STATE CONTRACTING MANUAL

CURRENT AS OF NOVEMBER 2012

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Volume 1

Notice

This publication is designed to provide accurate and current information about the law and State policies. Readers should consult the relevant codes, rules, and cases when relying on cited material.

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California Department of General Services

ABBREVIATIONS AND ACRONYMS
(Rev 11/12)

A & E	Architectural and Engineering
ADA	Americans with Disabilities Act
AG	Attorney General
BL	Budget Letter
CC	California Civil Code
CCR	California Code of Regulations
CalHR	California Department of Human Resources
CSCR	California State Contracts Register
CCC	Contractor Certification Clauses
DFEH	Department of Fair Employment and Housing
DOF	Department of Finance
DGS	Department of General Services
DGS/OLS	Department of General Services, Office of Legal Services
DGS/ORIM	Department of General Services, Office of Risk Management
DGS/OSDS	Department of General Services, Office of SB & DVBE Services
DGS/OSP	Department of General Services, Office of State Publishing
DGS/PD	Department of General Services, Procurement Division
DGS/RESD	Department of General Services, Real Estate Services Division
DVBE	Disabled Veteran Business Enterprise
EZA	Enterprise Zone Act
GC	California Government Code
GIA	General Interagency Agreement Terms and Conditions
GTC	General Terms and Conditions
IFB	Invitation for Bids
IRS	Internal Revenue Service
IT	Information Technology
LAMBRA	Local Agency Military Base Recovery Area Act
LC	California Labor Code
LPA	Leveraged Procurement Agreement
MM	Management Memo
MOU	Memorandum of Understanding
MSA	Master Services Agreement
NCB	Non-Competitively Bid Contract Justification
NLRB	National Labor Relations Board
PCC	California Public Contract Code
RFP	Request for Proposals
RFQ	Request for Qualifications
SAM	State Administrative Manual
SCAN	State Contracting Advisory Network
SCM	State Contracting Manual
SCO	State Controller's Office
SPB	State Personnel Board
TACPA	Target Area Contract Preference Act
UIC	California Unemployment Insurance Code
USC	United States Code

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1. INTRODUCTION

1.00 • INTRODUCTION
(Rev 11/12)

This State Contracting Manual (SCM) is provided as a resource to persons involved in California's State contracting process. (GC § 14615.1.) It provides the policies, procedures and guidelines to promote sound business decisions and practices in securing necessary services for the State. This manual does not eliminate or override statutory requirements, or requirements implemented by way of superseding Executive Orders and Management Memos.

A. Volume 1 of the manual deals primarily with non-IT services, consultant services, legal services, subventions, and interagency agreements. It does not cover real estate lease transactions, commodities or IT acquisitions. Overviews of public works contracts and architectural and engineering contracts are provided in chapters 10 and 11, respectively. DGS/OLS should be contacted for assistance in interpreting any section of Volume 1 of this manual or when seeking a variance from established contracting requirements or practices.

B. Volume 2 (formerly the Purchasing Authority Manual) contains information about delegated purchasing authority, commodities acquisitions and protests, preference programs, non-competitive bidding, leveraged procurement agreements, and reporting requirements. DGS/PD should be contacted for assistance in interpreting Volume 2.

C. Volume 3 contains information and provisions applicable to Information Technology (IT) acquisitions. DGS/PD should be contacted for assistance in interpreting Volume 3 of this manual.

1.01 • TABLE OF CONTENTS
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1.02 • AVAILABILITY OF THE MANUAL
(Rev 11/12)

The manual is available from the internet at www.dgs.ca.gov/ols. All contracting officials should register for the subscription service provided by DGS/OLS for changes to the SCM volume 1. Registration can be accomplished online at www.ols.dgs.ca.gov service.

1.03 • GUIDES TO USAGE OF THE MANUAL
(Rev 11/12)

A. Table 1.1 provides a guide for interpreting the acquisition requirements presented in this manual.

Table 1.1

Required or Discretionary Language			
	Requirements "must," "shall," "mandatory," or "required"	Limited Discretion "should"	Full Discretion "may," "guidelines," "recommended practices," or "examples"
Source	Statutes, regulations, State policies, DGS policies required to meet legal responsibilities	DGS policies related to requirements or considered to be good business practices	Policies, procedures, and guidelines presented as helpful aids
Compliance	Must be followed unless exempt by law or granted exemption by DGS	Need to be followed unless the agency has a good business reason for variance	Optional
Documentation	Documentation required	Brief notation in the files suffices	None required
Consequence for noncompliance	Noncompliance may cause violation of law and/or rejection of contract by DGS	Noncompliance may affect compliance with a requirement or the advisability of the contract; DGS may question and request documentation	None

B. Some mandatory requirements may be waived by DGS/OLS. Agencies seeking an exemption from any mandatory requirement should apply in writing to the Deputy Director & Chief Counsel of DGS/OLS. Any written exemptions should be kept on file for audit purposes.

1.04 • AGENCY RESPONSIBILITIES
(Rev 11/12)

Each State agency is responsible for its own services acquisitions program. This responsibility includes ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, writing the contract in a manner that safeguards the State's interests, and obtaining required approvals.

The role of DGS/OLS includes:

- Approving contracts after execution by the State agency (PCC §§ 10295 and 10335)
- Providing up-front assistance to agencies regarding acquisition problems (GC § 14600)

- Overseeing State contracting practices (GC § 14600)
- Improving the State's contracting system (GC § 14600)
- Training State personnel in contract requirements

1.05 • CLASSIFICATION OF CONTRACTS
(Rev 11/12)

A. Proper classification of acquisitions is necessary as a first step in determining which solicitation process is appropriate for the contract, and what elements are required to be in the contract.

B. Consider the following concepts for each acquisition:

1. Is it an Architectural & Engineering (A&E) Contract? Are the services sought required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental service as defined in GC § 4525?

   If so, the process contained in GC § 4525 must be followed. Note: An agency must have adopted regulations in order to utilize the process in GC § 4525.

2. Is it a Public Works Contract as defined in PCC § 1101? Does the work involve erection, construction, alteration, repair or improvement of a public structure, building, road, or other improvement?

   If so, the contract is a public works contract and further consideration must be made as follows:

   a. Does the contract estimate meet the statutory definition of a "Project" per PCC § 10105? If so, unless your agency is one of the agencies listed in the State Contract Act, approval (RESD Form 23) must be obtained from DGS/RESD prior to bidding for these services.

   b. Does the acquisition involve development of plans and drawings? Even if the contract amount is less than the current "Project" limit, approval (RESD Form 23) must be obtained from DGS/RESD prior to bidding.

   c. Does the contract estimate exceed $610,000? If so, only the agencies listed in the State Contract Act, and agencies specifically authorized by statute, are authorized to contract for the work. (PCC § 10108.)

3. Is it a contract for the purchase of a Commodity or Goods? (PCC § 10300, et seq.) Does the contract have as its sole or main purpose, the buying of some tangible items such as equipment, parts, supplies, or other merchandise? If so, further consideration must be made to determine whether any services are being provided as well, and which has the predominant value to the contract; the items being purchased, or the services being rendered? The dollar value associated with the services provided, or the value of the goods being supplied are factors that should be considered. (See SCM volume 2.)

4. Is it an Information Technology (IT) acquisition? (PCC § 12100 et seq.) Does the contract have as its sole or primary purpose, an information technology procurement or activity? If so, further consideration must be made. If the contract is determined to be an IT activity, the provisions of the State Administrative Manual in section 5200 must be adhered to. IT activities typically require additional documentation. When determining whether a contract is for IT, one must consider the predominant purpose or value of the activity, and

whether information technology skills and knowledge are involved as the primary purpose of the contract or whether such knowledge or skills are used to further an overarching purpose. For example, a contract to manage a health benefits program may utilize software and computer hardware to fulfill services required. Example: A contract for installing cable for a local area network includes purchase of the wiring and plugs, but also includes installation. The primary value is getting the cable installed, so this would most likely be a service or Public Works contract if it were being done in a public structure. (See SCM volume 3.)

5. Is it a contract for non-IT services? (PCC § 10335 et seq.) Does the contract have as its sole or primary purpose providing non-IT services? Services contracts are those that have someone doing something. Many service contracts are easily identified, e.g. waste removal services, cleaning services, etc. However, some services contracts are more difficult to determine, especially when they involve other disciplines as well. Example: A contract for carpeting may involve purchase of carpet (commodity) as well as removal of old carpet and pad (service), and installation of new carpet and pad (service). The determining factor should be what is the primary focus of the contract and expertise of the contractor. Is it the purchase of the item, or proper installation?

6. Is it a consulting services contract? (PCC § 10335.5.) Does the contract have as its sole or primary purpose, some type of recommendation or product of the mind? Is the unique knowledge of the individual and intellectual abilities of critical importance to the success of the contract?

7. Is it a contract for legal services? (PCC § 10335.) A legal services contract is a type of consulting services contract to obtain services which must be performed by a licensed attorney.

1.06 • CIRCUMVENTION OF RESPONSIBILITIES PROHIBITED
(Rev 3/03)

Statutes, regulations, and policies governing the State's contracting process are designed to protect the State's interests. (PCC § 100.) Therefore, it is not appropriate to seek artificial exceptions to contracting requirements that undermine the integrity of the competitive bidding process. Pass-through contracts in which the vendor or another governmental agency is doing something that an agency cannot lawfully do directly, such as avoiding competitive bidding, is a common type of unlawful circumvention. (PCC § 10340.).

1.07 • STANDARD CONTRACTING FORMS
(Rev 11/12)

A. The most commonly used forms in the service contracting process are listed below. Check the Internet site for the DGS Office of State Publishing (DGS/OSP) at www.dgs.ca/gov/osp to verify you are using the most current revision.

Form Number – Used for
STD 4 - Consultant Evaluation
STD 16 – Department of Fair Employment and Housing (DFEH) Contract Reporting Form
STD 17A - Non-discrimination Certificate
STD 18 - Non-discrimination Certificate (construction)
STD 19 - Non Compliance Certification
STD 21 - Drug Free Certification
RESD Form 23 - Request for Project Undertaking (construction)
STD 204 - Payee Data Record
STD 213 – Standard Agreement (First page for State contracts and Interagency Agreements under standardized contract process)
STD 213A – Standard Agreement Amendment (First page for amendment to contract agreement under standardized contract process)
STD 215 - Agreement Summary
STD 807 - Payment Bond (construction) PCC §§ 7103 and 10221
STD 810 - Contract Report (Small Business Participation)
STD 811 - Small Business Preference Request (construction)
STD 815 - Contracts Register Advertising Form
STD 821 - Request for Advertising Exemption
STD - 830 Target Area Contract Preference Act (TACPA) Request Form
STD - 831 Employment-Enterprise Zone Act (EZA) Request Form
STD - 832 Local Agency Military Base Recovery Area Act (LAMBRA) Request Form
OTHER - Non-Competitively Bid (NCB) Contract Justification Form

B. Agencies are not authorized to make revisions to the standard forms without prior approval from DGS.

2. THE BASIC CONTRACTING PROCESS

2.00 • INTRODUCTION

This chapter describes the basic contracting process and the principal components of the process.

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2.02 • DEFINITION OF A CONTRACT

(Rev 11/12)

"A contract is an agreement to do or not to do a certain thing." (CC § 1549.) It gives rise to an obligation or legal duty enforceable in an action at law. (CC § 1428.) Contract and Agreement are used interchangeably in the SCM. A contract must clearly identify the parties to the contract, the term of the contract, the contract price (or in-kind value), and a contract sets forth terms, conditions, and the statement of all work to be performed.

2.03 • PRELIMINARY CONSIDERATIONS

(Rev 11/12)

The contracting process starts with the recognition of a need for services. From that point the process varies depending on the type of services needed. Key considerations include:

A. Time

When the services are needed is a critical factor. Sufficient time must be allowed for internal agency process as well as required external review(s). (See SCM 1, chapter 4.)

B. Civil Service

The State Constitution generally requires contracting to be limited to those services that cannot be performed by civil service employees except as provided for in GC § 19130.

C. Authority and Approvals

Many decisions require authorized approval, including final formal approval, either by the agency or by DGS/OLS. Some contracts are legally exempt from DGS/OLS approval. Some may require approval by other agencies. (See SCM 1, chapter 4.)

D. Funding

Funding for the services is a crucial component and must be identified.

E. Competitive Bidding

Services obtained from the private sector are typically subject to a competitive selection process. (See SCM 1, chapter 5.)

F. Management of the Contract

Management of the contract must be anticipated and planned during the contracting process. Deliverables must be clearly described so that they can be evaluated and payments can be approved. (See SCM 1, chapter 9.)

2.04 • OVERVIEW OF THE CONTRACTING PROCESS
(Rev 11/12)

The following Table 2.1 gives a general overview of the State's contracting process. The process necessarily varies greatly depending on the circumstances of the specific contract. Table 2.1 is provided to help in planning your contract.

Table 2.1

	IMPORTANT FACTORS	DECISIONS TO BE MADE
1. Someone within the agency must identify the need for a service, whether the need is for a routine renewal of an existing essential service or the acquisition of totally new or unique services.	• What is the nature of the service? • What type of service is needed? • How necessary is the service? • When is the service needed? • Is this an ongoing or one-time service? • Is this an existing service or a new service? • Is this service routine or extraordinary?	• What internal procedures apply to requesting services? • What are the possible or probable sources for the services? • What justifications need to be developed? • Who has the authority to approve the request?
2. Services are required to be performed by civil service employees whenever feasible. Such feasibility must be considered before seeking a contract. (See GC §19130)	• Is the service available within your department? • Can another State agency perform the service? • Is this routine or extraordinary? • What are the estimated costs of alternatives, including in-house or interagency services?	• Is a contract with a non-State provider really necessary? • Which is the best alternative? If in-house service, the contracting process stops. If inter-agency service is best, the process continues. If a contract is justified, the process continues.
3. Costs and the availability of funds are always a factor. Alternatives range from using already-budgeted funds for simple services to seeking an appropriation.	• What funds are available to pay for the services?	• Who has authority to approve funding?

The Following Considerations Assume a Contract is Justified and Funds are Available		

4. The contractor selection method depends on the services involved and/or the circumstances. Different methods impose different requirements and procedures.	• What is the nature of the service?
	• When is the service needed?
	• Is this an emergency?
	• What is the estimated cost?
	• Are the sources for the service limited?
	• Is a contracted source already available?
	• Can an existing contract be amended?
		Select by competition, such as:
		• Invitation for Bids (IFB)
		• Request for Proposals (RFP)
		• SB/DVBE two quote method (GC §14838.5, 14838.7)
		Select by other method such as exploring:
		  • use of DGS LPAs
		  • use of statutory bid exemptions

5. Formal competitive bidding is generally required by law or policy. The formal competitive bidding process involves numerous factors and decisions**.**	• The contracting opportunity must be publicized, usually by formal advertising. • A solicitation package containing all specifications must be developed and must be available to all competitors. • Competition must not be unnecessarily restricted. • Procedures must be followed to ensure a fair competition. • The competitors' responses must be judged, and a winner must be determined. • The results must be announced, and the contract awarded. • The contract must be written in accord with the specifications and the contractor's response to the solicitation.	• Who develops the technical specifications describing the services to be performed? • Who ensures that the technical specifications are necessary, will achieve the desired results, and do not restrict competition? • Who develops and reviews the specifications describing general contract requirements and the solicitation requirements? • Who conducts solicitation activities, including advertising, dealing with competitors, receiving and safeguarding responses, opening responses, evaluating responses, and notifying competitors? • Who writes and processes the contract?

6. The contract must be processed for signature, approval and distribution.	• The contract must be signed by the contractor. • The contract must be signed by the person authorized to sign for the agency. • The Std. 215 must be signed certifying availability of funds and indicating the encumbrance of funds. • Additional approvals must be obtained depending on the contract. • The contract must be distributed.	• Who approves the contract? • Are special approvals required? • Is final approval by agency authorized or is final approval reserved to DGS? • Who distributes copies of the contract?
7. Management of the contract must be built into the contract to facilitate measurement of achievement and measurement of contractor performance.	Management includes: • Identifying the deliverables and ensuring satisfactory delivery • Monitoring progress, especially for quality and performance deadlines • Providing for audit, especially for critical compliance issues • Reviewing invoices for contract compliance, accuracy, and prompt payment if invoice is undisputed • Tracking State deadlines and use of funds • Identifying contract and contractor problems and communicating these to the contractor	• Did the contractor satisfactorily perform all required services? • Should the contractor be paid or should the invoice be disputed? • Is a formal evaluation required or needed? • Should the services be stopped or continued? • Should the contract be renewed or rebid? • How can the contract or contracted services be improved? • Should the encumbered funds be adjusted?

2.05 • ELEMENTS OF A VALID CONTRACT

(Rev 11/12)

Each contract must contain the following information:

- Identification of the parties.
- Term for the performance or completion of the contract (dates or length of time).
- Encumbrance of funds when required.
- Consideration (The contract must clearly express the maximum amount to be paid and the basis on which payment is to be made: e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery.)
- Scope and deliverables (The work, service, or product to be performed, rendered, and/or delivered.) Clear and concise language must be used to describe the scope.
- Other general or unique terms and conditions of the agreement.
- Signature by a person for each party who is authorized to bind that party.

2.06 • AUTHORITY TO SIGN A CONTRACT
(Rev 11/12)

A. A State agency's authority to contract is limited to those officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority.

Anyone who signs a contract should have sufficient knowledge and expertise in the area of contracting and the goods or services being procured. If an individual with statutory authority does not have sufficient knowledge or expertise in these areas, that individual should have the contract reviewed by a knowledgeable person prior to final signature.

Some important considerations for granting signature authority or assessing one's ability to effectively review a contract for approval are:

1. Training and/or certification in accordance with guidance provided by DGS.
2. The procurement approach used.
3. The goods and/or services for which the department is contracting.
4. The complexity and value of the contracts or procurements.
5. The purchasing authority of the department.
6. The knowledge, experience, and expertise of the individual signing the contracts.
7. Experience with the principles of sound contracting and procurement.
8. Familiarity with the process of contract formation, execution and administration.

Agencies must maintain a written record of all persons authorized to sign contracts and transmittals.

B. State boards and commissions either have statutory authority for the executive officer to sign contracts, or the authority of the executive officer to sign contracts is provided by resolution, order, or motion. Contracts in excess of $5,000 must be accompanied by evidence of the applicable authority to sign the contract. Contracts under $5,000 are generally deemed to pertain to ministerial duties and do not need to be accompanied by evidence of the applicable authority to sign the contract.

C. Local public entities authorize and approve execution of contracts through a resolution, order, motion, or ordinance. A copy of such authority must be required by State agencies unless payment will be made after performance is complete. A copy of such authority should be retained in the contract file. (See SCM 1, section 3.05.)

2.07 • STANDARD LANGUAGE
(Rev 11/12)

The provisions noted in Table 2.2 are generally required. Many of the provisions are contained in the State's standard general terms and conditions (GTCs) which should be incorporated by reference to the DGS/OLS website. Agencies should submit a basis for non-use of clauses.

Table 2.2

Contract Provisions	When Required	Law/Statute
Audit by State Auditor	All contracts over $10,000	GC § 8546.7
Audits and access to records	For contracts subject to DVBE goals	PCC § 10115, et seq. 2 CCR § 1896.60, et seq.
Nondiscrimination clause	All contracts	GC § 12990
Antitrust Claims	All competitively bid contracts	GC § 4550, et. seq.

Contract Provisions	When Required	Law/Statute
Statement of compliance	Contracts $5,000 or over when not in bid documents	2 CCR § 8113
Americans with Disabilities Act (ADA)	All contracts	42 USC § 12101, et seq.
National Labor Relations Board certification	All contracts	PCC § 10296
Drug-free workplace	All contracts	GC § 8350, et seq.
Progress payments	All contracts where progress payments will be made	PCC § 10346
Recycled Content Products	All contracts	PCC §§ 6615, 12201(c), 12205
Termination & Amendments	All contracts	GC § 11010.5
Expatriate Corporations	All contracts	PCC § 10286.1
Priority hiring considerations	Contracts in excess of $200,000	W&I §§ 11200, 11349, PCC § 10353, 2 CCR § 1896.30
Resolution of contract disputes	All service contracts should; consulting services must; public works contracts may	PCC §§ 10381, 22200, et seq.
Validity	All contracts requiring DGS approval	PCC §§ 10295, 10335
Subject to availability of funds	All contracts signed before approval of budget	State and Federal budgets
Convict/Forced labor/or sweatshop labor Sweatfree Code of Conduct	All contracts for purchase of goods or commodities. All contracts for purchase or laundering of apparel or garments.	PCC § 6108
Child support compliance	All contracts exceeding $100,000 (Interagency Agreements are exempt from this requirement)	PCC § 7110
Non eligible alien certification	All sole proprietor contracts	8 USC § 1621, et. Seq.
Insurance requirements	All contracts doing hazardous works	State policy
Air/Water pollution violation certification	All contracts over $10,000	GC § 4477
Domestic partners	All contracts $100,000 or over	PCC § 10295.3
Indemnity	All contracts	State policy
Prompt Payment	All contracts	GC § 927, et seq.
Consultant Services – Note: Needed in addition to "Contract Provisions" listed above.		
Amendment	Consultant contracts	PCC § 10335
Evaluation of contractor	Consultant services	PCC § 10367

Contract Provisions	When Required	Law/Statute
Evaluation criteria	Consulting services of $5,000 or more	PCC § 10371
Progress schedule	Consulting services of $5,000 or more	PCC § 10371
Consultant résumés	Consulting services of $5,000 or more	PCC § 10371
Detailed cost analysis	Consulting services of $5,000 or more	PCC § 10371
Project coordinator	Consultant services	
Progress reports/meetings	Consultant services	PCC § 10371
Legal Services - Note: Needed in addition to "Contract Provisions" listed above.		
Legal cost and billing guidelines	Contracts for legal services	PCC § 10353.5
Legal litigation plans	Contracts for legal services	PCC § 10353.5
Case phasing of activities	Contracts for legal services	PCC § 10353.5
Legal budgets	Contracts for legal services	PCC § 10353.5
Legal malpractice	Contracts for legal services	PCC § 10353.5
Legal bill & law firm audits	Contracts for legal services	PCC § 10353.5
Subvention Contracts – Note: Needed in addition to "Contract Provisions" listed above.		
State purchase of equipment	Subvention aid or local assistance	State policy
Prior authorization for reimbursement over $2,500	Subvention aid or local assistance	State policy
Prior State approval for training seminars, etc., and material	Subvention aid or local assistance	State policy
Contracts with Federal funding – Note: Needed in addition to "Contract Provisions" listed above.		
Termination 30 days	Contracts funded in whole or in part by Federal government, State government, and other public entities	State policy
Fund availability	Contracts funded in whole or in part by Federal government, all contracts	State policy
Other Contracts – Note: Needed in addition to "Contract Provisions" listed above.		

Contract Provisions	When Required	Law/Statute
Prevailing wages	Moving services over $2,500	SAM § 3810 GC § 14920
Prevailing wages	Public works	LC § 1770, et seq.
State's responsibilities for repairs, liability	Contracts for equipment rental	State policy
Equipment maintenance	Contracts for equipment rental	State policy
Interagency Agreements		
How charges are computed	All interagency contracts	SAM §§ 8752 and 8752.1
Audit	All interagency contracts over $10,000	GC § 8546.7
Advancing of funds	Any interagency contract	GC § 11257
Non-payment Transaction Request	All interagency contracts	GC § 11255; BL 10-10

CHAPTER 2 - APPENDIX

A DGS/OLS REVIEW CHECKLIST

(Rev 11/12)

[Note: This checklist is provided to inform State agencies of the typical areas of review and/or analysis performed by DGS/OLS. It should not be viewed as a limitation of DGS/OLS contract review activities.]

A. THE CONTRACT COMPLIES WITH THE LAW.

1. Authority to contract out
    - a. Specific statute
    - b. GC § 19130 consideration
        - (1) Cost savings 19130(a) -- State Personnel Board (SPB) process required (2 CCR § 547.69 and §547.70)
        - (2) Other reasons 19130(b) (2 CCR § 547.60)
            - (a) See 19130(b)(1) Exempt under Constitution
            - (b) See 19130(b)(2) New State function and legislative authority
            - (c) See 19130(b)(3) Service not available: highly specialized or technical
            - (d) See 19130(b)(4) Incidental to the purchase or lease
            - (e) See 19130(b)(5) Conflict of interest; need unbiased findings
            - (f) See 19130(b)(6) Emergency appointment
            - (g) See 19130(b)(7) Private Counsel, with Deputy Attorney General (DAG) approval. Notice provided to Bargaining Unit 2 representatives of contract
            - (h) See 19130(b)(8) Contractor will provide things that are not feasible for the State to provide
            - (i) See 19130(b)(9) Training when civil service is not available
            - (j) See 19130(b)(10) Urgent, temporary, or occasional services when civil service delay would frustrate the purpose
2. Budget authority
3. Legal method of procurement
    - a. Bidding generally required
        - (1) IFB
        - (2) RFP
        - (3) Two SB or DVBE quotes (GC §§14838.5, 14838.7)

b. Bidding exemptions

(1) Statutory
(2) DGS policy or NCB

4. Legal requirements met for type of contract

5. Authority to amend

B. THE CONTRACT MAKES GOOD BUSINESS SENSE AND THE COST IS REASONABLE.

1. Good business sense

a. Drafted to obtain desired results
b. Scope of work specific and realistic
. c. Maximum use of dollars
d. Deliverables clear, measurable, and concise
e. Realistic timetable

2. Reasonable cost

a. Consider whether:

(1) Bid is within estimate
(2) Bids cover a wide range
(3) Low bid is too low
(4) Low bid is too high

b. Has re-bidding been considered if bids are out of line?

C. THE CONTRACT USES CLEAR AND CONCISE LANGUAGE CONSISTENT WITH THE TERMS OF SOLICITATION AND BID.

1. Term

a. Within fiscal year appropriation; and
b. If for multiple years, contingency language as appropriate

2. Scope of work

a. Specifications, requirements
b. Personnel, staffing
c. Coordination
d. Measurable results, deliverables
e. Timelines, progress reports
f. Evaluation, acceptance

3. Total amount and payment method, progress payments, withhold

4. Terms and conditions—standard and special

D. SECONDARY ISSUES AND SUPPORTING DOCUMENTATION ARE REVIEWED.

1. Social issues (as appropriate)

a. Certified small business
b. Certified DVBE
c. TACPA
d. EZA
e. LAMBRA

2. Drug-free workplace, other required certifications

3. Statement of compliance
4. Check of corporate standing
5. Other approvals (as applicable)
    a. AG
    b. SPB
    c. DGS Office of Fleet Administration
    d. DGS/ORIM
    e. Records Management
    f. DGS/OSP
    g. CalRecycle
6. Std. 204 noted
7. Resolution
8. Bonds
9. Ads, STD 821, or exemption noted
10. Negative evaluations

3. ADDITIONAL REQUIREMENTS FOR SPECIFIC TYPES OF CONTRACTS

3.00 • INTRODUCTION

This chapter covers specific requirements for various types of contracts. See Chapter 2 for the elements of a basic contract, Chapter 10 for public works contracts, and Chapter 11 for architectural and engineering contracts.

