Procurement Planning

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## Chapter 2

## Procurement Planning

#### Overview

##### Introduction

The purpose of this chapter is twofold. The first is to layout the foundation of the role of the buyer involved in a department’s purchasing authority program. This includes a discussion on 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 the class of procurement, non-IT or IT, goods or services, identifying pre-procurement approval requirements and processes, and selecting the appropriate procurement approach for a purchase.

#### Section A

#### Getting Started - All Things Considered

#### Overview

##### Introduction

Understanding the role of the purchasing authority buyer, knowing the rules and applying them appropriately throughout the procurement process is key to executing any procurement activity and demonstrates a department’s ability to manage a quality purchasing authority program.

Simply put, purchasing authority buyers, hereafter referred to as “buyers”, will be successful in their purchasing activities when they:

* Know and understand the scope of their department’s approved purchasing authority,
* Know and follow the rules applicable to State purchasing,
* Correctly use the appropriate procurement approach, and
* Pay attention to details.

#### 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 State’s resources.

The person signing the purchase document certifies, on personal knowledge, that the order for purchasing the items specified is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California; and that all such legal requirements have been fully complied with.

##### 2.A1.1 Responsibility over public funds

Departmental personnel, in particular buyers, involved in procurement activities are either directly or indirectly spending public funds and subject to public scrutiny.

Consequently, departmental personnel generally and buyers specifically are reminded 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 department customers 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 their customers are met within stated laws, regulations, executive orders, policies and procedures, while maintaining impartiality, allowing for open competition, reducing waste, preventing improper activities and avoiding conflicts of interest during and after the procurement process.

#### Topic 2 – Gifts and Gratuities

##### 2.A2.0 Accepting gifts and gratuities

GC Sections 19990 establishes the authority for departments to create incompatible activity statements for employees to follow. Buyers are responsible for knowing what their department’s policies are 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 Evaluation Teams

GC section 1090 requires that state officers and others shall not be financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members. State employees and others may not participate as purchasers or members of the evaluation team at any sale or vendors at any purchase made by them in their official capacity.

##### 2.A2.2 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.A2.3 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. All expenditures must support the department’s mission (function and purpose) and benefit the State to not be considered gifts of public funds.

This includes any advance payments or pre-payments made to a contractor before work has been performed or to a supplier before all products have been received. Refer to 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 flashlights, ashtrays, key chains, squeeze toys, pens, hats, trinkets, shirts, cups and other gift items).

##### 2.A2.4 Accepting free or loaner equipment from suppliers

The DGS/PD recommends that departments do not accept suppliers’ offers of goods or services without cost or obligation to the State. If a department’s decision is contrary to this recommendation, the department must execute a purchase document to document the agreement.

##### 2.A2.5 Consider before accepting

Before accepting any suppliers’ goods and services offered at no cost or obligation to the department, the department must consider the perception of the acceptance to other suppliers.

How does the department remain fair and impartial if a decision is eventually made to solicit the product?

**Warning:** If a department elects 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 Procurement Approach

#### Overview

##### Introduction

When planning a purchase activity, there are four major areas to consider. Buyers must have the ability to correctly determine:

* The estimated dollar value of the procurement.
* The class of purchase (IT vs. Non –IT and Goods vs. Services).
* What pre-procurement review and approvals are necessary either by State purchasing policies or departmental policies and procedures?
* The most appropriate procurement approach within your department’s approved purchasing authority (i.e. CALPIA, competitive, LPA order).

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

#### Topic 1 – Classifying the Purchase

##### 2.B1.0 Importance of properly classifying purchases

The ability to properly classify a purchase enables the buyer to conduct the procurement by correctly:

* Applying the appropriate laws, regulations, policies, and procedures.
* Identifying whether or not the department has the applicable purchasing authority to conduct the purchase activity or requires the DGS/PD assistance.
* Securing additional approvals and/or waivers as applicable.

The impact of not being able to correctly classify 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 Purchase classification

This volume focuses on State purchasing activities for Non-IT goods. Non-IT goods are tangible or movable products with little or no information technology functionality.

Examples: Food, furniture, farm animals and office supplies.

##### 2.B1.2 Determine the main purpose

Classifying a purchase begins by determining the predominant factor or the major objective and/or purpose of the entire purchase. In doing so, ask yourself the following question: What is the sole or main purpose of the purchase?

##### 2.B1.3 Example #1

Non-IT goods

A department purchases a vehicle for enforcement use. The vehicle has been fitted with an electronic mapping system and telecommunications equipment. The purchase is made under the non-IT purchasing authority after securing approvals required from the DGS Office of Fleet Administration. The features of the car are secondary to the purpose of the vehicle, which is a means of transportation.

##### 2.B1.4 Example #2

IT goods

A department buys ten personal computer (PC) keyboards 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. See SCM, Vol. 3 for information on IT goods.

##### 2.B1.5 Non-IT vs. IT

There are many items that 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 “good” and be acquired under the non-IT goods purchasing authority.

##### 2.B1.6 Distinguishing goods from services

When determining if an acquisition is for goods only, the DGS/PD recommends that buyers consider the following concepts:

* 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 a good with minimal or no non-IT or IT services, the purchase is conducted under the non-IT goods purchasing authority.
* What is the main value of the contract – the good or the service?
* If the main value is the service, the transaction should be treated as a service contract.
* If the service is non-IT, then the purchase is acquired in accordance with PCC section 10335, SAM section 1200, and the SCM, Vol. 1.
* If the service is IT, then the purchase is acquired in accordance with PCC section 12100 et seq., SAM sections 4800 et seq., 5200 et seq., SCM, Vol. 3 and the Statewide Information Management Manual (SIMM)

**Warning:**

Non-IT services included with the purchase of non-IT goods may not exceed

$9,999.99 and must be directly related to the purchase of the goods, such as set up or installation. Non-IT services such as maintenance is not allowed

and must be procured separately under the SCM, Vol. 1 unless available on

a leveraged procurement (LPA) contract.

##### 2.B1.7 Examples of goods vs. services

Example:

A manager has requested new furniture for the office. The buyer needs to purchase the new furniture and acquire the services necessary to position that furniture in the office. The main value is the furniture. The request should be treated as a non-IT goods contract.

Example:

A department has developed a graphic depiction of its business process for display in the department’s public lobby. A decision has been made to have a custom frame made for the display due to its unique size and amount of public visibility. This would be a non-IT service not subject to the DGS/PD purchasing authority because the main purpose is the custom framing services.

##### 2.B1.8 Need help in classifying purchases?

Buyers needing assistance in determining the classification of a purchase after reviewing the available resources (i.e. SAM, SIMM) should first consult with their department’s PAC and may also contact the DGS/PD/PAMS.

Refer to the procurement related resource directory found in the Introduction of this manual or click here to access the directory on the DGS/PD web page.

