

Subject: PERSONAL SERVICES CONTRACT (TEMPORARY HELP)

REFERENCES	SECTIONS
Administrative Order http://inside.dgs.ca.gov/ad/ao.aspx	04-09
DGS Manual http://inside.dgs.ca.gov/osp/OSPManual/TOC.aspx	0600
Executive Orders	W-103-94
Human Resources Policy Memorandums http://www.dgs.ca.gov/ohr/Home/HRPolicyMemos.aspx	99-03, 99-025
Law & Regulation http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&Action=ExpandTree&AP=IE1C9A760D48D11DEBC02831C6D6C108E&ItemKey=IE1C9A760D48D11DEBC02831C6D6C108E&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL13.04&VR=2.0&SPa=CCR-1000&pbcd=DA010192&fragment#IE1C9A760D48D11DEBC02831C6D6C108E	GC: 19887, 19130 SPB Rule: 547.59-547.71
Memo of Understanding (MOU) http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx	Refer to Employee's MOU
Responsible Control Agency and Program http://www.spb.ca.gov/	State Personnel Board
SPB/DPA Policy Memos http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx	PML: 04-021, 02-003
Other	
Management Memorandum http://www.dgs.ca.gov/osp/Resources/SAMMM.aspx State Administrative Manual (SAM) http://sam.dgs.ca.gov/Home.aspx Contract Manual http://www.dgs.ca.gov/ols/Resources.aspx Create Service Orders http://inside.dgs.ca.gov/abms/ABMSProcedures/POandSO.aspx Small Business and DVBE Services http://www.dgs.ca.gov/pd/Programs/OSDS.aspx	00-15, 01-07, 01-20, 94-16, 96-16 1200, 3500, 4500, 5200 http://www.pd.dgs.ca.gov/smbus/default.htm

Personal Services Contract (Temporary Help)

Definition

Definitions:

A "Personal Services Contract" is defined as any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State.

A "cost-savings based Personal Services Contract" is a personal services contract proposed to achieve cost savings and subject to the provisions of Government Code Section 19130(a).

Explanation/ background

In State government, there are business needs which require the use of staff that are not working a standard full or part time schedule. Because the California Constitution requires that the state workforce consist of civil service employees, except in specific unique circumstances, several categories of approved state hiring were developed to address such non-regular work schedules:

- Permanent intermittent employees may be hired when the workload fluctuates. The employees in this category work periodically, as workload requires. Examples include work that is dependent on weather conditions, fluctuating project workload, and back-up for regular workforce as workload requires.
- Seasonal employment is also an alternative and may be used, particularly when workload is weather dependent, such as park employees, snow removal, etc.

Contracting out for temporary staff is appropriate for emergencies, but not for the situations described above that are predictable and which can be planned for in advance.

Before entering into future personal service contracts with a temporary help agency, you **shall** contact your assigned Classification and Pay (C&P) Analyst to discuss the appropriate civil service options.

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Policy

It is the policy of the DGS that:

1. **Justification for contracting in lieu of using state employees is required for all contracts, and form STD 15 (or form STD 215) must be used when a Standard Agreement (form STD 2) is used.** Contracting for services is only permitted per Government Code Section 19130(b). A written justification for contracting for services is required for all contracts of \$1,000 or more. The form STD 15 provides a place for documenting the justification and must be used when a form STD 2 is used, regardless of whether the contract must be submitted to the Office of Legal Services (OLS) for review and approval. When a Service Order is used, the justification should be documented by either an attachment to or notation on the file copy of the Service Order (not the copy given to the contractor).
2. **All contracts (Standard Agreements and Service Orders) for temporary help must be approved by the Office of Human Resources (OHR) prior to issuing the contract.** This policy applies to all contracts with firms whose business is to provide staff to their clients (a temporary help company) as opposed to providing a specific service (such as contracting for equipment repairs). It is the responsibility of each Office/Branch Chief to ensure that no staff with approval authority within the Activity Based Management System (ABMS) approves a contract or invoice without having obtained this approval.

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Procedures

The following procedures **shall** be followed when requesting a personal service contract.