3.01 • TABLE OF CONTENTS

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3.02 • CONSULTANT SERVICES CONTRACTS
(Rev 11/12)

A. A consultant services contract is a services contract of an advisory nature that provides a recommended course of action or personal expertise. (PCC § 10335.5.)

1. The contract calls for a product of the mind rather than the rendition of mechanical or physical skills.
2. The product may include anything from answers to specific questions to the design of a system or plan.
3. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services.

B. Expert witness contracts and legal services contracts are types of consulting services. (PCC § 10335.5.) These two types are exempt from competitive bidding. (See SCM I, section 5.80.)

C. Consultant services contracts do not include:

1. Contracts between State agencies and the Federal government. (PCC § 10335.5.)
2. Contracts with local agencies, as defined in Revenue and Taxation Code § 2211, to subvene Federal funds for which no matching State funds are required.
3. Contracts for architectural and engineering services. (GC § 4525.)

D. Agencies shall only use private consultants when the quality of work is at least equal to that of agency resources. (PCC § 10371.) But such contracts must still also comply with GC section 19130.

3.02.1 CONTRACT REQUIREMENTS

A. Consultant services contracts have certain requirements that do not apply to other contracts. (PCC § 10371.)

1. Consultant services contracts of $5,000 or more shall contain detailed performance criteria and a schedule for performance.

2. The contractor must provide a detailed analysis of the costs of performance of the contract.

3. Consultant services contracts of $5,000 or more shall have attached as part of the contract, a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor.

B. A consultant contract should contain:

1. A clear description of the work to be done or the problem to be solved. (If a problem cannot be clearly delineated, the agency must consider whether the problem is sufficiently understood or is not deserving of a consultant's attention.) The contract must specifically identify in realistic terms what the consultant is to accomplish, including any desired approach to the problem; practical, policy, technological, and legal limitations; specific questions to be answered; the manner in which the work is to be done; a description of the items to be delivered and measurable results they are required to achieve; the format and number of copies to be made of the completed reports; and the extent and nature of the assistance and cooperation that will be available to the consultant from the State.

2. Time schedules, including dates for commencement of performance and submission of progress reports, if any, and date of completion.

3. Manner of progress payments, whether and to what extent they will be allowed, and, if appropriate, known or estimated budgetary limitations on the contract price.

4. The dispute resolution clause should outline the steps to be taken by each party in the event a dispute arises. (PCC § 10381.)

5. Final meeting requirements between the contractor and agency management, when the contractor is to present his or her findings, conclusions, and recommendations, when applicable.

6. Final report requirements that require the consultant to submit a comprehensive final report, when applicable.

3.02.2 REVIEW OF TECHNICAL QUALIFICATIONS

The following criteria should be covered in the evaluation of technical qualifications presented in response to an RFP or IFB:

A. Does the proposing firm understand the agency's problem? Oral presentations may be arranged, if necessary.

B. Is the approach to the problem reasonable and feasible?

C. Does the firm have the organization, resources, and experience to perform the assignment? Has the firm had experience in similar problem areas?

D. Has the firm submitted sufficient information to establish that the personnel it has committed to the assignment have the appropriate professional qualifications, experience, education, and skill to successfully complete the assignment?

3.02.3 REVIEW OF PRIOR PERFORMANCE EVALUATIONS

A. Before awarding a consulting services contract of $5,000 or more, an agency must request a copy of any negative evaluations from DGS/OLS. (PCC § 10371.)

B. DGS/OLS shall send a copy of any evaluation report and response to the contracting manager or contracting officer, or highest-ranking contracting official of a State agency on receipt of a written, telephonic, or other form of request stating the reason for the request. On receipt of a consultant services contract submitted for DGS/OLS approval, DGS/OLS shall notify the awarding agency within ten working days if a negative evaluation is on file for the contractor. (PCC § 10370.) To avoid possible delays in approvals of contracts submitted to DGS/OLS, the awarding agency should document the review of the negative evaluations in the space provided on form STD 215.

3.02.4 MULTIPLE CONTRACTS WITH THE SAME CONSULTANT (PCC 10371(b))

Any agency entering into more than one consultant services contract with the same contractor within a 12-month period for an aggregate amount of $12,500 or more, must have each contract that exceeds the $12,500 aggregate amount approved by DGS (PCC § 10371). After the $12,500 aggregate amounts are met, all contracts with the same contractor, regardless of dollar amount, must be approved by DGS/OLS.

3.02.5 CONTRACTOR EVALUATIONS (PCC §§ 10367 and 10369(f))

Each contractor providing consultant services of $5,000 or more shall be advised in writing on the standard contract that the performance will be evaluated.

A. One Contract/Contractor Evaluation, form STD 4, must be prepared within 60 days of the completion of the contract.

B. The agency shall document the performance of the contractor in doing the work or in delivering the services for which the contract was awarded.

C. The evaluations shall remain on file by the agency for a period of 36 months. If the contractor did not satisfactorily perform the work or service specified in the contract, the agency conducting the evaluation shall place one copy of the unsatisfactory evaluation form in a separate agency contract file and send one copy of the form to DGS/OLS within five (5) working days of completion of the evaluation.

D. Upon filing an unsatisfactory evaluation with DGS/OLS, the State agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have 30 days to submit a written response to the evaluation to the agency in the department under the contract and to send it to the awarding agency and the department. The contractor's response shall be filed with the evaluation in the agency's separate contract file and in DGS/OLS's files.

E. The evaluations and contractor responses on file with the agencies and DGS/OLS are not public records. They should be maintained in a separate file. (PCC § 10370.)

3.02.6 PARTICIPATION OF AGENCY PERSONNEL

A. Agencies receive the greatest benefits from consultants when the project is a joint undertaking and agency personnel are active participants. Their participation provides the employees with training opportunities and knowledge of what the consultant has done, why it was done, and how the agency can benefit by it. The work often represents

knowledge that may not be derived simply through the analysis of the consultant's formal report. Agency personnel working with the consultant provide project continuity at the

operating level in subsequent months. Teamwork between the consultant and agency employees can also foster support for the project and enhance its chances for success.

B. Each contract should identify a person (or position) in the agency who will be the project coordinator. This person will have the overall responsibility to evaluate and follow up on the work of the consultant. Other staff time should be allotted for the project according to the nature and complexity of each engagement.

C. The contract shall provide a progress schedule and milestones, such as a series of progress reports or meetings on a regular basis to allow the agency to determine whether the consultant is on the right track and whether the project is on schedule, to provide communication of interim findings, and to afford opportunities for resolving disputes so that remedies can be developed quickly (PCC § 10381(c)).

3.02.7 PROHIBITED BIDS/CONTRACT PARTICIPATION (PCC §10365.5)

A. A person, firm, or subsidiary awarded a consulting services contract shall not submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract except:

1. A person, firm, or subsidiary may be awarded a subcontract of no more than 10% of the total monetary value of the consulting services contract.

2. This prohibition applies to non-IT and IT contracts. (See PCC § 10430(b).)

3.03 • INTERAGENCY AGREEMENTS
(Rev 11/12)

A. An interagency agreement (I/A) is a contract between two or more California State agencies. (GC § 11256.)

1. A contract with a California State University campus is treated as an I/A.

2. A contract with a University of California campus or Regents (UC) may be treated as either an I/A or a standard agreement, but the contract must use the required terms for whichever type of contract is used. For example, if the UC agrees to calculate cost based upon the provisions in SAM § 8752, then it is treated as an I/A, meaning the GIA terms are used. Otherwise, it will be considered a standard agreement and standard non-GIA contract terms are used.

3. I/As may not be used for contracts with campus foundations, the federal government, local entities, JPAs, or other states.

B. Special provisions apply:

1. I/As are exempt from advertising in the CSCR.

2. I/As are exempt from competitive bidding.

Note: If the entity performing the service is using subcontracts or purchasing goods, those services and goods should be incidental and typically should be competitively bid. See SCM 1, section 3.06. Both parties to the I/A must follow State laws and State contracting requirements.

3. I/As may provide for advancing of funds (GC §§ 11257 through 11263 and SAM § 8758.1).

C. Requirements are as follows:

1. An Interagency Agreement STD 213 must be used.

2. Under the State's standard contracting process, the contract should reference the State's standard current interagency terms and conditions by reference to the DGS/OLS website (e.g., GIA 610).

3. I/As shall include a provision that the charges have been or will be computed in accordance with State requirements as noted in State Administrative Manual (SAM) §§ 8752, and 8752.1 unless there is a legal reason for not doing so. The reason should be noted. SAM §§ 8752 and 8752.1 are included in the State's current standard terms and conditions (GIA 610).

4. I/As involving the expenditure of public funds in excess of $10,000 shall contain a provision that the agreement is subject to the examination and audit by the State Auditor for a period of three (3) years after final payment under the agreement (GC § 8546.7). This provision is included in the State's current standard terms and conditions (GIA 610).

5. DGS/OLS approval is required for I/As in accordance with SCM I, sections 4.03 and 4.04. (GC § 11256; SCM 1, chapter 4.)

3.04 • LEVERAGED PROCUREMENT/MASTER AGREEMENTS FOR SERVICES AND CONSULTING SERVICES

(Rev 11/12)

A. Leveraged Procurement Agreements (LPAs) are statewide agreements awarded by DGS, including services and consulting services agreements, that can be used by other departments. DGS has unique statutory authority to award such agreements (PCC § 10298.) There are various types of LPAs, including but not limited to: master contracts, CMAS, and WSCA/NASPO contracts.

1. LPAs take advantage of the State's buying power. Prices are often less than those a single agency could obtain on its own. State agencies can use the statewide LPAs through the use of a subscription agreement, typically using a Standard Agreement Form (STD 213).

2. LPAs take care of the bidding process and other administrative details. Depending on the particular agreement, Civil Service justification (GC § 19130), and DVBE goals may or may not have been dealt with. Agencies using LPAs should ensure these requirements are documented in their own contract files.

3. LPAs allow an agency to obtain needed services quickly and easily, avoiding the delay and uncertainty of the bid process. Most LPAs, especially those with multiple vendors, have User Guides that explain how the contracts are to be used. User Guides for different agreements have varying requirements. It is the responsibility of the using agency to follow the requirements in the User Guide for that particular LPA and to adhere to all other applicable code and SCM requirements.

4. Some subscription contracts to LPAs cannot exceed certain amounts also known as "caps." Before developing a subscription contract, check with the LPA User Guide, Contract Manager, and/or SCM volume 2 regarding caps.

5. Subscription agreements (i.e. contracts off an LPA) for services require DGS approval, just like other services contracts. (See SCM I, section 4.03.) Such approvals are done through DGS/OLS, except CMAS which is done through DGS/PD.

6. For additional information regarding LPAs, see SCM volume 2. For lists of available LPAs, see the DGS/PD webpage.

B. Intra-agency master agreements are contracts awarded by a department for the use of the divisions within that department. Intra-agency master agreements may differ from agency to agency depending on program needs and statutory authority, but all must comply with statutory and SCM contract requirements. Any agency wishing to enter into such agreements should first discuss the agreement with its DGS/OLS attorney.

3.05 • CONTRACTS WITH LOCAL GOVERNMENT
(Rev 11/12)

When one of the contracting parties is a county, city, district, or other local public body, the contract shall be accompanied by a copy of the resolution, order, motion, ordinance or other similar document from the local governing body authorizing execution of the agreement. When performance by the local government entity will be completed before any payment by the agency, such as a room rental or a one-time event, a resolution is not needed.

3.06 • CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES AND PUBLIC UNIVERSITIES
(Rev 11/12)

A. **Government entities/auxiliaries exempt from competitive bidding:** Agreements for services and consultant services do not require competitive bids or proposals if the contract is with:

1. A California State agency, State college or State university
2. A state agency, state college or state university from another state
3. A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
4. An auxiliary organization of the CSU, or a California community college
5. The Federal Government
6. A foundation organized to support the Board of Governors of the California Community Colleges, or
7. An auxiliary organization of the Student Aid Commission established under Education Code § 69522.

B. **Administrative overhead fees**: Agencies shall assure that all administrative fees are reasonable considering the services being provided. Agencies may only pay overhead charges on the first $25,000 for each subcontract. These overhead limitations may be waived when contracts are with the Federal government and cost recovery requirements result in higher published rates. The overhead may not exceed the published rates.

C. **No subcontracting to circumvent competitive bidding:** Services to be provided by entities listed in section A above are to be performed *primarily with the staff of the public entity* or, in the case of the educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular educational institution. *Agreements with entities listed in section A are not to be used by State agencies to circumvent the State's competitive bidding or other contracting requirements*. (PCC § 10340.)

D. **Subcontracting without limitation**: Services may be subcontracted without limitation only when the subcontracting is justified and not for the purpose of circumventing state contracting requirements and:

1. The primary agreement is a subvention agreement, (See 3.17); or
2. The total of all subcontracts does not exceed $50,000 or 25% of the total contract, whichever is less, and that subcontracting is not done for the purpose of circumventing competitive bidding requirements; or
3. All subcontracts are with entities listed in section A.

E. **Subcontracting subject to conditions:** If the total of all subcontracts exceeds $50,000 or 25% of the total contract, whichever is less, then minimal higher levels of subcontracting might be permissible if the subcontract is justified and not for the purpose of circumventing state contracting requirements, still conforms to section 3.06.B and C above, and:

1. Meets one of the categories in 3.06 D.; or
2. Prior written approval from DGS/OLS has been received; or
3. Certification by the government entity that the subcontractor has been selected pursuant to a competitive bidding process that seeks at least three (3) bids from responsible bidders; or
4. Approval by the agency secretary (or highest executive officer if no agency secretary exists), explaining the reason the subcontract(s) are included in the public entity contract rather than being separately bid and contracted for by the department, and attesting that the selection of the subcontractor(s) without competitive bidding was necessary to promote the agency/department program needs and was not done for the purpose of circumventing competitive bidding or other state contracting requirements.

F. This section is intended to limit, not increase, the amount of subcontracting if any in public entity contracts. It is not intended to create a basis for using public entity contracts to procure third-party services or goods for state agencies. It is intended to allow some limited subcontracting on an exceptional basis, under appropriate documented circumstances, where the subcontract is integral to the work being performed under contract with the public entity and the contract work is performed primarily by staff of the public entity.

G. If a contract submitted to DGS for approval does not identify subcontracts, but the contract subsequently involves subcontracts, then, if the subcontracted amount exceeds the limits in D.2 above, the contract shall be amended to identify the subcontracts (name, staffing, portions of the work to be performed, and budget detail) and the amendment shall be submitted to DGS for approval.

Note: When determining the amounts or percentages being sub-contracted, do not include amounts or percentages sub-contracted to exempt entities in 3.06 A.

3.07 • LEGAL SERVICES CONTRACTS
(Rev 11/12)

A. Legal services contracts are not subject to competitive bidding or advertising. They must be authorized by the Attorney General unless specifically exempted by statute. In general, the law requires agencies to use the Attorney General as their legal counsel; however, with written consent by the Attorney General, agencies may contract for legal services. This consent must be obtained before seeking DGS/OLS approval (GC § 11040, et seq.).

B. State agencies must provide written notification of the request to the AG to the designated representative of State Employees Bargaining Unit 2 within five (5) business days of the request to the AG. Those State agencies not required to obtain the consent of the AG per GC § 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five (5) business days prior to the execution of the contract by the State agency. Written notice shall include the following: a copy of the complaint or other pleading, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information; the justification for the contract per GC § 19130(b); the nature of the legal service to be performed; the estimated hourly wage to be paid under the contract; the estimated length of the contract; the identity of the person or entity entering into the contract with the State. This notice requirement does not apply to contracts for expert witnesses or consultations in connection with a confidential investigation or any confidential component of a pending or active legal action. (GC § 11045.)

C. A copy of the contract and any amendments must be sent to the designated representative for State Employees Bargaining Unit 2 at or before the time of submittal to DGS/OLS for approval. (GC § 11045(c).)

D. Consent to amend the contract need not be obtained from the Attorney General if the amendment merely alters the length of the contract or involves terms related to the agency's choice of, or fiscal relationship with, the outside counsel. If the contract scope of work is to be amended, consent must be obtained from the Attorney General.

E. Legal services contracts must contain the following provisions. The contractor shall:

1. Agree to adhere to legal cost and billing guidelines designated by the agency.
2. Adhere to litigation plans designated by the agency.
3. Adhere to case phasing of activities designated by the agency.
4. Submit and adhere to legal budgets as designated by the agency.
5. Maintain legal malpractice insurance in an amount not less than the amount designated by the agency.
6. Submit to legal, bill audits and law firm audits if so requested by the agency. The audits may be conducted by employees or designees of the agency or by any legal cost-control provider retained by the agency for that purpose.

F. A certification effective January 1, 2003, and pursuant to Business and Professions Code § 6072, must be included in legal services contracts of $50,000 or more if they are to be performed within California:

> "Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the

lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State. Failure to make a good faith effort may be cause for non-renewal of a State contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services."

Note: The contractor may be required to submit to a legal cost and utilization review as determined by the agency (PCC § 10353.5).

3.08 • EXPERT WITNESS CONTRACTS

(Rev 3/03)

A. When a consultant is retained as an expert witness in pending litigation, the rate paid should be consistent with the complexity and difficulty of the testimony to be given, the going rate for similarly qualified consultants, and the qualifications and reputation of the particular consultant. The contract should detail exactly what the consultant is to do, i.e., provide reports, submit to depositions, testify in court, or make other appearances.

B. Contracts solely for the purpose of obtaining expert witnesses for litigation are exempt from advertising and bidding requirements (PCC § 10335.5).

C. Use of litigation experts pursuant to PCC § 10335.5(c)(3) must be supported by a written justification, which demonstrates that litigation is "likely" rather than theoretical.

3.09 • AMENDMENTS

(Rev 11/12)

A. An amendment is any modification to a contract.

1. It should contain the same degree of specificity for changes that the original contract contained for the same item.

   a. The items of work covered by the amendment should be clearly written as part of the contract. Example: "Scope of work Exhibit X is hereby amended to include additional items of work as shown on Exhibit X1"

   b. Paragraphs being amended should be clearly identified. Example: "Paragraph X is hereby amended to read: The total amount of this contract is... "

2. Amendments must be entered into before the expiration of the original contract.

   Note: Do not use such wording as, "This contract is effective from (amendment date) to ending date." Such terminology has the legal effect of moving the starting date of the entire contract up to the amendment date. The effective date of the amendment can be specified without affecting the contract period. Example: "The effective date of this amendment is . . ."

3. If the original contract was subject to DGS/OLS approval, the amendment is also subject to DGS/OLS approval unless it only extends the original time for completion of performance of the contract for a period of one year or less. A contract may be amended only once under this exemption (PCC § 10335). (See SCM 1, chapter 4.)

4. If the original contract was not subject to DGS/OLS approval but the amendment makes the contract as amended subject to DGS/OLS approval because the total value of the contract exceeds applicable dollar value thresholds for approval, the

amendment must be approved by DGS/OLS. Submit a copy of the original contract and any other amendments to DGS/OLS when seeking approval of the amendment. (See SCM 1, chapter 4.)

5. Contracts awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if so authorized by the law requiring competitive bidding (See SCM 1, chapter 5; PCC § 10335 and GC § 11010.5). Contract language authorizing an amendment must be specific (such as an express option year at the same rates and terms), not generic (such as merely stating generally that the parties can amend).

Note: In some instances, contracts not providing for amendments may still be amended if an approved NCB is obtained.

6. If the amendment has the effect of making the contract subject to any other contract requirements, those requirements must be complied with, including requirements related to lease/purchase analysis, and additional restrictions and approvals required for the State's indemnification or holding harmless the contractor, addition of hazardous work, or a change in the rate of compensation from the rate bid.

7. If the amendment when added to the original contract and any other amendments exceeds $50,000 (or amount of approval exemption, up to $75,000, if your agency has an exemption letter), the amendment must be submitted to DGS/OLS for approval.

8. When an amendment is subject to DGS/OLS approval, a STD 215 should be completed, explaining the authority and the reason for the amendment. The amendment should be transmitted to DGS/OLS in accordance with the procedure detailed in SCM 1, chapter 4.

9. When an amendment changes or corrects contract terms by "striking" out contract terms, both parties signing the agreement must initial each "strikeout."

10. When an amendment changes the contract amount, the amount changed by the amendment must be stated, along with the new total contract amount. Example:

    "This amendment adds $1,000 to the contract. The total amount of the contract will not exceed $(new contract total)."

11. An amendment may not be used to circumvent the competitive bidding process. A non-competitively bid contract justification (NCB) may be required. (See SCM 1, chapter 5.)

12. Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC § 16304, 2 CCR § 610, FY Budget Act.)

13. Amendments to a contract that either change the name of the vendor or change the vendor because of a change in business status must be accompanied by official documentation showing the change. This could include the certified filing from the Secretary of State or the sales agreement signed by both parties.

3.10 • EMERGENCY CONTRACTS
(Rev 11/12)

Emergency is defined in PCC § 1102 as "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment

of life, health, property, or essential public services." To qualify as an emergency, a contract must meet all elements of this statutory definition.

Emergency contracts are exempt from advertising and competitive bidding, and do not require an NCB.

Ordinarily, services contracts should not be commenced before formal approval by DGS/OLS if dollar amounts require DGS/OLS approval. However, in emergency circumstances an award may be made with the approval of the agency head or their designee without DGS/OLS approval. Thereafter, the contract should be sent to DGS/OLS for approval. Other required approvals may be deferred in the same manner.

3.11 ● FEDERALLY FUNDED CONTRACTS
(Rev 3/03)

A. All contracts, except for State construction projects that are funded in whole or in part by the Federal government, must contain a 30-day cancellation clause and the following provisions:

   1. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

   2. This contract is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year ____ for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.

   3. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

   4. The department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.

B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the State agency can certify in writing that Federal funds are available for the term of the contract.

C. GC § 8546.4(e) provides that State agencies receiving Federal funds shall be primarily responsible for arranging for Federally required financial and compliance audits, and shall immediately notify the Director of Finance, the State Auditor, and the State Controller when they are required to obtain Federally required financial and compliance audits.

3.12 ● HAZARDOUS ACTIVITIES CONTRACTS
(Rev 11/12)

These contracts require approval by DGS/OLS and DGS/ORIM.

A. Hazardous activities are activities performed by the contractor that may result in substantial risk of serious injury to persons or damage to property. Such activities include but are not limited to the following types of work or service:

1. Major repairs or alterations, or new construction of buildings. Contracts in excess of $50,000 are defined as major. Contracts for lesser amounts may be determined to be hazardous depending on the risk of damage or injury.
2. Excavation, drilling, or demolition.
3. Pest control, fumigation, crop or agricultural spraying, or application of chemicals of any type.
4. Elevator maintenance.
5. Transporting of persons by any mode of transportation. Automobile liability insurance is required in addition to public liability insurance.
6. Use or maintenance of any aircraft (fixed wing or rotor) or watercraft. Aircraft liability insurance is required in addition to public liability insurance.
7. Automobile or motorcycle racing, rodeos, thrill shows, fireworks exhibitions, or carnivals.
8. Treatment, removal, storage, or any other handling of hazardous substances including but not limited to toxic waste, petroleum waste, asbestos, and like substances.

B. Regardless of the contract amount, insurance is required if hazardous activities are included in the performance of a contract. It is recommended that insurance be required on all contracts regardless of the hazardous nature. DGS/ORIM is available to provide additional consultation on all insurance and liability matters.

1. Contracts for hazardous activities must be submitted to DGS/ORIM for review to ensure that the contract and the certificate of insurance comply with the provisions of SCM 1, section 7.40 and that the insurance coverage meets applicable standards.
2. If the contract and accompanying insurance certificate are deemed appropriate, DGS/ORIM will certify the contract as meeting insurance requirements. If complete contracts are submitted to DGS/ORIM, DGS/ORIM will forward the contract to DGS/OLS for review and approval. Otherwise an approved copy of the STD 215 will be forwarded to the contracting agency.

C. Contracts for hazardous activities shall contain the following provisions:

1. That the contractor must furnish to the State a certificate of insurance stating that liability insurance of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the contractor. (Adjust the amount in the contract language if higher insurance is required.)
2. That the contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the time of this contract, the contractor agrees to provide, at least 30 days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS/ORIM, and the contractor agrees that no work or services shall be performed prior to such approval. The State may, in addition to any other remedies it may have, terminate this contract should contractor fail to comply with these provisions.

3.13 • JOINT POWERS AUTHORITIES
(Rev 11/12)

Joint Powers Authorities (JPAs) are formed through agreement between two or more public agencies for the purpose of jointly exercising any power common to the contracting parties. The State may contract with a JPA for services, without being a party to one. JPAs are treated as public entities and as such, contracts with JPAs are exempt from competitive bidding. A board resolution or other similar document from the JPA authorizing execution of the agreement with the State is required unless services will be completed prior to payment from the State. (See GC § 6502.)

Note: Contracts with JPAs must still meet all State contract requirements including GC § 19130, DGS contract approval, not using JPAs as a pass-through for other contracts (see SCM 1, section 3.06) and verification that the JPA rates are reasonable.

3.14 • WAGE AND BENEFIT REQUIREMENTS FOR SPECIFIC TYPES OF PERSONAL SERVICES (GC §19134)
(Rev 11/12)

A. Personal services contracts of the types listed below are required by statute to contain provisions that ensure that specified employee benefits and wage levels are provided to the Contractor's employees who perform the services of the agreement (covered employees). This requirement applies to the following types of contracts:

1. Contracts that exceed a term of 90 days and are for janitorial, housekeeping, custodian, food service, security guard, laundry or window cleaning services, including but not limited to, the job classes identified in the current Memorandum of Understanding between the State and Bargaining Unit 15; and
2. Subcontracts that include employees providing services meeting the conditions in 3.14.A.1 above at State leased buildings of 50,000 sq. ft. or more where the State occupies 100% of the floorspace of the facility.

B. The Contractor must provide the following "employee benefits" to covered employees:

1. Basic health care, as identified in 10 CCR § 1300.67
2 Dental services
3. Vision services
4. Holiday Pay
5. Vacation
6. Retirement

C. The Contractor can provide these benefits either through a purchased plan, or by self-insurance.

D. The Contractor can meet the "benefits requirement" and 85% wage requirement by:

1. Providing "employee benefits" and wages costing not less than 85% of the State cost for employees doing similar work; or
2. Cash Payment in lieu of providing benefits, in an amount not less than 85% of the State of California's cost for employees doing similar work; or

3. A combination of Employee Benefits and Cash Payments totaling not less than 85% of the State cost for employee benefits for a State of California employee performing similar work, in addition to at least 85 % of State wages.

E. Benefits and Cash Payment Calculations

1. By February 1 of each year, CalHR will publish a Schedule of Employee Benefit Rates and Wages online at the CalHR web site.

2. State agencies must use this Schedule to determine the required Employee Benefits and/or Cash Payments in Qualifying Contracts during the year in which they are published.

3. Agencies may select for any Qualifying Contract either the Detailed Rates or the Blended Rate appearing on the most recent Schedule.

