MANAGEMENT MEMO

	NUMBER: MM 02-12
SUBJECT: RESTRICTIONS REGARDING USE OF CMAS, MASTER SERVICES AGREEMENTS, AND NON-COMPETITIVELY BID CONTRACTS DURING INTERIM REVIEW PERIOD	DATE ISSUED: MAY 28, 2002
	EXPIRES: UNTIL RESCINDED
REFERENCES: EXECUTIVE ORDER D-55-02	ISSUING AGENCY: DEPARTMENT OF GENERAL SERVICES

It is the intent of Executive Order D-55-02 that competitive bidding processes will be employed to the maximum extent required by law. The purpose of this Management Memo is to provide Interim Guidelines for the acquisition of goods and services obtained through the use of CMAS, Master Services Agreements, and Non-Competitively Bid acquisition methods during the review period established by Executive Order D-55-02. Separate standards and processes are required for contracts $100,000 or less and those greater than $100,000. These are designated as Attachments A, B, and C, attached hereto.

1. Each State Agency and each department/commission/board not under an Agency shall designate a Procurement Liaison who will be responsible for the implementation of these Interim Guidelines. The name, telephone number and e-mail address of such person shall be transmitted to the Department of General Services (DGS) Procurement Division (custserv@dgs.ca.gov) by 5:00 p.m. June 4, 2002. Any follow-up instructions regarding these Interim Guidelines will be disseminated through the designated Procurement Liaison and through the DGS Procurement Division website. (See #11 below)

2. Failure to comply with the restrictions and/or requirements of these Interim Guidelines will result in the loss of delegated purchasing privileges.

3. Contracts should not be executed, and/or work should not be commenced until all of the approvals required by this Management Memo and Attachments have been obtained.

4. Contracts currently exempt from competitive bidding by statute (e.g. Interagency agreements, etc.) or which are based on purchases from a competitively bid master contract (e.g. Commodities master contracts, security guards, etc.) are not subject to this Management Memo and shall be entered into according to current legally required procedures. Contracting for architectural and engineering services, which is based on a statutorily required competitive selection process, is exempt from this Executive Order.

5. Although all Constitutional Officers, the University of California, the California State University, the Lottery Commission, the Public Employees' Retirement System, the State Teachers' Retirement System, the State Compensation Insurance Fund, and other independent state entities are exempt from this Executive Order, they are encouraged to take all necessary actions to comply with the intent of the Order. Contracts by local government entities are exempt from Executive Order D-55-02, but remain subject to their own laws or procedures.

6. Application of the Interim Guidelines to amendments of existing non-competitively bid contracts will be based on the cumulative dollar value <u>after</u> including the amendment. (e.g. $40,000 base contract plus a $70,000 amendment would be considered a $110,000 contract.)

7. Purchases and contracts not addressed by this Management Memo will be subject to the Department of General Services' oversight and must be processed in accordance with existing statutory requirements as well as applicable Procurement Division Delegation requirements and/or the State Contracting Manual.

8. Unless competitively bid, purchases greater than $100,000 involving contracts subject to Executive Order D-55-02, in addition to all other legally applicable requirements shall be justified by one of the following criteria:

   a. Provision of essential services
   b. Required for public health or safety
   c. Emergency as defined in Public Contract Code 1102
   d. Necessary to avoid financial loss to the state

   These terms are further defined in Attachment C.

9. Order of precedence: In applying these Interim Guidelines, the precedence shall be applied in the following order:

   a. Executive Order D-55-02.
   b. Management Memo 02-12, including Attachments A, B and C.
   c. Procurement Division Delegation for information technology and commodities.
   d. State Contracting Manual (Non-IT services).

   Copies of these documents are available on the Procurement Division website. (see # 11 below)

10. These Interim Guidelines are subject to future revision as determined by DGS with the approval of the Department of Finance.