#### Topic 2 – Procurement Planning – Where Do I Go from Here?

##### 2.B2.0 Start planning early

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 department must classify the purchase (non-IT/IT and good/service), and make a decision on the procurement approach (competitive, non-competitive, exempt, or using one LPA programs).

##### 2.B2.1 Initial buyer review

The buyer’s first step in the planning and scheduling of a procurement effort is the initial review of a department’s purchase request. Reviewing the request in terms of the following information will assist the buyer in determining any impact in relationship to the procurement planning and scheduling activities.

| Does the purchase require: | If “Yes”: |
| --- | --- |
| 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 of this chapter for details for external reviews and approvals.
 |

##### 2.B2.2 Seeking legal participation

Buyers should seek departmental legal participation as necessary.

Purchasing activities that benefit from the department’s legal staff participation may include but are not limited to the following:

* Purchases that have a history of litigation.
* Conflict of interest issues.
* Follow-on contracting issues.

##### 2.B2.3 Narrowing in on the procurement alternatives

To assist in determining the procurement approach that best meets the department’s needs, buyers should ask themselves the following questions:

* What is the statement of work (SOW)?
* Is the acquisition an emergency purchase as defined by PCC section 10340?
* Can civil servants, as opposed to outsourcing, satisfactorily perform the services?
* Can another state agency 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 CALPIA or 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 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.B2.4 Specification development assistance

The DGS/PD Engineering Services is available to assist departments in providing technical knowledge and assistance in planning efforts and specification preparation. For additional assistance, see the sample Bid Specification Checklist shown below.

Click here to access the [DGS/PD Engineering Services web page](https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Request-Procurement-Engineering-Services).

Click here to access a [sample solicitation Specification Checklist](https://www.dgs.ca.gov/-/media/2D45322F830C42E8B7AEFE9C5E72ED91.ashx)

#### Topic 3 - Other Considerations Affecting the Planning Process

##### 2.B3.0 Promotional materials

Prior to conducting a purchase for promotional materials, (i.e. apparel, badges, desk items, etc.) a buyer must include written justification within the procurement file supporting how the purchase meets the department’s mission and business needs. Written justifications should include either a general or specific description of the type of event(s) and how the promotional material(s) will be used. Refer to section A, Topic 2 of this chapter for additional considerations and examples.

##### 2.B3.1 Requests for reasonable accommodation purchases

A purchase made in response to a request for reasonable accommodation does not preclude buyers from adhering 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.B3.2 Installation of physical layer cable and carpet

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) and carpet are considered public works. Departments may allow for a public work component only when it is incidental to the overall project requirements.

##### 2.B3.3 Outsourcing services

Departments must give careful analysis to using contracted personnel rather than using 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](http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx).
* 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).
* 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](http://leginfo.legislature.ca.gov/faces/codes.xhtml).

##### 2.B3.4 Leasing equipment

Leasing may be used when a department lacks sufficient funds for a purchase or if the department has insufficient data to project future needs.

In these cases, departments, prior to initiating any type or approach of purchasing activity as a lease, must document a lease versus purchase analysis as described in SAM section 3700 et seq. Lease vs. purchase analysis documentation must be retained within the procurement file.

Click here to access the Lease versus Purchase Analysis form. [Word](https://www.dgs.ca.gov/-/media/4672FB8A10B446F6858EA09A19B98DCC.ashx)

**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.B3.5 Blanket purchases

A blanket purchase is an acquisition mechanism established for no longer than one year with one supplier where the quantities of specific products are not known. In these cases, the department has determined that a group of goods from a specified supplier is necessary to the program, but the department must be flexible when determining the instant need.

In no case may a blanket purchase exceed $4,999.99 per transaction, unless the blanket purchase is issued under an LPA contract whereby the purchase document dollar cap is limited to the LPA contract dollar threshold. The department must keep a copy of each order placed against each blanket purchase document in the procurement file. The department must document in the procurement file why it is in the State’s best interest to execute a blanket purchase.

##### 2.B3.6 Shipping charges

Departments conducting competitive solicitations shall determine shipping terms during the procurement-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 a department determine another method of shipping is more appropriate in meeting their needs and the weight of the purchase is 100-lbs or more then the department shall contact the Transportation Management Unit (TMU) to provide the department with the cost of freight charges from TMU’s pre-established shipping contracts.

Departments are not required to contact TMU for purchases weighing less than 100-lbs.

Refer to Chapter 4 and Chapter 8 for additional information.

Click here to access the [TMU web page](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Transportation-Management).

##### 2.B3.7 Term purchases

Departments granted purchasing authority to conduct competitive solicitations may establish term purchase contracts through a competitive bid process.

A term purchase establishes a purchasing mechanism for:

* A specified period of time – not to exceed 36-months.
* A specified list of products and quantities.
* Items a department acquires on a routine basis.

Buyers conducting a competitive solicitation for a term purchase must adhere to the following:

* A competitive bid must be conducted whenever the dollar amount is $5,000.00 or greater.
* The solicitation must clearly identify contract start and end dates and the contract period may not exceed a 36-month period.
* The solicitation must clearly state the aggregate amount of the contract, but in no event may it exceed a department’s approved purchasing authority limit for non-IT goods, as applicable to the procurement.
* The solicitation, the resulting contract or the cumulative value of orders released against the contract may not exceed the amount of a department’s approved purchasing authority for non-IT goods, as applicable to the procurement.
* The solicitation must clearly state a maximum number of units that may be purchased.

Example:

10 units will be purchased upon award, and the department reserves the right to purchase up to 10 more units during the contract term.

**Note**: Evaluation and award must be based upon the total quantities per line item to be purchased during the contract term. Using the above example, the evaluation and award would be based upon 20 units.

* The solicitation must clearly state the delivery terms over the course of the contract term.
* The solicitation must clearly define whether or not pricing is firm over the course of the contract or if allowances will be made for price increases or decreases.
* The department must keep a running total of orders placed against each term purchase contract in the procurement file.

**Note:** A term purchase is not a suitable solicitation approach if a department is unable to commit to the stated quantities.

##### 2.B3.8 Statewide Pharmaceutic-al Program

The State of California Department of General Services (the DGS) implements and administers a Statewide Pharmaceutical Program, also referred to as the Prescription Drug Bulk Purchasing Program, established by Government Code §14977-14982.  The California State Departments of Corrections and Rehabilitations (CDCR), Mental Health (DMH), and Developmental Services (DDS) and other state agencies under the DGS authority are mandated to participate in this program.  Other state, district, county, city, municipal, or public agency governmental entities may elect to participate in this program.  (However, CDCR pharmaceutical purchasing is currently subject to the direction of the Federal Court Health Care Receiver.)

The DGS works in conjunction with a Central Pharmacy Advisory Board to implement and administer a Statewide Pharmaceutical Program and implement strategies to manage escalating prescription drug prices. Representation on this Board is appointed by the entities participating in the Statewide Pharmaceutical Program.