4. Based on the hourly rates published by CalHR, the Department of Finance shall issue an annual Budget Letter providing State agencies with budget instructions regarding reimbursements to State agencies for the costs of Employee Benefits and/or Cash Payments under Qualifying Contracts.

F. Solicitations for Qualifying Contracts shall include provisions requiring compliance with GC § 19134, including the following:

1. Bidders shall include in their bids provision for Employee Benefits and/or Cash Payments to all Covered Employees as well as the 85% wage requirement. Contracting agencies shall provide to bidders the State employee benefit cost amounts and 85% wage amounts to be used in preparing the bids (based on the Schedule of Employee Benefits Rates published by CalHR). Rate changes for benefits or wages occurring subsequent to issuance of a solicitation, but prior to the bid due date, shall be included in an addendum to the solicitation.

2. Solicitations for Qualifying Contracts and Resulting Contracts shall contain a provision that the contractor must submit monthly reports to the contracting agency documenting:

   a. The number and names of Covered Employees receiving Employee Benefits and/or Cash Payments in the preceding month;

   b. The number of hours each Covered Employee worked on the Qualifying Contract in the preceding month;

   c. The employer's cost of required Employee Benefits and/or Cash Payments directly provided to Covered Employees in the preceding month. These reported costs shall not include administrative or other indirect costs incurred by providing Employee Benefits;

   d. That wages paid are at least 85% of State wages for similar work.

3. Rates and wages in effect at the time of the bid due date shall remain in effect for the first year of the contract term, at a minimum. At the end of the first year of the contract term, and each subsequent year thereafter, any intervening and/or rate changes (as published by CalHR) shall be given effect by contract amendment. If the contract term is less than one year, the rates and wages in effect at the time of the bid due date shall apply for the entire contract term.

4. A provision allowing for adjusting Employee Benefits and/or Cash Payment amounts in the event of an amendment to the Schedule of Employee Benefit Rates published by CalHR during the term of the contact.

Notice that the contract is subject to audit for compliance with the provisions of GC § 19134.

5. Notice that failure to comply with the provisions of GC § 19134 is a material breach, which may constitute grounds for immediate termination by the State.

G. Bids for Qualifying Contracts shall include, in addition to all other requirements specified in the solicitation:

1. The method the bidder has chosen to fulfill the requirements of Government Code § 19134, either by (a) providing Employee Benefits, or (b) providing Cash Payments, or (c) providing a combination of Employee Benefits and Cash Payments.

2. The total cost of Employee Benefits and/or Cash Payments based on the CalHR Rate Schedule in effect at the time the bids are due. For purposes of bidding only, the contracting agency may instruct the bidder to assume that the rates in effect at the time bids are due will be effective through the life of the contract, notwithstanding that the rates are in fact subject to change.

3. Before execution of the contract, employers choosing to offer Employee Benefits shall provide the names of insurance providers and terms of the coverage.

H. Reporting and Monthly Statements: Contractors shall provide monthly statements to the contracting agency during the term of a Qualifying Contract. These statements shall include:

1. The number of Covered Employees who received Employee Benefits and/or Cash Payments in the preceding month;

2. The name of each Covered Employee who received Employee Benefits and/or Cash Payments in the preceding month;

3. The number of hours each Covered Employee worked on the Qualifying Contract in the preceding month;

4. The amount paid to each Covered Employee for Employee Benefits and/or Cash Payments in the preceding month;

5. The total monthly cost of Employee Benefits and/or Cash Payments in the preceding month, excluding any administrative cost; and

6. The number of employees working on a Qualifying Contract and the hourly wage paid to each in the preceding month.

I. Audits: Qualifying Contracts and documents relating to implementing GC § 19134 may be audited by the contracting State agency, the Department of General Services, and/or the Bureau of State Audits.

J. Breach: GC § 19134(e) states that failure to provide benefits or cash-in-lieu payments to employees constitutes a “material breach” for any contract for personal services covered by that section. A breach may result in immediate contract termination by the State of California.

3.14.1 JANITORIAL/BUILDING MAINTENANCE CONTRACTS: ADDITIONAL REQUIREMENTS

Effective for contracts entered into after January 1, 2002: Any contractor or sub-contractor providing janitorial and/or building maintenance services in California, that is awarded a

contract to provide such services at a new site(s) must retain for 60 days, the current employees employed at that site(s) by the previous contractor/sub-contractor. The awarding authority shall obtain from the previous contractor employee information and provide the same information to the new contractor so the new contractor can make the necessary notifications required by Labor Code § 1060, et seq.

3.15 • CONTRACTS WITH NONPROFIT ORGANIZATIONS
(Rev 11/12)

Contracts may be made between the State and a private entity that is a nonprofit corporation. (Int. Rev. Code § 501(c).) Bidding requirements would apply unless exempt by statute or the contract is for subvention or local assistance.

3.16 • REVENUE AGREEMENTS AND CONCESSION CONTRACTS
(Rev 11/12)

Contracts in which the State receives income. Examples include, but are not necessarily limited to:

A. Contracts between the State and private or public entity, in which the State is performing services and receiving payment (sometimes also referred to as a reimbursement agreement).

B. Contracts that involve income-generating activities, where the State receives a certain percentage of the income, rebate, or other payment from the vendor, rather than paying the vendor for services, such as: recycling agreements, and State Parks concession contracts. Income-generating contracts typically must be competitively bid (or an NCB obtained) and are subject to other standard contract requirements and approvals.

Note: This section does not create authority for performing revenue, reimbursement or concession contracts, it merely describes types that may exist. Agencies typically must have statutory authority to support performance of unique agreements such as these.

3.17 • SUBVENTION AND LOCAL ASSISTANCE CONTRACTS
(Rev 11/12)

A. Those agreements providing assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose. The agency's budget would have to allow for this assistance.

B. Because subvention aid or local assistance contracts are generally not awarded to a low bidder through competitive bidding, these contracts should contain adequate control language and should address the necessity and reasonableness of the cost in the contract submittal.

3.17.1 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT TRANSMITTAL
(Rev 11/12)

A. The Contract Transmittal form, STD 215, for subvention aid cost-reimbursement types of contracts must:

1. Advise whether the contracting agency, with the advice of the State Personnel Board, has determined that the reimbursable salaries do not exceed salaries payable to State personnel for similar classifications; and

2. Identify the classifications and rates involved if the reimbursable salaries exceed State rates, and state the reason for such higher rates, and how the agency's interests are served by the contract.

B. The transmittal should detail:

1. The factual basis for the contracting agency's determination that the other reimbursable costs and any fixed unit rates are reasonable in amount;

2. The basis for selection of the particular contractor; and

3. The contracting agency's compliance with any special statutory requirements applicable to the particular program.

3.17.2 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT FISCAL CONTROL PROVISIONS

A. Payment provisions in subvention aid contracts should be on a cost-reimbursement basis with a ceiling specifying the maximum dollar amount payable by the agency. Contracts must set forth in detail the reimbursable items, unit rates, and extended total amounts for each line item. Among other matters, the following information should be documented:

1. Identify and justify direct costs and overhead costs, including employee fringe benefits;

2. Monthly, weekly or hourly rates as appropriate and personnel classifications should be specified, together with the percentage of personnel time to be charged to the contract, when salaries and wages are a reimbursable item;

3. Rental reimbursement items should specify the unit rate, such as the rate per square foot; and

4. If travel is to be reimbursable, the contract must specify that the rates of reimbursement for necessary traveling expenses and per diem shall be set in accordance with the rates of CalHR for comparable classes and that no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the agency.

B. Subvention aid contracts must specifically reserve title to the agency for State-purchased or State-financed property, which is not fully consumed in the performance of the contract, even when the property is purchased in whole or in part by Federally supplied funds (absent a Federal requirement for transfer of title).

1. The contract must include a detailed inventory of any State-furnished property, and the agency must comply with the policies and procedures regarding State-owned property accounting set forth in the State Administrative Manual § 8640, et seq. Provisions must be included regarding the usage, care, maintenance, protection, and return to the agency of the property.

2. If purchase of equipment is a reimbursable item, the equipment to be purchased should be specified. Automotive equipment should be purchased by the DGS/Procurement Division. The contracting State agency should arrange for purchase of all other major equipment items by the DGS/Procurement Division, as well as other items when economies can be achieved by so doing, with the cost to be deducted from the amount payable to the contractor.

C. Payments are not permitted for construction, renovation, alteration, improvement, or repair of privately owned property when such work would enhance the value of the property to the benefit of the owner.

D. The contract should require prior authorization in writing by the agency before the contractor will be reimbursed for any purchase order or subcontract exceeding $2,500

for any articles, supplies, equipment, or services. The contract should also require the contractor to provide in its request for authorization all particulars necessary for evaluation of the necessity or desirability of incurring such cost and the reasonableness of the price or cost. Three competitive quotations should be submitted or adequate justification provided for the absence of bidding.

E. The contract should reserve prior agency approval controls over the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop or conference and over any reimbursable publicity or educational materials to be made available for distribution. The contractor should be required to acknowledge the support of the agency when publicizing the work under the contract in any media.

F. The contract must require the contractor to maintain books, records, documents, and other evidence pertaining to the reimbursable costs and any matching costs and expenses and to hold them available for audit and inspection by the State for three years.

3.18 • UC, CSU, COMMUNITY COLLEGES, AND THEIR FOUNDATIONS OR AUXILIARIES

(Rev 11/12)

A. Agreements with the Regents of the University of California (UC) do not require bidding when the agency directly contracts with the UC to do the work utilizing UC faculty, staff and/or students. Agreements with the UC may be done using the GIAs where cost calculations are in accordance with SAM § 8752. Where costs are not calculated in accordance with SAM § 8752, or where UC participates in a bid for the contract opportunity, the contract must be done using a STD 213 and meet all standard requirements for other Services or Consulting Services Contracts. Agreements with UC may allow reimbursement at UC travel rates rather than requiring CalHR travel rates.

B. Agreements with the Trustees of the California State University (CSU) do not require bidding when the agency directly contracts with CSU to do the work utilizing CSU faculty, staff, and/or students. These are typically done using the GIAs.

C. Agreements with auxiliary organizations or foundations of the UC, CSU, or the California Community Colleges that aid the mission of the institutions with which they are affiliated do not require bidding when the agency directly contracts with the auxiliary organization or foundation to do the work utilizing the organization's regular staff or students. Contracts with auxiliary organizations or foundations of the UC, CSU or California Community Colleges must be done using a STD 213, must use the GTCs not the GIAs, and must meet requirements for other Services or Consulting Services Contracts.

Note: These contracts and agreements cannot be used to circumvent the State's competitive bidding requirements. Subcontracting and purchases under these contracts and agreements should be competitively bid in a manner similar to that required by the State. (See also SCM 1, section 3.06.)

3.19 • IT AND TELECOMMUNICATIONS CONTRACTS

(Rev 11/12)

(See SCM Volume 3)

3.20 • CONVENTION AND CONFERENCE FACILITIES CONTRACTS

(Rev 11/12)

Services for conventions and conference facilities, including room rentals, do not have to be

competitively bid if under $250,000.00. However, they must generally follow the requirements of other services contracts.

The bidding exemption for facilities does not cover other types of services that may be needed for a convention or conference (e.g. training, consulting, etc.). If other types of services are needed, agencies must contract for those following standard contract requirements (e.g. GC § 19130, bidding, etc.).

3.21● PRINTING SERVICES CONTRACTS
(Rev 11/12)

Contracts awarded by State agencies for printing work are personal services within the meaning of GC §19130. State agencies must comply with GC §19130 in contracting out for printing services. Prior to contracting out for printing services, departments must contact the DGS Office of State Publishing (DGS/OSP) to determine if DGS/OSP can perform the work. Any contract for printing services must be supported by a written exemption from DGS/OSP. For additional information, see Management Memo 07-06 including Attachments (referencing a court ruling finding GC section 14612.5 to be unconstitutional).

Contracting agencies should also be aware of MOU provisions which require advance notice to potentially affected unions. See, e.g., Bargaining Unit 1 MOU §14.8.C which requires that departments provide a copy of an IFB or RFP to a designated union representative at the time of posting, if the proposed contract calls for services provided by that bargaining unit.

3.22 ● CONTRACTING FOR STUDENTS
(Rev 11/12)

A. When contracting for students, GC §19133 requires that:

1. Work must be related to the student's field of study.
2. Students cannot accrue civil service status.
3. Students cannot be employed for more than 194 days in the 365 days beginning with the day of initial employment.
4. Use of students cannot cause displacement of civil service employees.

B. GC §19133 provides:

"Any State agency may enter into an agreement with any public or private institution of higher education in California, nonprofit campus foundation, or State higher education foundation to provide part-time employment to students attending a public or private institution of higher education that contracts with the State agency, or to students attending a public or private institution which is affiliated with a nonprofit campus foundation, or a State higher education foundation that contracts with a State agency, in work related to the field of study of the student."

C. Contracts must contain language describing the work the students are to perform, as well as the field of study which is related to the work the students are to perform.

D. All contracts must specify by name which educational institutions can provide students – e.g., if the contract is with a campus foundation, only educational institutions which have an executed and approved letter of affiliation with the foundation contractor. Sample contract language may be found on the DGS/OLS website.

E. Contracts issued for student assistants per GC §19133 are not subject to competitive bid requirements.

3.23 ● MEMBERSHIPS
(Rev 11/12)

Memberships in professional organizations for represented employees are governed by the 21 collective bargaining agreements and payment is on a reimbursement basis (through a travel claim). Memberships in professional organizations for non-represented employees are governed by CalHR rules and payment is on a reimbursement basis (through a travel claim). These memberships, for both represented and non-represented employees, are not to be purchased through the State's procurement process (that is a STD 65).

Departmental memberships in professional organizations are considered a service and therefore, must be procured via a service order or STD 213, depending on the dollar amount. Departmental memberships are not to be purchased through DGS/PD's procurement process (that is, via STD 65).

3.24 ● FISCAL INTERMEDIARIES
(Rev 11/12)

State agencies must follow the guidelines provided in SAM 8002.1 whenever planning the use of other entities to receive money or make disbursements on behalf of the State. SAM § 8002.1 requires obtaining Department of Finance approval for use of a fiscal agent.

3.25 ● COMMERCIAL OFFICE MOVING SERVICES
(Rev 11/12)

Contracts exceeding $2,500 with a carrier for commercial office moving services must conform to the requirements contained in SAM § 3810 which provide for such contracts to be with a carrier whose drivers and supporting personnel are operating under current collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. (GC § 14920.) Agencies must include such requirements in Invitations for Bids and contracts. Agencies may also wish to check for the availability of such services through an LPA.

3.26 ● ELEVATOR MAINTENANCE CONTRACTS
(Rev 11/12)

Contracts for elevator maintenance shall include the following provision:

> *Commencement and termination of contract: The service to be performed under this contract shall begin on the date specified and continue for a period of five (5) years. The State may terminate this contract at any time by giving the contractor at least thirty (30) days written notice of its intention to do so.*

3.27 ● CONTRACTING WITH EXPATRIATE CORPORATIONS
(New 11/12)

California PCC section 10286.1 generally provides that a State agency may not enter into any contract with an expatriate corporation (as defined by code) or its subsidiaries. However, the chief executive officer (CEO) of a State agency or his or her designee may waive the prohibition against contracting with such an entity, if the CEO has made a written finding that the contract is necessary to meet a compelling public interest. "Compelling public interest" includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety or an emergency as defined in PCC section 1102. (PCC § 10286.1(c).)

If your agency determines that a contract with an expatriate corporation or one of its subsidiaries is necessary, submit a copy of the PCC section 10286.1(c) waiver when submitting the contract to DGS/OLS for approval.

3.28 ● LOSS LEADER
(New 11/12)

RFPs for services contracts that involve furnishing of equipment, materials, or supplies must contain the following statement:

> *"It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code."*

The law provides that the statement is deemed to be part of an RFP even if the statement is inadvertently omitted from the RFP. (PCC § 10344(e).)

3.29 ● DARFUR CONTRACTING ACT
(New 11/12)

PCC sections 10475 et seq., the Darfur Contracting Act of 2008, establish restrictions against contracting with vendors doing certain types of business in Sudan. The Act sets forth criteria to determine if a vendor is a "scrutinized company" and therefore ineligible to bid on or submit a proposal for State contracts. When a company submitting a bid or proposal has or within the previous three years has had business activities or other operations outside the United States, they must execute a certification stating they are not a scrutinized company as defined, or demonstrate they obtained permission under the statute. (PCC §§ 10478, 10477(b).) The Act includes penalties for false certifications. (PCC § 10479.)

3.30 ● IRAN CONTRACTING ACT
(New 11/12)

PCC sections 2202 et seq., the Iran Contracting Act of 2010, establish restrictions against contracting with vendors that provide specified levels of goods or services or other investment activities, as defined, in the energy sector of Iran. The Act requires that DGS post a list of persons determined to fall within the Act's prohibitions, and to update the list every 180 days. Agencies receiving bids or proposals, or entering or renewing contracts valued at $1 million or more must obtain a certification from the vendor certifying they are not on the list and are not a financial institution extending credit to an ineligible vendor on the list. Agencies should independently check the DGS list, available on DGS/PD's website, to verify the certification. (PCC § 2204.) The Act includes certain exceptions. (PCC § 2203(c).)

3.31 ● THE CONGO – SECURITIES EXCHANGE ACT
(New 11/12)

PCC § 10490 establishes restrictions on contracting for certain goods and services relating to compliance with the Securities Exchange Act of 1934. It is anticipated the federal government will post a list of scrutinized companies that will form the basis for this contracting ban. DGS will issue further instructions for compliance with this ban once the federal list is available.

3.32 ● TAX DELINQUENCIES CONTRACT BAN
(New 11/12)

Public Contract Code section 10295.4 provides that a state agency shall not enter into any contract for goods or services with a contractor whose name appears on either list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. This prohibition applies to contracts executed on or after July 1, 2012. FTB and BOE will post and periodically update lists of the 500 largest tax delinquencies on their websites as required by law. Starting July 1, 2012, prior to executing contracts, state agencies must check the FTB and BOE lists to ensure the proposed awardee/vendor is not on either list.

4. DGS CONTRACT APPROVAL

4.00 • INTRODUCTION

(Rev 11/12)

This chapter presents the policies and procedures related to obtaining contract approval from DGS/OLS. Exemptions from such approval are also covered.

4.01 • TABLE OF CONTENTS

(Rev 11/12)

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4.02 • RESPONSIBILITY FOR CONTRACT APPROVAL

(Rev 11/12)

A. Each State agency is responsible for making sure that its contracts comply with applicable legal requirements and are based on sound business practices. DGS/OLS provides the final approval if required by law.

B. In some instances additional approvals may be needed, such as those from the Attorney General, State Personnel Board, State Fire Marshal, DGS/ORIM, DGS/OSP, or other DGS offices. (See SCM I, section 4.11.)

C. Contract approval by DGS serves to assist State agencies by:

1. Ensuring effective compliance with applicable laws and policies.
2. Conserving the fiscal interests of the State and preventing improvident acts.
3. Applying contract knowledge and legal expertise prior to final approval.

D. Remedies and Penalties:

1. PCC § 10420 - Every contract or other transaction entered into in violation of Chapter 2 of the PCC is void, unless the violation is technical or nonsubstantive.
2. PCC § 10421 - Civil action may be brought in Superior Court to determine a violation of Chapter 2 of the PCC. If a violation is found the contract shall be void.
3. PCC §§ 10422 - 23 - Any State employee or person contracting with the State who corruptly performs an official act or corruptly permits the violation of any contract made under Chapter 2 of the PCC is guilty of a felony.
4. PCC §10424 - provides that a violation of PCC §§ 10422 or 10423 may make the employee or the person contracting with the State liable to the State for double the amount the State may have lost.
5. PCC § 10425 - Willful violation of any other provision of Chapter 2 of the Public Contract Code shall constitute a misdemeanor.

4.03 • CONTRACTS REQUIRING DGS/OLS APPROVAL
(Rev 11/12)

DGS/OLS has statutory authority under several sources to approve contracts. PCC §§ 10295, 10297, 10335 and GC § 11256 are the primary legal authority for DGS/OLS' review and approval of contracts. GC § 14615 is the legal authority for the supervision of the State's financial and business policies, and GC § 14616 is the legal authority for some exemptions from DGS/OLS approval of contracts.

As a general rule, DGS/OLS approval is required on all services contracts over $50,000; over $75,000 if an agency has applied for and received this higher exemption level (see SCM 1, section 4.05). The approval requirement applies to all non-IT services contracts, including but not limited to consulting services and interagency agreements, subject to express exemptions identified in section 4.04 below.

Individual agencies may have specific statutes affecting their particular contracting programs. Some specific types of contracts which require DGS/OLS review/approval, *regardless of dollar amount*, include but are not limited to the following:

1. Contracts that limit the contractor's liabilities or require the State to indemnify or to hold the contractor harmless;
2. Contracts that require the State to assume liabilities beyond the State's control;
3. Contracts that provide for advance payment for services or rental;
4. Any provision creating a contingent liability against the State (e.g., those vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities);
5. Any hazardous activity such as found under SCM 1, section 3.12; and
6. Contracts that seek to modify the State's standard terms and conditions (GTCs, CCCs, GIAs).

4.04 • CONTRACTS NOT REQUIRING DGS/OLS APPROVAL

(Rev 11/12)

A. The law requires all non-IT services contracts to be approved by DGS/OLS unless the contract is exempt from approval. (PCC § 10295.) See section 4.03 above.

A services contract is exempt from DGS/OLS approval if:

1. It is specifically exempt from approval by statute (See, e.g., PCC §§ 10295(c) and 10430); or
2. It is $50,000 or less (subject to exceptions noted in section 4.03 above). (GC §§ 11256, 14616); or
3. It has been exempted from approval by an exemption letter issued by DGS/OLS (PCC §10351); or
4. It is a federally or State-funded grant exempted based on opinion of the Attorney General. Note: This exemption applies when the State is *issuing* a grant, it does not exempt all agreements merely because they are paid for with federal and/or other grant funds.
5. It is an interagency agreement over $50,000 and less than $1,000,000 that uses the current GIAs (including SAM 8752 and 8752.1 cost provisions) without modification and that has no direct or indirect subcontracting (GC § 11256), subject also to the following:
    a. This interagency agreement exemption does not apply when contracting with CSU, UC, or any other state agency exempt from Division 2, Part 2, Chapter 2 of the Public Contract Code (PCC 10290 et seq.);
    b. Agencies shall not use I/As to circumvent any State law or contracting requirements;
    c. Agencies shall not use I/As to obtain any third-party IT goods or services nor any third-party non-IT goods or services;
    d. DGS reserves the right to audit exempt contracts at the contracting agency's expense;
    e. If DGS determines an agency is failing to abide by the conditions of this exemption, DGS reserves the right to revoke the exemption such that that agency would then be required to submit to DGS for approval all I/As of $5,000 or more (or such other amount as DGS establishes when revoking or reducing this exemption);
    f. DGS is establishing this I/A exemption on a pilot basis, and DGS will evaluate outcomes to determine whether to modify, continue, or discontinue the exemption;

Although these exempt contracts do not require DGS/OLS approval, review/approval services are available on request for any contract, regardless of value.

B. If an exempt contract is amended, the amendment may trigger the DGS/OLS approval requirement for the same reasons noted in 4.03 and 4.04 above (e.g. increase in dollar amount, modifying GIAs, adding subcontracts, etc.).

C. DGS reserves the right to audit agencies regarding the above-referenced exemptions.

4.05 • EXEMPTION LETTERS
(Rev and renumbered 11/12)

DGS may exempt contracts up to $75,000 from review if certain conditions are met. Such exemptions are provided through exemption letters.

Table 4.1

Factors	Authority	General Considerations
All Services, Consultant Services, and Interagency Agreements	PCC § 10351 (Services and Consultant Services) GC § 11256 (Interagency Agreements)	• Under $75,000 • Agency officer responsible and directly accountable for contracting program • Written policies and procedures • Management system • Contract training program • Audit every two (2) years • Reporting procedures

Application for an exemption letter or renewal should be made by written request to the Director of DGS.

4.06 • CERTAIN STATE AND FEDERALLY FUNDED GRANTS EXEMPT FROM APPROVAL BY DGS/OLS
(Rev and renumbered 11/12)

The Attorney General (AG) has opined that certain federally and State-funded grants are not subject to approval by DGS/OLS. The AG opinions are based primarily on the nature of a grant compared with a services contract as described in the law. (See 58 Ops.Cal.Atty.Gen 586 (1974) and 63 Ops.Cal.Atty.Gen. 290 (1980).)

The AG opinions present the following factors as relevant to whether a contract qualifies as an exempt grant:

A. The grant must fall under specific statutory authority. Without specific statutory authority, a grant is an illegal gift of public funds.

B. The grant must not benefit the State. Even if the award was made pursuant to an authorized grant program, it is not exempt from approval (unless exempted by specific statute). Common benefits which would indicate a contract rather than a grant include:

   1. Services are provided to the State.
   2. The State obtains title to equipment, copyrights, or patents.
   3. The State is relieved from a statutory obligation to perform the services (usually services to the public).

C. Performance under the grant must not be controlled by the State. The grant must fund the grantee's program, not the State's program.

Agencies shall not circumvent State contracting requirements by labeling contracts as "grants." In addition, an agreement is not a grant simply because it is paid for with federal and/or grant funds, rather, the above additional factors must be considered for proper characterization of the agreement.

4.07 • APPROVAL OF EMERGENCY CONTRACTS
(Rev and renumbered 11/12)

"Emergency" is defined in PCC § 1102 as "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services."

The law recognizes exceptions from competitive bidding in emergencies (PCC §§ 10340 (b)(1) and 10371 (d)), but no exception is provided from contract approval. The basic policy is to respond to the emergency as circumstances demand and then to obtain the formal approval(s) as soon as practicable. However, before the start of the work, the contract must be verbally authorized by someone with authority at the agency to initiate a contract in such situations. If there is any question about whether the circumstances qualify as an emergency, DGS/OLS should be contacted as soon as possible. The contract will be processed on an expedited basis as discussed in SCM 1, section 4.08 C.

4.08 • OBTAINING APPROVAL FROM DGS/OLS
(Rev 11/12)

Below are general guidelines regarding what documents to include when submitting a contract to DGS/OLS for approval.

A. Required Supporting Documents

1. The Contract

Under the State's standardized contract format, the contract contains:

a. STD 213: Contract page 1, which should identify the following attachments and number of pages:

b. Exhibit A: Scope of Work

c. Exhibit B: Budget Provisions

1) Include sufficient budget detail to describe expenditures and justify the costs of the contract;

2) Include budget contingency language. Sample language:

<u>Budget Contingency Clause</u>

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

d. Exhibit C: General Terms and Conditions.

1) Reference the current version of the State's standard terms and conditions (e.g., "GTC 610" or subsequent version; use the GIAs for I/As.)

2) The GTCs should be incorporated in the contract by reference to the DGS/OLS website location.

3) Some GTCs are mandated by statute and some are policy based.

4) The GTCs incorporate by reference certain mandated contractor certification clauses ("CCC's"). A copy of the current CCC's must be separately executed by the contractor and retained in the contract file.

e. Exhibit D [optional]: Typically a department's own special terms and conditions.

f. Other Exhibits/Attachments (optional, as needed).

