



JOINT STATE OFFICE

September 12, 2013

Caroll Mortensen, Director
Department of Resources, Recycling and Recovery
1001 I Street
Sacramento, CA 95812

**RE: Draft Waste Sector Management Plan
Comments on Draft State Procurement Technical Paper**

Dear Ms. Mortensen:

The California Refuse Recycling Council (CRRC) is a statewide non-profit trade association comprised of over 120 companies involved in the collection and processing of materials that also operate approximately 20 composting facilities, 50 material recovery facilities (MRFs), 35 construction and demolition debris processing facilities, and 12 landfills statewide. Our industry, in partnership with local government, has been instrumental in our state's efforts to attain the recycling mandate of 50% waste diversion from landfills, required by the California Integrated Waste Management Act of 1989 (AB 939), and will remain critical to the attainment of future greenhouse gas (GHG) reduction goals.

On August 1, 2013, CRRC submitted comments to the AB 32 Scoping Plan. The 2013 Update provides a great opportunity to better integrate policies and programs across all sectors to achieve the most significant greenhouse gas reductions and other co-benefits.

Our remarks concerning the State Procurement Technical Paper are underpinned by the need for the state to set strong policy and programs that serve to strengthen markets for recovered materials. Through its vast purchasing authority, the state of California is in a unique position to not only help establish sustainable markets for environmentally preferable products (EPP) but also lead in the effort to establish minimum post-consumer recycled content (PCRC) requirements for many of the products the state purchases that effectively reduce GHG emissions.

Comments and Observations to the Draft Technical Report

While documenting the significant impact purchasing decision can have on lowering GHG emissions, the Draft Technical Paper provides a sobering account of the failure of state government over the past 10 years to make good on its promise to position the state of

California as a leader for environmentally sound procurement practices. Instead of being in a position to highlight past successes and offer new proposals designed to further the state EPP goals, the Technical Paper chronicles the challenges state government has encountered since the SABRC program was inaugurated in 2003. Specifically the report laments the fact that:

- Only \$185K in purchases was reported into the SABRC data base, and of that amount - only 70% was compliant (\$130K);
- The lack of accurate data and reporting into the State Contract & Procurement Registration System (SCPRS) renders it of questionable value for purposes of informing and driving policy around increased environmental purchasing practices and opportunities for expansion of SABRC product categories;
- The state is unable to assess what percentage of the state's overall spending on goods and services (\$14B/annually) is for products suitable for PCRC;
- The lack of enforcement mechanisms inherent in the administration of the SABRC program limits its effectiveness; and
- Shortcomings inherent in the *Delegation of Procurement Authority* appear to allow departments to make purchasing decisions independent from DGS oversight, often with little or no attention paid to the goals of purchasing EPP.

Before we offer our recommendations for structural changes designed to strengthen the state purchasing program for EPP procurement, we would like to acknowledge certain findings contained in the report that appear promising, and in doing so encourage the state to stay the course on selected activities. Specifically we acknowledge the following:

- The announcement that the state's new financial ERP (FI\$Cal) will include not only the ability to track purchases against the current eleven categories of products covered by the State Agency Buy Recycled Campaign (SABRC), but that the FI\$Cal system will be designed to include seven additional categories, including carpet, mulch, paper supplies, IT equipment and printer/duplication cartridges among others;
- The finding that changes in vehicle procurement practices as a response to Ex Order S-14-09 have resulted in GHG reductions of over 20K tons per year;
- The recognition by the state that it must first determine which products have the greatest potential for waste and GHG emission reductions in order for those products and their purchasers to be targeted into the future; and
- The need to develop additional emission reduction factors for key products and categories to assist in defining GHG emissions reductions associated with procurement of EPP and PCRC products.