Please review the DGS/Pharmaceutical Contracts Website at, [Pharmaceutical Acquisitions](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Statewide-Pharmaceutical-Program), for a list of contracts supporting the Statewide Pharmaceutical Program.

##### 2.B3.9 Non-Compliant Trash Bag Manufacturers and Wholesalers

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). For more details, see Chapter 3.

##### 2.B3.10 Non-discrimination

Any employer who wishes to contract with the State for non-IT goods is subject to the provisions of GC section 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](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses).

##### 2.B3.11 Exception to GC section 12990

The requirements of GC section 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.

##### 2.B3.12 Darfur Contracting Act

Pursuant to Public Contract Code sections 10475 through 10481, for acquisitions of non-IT goods or services, departments must require vendors to certify whether they are a scrutinizedcompany.  This applies regardless of the procurement approach, method, or solicitation format used including, but not limited to: Formal Bids, Informal Bids, Request for Proposals, Invitation for Bids, Non-Competitive Bids, the SB/DVBE Option, and Fair and Reasonable acquisition method.  This [sample](https://www.dgs.ca.gov/-/media/CBAFDC111B6C43B09496B8391E11F394.ashx) or a similar code-compliant document should be used to satisfy the Act’s certification requirements. Departments that elect to develop their own processes and/or documents to suit their business needs should work with their legal counsel to ensure compliance with the Act.

The only exception to departments obtaining this information is for contracts awarded using the DGS Leveraged Procurement Agreements (LPAs).

Effective January 1, 2009, procurements for non-IT goods or services must address the requirements of this Act.  The Act is intended to preclude State agencies generally from contracting with *SCRUTINIZED* companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

A *SCRUTINIZED* company as defined in Public Contract Code section 10476 is ineligible to bid on or submit a proposal for a contract with a State agency for Non-IT goods or services (Public Contract Code section 10477(a)).  Public Contract Code section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a SCRUTINIZED company in order to submit a bid or proposal to a State agency.   A SCRUTINIZED company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code section 10477(b).

##### 2.B3.13 State contracts for goods, loss leader

Beginning January 1, 2010 and pursuant to PCC section 10302(b)(1), every solicitation for non-IT goods 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 a solicitation even if the statement is inadvertently omitted from the solicitation (PCC § 10302(b)(4)).

##### 2.B3.14 Loss leader, excluded acquisitions

The following acquisitions do not require loss leader language:

* RFOs for acquisitions from Leveraged Procurement Agreements
* Acquisitions made using Fair and Reasonable method
* Acquisitions made using the SB/DVBE Option.

##### 2.B3.16 Iran Contracting Act

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](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Iran-Contracting-Act-List.ashx?la=en&hash=95E15BE0E8841A4AC8C2CD823C7D8EC0F1F58981) 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](https://www.dgs.ca.gov/-/media/B495FA7745BF41D9A85D19AD55CAE4B4.ashx) 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.B3.18 Prohibition on tax delinquents bidding

Pursuant to the Public Contract Code section 10295.4, effective July 1, 2012, persons or companies identified as the largest tax delinquents by the Franchise Tax Board (FTB) or the California Department of Tax and Fee Administration (CDTFA) are ineligible to enter into any contract with the state for non-IT goods or services. Any contract entered into in violation of section 10295.4 is void and unenforceable.

Prior to executing any state contract or renewal for non-IT goods or services, the contracting department must verify that the contractor is not on a prohibited list by checking both the FTB and CDTFA websites. This 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. 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 code.

Public Contract Code 10295.4 provides no exceptions to these prohibitions.

The list established by FTB can be found on the [FTB website](https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/november-2018/top-500-delinquent-taxpayer-list.html) at https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/november-2018/top-500-delinquent-taxpayer-list.html

The list established by CDTFA can be found [here](https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm).

##### 2.B3.19 Certification for PCC 2010

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](https://www.dgs.ca.gov/-/media/8FB4E76F852F4F829CB9EB58638F318D.ashx) or a similar code-compliant document should be used to satisfy this certification requirement.

#### Topic 4 – Statement of Work (SOW)

##### 2.B4.0 Determining the need for a SOW

A department must include a statement of work for all services transactions and for goods transactions when appropriate. A statement of work protects the State and the contractor by identifying and documenting the details of the work to be performed.

##### 2.B4.1 What to include in a SOW?

A statement of work 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.
* 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).
* Cost per deliverable
* Contractor’s total cost.
* Product specifications
* Description of when, where product is to be delivered
* Pallet requirements
* Delivery personnel requirements

#### Topic 5 – Emergency Purchases

##### 2.B5.0 Definition

An emergency as defined by PCC section 1102 is “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

##### 2.B5.1 Types of emergencies

An emergency is further 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.B5.2 Required documentation

Regardless of the classification of the emergency, departments must document the procurement file and/or provide to the DGS/PD, as applicable, the following information:

* A description of the emergency.
* Explanation of why the situation warranted the emergency purchase.
* Explanation of the consequences of making the purchase through normal procurement processes.
* A description of the goods and price.
* The names and quotations of suppliers contacted.

##### 2.B5.3 Responding to a natural disaster

| If the purchase activity | Then the buyer will proceed with the purchase |
| --- | --- |
| Is within a department’s authorized non-competitively bid (NCB) contract purchasing authority dollar threshold | * Documenting the circumstance of the emergency purchase.
* Issuing 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. | * Documenting the circumstance of the emergency purchase.
* Issuing the purchase document, leaving the PA number box on the purchase document blank.
 |

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

##### 2.B5.4 Emergency purchase not in response to a natural disaster

| If the purchase activity | Then the buyer will proceed with the purchase |
| --- | --- |
| Is within a department’s authorized NCB contract purchasing authority dollar threshold. | * Documenting the circumstance of the emergency purchase.
* Documenting names and quotations of suppliers contacted.
* Issuing 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. | * Contacting the DGS/PD immediately or within the next business day to provide the circumstance of the emergency at the One-Time Acquisition support number: 375-4471
* The DGS/PD contact reviews the circumstance and if approved, assigns the transaction an Authorization to Exceed Monetary Limits (Form 42) number.
* Documenting the circumstance of the purchase.
* Recording the Form 42 number in the PA number box on the purchase document prior to issuing the purchase document.
 |

The following chart provides the emergency purchase process in response to an emergency situation other than a natural disaster.

##### 2.B5.5 Examples of non-IT goods emergency and non-emergency purchases

PCC section 10340(a) (1) allows for emergency purchases of non-IT goods without competitive bidding when the goods and services are necessary for the immediate preservation or protection of the public health, welfare, or safety.

Example of emergency:

A mudslide, caused by a flood, occurs on a highway and the crew must make an immediate purchase for supplies to clean up the mud.