2. Contract Transmittal form, STD 215. This form must be fully completed and must contain an explanation sufficient to afford a basis for approval, including:

   a. The purpose and necessity or desirability of the contract or interagency agreement;

   b. The reasonableness of the price or cost of the services; and

   c. Any other relevant information necessary to understand the proposed transaction.

   d. The form STD 215 shall also contain the name, telephone number, and email address of the contact person in case questions arise or additional information is needed by DGS/OLS reviewing attorney. The contact person is the staff member who regularly deals with DGS/OLS on contract matters. A copy of the STD 215 will be retained on file at DGS/OLS.

   e. Within ten working days of an award, an agency must report the award of each contract over $5,000 to the Department of Fair Employment and Housing (DFEH), including contracts with the University of California. Information required is specified in 2 CCR § 8117.5. (This requirement does not apply to contracts with other California State agencies or with the Federal government.) Use STD 16 for reporting purposes. Check the box on the reverse side of the STD 215 that this requirement has been complied with.

3. Payee Data Record form STD 204. This form must be completed by the vendor (except for State and other governmental entities). The form should accompany the contract to final approval or a note should be made of it on the STD 215. The STD 204 must be retained in the agency's accounting or business affairs office.

4. Bidding documents (i.e. IFB/RFP). If the contract was awarded by competitive bid, all bids or proposals received, together with the documents comprising the IFB or RFP and related correspondence, must accompany the contract to final approval. If fewer than three (3) bids or proposals were received, document the awarding agency's efforts to obtain at least three (3) competitive bids. (See SCM I, section 5.70.B)

5. The California State Contracts Register ("CSCR") ad. The ad as well as all other ads used to advertise the contract must accompany the contract to final approval. A printout of the electronic version of the CSCR ad or a copy of the confirmation printout is sufficient substantiation of that ad.

6. A Statement of Compliance form, STD 19. This form must accompany bids or proposals submitted by contractors for nonexempt State contracts of $5,000 or

more. (See 2 CCR § 8113.) State agencies may attach a copy of the STD 19 to their solicitations for bids or proposals. The STD 19 must be fully executed by the bidder and returned to the agency with the bid before the bid deadline.

a. Agencies may include the following provision in bid forms in lieu of using STD 19:

Statement of Compliance

The prospective contractor's signature affixed hereon and dated shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the bidder has, unless exempted, complied with the nondiscrimination program requirements of GC §12990 (a - f); and of Title 2, CCR § 8103.

b. Agencies may include the following provision in the contract in lieu of using STD 19 in non-bid contracts:

Statement of Compliance

The contractor's signature affixed hereon shall constitute a certification, under the penalty of perjury under the laws of the State of California, that the contractor has, unless exempted, complied with the nondiscrimination program requirements of GC §12990 (a-f); and of Title 2, CCR § 8103.

Note: An offer by a contractor to enter into a contract on a noncompetitive basis, when permitted, cannot be accepted unless such contractor furnishes a Statement of Compliance as a part of its final offer.

c. The Statement of Compliance is included in the document, "Contractor Certification Clauses" (CCC), found on the DGS/OLS website.

7. Drug-Free Workplace Certification. State contractors and grantees must certify that they will provide a drug-free workplace by signing a Drug-Free Workplace Certification STD 21. The Drug Free Workplace Certification is included in the document, Contractor Certification Clauses (CCC), found on the DGS/OLS website.

8. The Expatriate Corporation, Domestic Partnerships and Sweatfree Code of Conduct Certifications. These certifications are included in the Contractor Certification Clauses (CCC), and found on the DGS/OLS website.

9. DVBE documentation. When participation goals are required in the bidding documents, as discussed in SCM 1, chapter 8, documentation supporting the commitment to meet the goals must accompany the contract.

10. Documentation of other required approvals. (See, e.g. SCM 1, section 4.11.)

11. Mission Critical Certification. Following Executive Orders S-01-08 and S-09-09, effective February 11, 2010, and until further notice, agencies and departments are required to provide a written document identifying the contract and signed by an Agency Secretary or Department Director, or their designees as follows:

"I certify that this purchase is vital and mission critical for this agency or department." Name, Title, Date. (See DGS Broadcast Bulletin dated February 18, 2010.)

12. Any documents that would assist DGS/OLS in approving the agreement.

B. Number of Copies

1. Under the standardized contracting process, when approval by DGS/OLS is required, the following information should be submitted according to the chart below:

STD 215	For all agreements and amendments: Send two copies.
STD 213, exhibits and backup	Four (4) of the STD 213 face sheets as indicated below: One STD 213 with original signatures, attached to a complete copy of the agreement, plus all relevant back up. One STD 213 with original signatures, no attachments. Two copies of the STD 213 , no attachments.
STD 213A, exhibits and backup	Four (4) of the STD 213A face sheets as indicated below: One STD 213A with original signatures, attached to a complete copy of the amendment, plus all relevant backup. One STD 213A with original signatures, no attachments Two copies of the STD 213A, no attachments. One reference copy of the original Agreement and STD 215 transmittal, along with copies of all prior amendments and STD 215 transmittals, regardless of whether or not they were exempt from DGS/OLS review.

NOTE: At least two (2) of the STD 213s or 213As must bear original handwritten signatures. Stamped replicas of signatures are not acceptable as original signatures. Generally, no more than four (4) copies of the agreement will be signed by DGS/OLS.

After approval by DGS/OLS, the copies will be distributed as follows:

a. One copy of the STD 215 and STD 213 or 213A face sheet will be forwarded to the State Controller's office. This step is not required for contracts submitted by district agricultural associations or for contracts in which payment is not from funds in the State treasury.

b. DGS/OLS will retain only one copy of the STD 215 and STD 213 or 213A face sheet. In some instances, at the discretion of DGS/OLS, a complete agreement will be retained at DGS/OLS.

c. The remaining two (2) STD 213s or 213As with original signatures will be returned to the submitting agency.

C. Contract Approval Review Time

DGS strives to complete the review and approval process in ten working days or less.

Note: Expedited review is available in ***exceptional*** circumstances on request.

D. In addition to the above requirements, DGS/OLS asks individuals involved in the preparation and transmittal of documents to DGS/OLS to consider the following:

1. Ensure that all information on the STD 215 is complete and specifically relates to the contract being submitted.

2. When completing the forms, review by an DGS/OLS attorney is made easier and more efficient if the form can be easily read. Reducing the type font in order to squeeze in an explanation is not recommended. If your narrative requires more space, enter “see attached” and include additional pages as needed. This way, the length of your explanation is not limited by the size of the box, and it makes it easier to complete the contract review.

3. When amending a contract by replacing entire sections, review is made more efficient by highlighting the changes being made. For example, if replacing an entire scope of work that is contained in several pages and only a few items are being changed, please boldface or underline the actual changes. This will expedite the review process, and focus the attorney’s review on the actual changes involved in the amendment.

4.09 • APPROVAL AND COMMENCEMENT OF WORK
(Rev 11/12)

A. Legal Requirements

The approval by DGS/OLS is the final, formal approval of the contract. When DGS/OLS’ approval is required, contracts for services should not begin before receipt of approval; payment for services may not be made until the contract is approved by DGS/OLS or, in the case of an exempt contract, until it is formally approved by the agency. (See PCC §§ 10295 and 10335.)

B. Necessity of Time Management

In light of the legal requirements for contract approvals, it is important for contracting departments to timely execute and timely submit contracts.

Contracts should be submitted to DGS/OLS for approval a sufficient time in advance of the contract start date to afford the opportunity for adequate review and discussion as may be needed. Guidelines for timely submittal of contracts and late justification exceptions are outlined in DGS Administrative Order 06-05.1 (available by contacting DGS/OLS).

C. Consultant Contracts

The law does not permit consultants to start work before formal contract approval, except in an emergency. When it is necessary for a consultant to start work before approval of the contract, the circumstances must be noted in the contract file as an emergency in accordance with PCC § 10371(d).

D. Warning to Contractors

1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. (PCC §§ 10295, 10335.)

2. The contractor should be warned not to start work before receipt of the approved contract. The warning can be provided in the IFB or RFP, at the time of the award, or at the time the contract is sent to the contractor for signature.

3. If the contract is not approved and the contractor has begun work, the contractor may be considered to be a volunteer or the contractor may have to pursue a claim for payment by filing with the Victim Compensation and Government Claims Board. The State has no legal obligation unless and until the contract is approved.

Note:	If a late contract is approved, authorized services provided by the contractor can be paid from the beginning date of the contract.

4.10 • APPROVAL OF AMENDMENTS
(Rev 11/12)

A. If the original contract was approved by DGS/OLS, any amendment must be approved by DGS/OLS except for the following:

1. If an amendment only extends the original time *for completion of performance* for a period of one year or less, the amendment is exempt from approval by DGS/OLS. This exemption can only be used once. (PCC § 10335(d)(1).) Note: this exception only covers extensions of time "to complete performance," such as extending a final report due date. It does not cover other types of amendments, such as amendments that extend time to use the contractor for additional as-needed or hourly rate type services, or amendments that change (increase, decrease, alter) the scope of work, budget, or terms and conditions. (See PCC § 10335(d)(3).)

2. Even though the extension cited above is exempt from approval, upon completion of the amendment, a fully executed copy of the amendment and a form STD 215 explaining the reason for the extension must be sent to DGS/OLS if the original contract was subject to DGS/OLS approval. (PCC § 10335(d)(1).)

B. To obtain DGS/OLS approval of an amendment, the amendment should be submitted to DGS/OLS with a STD 215 and all supporting documentation, along with a copy of the original agreement, any intervening amendments and the STD 215s for each.

C. See SCM 1, chapters 3 and 5 for other information about amendments.

4.11 • OTHER REQUIRED APPROVALS
(Rev 11/12)

The following are examples of additional approvals required for certain types of contracts. Documentation of the approval must be included as supporting documentation when submitting the contract package to DGS/OLS for approval.

A. GC §19130(a) cost savings contracts – copy of Notice to SPB and the SPB determination if a union requested review.

B. Legal Services contracts – copy of DOJ approval memo (or statutory authority to contract out); other pre-approvals as required.

C. Hazardous Activities – DGS/ORIM approval stamp.

D. Fiscal Agent contracts – DOF approval.

E. Financial Compliance Audits– prior written approval of the Controller and DOF for contracts for financial or compliance audits, unless the agency is required by State law to obtain an annual audit. (Govt. Code § 8546.4(e).)

F. Waste Recycling Agreements - Agreements for waste recycling services require prior approval by the Department of Resources, Recycling and Recovery (CalRecycle). (PCC § 12165(d); PRC § 40400 et seq.)

G. Public Entities - May require a resolution.

H. Printing Services – DGS/OSP approval.

5. COMPETITIVE BIDDING METHODS

5.00 • INTRODUCTION

This chapter provides recommended guidelines and procedures that should be used when seeking vendors and contractors to perform services and for consultant service contracts. Most of these guidelines are based on existing State policy and established practices; some are also based on statutory requirements.

5.01 • TABLE OF CONTENTS

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5.02 • STATUTORY AND REGULATORY REFERENCES
(Rev 11/12)

A. Public Contract Code Sections

1. Disabled Veteran Business Enterprise participation and incentives. (PCC § 10115 see also Mil &Vet code § 999, et seq.)
2. Service contracts. (PCC §§ 10295, and 10335 et seq.)
3. Consultant services contracts. (PCC §§ 10295, and 10335 et seq.)
4. Conflict of interest by current and former State employees. (PCC §§ 10410 – 10411.)

B. Government Code Sections

1. Target Area Contract Preference Act (TACPA) (GC §§ 4530 – 4535).
2. Employment-Enterprise Zone Act (EZA) (GC § 7080).
3. Local Agency Military Base Recovery Area Act (LAMBRA) (GC §§ 7113.5 - 7114).
4. Antitrust claims (GC §§ 4550-4554).
5. Small business bidder preference (GC § 14838).
6. Nondiscrimination compliance programs (GC § 12990).
7. California State Contracts Register advertising (GC §§ 14825 - 14829.2).
8. SB and DVBE quotes (GC §§ 14838.5, 14838.7)

C. Title 2, California Code of Regulations

1. Contract protest procedures (section 1195).
2. Application of small business, TACPA, EZA and LAMBA preferences and DVBE regulations (section 1896 et seq.).

5.03 • FUNDAMENTAL RULES
(Rev 10/98)

A. An agency may not draft any competitive bidding document (i.e., IFB or RFP) in a manner that limits bidding directly or indirectly to any one bidder. (PCC § 10339.)

B. Services may not be split to avoid the need to advertise or obtain competitive bids. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to a State law, policy, or departmental procedure. (PCC § 10329.)

C. Sealed bids must be received at the place and by the time stated in the IFB or RFP. Bids received after the time stated in the solicitation document are not valid regardless of the circumstances causing the late submittal. (PCC § 10341.)

D. The sealed cost bids for an IFB and RFP primary must be publicly opened. (PCC §§ 10341 and 10344.)

5.04 • PRELIMINARY CONSIDERATIONS AND DECISIONS
(Renumbered and revised 11/12)

Many of the questions and decisions needed to establish a sound basis for a final contract must be addressed by the contract users. They are the individuals most concerned with both quality and usability of what will be produced under the contract. They are the individuals best equipped

to ask and to answer the main questions about the performance leading to the final service or product that prompts the need for the contract.

Primary Contracting Considerations:

1. What type of service is needed and why and when is it needed?
2. Can services be provided within the agency?
3. Can another State agency provide the service through an Interagency Agreement? (If agency staff cannot provide the services, a justification consistent with GC § 19130 is required.)
4. If an outside contractor is to be used, how will the contractor be obtained? Will it be necessary to competitively bid, or does one of the exemptions to bidding apply?
5. What type of contract is involved? Goods, IT goods, IT services, IT consulting services, non-IT services, non-IT consulting services?

Note: The Scope of Work is the key to a satisfactory contract. The level of satisfaction depends on fully assessing and defining the contract need. The determination of a level of quality sufficient to meet the need and guarantee the desired outcome and identification of the capability and qualifications required of a contractor to accomplish the outcome will produce a successful contract

5.05 • COMPETITIVE BIDDING REQUIREMENTS AND ALTERNATIVES
(New 11/12)

Contracts must be competitively bid using the Public Contract Code process, unless there is a legally authorized basis for bid exemption. (PCC §10340(a).) Basic grounds for exemption include:

A. Statutorily exempt;

B. DGS Approved Exemptions (PCC § 10348)

1. Categorical Exemptions
2. Non-competitively bid exemption (NCB) or Special Category (SCR) approval.

See SCM I, section 5.80 for more information regarding exemptions and alternative methods for award.

5.06 • COMPARISON CHART OF BIDDING METHODS
(Rev 11/12)

There are three basic types of services contract solicitations: Invitation for Bid, Primary Request for Proposal, and Secondary Request for Proposal. (See PCC §§ 10340-10345.)

Table 5.1

Considerations	Invitation for Bid	Primary RFP	Secondary RFP
When this method is typically used	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.	To obtain complex services in which professional expertise is needed and may vary. Where different methods and approaches may be applied during performance.	To obtain very complex and/or unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed.
Cost/value of services	$5,000 or more	$5,000 or more	$5,000 or more

CSCR advertising	Yes	Yes	Yes
Formal bidder Q&As with submittal deadline	Optional	Optional	Optional
Bidders' conference or site inspection	Optional, but bidders' conference is rarely needed for an IFB.	Optional. Held if needed to clarify service needs.	Optional. Held if needed to clarify service needs.
How award is made	Lowest responsible bidder: public bid opening	Lowest qualified responsible proposer; public bid opening	Highest-scored responsible proposer
Oral Interviews	Not applicable.	Optional. Held if needed.	Optional. Held if needed.
What information is submitted	Bid form and other material deemed necessary by the awarding agency.	Narrative proposal and a separate envelope containing cost information.	Narrative proposal, including a cost component, in one envelope
Statement of Work (SOW) considerations	SOW contains all contract requirements except price.	Objectives, major tasks, and timelines are identified. Proposer offers detailed work plans, methods, etc.	Goals and objectives are stated. Proposer offers detailed work plans, approaches, methods, etc.
How small business preference is applied	The cost bid of a certified small business is reduced for evaluation purposes by 5 % of the lowest cost bid offered by a noncertified small business.	The bid of a certified small business is reduced for evaluation purposes by 5 % of the lowest cost offered by a noncertified small business.	Certified small business will have its points increased by 5% of the total points awarded to the highest scored non-small business bidder.
Is TACPA/EZA/ LAMBRA applied?	If the total contract is more than $100,000 and the work site is not fixed.	If the total contract is more than $100,000 and the work site is not fixed.	If the total contract is more than $100,000 the work site is not fixed.
DVBE participation required?	Determined by Agency	Determined by Agency	Determined by Agency

5.07 • DIFFERENCES BETWEEN IFBs AND PRIMARY RFPs
(Rev 11/12)

The general differences are indicated in Table 5.2. To easily distinguish the two methods, different terminology is used. Generally, in IFBs the terms Bid and Bidder are used, and in RFPs the terms Proposal and Proposer are used, although the PCC uses them interchangeably.

Table 5.2

Invitation for Bid	Primary Request for Proposal
Bidders may need to certify only that they meet the IFB requirements. Bidders acknowledge that they meet the IFB requirements.	Narrative proposals containing varying amounts of proposer information are usually required to be submitted.
Sealed bids or price quotes are submitted. A single-envelope or two-envelope process may be used.	Sealed cost proposals are submitted in separate envelopes from the narrative proposals.

A pass/fail determination is made for responsiveness to IFB requirements. This can be accomplished after bids are opened and read aloud.	Proposals are reviewed for responsiveness to RFP format requirements. Proposals may be rated or scored. Cost/price offerings of qualified proposers are opened and read aloud for responsible proposers.
Bidders' conferences are optional but are rarely needed.	Bidders' conferences are optional but are often held to clarify the services being sought.
To obtain services valued at $5,000 or more.	Same as for IFB.
IFBs are used to secure simple services calling for routine personal or mechanical skills. Work methods are standard, or little discretion exists in terms of how the work is performed.	RFPs secure complex services calling for technical and/or professional skills and expertise. The proposer uses discretion in applying various approaches or methods.
Bidder capabilities are not rated or scored. Bidders either pass or fail IFB requirements.	Proposer qualifications, capability, and experience may be scored on evaluation criteria stated in the RFP.
The statement of work (SOW) is clearly stated. Bidders are generally told what, how, when, and where work and services are to be done.	The SOW contains as much detail/depth as possible but may include an agency's needs, goals, and objectives. Proposers are relied on to recommend methods or approaches to meet an agency's needs.
Award is made to the lowest responsible bidder.	Same as for IFB.

5.08 • PRIMARY RFP AND SECONDARY RFP DIFFERENCES
(Renumbered 11/12)

Table 5.3 outlines the differences between primary and secondary RFPs.

Table 5.3

Primary RFP	Secondary RFP
Services are complex, but not uncommon or unique.	Services are complex, uncommon, or unique.
Performance requires varying methods or approaches but not innovation or creativity. The methods and approaches used may not differ significantly from one proposer to another, which allows costs to be used as the deciding factor for making the award.	Performance requires unusual, innovative, or creative techniques, methods and approaches. The quality of expertise and approaches, methods, and innovation used may differ significantly from one proposer to another.
The statement of work (SOW) is fairly well defined in terms of services or functions that must be performed, as are the time frames that are required.	The SOW is less precisely defined and may contain only the agency's business needs, goals or objectives that must be met.
Costs proposals are submitted in a separate sealed envelope apart from the narrative proposal.	Price may appear as a section within the narrative proposal and must be a significant factor. Price does not mean cost effectiveness.

Narrative proposals are reviewed, evaluated, and scored for compliance with format, content, and qualification requirements.	Narrative proposals are evaluated and scored. Oral interviews are optional. Passing points may be set to determine the finalists.
Cost proposals are not scored.	The cost component is either scored against criteria stated in the RFP or subjected to a formula to convert the quoted cost into score or point values.
Qualified proposals that are responsive to the RFP requirements will have their cost/price proposals publicly opened and read.	Cost proposals are not announced or publicly read.
Following the opening and reading of cost proposals, cost proposals are then adjusted for applicable small business, TACPA, EZA, LAMBRA preferences and DVBE Incentives.	Cost proposals are adjusted for applicable small business, TACPA, EZA, LAMBRA preferences, and DVBE Incentives.
A certified small business receives an amount equal to 5 % of the lowest cost proposal submitted by a non-certified small business reduced from its cost proposal.	A certified small business will have its total points increased by 5% of the total points awarded to the highest scored non-small business bidder.
Award is to the responsible proposer offering the lowest cost for its services.	Award is to the responsible proposer earning the highest overall score.

5.09 • RESERVED
(Rev 11/12)

[Former content of 5.09 has been merged into 5.30.]

5.11 • INVITATION FOR BIDS
(Rev 11/12)

A. An Invitation for Bids (IFB) must be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same work or equipment, specifications, and contract obligations.

An IFB seeks an answer to the following:

"Here is exactly what we need to have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?"

B. An IFB must indicate the specific requirements of the State. Timely bids are reviewed to determine which bidders meet the requirements indicated in the IFB.

For each specific requirement, a basic yes or no answer is required. There is no "fully," "barely," "almost," or "exceeded" level of evaluation. After identifying which bidders are responsive to all requirements stated in the IFB, it is then a matter of determining which bidder is offering the lowest cost for its services.

C. All bids may be rejected whenever the agency determines that the cost is not reasonable, the cost exceeds the amount estimated, or otherwise in the best interest of the State. Although many agencies reserve the right to reject all bids, no bid may be rejected arbitrarily or without reasonable cause.

5.15 • REQUEST FOR PROPOSALS
(Rev 10/05)

A. A Request for Proposals (RFP) must be as precise as possible to ensure that all proposals are accomplishing the same goal. An objective evaluation procedure must be used to determine which proposers have complied with the RFP requirements and to whom the contract should be awarded.

B. An RFP seeks an answer to the following:

"Here is what we wish to accomplish. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met. How would you accomplish the job for us and for how much?"

C. An RFP should not be used when the service or equipment to be hired is standard, routine, or common, or when there is a standard associated with the service or equipment to be hired. For example, the hiring of a pest-control firm to do routine exterminations should be accomplished through an IFB, not an RFP.

D. There are two (2) methods for evaluating proposals and awarding contracts (PCC § 10344):

1. Primary Method: By this method, the contract is awarded to the responsible and qualified proposer offering the lowest cost for its services. For more information on the primary RFP method, see SCM I, section 5.20.

2. Secondary Method: This method requires evaluation of proposals by an evaluation committee with the award made to the responsible proposer earning the highest score. For more information on the secondary RFP method, see SCM 1, section 5.25.

E. Before soliciting proposals, agencies must determine which method of evaluation will be used in order to include the appropriate information in the RFP, as follows:

1. A comprehensive evaluation plan must be developed and finalized. All rating and scoring factors which are to be considered must be included, criteria for considering costs to the State must be developed, and the evaluation plan must provide for a fair and equitable evaluation of all proposals (PCC § 10344).

2. All proposals and all evaluation and scoring sheets must be available for public inspection at the conclusion of the scoring process (PCC § 10342).

F. When an evaluation committee is appointed:

1. The voting members used in the selection process shall be from the agency soliciting the proposals or awarding the contract.

2. Private consultants may not be voting members of the committee and may only be used to provide clarification or subject matter expertise to the committee members.

3. If the contract is awarded by a State board or commission, the recommendations of an evaluation committee shall be considered advisory in nature, and the board or commission must make the ultimate decision unless statute expressly permits the board or commission to delegate that responsibility.

5.20 • REQUEST FOR PROPOSALS: PRIMARY METHOD
(Rev 3/03)

A. In addition to the requirements identified elsewhere in this chapter, an RFP primary must include a requirement that each proposer submit its proposal with the cost proposal and all cost information in a separate, sealed envelope (PCC § 10344).

B. Proposals received as a result of the primary RFP method must be evaluated and the contract awarded in the following manner:

1. Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Proposal standards should be set so that every proposer deemed to meet the standards specified in the RFP could perform at the required level.

2. The sealed envelopes containing the cost proposal for those proposals that meet the format requirements and standards shall then be publicly opened and read. The contract must be awarded to the lowest-cost responsible proposer.

5.25 • REQUEST FOR PROPOSALS: SECONDARY METHOD (POINT COUNT OR HIGH SCORE)
(Rev 11/12)

A. Use of the secondary RFP method should be limited to those instances in which agencies are seeking a unique solution to a problem or situation that cannot necessarily be resolved by the lowest bidder (i.e., when the methods, approaches, and procedures to be used in performing the work are of primary importance).

B. When scoring a proposal, cost/value effectiveness and cost adequacy may be judged, evaluated and awarded points as part of the technical score, but this must be in addition to the cost points (PCC § 10344). Agencies should discuss the RFP with their assigned DGS/OLS attorney if considering developing a solicitation where cost points (dollars/actual price component) are less than 30% of the total points, or risk non-approval of the resulting contract.

The following formula may be used for the award of cost points:

Lowest cost proposal is awarded the maximum cost points. Other proposals are awarded cost points based on the following calculation:

Lowest Proposer's Cost = (factor) X maximum cost points = cost points for other proposer

Other Proposer's Cost

EXAMPLE: Lowest cost proposal = $ 75,000
Other proposal = $100,000

30 cost points available

(Lowest cost proposal) $\frac{\$75,000}{\$100,000}$ = ¾ X 30 = 22.5 cost points awarded to other proposal

C. Proposals received as a result of the secondary RFP method must be evaluated and the contract awarded in the following manner (PCC § 10344):

1. Review all eligible proposals (i.e., those that are received in the time and manner prescribed) to determine which ones meet the format requirements specified in the RFP.

2. Those proposals that meet the format requirements shall then be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

5.30 • REQUIRED LANGUAGE IN COMPETITIVE BIDDING DOCUMENTS
(Rev 11/12)

A. All competitive bid proposal packages (IFBs and RFPs) shall contain (as applicable):

1. Date, time, and place bids are due (PCC §§ 10341, and 10344)

2. Small Business Preference Program information (GC § 14835) (SCM 1, chapter 8)

3. Disabled Veteran Business Enterprise participation goals (PCC § 10115 et seq.) (SCM 1, chapter 8)

   Each State agency is required to have DVBE participation goals in contracts for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement (PCC § 10115 et seq.) except those services subject to Chapter 6 commencing with GC § 16850. Participation goals apply to the overall dollar amount expended each year by the awarding agency. Each agency is allowed to determine the dollar level and types of contracts that are subject to or exempt from DVBE goal participation. If the contract is of a type or total dollar amount subject to DVBE participation in accord with departmental procedures or regulations, the bid document used to procure such services, should contain applicable DVBE participation instructions and forms and DVBE audit language. For information on DVBE participation goals, refer to applicable State agency policies, procedures, or regulations or the statutes on this topic. (See SCM 1, chapter 8.)

4. DVBE Incentive or Documentation of Incentive Exemption (GC §§ 14600, 14615; 2 CCR § 1896.99.100) (SCM 1, chapter 8).

5. Conflict of Interest provisions (PCC §§ 10410, 10411); these provisions are now in the CCCs, available on the DGS/OLS website.

