope of the WSCA contract and State provisions. Any amendment should contain the same degree of detail for changes that the original order contained. See Chapter 8 for additional information on amending purchase documents.

6.G1.6 Cloud Computing SaaS Special Provisions (added 9/14) (deleted 12/11)	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.

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.

Contents

This section contains the following topic:

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Topic 1 – CALNET 2

6.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 Office of Technology Services (OTech) has authority to develop statewide policy on the use of business telecommunications systems and services by departments. As such, the OTech/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.

6.H1.1 Required use of Otech/STND contracts

Departments must use the CALNET 2 contracts to obtain mandatory voice and data services unless an exemption is granted by the OTech/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 the DGS established State Procurement Process.

Otech/STND is responsible for managing all CALNET 2 contracts to ensure compliance with OTech policy. The 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 Otech/STND website.

6.H1.2 Use of other LPAs for telecommunications equipment/ service purchases

Once approval is obtained from the Otech/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 Otech/STND website when complete.

6.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

Chapter 7

Protest and Post Award Disputes

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Chapter 7

Protest and Post Award Disputes

Overview

Introduction

This chapter describes the processes and possible outcomes when a supplier protests requirements during a competitive solicitation or challenges the contract award for Information Technology (IT) goods and services solicitations. Refer to the SCM Vol. 2 for protests of non-IT delegated procurements and post award disputes for non-IT goods.

Also included in this chapter is information regarding supplier disputes once an IT contract has been executed.

Contents

This chapter contains the following topics:

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Topic 1 – Protest Basics

7.1.0 Definition

A protest is a challenge brought by a supplier 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 bidder against the proposed contract award for 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 (h).
- Victim Compensation and Government Claims Board (VCGCB) – Board Hearing Regulations, California Code of Regulations (CCR), Title 2, Division 2, Chapter 1 sections 870.1 – 874.1
- Alternative Protest Process (APP) - PCC section 12125 et seq.
- Office of Administrative Hearings (OAH) – Arbitration Regulations - CCR, Title 1 Division 2, Chapter 5 section 1400 et seq.

7.1.2 Authority and role over protests

The DGS/PD Deputy Director must review and render a final decision for initial protests, also known as protests of requirements, for formal IT competitive solicitations.

The VCGCB must review and render a final decision for protests of solicitations conducted under PCC section 12102(h), also known as a traditional protest of proposed award, when they are not withdrawn.
The OAH arbitrates and renders a final decision for protests of solicitations conducted under PCC section 12125 et seq., also known as the APP, which requires protestants to meet regulatory filing requirements and potential bond submissions to retain the right to continue into a hearing.

The DGS/PD cannot delegate its authority to manage protests. Therefore, whenever a department is notified of a protest of IT goods and services, regardless of the PCC under which the solicitation is conducted, the department shall contact the DGS/PD/Dispute Resolution (DR) immediately (the same day or within 24 hours).

Note: See SCM, Vol. 1 and Vol. 2 for information regarding protests of non-IT services and non-IT goods respectively.

7.1.3 Ability to award during protest

Unless the purchase is conducted under the 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 the VCGCB. If the purchase is conducted under the APP, the DGS Director may authorize an award(s) while the proposed award is under protest and pending resolution at the OAH.

7.1.4 Dispute resolution (DR)

The DGS/PD/DR facilitates resolution of protests against IT solicitation requirements, protests against proposed awards for IT goods and services, and IT contract disputes.

Click here to access the DGS/PD/DR web page.

7.1.5 Protest provisions in standard solicitation language

The DGS/PD solicitation document provides suppliers with the information for initial protests or protest of proposed awards for IT competitive solicitations. This language is found in the following:

- Bidder Instructions, Article # 12-Specification Concerns
- Bidder Instructions, Article # 21—Protests (PCC section 12102(h))
- 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 (see Chapter 4)

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 IT goods and services.

Topic 2 – Initial Protests – IT Goods and Services

7.2.0 Terminology

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.

7.2.1 Who can file and when to file an initial protest

Any supplier may file an initial protest of IT requirements for solicitations conducted under PCC section 12102(h) 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.

7.2.2 Handling an initial protest (rev 12/14)

When a buyer receives an initial protest or a supplier has notified the buyer of their intent to lodge an initial protest:

1. A supplier shall lodge an initial 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 notifies the buyer verbally via telephone or in person of intent to protest, the buyer must notify the supplier that a written protest is required to start the resolution process. The buyer will notify the DGS/PD/DR of receipt of the written initial protest and confirm whether or not the initial protest is timely submitted. The Deputy Director has final authority to resolve the protest. 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. When an initial protest has been received, the buyer is to immediately notify the DGS/PD/DR by phone and by fax or electronic mail:
   - Protest Coordinator, Dispute Resolution
   - Phone: (916) 375-4581
   - FAX: (916) 376-6226
   - Email: PDProtest@dgs.ca.gov
3. Any further action on the solicitation must stop until the initial protest has been resolved either through a withdrawal of the protest or a written final determination by the DGS.
4. The DGS/PD/DR staff:
   - The initial protest shall be acknowledged
   - An independent review of the initial protest in relationship to the solicitation document shall be conducted immediately
   - Legal advice will be sought
   - Communication with the buyer receiving the protest shall be maintained
   - A written final resolution shall be sent to the supplier who filed the initial protest
5. The buyer and the DGS/PD/DR staff shall work together to resolve the

initial protest 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 or
- 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.

6. The buyer will draft a written response to the supplier, and the DGS/PD/DR 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 the DGS/PD/DR.
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 the Deputy Director or
   - Cancels the solicitation or
   - Amends the solicitation to change the solicitation to reflect the initial protest in part or in whole

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7.2.3 Adjustment of bid due date may be required

If a resolution 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 – Protests of Proposed Award

7.3.0 Definition

A protest of proposed award is a challenge conducted under PCC 12102(h) or PCC 12125 et seq. by a participating bidder against the proposed contract award for solicitations.

7.3.1 Who can file protests of proposed award and when

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(h) 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 <u>during the timeframe specified in the solicitation document</u> which will be no less than 1 and no more than 5 working days after the posting of the Notice of Intent to Award.

7.3.2 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 IT procurements.

Pursuant to PCC section 12125 et seq., an IT goods and services competitive solicitation may include the alternative protest procedure.

An APP Application must be completed and submitted for approval in order to be conducted under the APP. Department's interested in participating in the APP shall contact the DGS/PD/DR Manager, who acts as the DGS/PD/APP Protest Coordinator.

For additional information refer to OAH Arbitration Regulations - CCR, Title 1 Division 2, Chapter 5 section 1400 et seq.

7.3.3 Protest of proposed award under PCC 12102(h), Traditional process
(rev 12/14)

The following describes the process that shall be followed when a notice of protest has been received under PCC 12102(h):

1. The participating bidder notifies the buyer identified in the solicitation of an objection to the selection of the intended award. The notification may or may not include the grounds for the protest or the details related to the protest.
2. The buyer immediately upon having knowledge of or having received a written notice of intent to protest the proposed award, notifies the DGS/PD/DR by phone, fax or electronic mail:
   - Phone: (916) 375-4581
   - FAX: (916) 376-6226
   - Email: PDProtest@dgs.ca.gov
3. The buyer stops any further action of the proposed contract award until resolution of the protest of proposed award has occurred.
4. The buyer provides the DGS/PD/DR 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 recommendation for award, and any other documentation or information used to determine the proposed awardee. The DGS/PD/DR works with the buyer to validate documents to be submitted.
5. The DGS/PD/DR staff prepares and transmits all required formal documentation to meet regulatory notification and submission of the protest to the VCGCB.
6. Within ten calendar days after filing the intent to protest, 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.
7. The DGS/PD/DR, 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 DGS/PD/DR ensures that all deadlines and milestones are met.
8. The DGS/PD/DR, buyer and legal counsel review the protestant's rebuttal to prepare for potential hearing or next steps.
   The VCGCB reviews all submitted documentation and will determine notification and hearing dates to be scheduled as necessary. Hearings are held by the VCGCB, which result in a final administrative decision regarding the protest.
9. The DGS/PD/DR responds to all inquiries from the VCGCB.

For additional information refer to VCGCB Regulations, CCR, Title 2, Division 2, Chapter 1 sections 870.1 – 874.1

Topic 4 - Post Award Disputes

7.4.0 Definition

A post award dispute is a disagreement or conflict between a contractor and a department after a purchase document has been executed. Most often, contract disputes arise due to contract performance issues on the part of either the contractor or the State.

7.4.1 Occurrences

Disputes can occur in any purchasing category. It makes no difference whether the purchase document was the result of a competitive solicitation, LPA order, or an NCB contract.

Disputes may also result from not having a clear understanding of the State's General Provisions, purchase document terms and conditions, Special Provisions, or when a Statement of Work is not clearly defined or contains conflicting provisions or ambiguities.

7.4.2 Buyer responsibility

Buyers are the eventual contract managers responsible for monitoring the contractor's performance after award. However, in many departments, buyers do not conduct daily or regular oversight of every contract. That responsibility usually falls to an IT project manager, or some other person closely associated with the project. In this case, the buyers will advise the person to administer the contract in accordance with the terms and conditions by notifying the contractor of problems immediately. 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.

7.4.3 Dispute provisions

The contract terms found in General Provisions Information Technology (GSPD-401IT) Article #44 Disputes provide suppliers with the process for disputing contract administration after an award has been executed.

Click here to access the GSPD-401IT.

7.4.4 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.

Note: As stated within the GSPD-401IT, 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.