Example of a non-emergency:

A department wants to purchase three (3) used bulldozers for routine forestry maintenance at a cost of $492,000.00. The purchase saves the department an estimated $260,000.00 when prices are compared to new bulldozer prices. Although it may be in the State’s best interest to purchase the used equipment, it does not meet the definition of an “emergency”.

**Warning:** Poor planning is not an emergency.

#### Topic 6 – Negotiation Process Guidelines and Procedures Under Public Contract Code Section 6611

##### 2.B6.0 Authority over Negotiations

Public Contract Code Section 6611(a) (“PCC Section 6611(a)”) authorizes the Department of General Services (DGS) to use a negotiation process under certain circumstances when procuring or contracting for goods, services, information technology, and telecommunications. The DGS recommends that during the acquisition planning phase State Agencies and Departments plan accordingly and consider whether a negotiation process is appropriate for a given procurement. If so, departments should contact the DGS for assistance prior to issuing a solicitation to add language to their solicitation documents indicating the requesting department’s intent to utilize PCC Section 6611(a) during the solicitation process.

##### 2.B6.1 How to Make a Request to the DGS

In order to implement negotiations pursuant to PCC Section 6611(a), State Agencies and Departments shall submit a written request to the DGS. The written request must contain the following:

* Description of the procurement
* How the procurement meets the State’s needs
* Explanation of why 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 or Department Procurement and Contracting Officer.

The request shall be addressed to the DGS as follows:

##### Non-IT goods

IT goods and services

Attn: Deputy Director, DGS/PD

##### Non-IT services

Attn: Deputy Director and Chief Counsel, DGS/OLS

##### 2.B6.2 Bases for Negotiations (PCC section 6611(a)(1))

The DGS may initiate negotiations if the DGS determines 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 section 6611(a)(1));

**Example:** The State has identified a general need for a new technology; however, market research indicates the technology may have multiple, unanticipated, secondary benefits. The State would be able to further define its business needs for the technology by conducting direct negotiations with the contractors who are subject matter experts.

1. 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 section 6611(a)(2));

**Example:** The State may have identified specific *business problems* and *technical requirements*, but a negotiation process with prospective contractors may produce multiple potential solutions of goods, services, or a combination of both.

1. The complexity of the purpose or need suggests a bidder’s costs to prepare and develop a solicitation response are extremely high (PCC section 6611(a)(3));

**Example:** A complex information technology procurement where the State may have ascertained through market research that the cost for bidders to develop a proposal in response to a solicitation is extremely high and may limit the number of bidders willing to participate.

1. 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 section 6611(a)(4));

**Example:** The State has an identified need to conduct procurement for a telecommunications system; however, market research has shown the technology within the industry is changing so rapidly that a traditional procurement method will not yield the best value to the State.

##### 2.B6.3 Guidelines and Procedures

When the DGS uses PCC section 6611, the following preliminary considerations,

guidelines, and procedures shall apply:

1. Each solicitation document shall set forth in detail the evaluation methodology and criteria to be applied to that particular solicitation. The evaluation methodology will be specific to the type of procurement being conducted, i.e., goods, services, information technology, or telecommunications.
2. An evaluation team will evaluate all bids/proposals according to the methodology specified in the solicitation and consider all award criteria, which may include administrative and technical requirements, as well as price.
3. The DGS may elect to proceed with negotiations if one or more conditions identified in PCC §6611(a) exists. In some instances, the condition supporting negotiations may be known to the DGS prior to issuing a solicitation. In some instances, the condition supporting negotiations may not be known to the DGS until after a solicitation commences.
4. If the DGS elects to proceed with negotiations, a state negotiation team will be convened, which may be the same team as the evaluation team on any individual procurement.
5. Once convened, the negotiation team shall confirm the purpose and scope of the negotiations and the identity of the bidders who shall be invited to participate in the negotiation process.
6. The negotiation team shall obtain approval from the Director of the DGS, or his/her designee, to proceed with negotiations.
7. The DGS shall identify which bidders shall participate in the negotiations in one of the following ways:
	1. The DGS may identify in the solicitation document the methodology that will be used to identify bidders to participate in negotiations. This may include, but is not necessarily limited to, a methodology that establishes a competitive range based on bidders’ rankings following bid/proposal evaluations.
	2. The DGS may identify in an addendum to the solicitation document the methodology that will be used to identify bidders to participate in negotiations.
	3. The DGS may negotiate with all responsive responsible bidders following bid/proposal evaluations.
8. Bidders will be notified in writing (i) that the DGS is initiating negotiations pursuant to PCC section 6611(a); (ii) the general purpose and scope of the negotiations; (iii) the anticipated schedule for the negotiations; and (iv) the procedures to be followed for those negotiations. This information may be provided in a single document or separate documents.
9. The DGS may issue additional information and/or instructions to bidders participating in negotiations as needed.
10. As part of the negotiation process, participating bidders may be asked to submit supplemental bids/proposals. Any request for supplemental bids/proposals will be directed in writing to all bidders participating in the negotiations, and will provide details concerning the format and due date for the supplemental bids/proposals.
11. Negotiations may be completed after a single round, or may be done in several rounds as determined by the negotiation team.
12. Negotiations will 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.
13. A written record describing the procedural steps taken in the negotiation process and the basis for final contract award shall be maintained.
14. The DGS may terminate negotiations and/or the solicitation at any time.

#### 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 and category of a purchase request before initiating a procurement activity. Now, the buyer needs to analyze the request to validate any pre-approval requirements.

#### Topic 1 – Office of Fleet and Asset Management (OFAM)

##### 2.C1.0 Office of Fleet and Asset Management (OFAM)

In accordance with GC section 13332.09, departments may not procure mobile equipment without first securing approval from the DGS/Office of Fleet and Asset Management (OFAM). Evidence of OFAM approvals must be documented in the procurement file.

Mobile equipment is defined in the OFAM State Fleet Handbook (OFAM Handbook) as:

“Used for passenger and equipment transportation, construction or maintenance work, and is self-powered or easily moved (trailer or skid mounted). This includes sedans, station wagons, Suburbans, carryalls, light utility pickups, vans under ¾ ton, jeeps, trucks, boats, and trailers.”

##### 2.C1.1 Fleet assets requiring OFAM approval

| Mobile Equipment Type | Description |
| --- | --- |
| Motor vehicle | * A vehicle that is self-propelled and registered by the Department of Motor Vehicles (DMV) for street use.
 |
| General use mobile equipment | * Self-propelled mobile equipment
* Self-propelled mobile equipment registered by the DMV for off-road use.
* Vessels registered by the DMV for use on water.
* Vessels documented by the U.S. Coast Guard.
 |
| Surplus mobile equipment | * Motor vehicles or general use mobile equipment that was previously owned or operated by any entity.
 |

The following motor vehicles and general use mobile equipment are subject

to OFAM approval:

**Note:** Please refer to DGS/OFAM Management Memo 13-01, *State Fleet Asset Oversight* for a complete listing of assets that require DGS/OFAM approval.