Recommendations for Enhanced Program Effectiveness

CRRC's largest concern with the State's Environmentally Preferable Purchasing Program as it is administered today serves as the foundation for the reforms we view as necessary and critical for the program to achieve a level of success. That concern is grounded in the fact that today the state Procurement of EPP is essentially advisory in nature. As stated on page one of the

report, the current program is best characterized as having made strides in "Promoting the purchase of environmentally preferable products (EPP) and PCRC products." The report also admits that the state's EPP program administered by CalRecycle and the DGS is largely a data collection effort designed to inform the state in arrears on the purchasing activities of individual departments specific to the SABRC and EPP purchases. However, the Technical Paper correctly admits that significant gaps in the reporting of product procurements coupled with lack of enforcement contribute to the program being viewed inside state government as mostly voluntary. In essence the program today is akin to a cheerleading squad, stationed on the sidelines relegated to offering enthusiasm, support and encouragement—but with little ability or charter to make things happen on the field of play.

We would submit that the state can invest all the time and resources necessary to narrowing existing data and reporting gaps, however until the state transitions the program from one being promotional in nature to one characterized by strict procurement requirements for environmentally preferable products - it will remain largely ineffective.

Recommendation #1

Establish in the State Contracting Manual a Separate Procurement Process for EPP

The state should establish in the State Contracting Manual a separate and distinct procurement process for EPP Procurements. This EPP procurement process would be mandatory for use by state departments when soliciting for predefined categories of goods and services, both non-IT and IT.

Once established in the state's contracting manual, the requirements would apply to all nonexempt state agencies and would include at minimum the following:

- Listing of all products and services to which the EPP Procurement Process would apply;
- RFP, RFO and IFB templates tailored to support EPP procurement and required for use by state purchasing officials,
- Alternative model contract terms and conditions favorable to environmentally preferable products;
- Elimination of the prohibition against restrictive use requirements in instances where it can be shown that inclusion of the requirement results in significant and quantifiable environmental benefits;
- Allowance for bid scoring and evaluation based on best value to the environment versus strictly lowest cost or price.

The use of alternative processes available to state purchasing agents and contract officers is not new. Today for example a state department is permitted to administer procurements for information technology goods or services using the Alternative Protest Process (PCC 12125-12129) which was established to prevent frivolous protest and speed up the acquisition of IT goods and services. Similarly the state recently published guidance that defines the procedures departments are to follow when they determine that the incorporation of "negotiations" into

the bidding process for goods and services - including negotiations over pricing - would be in the state's best interest or meet its policy goals. This flexibility - found in PCC 6611 - was established in order to allow state purchasing officers with enhanced tools to achieve desired outcomes from a particular procurement. Clearly the state has recognized that in order to achieve certain procurement outcomes it may need to avail itself of specific procurement processes that serve to achieve that outcome.

Why do we need an alternative Procurement Process for EPP? The answer is that without making changes to the current traditional solicitation process, it will remain difficult for the state to achieve its goals for EPP. The following serves as an example to this point.

The Technical Paper announces that the current eleven SABRC categories will soon expand to eighteen with the addition of IT equipment including printer cartridges - among several others. The problem with simply expanding and promoting the number of SABRC categories the state hopes to collect data on without coupling it with a procurement process designed specifically to support EPP is that a state buyer will be constrained to using the standard RFP templates and attendant contract terms and conditions. By way of example, GSPD 401IT are the states mandatory, model contract terms and conditions that accompany all IT Procurements. They are nonnegotiable and contain the following term:

NEWLY MANUFACTURED GOODS:

All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

Over the past decade, the IT industry has petitioned DGS to modify this requirement based on the industry practice where all equipment is bench or field tested prior to shipment. In the instance where a defect is discovered through testing, the manufacture will recondition the hardware to ensure its performance meets spec. This process of "reuse" - while consistent with the second tier of the recycling hierarchy - is not allowed by the state due to the requirement that all goods be certified as newly manufactured and not reconditioned.

A second example involves the current state bid requirement that a solicitation such as an RFP not contain any requirements that may result in reduced competition. Referred to as a "restrictive bid requirement," the prohibition of such a requirement may be counter to the state achieving its environmental goals. If for example the state wishes to procure florescent light tubes that are environmental preferable and in doing their market research discover that one manufacturer offers a tube with little to no mercury content, under the current procurement protocol, the state would be prohibited from including in its bid requirements a "low mercury standard" even though one is commercially available. Unless several manufacturers pose the same capability, the requirement for low mercury content would be viewed as restricting competition and thus invalid and grounds for a bid protest. Having a procurement process designed to achieve the state's environmental goals would free up state buyers to solicit and

award contracts to those manufactures who are leaders in the design, development and offering of environmental products.