11. Additional information regarding this Management Memo will be published on the Procurement Division website (www.dgs.ca.gov/pd) as it becomes available. (Select "Executive Order D-55-02".) Of particular interest will be the FAQ (Frequently Asked Questions) section, which will address common inquiries regarding the application of the Executive Order and Interim Guidelines.

Questions regarding this Management Memo may be directed to:

IT Goods & Services, Commodities:

Marnell Voss, Manager
Business Development Unit
Department of General Services
Procurement Division
Telephone: (916) 375-4563
e-mail: marnell.voss@dgs.ca.gov

Non-IT Services:

Kathleen A. Yates, Senior Staff Counsel
Department of General Services
Office of Legal Services
Telephone: (916) 376-5115
e-mail: Kathleen.Yates@dgs.ca.gov

Clothilde V. Hewlett, Interim Director
Department of General Services

ATTACHMENT A

Executive Order D- 55-02 Interim Guidelines: Specified Purchases $100,000 or Less

	IT Goods and Services	Commodities	Non-IT Services
CMAS Purchases $100,000 or Less	Solicit and obtain offers from 3 vendors including one Small Business (if available). If less than 3 offers are received, file must be documented as to solicitation methods used. Variance of model contract terms is permitted only with DGS review and approval.	Solicit and obtain offers from 3 vendors including one Small Business (if available). If less than 3 offers are received, file must be documented as to solicitation methods used. Variance of model contract terms is permitted only with DGS review and approval.	Solicit and obtain offers from 3 vendors including one Small Business (if available). If less than 3 offers are received, file must be documented as to solicitation methods used. Variance of model contract terms is permitted only with DGS review and approval. DGS/PD review and approval for purchase orders greater than $35,000.
Master Agreements $100,000 or Less Including: MSA/MPA/MRA/SPS/ WSCA and Cal-Store Agreements	Same as above.	Competitively bid master contracts for commodities are exempt from the Executive Order.	Same as above with the following exception: DGS/OLS review and approval for purchase orders greater than $35,000.
Non-Competitively Bid Contracts $100,000 or Less	1) Emergency 2) Only source (PCC 12102)	1) Emergency 2) Only source (PCC 10301,10302)	Complies with PCC 10340.
Non-Competitively Bid Contract Approvals	Approval by Agency Secretary or immediate next ranking official (see Attachment C-1) and; Approval by DGS if over $25,000.	Approval by Agency Secretary or immediate next ranking official (see Attachment C-1) and; Approval by DGS if over $25,000.	Approval by Agency Secretary or immediate next ranking official (see Attachment C-1) and; Approval by DGS if over $5,000.