##### **2.C1.2** Excluded from OFAM oversight

Departments are not required to obtain the OFAM’s approval on the following

fleet type assets regardless of being registered by the DMV or not:

* Golf Cart (if rated below 35 mph)
* Mower (self-propelled and 24 hp or less)
* Generator
* Mobile home and/or office (only if permanently parked, if moved see footnote)
* Indoor Forklift
* Pallet jack
* Personnel hoist or lift
* Agriculture or construction equipment pulled by a vehicle
* Other fleet-related equipment as determined by the OFAM
* Trailer (2,999 lbs. GVWR or less) \*

**\*Note:** Trailer pertains to small trailers only, and not the equipment mounted on trailers, e.g. generators, welders, signs, message boards, kettle pots, outhouses, etc.  Assets carried on trailers such as: motorcycles, snowmobiles, ATVs, etc., are considered fleet assets and are referenced separately.

##### 2.C1.3 Mobile equipment purchases and repairs

When purchasing mobile equipment, departments must submit the following to OFAM for approval prior to contract execution:

* A completed Purchasing Authority Purchase Order (STD. 65) or Purchase Estimate (STD.66) for replacement or additional vehicles.
* An approved Property Survey Report (STD.152) for replacement vehicles.

**Note**: In accordance with the OFAM Handbook, tires and batteries for mobile equipment must be purchased using the State’s leveraged procurement agreements whenever possible.

**Note:** Mobile equipment repairs are considered non-IT services and, therefore, may not be purchased under a department’s purchasing authority.

Departments may not modify and/or repair mobile equipment without OFAM approval if the modification/repair exceeds the OFAM-established dollar thresholds. When contracting for mobile equipment modifications/repairs, departments must obtain OFAM approval when the transactions are expected to exceed specific dollar thresholds as established by OFAM. In addition to obtaining advance OFAM approval, when required, for vehicle modifications/repairs, departments must also get OFAM post approval once the modifications/repairs have been completed. All repairs and/or replacement of upholstery and glass require OFAM approval.

Department’s should consult the OFAM Fleet Handbook and the SCM, Vol. 1 regarding these services.

Click here to access the [list of OFAM forms](http://www.dgs.ca.gov/ofam/Forms.aspx).

Click here to access the [OFAM Handbook](https://www.dgs.ca.gov/OFAM/Resources/Page-Content/Office-of-Fleet-and-Asset-Management-Resources-List-Folder/Publications-on-Fleet-Asset-Management)

##### 2.C1.4 Where to submit vehicle acquisition packages

Departments will submit completed forms and attachments to:

Office of Fleet and Asset Management

Attention: Statewide Equipment Coordinator

1700 National Drive

Sacramento, CA 95834

#### Topic 2 – Surplus Property & Reutilization Program

##### 2.C2.0 Requirement to utilize existing surplus personal property

State agencies shall utilize surplus personal property whenever feasible by contacting the DGS Surplus Property & Reutilization (SP&R) program to determine if surplus personal property is available.

Personal property includes all types and categories of property (i.e. furniture), except land or other real property, and records of the state government.

Exception: State agencies purchasing property related to an approved Reasonable Accommodation (RA) are not required to contact DGS SP&R Program to determine if surplus personal property is available.

Procurement files must note use of this exemption.

##### 2.C2.1 How to contact SP&R

Contact the DGS SP&R program at their facility in Sacramento:

Call: (916) 928-5800

Email: contactspr@dgs.ca.gov

Visit: National Drive Warehouse

 1700 National Drive

 Sacramento, CA 95834

Online: A real time listing of current property is available at the National

 Drive Warehouse [SP&R Program](https://www.dgs.ca.gov/OFAM/Services/Page-Content/Office-of-Fleet-and-Asset-Management-Services-List-Folder/Reutilize-State-owned-Personal-Property).

##### 2.C2.2 Needs not met by SP&R

When a state agency’s functional needs cannot be met by the SP&R Program, then the state agency must next consider if its needs can be met by the California Prison Industry Authority (CALPIA) before proceeding in the open market.

##### 2.C2.3 Modular systems & conventional furniture

State agencies must first check with the SP&R program to confirm surplus property is not an option and obtain a CALPIA waiver before purchasing new modular systems & conventional furniture. For additional information see [Management Memo 11-01](https://www.dgs.ca.gov/-/media/Divisions/OSPPR/Memos/MM11_01.ashx?la=en&hash=0DE7467A676B316901A17A0FBB4E03C3348FAFEB). Documentation of the contact with SP&R must be kept in the procurement file.

##### 2.C2.4 Documentation requirement

**Furniture** (section 2.C2.3): State agencies that have been notified by the SP&R program that their requirements cannot be met by the reuse of surplus shall keep this notification in the procurement file.

**Other:** State agencies can self-certify verification of state surplus property (in the appropriate checkbox) on the Purchasing Authority Purchase Order STD 65 form. If email correspondence exists, this must be kept in the procurement file.

**RA Requests:** When state agencies do not verify availability of surplus property due to the exception provided in section 2.C3.0 for acquisitions related to requests for RAs, state agencies must make a note of the use of this exception in the procurement file.

**Note:** Medical and/or confidential information regarding the RA request must

not be retained in the procurement file.

#### Topic 3 – Acquisitions Related to Reasonable Accommodations

##### 2.C3.0 Background

It is the policy of the state that qualified individuals with a disability shall be employed in public service on the same terms and conditions as the nondisabled, consistent with applicable state or federal law. Further, it is the policy of this state that a department, agency, or commission shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an individual with a disability, unless the hiring authority can demonstrate that the accommodation would impose an undue hardship on the operation of its program. A department shall not deny any employment opportunity to a qualified applicant or employee who is an individual with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the applicant or employee.

Public Contract Code (PCC) 10298.1 requires DGS to provide a report on the DGS website regarding the purchases of services, goods, information technology, and telecommunications related to reasonable accommodations for state employees. DGS is also required to review procurement policy/procedures and make recommendations on improving the process for acquisitions related to reasonable accommodations. This topic implements PCC 10298.1 and provides special procedures specific to acquisitions related to reasonable accommodations.

##### 2.C3.1 Tracking and Reporting RA Acquisitions in FI$Cal

State agencies shall track acquisitions related to reasonable accommodations. These acquisitions shall be recorded, reported, and identified in the State Contracting and Procurement Registration System (SCPRS) located in the state’s FI$Cal. DGS will use this data to produce the report required by PCC 10298.1.