Finally we recommend that all statewide mandatory contracts administered by DGS be viewed as candidates for EPP and or PCRC requirements. It is worth noting that as recent as August 14 of this year the state announced the establishment of a new mandatory contract for Towels, Washcloths and Blankets. When we contacted the DGS buyer responsible for the procurement and inquired if the new mandatory contract included *any* provision for EPP - the response was "No, it did not." In our view this demonstrates not only a missed opportunity for EPP, but a procurement planning process for EPP that is broken. Appendix 2 of the Technical Paper features an analysis of the states purchasing practices for Printing and Writing Paper. The analysis shows that had the state established a mandatory contract for paper with 100% PCRC, the associated GHG emissions would have been reduced by 33% (from 52,646 MTCO_{2e} to 35,512 MTCO_{2e}). In this instance, the state's failure to provide such a contract underscores the lack of commitment to achieving the highest EPP standards available.

Concluding this point - if the state wants to see measurable results in its EPP programs, it needs to start with the adoption of a redesign of its solicitation protocol and conclude with a scoring and evaluation process that results in awarded contracts to vendors based on pre-established environmental attributes/standards associated with their product or service offering.

Recommendation #2

Establish Meaningful Enforcement Measures for State Agency Non Compliance

The Technical Report offers several recommendations which are characterized as potential opportunities to achieve meaningful results in the area of Procurement actions designed to achieve greater benefits to the environment. These include the identification of products purchased by the state that offer the greatest potential for GHG reductions. However the report falls short in recommending mandatory use of EPP contract schedules and meaningful sanctions for noncompliance.

In our view, in order for the state to experience significant progress towards the purchasing of environmentally preferable products it must first fully leverage the statutory authority found in PCC 12153 through PPC 12404. These statutes arm the state with broad authority to further leverage procurement decisions to support the state's broader waste reduction and climate change goals by increasing the procurement of environmentally preferable and post-consumer recycled content goods. However any actions the state may take must be coupled with the adoption of greater enforcement policies for non-compliance with the EPP program requirements. These actions could include:

- Reducing or revoking a department's delegated purchasing authority for failure to adhere to the SABRC requirements including failure to report timely, and/or circumventing the use of contracts that offer EPP.

- Establishing the requirement that a prerequisite for legislative approval of a department's annual spending appropriation be the demonstration of the department having met or exceeded the state's purchasing goals for EPP;
- Mandatory attendance to SABRC training classes for department buyers who are found to be ignoring the SABRC program.

Conclusion

As stated earlier, CRRRC views the 2013 Update to the AB 32 Scoping Plan as a great opportunity to better integrate policies and programs across all sectors to achieve the most significant greenhouse gas reductions and other co-benefits. CRRRC member companies involved in the collection, processing and recycling of materials recognize the role our industry has and will continue to have in helping reduce GHG emissions. We also feel strongly that the operations of individual state departments and agencies bear an equal responsibility in ensuring that their actions are helping the state achieve its environmental goals of waste and GHG reductions. With the passage of AB 317 and mandatory recycling of commercial waste, we in the collection and recycling industry are expanding our operations to cleanly process and recycle increased percentages of the material we collect. This comes with sizable investments in not only our material handling facilities, but at our composting facilities, construction and demolition debris processing facilities, and landfill operations statewide. We believe it is not too late for the State of California to begin to demonstrate its commitment to GHG reduction through a reformed Procurement Program designed around the purchase of environmentally preferable products and PCRC products.

Should you or members of CalRecycle have questions or wish to discuss any aspect of the comments provided in this paper, please contact either our incoming Northern District Regulatory Affairs Director, Ralph Chandler, at (916) 444-2055 (email: rca@ralphchandler.com), or contact our Southern District Regulatory Affairs Director, Kathy Lynch, at (916) 443-0202 (email: lynch@lynchlobby.com).

Sincerely,



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CRRRC State President



Mark Figone
CRRRC Northern District President

cc: CRRRC Board of Directors
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