7.4.5 Resolving disputes

Disputes shall be documented in the procurement file. When informal discussions and negotiations fail to render a satisfactory resolution for all parties:

1. All conflicts or disagreements that affect contract performance shall be documented
2. Discussions shall occur with all principals (contractor, buyer, contract administrator, project manager, etc.) involved in the conflict
3. Dispute language contained within the GSPD-401IT and any special or additional contract provisions that may impact the dispute shall be reviewed
4. Every effort shall be made to reach an agreement that is acceptable to all participants
5. Written summaries of the major points of the dispute shall be prepared
6. The State cannot gift public funds, and must ensure that any monies or settlement are reasonable, legal, and justifiable
7. Department management and/or department legal counsel shall be involved, as appropriate. For the DGS/PD buyer, the DGS/OLS attorney and the DGS/PD/DR staff shall be involved.
8. If the dispute resolution:
   - Requires clarification or change to the purchase document, 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.
9. The department director or designee shall render a final decision within a timely manner
10. If the supplier is not satisfied with the department's final decision, then the supplier may appeal the decision to the DGS/PD/DR for resolution at any time in the process. Either party to the dispute may invoke the Disputes clause.

Chapter 8

Purchase Documents

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Chapter 8

Purchase Documents

Overview

Introduction

This chapter describes:

- The policies and procedures regarding the State Contract and Procurement Registration System (SCPRS), which provides a uniform reporting process for contracts and purchases of all goods and services over $5,000.
- The policies and procedures regarding transportation management and shipping methods.

Some of the different purchase documents and associated forms/documents used for competitive and non-competitive purchase of IT Goods and Services.

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Topic 1 – State Contract and Procurement Registration System (SCPRS)

8.1.0 Purpose of SCPRS
(rev 5/15)

The SCPRS is an Internet-based application that was developed as a contract tracking system to provide a centralized database on State contracting and purchasing transactions. Beginning in Summer 2015, the SCPRS system transitions from BidSync to FI$Cal.

8.1.1 Registering purchases
(rev 5/15)

Any and all purchase documents valued over $5,000 shall be registered in the SCPRS, regardless of the contract type. This includes, but is not limited to grants, subvention contracts, and exempt contracts. Departments are encouraged to also enter information for lower dollar-value transactions.

The system enables departments to record transactions valued at $5,000 and less. Individual departments may elect to do so in an effort to meet internal tracking needs. Additionally, recording transactions in SCPRS, eliminates the requirement to send hard copies of the purchase documents to the DGS/PD. Effective July2016, any State Department, including those that are deferred or exempt from FI$Cal, shall register all transactions in the FI$Cal SCPRS system, regardless of dollar value and procurement method. Exempt and deferred departments will have the option to either enter their procurements manually or upload their transactions using the upload tool.

8.1.2 Recording the SCPRS number

The registration number assigned by the SCPRS must be entered on all purchase documents before they are issued to the supplier.

Most purchase documents accommodate the SCPRS number commonly located in the top right side of the forms. If a purchase document does not have the SCPRS box, the SCPRS number must be manually recorded in the top right side of the form.

8.1.3 Registering responsibilities

Responsibility for entering the SPCRS registration number information is as follows:

- Is within a department's approved purchasing authority, the department will:
  - Record the assigned registration number on all purchase document copies before purchase document is released to the supplier
  - Retain a copy of the purchase document with the recorded registration number in the procurement file
- Requires the DGS approval, the requesting department will:
  - Record the assigned registration number on all purchase document copies ONLY AFTER obtaining the required the DGS approval and before purchase document is released to the supplier
  - Retain a copy of the purchase document with the recorded registration number in the procurement file
- Is purchased by the the DGS on behalf of a department, the the DGS will record the assigned registration number on all the purchase document copies

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8.1.4 Consequences of not reporting

A department failing to record transactions in the SCPRS registration system will be considered non-compliant with purchasing authority requirements, which may adversely impact the department's purchasing authority. This requirement is subject to the DGS audits.

8.1.5 Amendments must be registered (rev 5/15)

Purchase document amendments must be registered with the SCPRS.

Note: If an original transaction was valued at $5,000 or less and an amendment results in increasing the transaction amount to over $5,000, both the original transaction and the amendment must be registered with the SCPRS. Hard copies do not need to be submitted to DGS.

8.1.6 SCPRS internet site

Click here to access the SCPRS through the eProcurement web page. If you have questions or require assistance, contact the eProcurement Help Desk, eProcure@dgs.ca.gov or (916) 375-2000.

Topic 2 – Transportation Management Unit (TMU)

8.2.0 Transportation Management Unit (TMU)

The TMU was established in accordance with the provisions of GC 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 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.

Click here to access the TMU web page.

8.2.1 Free on board (F.O.B.)

The shipping term Free on Board (F.O.B.) identifies the location where title to the goods changes from the seller (supplier) to the buyer (department).

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.

Most State purchases will be acquired using the term F.O.B. Destination, Freight Prepaid. LPA purchase documents, unless otherwise specified within the individual LPA user guide, will also identify F.O.B. Destination, Freight Prepaid, as the shipping term.

8.2.2 Contact TMU

The TMU shall be contacted 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

<u>Example</u>:
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.

Topic 3 –Creating Purchase Documents

8.3.0 Standard purchase documents

There are two primary purchase documents used for IT transactions available to departments: the STD. 65 and the STD. 213 for IT Goods and Services Only.

Click here to access the (STD. 65/STD.65a Purchase Order), available on the DGS/OSP standard forms web page

Note: Forms STD. 65 and STD. 65a may only be used by departments with delegated purchasing authority.
Click here for Standard Agreement (STD. 213) for IT Goods and Services Only
Click here for Standard Agreement Amendment (STD. 213A)
Click here to access Agreement/Summary (STD. 215)

8.3.1 LPA purchase documents

The majority of LPA contracting processes require the use of the STD. 65, although there may be some options or exceptions. LPA user instructions must be reviewed to ensure that the proper purchase document is used when executing purchases against an LPA.

8.3.2 Purchasing information network (PIN) users

Departments executing the PIN version of the STD.65 (STD.65-PINDEL) should be aware that the STD.65-PINDEL currently does not have an area to record the SCPRS number. The SCPRS number must be hand recorded on the executed order. Refer to Topic 1 of this chapter for information on SCPRS.

Note: The DGS/PD recommends that departments refer to the instructions located on the last page of the STD.65 for completing the STD.65-PINDEL purchase documents issued from PIN.

8.3.3 Signature requirements

Only authorized personnel who are delegated signature authority by department management may sign purchase documents on behalf of the State. Original signatures are required on purchase documents. Stamped or electronic signatures are not allowed.

Signatures must also be secured from the department's accounting office verifying the availability and encumbrance of funds and the departmental personnel authorized to sign the purchase document as supported by the department's documented signature authorization list.

State Departments - Authorized Signatures

- Authority to sign purchase documents is limited to those executive officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority.
- Anyone who signs a purchase document 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 signing, have the purchase document 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 purchase document formation, execution, and administration, and completion of applicable training and/or certifications.
- Each executive officer who has statutory authority to sign purchase documents shall ensure that his/her agency maintains a current written record of agency employees authorized to enter into and sign purchase documents on behalf of that agency. This written record shall be subject to the DGS audit.
- State Board's and Commission's purchase documents in excess of $5,000 must be accompanied by a copy of the resolution approving the execution of the purchase document, unless by statute the executive officer may sign the purchase document.

Local Governmental Entities - Authority

- Purchase documents 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 purchase document. A copy of the authorization should be sent to the DGS/PD with the purchase document.
- Where performance by the local governmental entity will be complete prior to any payment by the State a resolution is not needed.

8.3.4 Executing purchase documents

A purchase is not fully executed, regardless of the type of purchase document used, until all the necessary approvals and signatures have been obtained and secured on the purchase document as applicable to the purchase. Refer to Chapter 9 and Chapter 10 for additional information.

8.3.5 Handwritten changes are discouraged

Handwritten notations and/or corrections are not generally acceptable methods to make changes to purchase documents. In any event any handwritten corrections that are not initialed and dated will be rejected by the DGS. All corrections and changes must be formalized by an amendment to the purchase document.

8.3.6 Purchase order/estimate change request (STD.96)

The Purchase Order/Estimate Change Request (STD. 96) is used to request a change to a Purchase Estimate (STD. 66) which has been submitted to the DGS/PD or to a purchase order issued by the DGS/PD.

The STD. 96 may not be used to create an amendment to an IT transaction executed on a STD. 65.

8.3.7 Contract Award Report (rev 9/12)

Within 10 working days of an award, and using the Contract Award form (STD. 16) to transmit the information, a department must report the award of each IT contract over $5,000 to the Department of Fair Employment and Housing (DFEH), including contracts with the University of California, California State Universities and California Community Colleges. Information required is specified in 2 CCR (California Code of Regulations) Section 8117.5. This requirement does not apply to contracts with other California State departments or with the federal government. Use an STD. 16 for reporting purposes. A copy of the completed form will be retained in the department's procurement file. For additional information on this reporting requirement, see Chapter 12.

8.3.8 Receiving goods and services

Purchase documents regardless of whether they are for IT goods or services must be properly executed and fully approved prior to receiving any IT goods and/or having any services performed by a contractor. Refer to Chapter 10 for post award information on receiving goods and services.

Topic 4 - STD. 65/65a

8.4.0 General use of the STD. 65/65a

Departments must use the STD. 65/65a as provided by the DGS/PD and available from the DGS/OSP or any STD.65-PINDEL issued from PIN. If a department creates an alternate version of the State's STD.65 as made available by the DGS/PD, it must submit the alternate version to the DGS/PD for review and approval prior to executing any orders using the alternate format. The DGS/PD will approve only one alternate format to be used by a department at any given time.

Note: This review and approval process is required even if the document is re-created as an exact replica of the STD.65/65a.

8.4.1 Approval process for alternate format

Departments proposing to use an alternate format for the STD.65 must submit a request through the DGS/PD Forms Coordinator as follows:

Step	Action
1	Prepare a request memo identifying the change(s) to the STD.65/65a and state why the change(s) is/are necessary.
2	Prepare and attach to the memo a "mock up" of the proposed STD.65/65a identifying all requested changes.
3	Secure approval by the department's Procurement and Contracting Officer (PCO) on file at the DGS/PD or Purchasing Authority Contact (PAC) with an indication that the PCO concurs with the request.
4	Route the request to the attention of: Forms Coordinator DGS Procurement Division 707 Third Street, Second Floor South MS 2-205 West Sacramento, CA 95605
5	The DGS/PD Forms Coordinator will review the proposed changes and will determine whether or not the changes are acceptable.
6	A letter will be prepared by the DGS/PD Forms Coordinator approving or disapproving the changes, which will be forwarded to the requesting department's PCO. A copy of the DGS/PD response will be provided to the Purchasing Authority Management Section (PAMS).