6. Corporate qualifications to do business in California (R&TC § 23101); these provisions are now in the CCCs, available on the DGS/OLS website.

   a. When contracts are to be performed in the State by corporations, the contracting agencies should obtain verification that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.

   b. “Doing business” is defined in Revenue and Taxation Code § 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing services within the State not be subject to the franchise tax.

   c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business

in California. Agencies may determine whether a corporation is in good standing by accessing the Office of the Secretary of State's web site at www.ss.ca.gov.

d. Contracting and approving agencies may obtain assistance from the Franchise Tax Board in evaluating a contractor's claim of exemption. Inquiries should be directed to the Exempt Organizations Unit desk, telephone (916) 845-4171.

7. Drug-free requirements (GC § 8350 et seq.); these provisions are now in the GTCs available on the DGS/OLS website

8. Statement of Compliance (GC § 12990(a - f), 2 CCR § 8113); this provision is now in the CCCs, available on the DGS/OLS website

9. Antitrust claims (GC §§ 4552, 4553, and 4554); this provision is now in the GTCs, available on the DGS/OLS website

10. TACPA preference, if applicable (GC § 4530, et seq. and 2 CCR § 1896.30);

    Each IFB or RFP for goods or services, in which the cost is estimated to be in excess of $100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. Bidders and proposers may apply for such preferences by means of a Target Area Contract Preference Request - STD 830S (for services) or STD 830G (for goods) (2 CCR § 1896 et seq., see also SCM 1, chapter 8). Contact DGS/Dispute Resolution/Preference Program Section for information on TACPA at (916) 375-4604 or (916) 375-4600.

11. EZA (GC § 7070)

    Each IFB or RFP for goods or services in which the cost is estimated to be in excess of $100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. The percentage preferences allowed for EZA are similar to those allowed for TACPA (2 CCR § 1896 et seq.). Bidders may apply for the EZA preference using the Enterprise Zone Act (EZA) Request Form Std. 831. Contact DGS Dispute Resolution/Preference Program Section for information on EZA at (916) 375-4604 or (916) 375-4600. An additional source of information on this topic is in GC § 7080 et seq. (See SCM 1, chapter 8.)

12. LAMBRA (GC § 7118)

    Each IFB or RFP for goods or services in which the cost is estimated to be in excess of $100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. For percentage preferences allowed for LAMBRA see GC § 7118. Bidders may apply for the LAMBRA preference using the Local Agency Military Base Recovery Area Act (LAMBRA) Request Form Std. 832. Contact DGS Dispute Resolution/Preference Program Section for information on LAMBRA at (916) 375-4604 or (916) 375-4600.

13. Protest procedures (SCM 1, chapter 6);

14. Loss leader provisions (PCC § 10344).

15. Darfur Certification (PCC § 10475 et seq.)

16. Iran Contracting Act Certification (PCC § 2202)

17. Insurance requirements (see SCM 1, sections 3.12, 7.40)

18. Priority Hiring Considerations for Contracts with a Value in Excess of $200,000; these provisions are now in the GTCs available on the DGS/OLS website.)

    Every contract for services in excess of $200,000 shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code § 11200 (PCC § 10353).

B. The general terms and conditions of the contract and any unique provisions should be included in the bid document to inform bidders of these requirements. See also 5.35.4.

5.35 • DRAFTING AN RFP

(Renamed 11/12)

In addition to other requirements set forth in this chapter, further consideration should be given to effective drafting of RFPs. The more thoroughly that a State agency communicates its specific needs, requirements, goals, and objectives in the RFP, the more complete, responsive, and acceptable the proposals received will be. RFPs should include:

1. A statement of work that contains:

    a. A clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met.

    b. An explanation in realistic terms of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence.

    c. Practical and policy information, technological requirements or specifications, and legal limitations, if any.

    d. Specific questions to be answered or issues to be addressed.

    e. Performance timelines or completion dates.

    f. Required quality control standards to be met, if applicable.

    g. A description of the items, products, or results to be delivered.

    h. The format and number of copies of the completed progress reports and final report, if applicable.

    i. The extent and nature of the assistance and cooperation from the State that will be available to the proposer.

2. Proposal instructions should contain a description of the format that proposals must follow and the elements they shall contain. The factors to be used in proposal evaluation and contractor selection may not be changed or added after the RFP has been distributed without adequate notice to all potential proposers through an addendum. RFPs must provide:

    a. Specifications, including:

        - Standards the agency will use in evaluating proposals.
        - Information on how the State will select the winning proposal.

    b. Time schedules, including:

        Date to submit questions or seek clarification of the RFP

        - Date of Proposers' Conference, if applicable.

- Date on which the proposals must be submitted.
- Timetable the agency will follow in reviewing and evaluating proposals.
- Date of cost proposal opening.
- Date of award.
- Anticipated contract term, including commencement and completion dates.

3. Notice of payment terms or restrictions, including:

   a. Whether and to what extent progress payments will be allowed.

   b. Whether payments are subject to payment withholds.

   c. Penalties for late or inadequate performance.

   d. Known or estimated budgetary limitations on the contract price, if applicable.

4. Applicable contract provisions, including:

   a. Actual or sample contract language or boilerplate contract provisions that will appear in the resulting contract.

   b. It is important to include any terms or provisions that will place a contingent liability on the contractor or affect the contractor's operating costs.

5. Requirements those prospective proposers must address or include in their proposal, if applicable, such as the following:

   a. A description of the proposer's qualifications, including:

      - Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California.
      - For proposers that are nonprofit organizations, proof of nonprofit status.
      - Copies of current business licenses, professional certifications, or other credentials.
      - Proof of financial solvency or stability (e.g., balance sheets and income statements for one year or more), as deemed applicable.
      - A list of current or former references for whom the proposer has performed similar work.

   b. A brief list of similar types of contracts that were successfully concluded, with a sample of such work.

   c. A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work.

   d. Identification of a project coordinator (recommended for all bid documents but required when consultants are sought).

   e. Résumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services (required by law for consultant contracts).

   f. An overall description of the techniques, approaches, and methods to be used in performing the services. For cost reimbursement contracts with consultants, the amount of time and manpower to be expended and the equipment and facilities to be utilized, if applicable.

g. If subcontractors are contemplated, identification of those persons or firms, the portions and monetary percentages of the work to be done by the subcontractors how they were selected and why, résumés of each major subcontract participant, and a description of how subcontracted work will be controlled, monitored, and evaluated

h. The total cost of the project, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:

- Identification of position/classification titles funded.
- Salary rates or ranges.
- Percentage of time devoted to the work.
- Fringe benefits.
- Operating expenses.
- Travel and per diem expenses.
- Overhead or indirect costs.
- Subcontractors with the same type of cost details.
- Other costs.

6. Identification of services provided on a flat fee, lump sum, or unit rate basis.

5.40 • GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFPs

The following are suggested criteria that may be used in evaluating proposals:

1. Does the proposing firm understand the agency's problem or needs?
2. Can the proposer fit this work into its existing obligations?
3. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
6. Has the firm had experience performing work of a similar nature, size, and scope?
7. Does the proposer's past experience complement the services being sought, or is the proposer’s past experience appropriate to qualify the proposer to perform these services?
8. What are the professional qualifications of the personnel that the firm will commit to the project?
9. Has the proposer allocated sufficient staff resources?
10. Has the proposer addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
11. Does the proposer appear to be capable of handling and resolving unanticipated complications and delays without interrupting the delivery of services?
12. Are any proposed timelines for performance presented by the proposer feasible?

13. Did the proposer include plans that will show how performance will be monitored and measured to ensure that all services are successfully performed and that the objectives, goals, and requirements are met?

14. Does the proposer appear to have the capacity to manage fiscal resources responsibly?

15. Does the proposer have sound fiscal, accounting and cost-monitoring or budget-monitoring procedures in place?

5.45 • TIE BIDS
(Rev 11/12)

Agencies should provide for a tiebreaker in the solicitation document setting forth how the contract award will be made in the event of a tie. An example of permissible tiebreaker is a coin toss. Such event must be observed by witnesses and ideally the affected bidders would be invited. See SCM 1, section 8.21.C for ties between certified small businesses and DVBEs.

5.60 • TIME FOR COMPLETION OF THE COMPETITIVE BIDDING PROCESS
(Rev 11/12)

A. The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. Resolution of protests may add a delay of one to three months.

B. The time needed to complete a bid proposal process will depend on the type of competitive bidding method used, the complexity of the services required, the number of bids or proposals received, whether a bidders'/proposers' conference is held, whether DVBE participation is required, whether protests are received, and other factors.

5.65 • POSTING AND NOTIFICATION REQUIREMENTS
(New 11/99)

A. RFP. After selecting a bidder for possible contract award under an RFP (Primary or Secondary):

1. The agency must post, in an area accessible to the public, a letter of intent to award (PCC § 10345).

Note: Agencies may post the letter of intent on their Internet Homepage in addition to, but not in lieu of, the public posting.

2. The contract cannot be awarded for a period of 5 working days (starting the day after posting), during which time the agency must allow all bidders access to all the bid information including all responses and score sheets used in the evaluation (PCC § 10345).

B. IFB. After selecting a bidder for possible contract award under an IFB:

1. The agency must post, in an area accessible to the public, a letter of intent to award if requested in writing by any of the bidders (PCC § 10345).

2. If the lowest bidder is not being awarded the contract, the low bidder must be notified of that fact five (5) working days prior to contract award. The notice should also include the reason why the lowest bidder is not being awarded the contact.

3. If the agency is awarding to the lowest responsible bidder, and no requests have been made to publicly post a letter of intent, the agency may award the contract without delay.

5.70 • COMPETITIVE BIDDING ISSUES
(Rev 11/12)

A. Advertising. Potential bidders must be formally notified of the bid opportunity through CSCR advertisement, unless an advertising exemption (approved Std 821) has been received. (Govt. Code § 14827.2.)

B. Less than three bids. If three (3) competitive bids are not received, the State agency will prepare a complete explanation as to why less than three (3) competitive bids were received; provide a justification as to the reasonableness of the price; provide the names and addresses of the firms, or individuals specifically notified of the contracting opportunity; and retain this document in the agency's contract file (PCC § 10340).

C. Preferences for certified small businesses, microbusinesses and non-small businesses subcontracting preference. There are preferences to be applied to eligible certified small businesses, microbusinesses and non-small businesses, which subcontract with at least 25% certified small businesses (See SCM 1, sections 8.20 and 8.21). Additional preferences under TACPA and EZA and LAMBRA shall be granted as applicable when cost of the service will exceed $100,000 and the work site will not be fixed by the terms of the contract. Exceptions for IT services, architectural and engineering services and situations involving multiple contract awards are noted in the cited regulations. Additional information on TACPA and EZA and LAMBRA can be obtained from the DGS Dispute Resolution/Preference Program section (See 2 CCR § 1896 et seq. and SCM 1, chapter 8).

D. DVBE Participation Requirements and Incentive (See SCM 1, chapter 8).

E. Once a contract is awarded, the solicitation has ended. If the Contractor awarded the contract fails to perform the contract, the agency cannot award to the second lowest bidder without re-bidding, or obtaining an NCB approval.

F. There is no requirement to award a contract if, in the opinion of the State agency, no bids or proposals were received containing a reasonable contract price or if there is another business-based reason not to make an award.

5.75 • ADVERTISING STATE-CONTRACTING OPPORTUNITIES
(Renumbered and Rev 11/12)

A. Contracts of $5,000 or more must be advertised in the CSCR for at least 10 working days. Agencies shall not release solicitations prior to publication in the CSCR. Contracts awarded as an NCB and amendments that require an NCB approval, will be published in the CSCR by DGS/PD as part of the NCB approval process. No agency action is required to publish the NCB approval. (GC §§ 14827.1, 14827.2; PCC § 10335(a).)

B. CSCR advertising procedures are as follows:

1. Advertising in the CSCR is now done through the DGS eProcurement system. Agencies should submit advertisements using the DGS Procurement Division's Internet Web page: http://www.dgs.ca.gov/pd/Programs/eprocure.aspx. Agencies may contact CSCR eProcurement help desk at (916) 375-2000 or eprocure@dgs.ca.gov for additional information.

2. DGS charges a fee for each ad that appears in the CSCR.

C. Under appropriate circumstances, agencies may obtain an exemption from advertising.

This is done on a STD 821 submitted to DGS/Procurement Division. An exemption from advertising eliminates the CSCR advertising requirement only; it is not an exemption from bidding. If DGS/Procurement Division approves a form STD 821 for an advertising exemption, DGS will publish a notice of exemption in the CSCR.

D. Re-bids: Agencies conducting a re-bid need not obtain an approved Exemption from Advertising or re-advertise the contract opportunity in the CSCR, if:

1. The re-bid occurs within three (3) months of the publication of the original CSCR advertisement;
2. Notice of rebid is provided to persons who requested the original solicitation package; and
3. No material change to the bid.

5.80 • CONTRACTS EXEMPT FROM ADVERTISING IN THE CSCR AND COMPETITIVE BIDDING

(Rev 11/12)

As noted in section 5.05, competitive bidding is required unless there is a legally authorized basis for bid exemption. Key exemption categories are identified below.

A. Statutory Exemptions

1. Contracts of less than $5,000 (PCC §§ 10335(a), 10335.5(c)(5)).
2. Contracts of less than $5,000 where only per diem or travel expenses, or a combination thereof, are to be paid (PCC § 10335(a)).
3. Emergency contracts. The work or service is for the immediate preservation of the public health, welfare, safety, or protection of State property (PCC §§ 1102, 10340).
4. Interagency agreements. Contracts with other California State agencies, and California State University and University of California campuses (PCC §§ 10335(a), 10340(b)(3); GC § 11256; see also SCM 1, section 3.03.).
5. Contracts with other public entities, including contracts with another state, local, or Federal agency, auxiliaries of CSU or the California community colleges; or an organization acting as a governmental agency under a joint powers agreement (PCC §§ 10335(a), 10340(b)(3); see also SCM 1, section 3.06.A).
6. Contracts solely for the purpose of obtaining expert witnesses for litigation (PCC § 10335.5(c)(3).
7. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff (PCC §10335.5(c)(4)).
8. Community Based Rehabilitation Program (CRP). Contracts with business entities operating Community Based Rehabilitation Program (CRP), that are justified under one of the exceptions in GC § 19130(b), and that meet the criteria established by Welfare and Institutions Code §1 9404 (PCC §10340). Note: Contracts with CRPs that are justified under GC § 19130(a) are required to be competitively bid.
9. Small Business/DVBE Option (GC §§ 14838.5; PCC §§ 10335.5(c)(6), 10340(b)(6)).
   a. This option allows for an award under the following conditions:

1) The contract is awarded to a certified small business, micro-business or disabled veteran-owned business;

2) The contract award is greater than $5,000 and less than $250,000; and

3) Quotes were received from at least two certified small businesses or micro-businesses; or two certified disabled veteran-owned businesses.

b. An award based on receiving only one quote is not permitted under this method.

c. Mixing quotes (e.g. one SB and one DVBE) is not permitted under this method.

d. The code does not expressly require award to the low quote, however, if award will be made by other than low quote, the agency must document the business reasons and cost reasonableness basis for selecting the other quote.

e. No particular format or timing is required under this option. Agencies have discretion as to how to obtain the quotes. Agencies should provide vendors sufficient information about the services on which the vendors can formulate a quote, including copy of the proposed contract (e.g. scope, payment provisions, and terms).

f. The small business preference is not applicable under this method.

g. There is no protest right for this method. (GC § 14838.5.) Therefore agencies should not cite protest provisions when soliciting quotes.

h. Use of this method is capped at $250,000 for the entire contract term, including any option years and/or amendments. If an agency believes the contract may exceed $250,000, they should use a different solicitation method, such as an IFB or RFP. If quotes come in over $250,000, the agency would need to resolicit, either scaling down the project to lower the quotes or using a different solicitation method.

i. For public works, the dollar range for which this two-quote method can be used is $5,000 to $270,000 (or other project cost limit amount as may periodically be issued by the Director of Finance pursuant to PCC § 10105). (GC § 14838.7.)

10. Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations (PCC § 10340(b)(7)).

11. Other Specific Statutory Exemption. The STD 215 should identify the statutory citation supporting the exemption.

B. DGS Approved Exemptions (PCC § 10348)

1. Non-Competitive Bid (NCB) or Special Category Request (SCR)

a. An NCB transaction (formerly “sole source”) is a contract for goods or services or both when only a single business enterprise is afforded the opportunity to provide the specified goods or services.

b. Executive Order on NCB

The Governor's Executive Order, D-02-55, issued effective May 20, 2002, rescinded the previous sole source Executive Order W-103-94 and all management memos related to that Executive Order.

c. The NCB form with instructions and signature requirements can be found on the DGS/PD website. See also SCM volume 2.

d. An SCR is similar to an NCB but involves a group of related contracts rather than a single contract. The SCR form and further information can also be found on the DGS/PD website and in SCM volume 2.

2. DGS Categorical Exemptions (PCC § 10348; historical references: SAM 1233, MM 03-10).

a. Services contracts using a DGS LPA;

b. Subvention and local assistance contracts as defined in SCM 1, section 3.17. This exception applies only when services are provided to the public and not specifically to a State agency;

c. Maintenance agreements under $250,000 per year for equipment that is under documented warranty, or where there is only one authorized or qualified representative or where there is only one distributor in the area for parts and services under $250,000.00 per year;

d. Contracts where the state is unable to compete and select a different contractor because a contractor has already been selected by a federal, state, city, county, or other regulatory entity to perform a service in a specific geographical area (e.g., refuse and/or sewage disposal contracts where there is an exclusive franchise agreement that has no exception for the state);

e. Public entertainment contracts for State-sponsored fairs and expositions;

f. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code § 605(b);

g. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed $250,000;

h. Contracts for ambulance services (including but not limited to 911) when there is no competition because the contractor is designated by a local jurisdiction for the specific geographic region; (historical reference: MM 05-04.)

i. Contracts for emergency room hospitals, and medical groups, physicians, and ancillary staff providing services at emergency room hospitals, when a patient is transported to a designated emergency room hospital for the immediate preservation of life and limb and there is no competition because the emergency room hospital is designated by a local emergency medical services agency and medical staffing is designated by the hospital. This exemption covers only those services provided in response to the emergency room transport; (historical reference: MM 05-04.)

j. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety;

k. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to $250,000. This includes access to *pre-existing* proprietary research data through a non-IT services contract, however "subscription" is not intended to include the performance of any personal *services* (such as, but not limited to, consulting, advice, research);

l. Rental of proprietary postage meters if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area. This exemption applies only in circumstances where annual postage meter rental services are less than $100,000;

m. Departmental memberships in professional organizations, provided it is solely a membership and does not include the performance of any personal *services*. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by CalHR rules; (See SCM 1, section 3.23.)

n. Contracts for non-IT services training for state personnel if the cost of the training contract does not exceed $50,000 and the cost of multiple training contracts with a single contractor does not exceed $50,000 cumulatively in any 12-month period. (Historical reference: MM 11-05.) The exemption is for pre-existing training courses; it does not cover development of training or other personal or consulting services. Agencies shall not split contracts to avoid competitive bidding or other contract requirements. Agencies with recurring training needs should assess the cumulative amounts departmentally and generally should go out to bid if there are ongoing and/or department-wide needs.

5.81 • AMENDMENTS

(New 11/12)

Competitive bidding requirements and exemptions should be evaluated when contemplating an amendment (PCC § 10335).

A. Amendments to competitively bid contracts. A competitively bid contract can only be amended without NCB approval under the following circumstances:

1. The contract provides for the particular type of amendment (not merely a generic statement about the parties being able to amend) and:

a. The additional years or additional tasks were anticipated and evaluated in the IFB/RFP (i.e. exercise of an option to renew that was included in the IFB/RFP); or

b. The amendment does one, but not both, of the following, and there is no change in the scope of work:

i) Adds time only to complete performance, not to exceed one year. Note: "time only" means time to complete performance of the original agreement, such as extending the due date for a final report on a fixed-fee agreement. An amendment that provides for additional as-needed services (such as extended use of hourly fee or pay-per-service type arrangements) is not "time only" within the meaning of this exemption; **or**

ii) The amendment adds not more than 30% (not to exceed $250,000) of the original contract. Note: this increase must be supported by specific business reason, such as in a unit rate contracts (e.g. per test, per sample, etc.) usage was higher than the original good-faith estimates/multipliers used in the solicitation. This permits flexibility when exceptional unanticipated circumstances warrant; but it should not be used in circumstances such as paying a contractor more on a fixed fee bid, and should not be standard operating procedure.

This time-or-money amendment exemption can only be used once. Further amendments would require NCB approval or a new bid for services. For example, a department cannot amend for time, then attempt to amend to add money.

2. Amendments to existing contracts under the same terms and the same or lower rates where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending until a new contract can be executed, but in no case shall the amendment extend beyond six (6) months.

3. Amendments to an existing contract to correct incidental errors such as: State's clerical error in transposition of numbers from bid response to contract, typographical errors in a contract number, name, or address, or change in or omission of a contact name or phone number.

B. Amendments to statutorily exempt contracts. Determine if the statute supporting the original award also supports exemption of the amendment.

C. Amendments to NCB contracts. Generally an amendment to an NCB contract will require a new NCB. An NCB contract can only be amended if the amendment is within scope of the original NCB application and approval (e.g. amount, term, scope of work, reason for not bidding, etc.). If the amendment changes information originally described in the NCB, or is based on grounds other than those described in the original NCB, a new NCB approval is needed for the amendment. As a general rule: "Once an NCB, always an NCB." Thus, for example, if an agreement or amendment is awarded by NCB, agencies cannot then add additional time or money using 5.81.A.1.

5.85 • MULTIPLE AWARDS
(Rev 11/12)

Most agencies do not have statutory authority to make master contract/multi-vendor type awards. In certain limited circumstances, agencies may develop multi-vendor awards, provided the awards still follow the PCC methodology (i.e. IFB or primary RFP award to low cost bidder or secondary RFP award to high point count proposal).

For example, if services are needed in several regions, an agency might develop a consolidated solicitation to award multiple contracts, one per region. Alternatively, in unique circumstances such as for essential services where a back-up contractor is needed, an agency might develop a solicitation to award a primary and secondary contract, with work going primarily to the first ranked contractor, and only then to the back-up vendor(s) in order of next-best cost/score rankings, under specified conditions.

Absent express statutory authority, departments cannot award to a list of vendors and then assign work through informal quotes or other rotational process. All work must be directed to 1st rank (IFB low bid or RFP Secondary high point) vendor, before moving to 2nd ranked.

The solicitation must identify the number of awards to be made, how awardees will be selected, and how work will be distributed (e.g. by region or by low bid or high point count ranking). Any agency wishing to explore these options due to exceptional circumstances requiring backup ranked contractors should first consult their assigned DGS/OLS attorney.

5.90 • CONTRACTS UNDER FIVE-THOUSAND DOLLARS
(Rev 11/12)

Contracts under $5,000 are not required to be competitively bid (PCC § 10335). However, agencies should obtain price quotes if there is reason to believe a response from a single source is not a fair and reasonable price. Cost justification should be documented.

6. CONTRACT AWARD PROTESTS

6.00 • INTRODUCTION

(Rev 11/12)

The protest process covered in this chapter applies only to non-IT services or consulting services contracts that are awarded through an Invitation for Bid (IFB) or Request for Proposal (RFP) process.

Legal references: PCC §§ 10341 - 10345 and Title 2 California Code of Regulations §§ 1195 - 1195.6.

Some information about the rules to be followed in deciding a protest may be helpful. It is generally the rule that the party challenging the decisions of an administrative agency bears the burden of proof that the awarding agency has committed an error in the bid process sufficiently material to justify invalidation of its proposed award, or that its decisions are lacking a rational basis and are, therefore, arbitrary and capricious. An example of a material error would be, among others, failure of the awarding agency to follow pertinent State statutes and regulations or the provisions of its own bid document. When scores of an Evaluation Committee are at issue, more than the opinion of the protestant that scores should have been different, or that different scores could have been awarded based on the same information, is required to invalidate scoring decisions. In view of these parameters, the focus of the reviewing authority (here, DGS) is usually whether the protestant has met its burden of proof that the awarding agency has committed a material error in the conduct of the bid process.

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6.02 • GROUNDS FOR PROTEST
(Rev 11/12)

A. Those who may protest are as follows:

1. For IFBs, any proposer who claims it is the lowest responsible bidder meeting the specifications for the contract.
2. For RFPs, any proposer who claims that the State agency failed to follow the procedures specified in either subdivision (b) or (c) of PCC § 10344.

B. There is no basis for protest if the awarding agency rejects all bids or proposals, based on the best interests of the State.

6.03 • PROTEST EXCLUSIONS
(Rev 11/12)

There is no jurisdiction for the DGS to consider a protest if:

A. The protestant was not a bidder or proposer;

B. The protestant has not alleged that it was the lowest responsible bidder or the highest-scored proposer;

C. The protestant is not in a position to make a supportable assertion that it was the lowest responsible bidder or should have been the highest-scored proposer;

D. The protest was not submitted timely;

E. The grounds for the protest do not meet the permissible grounds stated in the PCC; or

F. The contract award is for a type of contract not subject to the protest procedures. This category includes public works contracts awarded under the State Contract Act (PCC §10100 et seq.); contracts for professional architecture or engineering services under GC § 4525; contracts awarded under GC §§ 14838.5 and 14838.7.

6.04 • ROLE OF DGS IN CONTRACT PROTEST HEARINGS
(Rev 11/12)

If the protest is based on permissible grounds, DGS will decide the protest and prepare a written decision. Following confirmation by staff that legal prerequisites have been met for a protest, the Director of DGS appoints a hearing officer who will:

A. Determine whether to review and decide the issues by written submission or oral hearing.

B. Render a written decision within 30 days of the final submission of evidence.

6.05 • PROTEST AFFECTING VITAL SERVICES
(Rev 11/12)

If a protest is filed and cannot be resolved before the need for vital services occurs, the agency may extend an existing contract for up to six months at the same or lower rates. The extension should indicate an end date of up to six months or the award of a new contract, whichever occurs first. If there is no existing contractor, if the existing contractor does not wish to continue, or if a longer extension is needed, an NCB would be required.

6.10 • PROCEDURE FOR PROTESTING AN AWARD
(Rev 11/12)

A. A contract award may not be made until one of the following occurs:

1. (IFB process) If the contract is not being awarded to the low bidder, the agency must notify the low bidder at least five working days prior to award that the contract is not being awarded to the low bidder. The notification must be by telegram, facsimile transmission, overnight courier, Internet transmission or personal delivery.

2. (IFB process) On written request from any bidder, the awarding agency must post a notice of the proposed contract award in a place accessible by the general public, including any Internet site identified in the IFB at least five (5) working days prior to awarding the contract.

3. (RFP process) The agency must post a notice of the proposed contract award in a place accessible by the general public, including any Internet site identified in the RFP for at least five (5) working days prior to awarding the contract.

B. Inspection of bids is required as follows:

1. (IFB process) After bid opening, all bids shall be available for public inspection.

2. (RFP process) All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process.

C. There are time limits in which to file a protest. A protest must be filed with the agency and DGS after notice of intent to award the contract if notice was required, but before the actual award.