Acquisitions conducted by state agencies shall be recorded and reported by the state agency as follows:

* For state agencies transacting in FI$Cal, this shall be accomplished by selecting the Acquisition Sub-Type “Reasonable Accommodation (State Employee)” in FI$Cal at the beginning of the acquisition process. Contracts executed using the Std 213 Standard Agreement form which are generated and approved outside of FI$Cal shall not be reported separately to SCPRS since the transaction has already been recorded in SCPRS while transacting in FI$Cal.
* For state agencies not transacting in FI$Cal, this shall be accomplished by selecting the Acquisition Sub-Type “Reasonable Accommodation (State Employee)” when reporting the purchase in SCPRS-FI$Cal.

Acquisitions that exceed state agency’s purchasing authority and that are conducted by DGS/PD One Time Acquisitions Unit (OTA) will be recorded and reported by OTA. OTA shall select the Acquisitions Sub-Type ““Reasonable Accommodation (State Employee)” when transacting in FI$Cal. OTA may execute contracts using the Std 213 Standard Agreement form which are generated and approved outside of FI$Cal. When this occurs, the Std 213 Standard Agreement shall not be reported separately to SCPRS since the transaction has already been recorded in SCPRS by the OTA.

##### 2.C3.2 Expedite RA Acquisitions

When conducting an acquisition to fulfill a reasonable accommodation request, buyers must expedite the purchase, regardless of the acquisition type or method used to make the purchase. A purchase made in response to a request for reasonable accommodation does not preclude adherence to state procurement laws, regulations, executive orders, and policies.

State agency buyers must initiate the procurement process within seven business days of receipt of the purchase request.

State agency internal procurement policy and procedure manuals must identify the expedite process for RA acquisitions including the expectation and required steps to initiate the procurement process within seven business days of receipt of the purchase request.

##### 2.C3.3 Designate an RA Procurement Coordinator

Each state agency shall designate one individual as the RA Procurement Coordinator for the state agency. State agencies with a procurement function that includes decentralized purchasing, may designate sub-RA Procurement Coordinators at each location or for a particular region. Internal policy and procedures must specify the designated individuals.

| **Your roles and responsibilities include, but not limited to:** | **Who Can Be Designated** |
| --- | --- |
| 1. Receives RA acquisition requests from the state agency’s designated RA Coordinator(s).
2. Ensures RA acquisitions are expedited.
3. Tracks RA acquisitions in order to ensure that the acquisition is expedited and that the goods or services are delivered timely.
4. Evaluates and recommends internal procurement procedures in order to expedite acquisitions.
5. Participate in training as required by DGS.
6. Ensures that RA acquisitions are accurately reported in FI$Cal.
 | A trained buyer that works in the procurement office under the chain of command of the Purchasing Authority Contact (PAC).The PAC can be designated.Sub-RA Procurement Coordinators must be a trained buyer that works in a decentralized procurement office. |

##### 2.C3.4 Training Related to RA Acquisitions

State agencies shall ensure that RA procurement coordinators are trained procurement professionals. RA procurement coordinators are required to attend and receive a certificate of completion for the Acquisitions Related to Reasonable Accommodations course offered by the DGS PD’s California Procurement and Contracting Academy (Cal-PCA).

##### 2.C3.5 Internal Procurement Procedures Specific to RA Acquisitions

State agencies shall maintain internal procurement procedures that align with SCM policy and procedures for acquisitions related to reasonable accommodations. Internal procedures shall be unique to each state agency’s internal business process and organizational structure to include detailed steps/action items, timeframes, individuals (working titles) responsible for steps/action items, and process flow charts.

State agencies shall ensure that their procurement professionals and other state staff involved in the procurement process are knowledgeable of these internal procurement procedures.

##### 2.C3.6 Surplus Property Verification Exempt for RA Acquisitions

State agencies purchasing property for employees related to an approved

State agencies purchasing property for employees related to an approved Reasonable Accommodation (RA) are not required to contact the DGS Surplus Property & Reutilization (SPR) program to determine if surplus personal property is available.

Personal property includes all types and categories of property (i.e. furniture), except land or other real property, and records of the state government.

Procurement files must note the use of this exemption.

##### 2.C3.7 CalP I A Waiver Exemption for RA Acquisitions

State agencies must first evaluate CALPIA products (i.e. chairs, tables). If CALPIA does not offer products that meet the individualized needs (such as features or functionality of necessary equipment) of the applicant or employee with a disability necessary to fulfill an approved\* reasonable accommodation (RA) request, the state agency may proceed with the purchase without a CALPIA exemption/waiver. The state agency must document the procurement file in sufficient detail to explain why CALPIA products did not meet the needs specified in the RA request.

\*“Approved” means that the state agency followed their internal RA process and received the appropriate approvals prior to proceeding with the purchase.

Reminder: Medical and/or confidential information regarding the RA request must not be retained in the procurement file. See section 2.C3.11 Procurement File Documentation for RA Acquisitions.

##### 2.C3.8 California Assistive Services, Devices, and Technology Supplier Directory (Cal-ATSD)

The Department of Rehabilitation (DOR) maintains the California Assistive Technology, Services, and Devices Supplier Directory (Cal-ATSD). Cal- ATSD is a valuable resource of suppliers with expertise for addressing employee reasonable accommodation needs. The Cal-ATSD is a centralized directory that provides state and local agencies with a resource to quickly identify suppliers who provide assistive services, devices, and technology.

This resource supports the timely and effective delivery of reasonable accommodation goods and services such as assistive/adaptive services, devices, and technology to state employees with disabilities, consumers served by the California Department of Rehabilitation as well as other individuals served by state and local agencies. DOR is collecting necessary information such as manufacturer certifications and other pertinent data from suppliers listed on Cal-ATSD to assist buyers with identifying the types of products and services offered by suppliers.

This supplier directory is not a Leveraged Procurement Agreement (LPA) as defined in the SCM; however, it is a centralized resource of suppliers that DOR has created and is making available to state and local agencies to assist with expediting procurements.

State agencies can conduct acquisitions with suppliers on the Cal-ATSD after determining that a mandatory source such as CalP I A or mandatory LPA’s do not offer goods or services required to meet the unique needs of an employee with a reasonable accommodation.

Use of this supplier directory is encouraged as a resource of suppliers with expertise in the assistive/adaptive services, devices and technology.

State agencies shall conduct acquisitions in accordance with State Contracting Manual (SCM) procedures and may use available acquisition methods identified in the SCM such as the Fair and Reasonable Acquisition Method for purchases under $10,000 when conducting acquisitions and executing contracts with suppliers on this directory.

##### 2.C3.9 Leveraged Procurement Agreements

DGS/PD is committed to continuously improving the acquisitions process in order to expedite delivery of goods and services to employees with reasonable accommodations. Therefore, DGS will periodically review RA acquisition data entered into FI$Cal to identify opportunities to create Leveraged Procurement Agreements specific to goods and services regularly purchased on behalf of RA needs.

##### 2.C3.10 Compliance with RA Procurement Policy & Procedures

DGS/PD Purchasing Authority Unit (PAU) and the DGS Office of Audit Services (OAS) will monitor compliance. State agencies conducting acquisitions under the purchasing authority granted by the DGS are required to establish policy.

