



**Department of General Services
Procurement Division**

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Broadcast Date: December 31, 2009

**TO: Procurement & Contracting Officers (PCOs)
Purchasing Authority Contacts (PACs)
DGS Small Business and DVBE Council
SB and DVBE Advocates
State Contract Advisory Network (SCAN) Members**

RE: Loss Leader - Assembly Bill (AB) 926, Chapter 490, Statutes of 2009

The purpose of this broadcast bulletin is to provide instructions on "loss leader" solicitation language and reporting activity as required by Assembly Bill (AB) 926, Chapter 490, Statutes of 2009, and to announce modifications to the State Contracting Manual (SCM), Volumes 1, 2 and 3. The following sections of the SCM will be modified:

- SCM Vol. 1, Chapter 2, Section 2.07, - Standard Language
- SCM Vol. 2, Chapter 2, Section B, Topic 3, 2. B3.8 – State contracts for goods, loss leader
- SCM Vol. 2, Chapter 2, Section B, Topic 3, 2. B3.9 – Loss leader, excluded acquisitions
- SCM, Vol. 3, Chapter 1, Section B, Topic 4, 1. B4.10 – State contracts for IT goods and services, loss leader
- SCM, Vol. 3, Chapter 1, Section B, Topic 4, 1. B4.11 – Excluded acquisitions, loss leader

"Loss leader" is defined in Section 17030 of the Business and Professions Code as any article or product sold at less than cost: (a) Where the purpose is to induce, promote or encourage the purchase of other merchandise; or (b) Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or (c) Where the effect is to divert trade from or otherwise injure competitors.

Pursuant to AB 926, departments are required to include solicitation language (see below) on "loss leader" in a solicitation for a state contract for goods, a request for proposal for a contract for services that involves the furnishing of equipment, materials, or supplies and a request for proposal for a state contract for the acquisition of information technology goods and services. In addition, awarding agencies will be required to report transactions that do not contain "loss leader" language in solicitations

to the DGS for the period of March 31, 2010 through December 31, 2011.

Loss Leader language to be included in applicable solicitations:

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.

Departments are required to report each occurrence of omission of the solicitation language to DGS within 30 days of discovery (even if the "loss leader" language is inadvertently omitted from the solicitation), as well as a cumulative list of contracts that do not contain "loss leader" language, by June 30, 2011 and June 30, 2012. Click on the following link to access the "Loss Leader" report [Form and Instructions](#).

This form must be used to report to the Purchasing Authority Management Section both individual omissions within 30 days of discovery, as well as the cumulative list of contracts at the end of fiscal years 2011 and 2012. Individual reports must be emailed with "Loss Leader Report" referenced in the subject line and the cumulative report must be scanned and emailed with an authorized signature to the same email address below:

pams@dgs.ca.gov

For policy questions regarding this bulletin contact:

ppo@dgs.ca.gov

For questions regarding submittal of requested information, contact:

pams@dgs.ca.gov