D. Once a protest is filed, the contract may not be awarded until the protest is withdrawn or DGS has rendered a decision.

E. After filing a protest, the protestant has five (5) calendar days to file a detailed written statement of the protest grounds if the original protest did not contain the complete grounds for the protest.

F. Upon receipt of a protest, DGS/OLS:

1. Sends the protestant an acknowledgement letter which includes copies of the protest statutes and regulations and informs the protestant that it must submit a full and complete statement specifying grounds of protest within five (5) calendar days of filing of the notice of protest.

2. Faxes to the awarding agency a request for information regarding the proposed contract and agency contact person. The agency should complete and return the form to DGS/OLS within 24 hours. Failure to promptly complete and return the form will delay the protest process. In addition, if the agency is aware of any reason that the protest should not go forward, this would be communicated to DGS/OLS at this time (See SCM 1, section 6.03).

3. Reviews the protest to determine whether DGS has jurisdiction. If DGS does not have jurisdiction, DGS/OLS issues a written notice of dismissal.

4. Assigns a Hearing Officer to the protest if DGS has jurisdiction. The Hearing Officer determines whether the protest will be resolved by written submission or public oral hearing.

a. Written Submission Process: DGS/OLS sends a Hearing Notice to all interested parties, setting the due date for written submissions.

b. Oral Hearing Process: DGS/OLS sends a Hearing Notice to all interested parties of the date, time and place of the hearing at least five (5) calendar days before the hearing date. The Hearing Notice will also include a due date for written submissions. DGS/OLS will arrange for the hearing to be recorded.

6.15 • ORAL HEARING GUIDELINES
(Rev 11/12)

A. The hearing is conducted as a fair hearing;

B. Informal procedures are followed;

C. No oath is given;

D. Witnesses and participants are advised to be truthful, accurate, and to the point;

E. Liberal rules of evidence apply;

F. Comments must be relevant to the protest issues;

G. Statements may be allowed from the interested parties, their witnesses, or authorized representatives;

H. Cross-examination may be permitted at the discretion of the hearing officer; and

I. All interested parties are given the opportunity to present their positions.

6.18 • DECISION ON THE HEARING
(Rev 11/12)

The hearing officer's decision is a final administrative decision based on the record produced. The decision will recite the basis for the hearing officer's decision. DGS has no jurisdiction to consider any appeal to the hearing officer's decision.

6.19 • COSTS OF THE PROCEEDING
(Rev 11/12)

A. All DGS costs of the protest proceeding are charged to the State agency involved.

B. For Oral Hearings, any interested party may arrange with the reporter to have a transcript prepared at the party's cost.

6.30 • PROTESTS ON OTHER TYPES OF SOLICITATIONS
(Rev 11/12)

A. Protests about contracts for commodities, telecommunications, and IT goods and services are made to the Victim Compensation and Government Claims Board, or to the Office of Administrative Hearings per PCC § 12125.

B. Protests about contracts for public works, grants, A&E services, repair or maintenance of personal property, or any other type of solicitation not specifically covered by another statute may be heard by DGS if both parties agree to its jurisdiction.

6.35 • NOTIFICATION OF THE RIGHT TO PROTEST
(Rev 11/12)

A. Agencies should include information for protesting the award of contracts in all IFBs and RFPs. This should advise protestants' that the initial protest letter and a detailed, written statement of protest, including the IFB/RFP number, and the name of the State agency involved and the agency contract person, should be submitted to both of the following:

- Department of General Services
  Office of Legal Services
  Attention: Protest Coordinator
  707 Third Street, 7th Floor, Suite 7-330
  West Sacramento, CA 95605
  FAX: (916) 376-5088
- The awarding agency [insert address]

B. Protests may be sent by regular mail, facsimile, courier or personal delivery. Protestants should include their fax numbers if they have one.

6.40 • MINIMIZING PROTEST EXPOSURE
(Rev 11/12)

To minimize protest exposure and to enhance the likelihood of prevailing at a hearing, the agency should ensure that:

1. All solicitation packages are prepared with the appropriate clauses, phrases, and documents, and each is in compliance with all statutory and policy requirements;
2. All solicitation packages are written with clear and easily understood instructions;
3. Evaluators are carefully instructed on the evaluation approach to be used;
4. Sound decisions are made when determining a bidder's responsiveness to IFB or RFP requirements;
5. All bidders are treated fairly and impartially;
6. All bidders are given access to identical information and facts about the bid documents, statement of work, and qualification requirements;
7. The waiver of immaterial defects in any one bid or proposal does not unduly prejudice other bids or proposals or affect the price;
8. Bidders are given timely and prompt access to all applicable IFB or RFP evaluation materials following the posting of a notice of intent to award; and
9. All inquiring bidders are informed of the reasons their bids or proposals are deemed nonresponsive.

7. MISCELLANEOUS CONTRACTING ISSUES

7.00• INTRODUCTION

This chapter covers miscellaneous contracting issues that arise in various types of contracts.

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7.05 • CIVIL SERVICE CONSIDERATIONS
(Rev 11/12)

A. Basic considerations are as follows:

Contracting for Personal Services, in lieu of using civil service personnel, is permitted only if the standards outlined in GC § 19130 (a) or (b) are met. (See 2 and 3 below.)

1. Section 19130(a) permits contracting for personal services to achieve cost savings.

   a. Any State agency proposing to execute a contract based on cost savings to the State as justification for not using civil service personnel, must first notify the State Personnel Board of its intention (GC § 19131; 2 CCR section 547.69).

   b. Section 547.73 of the SPB regulations provide that the cost savings achieved shall be either 10% or more of the civil service costs of performance or shall be $50,000 in 1988 dollars and at least 5% of the civil service cost of performance. The 1988 dollar equivalent for the calendar year 2002 is at least $75,000.

   c. When submitting a GC §19130(a) contract to DGS/OLS for approval, the contracting department must include a copy of the Notice of Intent filed with the SPB and, if an employee organization requested review, a copy of SPB's decision.

2. GC § 19130(b) permits contracting for personal services when any of the requirements of GC § 19130(b) are met. (See also SPB Regulations 2 CCR § 547.60.)

   a. Contracts awarded on the basis of GC § 19130(b) are subject to review at the request of an employee organization representing State employees. For standards of review see PCC § 10337.

   b. SPB regulations require agencies, when submitting contracts let under GC § 19130(b) for DGS approval, to attach a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in GC § 19130(b).

   c. Departments must retain all data and information relevant to the contract and necessary for a specific application of the standards set forth in GC § 19130(b) in the event that the State Personnel Board's review is requested. For standards of review see PCC § 10337.

B. GC § 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment. Therefore, State law and policy require that each State agency's contract for services with individuals be executed and administered in a manner consistent with the establishment of an independent contractor status and not the creation of a civil service appointment.

C. GC § 19135 provides:

1. If a contract is disapproved by SPB or its delegate, a state agency shall immediately discontinue that contract unless ordered otherwise by SPB or its delegate. The state agency shall not circumvent or disregard SPB's action by

entering into another contract for the same or similar services or to continue services that were the subject of the contract disapproved by SPB or its delegate.

2. A state agency ordered to discontinue a contract shall serve notice of the discontinuation of the contract to the vendor within 15 days form the SPB's final action unless a different notice period is specified. A copy of the notice must also be served on the SPB and the employee organization that filed the contract challenge. Failure to serve this notice may be grounds for rejection of future contracts for the same or similar services that were discontinued.

D. Agencies must comply with applicable statutory and MOU requirements to provide notice to unions.

7.10 • CONFLICTS OF INTEREST
(Rev 11/12)

A. IS THERE A CONFLICT OF INTEREST? The phrase "conflict of interest" covers several subjects. It requires State agencies to closely examine who is doing the work under the contract. Agencies should develop a plan to review conflict of interest issues.

IS OR WAS THE CONTRACTOR A STATE EMPLOYEE? State agencies need to determine whether the contractor is a former or current State employee who is prohibited from contracting under the PCC §§10410 – 10411 or GC 87401 et seq.

1. CONSULTANT CONTRACTS: State agencies must determine whether a consultant's proposed duties create any reporting requirements under the Political Reform Act.

Under some circumstances, consultants may be required to report economic interests; may be prohibited from receiving gifts; and/or may be disqualified from participating in certain decisions. Covered consultants may include:

a. Individuals performing services acting as a consultant with authority to:

- Approve a rate, rule or regulation.
- Adopt or enforce a law.
- Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement.
- Authorize your agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval.
- Either grant agency approval to a contract that requires your agency's approval and to which your agency is a party; or grant approval to the specifications for such a contract.
- Grant agency approval to a plan, design, report, study, or similar item.
- Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision of the agency.

b. Individuals who serve, under contract, in a staff capacity with the agency and in that capacity participate in making a governmental decision as defined in 2 CCR 18702.2.

c. Individuals who perform the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under GC § 87302.

2. IS THERE A PROHIBITED FINANCIAL INTEREST PRESENT? State employees and certain consultants may be prohibited from participating in decisions or participating in "making contracts" if they have a financial interest. See GC §1090 et seq. and GC § 87400 et seq. Contracts made in violation of GC § 1090 are voidable (GC § 1092).

3. IS THERE A FOLLOW-ON CONTRACT INVOLVED? Consultants are prohibited from bidding on, or being awarded a contract that is required, suggested, or otherwise deemed appropriate in the end product of a previous consulting contract with them. See PCC § 10365.5 to determine applicability.

B. RESOURCES

1. Fair Political Practices Commission: see www.fppc.ca.gov

2. Examine your department's Conflict of Interest Code to determine the reporting requirements for covered consultants.

3. Ethics Training: On line training (DOJ), see: www.caag.state.ca.us/consultants/index.htm and www.caag.state.ca.us/ethics/index.htm.

4. Your departmental legal office.

C. AGENCY RESPONSIBILITY

1. Agencies/departments must indicate on the Std. 215 that they have evaluated the proposed contract for any potential conflict of interest issues.

2. It will be presumed that an affirmative ("Yes") indication means that the department has made a determination that there are no facts known or reasonably known that would disqualify the proposed contractor from legally performing the contract.

3. DGS reserves the right to conduct an independent review for conflicts of interest during the course of its standard contract review. However, this does not relieve agencies from performing their review per B.2., above.

7.15 • REPORTING OF CONTRACTING PRACTICES
(Rev 11/12)

A. PCC § 10111 requires DGS to provide a report on contracting activity. Accordingly, State agencies must report information about the following to DGS/OSDS annually by August 1 (using STD 810 forms):

1. Consulting services contracts (PCC § 10111(a));

2. Noncompetitively bid consulting services contracts (PCC § 10111(a)(4));

3. Consultant contracts (PCC § 10111(b));

4. Disabled Veterans Business Enterprise participation in contracts (PCC §§ 10111(d), 10111(e)(7));

5. Small business participation in contracts (PCC § 10111(e)); and

6. Contractor participation by race, ethnicity and gender, to the extent these characteristics have been voluntarily reported (PCC § 10111(f)).

B. In addition, State agencies are required to report information on the following:

1. Late payments (to DGS/OSDS, on an annual basis, within 90 calendar days following the end of each fiscal year (GC § 927.9);

2. Contract award STD 16 (to the Department of Fair Employment and Housing, within 10 days of contract award (GC § 12990(b); 2 CCR 8117.5); and

3. Independent Contractors (to the Employment Development Department, on Form DE 542, within 20 days of entering into a contract or contracts that in the aggregate equal or exceed $600 in any year (Unemployment Insurance Code § 1088.8(c)).

C. Chapter 12 of Volume II of the State Contracting Manual, as well as the Calendar of Reports (http://www.documents.dgs.ca.gov/pd/delegations/CalReportsChap13.pdf), contain information regarding forms to fill out in connection with reporting requirements and where to send the reports, as well as the dates by which reports must be submitted. The above lists are not meant to be exhaustive.

D. Post-evaluation of non-IT consulting contracts. (Also see SCM I, § 3.02.5.)

1. State agencies are required to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than $5,000 or more (PCC §§ 10367, 10369).

2. Post-evaluation forms must be prepared within 60 days of completion of the contract (PCC § 10369(d)).

3. Copies of all post-evaluations must be kept on file by the awarding State agency for a period of 36 months (PCC § 10369(e)).

4. One copy of an unsatisfactory evaluation must be placed in the State agency's contract file, and another copy must be sent to DGS/OLS (PCC § 10369(e)). A State agency's failure to send a negative (unsatisfactory) post-evaluation to DGS may be grounds for rejection of future contracts or modifications of that agency's exemptions (PCC § 10370).

5. An unsatisfactory evaluation must be sent to the contractor within 15 days. The contractor has the right, within 30 days of receipt of an unsatisfactory evaluation, to submit a written response that shall be filed both with the unsatisfactory evaluation in the State agency's contract file and DGS (PCC § 10369(f)).

7.20 • PROMPT PAYMENT
(Rev 11/12)

A. Prompt Payment Act and late payment penalty. Under GC § 927 et seq., State agencies which acquire property or services pursuant to a contract with a business must pay that business for each complete delivered item of property or services within 45 days from the date set forth in the contract or, if no payment date is specified in the contract, submit a correct claim schedule to the State Controller's Office (SCO) within 30 calendar days after receipt of the undisputed invoice. The SCO must pay the business within 15 days of receipt of the invoice from the State agency. The clock starts to run when an invoice is received by the department, not when it is received by the accounting office. DGS/OLS will not approve any contracts with payment periods longer than 45 days.

If payment is not made within the times specified above, an interest penalty fee at a rate of 1% above the Pooled Money Investment Account earning rate for the previous year must be paid. For non-small businesses, the penalty is waived if the penalty is $75.00 or less (GC § 927.6 and SAM § 8475).

B. Small business prompt payment. Additional provisions apply for certified small businesses (GC § 927.6(a) and SCM 1, chapter 8).

7.25 • PAYEE DATA RECORD
(Rev 11/12)

A. Each contractor who enters into a contract with the State must provide a taxpayer identification number; i.e., the Federal Employer Identification Number or the Social Security Number that has been assigned to the contractor by the Federal government. The taxpayer identification number is entered on the Payee Data Record – STD 204, which is to be retained in the awarding agency's accounting or business services office. A Taxpayer ID number is not required for a reimbursement contract.

B. The law requires that any agency requesting the disclosure of a social security number must advise the provider as follows:

1. Whether disclosure is mandatory or voluntary
2. By what statutory authority the number is solicited
3. The intended use of the number

7.29 • EQUIPMENT PURCHASES
(Rev 11/12)

A. When equipment is purchased or built with State funds as part of the contract the contract must clearly state that title to any equipment purchased or built with State funds will vest in the State. On termination of the contract, the State may:

1. Request such equipment be returned to the State, with costs incurred by the contractor for such return being reimbursed by the State.
2. Authorize the continued use of such equipment for work to be performed under a different agreement or contract.

B. The State may, at its option, repair any damage or replace any lost or stolen items and deduct the cost thereof from the contractor's invoice to the State, or require the contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the State with no expense to the State. In the event of theft, a report must be filed immediately with the CHP (SAM § 8643).

C. The contractor should maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of a contract. The inventory record of each piece of such equipment should include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of $5,000 or more. In addition, theft-sensitive items of equipment costing less than $5,000 should be inventoried. A copy of the inventory record must be submitted to the State on request by the State (SAM § 8600).

D. Procedures for the handling and accounting of equipment through contracts are the same as that for handling through regular State purchasing.

7.30 • CONTRACT BUDGETS
(Rev 3/03)

A. The following items should be included and all unit rates must be extended and totaled:

1. Personal service costs showing individual or position rates per unit of time;
2. Fringe benefits cost citing actual benefits or a percentage of personal services cost;
3. Operating expenses including rent and supplies;
4. Equipment costs specifying equipment to be bought and the disposition of equipment at the end of the contract;
5. Travel expenses and per diem rates set at the rate specified by CalHR for similar employees or verification supplied that such rates are not available to the contractor;
6. Overhead;
7. Other specific breakdown required.

B. A consultant services contract must contain the above items to meet requirements of PCC § 10371(c).

7.31 • AVAILABILITY OF FUNDS
(Rev 3/03)

A. If the contract funding spans more than one fiscal year's appropriation, the contractor must be advised in writing as follows:

This contract is valid and enforceable only if sufficient funds are made available by the Budget Act of the appropriate fiscal year for the purposes of this program. In addition, this contract is subject to any additional restriction, limitations or conditions enacted by the Legislature, which may affect the provisions, terms, or funding of this contract in any manner.

B. Services should be paid for out of the funding for the fiscal year during which they are rendered.

7.32 • ADVANCE PAYMENTS

Advance payments by the State are permitted only when specifically authorized by statute and should be made only when necessary. Contracts or agreements containing provisions for advance payments by the State should preferably provide for small periodic payments rather than the total contract price or lump-sum advances (GC §§ 11256 – 11263, 11019 and 12425).

7.33 • PROGRESS PAYMENTS
(Rev 3/03)

A. A progress payment is a partial payment for a portion or segment of the work needed to complete a task.

B. Not less than 10% of the contract amount shall be withheld pending final completion of the contract. If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task (PCC § 10346).

Note: Separate and distinct tasks do not usually occur when the contract is for a finished project report or plan. To determine whether a particular task is separate and distinct you must decide if later tasks build on it. For example, if the contract requires the writing of a manual the completion of each chapter is not a separate and distinct task. The 10% withhold should not be paid until the manual is completed satisfactorily.

C. No State agency shall make progress payments on a contract unless it first has established procedures approved by DGS/OLS, to ensure that the work or services contracted are being delivered in accordance with the contract (PCC § 10346).

D. Recommended policy for State agencies:

1. Discourage progress payments whenever possible.
2. Do not allow progress payments on contracts of less than three (3) months.
3. If progress payments are to be made, they should be made not more frequently than monthly in arrears or at clearly identifiable stages of progress, based upon written progress reports submitted with the contractor's invoices.
4. Progress payments should be based on at least equivalent services rendered. (Hours worked should not be the sole basis for progress payments.)
5. Progress payments shall not be made in advance of services rendered.
6. Contracts shall require a withhold of 10% of each progress payment either pending satisfactory completion of the contract or completion of a separate and distinct task.

Note: If the contract is competitively bid this term should be noted in the bid document.

7. Establish a procedure to indicate the amount to be withheld on invoices.
8. Establish a procedure to obtain the amounts withheld.

7.34 • CONTRACT PAYMENT BY STATE PURCHASE CARD, CAL-CARD **(Rev 11/12)**

Cal-Card is a payment mechanism only. It shall not be used to circumvent service contracting rules.

If you intend to use Cal-Card as a payment mechanism, place this information in your solicitation document and contract.

CAL-Card Payment Provisions are required to follow this basic format:

"*CAL-Card PAYMENT PROVISIONS"*:

Upon receipt of an itemized invoice, in arrears, stating the goods/services provided, time period covered, detailed costs and the contract number, the Contract Manager will notify the Contractor of payment authorization. The Contractor will provide the Contract Manager a copy of the itemized, transaction receipt showing payment was received, the invoice, the contract number and the CAL-Card card verification number charged.

Contractor to send invoices to:

Name, mailing address and phone number of the Contract Manager/Cardholder.

Name, mailing address and phone number of Contractor payment authorization contact.

Additional information regarding the CAL-Card Program is located on the DGS/PD website.

Questions regarding the CAL-Card Program may be directed to the Statewide CAL-Card Contract Administrator, Department of General Services, Procurement Division, 707 Third Street, 2nd Floor, West Sacramento, CA 95605, Telephone (916) 375-4579.

7.40 • INSURANCE REQUIREMENTS
(Rev 11/12)

A. For most types of services contracts, departments retain responsibility for assessing the need for and the amount of insurance, obtaining proof of insurance, and including appropriate solicitation and contract language as applicable.

B. Contracts for hazardous activities are required to have insurance (See SCM 1, section 3.12). Insurance for hazardous activities shall meet the following requirements:

1. The insurance must be issued by an insurance company acceptable to DGS/ORIM or be provided through partial or total self-insurance acceptable to DGS/ORIM.

2. The contractor must furnish to the State a certificate of insurance showing that a limit of liability of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined, is presently in effect for the contractor.

Note: $1,000,000 per occurrence is the minimum acceptable limit of insurance; higher limits should be required in cases of higher-than-usual risks.

3. At a minimum, the certificate of insurance shall show that the contractor is protected through commercial general liability insurance. Additional insurance may be required. Please refer to the following list of examples:

   - Automobile Liability – if motor vehicles are used in the performance of the work.
   - Aircraft Liability – if an aircraft is used in the performance of the work.
   - Crime Coverage – if work involves handling of State money or securities.
   - Pollution Liability – if work involves the handling of hazardous waste or the application of chemicals.
   - Professional Liability – if work is of a professional nature such as physicians, architects, engineers accountants or consultants.
   - Watercraft Liability – if watercraft is used in the performance of the work.
   - Workers' Compensation – a statutory requirement for contractors with employees.

4. Contractor is responsible to notify the State within 5 business days of any cancellation, non-renewal or material change that affects required insurance coverage.

5. The policy(ies) must provide additional insurance language as follows: The State of California, its officers, agents and employees are included as additional insured, but only with respect to work performed for the State of California under the contract. The additional insured endorsement must accompany the certificate of insurance.

6. The certificate of insurance shall meet such additional standards as may be determined by the contracting State agency, either independently or in consultation with DGS/ORIM, as necessary for protection of the State.

Note: DGS/ORIM is available to provide additional consultation on all insurance and liability matters.

7.45 • CONTRACTS WITH NO DOLLAR AMOUNT

In agreements in which only in kind services are used and in which the performance is other than monetary, the consideration must be valued on a monetary basis for the purpose of determining whether DGS/OLS approval is required.

7.50 • AUDITS

(Rev 11/12)

A. Audit Requirement: All contracts for expenditure of public funds in excess of $10,000 must contain a clause stating that the contract is subject to audit by the State Auditor (GC § 8546.7). All contracts containing participation goals (usually not in contracts under $10,000) as discussed in SCM 1, chapter 8 must contain an audit clause (CCR § 1896.75). Also, federally funded contracts are often subject to audit in accordance with Federal regulations. In addition, the awarding agency has the general responsibility for determining compliance with the terms and conditions of its contracts and may have need of contractual audit authority.

B. Records Keeping and Retention: To facilitate being able to conduct an audit, if needed, the contractor must agree to maintain the records involved with the performance of the contract and to make those records reasonably available for audit. The minimum period of time for retention of contract records is three (3) years after final payment of the contract (GC § 8546.7). In the event of a contract performance or payment dispute, this minimum is extended until the dispute is resolved. The awarding agency should not impose a longer records retention requirement or more detailed record keeping requirements unless there is a specific need to do so. If there is a need for longer retention or more detailed records, a clause covering these subjects should be tailored for the contract in a fashion that does not conflict with the clauses below. The Attorney General recommends a record retention of seven (7) years.

C. Contract Audit and General Records Keeping Clause: The following clause meets the above requirements and must be included in all contracts of $10,000 or more regardless of the form of contract used. This clause should be sufficient to meet most State and Federal needs. If your agency has a need for a different standard audit clause, the clause should be submitted to DGS/OLS for review with an explanation as to the necessity of the differences.

"Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement (GC § 8546.7, PCC § 10115 et seq., CCR Title 2, §1896). Contractor shall comply with the above and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC § 10115.10."

7.55 • DRUG-FREE WORKPLACE ACT OF 1990
(Rev 11/12)

The Drug-Free Workplace Act of 1990 (GC § 8359, et seq.) requires State contractors and grantees to certify that they will provide a drug-free workplace.

The certification language is set forth in State standard form STD 21.

Alternatively, the required certification appears in the State's standardized Contractor Certification Clauses (CCCs) which are incorporated by reference in the State's standard General Terms and Conditions (GTCs).

7.60 • EQUIPMENT RENTAL AGREEMENTS

A. Unless it has specific statutory authority, a State agency cannot agree to:

1. Indemnify a contractor;
2. Assume responsibility for matters beyond its control;
3. Agree to make payments in advance;
4. Accept any other provision creating a contingent liability against the State; or
5. Agree to obtain insurance to protect the contractor.

B. The contract must clearly provide that the State does not have responsibility for loss or damage to the rented equipment arising from causes beyond the control of the State. Any provision obligating the State to return the equipment in good condition, subject to reasonable wear and tear, also must except or exclude loss or damage arising from causes beyond the control of the State. The contract must clearly restrict the State's responsibility for repairs and liability for damage or loss to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

C. If the State does not elect to maintain the equipment, the contract will place the obligation on the contractor, as lessor, to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification, with a clear right in the State to terminate or cease paying rent should the contractor fail to maintain the equipment properly. For this purpose, the contractor's representatives shall be given full and adequate access to the equipment at reasonable times.

D. Personal property taxes are not generally reimbursed when leasing equipment (See SAM § 8736).

E. For the purpose of determining whether contracts containing renewal options are subject to the approval of DGS, the total cost and term of the rental shall be computed by including the cost and term of all renewal options included in the contract.

7.61 • PURCHASE OPTIONS
(Rev 10/98)

A. To avoid paying hidden interest and carrying charges, the State agency should consider purchasing the equipment outright rather than entering into an "installment purchase" or "rental agreement with option to purchase." Funding problems should be discussed with DOF budget staff.

B. Approval by DGS of the rental agreement does not include approval for the exercise of the option to purchase. Any exercise of the option and purchase of the equipment must

be processed through DGS, Procurement Division, in accordance with the procedures set forth in SAM § 3500, et seq.

C. Agencies shall not circumvent State purchasing policies through use of contracts containing options to purchase.

D. Whether an equipment rental transaction, which includes an option to purchase, should be processed in accordance with the SCM 1 or should be processed in accordance with the "Purchases" chapter of SAM § 3500 et seq., is dependent upon the acquisition of title to the equipment.

1. If the contract provides for automatic transfer of title to the State upon completion of the so-called "rental" payments, or upon payment of a nominal consideration after completion of such "rental" payment, the transaction would be more in the nature of a "conditional sale" or "installment purchase" rather than a "rental of equipment" and should be processed in accordance with SAM § 3500 et seq.

2. If the rental payments will be the same whether or not the lessor's offered option to purchase is included in the rental agreement, and the State agency includes the option as an unobjectionable and possibly desirable feature, the contract may be processed in accordance with the SCM.

7.62 • LEASE/PURCHASE ANALYSIS FOR EQUIPMENT

A. A lease/purchase analysis shall be prepared (See SAM § 3700) for each contract to lease equipment where the contract exceeds $1,000 or the duration of the lease exceeds three (3) months. This requirement does not apply to contracts for equipment rented in accordance with PCC § 10108, from other State agencies, or equipment obtained under a Master Rental Agreement.

B. A Lease/Purchase Analysis is required as follows:

1. Dollar amount exceeds $1,000 or the duration of the lease exceeds three (3) months. A copy of the analysis and the contract or amendment shall be retained by the agency.

2. Submit a copy of the analysis with the contract or amendment to DGS/OLS for approval when approval is required based on the agency's delegated approval amount.

C. If the lease/purchase analysis indicates that it is more economical to purchase, it will be necessary to include a justification explaining how it is in the State's best interest that the equipment be leased. A lease/purchase analysis based on a "zero" salvage value of the equipment will normally be acceptable only when mechanical useful life and program useful life are the same. When bids are obtained, prices for both leasing and purchasing will be secured to facilitate the making of the analysis.