##### 2.C3.11 Procurement File Documentation for RA Acquisitions

State agencies shall document the procurement file with required procurement/contract related information. Medical and/or confidential information must not be contained in the procurement file.

Federal and State law require that certain information in connection with the reasonable accommodation process must be kept confidential. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any employee of a state department who obtains or receives such information is strictly bound by these confidentiality requirements. State agencies should ensure to the extent possible that these requirements are met during the RA process, including the procurement/acquisition process, so that any RA related information that is disclosed will be no more than is necessary to process the request.

#### Topic 4 – California Prison Industry Authority (CALPIA)

##### 2.C4.0 California Prison Industry Authority (CALPIA)

Pursuant to Penal Code section 2807, a department must first consider if CALPIA can fulfill the department’s need prior to purchasing an item from commercial suppliers. CALPIA offerings include the following:

| **CALPIA Product Categories** | **Product Examples** |
| --- | --- |
| Bedding, Cleaning Products, Clothing & Textiles, Gloves, Flags, Shoes, Services, Modular Buildings | Mattresses & Pillows, Bar Soap, Janitorial/Kitchen/Laundry Chemicals, Green Seal Certified Chemicals, Flags, Signs, NFPA Wildland Gear, ANSI Garments, Highway Construction & Maintenance Garments, Institutional Garments, Hospital & Medical Garments, Optical Services, Dental Services, Portable Customized Buildings  |
| Printing & Bindery Products, Signs & Decals | Binders, Portfolios, Files, Diploma Covers, Parking Placards, Printing Services, Plaques & Name Plates, Banners, Decals & Stickers, Metal Signs, Highway Signs |
| Furnishings, Open Office Systems, Metal Products | Office furniture Product Lines, Computer Furniture, Office Furniture, Residential Life, Seating, Storage, Tables, Accessories |
| Food products | Milk, Almonds, Poultry Products, Eggs, Meat Products, Bread Products, Coffee, Juice/Beverages, Packaged Meals, Peanut Butter & Jelly, Cookies, Syrup |

##### 2.C4.1 CALPIA exemption process

Departments may be granted a CALPIA exemption to procure goods from other sources when sufficiently justified. The table below describes the CALPIA exemption process that departments must follow:

| Stage | Description |
| --- | --- |
| 1 | The department contacts the CALPIA sales branch at (916) 323-2419 or access and complete the [Exemption Request](https://www.calpia.ca.gov/about/doing-business-with-calpia/exemption-process/general-state-agency-purchase-exemption-form/).  |
| 2 | The department completes a CALPIA exemption request and mails it to:CALPIA Sales Branch560 East Natoma StreetFolsom, CA 956340-0040**Note:** Expedite requests may be faxed to (916) 322-1184, however, expedites must be justified and a hard copy of the exemption request with original signatures is required prior to CALPIA approval. |
| 3 | All exemption requests will be faxed back to the department. Copies of the exemption request approved by CALPIA must be retained in the procurement file as proof of exemption determination. Documentation of only the CALPIA exemption number is insufficient to comply with the exemption documentation requirement.  |
| 4 | The CALPIA Sales Representative will contact the department when an exemption request is denied. The denied exemption request with original signatures will be sent to the department. |

##### 2.C4.2 Reasonable accommodation requests)

State agencies must first evaluate CALPIA products (i.e. chairs, tables). If CALPIA does not offer products that meet the individualized needs (such as features or functionality of necessary equipment) of the applicant or employee with a disability necessary to fulfill an approved\* Reasonable Accommodation (RA) request, the state agency may proceed with the purchase without a CALPIA exemption/waiver.  The state agency must document the procurement file in sufficient detail to explain why CALPIA products did not meet the needs specified in the RA request.

\*“Approved” means that the state agency followed their internal RA process and received the appropriate approvals prior to proceeding with the purchase.

Reminder:Medical and/or confidential information regarding the RA request must not be retained in the procurement file.

##### 2.C4.3 CALPIA price lists

CALPIA State Price Schedules (SPS) are no longer in effect. CALPIA is now providing pricing through the CALPIA Price List.

Click here to access the [CALPIA web site](http://www.pia.ca.gov/).

##### 2.C4.4 Ordering procedures

Departments must use the Purchase Order (STD.65) or the STD.65-PINDEL to execute CALPIA purchases.

The STD.65 must detail the catalog item number, description, unit price and extended dollar amount. Calculate the total amount of the purchase document and issue the STD.65 (contractor-original and packing slip copies) to:

By mail:

California Prison Industry Authority

Attn: Customer Service

560 East Natoma Street

Folsom, CA 95630-2200

By Fax:

Attn: Customer Service

(916) 358-2660

Electronic:

Agencies can utilize CALPIA’s online catalog purchases at www. calpia.ca.gov

**Note:**

* Do not include sales, use or federal excise taxes, as they do not apply.
* Payment terms are “net 45 days” or Controller Transfer
* Contact CALPIA, Customer Services for FOB point and delivery due dates.

##### 2.C4.5 (deleted 12/13)

##### 2.C4.6 Payment by CAL-Card

CALPIA purchases less than $2,500.00 where departments select to use the CAL-Card as the payment method will follow the requirements as identified in SCM, Vol. 2, Chapter 9.

All CALPIA purchases valued at $2,500.00 and over that are paid using the CAL-Card payment process must be executed on the STD.65. A copy of the STD.65 is not required to be submitted to CALPIA.

##### 2.C4.7 Copy to the DGS

Refer to Chapter 8 for the DGS/PD for the DGS distribution requirements.

####  Topic 5 – Community-based Rehabilitation Program (CRP)

##### 2.C5.0 Purchases from Community-Based Rehabilitation Programs

The DGS/PD encourages departments with the DGS approved purchasing authority to consider purchasing products and services from rehabilitative or sheltered workshops pursuant to Welfare and Institutions Code (WIC) section 19403. In accordance with WIC 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**: Departments must document its procurement file to support that the price offered by a community rehabilitation program is fair and reasonable.

##### 2.C5.1 (deleted 5/11)

####  Topic 6 – Additional Pre-Procurement Reviews and Approvals

##### 2.C6.0 Real Estate Services Division (RESD)

The DGS/RESD has the statutory authority for the acquisition of real property. Departments, prior to acquiring space, property and/or facility design services, must contact RESD.

Click here to access the [RESD web page](http://www.resd.dgs.ca.gov/default.htm).

##### 2.C6.1 Department of Conservation (DOC)

PCC section 10295.5 prohibits departments from purchasing sand, gravel, aggregates or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975, unless the Department of Conservation (DOC) has determined that the surface mining operation is eligible to sell materials to the State.

