

Date: July 29, 2021 File No.: 1200

To: Eileen Sobeck, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

From: **Department of General Services**
Office of Audit Services

Subject: **AUDIT REPORT: DELEGATED PURCHASING PROGRAM**

Attached is the final report on our compliance audit of the State Water Resources Control Board's (SWRCB) delegated purchasing program. The objective of our audit was to determine that procurement transactions are being conducted in accordance with the terms and conditions of SWRCB's purchasing authority delegation agreements with the Department of General Services (DGS), which include dollar threshold limits for various categories of procurements.

SWRCB's written response to our draft report is included in this final report. The report also includes our evaluation of the response. We are pleased with the actions taken or proposed and commitments made to address our recommendations.

As part of its operating responsibilities, the Office of Audit Services is responsible for following up on audit recommendations. Therefore, please submit on your department's official letterhead a status report on the implementation of each recommendation to us by January 31, 2022.

To the extent practical, proof-of-practice and supporting documentation should be specific and include excerpts, samples, screenshots and/or copies of the following (related recommendation(s) noted):

- 1) Written policies and procedures for prompt payment advising staff to calculate and pay late payment penalties at the same time that the vendor invoice is paid (Recommendation #1).
- 2) Payment vouchers or other supporting document(s) showing that the late interest penalties that are currently due to the vendors have been paid (Recommendation #2).

- 3) Training plans and/or agendas detailing the below topics and the requirements associated with those topics (Recommendation #3):
- Use of Leverage Procurement Agreements (LPA) and associated requirements
 - Use of SB/DVBE bidders and associated requirements
 - Proper documentation and correct recording of the procurement method in the procurement file and in FI\$Cal
 - Seller's permit verification
 - Department of Fair Employment and Housing (DFEH) Std.16 reporting
 - Franchise Tax Board (FTB) and California Department of Tax and Fee Administration (CDTFA) verifications
 - Documenting Certification of Compliance with State IT Policies (SIMM 71B)
 - DVBE program verbiage and waiver/exemption
 - Fair and reasonable pricing technique and documentation
 - Documenting cost reasonableness justifications for exempt or sole source purchases
 - Documenting the required NCB forms
 - Obtaining and documenting required approvals (i.e., OFAM for mobile equipment purchases)

The necessity of any further status reports will be determined at that time. Please transmit your proof-of-action and/or status report to: DGS – Office of Audit Services, 707 3rd Street, 8th Floor, West Sacramento, CA 95605.

We greatly appreciated the cooperation and assistance provided by SWRCB's personnel.

If you have any questions, please call me at (916) 376-5054, or Christine Pham, Management Auditor, at (916) 376-5060.

Olivia Haug

OLIVIA HAUG
Manager, Office of Audit Services

Attachment

cc: Eric Oppenheimer, Chief Deputy Director, SWRCB
John Russell, Deputy Director, Division of Administrative Services, SWRCB
James Bradley, Chief, Business Operations Branch, Division of Administrative Services, SWRCB

Eric Jarvis, Assistant Secretary, California Environmental Protection Agency, Fiscal and Administrative Programs
Purchasing Authority Management Section (PAMS), Procurement Division,
DGS

**GOVERNMENT OPERATIONS AGENCY
DEPARTMENT OF GENERAL SERVICES**

**AUDIT OF THE
STATE WATER RESOURCES
CONTROL BOARD**

**FOR COMPLIANCE WITH STATE
DELEGATED PURCHASING PROGRAM
REPORT NO. 1200**

OFFICE OF AUDIT SERVICES

MARCH 2021

**STATE WATER RESOURCES CONTROL BOARD
DELEGATED PURCHASING PROGRAM AUDIT
REPORT NO. 1200**

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STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES
AUDITOR'S REPORT

DATE: July 29, 2021

TO: Eileen Sobeck, Executive Director
State Water Resources Control Board

This report presents the results of our compliance audit of the delegated purchasing program of the State Water Resources Control Board (SWRCB). As required by Public Contract Code Section 10333, the Department of General Services (DGS) conducts an audit at least once in each three-year period of each state agency to which purchasing authority has been delegated by the department. The objective of our audit was to determine that procurement transactions are being conducted in accordance with the terms and conditions of SWRCB's purchasing authority delegation agreements with DGS, which include dollar threshold limits for various categories of procurements. As applicable, the scope of our audits of state agencies includes, but is not limited to, compliance with policies governing the conduct of competitive solicitations, use of leveraged procurement agreements, solicitation of certified small businesses (SB) and disabled veteran business enterprises (DVBE), establishment of fair and reasonable pricing for acquisitions of less than \$10,000, use of CAL-Cards to pay for goods and services, and prompt payment of suppliers. Our audit was conducted in accordance with U.S. generally accepted auditing standards.