8.4.2 Common purchase order format

Departments granted multiple purchasing authorities and/or conducting purchasing activities in multiple units or locations shall use a common purchase order document. A department may concurrently use the STD. 65/65a as provided by the DGS/PD, any of the STD.65-PINDEL formats as issued from PIN, and an alternate format approved by the DGS/PD.

8.4.3 Grace period to comply with state revised STD. 65/65a

Departments will have a 90-day grace period to comply with the required use of any future revisions to the DGS/PD STD.65/65a. This 90-day period includes obtaining re-approval of a revised alternate format that includes new revisions to the State's STD.65.

A department may request an extension to begin using a STD.65/65a revision by justifying the extraordinary circumstances requiring the extension, identifying how the department will implement the changes reflected in the revision during the extension period, and providing an estimated timeframe within which the department will begin using the revised version.

8.4.4 Unique numbering

To avoid duplicate billings by the DGS/PD and/or incorrect supplier invoicing, and to facilitate tracking and the DGS/PD oversight, the department's agency order number must be unique from transaction to transaction and from year to year.

Example

03-001, 03-002, 03-003

The first two digits represent the fiscal year of the purchase order issue date. The department may determine the number of digits following the fiscal year, but the total number of characters in the sequence may not exceed 12. This maximum number of characters does not include the amendment number.

Amendments must be identified using the original agency order number and an amendment number. The amendment number must be numeric and may not exceed 2 digits.

Example

03-001, Amendment No. 01
03-001, Amendment No. 02
03-001, Amendment No. 03

Note: The amendment number must be entered in the "Amendment No." box on the STD.65.

8.4.5 STD. 65 instructions

Refer to the instructions provided on the last page of the STD.65 entitled "Instructions for completing the Purchasing Authority Purchase Order" to ensure complete and accurate information is provided.

8.4.6 CAL-Card transactions

If payment is to be made using CAL-Card, then the "Payment by CAL-Card" box on the STD. 65 must be checked as "Yes" to avoiding paying for the purchase twice.

Note: LPAs, in particular CMAS contracts, will stipulate whether the Contractor accepts the CAL-Card as a payment method.

8.4.7 Where to send the "Procurement Division copy" of the STD. 65
(rev 5/15)

The completed STD. 65 must be distributed as indicated on the bottom of the form (contractor-original and packing slip copies, Procurement Division copy, and agency copy).

The "Procurement Division copy" shall be submitted to the DGS/PD upon issuance or no later than monthly in accordance with the reporting requirements as indicated on the STD. 65 or as described in Chapter 12 to the following address:

By Interagency Mail (IMS):	Z-1 DGS/Procurement Division Attn: Data Entry Unit – Second Floor 707 Third Street, Second Floor, South MS 2-205 West Sacramento, CA 95605
By Mail to:	Department of General Services Procurement Division Data Entry Unit - Second Floor, South MS 2-205 P.O. Box 989052 West Sacramento, CA 95798-9052
Hand-Delivered to:	DGS/Procurement Division Data Entry Unit 707 Third Street, Second Floor South MS 2-205 West Sacramento, CA 95605

NOTE: If the transaction was entered in SCPRS, you are not required to send a hard copy to DGS.

8.4.8 "Bill to" or "charge to" address

The "Bill to" or "Charge to" address shown on the purchase order identifies where related invoices must be submitted for payment for 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.

8.4.9 "Ship to" address

The "Ship to" address located on the purchase order identifies the physical location of where the goods being purchased are to be delivered. Information must include the name of the department and address.

8.4.10 Ground transportation

All shipments will be made by ground transportation unless otherwise specified on the purchase order.

8.4.11 Procurement method on STD. 65

General instructions for completing the "Procurement Method" on the purchase order are described on the last page of the STD.65 as made available via the OSP standard form data base. The following are examples of transactions based on:

- *Transactions based on Fair and Reasonable Pricing*: The "Competitive" box will be checked and "Fair and Reasonable" or "F and R" will be recorded on the line provided to the right of the box.
- *Transactions based on NCB and issued as an LPA:* The "Leveraged" and "Non-competitively Bid" boxes will be checked on transactions that are supported by NCB contract justifications but reference LPA terms and conditions.
- *Transactions based on an Exempted LPA*: The "Leveraged" and "Exempt" boxes will be checked on LPA transactions and are identified as "exempt", e.g., Cal-Net, WSCA are LPA contracts that are exempt for obtaining multiple offers so both boxes on the STD.65 would be checked.

8.4.12 CALPIA orders
(rev 12/13)

It is not necessary for buyers to check any information located within the Terms and Conditions block of the STD.65 as this information is not applicable to PIA purchases.

8.4.13 Avoid price bundling

Products and/or services being purchased are not to be combined into one general description (bundled) with one price. Products and/or services being purchased shall be listed individually (line item descriptions) and prices listed for each line item.

Note: For purchase orders issued by the DGS/PD, i.e., an IT system, there might be one line item on the front but individual listings within for maintenance and other purposes.

Topic 5 – STD.213 for IT Goods and Services Only

8.5.0 General use of the STD.213 for IT Goods and Services Only

The STD. 213 for IT Goods and Services Only is used by departments with approved IT purchasing authority and the DGS/PD, most commonly for contracts resulting from a competitive solicitation, i.e., RFP. The contract must be strictly for IT services or in instances where the IT goods being purchased are subordinate to the value of the IT service. The STD. 213 for IT Goods and Services Only is also used for Interagency Agreements (IAA) between two or more State departments (Government Code [GC] section 11256) with one furnishing IT services, materials or equipment to, or performing IT work for the other State department.

Example:
Departments acquiring PC equipment maintenance services resulting from a competitive solicitation would use the STD. 213 for IT Goods and Services Only.

8.5.1 STD. 213A Standard Agreement Amendment

The Standard Agreement Amendment (STD. 213A) is used to amend agreements established with an STD. 213 for IT Goods and Services Only.

8.5.2 STD. 215 Agreement summary (rev 9/12)

In conjunction with the STD.213 for IT Goods and Services Only, departments are required to complete an Agreement/Summary (STD.215). This form provides an overview of the contract's purpose, funding information, procurement methodology, and a justification for contracting out the services (GC section 19130).

The STD.215 , must contain an explanation sufficient to afford a basis for approval as to:

- The purpose and necessity or desirability of the contract or IAA;
- The reasonableness of the price or cost of the services (not applicable to IAAs except those with the University of California or California State University); and
- Any other relevant information necessary to understand the proposed transaction.

When an STD. 213 for IT Goods and Services Only contract requires the DGS/PD approval, the form STD. 215 shall also contain the name and telephone number of the contact person in case questions arise or additional information is needed by the DGS/PD/One Times Acquisition Section (OTA). The contact person is the staff member who regularly deals with the DGS/PD/OTA on IT contract matters. A copy of the STD. 215 will be retained in the contract file.

8.5.3 Recording the purchasing authority number

Departments executing IT service contracts using the STD.213 for IT Goods and Services Only will record the purchasing authority number in the information block entitled "Purchasing Authority Number" located in the upper right side of the form.

8.5.4 SCPRS tracking

The SCPRS-assigned tracking number must be recorded in the designated box in the upper right corner of the STD.213 for IT Goods and Services Only.

8.5.5 Unique numbering

To avoid duplicate billings by the DGS/PD and/or incorrect supplier invoicing, and to facilitate tracking and the DGS/PD oversight, the department's contract number must be unique from transaction to transaction and from year to year.

Example
03-001, 03-002, 03-003
The first two digits represent the fiscal year of the contract issue date. The department may determine the number of digits following the fiscal year, but the total number of characters in the sequence may not exceed 12. This maximum number of characters does not include the amendment number.

Amendments must be identified using the original contract number and an amendment number. The amendment number must be numeric and may not exceed 2 digits.

Example
03-001, Amendment No. 01
03-001, Amendment No. 02
03-001, Amendment No. 03

Note: Since the STD.213 for IT Goods and Services Only does not include a separate box for the amendment number, the amendment number must be entered with the contract number in the "Agreement Number" box.

8.5.6 California Department of General Service use only block

Located in the lower right corner of the STD.213 for IT Goods and Services Only is an information block identified "For the DGS/PD Use Only". A stamp of approval from the DGS/PD is recorded when a STD.213 for IT Goods and Services Only exceeds a department's purchasing authority for competitive solicitations or NCB contracts. Departments may record information in this information block only if the contract does not require review and approval by the DGS/PD.

Example:
"Further review and approval by the DGS/PD is not required in accordance SCM, Volume 3, Chapter 5.

8.5.7 Number of copies

Std.213 for IT Goods and Services Only:
Transactions executed under approved IT competitive purchasing authority and within the established authorized dollar thresholds must be prepared in quadruplicate, at a minimum, with original signatures, and distributed as follows:

- 1-copy to the contractor
- 1-copy to the requesting department
- 1-copy to the State Controller's Office (SCO)
- 1-copy to the DGS/PD

IT service transactions exceeding a department's the DGS/PD approved purchasing authority must be submitted to the DGS/PD, when required, in quadruplicate with original signatures for review, approval, and distribution as follows:

- 1-copy to the contractor
- 1-copy to the submitting department
- 1-copy to the State Controller's Office
- 1-copy to the DGS/PD

Note: Upon securing final approval from the DGS/PD, the submitting department will receive two copies of the finalized contract for distribution. The department retains one copy and provides one copy to the contractor. The DGS/PD provides the SCO with an approved contract copy.

