Suggested Procedures for Selecting Financing

March 18, 2008

1. **PURPOSE:** This procedure outlines the State of California's highly innovative concept for installment purchase financing - the Internet-based GS $Mart program. Accessible through the DGS Web site, this award-winning E-commerce financial marketplace is designed to facilitate State of California installment purchases, thus making this form of financing easier than that attributed to the financing of automobiles and/or mortgages. Besides offering ease of financing, GS $Mart offers substantial cost savings by way of tax-exempt rates which are typically half of commercial lending rates. The program's participating Lenders have been pre-qualified to conduct business with the State of California and the program's financing plans have been developed for easy comprehension.

   NOTE: All references within GS $Mart to "lender(s)," "lend," "lending," "loan(s)," and like terms are used as nomenclatures and for ease of understanding only. Under no circumstances is the use of the GS $Mart program allowed to incur additional debt to the State of California and its agencies.

2. **DEFINITIONS:** See Glossary Section for definitions. Any definitions included here are for purposes of this procedure only. Detailed definitions can be found at the program's Web site.

   1. Amortization Schedule - A document that sets forth dates and amounts for the repayment of a loan due under a financing agreement (commonly referred to as a "Payment Schedule" in the finance industry). This form is created and supplied by the Lender. Each payment, usually of equal amounts, must be broken out by the Lender to reflect the interest and principal portions applied to the financing.
   2. Asset - The goods and/or services to be acquired.
   3. E-commerce - Acronym for "electronic commerce." Pertains to any and all financial transactions that occur by way of the Internet.
   4. GS $Mart - (Pronounced "G S Smart") The **G**olden **S**tate Financial (**$**) **Mar**ke**t**place. The State of California's Internet-based program that offers an alternative form of financing for state purchases.
   5. Installment Purchase - An obligation that is repaid in specific, usually equal, amounts over a certain period as specified on the amortization schedule. This type of purchase is often referred to in the finance industry as a "financing" or "lease purchase." Title to the assets typically transfers to the State upon acceptance and the accrual of interest.
   6. Lender - The entity that arranges for the payment, on behalf of the State, to the Supplier for the assets being procured. The Lender will pay the Supplier no later than 30 days from the date of acceptance of the assets by the State. In turn, the State makes recurring payments to the Lender.
   7. Refinancing - The repayment of existing financial obligation with funds raised by creating new financial obligations. Typically used to take advantage of dropping interest rates and can apply to one or more agreements (i.e., combining several purchase orders into one, by way of an amendment, to take advantage of lower rates).
   8. Supplier - The entity providing the asset to the State. The Supplier is responsible for all performance obligations and duties under the purchase order.

3. **PROCEDURE:**
    1. The GS $Mart program may be utilized by State of California agencies and any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds (hereafter referred to as "local agency"). Each local agency should make its own determination whether the GS $Mart program is consistent with their procurement policies and regulations.
    2. Use of GS $Mart is optional, however, 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. Agencies are strongly encouraged to optimize the benefits of this program by comparing commercial versus tax-exempt financing rates or other costs of lending/financing in the open market, as well as the time-savings realized in utilizing GS $Mart. Most transactions through the program take place in a week or less compared to the typical timeframe of months, which does not allow for the current rates. Plus, GS $Mart Lenders have already agreed to established standard terms and conditions, alleviating negotiating time and struggles on the agency's end.
    3. Due to the cost of financing, it is highly recommended that the total amount for a financed deal not fall below $50,000 (excluding interest/financing costs). Funds may be available for purchase costs including training, installation, freight, sales tax, as well as any subsequent financing costs. So as not to jeopardize the agency and state, all financed assets utilizing the program's tax-exempt plan must qualify under federal Internal Revenue Service tax-exempt regulations.
    4. The financing period can not exceed the useful life of the assets.
    5. Financed assets must be essential to the agency's mission and maintained in good working order at all times.
    6. The agency must keep the assets as personal property, not part of freehold or improvement to buildings. The agency must also notify the Lender and/or Supplier prior to any asset relocation.
    7. After the acceptance of the assets, the agency cannot exercise the "Termination for Convenience" provision as it relates to financing.
    8. The agency is responsible for risk of loss of assets only after acceptance unless otherwise agreed in the purchase order.
    9. All documents needed for closing a financing transaction must be completed in an expedient manner and copies of all purchase orders and related documents forwarded immediately to both the Lender and GS $Mart Manager. This locks in the financing rate and ensures the rendering of a timely legal opinion (if applicable) and timely filing of the required IRS documents.
    10. The GS $Mart Manager, with assistance from the Lender, will file all required documents with the Internal Revenue Service.
    11. The agency must pay for all assets acquired via an installment purchase from their annual budget. In the event of non-appropriation by the Legislature, and at the request of the Lender, the agency will provide written notice attesting to the non-appropriation and allow the Lender or its designee to remove the financed assets.
    12. 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.