Overall, we concluded that SWRCB needs to improve current policies, procedures, and processes to help ensure compliance with the terms and conditions of its delegation agreement. As discussed under the Findings and Recommendations section of this report, we identified a number of areas for improvement that need to be addressed to fully comply with purchasing requirements. The implementation of the recommendations presented in this report will assist SWRCB in addressing these issues.

During our review we also identified other matters requiring attention, but did not pose a significant risk to the delegated purchasing program, that we discussed with SWRCB's management and are not further detailed in this report.

It should be noted that when advised of areas for improvement during our audit fieldwork, SWRCB's management took action or agreed to take action to address our concerns. We were pleased with the commitment shown to improve compliance with state requirements. However, we did not perform effectiveness tests to determine whether the corrective actions were functioning as intended. SWRCB's management has the ongoing responsibility for ensuring that its business management policies and procedures are functioning as prescribed and are modified, as appropriate, for changes in conditions.

Your response to our recommendations as well as our evaluation of the response are included in this report.

We greatly appreciated the cooperation and assistance provided by SWRCB's personnel.

If you need further information or assistance on this report, please contact me at (916) 376-5054, or Christine Pham, Management Auditor, at (916) 376-5060.

Olivia Haug

OLIVIA HAUG
Manager, Office of Audit Services

Staff: Christine Pham, Management Auditor

cc: Eric Oppenheimer, Chief Deputy Director, SWRCB
John Russell, Deputy Director, Division of Administrative Services, SWRCB
James Bradley, Chief, Business Operations Branch, Division of Administrative Services, SWRCB
Eric Jarvis, Assistant Secretary, California Environmental Protection Agency, Fiscal and Administrative Programs
Purchasing Authority Management Section (PAMS), Procurement Division, DGS

STATE WATER RESOURCES CONTROL BOARD

DELEGATED PURCHASING PROGRAM AUDIT

FINDINGS AND RECOMMENDATIONS

The following presents our detailed findings and recommendations developed based on our compliance audit of SWRCB's delegated purchasing program. The state's delegated purchasing requirements are primarily contained in State Contracting Manual (SCM) Volumes 2 (Non-IT), 3 (IT), and F (FI\$Cal).

This information was developed based on our fieldwork conducted over the period of August 20, 2020 through March 30, 2021. To determine compliance, we reviewed policies and procedures, interviewed parties involved, tested records and transactions and performed other tests as deemed necessary. The period covered by our testing varied depending upon the area of review and the type of transactions involved; however, the emphasis of our review and testing was with current procedures and transactions completed during the 2019-20 fiscal year. Our transaction tests included the review of 43 delegated non-IT and IT procurements, including 13 leveraged procurement agreement transactions.

DELEGATED PURCHASING PROGRAM

Overall, we concluded that SWRCB needs to improve current policies, procedures, and processes to help ensure compliance with the state's primary procurement requirements, including those governing the obtaining of bids from multiple suppliers. Our tests disclosed a number of areas for improvement that need to be addressed to fully comply with purchasing requirements.

It should be noted that though the frequency of occurrence is low in some cases for some types of noncompliance instances, when combined, the numerous instances indicate a weakness in the procurement program that warrants addressing. Since the instances of noncompliance were discussed with responsible management and staff during our audit fieldwork, they are not detailed in this report. However, the types of exceptions noted with procurement transactions performed by SWRCB staff involved insufficiencies in the following areas:

Prompt Payments to Vendors – SWRCB currently does not have written invoice processing policies and procedures to ensure the prompt payment of vendor invoices. We sampled 31 invoices over a three-months' period in 2020 and found all 31 invoices were paid late. While late payment penalties totaling \$11,832 were required for 13 of the 31 invoices, they had not been paid as of the completion of our audit (SCM F, 8.A1.1). Late invoice payment is a repeat finding from our 2017 audit. Government Code Section 927, et seq., and SAM Sections 8474 through 8474.4 contain the state's policies related to the prompt payment of businesses. These policies include

a requirement that vendor invoices be paid within 45 calendar days of receipt and the automatic payment of penalties when applicable. The 45-day timeline allows state agencies 30 days to perform their payment approval function and the State Controller's Office (SCO) 15 days to perform its audit and warrant generation process. The failure to promptly pay invoices restricts the state's efforts in getting businesses to provide goods and services to the state.

