

## **GETTING STARTED ALL THINGS CONSIDERED**

**2611**

(May 2005)

Understanding the role of the purchasing authority purchaser, knowing the basic 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 **purchaser's**, hereafter referred to as "**purchasers**," 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.

## **THE PURCHASER'S ROLE**

**2611.1**

(May 2005)

### **FIDUCIARY RESPONSIBILITY**

**2611.1.1**

(May 2005)

**Purchasers** have a fiduciary responsibility to California's citizens and taxpayers to protect the State's interest as a whole and, in particular, to safeguard the resources of their department.

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.

### **RESPONSIBILITY OVER PUBLIC FUNDS**

**2611.1.2**

(May 2005)

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

Consequently, departmental personnel generally and **purchasers** 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.

## **WATCHDOG**

**2611.1.3**

(May 2005)

**Purchasers** 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.

## **GIFTS AND GRATUITIES**

**2611.2**

(May 2005)

### **ACCEPTING GIFTS AND GRATUITIES**

**2611.2.1**

(May 2005)

**GC** sections 89503 and 19990(f) establish the legal authority for departments to create Incompatible Activity Statements for employees to follow. **Purchasers** 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, money or equipment, meals, lodging, transportation, entertainment, service or any other favor of value from any person 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.

## CONSIDER THE CONSEQUENCE

2611.2.2

(May 2005)

**Purchasers**, after refreshing themselves with their department's 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?

## AVOID MAKING A GIFT OF PUBLIC FUNDS

2611.2.3

(No. 3 February 2006)

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. **The justification statement must clearly identify the state purpose, especially on those items where the purpose would normally not qualify as a valid state purpose. Be clear and concise in describing the purpose and careful not to simply state the name of the item purchased.**

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 Section 2672 for additional information.**

**Note: Departments may not procure personal items such as Kleenex, aspirin, glass wipes and/or appliances that are not part of the department's mission.**

R  
E  
V

## EXAMPLES OF GIFTS OF PUBLIC FUNDS

2611.2.4

(May 2005)

### Example #1

A **purchaser** wants to buy tee shirts with a silk-screened department logo, using its purchasing authority, for employees to wear while participating in a benefit walk/run event. This expenditure is not appropriate, as walking/running past onlookers does not constitute carrying out the department's mission. This is a benefit to the employees, not the department.

### Example #2

A purchaser makes a purchase of 50 desk lamps under its purchasing authority, but only receives a partial shipment. The supplier submits an invoice for the complete order and is paid in full for 50 desk lamps. This is an inappropriate payment as the supplier receives the benefit not the department. This payment is made in advance of goods received.

### Example #3

Break room supplies purchased for a meeting, office break room, or conference. This is not considered a valid state purpose. Employees not subject to emergency response are able to eat at their convenience and must pay for their own supplies.

### Example #4

An employee frames a set of photos for display in personal office space. This would not be considered a valid state purpose because individual offices are not considered open to the general public.

## **EXAMPLE OF AN ACCEPTABLE USE OF PUBLIC FUNDS**

**2611.2.5**

(May 2005)

### Example #1:

A department experiencing recruitment difficulties wants to buy pencils imprinted with the department's name and phone number, using its purchasing authority, as handouts at an employment fair/convention. The purchase benefits the department by drawing the interest of potential employees attending the event and looking for a job with the department. This purchase would not be considered a "gift of public funds".

### Example #2

Break room supplies such as coffee cups, coffeepots and utensils purchased for a 24-hour operation such as a command center or fire station. This is considered appropriate because employees are forced to eat at the convenience of their employer and are on duty, subject to emergency response.

### Example #3

An employee purchases picture frames and artwork for the lobbies, foyers, reception areas, conference rooms, state museums, libraries, etc. in a new building. This would be a valid state purpose because the items are being displayed in a public area and are not for individual use. It is also permissible to have safety and recognition awards made and/or framed. This is considered a valid state purpose because it is a formalized acknowledgement of employee achievement.

Work with your Purchasing Coordinator to determine the appropriateness of the purchase.

## **ACCEPTING FREE OR LOANER EQUIPMENT FROM SUPPLIERS**

**2611.2.6**

(May 2005)

DGS/PD recommends that **purchasers** do not accept suppliers' offers of goods or services without cost or obligation to the State. If a **purchaser's** decision is contrary to this recommendation, the **purchaser** must execute a purchase transaction (purchase order or contract) to document the agreement.

## **CONSIDER BEFORE ACCEPTING**

**2611.2.7**

(May 2005)

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 **purchaser** remain fair and impartial if a decision is eventually made to solicit the product?

**Warning:** If a **purchaser** 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.

[\(see next section\)](#)

[\(see HB Table of Contents\)](#)

[\(see Forms or Forms Samples\)](#)