13. The Department of General Services recommends that any GS $Mart Manager should obtain at least three quotes from the qualified Lenders. Rates are not firm until quoted in writing electronically (fax or E-mail) or via mail and will vary depending on the characteristics of the purchase (e.g., type of equipment, acceptance test period length, payment period, asset useful life, agency's prior payment history, Supplier's qualifications). Should quoted rates vary significantly from those posted on the GS $Mart Web site, immediately contact the GS $Mart Manager.
14. The recommended guidelines for selecting a Lender are:
    a. Notify the GS $Mart Manager of any possible installment purchases.
    b. Browse plan descriptions and rates in GS $Mart. Via the Internet, log on to www.orim.dgs.ca.gov which will bring up the DGS Web site. Select SFM, which stands for the State Financial Marketplace. Select GS $Mart and then browse the directory. For a list of pre-qualified Lenders, select Participating Lenders. To locate the plan descriptions, which includes terms and conditions and other pertinent information, select either Alpha Plan for tax-exempt information (most commonly used) or Beta Plan for taxable rates (rarely used). Rates are posted dependent on plan - peruse the desired rates by selecting the amount, then desired term.
    c. Forward a completed Rate Quote Form to the GS $Mart Manager, who in turn will edit your form and send it out to at least the five Lenders with the lowest rate for the a similar term and a similar dollar amount. All numbers from the requesting department will be rounded down to match the term and/or dollar amount on the GS $Mart web site. Again, via the Internet, log on to /gsmart/default.htm, which will bring up the GS $Mart Web site. browse the directory until you locate Rate Quote Form. Open the form, highlight all the text, select "copy" under "file," and paste into a new word processing document. From within your word processing program, complete the form, providing pertinent information about your purchase for the Lender (representations made to the Lender by way of this form must be accurate as financial consequences may result, i.e., any delays beyond the acceptance date may warrant rate and payment adjustments). Fax or E-mail the completed Rate Quote Form to the GS $Mart Manager.
    d. The selection of the Lender will be completed upon review of all of the Lender's Quotes, at which time the using department will select the Lender. Upon receiving Lenders' quotes, which will consist of the completed Rate Quote Form, amortization schedule and any notes and provisions, the awarding agency must decide whom to select based on all pertinent information including risks, obligations, responsibilities, and capabilities of the Lender to meet all requirements. Typically the Lender with the lowest rate quote is selected. If a department would like to select a lender other than the Lender with the low rate, only the department director can request this, and must justify the additional cost. The GS $Mart Manager is available to discuss the returned quotes and, at the request of the agency, make recommendations based on the specific deal, but will not make the final Lender selection on behalf of the agency.
    e. Issue a purchase order to the Supplier, noting the selected Lender.
        I. The purchase order is issued to the Supplier, with the Lender noted in the body of the document. In order for the State Controller's Office to issue payment to the Lender, the following paragraph must be included in the body of the purchase order:

"The terms and conditions of the Alpha Plan, Version _____, dated _____, found in GS $Mart, the State's financial marketplace, and the attached amortization schedule dated _____ and its notes and provisions (optional: "and Technology Refresh language" or "and Salvage Rider" or "and Return Rider Option") are hereby attached and made a part of this purchase order. The State designates (LENDER NAME) as its Lender for this purchase order. The Lender is entitled to all payments owed pursuant to the amortization schedule in consideration for the Lender's payment of the purchase cost of the assets (less any down payment as directed by the State) to the Supplier."