Use of Leverage Procurement Agreements – We found the procurement files lacking the correct user instructions, pricing sheets, and/or had conflicting information concerning coverage terms and pricing. Further, staff not verifying the purchase against the LPA resulting in \$23,625 overpayment on one purchase order (PO) and causing purchase of items not allowed by the LPA on another PO. It should be noted that lack of retention of the pricing page in the procurement file is a repeat finding from our 2017 audit.

Per SCM F, 5.A1.0, LPA prices for products and services vary from category to category. Some LPA prices are listed as maximums and negotiating for lower prices is recommended. Others are at a fixed price for which negotiation is not allowed. Because of these variables, buyers are required to confirm that the products, services, and prices are included in the contract and that the prices in the department's order are at or below the contract rates. This is accomplished by obtaining a complete copy of the LPA before executing any purchase documents. The contract's user instructions describe the tasks necessary to solicit offers for the order.

Further, SCM F, 5.A1.5 provides that departments obtain a copy of the LPA to be used in order to:

- Validate the contractor is authorized to sell specific products and/or services.
- Determine warranties, guarantees, maintenance provisions, product return policies, bond requirements, travel costs, etc.
- Determine if products and services are available on the LPA.
- Determine which products and/or services are specifically excluded.
- Determine if prices quoted are at or below LPA rates.
- Determine if additional approvals, forms, filings, etc. are required.
- Substantiate the contractor is CA certified as a SB or a DVBE (if applicable).
- Substantiate the contractor has a valid contractor's license (if applicable).

Use of SB/DVBE Bidders – For a significant number of test samples, the OSDS certification verification, DVBE Declaration, Bidder Declaration, and/or Commercially Useful Function (CUF) determination was either missing, dated years before the PO execution, or done months after the PO execution for one or more SB/DVBE bidders. These certification status, declarations, and verifications are meant to be specific to the transaction that the bidder is bidding on and therefore need to be current for them to have any useful meaning. It should also be noted that in all of our sample transactions where the SB/DVBE Option was utilized, SB/DVBE Option was not supported as a procurement method due to the exceptions noted concerning the OSDS certification, DVBE Declaration, Bidder Declaration, and/or CUF.

SCM F Chapter 3 describes socioeconomic and environmental programs established by state law and further defined by regulations and policies to increase business opportunities on state procurement and contracting activities for small and disabled veteran businesses and those businesses operating in economically distressed areas of the state. It also includes 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.

- SCM F, 3.A2.5 provides that solicitations (including verbal or written requests for offers), consideration of bids, or award of contracts shall not be provided to any firm that has been suspended from State procurement and contracting as listed on DGS/PD web page. The FI\$Cal system maintains certification status of SBs and DVBEs.
- SCM F, 3.A3.6 provides that 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.

- Per SCM F, 3.A4.7, written solicitations shall include the Bidder Declaration (GSPD 05-105) to allow bidders to identify if they are a DVBE and identify DVBE subcontractors, their proposed contract function and the corresponding percentage of participation.

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

- Per SCM F, 3.A2.6, in accordance with Government Code Section 14837 and M&VC section 999, all SB and DVBE contractors, subcontractors and suppliers that bid on or participate in a State contract, regardless of being a verbal or written solicitation and/or paid for using the CAL-Card as a payment method, must perform a Commercially Useful Function (CUF). In addition, the requirement to determine CUF is not affected by the applicability of the 5% SB preference and/or the DVBE participation goal or DVBE incentive. There is no exception to this requirement; consequently, certified SB, MB and DVBEs must perform a CUF. CUF must be determined prior to contract award.

In addition, during our audit testing we identified one or more below instances of noncompliance which, when combined, represent a weakness in internal controls:

- Conflicting procurement methods listed in the procurement file and in FI\$Cal and file documentation not supporting the method listed in FI\$Cal (SCM F, 2.B2.0)
- Seller's permit or seller's permit verification missing, was dated years prior to the PO execution, or was done months after the PO execution (SCM F, 4.B3.3)
- Department of Fair Employment and Housing (DFEH) Std.16 report missing from the file or done months after the PO execution (SCM F, 9.E4.0)
- Franchise Tax Board (FTB) and California Department of Tax and Fee Administration (CDTFA) verifications not done or done months after the PO execution (SCM F, 2.B4.5)
- The Certification of Compliance with State IT Policies (SIMM 71B) missing from the file or completed months after the PO execution (SCM F, 2.E5.0)
- DVBE program verbiage not included in the solicitation and an exemption or waiver not included in the file (SCM F, 3.A3.0 - 3.A3.2; 4.B1.4)
- The technique to determine fair and reasonable pricing not documented when utilizing the Fair and Reasonable procurement method (SCM F, 6.9.1; 6.9.4)
- Exempt or sole source purchases not supported by a cost reasonableness justification (SCM F, 6.6.7)
- Required NCB form missing from the file (SCM F, 6.2.1-6.2.2)
- Required OFAM approval missing from the file (SCM F, 2.D1.0 - 2.D1.3)

RECOMMENDATIONS

1. Establish written policies and procedures and revise current practices to require staff to calculate and pay all applicable late payment interest penalties at the same time the vendor invoice is paid.
2. Pay the late payment interest penalties that are currently due.
3. Retrain and reeducate staff to ensure they understand and comply with State requirements in the areas noted above.

CONCLUSION

Our findings and recommendations are presented to aid SWRCB in administering its delegated purchasing program. SWRCB should address the reported issues to assist in ensuring compliance with applicable state laws, policies, and procedures.

State Water Resources Control Board

July 7, 2021

Ms. Olivia Haug, Manager
707 3rd Street
West Sacramento, CA 95605

Dear Ms. Haug,

The State Water Resources Control Board (State Water Board) has reviewed the draft report of the Department of General Services, Office of Audit Services (DGS, OAS) compliance audit review. We agree with the findings and recommendations, below are the corrective measures to remedy the noted deficiencies in our procurement program. We are pleased that DGS, OAS review concluded that the State Water Board is conducting its delegated purchasing program in compliance with our delegated purchasing authority. The board further appreciates the time and collaboration the DGS OAS Auditor had with board staff and management during the audit review as it was instrumental in providing further improvements to our procurement program.

We submit the following responses to address the recommendations by DGS, OAS:

Recommendation #1: Establish written policies and procedures and revise current practice to require that staff calculate and pay all applicable late payment interest penalties at the same time the vendor invoice is paid.

The State Water Board is establishing written policies and procedures for paying invoices promptly, as well as developing procedures to pay late payment and interest penalties at the same time as the invoice.

Recommendation #2: Pay the late payment interest penalties that are currently due.

The State Water Board is currently working on paying all interest and penalties that are due.

Recommendation #3: Retrain and reeducate staff to ensure they understand and comply with state requirements in the areas noted above.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Ms. Olivia Haug
July 7, 2021

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An Executive Team was established in March 2021 to provide support, assist with the hiring process, and to fill vacancies immediately. A training plan is also being established for all invoice approvers and accounting staff, and training sessions will be conducted to ensure all approvers can receive the training.

The State Water Board is committed to conducting its delegated purchasing program in compliance with DGS's procurement policies. The board will continue to take actions to improve and monitor procurement policies and procedures to ensure compliance with delegated purchasing authority.

If you have further questions or need assistance, please contact James M. Bradley, Business Operations Branch Chief, at (916) 341-5058 or via email at James.Bradley@waterboards.ca.gov.

Sincerely,



Eileen Sobeck
Executive Director
State Water Resources Control Board

cc: Eric Oppenheimer
Chief Deputy Director
State Water Resources Control Board

John Russell
Deputy Director
Division of Administrative Services

James M. Bradley
Chief, Business Operations Branch
Division of Administrative Services

Eric Jarvis
Assistant Secretary
California Environmental Protection Agency, Fiscal and Admin Programs

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STATE WATER RESOURCES CONTROL BOARD (SWRCB)

EVALUATION OF SWRCB'S RESPONSE

We have reviewed the response by the State Water Resources Control Board (SWRCB) to our draft report. The response to the recommendations is satisfactory. We appreciate the efforts taken or being taken by SWRCB to improve its delegated purchasing functions.

As a part of our operating duties, we are responsible for following up on audit recommendations and will require a six-month status report on the implementation of those recommendations that have not been fully implemented. To the extent practical, proof-of-practice and supporting documentation should be specific and include excerpts, samples, screenshots and/or copies of the following (related recommendation(s) noted):

- 1) Written policies and procedures for prompt payment advising staff to calculate and pay late payment penalties at the same time that the vendor invoice is paid (Recommendation #1).
- 2) Payment vouchers or other supporting document(s) showing that the late interest penalties that are currently due to the vendors have been paid (Recommendation #2).
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