D. The director of the requesting department should give prior concurrence to proposals in which the lease/purchase analysis indicates purchase but the requesting unit proposes to lease.

7.65 • NONDISCRIMINATION PROGRAM

(Rev 11/12)

A. All employers who are, or wish to become, contractors with the State must develop and implement a nondiscrimination program as defined in Title 2, CCR § 8104; unless specifically exempted pursuant to Title 2, CCR § 8115, which includes contracts under $5,000 and contracts with licensed Community Based Rehabilitation Program (CRP) (See GC §§ 12935(a) and 12990(d); and Title 2, CCR § 8103).

B. A contractor shall include the nondiscrimination clause in its contracts and with all subcontracts to perform work under the contract, either directly or by incorporation by reference. Any such incorporation by reference shall be specific and prominent (See Title 2, CCR § 8103; and GC §§ 12935(a) and 12990(d)). Applicable contract language appears in the State's standard General Terms and Conditions (GTCs).

C. If there is no statement of compliance with the bid or proposal, the bid is unresponsive.

D. Nondiscrimination Certification - Any bid, proposal, or offer for a contract which is submitted by a contractor who has been decertified from contracting with the State by DFEH, shall be deemed to be nonresponsive and shall be rejected. Refer to the California Notice Register for a list of decertified contractors. (Published by the Office of Administrative Law and available through the Office of State Printing.)

7.70 • RECYCLED PRODUCT CONTENT
(Rev 11/12)

A. Effective September 1, 1999, per administrative policy, the following service contracts must contain language requiring the use of post-consumer recycled content products:

1. Janitorial contracts must contain terms requiring the use of janitorial supplies containing post-consumer recycled paper products only;
2. Printing contracts must contain terms requiring post-consumer recycled paper only, unless the proposed printing job cannot be done on recycled paper;

Contracts included in the above categories, subject to DGS/OLS approval, must contain the required terms or they will not be approved.

B. Contractors must certify in writing under penalty of perjury the minimum percentage, or the exact percentage, of post-consumer material in the product, materials, goods, or supplies provided under the agreement (PCC § 12205(a)-(b)) regardless of whether the product meets the requirements of PCC section 12209. Applicable certification language appears in the State's General Terms and Conditions (GTCs).

7.80 • MULTIPLE YEAR CONTRACTS
(Rev 11/12)

A. Contracts for services should normally not exceed two (2) years, absent a substantial written justification for a longer term, based on business reasons. The written justification should be stated on the STD 215 #25 (or on an attachment thereto).

B. Approval by DGS/OLS must be obtained prior to releasing any RFP or IFB for a contract term beyond two (2) years. A justifiable business reason must support such a request for approval. Prior approval for multiple year contracts is not required for contracts not subject to DGS/OLS review. Prior approval is not required on a 5-year term for elevator maintenance contracts (see SCM volume 1, section 3.26).

Agencies who wish to get prior approval from DGS/OLS should contact the attorney assigned to their department on how to proceed. Failure to obtain prior approval from DGS/OLS may be cause for non-approval of the contract.

Approval of a multi-year term request does not constitute DGS/OLS approval of the actual contract or amendment document, it is merely approval to use a multiyear term.

C. If the additional option years are considered in the method for selecting the contractor, an agency will not need to get an NCB exemption when amending the contract to exercise the option years so long as all terms, conditions, and costs are those evaluated in the bidding procedure. Contracts with option years are multiyear contracts, therefore

advance approval is required for the multiyear term length (e.g. 2+1 = 3-year term, so preapproval is required for the 2+1) prior to going out to bid.

D. For services such as fiscal audit or quality audit, it is desirable to obtain a different contractor after three (3) years.

7.85 ● CONTRACT TERMINATION CLAUSES

(Rev 11/12)

A. Agencies should carefully consider the types of termination clauses to be used in each contract.

1. TERMINATION FOR CAUSE. The standard language in the GTCs available on the DGS/OLS webpage is satisfactory for a termination for cause. Agencies should not change or modify this language due to the possibility of accidentally changing a legal requirement. If agencies wish to supplement for cause termination language by adding their own provisions, they should consult their own counsel and their DGS/OLS attorney in advance.

2. TERMINATION WITHOUT CAUSE. It is recommended that contracts contain a termination clause to allow the State to terminate the contract, without cause, with advance written notice provided to the contractor.

7.86 ● INDEMNIFICATION

(New 11/12)

A. State agencies cannot indemnify another party unless there is express statutory authority to do so and only to the extent necessary to obtain the services. Any such code authority must be identified in the contract file along with a written justification of the legal and business analysis supporting use of the provision under the circumstances. Agencies are advised to obtain preapproval of such clauses from DGS/OLS, rather than risk nonapproval of contracts.

7.90 ● BREACH OF CONFIDENTIALITY BY CONTRACTOR

(New 3/03)

Per PCC § 10426, State agencies shall specifically identify in a consulting contract, or in an IT contract, any information that is considered to be proprietary. During performance of the agreement, the contracting State agency shall provide written notification of information identified as proprietary subsequent to execution of the contract.

Intentional disclosure of information designated by the State as proprietary during negotiation, execution or performance of a consulting services contract, is unlawful and punishable as a misdemeanor.

8. BUSINESS PARTICIPATION PROGRAM REQUIREMENTS

8.00 • INTRODUCTION

(Rev 1/01)

This chapter discusses programs established to encourage participation in State contracting by various segments of the business community. One or more of these programs may be involved in a specific contracting opportunity. Agency staff involved with contract preparation should be familiar with these programs such that they can explain the program and contracting agency discretion decisions to bidders. Questions about these programs should be addressed to:

The Department of General Services, Procurement Division (See Table 8.1)
Internet Address: www.dgs.ca.gov/pd

Offices listed in Table 8.1 can be contacted through the Procurement Division web site.

8.01 • TABLE OF CONTENTS

(Rev 3/03)

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8.02 • PROCUREMENT DIVISION RESPONSIBILITY AND LEGAL REFERENCES
(Rev 11/12)

Table 8.1

Small Business and Disabled Veteran Business Enterprise (DVBE) Participation Program		
Function or Service	Office/Unit	Authority
Act as a resource. Disseminate policies and procedures.	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	PCC § 10115 et seq.; 2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98. Military and Veterans Code § 999.7.
Coordinate reporting	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	PCC § 10115 et seq.; 2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98.
Report Compliance Violations	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98.
Certification	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	California Military and Veterans Code § 999 et. seq. PCC § 10115 et seq.; 2 CCR §§ 1896.60 -1896.67; 2 CCR §§ 1896.90 - 1896.98.
Review and approve DVBE Utilization Plans	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	PCC § 10115.15
Administer the 5 % Small Business Preference Small Business issues and questions; Outreach Program	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	GC § 14835 et seq.; 2 CCR § 1896 et seq.
Small Business Advocate Program	Office of Small Business & DVBE Certification (DGS/OSDS) (916) 375-4940	GC §§ 14835, 14847
Ensure Prompt Payment to Small Businesses	Purchasing Authority Management Section (916) 375-4351	GC § 927 et seq.
Target Area Contract Preference Act (TACPA)		
Function or Service	Office/Unit	Authority
Administer the program and serve as a resource.	Dispute Resolution & Preference Program Section (916) 375-4609	GC § 4530 et seq.; 2 CCR §§ 1896.30 - 1896.41
Enterprise Zone Act (EZA)		
Function or Service	Office/Unit	Authority

Administer the program and serve as a resource	Dispute/Resolution & Preference Program Section (916) 375-4609	GC § 7080 et seq.
Local Agency Military Base Recovery Area Act (LAMBRA)		
Function or Service	Office/Unit	Authority
Administer the program and serve as a resource	Dispute Resolution & Preference Program Section (916) 375-4609	GC § 7118

8.10 • INTRODUCTION TO DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION PROGRAM

(Rev 11/12)

The California Disabled Veteran Business Enterprise Program (Mil & Vet Code § 999, et seq.) requires that agencies take all practical actions necessary to meet or exceed a Disabled Veteran Business Enterprise (DVBE) goal of 3% of the agency's overall contract dollars.

An agency has the discretion to apply this goal to a specific contract, but is expected to meet the goal for the total of its contracting each year. State agencies must report annually the level of participation achieved. Should full participation not be attained, agencies must explain why and identify efforts planned to achieve the goal in the future.

8.11 • DVBE REGULATIONS

(Rev 3/98)

The law requires each agency to adopt regulations to implement the program. However, to avoid duplication of effort, agencies have the option to adopt the regulations developed by DGS. The summarized policies and procedures presented in this chapter are based on those regulations. If agency personnel have questions or issues to be resolved, they should refer to their agency's regulations or to the DGS regulations as applicable.

8.12 • WHEN TO APPLY THE DVBE GOAL TO A CONTRACT

(Rev 11/12)

A. Agencies should develop a plan or strategy to ensure goal achievement for their overall departmental contract program.

1. Unless statutorily exempt, all contracts, regardless of amount, are subject to the DVBE requirement. Agencies may waive the requirement for an individual contract however; agencies are still expected to meet the overall DVBE goal attainment at the end of each year. When an agency decides to waive the DVBE requirement, this must be noted in the solicitation.
2. Awarding agencies have sole discretion to exempt contracts from the DVBE participation requirements. In reviewing contracts, DGS services will rely on the awarding agency's decision to exempt contracts.
3. Contracts with government agencies, including public colleges and universities, and joint power authorities, are exempt from the DVBE participation requirements.
4. Additional information regarding DVBE participation requirements can be found in SCM 2, chapter 3.

8.13 • BIDDERS' RESPONSE TO DVBE REQUIREMENTS IN A SOLICITATION
(Rev 11/12)

A. When the DVBE participation requirements have been included in the IFB or RFP, bidders must commit to meeting or exceeding the minimum DVBE participation goal.

B. Meeting the minimum participation goal

There are two (2) methods of meeting the goal. If a bidder is a:

1. Non-DVBE: Commit to use DVBEs for the amount stated in the bid document; or
2. DVBE: Commit to perform not less than the amount stated in the bid document with its own forces or in combination with other DVBEs.

8.14 • QUALIFYING AS A DVBE
(Rev 11/12)

A. Disabled Veteran Business Enterprise

1. Disabled Veteran: A veteran of the U.S. military, naval, or air service, with a service-connected disability of 10% or more, and is a resident of California.
2. Disabled Veteran Business Enterprise: A business concern certified by DGS/OSDS as meeting all of the following requirements:

   a. It is a sole proprietorship at least 51% owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51% of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51% of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51% of the joint venture's management and control and earnings are held by one or more disabled veterans.

   b. The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.

   c. It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

   d. It is a contractor, subcontractor or supplier that performs a "commercially useful function" in providing services or goods that contribute to the fulfillment of the contract requirements. "Commercially useful function" is defined as a person or entity doing all of the following: 1) is responsible for the execution of a distinct element of the work of the contract; 2) carries out the obligation by actually performing, managing or supervising the work involved; 3) performs work that is normal for its business services and functions; and 4) is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry standards.

e. It is not a “commercially useful function” if the DVBEs role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DVBE participation. (Mil. & Vet. Code § 999(b)(5)(B))

Note: The State Treasurer’s Office certifies DVBEs for contracts for professional bond services.

B. Control

As applied to “ownership (or management) and control” of DVBE means the DVBE owner(s) and or DVBE manager(s) must demonstrate expertise specifically in the firm’s field of operation in controlling the overall destiny and the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm’s field of operations is not sufficient to establish control. The control is comprised of two parts: Managerial and Operational. (For more detail see 2 CCR § 1896.61(f).)

C. Certification

DVBEs must be certified by DGS/OSDS. DVBE status can be verified by accessing the DGS/OSDS web page.

Note: By regulation, DVBEs have until 5:00 p.m. on the bid due date to submit a complete certification application. If certified they have eligibility. However, the firm may not have a copy of their DGS/OSDS certification letter and should state that their certification is pending. Verification can then be made by the agency with DGS/OSDS.

8.15 • DVBE BID INFORMATION

(Rev 11/12)

A. Once the decision has been made to include the DVBE participation requirements in the contract, detailed DVBE specifications must be included in the IFB/RFP. Most agencies have developed standard DVBE specifications. If an agency does not have such specifications or if there is any question about the sufficiency of the specifications used by the agency, the agency should consult with Procurement division.

B. In evaluating program compliance by the bidder, the awarding agency must review the activities to be performed by any DVBEs proposed to participate in the contract to assure that the DVBE performs a “commercially useful function” as defined in SCM 1, section 8.14 A. 2. (d)(e). For equipment rental bids, special rules apply to DVBEs which rent equipment or DVBEs which are found to be “equipment brokers” within the meaning of Mil. & Vet. Code § 999.2(b)(3).

C. Based on the evaluation, the awarding agency will determine whether the bidder has complied with the DVBE participation program requirements. If a bidder fails to meet the participation program requirements, the bidder must be deemed non-responsive and is not eligible for the contract award.

Note: A common mistake bidders make is to state that no subcontractors are needed and that goals are not applicable, offering that all the work can be done by the bidder with its own resources. Bidders should be warned that this is not an option if their bid is to be deemed responsive.

8.16 • MANAGEMENT OF DVBE CONTRACT REQUIREMENTS
(Rev 11/12)

A. Compliance

1. The awarding agency shall establish a method of monitoring adherence to the goals. Examples of monitoring methods include:

   a. Random verification of contacts made to solicit certified DVBE's.

   b. Review of job related bid evaluation criteria and how it was applied to subcontractor/supplier bids.

   c. Contacting DVBEs listed for participation upon award of contract and during performance to ensure their participation.

   d. Post award audits.

2. Awarding agencies must investigate and report the following program violations to the DGS-OSDS. The DGS/OSDS may suspend the violator and will forward the investigative report to the Attorney General for possible action. It is unlawful for a person or firm to:

   a. Knowingly and with intent to defraud, fraudulently obtain or retain certification as a DVBE.

   b. Willfully and knowingly make a false statement with the intent to defraud, to influence certification of any entity as a DVBE.

   c. Willfully and knowingly obstruct an investigation regarding DVBE certification.

   d. Knowingly and with intent to defraud, obtaining or attempting to obtain public moneys to which the person is not entitled under the DVBE Participation Program.

   e. Knowingly and with intent to defraud, fraudulently represent DVBE participation in order to obtain or retain a bid preference or State contract.

   f. Willfully and knowingly make a statement, declaration or other document, which is false as to any material matter.

   g. Willfully and knowingly aid or assist in the preparation or presentation of a false document.

   h. Willfully and knowingly fail to file any declaration or notice required by Mil. & Vet. Code § 999.2.

   i. Establish or cooperate in the establishment of, or exercise control over, a firm found to have violated the above. Violators are guilty of a misdemeanor and may also be liable for a civil penalty. Additionally, violators shall be suspended from bidding on, or participating as a contractor, subcontractor, or supplier in any State contract or project.

   Prior to reporting an alleged violation of PCC § 10115.10 to the DGS/OSDS awarding agencies must investigate the alleged violation and must prepare a written report of their findings. The written report must also include a recommendation for action to be taken commensurate with the awarding agency's findings and must be submitted to the DGS/OSDS within 60 days of notification to the awarding agency of the alleged violation.

j. For contracts with DVBE goals, agencies should include the following language to assist in verifying compliance:

"Contractor agrees to provide verification, in a form agreed to by the State,

that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract, or with any subsequent amendment."

B. Substitution of Subcontractors (Mil. & Vet's § 999.5(e))

1. After award of a contract, the successful bidder/contractor must use the DVBE subcontractors and/or suppliers proposed in the bid or proposal to the State unless a substitution is requested. The bidder/contractor must request the substitution in writing to the awarding agency and both the awarding agency and DGS/OSDS must approve the substitution in writing prior to commencement of any work by the proposed subcontractor/supplier. At a minimum, the substitution request must include:

   a. A written explanation of the reason for the substitution.

   b. A written description of the business enterprise to be substituted, including the DVBE certification status of the firm.

   c. A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substitution business will perform.

2. The California Code of Regulations (CCR), Title 2, section 1896.64(c) and Public Contract Code section 4107 (for public works) provide the current requirements for awarding departments to approve the substitution of a DVBE subcontractor. Departments shall follow the processes set forth in 2 CCR § 1896.64(c) and PCC § 4107 (for public works) when a prime contractor requests the substitution of a DVBE subcontractor with the added provisions that:

   a. Only another DVBE subcontractor shall be considered to replace a DVBE subcontractor; and

   b. The awarding department shall obtain final approval to replace a DVBE subcontractor from DGS/OSDS.

3. The request for substitution of DVBE and the awarding agency's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (PCC §§ 4100, et seq.) or any other contract requirements relating to substitution of subcontractors.

4. Prior to the approval of the prime contractor's request for substitution, the awarding agency, or its duly authorized officer, must give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor.

5. The listed subcontractor who has been so notified will have five (5) working days within which to submit written objections to the substitution of the awarding authority. Failure to file these written objections will constitute the listed subcontractor's consent to the substitution.

6. If written objections are filed, the awarding authority shall give at least five (5) working days' notice in writing to the listed subcontractor of a hearing by the awarding agency on the prime contractor's request for substitution.

C. Contract Completion Report

Upon completion of an awarded contract for which a commitment to achieve DVBE participation was made, an awarding department shall require the prime contractor that entered into a subcontract with a DVBE to certify to the awarding department all of the following: (1) the total amount the prime contract received under the contract; (2) the name and address of the DVBE that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; (4) that all payment under the contract have been made to the DVBE. (See Mil. & Vets Code §999.5(d).)

D. Audit

The DVBE regulations require inclusion of an audit clause in the contracts sufficient to permit audit for compliance with DVBE requirements. The audit clause contained in SCM 1, section 7.50 meets this requirement.

8.17 • DVBE INCENTIVE PROGRAM

(New 11/12)

A. All competitive solicitations must contain a DVBE incentive if the solicitation includes the DVBE program requirement, unless an exemption for the incentive is approved. Competitive solicitations exempted from the DVBE program requirement may include the DVBE incentive.

B. The DVBE incentive is an incentive between 1% and 5%.

1. The incentive is applied during the evaluation process for responsive bids from responsible bidders proposing the percentage(s) of DVBE participation for the incentive(s) specified in the solicitation.

2. The solicitation document may provide an incentive scale providing a range of incentive(s) (1% to 5%) for bidders offering a specified participation level(s).

3. A department's highest ranking executive officer or his/her designee may exempt a solicitation from the incentive if, on the release date, the department has met or exceeded the 3% DVBE goal in two (2) of the three (3) previous years according to the most current published DGS annual reports. A copy of the written exemption should be included with the contract documents when submitted for approval by DGS/OLS.

C. Low price awards:

1. The minimum incentive is 1% with or without a cap.

2. Use of a higher incentive percentage not to exceed 5% is allowed for a solicitation based upon the agency's need to meet its DVBE program goal.

3. The incentive is applied by reducing the bid price by the amount of incentive as computed from the lowest responsive bid price submitted by a responsible bidder.

4. This incentive is for evaluation purposes only.

5. Application of the incentive shall not displace an award to a small business with a non-small business.

6. A department's highest ranking executive officer or his/her designee may place a cap on identified solicitations of not less than $100,000 for the incentive and/or $100,000 for all combined incentives and preferences. Reference to the cap must be included in the solicitation document and documentation of the *executive officer/designee's written approval of the cap should be included with* the contract documents when submitted for approval by DGS/OLS.

D. High score awards:

1. The incentive shall be between 1% and 5% of the total possible available points, not including points for socioeconomic incentives or preferences.
2. The incentive points are included in the sum of non-cost points.
3. The incentive points cannot be used to achieve any applicable minimum point requirements.

E. DGS regulations are located at 2 CCR §1896.98.

8.18 • ANNUAL REPORT OF DVBE PARTICIPATION
(Renumbered and Rev 11/12)

A. Due Date and General Content

Public Contract Code section 10111 requires that DGS publish an annual statewide contracting activity report that consolidates information for various categories, including DVBE usage. To assist in this effort, all agencies must provide their reports annually to DGS/OSDS Reports Coordinator no later than close of business on August 1 of each year. Additional information regarding annual reporting can be found on the DGS/OSDS website.

8.20 • CERTIFIED SMALL AND MICROBUSINESS PROGRAM
(Rev 11/12)

A. Definition

Small business means a business certified by DGS/OSDS in which (GC § 14837 (d)(1); 2 CCR 1896.12(a)):

1. The principal office is located in California.
2. The officers are domiciled in California.
3. The business is independently owned and operated.
4. The business, with any affiliates, is not dominant in its field of operation.
5. And either:
   a. The business, together with any affiliates has 100 or fewer employees and average annual gross receipts of $14,000,000 (14 million) or less over the previous three (3) years, or
   b. The business is a manufacturer with 100 or fewer employees.

B. Microbusiness means a small business certified by DGS/OSDS in which (GC § 14837 (d)(2); 2 CCR 1896.12(b)):

1. The principal office is located in California.
2. The officers are domiciled in California.
3. The business is independently owned and operated.

4. The business, with any affiliates, is not dominant in its field of operation.

5. And either:

   a. The business, together with any affiliates, has 25 or fewer employees and average annual gross receipts of $3,500,000 (3.5 million) or less over the previous three (3) years, or

   b. The business is a manufacturer with 25 or fewer employees.

C. A certified small business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a "commercially useful function" defined as follows: 1) is responsible for the execution of a distinct element of the work of the contract; 2) carries out its obligation by actually performing, managing or supervising the work involved; 3) performs work that is normal for its business services and functions; and 4) is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. A small or microbusiness contractor, subcontractor or supplier is not performing a "commercially useful function" if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation (GC § 14837(d)(4)).

D. Eligibility

A business must be formally certified by DGS/OSDS to be considered for the small business or microbusiness preference.

E. Benefits of Certification

A certified small business or microbusiness is entitled to claim a 5% preference in bidding on State contracts as explained in SCM 1, section 8.21. Certified small business or microbusinesses are also entitled to interest penalties paid by the State for late payment of invoices. The penalties are greater for certified small business or microbusinesses than for non-certified businesses.

F. Nonprofit Veteran Service Agency Small Business Certification

Nonprofit Veteran Service Agencies (NVSA) can qualify for small business certification through the DGS/OSDS if the NVSA meets the requirements of Mil. & Vet. Code § 999.50, et seq. Upon certification, an SB/NVSA participating as a prime bidder is eligible for the 5% small business bidding preference if they have submitted a timely, responsive bid and have been determined to be a responsible bidder. An SB/NVSA is not subject to the same standards as other certified small businesses. SB/NVSA standards are identified in Mil. & Vet. Code § 999.51(a)(3).

G. Each State agency, with an annual contracting program of $100,000 or more, must appoint a State Contracting Small Business Advocate to act as a liaison for small business (GC §14846).

H. Upon completion of a contract for which a commitment to achieve SB or DVBE participation was made, the contractor shall report to the awarding department the actual percentage of SB and DVBE participation that was achieved. (GC § 14841; GTCs.)

8.21 • SMALL BUSINESS PREFERENCE PROGRAM
(Rev 11/12)

A. How the Preference Works

1. Certified small businesses or microbusinesses can claim the 5% preference when submitting a bid on a State contract. A non-small business may receive a

preference of 5% if the business commits to subcontract at least 25% of its net bid price with one or more small businesses or microbusinesses. The 5% preference is used only for computation purposes, to determine the winning bidder and does not alter the amounts of the resulting contract. The value of the preference is limited to $50,000 when a contract award is based upon award to the lowest compliant bid. A contract awarded on the basis of the 5% preference is awarded to the small business, microbusiness or non-small business for the actual amount of its bid.

2. An example of the method used in determining the successful bidder for an IFB, or the cost component of an RFP Primary follows:

Bidder	Bid Amount	Bid after preference	
One	$30,750	$30,750	Claims small business or microbusiness status but is not a certified small business or microbusiness; does not claim small business subcontractor participation
Two	$28,975	$28,975	Does not claim to be a small business or microbusiness, and does not claim subcontractor participation
Three	$29,520	$28,071.25	Claims non-small business subcontractor preference and does commit to 25% certified small business or microbusiness participation
Four	$29,870	$28,421.25	Claims small business or microbusiness status and is a certified small business or micro-business

For evaluation purposes, 5% of the low responsible bid of $28,975 would be $1,448.75 ($28,975 x .05); that amount would be subtracted from the bids of Three (for a bid after preference total of $28,071.25) and Four (for a bid after preference total of $28,421.25). The contract would be awarded to bidder Four for $29,870, as the non-small business subcontractor preference cannot remove an award from a certified small business or microbusiness.

3. The method used in determining the successful bidder for an RFP Secondary follows:

   a. Calculate the “earned” score for all bidders.

   b. If the highest scored proposal is from a non-certified small business or microbusiness, then:

      1. Calculate 5% of the highest responsible bidder’s total score.

      2. Add the amount calculated above to the score of each of the certified small business or microbusinesses. This new amount is the total score.

      3. Award of the contract must go to the bidder with the highest point count.

4. An example of applying the small business preference to an RFP Secondary follows:

Bidders (*Indicates certified small business)	A*	B	C*	D
Criterion 1(15 Max. points)	11	14	13	12
Criterion 2 (25 Max. points)	21	21	14	19
Criterion 3 (30 Max. points)	18	15	15	18
Cost (30 Max. points)	29.1	30.0	28.3	29.7
(cost points awarded are based on these bid amounts)	($103)	($100)	($106)	($101)
Total "earned" points for each bidder	79.1	80.0	70.3	78.7

Bidder B's was the highest scored proposal, a non-certified small business or microbusiness. Therefore points must be re-apportioned after application of the 5% calculation of B's point score. B's bid received 80.0 points. 5% of 80 is 4. All bids from certified small business or microbusinesses will receive 4 additional points. All bids from eligible non-small businesses will receive 4 additional points.

Point awards prior to preference points	79.1	80.0	70.3	78.7
Preference points	4.0		4.0	
Total final points for each bidder	83.1	80.0	74.3	78.7

The highest scored proposal is now the proposal received from A, a certified small business. The contract award amount will be A's original bid amount.

B. Small Business Preference Procedures

1. Notice of availability of the Small Business Preference Program must be included in all IFBs and RFPs. Agency staff should be familiar with the program in order to clearly explain it to bidders. Firms needing more information should be referred to the DGS/OSDS website.

2. Bidders claiming the small business preference may be requested, but not required, to submit a copy of their certification approval letter from DGS/OSDS with the bid or proposal. Failure to provide a copy of their certification approval letter in their response is not a material deviation. A bidder may claim the preference if the bidder submits a complete application for certification to the DGS/OSDS by 5:00 p.m. on the bid due date. Therefore, the awarding agency should check the status of the application with DGS/OSDS before awarding the contract. An awarding agency shall evaluate the activities to be performed by any certified small or microbusiness on the proposed contract to assure that the certified small or microbusiness is performing a "commercially useful function" as defined in SCM 1, section 8.20 C.

C. Procedures for Tie Bids Between a Small Business and DVBE Small Business

In the event of a precise tie between the low responsible bid of a certified small business and the low responsible bid of a certified disabled veteran owned business that is also a small business, the contract must be awarded to the disabled veteran owned small business. (GC § 14838 (f); 2 CCR 1896.8(f)).