II. A line item for the total interest (non-taxable) must be included and totaled into the purchase order. The total of the purchase order must match the principal (cost of the assets, plus tax) and the interest reflected on the amortization schedule.
III. Copies of the purchase order and any amendments must be sent to the Supplier, Lender, GS $Mart Manager, State Controller's Office, the user of the asset, as well as the user agency's accounting and budget offices.
IV. The agency must conduct the procurement per their delegation, policies and procedures, as well as inform both their accounting and budget officers prior to issuing a financing agreement; it is not the GS $Mart Manager's responsibility to police the actual procurement, only to assist with the State's financing mechanism.

f. Execute all closing documents by date needed. Closing documents consist of the following items, some of which are found on the program's Web site. NOTE: Where applicable, it is highly recommended that the Lessor signs a document first, the State, second.
   I. Certification Form -- Lender prepares, agency signs and returns to the Lender.
   II. UCC Form -- Lender prepares, agency signs and returns to the Lender.
   III. Opinion of Counsel -- the GS $Mart Manager prepares the document and forwards to DGS counsel, or a department counsel for signature. NOTE: The execution of the Opinion of Counsel signals the funding of a transaction - it is imperative that the agency forwards all copies of the completed purchase order, any amendments and closing documents they have, or receive, from the Lender, to the GS $Mart Manager as soon as possible. The Opinion can not be obtained unless this information is provided.
   IV. IRS Form 8038G -- The Lender sends the form directly to the GS $Mart Manager, who verifies, signs and submits to the IRS. NOTE: The GS $Mart Manager is the only authorized State employee, outside of the State Treasurer's Office, with authority to file tax-exempt documents on behalf of the State of California.

4. **RESPONSIBILITIES:**
   1. GS $Mart Manager
      a. Receive, evaluate and approve Lender qualification proposals for participation within the marketplace
      b. Receive, negotiate and approve different financing plans for use in the marketplace
      c. Receive, approve and post weekly rates from participating Lenders

d. Maintain, update and revise all information posted on the marketplace Web pages
e. Provide financial consultation and training services as related to the marketplace
f. Conduct presentations and aggressively market the program at trade shows, conferences, seminars and meetings
g. Lead roundtable discussions with Lenders, Suppliers and agencies, focusing on possible improvements within the marketplace
h. Obtain an opinion of counsel (if applicable)
i. File IRS 8038-G/GC forms for tax-exempt transactions with the Internal Revenue Service on a quarterly basis
j. Continuously monitor the marketplace for security, professional behavior and optimum operations
k. Send out all Request for Rate Quotes (RFRQ) on behalf of using departments.

2. Lender
    1. Assure interest rates are updated weekly and forwarded to the GS $Mart Manager for posting on the program's Web site. NOTE: Quotes that have lapsed for more than three weeks will result in the Lender being listed with the other inactive Lenders in the program.
    2. Provide a plan for on-going E-commerce support via a company Web site
    3. Pay the Supplier, on behalf of the state, all monies due under the purchase order in a timely manner
    4. Supply all closing documents for the agency/GS $Mart Manager
3. Supplier -- Supplies goods/services as ordered by the agency per the purchase order.
4. Ordering Agency
    0. Select Lender after review of the RFRQ results, and complete resultant purchase order
    1. Distribute all documents as instructed
    2. Immediately forward a copy of the completed purchase order and any/all closing documents to the GS $Mart Manager
    3. Approve loan payments to Lender in accordance with the Amortization Schedule

5. APPENDICE(S):

None

6. **AUTHORITY AND REFERENCES:**
    1. Statutory:

        Public Contract Code Section 10301
        Public Contract Code Section 10320.5
        Public Contract Code Section 12102(e)
        Public Contract Code Section 12109
        Public Contract Code Section 12110
        Public Contract Code Section 12113

    2. Regulatory: State Administrative Manual Section 3400. Budget Letter 06-27