8.5.8 Where to send the "Procurement Division copy" of the STD. 213, STD.213A, and STD. 215 (rev 5/15)

The DGS copy for IT transactions executed on a STD.213 for IT Goods and Services Only and executed within the established authorized dollar thresholds for IT competitive purchasing authority shall be submitted, upon issuance or monthly in accordance with the reporting requirements as described in Chapter 12 to the following address:

By Interagency Mail (IMS):	Z-1 DGS/Procurement Division Attn: Data Entry Unit – Second Floor 707 Third Street, Second Floor, South MS 2-205West Sacramento, CA 95605
By Mail to:	Department of General Services Procurement Division Data Entry Unit - Second Floor, South MS 2-205 P.O. Box 989052 West Sacramento, CA 95798-9052
Hand-Delivered to:	DGS/Procurement Division Data Entry Unit 707 Third Street, Second Floor South MS 2-205 West Sacramento, CA 95605

Note: If the transaction was entered in SCPRS, you are not required to send a hard copy to DGS.

Topic 6 – Amending Purchase Documents

8.6.0 When amendments are necessary

Amendments to original purchase documents are necessary when there is any change or modification to the original document 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

Note: If the purchase is the result of a competitive solicitation, 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 5.

8.6.1 Proper form to effect a change

The following purchase documents may be used to effect a contract change amendment, no matter how minor the change or amendment, when allowed and as stipulated pursuant to a contract, work authorizations:

- Purchasing Authority Purchase Order (STD. 65/65a) or approved revised version
- Purchase Order (STD. 65-PINDEL or any version issued by PIN)
- The Standard Agreement Amendment (STD. 213A) is used to amend agreements established with an STD. 213.

Note: The Purchase Order Change (STD. 96) should be submitted to the DGS/PD to request change to purchase estimates and/or purchase orders when the transaction is (or was) conducted by the DGS/PD on behalf of a department.

Warning: Letters or verbal notification between buyers and suppliers cannot be used to modify a contract. Contract changes/amendments must be formally executed in writing (written, signed, approved) to modify a contract.

8.6.2 Identifying and recording amendments

Amendments must be identified using the original purchase document number and an amendment number. The amendment number must be numeric and may not exceed 2 digits. The following are common examples of identifying purchase document amendments:

Examples

03-001, Amendment No. 01
03-001, Amendment # 1
03-001, Amd # 1
03-001, #1

The amendment number must be entered in the "Amendment No." box on the STD.65. The current version of the STD.213 for IT Goods and Services Only does not include a separate box for the amendment number. Consequently, both the agreement number and the amendment number must be recorded within the Agreement Number box located in the upper right corner of the form. A department should select a method of recording the amendment and continue using that same identification scheme throughout the life of the contract.

8.6.3 Degree of detail of an amendment

Amendments should contain the same degree of detail for changes that the original transaction contained (i.e., increase or decrease in quantity, corrected model number, revised delivery date, 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.

8.6.4 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 purchase document solicitation; if it is not, it must be treated as a non-competitively bid transaction. Changes to quantity, pricing, products, etc. are scope changes.
- An amendment must be processed using the correct format and procedures as described in this manual. Do not use letters or verbal notifications.
- 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 the DGS/PD for review, approval, and execution. (See Chapter 5 - Non-Competitively 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

8.6.5 Amendment increasing or decreasing total amount on a STD. 65

If the total amount of the purchase document is being altered, the original amount, the amount of the change, and the new total must be shown within the face of the STD.65. 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 the DGS administrative fee charges.

Example:

Original:	$2,000.00	Amended STD. 65 Total Amount Box shows
Amd #1:	+100.00	$100.00
Adjusted Total:	$2,100.00	

8.6.6 Amending a Statement of Work

The following shall apply when amending a purchase document that includes a Statement of Work:

- The Agency 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 purchase document:
  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 purchase document 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."

8.6.7 Canceling a purchase document

Canceling an executed purchase document, regardless of the contract form (STD.65 or a STD.213 for IT Goods and Services Only, etc.) requires issuing an amendment, with an amendment number.

The text on the purchase document 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 purchase document.

Amendment distribution is no different for a purchase document cancellation than a typical amendment. A copy of the executed amended purchase document is sent to the DGS/PD.

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.

Topic 7 – Interagency Agreements

8.7.0 Introduction

An IT Interagency Agreement (IT/IAA) is a contract between two or more State departments (Government Code [GC] section 11256) with one furnishing IT services, materials or equipment to, or performing IT work for the other State department. This chapter provides information on when IT/IAAs are used, special provisions, and requirements.

8.7.1 When IAAs are used

IT/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 State Administrative Manual (SAM) section 8752

Note: IT/IAAs may not be used for contracts with campus foundations, the federal government, local entities, or other states.

8.7.2 Authority to conduct purchasing activities using IAAs

An IT/IAA can be established between departments that do not have purchasing authority. However, the authority to conduct and approve the procurement varies depending upon a department's purchasing authority. It is not mandatory that departments obtain IT purchasing authority; however, departments without approved purchasing authority are prohibited from executing an IT/IAA. Executing IT/IAAs is part of a department's approved IT purchasing authority and is granted at the same dollar level as IT competitive purchasing authority.

Departments must submit an IT/IAA to the DGS/PD/OTA for review and approval if the department does not have IT competitive purchasing authority or if an IT/IAA exceeds the department's IT competitive purchasing authority dollar level.

Submit IT/IAAs to:
DGS/Procurement Division
Attn: One Time Acquisitions
707 3rd Street, 2nd Floor, South
West Sacramento, Ca. 95605

Note: This does not apply to those State entities that are exempt from the DGS oversight on IT procurements.

8.7.3 Computer processing and related IT services provided by the consolidated data center

Routine computer processing and related IT services provided by the consolidated data center to "customer" departments are processed under the data center's approved IT/IAA authority (DIA) without dollar limits.

8.7.4 Special provisions

IT/IAAs:

- Are exempt from
  - Advertising in the California State Contracts Register (CSCR)
  - Competitive bidding
    Note: If the entity performing the service is using subcontracts or purchasing IT goods, those IT services and goods should be competitively bid
- Do not include the Disabled Veterans Business Enterprise (DVBE) participation requirement if the department is using its own personnel
- May provide for advancing of funds (GC sections 11257 through 11263 and State Administrative Manual [SAM] section 8758.1)
- Do not require the Child Support Certification

8.7.5 Submittal of IT/IAAs requiring the DGS approval

An IT/IAA requiring approval should be submitted to the DGS/PD/OTA at least 10 working days before the anticipated start date or at least 20 working days before the anticipated start date for IT/IAAs $250,000 and above, which require the DGS/PD/OTA approval as well as the DGS/PD Office of Legal Services (OLS) approval.

8.7.6 Other requirements

Other requirements are as follows:

- A STD. 213 for IT Goods and Services Only must be used
- A STD. 215 (Agreement/Summary) must be used
- IT/IAAs shall include a provision that the charges have been or will be computed in accordance with State requirements as noted in SAM sections 8752 and 8752.1 unless there is a legal reason for not doing so. Such a reason might be the transfer of federal funds. The reasons should be noted.
- IT/IAAs involving the expenditure of public funds in excess of $10,000 shall contain a provision that the agreement is subject to the examination and audit by the State Auditor for a period of three years after final payment under the agreement (GC section 8546.7).

8.7.7 General terms and conditions (rev 10/11)

Standard language is included in the DGS/PD developed General Provisions for IT/IAAs.

Click here for copy of "IT/IAA General Provisions"

8.7.8 File documentation

IT/IAA file documentation must include a signed Certification of Compliance with State IT Policies if the cost is $100,000 or more and is in support of a development effort. Development is defined in SAM section 4819.2 as "Activities or costs associated with the analysis, design, programming, staff training, data conversion, acquisition, and implementation of new information technology applications." (SAM section 4819.41)

This certification must be signed by the agency director or by a member of agency management specifically designated by the director for this purpose.

If the IT/IAA is to procure services from a consolidated data center in support of multiple projects, the following must be certified (SAM section 4832).

- The funding level is appropriate for the nature and scope of the services to be supplied;
- The services are consistent with approved Feasibility Study Reports and/or Post-Implementation Evaluation Reports; and,
- Project reporting for the various projects is current.

Click here for SAM section 4832, Illustration 1, for the required format of the certification.

Chapter 9

Disbursements, Financing and Payment Programs

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Chapter 9

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.

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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.

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Topic 1 – Payment Fundamentals

9.A1.0 Basic requirements

Payment shall not be processed or released to any supplier for any IT goods and/or services without having in its possession all of the following:

- A properly authorized purchase document.
- Documentation verifying the IT goods/services were satisfactorily received and/or performed.
- An accurate and correct supplier invoice.

9.A1.1 Required payment date

Payments to supplier are to be made in accordance with the provisions of the California Prompt Payment Act (GC section 927 et seq). The Act requires departments (unless expressly exempted by statute) to pay properly submitted, undisputed invoices not more than 45 days after:

- The date of acceptance of IT goods or performance of IT services; or
- Receipt of an undisputed invoice, whichever is later.

Click here to access the Prompt Payment Program.

9.A1.2 Allocation of payment approval process time

Thirty (30) of the 45 calendar days allowed to pay invoices are allocated to a department's payment approval process. The remaining 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.

9.A1.3 Administrative fee/billing

The 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, the 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.

9.A1.4 The DGS price book

The DGS/PD publishes a price book and directory of services that provides a listing of the services provided and prices charged by the DGS.

Click here to access the DGS Price Book and Directory of Services.

9.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.

Click here to access the Board of Equalization web page

9.A1.6 Maintenance sales tax

The Board of Equalization (BOE) has ruled, in accordance with Regulation 1546 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, some supplies are taxable. See Regulation 1546 or contact BOE for additional information.

9.A1.7 CAL-Card usage

The CAL-Card is a payment mechanism, not a procurement approach. Only departments granted purchasing authority for any IT goods and services purchasing categories (includes eligible LPAs as allowed by individual contract agreements) may use CAL-Card. Refer to Section B, Topics 3-6, of this Chapter for information regarding the State's CAL-Card Purchase Card Program.