1. Offices/Branches **shall** submit a [justification memorandum \(see sample\)](#) and a completed "[Civil Service Options Considered Prior to Entering Into a Personal Services Contract](#)" form, along with a written justification for this request. The justification is to include the following information:
 - What services are needed
 - How long the services will be needed
 - A signature/date line for OHR Analyst/Manager
2. OHR approval **shall** be attached to the Service Order and submitted to Accounting and the OFS for payment.

Note: These procedures **do not** apply to services obtained through Master Service Agreements (MSA), CMAS, contracts with college employment services (i.e., Hornet Foundation), or services for repairs to equipment.

Service order policy

These policies and procedures vary from those normally applicable to state contracts in that they:

- Allow contracts under \$5,000 to be awarded without advertising in the California State Contracts Register (CSCR)
 - Allow the use of an "informal" competitive bidding system in lieu of "formal" procedures
 - Allow the use of a Service Order in lieu of a Standard Agreement for contracts under \$5,000 instead of \$1,000.
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General requirements

1. **Each Office/Branch continues to be responsible for following all laws and policies not waived or exempted by this policy.**

This includes, but is not limited to:

- Documenting a justification for contracting in lieu of using civil service employees
 - Checking the contractor's license for public works contracts
 - Including consultant contracts in the DGS' annual report
 - Ensuring that consultant contracts have sufficient detailed cost and performance data
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General requirements (continued)

2. **Services may not be split to avoid dollar limits.** In particular, a series of related services that would normally be bid as one job by a contractor cannot be split into separate tasks, parts, steps, phases, locations, delivery times, periods of performance, or charge codes when the effect of splitting is the circumvention of a dollar limit. Also, an amendment(s) or a series of service orders **shall not** be used to circumvent a dollar limit. Issuing a series of service orders totaling \$5,000 or more for the same undertaking **shall not** be done without **prior** approval of the Director. Also, service orders **shall not** be used to supplement a Standard Agreement for the purpose of avoiding a dollar limit applicable to that agreement.
3. **The flexibility afforded by the Service Order Policy shall be used to increase awards to small businesses certified by the Small Business and DVBE Services office.** A list of certified small businesses can be accessed at <http://www.bidsync.com/DPXBisCASB>. Whenever possible, the requirements for obtaining competitive quotes should be met by quotes from certified small businesses.
4. **Service orders may not be used to acquire architectural and engineering services.** Since orders are awarded based on a cost bidding system, they are not be used to acquire architectural and engineering services which must be acquired based on qualifications (Government Code Section 4525 et seq.)

Advertising

As a class of contracts, the contracts of the DGS under \$5,000 are hereby exempted from advertising in the CSCR.

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Competitive bidding

Contracts under \$5,000 are hereby exempted from formal competitive bidding procedures. For these exempted contracts, each office will attempt to obtain at least three quotes (or estimates); however, quotes are not required for contracts under \$1,000 nor for those services exempted from advertising in the CSCR per State Administrative Manual (SAM) Section 1233. Formal bidding procedures should still be used for small contracts when needed to protect the interests of the state.

The following requirements apply to the informal competitive bidding system:

1. Three price quotes or estimates should be obtained for all service orders whenever feasible. If feasible, quotes should be provided in writing and use of FAX quotes should be encouraged. A justification for not obtaining three quotes is required for contracts of \$1,000 or more. The justification must explain the efforts made to obtain the quotes, including the names of the contractors contacted. Justifications for contracts exempt from competitive bidding per SAM Section 1233 need only explain the applicability of the exemption. The justification must be approved by a supervisor or manager as delegated, in writing, by the Office/Branch chief. Service orders for services costing under \$1,000 may be issued without obtaining quotes.

Per Management Memo 94-16, a sole source transaction is defined as one "...where only a single business enterprise is afforded the opportunity to offer the state a price for the specified goods and/or services." If competitive bidding is required per the State Contracting Manual for the type of services involved, and the contract is for \$1,000 or more and is a sole source per this definition, a request for sole source must be filed with the Procurement Division.

2. All quotes, justifications, or explanations required by this policy must be documented.

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Service orders

A service order may be used in lieu of a Standard Agreement, form STD 2, for a simple contract for services costing less than \$5,000. The service order form can be accessed at <http://inside.dgs.ca.gov/abms/ABMSProcedures.aspx>. A Standard Agreement form must be used when the contract involves complex specifications or when having a signed agreement is needed for protection of the state, such as for most hazardous services. For exceptions to the above dollar limit, see item 3 below.

