

# Executive Summary

**T**o buy \$4 billion a year worth of goods, services and construction activities, the State has set up a procurement process that emphasizes fairness, low cost and achieving a set of social goals. None of these necessarily means that the State gets the best product to meet its needs or maximizes the use of its limited resources. Each of them adds cost (directly or indirectly) and complexity to the procurement process, resulting in delays and inefficiency.

In this report, the Little Hoover Commission acknowledges the need for the State to be fair in its dealings with suppliers as it spends public money; to be a comparative shopper in order to stretch dollars as far as possible; and to influence private actions through public policies encouraging small businesses, recycling and cultural diversity. The first priority, however, must be obtaining the *best value*: selecting the product that provides the most benefits for the lowest life-cycle cost. The procurement system should be designed to encourage officials to make best value choices rather than forcing them to focus on the paperwork-intensive process itself.

From this perspective, the Commission examined four areas of procurement: major computer and telecommunications equipment purchases; the protest process; the program designed

to encourage minority, women and disabled veterans participation in state business; and the Prison Industry Authority. As a result of its investigations, the Commission has made seven findings and 26 recommendations.



**F**inding 1: The present state procurement system focuses on low cost rather than on best value for the State.

Procurement experts and academics believe that, to make the best information technology purchases, governments need procurement systems that rely on knowledgeable, well-trained decision-makers who have been given the leeway to determine which bids offer the best value and are trusted to use good judgment (as opposed to hemming them in with rules and processes designed to protect against bias and influence).

While the State has acknowledged this theory by creating a separate set of laws to address the purchase of electronic data processing equipment, in practice the State's procedures for buying complex computer systems continues to rely heavily on low-cost evaluations rather than best-value judgments. A major reason for this is the State's emphasis on accountability: Decisions made on the basis of objective data -- such as pricing -- are much easier to document and defend than are decisions made on subjective assessments of who might perform best or how much better one piece of equipment rather than another will meet the State's needs.

The result can be wasted expenditures for inappropriate information technology systems or the failure to maximize the use of emerging technology because of lack of government expertise.

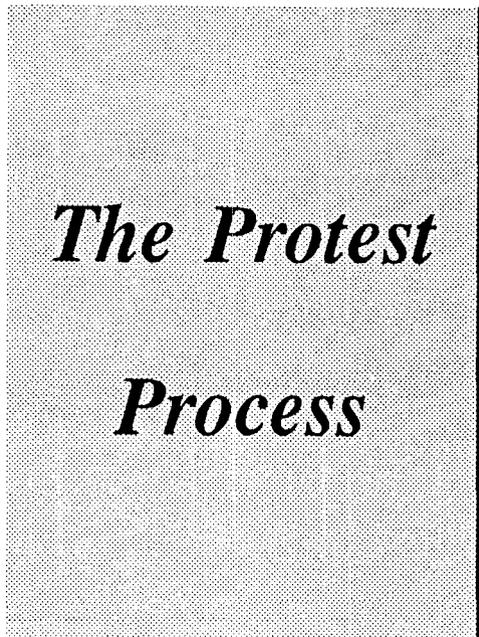
**Recommendations:**

1. The Governor and the Legislature should enact legislation that declares that the primary goal in conducting state

procurements is to obtain the best-suited product at the best price.

2. The State Administrative Manual should be changed so that state agencies may use a non-commodity, best-value evaluation procedure at their own discretion.
3. The Governor and the Legislature should direct the Department of General Services to streamline the procurement process to avoid multiple submissions.
4. The Governor and the Legislature should enact legislation that directs contract language negotiations to take place only after bids have been awarded.
5. The Governor and the Legislature should enact a resolution that would proclaim the State's intent to use functional specifications rather than detailed technical specifications in procurements.
6. The Governor and the Legislature should direct the Office of Information Technology to ensure that Requests for Proposals match the scope and intent of the Feasibility Study Reports.
7. The Governor and the Legislature should direct the Department of General Services to make increased resources available to those who write specifications for procurements.
8. The Governor and the Legislature should direct the Department of General Services to maintain equipment standards matrices only as an advisory guideline for departments.
9. The Governor and the Legislature should direct a modification of procurement procedures that would allow departments to purchase reconditioned equipment at their own discretion.
10. The Governor and the Legislature should enact comprehensive legislation to reorganize, simplify and streamline statutes relating to procurement.
11. In consultation with vendors, state departments and other procurement interests, the Department of General Services

should review contracting and invoicing procedures and create standardized formats to be used by all departments.



**F**inding 5: The State's contract award protest process is fragmented, is informal to a point that credibility is undermined, and is hampered by the perception -- if not the reality -- of being a kangaroo court that is unfair and/or ineffective.

