

2.5 Over-Archiving Theme #5— Individual Purchasing Issues

Throughout the discovery and analysis phase, the project team found inconsistent, outdated, and insufficient definitions for the various purchasing categories (types), key terms and phrases, and procurement methods.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

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

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

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 With the proliferation of changes to purchasing law and policy over the past three years, these documents are now outdated and require resources to update them.

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

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

2.5.1 Purchasing Categories

- ◆ FOAM Reference: Finding #2

Findings

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

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

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

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

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

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

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

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

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

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Recommendations

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

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

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

2.5.2 Cross-Reference of Purchasing Laws

- ◆ FOAM Reference: Finding #8

Findings

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

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

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

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

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

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

Recommendations

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

2.5.3 Purchasing Policy and Procedure Training

- ◆ FOAM Reference: Finding #10

Findings

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

Recommendations

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

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

2.5.4 Procurement Method Models

- ◆ FOAM Reference: Finding #14

Findings

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

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

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

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

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

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

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

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

Recommendations

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

2.5.5 Preparation and Dissemination of Lessons Learned

- ◆ FOAM Reference: Finding #16

Findings

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

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

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

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

Recommendations

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

2.5.6 Specifications, Requirements, and Business Needs

- ♦ FOAM Reference: Finding #18

Findings

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

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inclusion in solicitations, design specifications and performance specifications.

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

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

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

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

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

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

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

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

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

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

Recommendations

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

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

2.5.7 Approval Levels and Processes

- ♦ FOAM Reference: Finding #27

Findings

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

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

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

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

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

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

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

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

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

Approvals

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

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

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

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

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

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

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

Recommendations

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

2.5.8 Leveraging the Buying Power of the State

- ◆ FOAM Reference: Finding #29

Findings

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

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

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

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

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

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

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

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

Recommendations

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

2.5.9 Delegation/Approval System

- ♦ FOAM Reference: Finding #31

Findings

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

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

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

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

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

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

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

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

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

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

Recommendations

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

the process and correct mistakes before the solicitation is conducted.

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

2.5.10 Procurement Audits

- ◆ FOAM Reference: Finding #32

Findings

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

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

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

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

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

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

Recommendations

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

Summary

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