1. Use of any service order form other than the one provided above, must be approved by the Office of Legal Services (OLS) to ensure legal sufficiency.
2. As a contract, a service order must be approved by an officer with contracting authority as delegated by the Director. This authority may be delegated to subordinates only as expressly permitted in writing by the Director. Each Office/Branch chief is responsible for ensuring that the approval authorities granted within the ABMS are consistent with the authorities established by Delegations of Authority granted by the Director.
3. Service orders may be awarded for \$5,000 or more only when approved by the Director in the following circumstances:
 - a) When the Director has previously approved a substitute dollar limit for the specific type or group of contracts involved. To obtain such a substitute limit, the office must submit a request and justification to the Director through the OLS.
 - b) When the services are needed on an emergency basis. The service order must be submitted to the Director for approval prior to payment and accompanied by a justification that fully explains the nature of the emergency. "Emergency" is defined in the Public Contract Code, Section 1102, as a sudden, unexpected occurrence that poses a clear and imminent danger and requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

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- c) When the need for additional services and/or errors in work specifications are discovered after commencement of work, and it is economically in the state's best interests to amend the agreement rather than to stop work and award a new contract. Such events must be approved by the Director prior to payment.
- 4. A service order for recurring (see #5 below) or consultant services may not be amended to a total of \$5,000 or more without prior approval by the Director.
- 5. Most service orders should provide for one payment for a one-time event. However, a service order may be used for recurring services if the payment provisions are simple. For example, recurring service payments may be based on a set fee per month, a set fee plus a simple rate calculation, a simple application of an hourly rate, or a rate per unit of service. Also, a calculation of the service costs plus parts is acceptable.

A Standard Agreement must be used if the contract provides for a variety of service, and/or a variety of rates, and/or any complex service expectations or standards. Also, a Standard Agreement must be used when the payments are subject to withholding as progress payments, withholding for taxes, or when the payments are to be charged to multiple appropriations.
- 6. A service order may not be used for purchases of equipment or materials other than for those incidental to the performance of the service. However, a service order may be used for rental of equipment and/or may include fees for use of equipment.

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Service orders
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7. Since a service order is not signed by the contractor, **a copy shall be given to the contractor before work starts** to assure the contractor's agreement with the specifications and conditions of the contract. This is necessary to help protect the state from liabilities and disputes. A facsimile (FAX) may be used to transmit the agreement to the contractor (make sure the information faxed to the contractor includes the standard conditions). Whenever possible, the receipt of the agreement by the contractor **shall be** verified by telephone or by discussion when the contractor arrives to start work.

A verbal authorization to start work **shall be** approved by a supervisor or manager prior to the start of work. When the service order covering the work is processed, it too **shall be** approved by the supervisor or manager. The reason for verbally authorizing the work prior to issuing the service order **shall be** noted on the form or otherwise documented. Verbal authorizations **shall be** rare exceptions rather than the norm.

8. The office's approval of a contractor's invoice is a certification that the contractor has satisfactorily performed the services in accordance with the service order. If the contractor's form STD 204 is not already on file, the completed STD 204 **shall be** filed with the invoice, as explained to the contractor in Condition #16. Also, the service order number **shall be** referenced on the contractor's invoice.
9. The service order's standard conditions **cannot be** amended without prior approval by the OLS. However, the project specifications and amount of payment may be amended. Any such amendment **shall be** documented and **shall be** approved by an officer with the same level of authority (or higher) as the officer who approved the original service order.
10. A form STD 21, Drug-Free Workplace Certification, is required for all contracts before the contractor starts work. When a Standard Agreement is used, this requirement is usually met by including the form in the bid package. Since a bid package is not normally used for a service order, it will probably be necessary to request that the contractor submit the certification. A FAX procedure may be used to expedite this process.

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**Service
orders**
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As an alternative to obtaining the certification for each service order, a certification may be filed for a period of three years. Condition #15 explains this requirement to the contractor and states that the certification is made a part of the contract whether it is on file or submitted in response to the service order.