Local governmental entities may apply to participate in the State's CAL-Card Purchase Card Program (CCPCP).

Note: Non-IT services outside of an LPA procurement approach are subject to the contracting requirements of the SCM, Vol. 1.

When using the CAL-Card as a payment method for purchases all sales and use tax laws, rules and policies are applicable (see 9.A1.5 and 9.A1.6 above).

Topic 2 – Advance Payments

9.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.
9.A2.1 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.

Topic 3 – Progress Payments

9.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 IT 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.

9.A3.1 When progress payments are allowed

Pursuant to PCC section 12112 (IT goods and services), 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. 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.

9.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.

9.A3.3 Recommen-dations regarding progress payments

The following should be conformed to when dealing with progress payments:

- 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 services rendered
- 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 when completed constitute a completed project

Topic 4 – Payee Data Record (STD. 204)

9.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 purchase document if the supplier is not a government entity and before any payment is 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 should be retained at the department's business services or accounting office, as determined by each department's policy, and in the procurement file.

Note: Since each supplier's STD. 204 is maintained at the department's business services or accounting office, a supplier need only submit one Std. 204 to the department. Should any information change, a new form would be required.

9.A4.1 LPA contracts and STD. 204

LPA contracts such as CMAS include the contractor's signed STD. 204 as part of the completed contract. If a completed STD. 204 is not included in a LPA contract, it is the buyer's responsibility to obtain a completed STD. 204 from the supplier.

Click here to access the Payee Data Record (STD.204).

Topic 5 – Payment of Invoices

9.A5.0 Accurate invoice

Departments shall remind suppliers of the importance of submitting accurate and correct invoices to ensure timely payment for IT goods and services received. Departments must not pay for anything that is not in the purchase document (pallets, shipping, travel costs, etc.)

9.A5.1 Components of an accurate invoice

An accurate invoice provides the following:

- Agency Order Number (STD.65) or Contract Number (STD.213)
- Identifies in detail the IT goods acquired, quantities, unit price, extension, description, etc.
- Sales tax and/or use tax as a separate line item from goods
- Identifies IT 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

9.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 the previous information block.
- Undisputed, see Chapter 10.

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.

9.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.

Click here to access the Invoice Dispute Notification (STD.209).

9.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 "Payment Terms" block on the STD.65)

Note: 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.

9.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 IT goods, approving invoices or making payments for IT goods or services that they procured.

Topic 6 – Other Payment and Invoice Considerations

9.A6.0 Travel provisions

All 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.

9.A6.1 Freight bills must be audited by the TMU

In accordance with SAM section 3851, 3852 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 IT goods purchase and the freight bill amount matches that listed in the DGS/PD LPA.

9.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.

9.A6.3 Purchase document and invoice name must match

The supplier name as shown on the purchase document/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.

9.A6.4 Non-LPA supplier name discrepancy

If there is a discrepancy in a supplier name between purchase document and invoice, 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 document 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.

Note: Department buyers requiring assistance in determining the proper documentation to effect a name change should seek legal advice from their department counsel; the DGS/PD buyers should seek assistance from the DGS/OLS.

9.A6.5 LPA supplier name discrepancies

Departments encountering a discrepancy in supplier names when conducting LPA purchases shall immediately contact the DGS/PD to verify whether or not the contractor has processed the appropriate documentation to effect the change in name.

Click here to access the Procurement Related Resources Directory found in the Introduction of the SCM, Vol. 3.

Invoices shall be disputed until such time as the LPA contract has been updated with the name change via the 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.

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Topic 1 – California's Electronic Financial Marketplace

9.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 the DGS's financial marketplaces – "GS $Mart®" or "Lease $Mart®."

Contact the DGS Financial Marketplace prior to initiating a procurement that involves financing.

Click here to access the State Financial Marketplace (SFM).

9.B1.1 SFM compliance certification form

State departments will be required to complete a SFM Certification of Compliance form when contemplating financing a transaction using the California Financial Marketplace program. The completed form must be sent to the State Financial Marketplace Manager for approval before the SFM will proceed with the financing process.

Click here to access the State Financial Marketplace for additional information regarding this certification.

9.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 regulations. GS $Mart® can be used for financed agreements as a matter of:

- Convenience;
- Efficiency; and
- Substantial cost savings.

9.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 $100,000. This includes the cost of the tangible asset and, if applicable, sales tax. Financing an amount smaller than $100,000 may not be cost-effective. Contact the Financial Marketplace 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® Administrator *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.
-

Note: Current the DGS-approved lenders and financing plans are posted in the GS $Mart®, on the DGS website.

9.B1.4 Applicability

The above conditions for financed agreements apply to the following:

- Orders for applicable items placed against Leveraged Procurement Agreements such as the California Multiple Award Schedules (CMAS), unless otherwise stated in user instructions;
- A competitive acquisition; or
- A non-competitively bid acquisition.

Note: The above conditions do not apply to operating leases and rental agreements.

9.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., photovoltaic) 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.

9.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 the DGS to conduct this evaluation. The LCC model must be used for this analysis, and the 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.

9.B1.7 The DGS oversight

All State departments that use the Financial Marketplace and are subject to the DGS oversight must send a copy of each finance agreement to the GS $Mart® Administrator. The contract is reviewed to ensure compliance with Internal Revenue Service code requirements. The Administrator also files the necessary tax forms and reports on behalf of the department. No financing contract may be signed by a department without prior written approval by the DGS.

9.B1.8 Assignments

Contact the GS $Mart® Administrator prior to initiating an assignment of a contract that was financed using the GS $Mart® program.

9.B1.9 Refinancing

The GS $Mart® program posts the latest market information on the Internet, including the 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® Administrator before proceeding.

9.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 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.

9.B1.11 Contact Financial Marketplace Administrator

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.

Click here to access the State Financial Marketplace.

Topic 2 – California Prompt Payment Program

9.B2.0 California Prompt Payment Act and compliance

The California Prompt Payment Act requires State departments to pay properly submitted, undisputed invoices within 45 calendar days of initial receipt. 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. State departments are expected to adhere to the provisions of the California Prompt Payment Act. State departments granted any types of purchasing authority are required to establish procedures in compliance with the provisions of the California Prompt Payment Act, GC 927, et seq.

Click here to access the Prompt Payment Program.

9.B2.1 Late payment penalty report

Refer to Chapter 12 – Reporting Requirements.

Topic 3 - CAL-Card Purchase Card Program

9.B3.0 About CAL-Card

CAL-Card is a payment card for State departments and local governmental agencies to make purchases for IT goods and services.

The DGS/PD entered into a Master Services Agreement (MSA) for payment card services that allows California State and local agencies to use the VISA card for making purchases of IT goods and services.

9.B3.1 CAL-Card usage and purchasing authority

Only departments granted purchasing authority (includes eligible LPAs as allowed by individual contract agreements) may apply to participate in the State's CAL-Card Purchase Card Program (CCPCP).

Note: Non-IT services outside of an LPA procurement approach are subject to the contracting requirements of the SCM, Vol. 1.

9.B3.2 Departments exempt from purchasing authority requirements and local agencies

Click here for information on the CAL-Card Program.

9.B3.3 Payment mechanism only

The 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, including those discussed in the SCM, Vol. 1, Vol. 2, and Vol.3. This includes but is not limited to the application of all sales and use tax laws, rules and policies as applicable to the purchase. Refer to the above information blocks 9.A1.5 – 9.A1.6.

9.B3.4 Dollar threshold for CAL-Card use

The CAL-Card is a payment mechanism for the acquisition of IT goods or services up to the delegated purchasing limits authorized for the department and individual cardholder.

9.B3.5 Dollar limit increases

The CAL-Card is a payment mechanism for the purchase of IT goods and services up to the delegated purchasing limits authorized for the department. Increases to cardholder limits are done by the Agency's Program Administrator (or Alternate) through U.S. Bank. However, these limits may not exceed the delegated purchasing authority threshold for the procurement approach used.

9.B3.6 Eligibility

A department will no longer be eligible for the CCPCP 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 the DGS/PD.

All privileges will be cancelled until the department has an approved purchasing authority.

9.B3.7 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.

9.B3.8 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.

9.B3.9 Limitations

CAL-Card limitations are as follows:

Stage	Description
1	CAL-Card must be used for state purchasing 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	Individual departments may establish additional prohibited transactions within their CAL-Card programs.
8	Using the CAL-Card for an LPA order does not relieve the department from executing a STD.65 or other contract document as allowed by the LPA. Contact the CAL-Card Program at (916) 375-4579 for additional information.

Topic 4 – CAL-Card Program Participation Requirements

9.B4.0 Request to Participate (RTP) Form

Departments granted purchasing authority that are interested in participating in the CAL-Card Program are required to complete a Request to Participate (RTP) to U.S. Bank.

Click here to access the RTP form under the "Participant Information" ribbon.

9.B4.1 Addendum to CAL-Card MSA

In addition to the RTP, departments are required to execute an addendum to the CAL-Card MSA by signing a formatted Standard Agreement (STD.213) in accordance with the terms and conditions of the CAL-Card MSA. Two copies of the STD. 213 should be sent to U.S. Bank and request that one fully executed STD. 213 is returned to the agency for the contract file. Once the requesting department and U.S. Bank sign the STD.213, the formal implementation process is initiated.

Click here to access the CAL-Card Standard Agreement under the "Participation Information" ribbon.

For additional information contact the DGS CAL-Card contract administrator at: 916-375-4579.

9.B4.2 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:
CAL-Card Approver	• Budget expenditure approval. • Complying with all state and departmental procurement policies and procedures. • Reviewing and approving cardholder statements, and maintaining familiarity with the duties and authorities of the authorized cardholders. • Timely submission of the certified Cardholder Statement of Account (CSA) to the billing office for payment.
Accounting/Billing Office Contact	• Receiving and reconciling CSA 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 Coordinator.
Cardholder	• Authorizing the purchase with the assigned purchase card. • Ensuring that all transactions comply with purchasing authority requirements. • Reconciling the CSA with the transaction receipts and supporting documentation. • Reviewing and approving the CSA. • Responsible for filing a CSQI (dispute form) for billing issues unresolved with merchant. • Monitor disputes through resolution and closure.