ATTACHMENT B

Executive Order D-55-02 Interim Guidelines: Specified Purchases Over $100,000

	IT Goods and Services	Commodities	Non-IT Services
CMAS **IT Purchases:** **Over $100,000 to $500,000** **Commodity Orders:** **Not to exceed $100,000** **Non-IT Services:** **Over $100,000 to $250,000**	Solicit and obtain offers from 3 vendors including one Small Business (if available). If less than three offers are received, documentation of solicitation methods must be included with contract reporting to DGS. Variance of model contract terms allowed only with DGS approval. Limited to $500,000. No exemptions. All orders must be reported to DGS within 5 days of execution of contract. Must also comply with Executive Order Paragraph 6 conditions (see Attachment C-3).	Commodity Orders are limited to $100,000. No exemptions.	Solicit and obtain offers from 3 vendors including one Small Business (if available). If less than three offers are received, documentation of solicitation methods must be included with contract reporting to DGS. DGS/PD review and approval for contract orders greater than $35,000. Variance of model contract terms allowed only with DGS approval. Limited to $250,000. No exemptions. All orders must be reported to DGS within 5 days of execution of contract. Must also comply with Executive Order Paragraph 6 conditions (see Attachment C-3).
Master Agreements **Over $100,000 to $500,000** **Including:** **MSA/MPA/MRA/SPS/ WSCA and Cal-Store Agreements**	Same as above. Master Agreement purchases are limited to $500,000. Existing lower dollar limits established by actual agreements may further reduce this maximum.	Competitively bid master contracts for commodities are exempt from the Executive Order.	Same as above with the following exception: DGS/OLS review and approval for contract orders greater than $35,000.
CMAS/Master Approvals **Over $100,000**	Approval by Department Director or immediate next ranking official (see Attachment C-2 and C-3).	Does not apply to competitively bid master contracts for commodities.	Approval by Department Director or immediate next ranking official (see Attachment C-2 and C-3).
Non-Competitively Bid Contracts **Over $100,000**	1) Emergency 2) Only source (PCC 12102) Must also comply with Executive Order Paragraph 6 criteria (see Attachment C-3).	1) Emergency 2) Only source (PCC 10301,10302) Must also comply with Executive Order Paragraph 6 criteria (see Attachment C-3).	Complies with PCC 10340. Must also comply with Executive Order Paragraph 6 criteria (see Attachment C-3).
Non-Competitively Bid Contract Approvals[1]	Approval by Agency Secretary or immediate next ranking official (no delegation) and; Approval by DGS if over $25,000 and; If over $100,000 approval by DOF is also required. [2]	Approval by Agency Secretary or immediate next ranking official (no delegation) and; Approval by DGS if over $25,000 and; If over $100,000 approval by DOF is also required.[2]	Approval by Agency Secretary or immediate next ranking official (no delegation) and; Approval by DGS if over $5,000 and; If over $100,000 approval by DOF is also required.[2]

[1] See Attachment C-1 for approval authority.
[2] All Non-Competitively Bid Contract requests should be submitted to DGS-PD. DGS-PD will transmit those over $100,000 to DOF for review and approval.

ATTACHMENT C

Procedures and Definitions regarding Executive Order D-55-02

1) Required approvals for non-competitively bid contracts $100,000 or less and those greater than $100,000 shall be limited to the following persons:

   a) Agency Secretaries or their immediate next ranking official, or

   b) For departments or other entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.

2) Required approvals for CMAS and Master Agreement contracts exceeding $100,000 shall be limited to the following persons:

   a) Department Director or their immediate next ranking official, or

   b) For departments or other entities not reporting to a Department Director, approval authority is limited to the highest two ranking executive officials.

3) Paragraph #6 of the Executive Order applies additional qualifying criteria in addition to those that are statutorily required. Approval of contracts exceeding $100,000, as covered by the Executive Order, must contain documentation of facts that support the existence of any of the applicable criteria.

4) Definitions of Paragraph #6 criteria:

   a) Essential services:
   Includes services determined to be critically necessary for the operation of the department or the delivery of services required to be provided by the department.

   b) Required for Health and Safety:
   Goods or services determined as necessary to preserve, protect or promote public health, including persons under the care or custody of the state; or necessary to preserve, protect or promote public safety.

   c) Emergency (Public Contract Code 1102):
   A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, property or essential public service.

(Note: In the event of an emergency, statute permits the immediate acquisition of necessary goods and services as needed, with necessary approvals and documentation to follow.)

d) Avoidance of financial loss to the state:
Goods and services necessary, as determined, to prevent the waste of state funds or resources, including but not limited to:

1. Failure to obtain will result in the loss of federal or other funding.
2. Failure to obtain will result in damage to or deterioration of state resources.
3. Failure to obtain will result in the interruption of essential state operations or programs.
4. Failure to obtain could expose the state to liability based on the risk of damage to the property of others.
5. Failure to obtain could expose the state to risk based on the harm to the public.
6. Failure to obtain could result in the imposition of additional payments, penalties or fines.

5) Definition of terms used in Attachments A and B.

MSA: Master service agreement
MPA: Master purchase agreement
MRA: Master rental agreement
SPS: State Price Schedule
WSCA: Western States Contracting Alliance
Cal-Store: Cal-Store Master Purchase Agreement