If a department purchases sand, gravel, aggregates or other minerals from a mining operation that is not on the DOC’s list of approved mining operations, then the department must:

* Obtain both a retailer’s certification of the supplier’s identification and the Department of Conservation’s listing of approved mines in effect at the time of the award and contains the originating mining operation.
* Document the procurement file that the items acquired came from an acceptable source.

**Warning:** Departments must obtain sufficient supplier certifications until the originating mining operation’s identification can be determined.

Click here to access the Department of Conservation's listing of approved mining operations.

Click the following to access a Surface Mining and Reclamation Act certification form. [Word](https://www.dgs.ca.gov/-/media/F35D90E55DFD497097B327D38D666D4F.ashx) [PDF](https://www.dgs.ca.gov/-/media/9B5D499334754E748EDF50146C9A5237.ashx)

##### 2.C6.2 State Personal Board (SPB)

Every personal services contract must be documented to support the need to contract out work. GC section 19130 establishes standards 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](http://www.spb.ca.gov/).

##### 2.C6.3 CalRIM 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 CalRIM Manual](https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Make-Public-Records-Requests-at-OAH).

##### 2.C6.4 NCB requirements

Refer to SCM, Vol. 2, Chapter 5.

##### 2.C6.5 Bottled water requirements

Bottled drinking water may be purchased under a department’s delegated purchasing authority where it has been determined that the building water supply does not meet standards set by the California Department of Public Health (CDPH) for State owned facilities or local city, county environmental management department(s) for State leased facilities, or where the DGS/Real Estate Services Division has determined that the cost of connecting a drinking fountain to the building water supply renders it impractical. Documentation from the CDPH and/or local city, county environmental management department(s), and/or DGS/RESD must be maintained in the procurement file.

**2.C6.6 Pre-Procurement and Post-Award Requirements When Purchasing Printing Equipment**

1. **Policy**

Pursuant to Management Memo 19-03 and the State Administrative Manual (SAM), Section 2876, no state agency may acquire printing equipment, where a piece of equipment is valued in excess of $50,000, without prior approval from the Office of the State Printer (OSP).

1. **Procedure**

The procedures below apply to the purchase of any piece of printing equipment valued in excess of $50,000 in accordance with SAM Section 2876.

| **Step** | **Task** | **Timeframe** |
| --- | --- | --- |
| 1 | Complete the Printing Equipment Acquisition Request (PEAR) and a Recovery of Investment Template (RIT), which are available on the Office of the State Printer [(OSP) website](https://www.dgs.ca.gov/OSP/Resources/Page-Content/Office-of-State-Publishing-Resources-List-Folder/In-plant-operations) at https://www.dgs.ca.gov/OSP/Resources/Page-Content/Office-of-State-Publishing-Resources-List-Folder/In-plant-operations. |  |
| 2 | Submit a PEAR and RIT to the Statewide In-Plant Operations Manager in OSP.1. Must be submitted by the state agency’s Deputy Administrative Director and/or Procurement and Contracting Officer (no designee signature will be accepted).
2. If the state agency intends to use DGS’ Procurement Division’s One-Time Acquisition (OTA) services prior to the end of the fiscal year, the documents must be received by the Statewide In-Plant Operations Manager by the first business day in February of that fiscal year.
 | No less than ninety (90) calendar days prior to the anticipated solicitation release date for printing equipment.Must be received by first business day of February for requested OTA services. |
| 3 | The PEAR must be approved by the State Printer.1. The State Printer may approve the PEAR as written, provide conditional approval through the recommendation of alternative equipment, or reject the PEAR with explanation.
2. An approved PEAR is valid for the duration of the fiscal year of issuance and the following fiscal year.
 |  |
| 4 | When PEAR approval is received from OSP, the submitting state agency must provide the PEAR to:1. DGS Procurement Division’s Purchasing Authority Unit (PAU) with requests to increase purchasing authority.
2. DGS Procurement Division’s Dispute Resolutions Unit (DRU) with requests for approval of Non-Competitively Bid (NCB) Justifications.
3. OTA when requesting procurement services.
4. State Controller’s Office (SCO) with invoice for payment processing.
 |   |
| 5 | Electronic copies of the Scope of Work issued with the solicitation and the final purchase agreement must be provided to the Statewide In-Plant Operations Manager. | Within sixty (60) days of signed purchase agreement. |
| 6 | State agencies must keep a copy of the approved PEAR in the procurement file for acquisitions conducted under DGS’ purchasing authority. |  |

1. **Legal Reference**
* Government Code, Title 2, Division 3, Part 5.5, Chapter 7
1. **Related Policy, Procedures, & Resources**
* Management Memo 19-03
* State Administrative Manual (SAM), Section 2876
1. **Attachments**
* Printing Equipment Acquisition Request (PEAR), located on the Office of State Publishing (OSP) website at [PEAR](https://www.dgs.ca.gov/OSP/Resources/Page-Content/Office-of-State-Publishing-Resources-List-Folder/In-plant-operations#@ViewBag.JumpTo).
* Recovery of Investment Template (RIT), located on the Office of State Publishing (OSP) website at [RIT](https://www.dgs.ca.gov/OSP/Resources/Page-Content/Office-of-State-Publishing-Resources-List-Folder/In-plant-operations#@ViewBag.JumpTo).

#### Topic 7 – Purchase Requisition

##### 2.C7.0 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 procurements of non-IT goods.

##### 2.C7.1 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/OTA web site](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/One-Time-Acquisitions).

[Click](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std066.pdf) here for the Purchase Estimate (PE) (STD. 66).

[Click](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std066A.pdf) here for the Purchase Estimate Continuation form (STD. 66a)

##### 2.C7.2 Where to Send the STD. 66

The completed STD. 66 should be submitted to the DGS/PD using one of the following options:

1. Attach it to an e-mail and send the PE, descriptive information, supporting documents, and specifications to IAU@dgs.ca.gov.
2. Fax the form to (916) 375-4469.
3. Mail a copy to:

DGS/Procurement Division
Attn: Intake and Analysis Unit, Attn: Eugene Shemereko/Mary Lam
707 3rd Street, 2nd Floor
West Sacramento, Ca. 95605

Once the Purchase Estimate is received, it will be entered into the eProcurement system. Agencies can view and check status of purchase estimates/requisitions that have been entered by logging into the eProcurement system through the DGS/PD [eProcurement](https://caleprocure.ca.gov/pages/index.aspx) web page.

**Note**: Refer to memorandum on Fiscal Year Deadlines for Receipt of Purchase Estimates on the DGS/PD [One Time Acquisition website](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/One-Time-Acquisitions).

##### 2.C7.3 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.

Additional information and the Purchase Order/Estimate Change Request (STD. 96) can be found at the DGS/PD [One Time Acquisitions web page](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/One-Time-Acquisitions) under Purchase Orders**.**

**Note:** 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.

#### 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](https://www.dgs.ca.gov/-/media/87F2010C03A34D3C8729FA83A74C13C1.ashx)

##### 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.