Topic 5 – Executing Purchases Valued $2,500.00 and Over Using CAL-Card as the Payment Method

9.B5.0 CAL-Card transactions $2,500 and over

All purchases valued at $2,500.00 and over that are paid using the CAL-Card payment process must be executed using standard purchase documents as identified in Chapter 8 – Purchase Documents as applicable to the department's purchasing authority type and category used.

9.B5.1 Purchase document attachments

Any terms and conditions, model language and/or attachments (i.e. statement of work, specifications, etc.) applicable to the transaction must be attached to or incorporated by reference into the purchase document.

Note: Purchases executed on a STD.65 have a designated block to check to identify that payment will be made with the CAL-Card.

Topic 6 – Executing Purchases Valued Less than $2,500.00 and Using CAL-Card as a Payment Method

9.B6.0 General

For purchases valued less than $2,500.00 and not acquired through an LPA, departments are not required to execute a purchase document. When purchases to an individual supplier have reached $7,500 within a calendar year a STD. 65 must be issued for the next purchase.

9.B6.1 LPA purchase documents

All LPA purchases must be executed on a STD.65 or other purchase document as referenced in the individual user instructions and must include all required documentation applicable to the purchase.

9.B6.2 Supporting documentation

For those transactions that don't require a purchase document to be created, the following, as applicable, must be documented and retained in support of the transaction or attached to the CSA and the invoice documentation:

- Documentation to support fair and reasonable pricing for the purchase transaction.
- Responsive bids from at least two responsive suppliers.
- An approved NCB contract justification.
- An itemized detailed original invoice/receipt.
- Stock received information including the date received and by whom.
- Other documentation to support the transaction.

9.B6.3 Evaluate each transaction

The DGS/PD recommends that departments evaluate each non-LPA transaction less than $2,500 to determine whether it would be in the State's best interest to execute a purchase document.

Chapter 10

Receiving, Inspection, Acceptance Testing and Acceptance or Rejection

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Chapter 10

Receiving, Inspection, Acceptance Testing and Acceptance or Rejection

Overview

Introduction

This chapter describes the processes of receiving, inspecting, accepting and/or rejecting IT goods and services acquired through the purchasing authority procurement process.

Also included in this chapter is a discussion of asset management and the process of determining whether or not a service deliverable is acceptable.

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Topic 1 – General Process for Taking Possession of IT Goods and Services Purchased

10.1.0 Receiving process

Each department determines whether or not the IT goods and services received are acceptable and conform to all of the terms and conditions of the purchase document. The entire receiving process consists of:

Term	Definition	Example
Receiving	The act of taking possession of IT goods in order to stage them for inspection or place them into inventory. Caution: Placing IT goods into inventory without inspection may waive future inspection rights and remedies.	A worker on the receiving dock who signs for IT goods provides the acknowledgement that the IT goods were delivered, not that they were "accepted."
Inspecting	The act of examining IT goods that have been delivered to determine conformance to what was ordered via the purchase document. In some cases, the acquisition may require specialized skills or expertise in examining the goods to determine conformance.	The Department inspects computer goods and provides a clearance that the computer goods received conform to what is ordered via the purchase document.
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 determines that the IT goods and services, purchased are in conformance to the contract requirements as stated in the solicitation and purchase documents, the supplier's and/or manufacturers published technical specification and that the IT goods and services performs to a satisfactory level.	A department has purchased a network 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.
Acceptance	The legal act of documenting that the IT goods and services conform to the requirements of the purchase document terms and conditions.	Completing an inspection or performance test, the department provides the supplier a notification letter confirming that the inspection/test has occurred, the equipment passed the inspection/test and the department accepts the product

10.1.1 Eliminate the risk of error

Departments should maintain sufficient separation of duties in order to reduce the risk of error or fraud in their purchasing program. No one person should control all key aspects of an entire transaction or event. Refer to Chapter 1, Purchasing Authority.

10.1.2 Packaging and shipping standards

The DGS/PD General Provisions (GSPD 401IT) describes to suppliers how IT goods will be packaged and shipped to a State facility. Any special packaging and shipping requirements and/or instructions over and above the standard provisions must be documented in detail within the bid solicitation and the purchase document.

10.1.3 Shipping multiple containers

The General Provisions instructs 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.

10.1.4 Timely release of purchasing documents

Buyers must promptly release fully executed and properly approved purchase documents to appropriate personnel involved in post-award activities such as receiving shipments, accepting IT goods or authorizing payments. These personnel should have a current, complete and accurate purchase document (including technical specifications) to compare shipments received to what was ordered.

10.1.5 Substitution of IT goods

Receiving staff must notify the buyer when the products do not match the purchase documents. Product substitutions, over shipments or under shipments must not be accepted without being properly documented. A purchase document amendment must be executed. Refer to Chapter 8, Purchase Document, for information on processing a purchase document amendment.

10.1.6 Resolving disputes when state pays shipping

The 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 SAM section 3861 for additional information.

10.1.7 Follow-up on open orders

Departments' policies and procedures shall provide a means for buyers and receiving staff to follow up on purchases of IT goods and services ordered and not yet received.

Topic 2 – Receiving IT Goods

10.2.0 Questions to consider when receiving IT 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 IT goods on behalf of the department:

- 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 order?
- Does the delivery require further inspection by another more qualified person?
- Have all the terms listed on the purchase document been met and properly documented?

10.2.1 Standard receiving package

A standard receiving package should, at a minimum, contain the following documentation and be distributed to both the accounting and purchasing offices for payment and procurement file documentation:

- The invoice or packing slip
- The receiving copy of the purchase document
- A completed Stock Received Report (STD.106)

Note: 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.

10.2.2 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 document number as issued by the department
- Item number
- Quantity and unit of measure
- Product part number
- Description of the IT goods shipped

10.2.3 Receiving stock

In accordance with SAM section 8422.20, departmental receiving staff must prepare a Stock Received Report (STD.106) or may use an approved purchase document to record receiving information at the time IT goods are received. When a copy of the purchase document is used as a stock received report, the person checking the IT goods will write in the date received, the quantity received, and note any defect in condition of the IT goods. The original stock received report or the purchase document must be forwarded to the accounting office and a copy provided to the buyer to file in the procurement file on the day the IT goods are received.

The STD.106 will be stamped or similarly designated as "complete" when the order is completely filled. Completely filled is determined by carefully checking the quantity, description, and condition of the IT goods.

Click here to access the STD.106.

10.2.4 STD.106 signature authority

The staff responsible for inspecting and accepting the IT goods should sign the receiving document either the STD.106 or the approved purchase document. If the STD.106 signatory is not the person who physically inspected and took possession of the IT goods, then whoever does sign the STD.106 must take precautionary measures to assure that the IT goods were actually received, inspected, and accepted before signing.

10.2.5 Receiving partial deliveries

If a department elects to accept partial deliveries, a photocopy of the approved purchase document may be used as a stock received report. When using the purchase document as a stock received report, the receiving staff inspecting and accepting the IT goods will write 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 report for an order must be stamped or designated as "Complete" when the order is completely filled.

Note: The DGS/PD recommends that 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.

10.2.6 Receiving IT goods at field locations

Departments allowing IT 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 receiving duties 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.
- Document the following information and route to the headquarters contact person:
  - Contact name and phone number of person receiving IT goods.
  - Purchase Order number.
  - Documentation of what was actually delivered and inspected to verify compliance with the purchase document (including technical specifications), with clear notation and explanation of any discrepancies or partial shipments.
  - Signature of receiving employee.
  - Perform a timely inspection of received IT goods and report any issues according to departmental policies and procedures directly to the purchasing authority staff.

Note: Buyers are advised to provide receiving staff in field locations with purchase documents in a timely manner and review any special instructions directed by department policies and procedures to assist in accurately and efficiently receiving IT goods.

10.2.7 Need for complete receiving/ inspection/ acceptance documentation

The receiving package, inspection and acceptance documentation initiates the payment process, as accounting staff uses this documentation to reconcile against the purchase document and supplier invoice. This documentation also provides the material necessary for the buyer to perform any post-award activities, including closing out the purchase or conducting follow up activities with the supplier regarding outstanding or incorrect deliveries.

Failure to provide all required documentation and follow all related policies and procedures ultimately delays supplier payments unnecessarily and could result in the department paying late payment penalties.

10.2.8 Recom-mendations

The DGS/PD recommends receiving personnel to:

- Keep purchase documents on file 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 purchase document any problems or questions in delivery, receipt or discrepancies in equipment received inspected and accepted.

10.2.9 File documentation	Click here to access a post award file documentation listing.

Topic 3 – Inspection of IT Goods

10.3.0 Inspection, acceptance and rejection standards

The State has standard inspection, acceptance and rejection requirements as described in the General Provisions for IT (GSPD 401IT) entitled "Inspection, Acceptance and Rejection" to ensure these activities are conducted in accordance with State requirements.

10.3.1 Inspecting a shipment

Departmental receiving and/or designated staff (dependent upon the IT 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 purchase document 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 purchase document 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.

10.3.2 Conduct timely inspections

Inspections should be completed within a reasonable amount of time or as specified in the purchase document. If a department knows that the inspection will not be immediate, then the purchase document must provide when the inspection will occur and how it will be accomplished.

10.3.3 Partnering inspections

Departments determining that an authorized person(s) other than a State employee will inspect the IT 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 purchase documents, the State will then determine the final acceptance of the IT goods.

10.3.4 Installation checklist

Documentation may include a standard installation checklist for the supplier to complete and provide to a state representative upon completion of the tasks.

10.3.5 Documenting the results

Departments are advised to document all inspection results and provide the results to the department procurement office for filing within the procurement file.