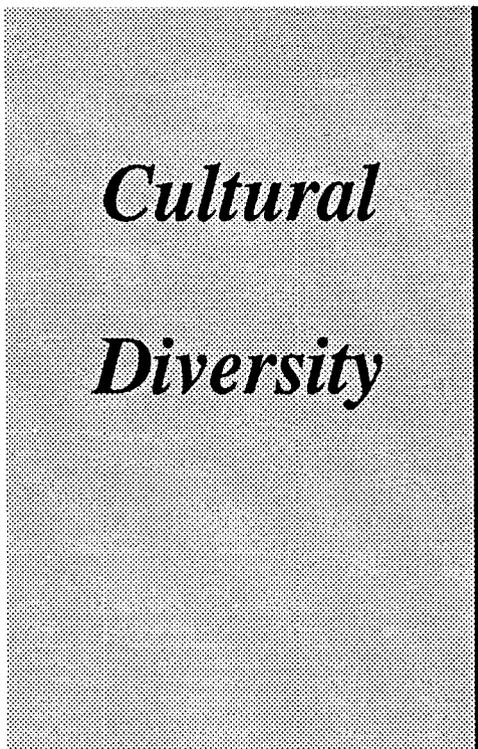
California's procurement protest process is spread among a variety of bodies. Where a bidder goes to complain about a procurement process or decision is dependent on the type of contract involved and the stage of the process being protested. The protest process in general has few of the procedural guidelines and structured policies that usually are essential for a system to have predictability and credibility. The "final" decisions of the protest system often involve no resolution of the problem and are tainted by an appearance of conflict of interest -- all of which result in a perception that the State's protest mechanism is unfair and/or ineffective.

**Recommendations:**

12. The Governor and the Legislature should enact legislation to centralize and provide uniformity to the bid protest process, as well as to upgrade the technical expertise of those involved in the process.
13. The Governor and the Legislature should direct the State Board of Control to institute formalized hearing procedures, record precedent-setting decisions, order remedies for bid award errors when appropriate and in other ways standardize the operation of the bid protest process.
14. The Governor and the Legislature should enact legislation to create an independent, binding arbitration process for those

protestors who are willing to pay the costs of an alternative process.

15. The Governor and the Legislature should enact legislation that would require the release of all relevant records to bid participants within a time frame sufficient to allow the filing of a detailed protest.
16. The Governor and the Legislature should enact legislation to require documentation of reasons when all bids are rejected and a project is put out for rebid.



**F**inding 6: The Minority Business Enterprise/ Women Business Enterprise/Disabled Veteran Business Enterprise program is failing to meet the goals set by law.

As the MBE/WBE/DVBE program enters its fifth year, almost all state departments are failing to reach the 15-5-3 percent goals for contracts. The program's administration is fragmented and its provisions are applied unevenly; in some cases, the law has simply been ignored while in others advantage has been taken of loopholes.

The program's good-faith effort and certification components and the lack of enforcement mechanisms all impose undue burdens on state departments, vendors and MBE/WBE/DVBEs, adding to state and private sector costs without producing the desired results. Although recent revisions promise some performance improvement, other sorely needed reforms pose a dilemma by threatening the program's viability.

**Recommendations:**

17. The Governor and the Legislature should pursue one of three options:
  - Option A: Enact legislation to contract for a disparity study and a recommended proportionate remedy as a prelude to adopting an aggressive, anti-discrimination procurement program.
  - Option B: Enact legislation that will recast the present MBE/WBE/DVBE program so that it operates similarly to the Small Business preference program.
  - Option C: Enact legislation that centralizes the authority and accountability for the MBE/WBE/DVBE program and provides adequate resources for outreach and enforcement efforts.
18. The Governor and the Legislature should eliminate the good-faith effort component of the MBE/WBE/DVBE program or reform the process so it achieves its intended purpose.
19. The Governor and the Legislature should enact legislation to abolish self-certification and set up a single-point full certification process.
20. The Governor and the Legislature should direct the Department of General Services to embark on an aggressive enforcement program.
21. The Governor and the Legislature should enact legislation that allows firms to file "global" plans with the Department of General Services as an optional way of complying with MBE/WBE/DVBE requirements.
22. The Governor and the Legislature should enact legislation to protect past and current vendors in the event the State's MBE/WBE/DVBE program is found unconstitutional.

# *The Prison Industry Authority*

**F**inding 7: The Prison Industry Authority, heavily and unwillingly subsidized by other areas of state government, is unable to document its degree of success in meeting program goals.

The Prison Industry Authority has a captive customer base in other state departments, which are forced to buy its goods and services. These customers, who have no leverage over PIA's performance, contend the products are overpriced, deliveries are often delayed and that quality is sometimes poor. The PIA defends its record,

claiming that prices are actually low for the quality of goods sold and that its activities save the State almost \$48 million a year. But the PIA is unable to show success in preparing prison inmates for the outside world, and its claims of providing cost savings evaporate quickly under scrutiny.

## **Recommendations:**

23. The Governor and the Legislature should enact legislation that allows state departments to purchase goods from the Prison Industry Authority on the basis of best value for the department.
24. The Prison Industry Authority should require its annual audits to recognize and document the subsidies it receives.
25. The Governor and the Legislature should enact legislation to give the Prison Industry Authority the responsibility of creating a hiring process that reflects real-world conditions.
26. The Governor and the Legislature should enact legislation requiring the Prison Industry Authority to report on program outcome statistics.