The document should, at a minimum, identify what action was performed, 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 Acceptance

10.4.0 Acceptance testing	Departments that require additional acceptance criteria over and above what is stated within the State's General Provisions (GSPD 401IT) must describe the acceptance criteria in the Statement of Work and/or the solicitation document.
10.4.1 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 or LPA RFO 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 purchase document.
10.4.2 (deleted 12/13)	
10.4.3 Acknowledging successful acceptance testing	Departments shall acknowledge acceptance of IT goods by issuing a written notice of successful acceptance to the supplier and providing copies of the acceptance letter as determined by internal policies and procedures. A copy of the acceptance letter must be retained in the procurement file.

Topic 5 – Rejecting Non-Conforming IT Goods

10.5.0 Process for rejection of IT goods

The following process should be followed if the IT goods are not in conformance with any requirements of the purchase document (including technical specifications:

Stage	Description
1	The person rejecting the IT goods must immediately communicate the problem(s) and rejection in writing to the buyer.
2	The buyer is responsible for notifying the supplier within a reasonable time after delivery or tender under UCC 2602, making arrangements to hold the rejected IT goods somewhere protected from damage, and taking reasonable care of rejected IT goods until the supplier can take possession of the IT 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 purchase document, 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). Example: A department executed a purchase document 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 purchase document. The remaining 25 desktop monitors will be rejected and returned to the supplier.
5	If the supplier, within a reasonable time period or as stated in the purchase documents, does not remove rejected IT goods, the department buyer may: • Ship products back to the supplier at the supplier's expense. • Store the rejected IT goods with reimbursement required from the supplier for any incurred costs.

10.5.1 Timely supplier notification

Departments are required to contact the supplier in a timely fashion or as specified in the purchase documents, when rejecting IT goods that are over-shipments, defective or for any other non-conformance to the purchase document.

10.5.2 Returned stock report (STD. 108)

In accordance with SAM section 8422.20 departments will prepare a STD.108 when returning IT goods to a supplier. This documentation shall also be provided to the buyer to follow up with the supplier as necessary. The STD.108 shall also be retained in the procurement file.

Click here to access the Returned Stock Report (STD.108).

10.5.3 Suppliers' return authorization	Suppliers may require buyers to obtain a return authorization before shipping IT goods back to the supplier. Buyers should contact the supplier prior to returning IT goods to confirm and follow any return authorization processes as required by the supplier.

Topic 6 – Supplier Performance

10.6.0 Documenting performance	Departments, upon confirming that IT goods received and inspected are either in conformance with the terms of the purchase document or are to be rejected, shall document the results of the delivery and inspection.
10.6.1 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. Click here to access the Supplier Performance Report.
10.6.2 Access to information	The purchasing staff should determine how completed SPRs are to be filed, either in a centrally located area providing all buyers access to the information or retaining the documents within the procurement files.

Topic 7 – Asset Management

10.7.0 Securing assets

The DGS/PD recommends that departments implement policies and procedures applicable to securing and safeguarding assets, regardless of how an asset was acquired.

10.7.1 Physical control over assets

The DGS/PD also advises departments to limit access to received IT goods to authorized staff and provide sufficient security controls to IT goods considered vulnerable to loss or unauthorized use. Inventory should be periodically counted and compared to control records.

10.7.2 Identification and tagging

In accordance with SAM section 8651, all State property must be tagged after acquisition. This includes property whether or not it meets all of the State's capitalization requirements. Refer to SAM section 8602 for capitalization definitions.

The purpose of tagging assets is to designate the assets as belonging to the State.

Refer to SAM section 8651 and/or individual department policies for tagging requirements.

10.7.3 Property control

In accordance with SAM section 8650, departments shall record the following information when property is acquired:

- Date acquired
- Property description
- Property identification number
- Cost or other basis of valuation
- Owner fund
- Rate of depreciation (or depreciation schedule), if applicable

Further, departments will keep track of state property using an automated system.

10.7.4 Surveyed property

In accordance with SAM section 3520, prior to disposal of any state-owned personal property other than vehicles or mobile equipment, departments must receive approval from the DGS/ Office of Fleet and Asset Management, Surplus Property Section.

A Property Survey Report (STD.152) must be submitted for approval prior to disposition. Disposition includes sale, trade-in, discarding, recycling, donating to local school districts or turning the property over to Property Reutilization. If not reusable, all Information Technology must be recycled. Refer to the Procurement Division web site for the Master Services Agreement for Universal Waste for local e-Waste recyclers.

Refer to the DGS/ OFAM/ Surplus Property web site to register for online submission of the Property Survey Report (STD. 152)

10.7.5 Lost, stolen, or destroyed property

Departments are required to prepare a STD.152, in accordance with SAM section 8643, to adjust property records whenever equipment is lost, missing, stolen or destroyed. Although Departments prepare the STD. 152 for lost, missing, stolen or destroyed property, it is not submitted to the DGS for approval but maintained by the Department with the documents described in the Report.

The report contains:

- A description of the events
- Precautions to be taken to prevent repeat situations
- A statement that the California Highway Patrol has been notified in accordance with GC section 14613.7
- Copy of the STD. 152

In accordance with SAM section 8643 and 20080, losses of state property due to fraud or embezzlement must be reported to DOF, Office of State Audits and Evaluations and the Bureau of State Audits.

10.7.6 Replacing lost, stolen or destroyed property

Departments should ensure that the appropriate documentation is provided to the buyer to support the purchase of replacement equipment as a result of being lost, stolen or destroyed.

10.7.7 Software disposal

Departments should refer to their department's Software Management Plan (refer to SAM section 4846 and SIMM section 120), IT Chief Information Officer office and/or Desktop and Mobile Computing Coordinator to ensure that the proper departmental policies are followed when disposing of IT software.

Topic 8 – Receiving Service Deliverables

10.8.0 Accepting or rejecting IT services

Buyers, in preparing purchase documents for IT services, must develop a clear, concise, and detailed description of the IT 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.

Refer to Chapter 11 – Contract Administration for information pertaining to monitoring.

10.8.1 IT maintenance services

Departments acquiring IT 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.

10.8.2 Tracking IT 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 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.

10.8.3 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 needs replacement (end of useful life).

Chapter 11

Contract Administration

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Chapter 11

Contract Administration

Overview

Introduction

Contract administration concentrates on the relationship between the department and the supplier from contract award to contract closeout ensuring the supplier delivers the product and/or service in conformance with the purchase document requirements. The contract administrator must completely understand all aspects of the purchase document. This chapter describes the DGS/PD requirements and recommended practices associated with contract administration activities.

Contents

This chapter contains the following topics:

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Topic 2 – The Do's and Don'ts of Contract Administration	5
Topic 3 – Ethical Decision Making and Contract Administration	6
Topic 4 – Record Retention and Contract Administration	7

Topic 1 - Contract Administration Principles

11.1.0 What's in a name?

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.

11.1.1 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 remains involved in the post award contract activities, including acting as the department's contract manager or as a liaison between the contracting parties and the DGS/PD as warranted.

11.1.2 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.

11.1.3 Establish the fundamentals

Once a purchase document has been executed, the contract administration responsibilities should be reviewed with the person assigned to the role. Any additional contract administration activities specific to the transaction should also be reviewed.

11.1.4 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 contract obligations to all parties involved, and maintain control over the contract performance.

11.1.5 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.

11.1.6 Post award orientation activities

Post-award orientations should include the following activities:

- Providing a complete copy of the authorized purchase document 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 purchase document audit files and retention.
- Review and document supplier performance.

11.1.7 Consider departments' processes

In addition to information contained in the SCM, Vol. 3, 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

11.2.0 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 IT 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.
  - Review progress reports, status reports, and timesheets as required.
- Approving the final product/IT services by submitting a written document accepting the deliverables.
- 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) for IT 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.

11.2.1 Contract administration don'ts

Contract administrators are <u>not authorized</u> 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 purchase document 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 signator unless authorized in writing.
- Sign any contractor's contract form.

Topic 3 - Ethical Decision Making and Contract Administration

11.3.0 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.

11.3.1 Review contract principles

Buyers that are turning over the contract administration functions to a person unfamiliar with the procurement 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.

11.3.2 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 www.fppc.ca.gov.

Topic 4 – Record Retention and Contract Administration

11.4.0 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.

11.4.1 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 purchase document number or supplier name.
- Establishing a separate hard copy file for each purchase document 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 purchase document and all amendments/addendums/supplements/changes
  - Work Authorizations
  - Deliverables
  - Correspondence – acceptance letters, termination notices, etc.
  - Invoices

Note: 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.

11.4.2 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.

Chapter 12

Reporting Requirements

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Chapter 12

Reporting Requirements

Overview

Introduction

The purpose of this chapter is to describe the reporting requirements related to Purchasing Authority and additional acquisition reporting requirements.

Contents

This chapter contains the following sections:

Section	See Page
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Section A

Purchasing Authority Reports

Overview

This section consists of the reporting requirements specific to a department's purchasing authority program. Reports for non-IT goods and IT goods and services are listed here.

Contents

This section contains the following topics:

Topic	See Page
Topic 1 – Purchasing Authority Activity Reporting	4
Topic 2 – Data Center Interagency Agreement Quarterly Report	6

Topic 1 – Purchasing Authority Activity Reporting

12.A1.0 Reporting
(rev 5/15)

Departments must report to the DGS/PD all transactions including amended and cancelled transactions executed under its purchasing authority. The categories of authority for transactions that must be reported are identified in Chapter 1 - Purchasing Authority and may include but are not limited to:

- Purchasing Authority Purchase Orders (STD.65)
- Standard Agreements for IT Goods and Services Only (STD.213) with a completed Agreement Summary (STD.215) as the cover document.

Some transactions are reported directly to the DGS/PD upon execution and, therefore, departments should not report those transactions as directed in this section. Submission of these transactions as directed in this section will result in duplication of the DGS administrative fee charges to the department. These transactions include:

- Transactions entered directly into the Procurement Information Network (PIN).
- Transactions executed electronically as allowed by the individual LPA, if the LPA specifically states that hard copy reporting is not required.

NOTE: Departments opting to register all transactions (including those less than $5,000) in SCPRS do not need to submit a copy of each executed purchase document to the DGS/PD. Effective July 2016, any State Department, including those that are deferred or exempt from FI$Cal, shall register all transactions in the FI$Cal SCPRS system, regardless of dollar value and procurement method.

12.A1.1 Due Dates

Departments must submit a copy of each executed purchase document, regardless of the form used, no less frequently than monthly, by the tenth of the month following the reporting period. Departments may submit transactions more often than monthly if the department so chooses.

12.A1.2 How to report

Departments must ensure that submitted transactions are:

- Batched separately by type of purchasing authority, non-IT and IT
- Batched separately by category of transaction
- Clear, legible, and complete in every detail

Note:
Customer departments that have entered into standard agreements for consolidated data center services with the Technology Agency/OTech are not to submit copies of the standard agreement to the DGS/PD. It is the responsibility of the data center to report these transactions in accordance with the data centers delegation granted by the DGS/PD.

12.A1.3 Where to submit (rev 5/15)

Departments will submit transactions executed under their purchasing authority that have not been registered in SCPRS:

By IMS to:
Z-1
DGS/Procurement Division
Attn: Data Entry Unit - Second Floor
707 Third Street, Second Floor South MS 2-205
West Sacramento, CA 95605

By Mail to:
Department of General Services
Procurement Division
Data Entry Unit - Second Floor South MS 2-205
P.O. Box 989052
West Sacramento, CA 95798-9052

Hand-Delivered to:
DGS/Procurement Division
Data Entry Unit
707 Third Street, Second Floor South MS 2-205
West Sacramento, CA 95605

12.A1.4 Summary Report

The option of using the Summary Report is no longer available. If a department is currently using the Summary Report and discontinuation of its use will adversely impact the department, the department should contact the PAMS to discuss an extension of time for its use.

Exception:
Consolidated Data Centers that conduct activities under Data Center Agreement Purchasing Authority (DIA) will continue to report their transactions using the summary report unique to the data center purchasing authority granted by the DGS/PD. Refer to Section A, Topic 2 of this chapter

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12.A1.5 Non-reportable transactions (rev 9/11)

The following procurement activities are not under the DGS/PD-approved purchasing authority and should not be reported:

- Non-IT services not executed as an LPA order.
- Individual memberships.
- Organizational memberships in non-IT organizations.
- Opportunity purchases executed by District Agricultural Associations (DAA).
- CAL-Card transactions for non-LPA purchases valued less than $2,500 executed without issuing a purchase document.

Topic 2 - Data Center Interagency Agreement Quarterly Report

IT Only

12.A2.0 Data center inter-agency quarterly report

The Office of Technology Services that conducts state data center activities under a DIA purchasing authority must submit the Data Center Interagency Agreement Quarterly Report on a quarterly basis by fiscal year, by the tenth of the month following the reporting period as follows:

Click here to access:
the DIA Quarterly Report in Word format
the DIA Quarterly Report in PDF format

12.A2.1 Due dates

DIA quarterly reporting periods and the related submission dates are as follows:

Reporting Period	Report is due no later than
July 1st through September 30th	October 10th
October 1st through December 31st	January 10th
January 1st through March 31st	April 10th
April 1st through June 30th	July 10th

Note:
When the report submission due date falls on a weekend or on a state-recognized holiday, reports will be due on the first next working day following the weekend or holiday.

12.A2.2 Where to submit

The consolidated data center must submit a DIA quarterly report regardless of whether or not the department executed reportable transactions. Reports must be complete and legible and must be submitted as follows:

By IMS to:
Z-1
DGS/Procurement Division
Purchasing Authority Management Section
Attn: DIA Quarterly Report
707 Third Street Second Floor South MS 2-208
West Sacramento, CA 95605

By Mail to:
DGS/Procurement Division
Purchasing Authority Management Section, Second Floor South MS 2-208
Attn: DIA Quarterly Report
P.O. Box 989052
West Sacramento, CA 95798-9052

Hand-Delivered to:
DGS/Procurement Division
Purchasing Authority Management Section
Attn: DIA Quarterly Report
707 Third Street, Second Floor South MS 2-208
West Sacramento, CA 95605

(deleted 12/13)

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(deleted 6/11)

(deleted 7/12)

(deleted 6/11)

Section B

Additional Acquisition Reporting Requirements

Overview

The section provides a review of reporting requirements for the Annual Contracting Activity Report. Reports for non-IT goods and IT goods and services are listed here.

Contents This section contains the following topics:

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Topic 1 – Annual Contracting Activity Report (STD. 810)

12.B1.0 Consolidated Annual Report
(rev 12/12)

The DGS/PD-The office of Small Business and DVBE Services is the centralized point to consolidate the following contracting activity reports:

- Contracting Activity
- Infrastructure Bond
- Consulting Services
- SB/DVBE Option and DVBE Incentive
- Ethnicity, Race and Gender, Sexual Orientation (ERGSO)

The report provides fiscal statistical information on each department's Small Business/Microbusiness (SB/MB) and Disabled Veteran Business Enterprise contracting activities to the legislature. Click on the following link to access all reporting forms and instructions.

12.B1.1 Contracting Activity Report

Per Chapter 3, departments are required to place a fair share of State purchasing and contracts with SB/MB and DVBEs. PCC section 10111 and Military and Veterans Code sections 999 et seq. require departments to report these activities.

12.B1.2 Improvement plan outline

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).

12.B1.3 STD. 810A Infrastructure Bond Activity

Pursuant to GC 14838.1 and the Infrastructure Bond Acts of 2006, this report provides statistical data on SB/MB and DVBE participation using the Infrastructure Bond funding.

12.B1.4 STD. 810C Consulting Services

PCC section 10111 requires departments to report all consulting services contracts that have been entered into, amended or completed during each fiscal year.

12.B1.5 STD. 810S SB/DVBE Option and DVBE Incentive
(rev 7/12)

PCC section 10111(e)(7) requires departments to report contracting activity using the SB/DVBE Option and the DVBE Incentive.

12.B1.6 STD. 810E Ethnicity, Race and Gender, Sexual Orientation (ERGSO)
(rev 12/12)

PCC section 10111 requires department 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. Effective January 1, 2013, AB 1960 (Dickinson), PCC 10111 (f), requires inclusion in the report on contracting activity voluntarily submitted information regarding the level of participation of lesbian, gay, bisexual, or transgender owned businesses in specified contracts, as provided.

12.B1.7 STD. 810D State Department's Contractor DVBE Subcontracting Consolidation Report
(added 8/14)
(rev 12/12)

MVC 999.5 (d) requires departments to collect information from a prime contractor that committed to subcontract with a DVBE firm upon completion of an awarded contract.

12.B1.8 Due Dates
(rev 8/14)
(rev 12/12)

Report	Reporting Period	Due Date
Annual Report • STD. 810 Contracting Activity • STD. 810A Infrastructure Bond • STD. 810C Consulting Services • STD. 810S SB/DVBE Option and DVBE Incentive • STD. 810E Ethnicity, Race and Gender, Sexual Orientation (ERGSO)	July 1st – June 30th	August 1st
• STD. 810D State Department's Contractor DVBE Subcontracting Consolidation Report	July 1st – June 30th	November 1st

Note: The initial STD. 810D is due November 1, 2015.

Click here to access the STD 810 reports' instructions and forms web page.

To learn more about the above PCC and GC codes, please visit: http://leginfo.legislature.ca.gov/faces/codes.xhtml.

12.B1.9 Where to Submit

Departments will submit these reports 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 Fl, Room 400
West Sacramento, CA 95605

Topic 2 - Late Payment Penalty Report

12.B2.0 Report Requirements

The Prompt Payment Act, GC section 927 et seq. requires departments to submit a late payment penalty report to the DGS Director. This report provides information on late payment penalties paid during the fiscal year.

Click here to access the Prompt Payment Program form.

12.B2.1 How to report

The Late Payment Penalty Report is due by September 30th as follows:
By IMS to:
DGS/Procurement Division

Office of Small Business and DVBE Services
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
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: Late Payment Coordinator
707 Third Street, First Floor Room 400
West Sacramento, CA 95605

Click here learn more about the Prompt Payment Programs.

Topic 3 - Contract Award Report

12.B3.0 Requirement
(rev 9/12)

Title 2 California Code of Regulations (2 CCR) Section 8117.5 requires contract award reporting within 10 working days. Click here to access the Contract Award Report form STD.16 . The completed Contract Award Report STD16 must be electronically submitted within 10 days of contract award to the following e-mail address: complianceprograms@dfeh.ca.gov.

Do not send paper copies of the STD16 to the DFEH. Retain a copy of the completed form in the department's procurement file.
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(deleted 9/12)

Topic 4 – Report of Independent Contractor(s)

12.B4.0 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.

Click here to access the Report of Independent Contractors (DE 542).

12 B4.1 How to report

Departments must report to EDD 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 must be submitted online to EDD or mailed to:

Employment Development Department
P.O. Box 997350 MIC 96
Sacramento, CA 95899-7350

12.B4.2 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.

12.B4.3 Additional information

Click here for additional information located on EDD's web page.

Topic 5 - State Agency Recycled Campaign Procurement Report (SABRC)

12.B5.0 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.

12.B5.1 Due date

Reports are due to CalRecycle as follows:

Reporting Entity	Report Due Date
District Agricultural Associations (DAA)	March 1st for the previous calendar year
Departments	October 31st for the previous fiscal year

12.B5.2 How to report

SABRC reporting shall be completed electronically using CalRecycle SABRC Agency Reporting (SAR) system. To access click on SAR.

12.B5.3 Reporting tools

CalRecycle provides additional information, guidance and tools to assist departments in reporting recycle content expenditures:

- SABRC Reporting Guidance
- SABRC Reporting Tools

Topic 6 - Calendar of Reports

12.B6.0 Calendar of reports
(rev 8/14)
(rev 12/13)
(rev 7/12)
(rev 6/11)

Click here to access the calendar of reports