8.22 • NON-SMALL BUSINESS PREFERENCE PROGRAM

(Rev 11/04)

GC § 14838(b)(1)(2) provides for a non-small business preference, as defined.

The preference to a non-small business bidder that commits to small business or microbusiness subcontractor participation of 25% of its bid price shall be 5% of either the lowest, responsive,

responsible bidder's price (IFB) or the highest responsive, responsible bidder's total score (RFP secondary). A non-small business, which qualifies for this preference, may not take an award away from a certified small business. The small business regulations are located at 2 CCR 1896. (See example in 8.21.)

8.23 • PROMPT PAYMENT OF SMALL BUSINESSES

(Rev 11/12)

A. Reason for the Program

To encourage expeditious invoice payment, the law provides for assessment of a penalty for late payments of invoices from contractors, including certified small businesses on all contracts and nonprofit organizations registered with DGS/OSDS (contracts less than $736,000) (GC § 927.6). As part of the implementation of this law, every solicitation should alert the bidder about this program

B. Description of the Program

The Prompt Payment Act (GC § 927, et seq.) applies to both small and non-small businesses. However the penalty calculation differs for small businesses as follows. The penalty is calculated, for certified small businesses and non-profit organizations, at a rate of 0.25% of the amount outstanding per calendar day from the

required payment date. Agencies must automatically calculate and pay the penalties, without requiring the contractor to submit an invoice for these penalty amounts (GC § 927.6).

Note: The time starts to run when the invoice is first received by the agency, not when it is received by your business or accounting office.

The program encourages small businesses or nonprofit organizations to stamp their invoices to identify the invoices as subject to the penalty if not paid within the specified time. Small business stamps are available from DGS/OSDS for a fee.

C. Involvement of DGS Office of Small Business and DVBE Services (DGS/OSDS)

DGS/OSDS serves as a resource for State agencies and businesses in the implementation of the prompt payment program. State agencies must be sure that a small business is certified before paying the higher interest penalty and that may require contacting DGS/OSDS. The DGS/OSDS does not investigate, arbitrate, or advocate for business firms or State agencies in the resolution of payment disputes.

The Prompt Payment Advocate in DGS/OSDS works with agency Small Business Advocates to provide information about the Act and assistance to contractors who have difficulty resolving payment problems.

D. Contracting Consideration

The subject of prompt payment should be considered during the contracting process to ensure that the contract gives clear and accurate instructions directing where invoices are to be sent. Those employees who will be involved in the receipt and approval of the

invoices need to be familiar with the program. In addition, when an award is made to a certified small business or microbusiness, the contract office should appropriately flag the copy of the contract sent to the accounting office.

8.30 • PROGRAMS STIMULATING BUSINESS AND EMPLOYMENT IN SPECIFIC GEOGRAPHIC AREAS (TACPA, EZA AND LAMBRA)

(Rev 11/12)

A. Introduction

The State has three programs designed to stimulate business and employment in geographic areas determined to be economically distressed: The Target Area Contract Preference Act (TACPA), the Enterprise Zone Act (EZA) and the Local Agency Military Base Recovery Area Act (LAMBRA). The Procurement Division, Dispute Resolution and Preference Programs Section administers these programs, provides resource information about the programs, and assists in evaluating preference applications.

B. Applicability to contracts

The TACPA, EZA and LAMBRA preferences apply to service contracts that meet specific criteria. The criteria are described in Table 8.2.

Table 8.2

Criterion	TACPA GC § 4530, et seq.	EZA GC § 7070, et seq.	LAMBRA GC § 7105, et seq.
Estimated Contract Amount: The dollar threshold or applicability	More than $100,000 GC §§ 4531 and 4534; 2 CCR § 1896.34, All responsive bids or proposals must be in excess of $100,000 for the TACPA preferences and incentives to apply. 2 CCR § 1896.37	Same as TACPA GC § 7084(b); 2 CCR § 1896.104; 2 CCR § 1896.107	Same as TACPA and EZA GC § 7118(b)
Excluded Contracts: Contracts not covered by the program	Contracts with a designated worksite GC § 4534	Same as TACPA GC § 7084(b)	Same as TACPA and EZA GC § 7118(b)
Geographic Areas: The worksite to be used by the contractor to qualify for the preference must be located within a designated area	Distressed areas as identified by the Office of Planning and Research and further defined in GC § 4532(d). GC § 4534	Enterprise zones as specified by the former Trade and Commerce Agency or the Department of Housing and Community Development GC §§ 7072(b)(2), (d), and 7084(b)	Work site(s) must be located in a local agency military base recovery area as specified by the Department of Housing and Community Development GC §§ 7111 and 7118(b)

Company Base	California GC §§ 4531, 4532(h) and 4534; 2 CCR § 1896.30(f)	Same as TACPA GC § 7084(b); 2 CCR § 1896.100(f)	Same as TACPA and EZA GC § 7118(b); 2 CCR § 1896.100(f)
Percent of Work: The percentage of the contracted work that the contractor must perform at the qualifying worksite	Not less than 90% of the total labor hours required to perform the contract. GC § 4534	Not less than 90% of the labor hours required to perform the contract. GC § 7084(b)	Same as EZA GC § 7118(b)
Worksite Preference: The percentage of preference associated with the worksite	5% preference on the price submitted GC § 4534; 2 CCR 1896.34	Same as TACPA GC § 7084(b); 2 CCR § 1896.104	Same as TACPA and EZA GC § 7118(b)
Work Force Preference: An additional preference of 1% to 4% available if the contractor agrees to hire certain identified persons equal to a percentage of its work force during the period of contract performance	Percentage of persons with high risk of unemployment hired in relation to work force*, and corresponding preference percentage of the price offered by the lowest responsible bid or the lowest responsible proposal: 5 to 9* 1% 10 to 14* 2% 15 to 19* 3% 20 or more* 4% GC § 4534.1	Percentage of persons living within a targeted employment area or are enterprise zone eligible employees hired in relation to work force, and preference percentage given: Work force and preference percentages same as TACPA. GC § 7084(c)	Percentage of persons living within a local agency military base recovery area hired in relation to work force, and preference percentage given: Work force and preference percentages same as TACPA and EZA. GC § 7118(c)
Preference Limits: The highest preference that can be given	9% (combination of the 5% Worksite Preference with the maximum 4% Work Force Preference) up to $50,000 GC §§ 4534, 4534.1 and 4535.2(a)	Same as TACPA GC §§ 7084(b), (c) and (d)	Same as TACPA and EZA GC §§ 7118(b), (c) and (d)
Maximum Combined Preferences and Incentives offered under all provisions of law	15% (combined cost of all preferences and incentives) up to $100,000 GC § 4535.2(a)	Same as TACPA GC § 7084(d)	Same as TACPA and EZA GC § 7118(d)

C. Preference Procedures

TACPA, EZA and LAMBRA preference notices and request forms STD 830 (TACPA), 831 (EZA), and 832 (LAMBRA) and the DGS/PD 526 must be included in all IFBs and RFPs when the estimated cost exceeds $100,000, unless the worksite is specified in the contract. To receive the preferences, the bidder must complete the forms and certify to perform the contract work as specified. This commitment must be enforced through

conditions contained in the contract (GC §§ 4535, 7084(f), 7118(f)). Agencies should contact the DGS/PD Dispute Resolution and Preference Program Section for assistance in evaluating these preference applications.

Standard contract language for TACPA, EZA and LAMBRA preferences can be found at the Procurement website of http://www.pd.dgs.ca.gov/edip.

9. CONTRACT MANAGEMENT

9.00 • INTRODUCTION
(Rev 3/03)

The contract manager is the authorized representative of the State of California responsible for administering a contract and monitoring the contractor's performance. The contract manager serves as a liaison with the contractor and may perform administrative tasks ranging from the request of contract services through the performance and final payment for completed services.

9.01 • TABLE OF CONTENTS
(Rev 3/97)

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9.04 • RESPONSIBILITIES OF A CONTRACT MANAGER
(Rev 1/01)

A. Typical responsibilities of the contract manager are as follows:

1. Develop and write a clear, concise, detailed description of the work to be performed.
2. Review the draft contract for contract provisions, scope of work, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and final product.
3. Ensure compliance with all applicable federal or other regulations.
4. Ensure that funding is available and the contract is encumbered in conformance with the agency's policy.
5. Notify the contractor to begin work.
6. Maintain contract documentation.
7. Monitor the contract to ensure compliance with all contract provisions:

a. Monitor progress of work to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract; e.g., review progress reports and interim products.

b. Ensure that all work is completed and accepted by the agency before the contract expires.

8. Assess and request amendments, renewals or new contracts as required allowing sufficient time to process and execute such changes before the contract expires or funds are depleted in order to prevent a lapse in service. Often, two (2) months are required for amendments and renewals, and four (4) to six (6) months for new contracts.

9. Review invoices to verify work performed and costs claimed in accordance with the contract.

10. Timely dispute or approve invoices for payment to avoid penalties under GC § 927, et seq.

11. Monitor contract expenditures to:

a. Ensure there are sufficient funds to pay for all services rendered as required by contract.

b. Identify low spending levels and consider partial dis-encumbrance and reassignment of funds.

12. Notify appropriate personnel of equipment purchase, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.

13. Monitor use of DVBE subcontractors and suppliers to ensure attainment of applicable contract participation goal. Contract managers should ensure that language for verification of DVBE participation is included in the contract (See SCM 1, chapter 8).

14. Contact the Contracts Office for assistance with contract problems.

15. Verify that the contractor has fulfilled all requirements of the contract before approving the final invoice.

16. Identify and approve the final invoice, as appropriate, and forward it to accounts payable for payment.

17. Complete the Contractor Evaluation form – STD 4, for consultant services contracts of $5,000 or more. Negative evaluations must be sent to DGS/OLS (See SCM 1, section 3.02).

18. Approve the final products or service.

B. Each agency must prepare the following reports required by legislation:

1. Fair Employment and Housing (Contract Award Report – STD 16, due within ten (10) working days of the award date) where applicable.

2. Consolidated Annual Reporting information – To assist DGS in its annual statewide contracting activity reporting, agencies must submit information, including but not necessarily limited to SB and DVBE usage, consulting services, SB/DVBE option and DVBE incentive, due to the DGS Contract Reports Coordinator no later than close of business August 1 annually. (PCC § 10111.) Additional information regarding required reporting can be found on the DGS/OSDS website and SCM volume 1, section 7.15, and SCM volume 2, chapter 12.

9.05 • CONTRACT MANAGER "DON'TS"
(Rev 11/12)

A. The contract manager is ***not*** authorized to take the following actions:

1. Instruct the contractor to start work before the contract is executed and approved.
2. Change any term or condition of the contract.
3. Direct the contractor to do work that is not specifically described in the contract.
4. Sign the contract as the agency's authorized signator unless authorized in writing.
5. Sign any contractor's contract form.

B. The contract manager shall not authorize payment to the contractor for any work not performed satisfactorily.

C. In addition, the contract manager is ***not*** authorized to do the following without an executed and approved contract amendment in place:

1. Extend the time period of the contract.
2. Allow the contractor to incur costs over the original limit set in the contract.

9.07 • ETHICS
(Rev 11/12)

A. A state officer or employee shall not engage in any activity or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. Such activities or enterprises include:

1. Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.
2. Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee. (GC § 19990.)

B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interest of the financial interests of persons who have supported them. (GC § 81001; see GC § 81000 et seq. (Political Reform Act of 1974).)

C. Courts have long held that a public officer is impliedly bound to exercise his or her powers with disinterested skill, zeal, and diligence and primarily for the benefit of the public. (See *Noble v. City of Palo Alto* (1928) 89 Cal.App.47.) A personal interest, whether financial or non-financial, that interferes with an official's ability to act in such a manner could potentially violated this common law doctrine.

D. Even the appearance of questionable or unethical practices is detrimental to both employees and their department.

E. Each department creates rules proscribing activities and enterprises, which may be set forth in policy and an incompatible activity statement. Each department also adopts its own conflict of interest code, in which it designates officers and employees that are subject to the department's conflicts of interest rules. Departments may impose additional requirements that are stricter than those required by law.

F. The Fair Political Practices Commission (FPPC) promulgates regulations to carry out the intent of the Political Reform Act of 1974. See, e.g., FPPC regulations, 2 CCR §§ 18703.4, 18704.1, 18705.4, 18728, 18940 through 18946.5, and 18950.1 regarding gifts, and relevant FPPC regulations as hereinafter promulgated and/or amended.

G. Public officials, state officers and employees are urged to review applicable statutes, FPPC regulations, and their department's policy, conflict of interest code and incompatible activity statement for guidance regarding ethical issues. Officers and employees should also be aware of Form 700 filing requirements. Questions regarding your obligations and resolution of any questionable relationships or practices should be referred to your supervisor.

9.09 • RECORD KEEPING
(Rev 11/12)

Each agency is responsible for maintaining all invoices, records, and relevant documentation consistent with the agency's record retention schedule for at least three (3) years after the final payment under the contract (GC § 8546.7). (See also SCM 1, section 7.50.)

Agencies should also be mindful of their obligations under the California Public Records Act (Govt. Code § 6250 et seq.).

The following format is recommended for the maintenance of contract records:

1. Label a file folder for each contract administered. In each file folder include:
   a. A log sheet for a diary of activities related to the contract. Each time you speak with anyone about the contract, make a note of the date of the discussion, and the subject matter discussed;
   b. A file guide labeled "Invoices." Retain a copy of all invoices in this file guide;
   c. A copy of the executed contract and other pertinent documentation, such as a copy of the original contract request and any correspondence related to the contract or contractor.
2. Prepare a computer file of all contracts administered. This practice allows easy access to management information, such as expenditures, contract expirations, and contract renewals.
3. Prepare a spreadsheet of expenditures. This practice is especially necessary if electronic tracking is not used. The spreadsheet can be a simple document showing the contract amount encumbered and the deduction for each invoice as it is approved for payment.
4. Document the notification to the contractor of the start date. Work cannot begin before contract execution and the effective date of the contract. Although initial notification to start work may be verbal, it should also be documented in writing and a copy of the notification retained in the contract file.
5. Keep copies of the correspondence with the contractor. All communications about the contract and/or the contractor should be in writing or followed up in

writing and a copy placed in the contract file. This practice protects the agency and the contract manager in the event of a contract dispute or an audit.

6. Monitor and document the performance of contract services. Contract managers must monitor the contractor's performance and document it accordingly.

7. Document the nonperformance of contract services. If problems are encountered during the term of the contract, they should be fully documented. Letters to contractors should outline any problems related to substandard or non-performance. Cite contract specifications verbatim in letters so that there is no uncertainty about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all relevant parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment. (See SCM 1, section 9.11.)

8. Oversee the completion of the contract. To finalize or complete the contract process, contact the contractor to determine whether all invoices have been received. Disencumber any remaining funds by notifying the appropriate payment unit by memo of the amount to be disencumbered. A copy should be retained in the contract file folder. If a computer file was used, close that file. Disencumbrance should be completed in a timely manner to release unspent funds for other purposes within the current fiscal year.

9. Evaluate the contractor. Any consultant services contract of $5,000 or more requires completion of a Contract/Contractor Evaluation – STD 4, within 60 days after completion of the contract (PCC § 10369). When a negative finding is made, the Contractor Evaluation – STD 4, shall be forwarded to DGS/OLS within five (5) days of completion of the evaluation. Contract/Contractor Evaluation forms are not public documents and should not be kept in the contract file.

9.11 • PERFORMANCE OF THE CONTRACTOR

Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file.

1. When work under a contract is unsatisfactory, a contract manager should:

   a. Notify the contractor in writing by certified mail;

   b. Explain why the work is not satisfactory and what corrective action is expected; and

   c. Give a specified period of time in which to satisfactorily perform the work.

2. In addition, the letter should inform the contractor that if the problems are not corrected, or if performance does not satisfactorily improve, the agency will terminate the contract; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including the costs of administration and rebidding of the work.

3. If the contract manager and the contract officer are uncertain of sufficient cause to terminate the contract and assess damages, they may request a legal opinion from the agency's legal counsel.

4. After reviewing the case, legal counsel may make recommendations for an appropriate settlement of the subject contract and outline the necessary steps to be taken.

9.12 • TERMINATION OF THE CONTRACT
(Rev 1/01)

A. Contractors should be notified by certified mail, or personal service, if an agency intends to exercise a termination for cause in the contract. The letter should also clearly set forth any task(s) required by the contractor such as return of State equipment, submittal of final invoice for work completed, etc.

B. The contractor must be reimbursed for all reasonable expenses authorized and incurred up to the date of termination, including any costs associated with termination, pursuant to the terms of the contract. However, the State is only obligated to pay for goods or services that meet the performance standards under the contract.

9.14 • CLOSING OF SERVICE CONTRACTS

It is the contract manager's responsibility to close the contract file. This action may consist of, but is not limited to, disencumbrance of funds, evaluation of the contractor, and authorization of final payment of invoices. If applicable, it may involve requesting renewal of the contract.

9.16 • RETENTION OF CONTRACT RECORDS
(Rev 11/12)

All contracts involving expenditures of public funds in excess of $10,000 must contain a provision that the contract is subject to the examination and audit of the awarding department or its delegate or the State Auditor for a period of three (3) years after final payment under the agreement. The contractor must agree that the awarding department shall have access to premises, on reasonable notice, during normal business hours for interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance (GC § 8546.7, PCC § 10115 et seq.; 2 CCR §§ 1896.60 et seq. and 1896.75).

In view of the need for contract records for present and possible future antitrust litigation, the Attorney General's office has requested that contract records be retained for a period of seven (7) years from either the closeout date or the payment date on the last invoice, whichever is earlier.

10. PUBLIC WORKS CONTRACTS

10.00 • INTRODUCTION

(Rev 11/12)

This chapter is intended to provide guidance in the preparation, administration, and execution of small or minor public works contracts, i.e. those that fall within certain dollar amounts, as established by the Department of Finance at two-year intervals.

A "*" as used in this chapter indicates the amount currently in effect as of the date of SCM I publication, but is subject to change. The current amounts are contracts not exceeding $610,000* for most agencies, and not exceeding $839,000* for most Resources Agency departments, boards, commissions, or conservancies. This chapter applies to public works contracts delegated to State agencies by DGS under PCC §§ 10108 and 10108.5.

This chapter *does not* apply to public works contracts, which are defined as projects under PCC § 10108, by agencies listed in PCC § 10106. Currently, in addition to DGS, those agencies are: the Department of Transportation (DOT), Department of Water Resources (DWR), Department of Boating and Waterways (DB&W), the Department of Corrections and Rehabilitation (CDCR) and the Military Department. These agencies may execute public works contracts for any amount and are not subject to the review and approval of the DGS (PCC § 10100 et seq.).

10.01 • TABLE OF CONTENTS

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10.05 • DEFINITIONS

(Rev 11/12)

A. A public works contract is defined as "an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind," (PCC § 1101). Note: Some contracts meet the definition of "public works" under Labor Code section 1720 thereby requiring prevailing wages, but may not meet the definition of public works under the State Contract Act and therefore may not be subject to other provisions of that Act and this chapter 10.

B. A project, for purposes of the State Contract Act (PCC § 10100 et seq.), is defined as the "erection, construction, alteration, repair, or improvement of any State-owned structure, building, road, or other State improvement of any kind with a total cost exceeding an amount periodically adjusted by the Director of Finance (PCC § 10105). The current amount is $270,000*.

10.10 • AUTHORIZATION OF PUBLIC WORKS CONTRACTS
(Rev 11/12)

NOTE: There is no NCB process available for Public Works Contracts.

Table 10.1

Type of Contract	Authorization Required	Legal Reference
Under $270,000*	DGS/OLS	PCC § 10295
Between $270,000* and $610,000*	DGS/RESD Form. 23 & DGS/OLS	PCC § 10108
Up to $839,000*	Resources Agency department with consent of DGS	PCC § 10108.5
Public works by: DWR DB&W CDCR DOT DGS Military Department	Attorney General or Department attorney	PCC §§ 10106, 10108, and 10220 Water Code § 120 et seq. Harbor and Navigation Code § 50, et seq. Penal Code § 7000 et seq. GC § 14000 et seq. GC § 14600 et seq. Military and Veterans Code § 430, et seq.

10.15 • PUBLIC WORKS CONTRACTS BETWEEN $1,000 AND $270,000*
(Rev 11/12)

A. Prepare the bid package as follows:

1. Prepare detailed plans and specifications.

   a. Work specifications

      Prepare clear and complete written specifications for the work. The specifications must be adequate in detail to apprise the prospective bidder of the character and extent of the work to be done and to ensure that the bids will be comparable and competitive. Room for speculation and conjecture must be reduced to a minimum.

   b. Product specifications

      Specifications may not be drafted in a manner that limits the bidding, directly or indirectly, to any one specific concern, or calling for a designated material, product, item, or service by a specific brand or trade name unless the specification is followed by the words "or equal." If the agency is aware of an equal product manufactured in California, it must

name such product in the specifications (PCC § 3400). Special rules applicable to roofing contracts are also contained in PCC sections 3002 and 3004.

c. The specifications shall provide for a period of at least thirty-five (35) days after the award of the contract for submission of data substantiating a request of an "or equal" item. PCC § 3400(b) provides an exception if the agency makes a finding, included in the specifications, that a particular material, product, item, or service is designated by specific brand or trade name for any of the following purposes: 1) so that a field test or experiment may be made to determine the product's suitability for future use; 2) in order to match other products in use on a particular public improvement either completed or in the course of completion; 3) in order to obtain necessary item that is only available from one source; or 4) in order to respond to a declared emergency.

2. Obtain approval from:

a. The State Fire Marshall (SFM):

SFM approval is required for changes in occupancy or use; remodels and modifications; and anytime flammable, combustible or hazardous materials will be stored or planned for the site.

b. The Department of General Services, Division of the State Architect, Access Compliance (DSA/AC):

DSA/AC review and approval is required for work involving construction of new, permanent or temporary buildings and facilities; or for renovation, structural repair, alteration, or additions to existing buildings and facilities including those identified as historic buildings.

3. Prepare the Notice to Contractors, including the following notifications:

a. A statement that the 5% small business preference, not to exceed $50,000, will be granted (i) to a certified small businesses, or (ii) to a non-small business if 25% of their bid is to a certified small business (a completed form STD 811 must be submitted with the bid proposal to request this preference).

b. The Contractors State License Board license classification necessary to bid on the contract (PCC § 3300).

c. Where to obtain bid packages.

d. Date, time, and place that bids must be received to be considered.

e. Notice that the successful bidder must enter into a contractual agreement in the form of a Standard Agreement STD 213

f. Prevailing Wages:

- The prevailing wage rates for each of the crafts or trade classifications involved in the proposed work to be contracted for must be set forth in the invitation for Bids (IFB) and in the contract itself.

Note: In lieu of specifying the rate of wages in the IFB and in the contract, the agency may include a statement that copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested party upon request.

- Obtain from the Department of Industrial Relations (www.dir.ca.gov) or any source authorized by the Department of Industrial Relations, the prevailing wage rates before requesting bids. (LC §§ 1770 and 1773.

Note: Public works contracts funded in whole or in part from state-issued bonds may have significant additional requirements for both contractors and agencies which include electronic filing of certified payroll records with, and fee payments to, the Department of Industrial Relations (DIR), as well as posting of a DIR-prescribed notice at the jobsite. (See LC §§ 1771 et seq. and related regulations.

g. Date, time, and place of a pre-bid meeting and/or site inspection. Mandatory pre-bid meetings shall not occur fewer than five (5) calendar days after the first publication of the initial Notice to Bidders (PCC § 6610).

h. If the contract is estimated to exceed $ 5,000:

- Statement that the contract is subject to State contractor nondiscrimination and compliance requirements (2 CCR § 8201).

i. If the contract involves an expenditure in excess of $25,000:

- Necessity of providing a payment bond (STD 807) equal to 100% of the total amount payable under the contract per PCC § 7103.

4. Prepare instructions to bidders on the following:

a. Examination of bid documents and site.

b. Bids and bidders to comply with:

- Sealed bids.
- Bid form required to be used.
- Responsibility for ensuring that their sealed bid is received at the proper time and at the proper place as shown in the Notice to Contractors or addenda. Any bid received after the scheduled closing time for the receipt of bids will be returned unopened.
- DVBE participation requirements and incentive information.
- Drug-free workplace certification.
- Restrictions applying to State employees (PCC §§ 10410-10411 or GC § 87401, et seq.).
- Restrictions on employment of undocumented aliens (PCC § 6101).
- Antitrust claims.
- Corporate qualification to do business in California.
- Expatriate corporation certification.
- Review of Commercially Useful Function being performed by a certified small business or DVBE.
- Any other information regarding the bid.

5. Prepare the bid proposal form, allowing for:

   a. Bid amount.

   b. Small business preference request.

   c. Place for listing of subcontractors' names, business addresses, and contractor's license numbers of all subcontractors who will perform work, labor, or render services in an amount in excess of one-half of 1% of the prime contractor's total bid; and the portion of the work that each will perform. (PCC § 4101.)

   d. Place for listing of DVBEs' names, business addresses, license numbers, and percentages of all DVBEs who will perform work, labor, or render services who will be used by the prime contractor to fulfill disabled veteran business enterprise participation goals.

Note: A prime contractor whose bid is accepted may not substitute a subcontractor listed in the original bid unless the provisions of PCC §§ 4107 or 4107.5 apply and a hearing is held, if required. See also Mil. & Vets Code § 999.10.

   e. General contractor's name, business address, Federal employer identification number, and contractor's license number, classification, and expiration date.

   f. Statement of Compliance, which may be printed on the bid proposal form in lieu of using a STD 19.

   g. Signature block, including the printed name of the authorized individual signing the bid, the authorized individual's title and telephone number, and the date.

   h. Whenever additive and deductive items are included in a bid, the bid document should specify the method to determine lowest bid.

6. Include all forms required to be submitted with the bid proposal:

   a. Drug-free Workplace Certification – STD 21;

   b. DVBE participation certifications;

   c. Labor Code Certification;

   d. Statement of Compliance – STD 19, if not included on the bid proposal form;

   e. Non-collusion affidavit (must be notarized) see Appendix (PCC § 7106);

   f. Small Business Preference and Certification Request (STD 811);

   g. Form of Guarantee if a guarantee provision is not included in the General Conditions; and

   h. Expatriate Corporation certification.

7. Prepare General Conditions, including:

   a. Insurance requirements; liability, workers' compensation, builders' risk, or other appropriate insurance;

   b. Bond requirements

- Payment Bond (Std 807) in a sum not less than 100% of the total amount payable if the contract involves an expenditure in excess of $25,000. (PCC § 7103.)
- Performance Bond if contract exceeds $10,000 and progress payments will be made – 100% of contract amount.

Note: Bonds must be issued by a California-admitted surety. (CCP § 995.311.)

c. Prevailing wage rates (LC § 1770, et seq.).

d. National Labor Relations Certification.

e. Standard California Nondiscrimination Construction Contract Specifications STD 18.

f. Use of apprentices.

g. Guarantee, if a Form of Guarantee is not included.

h. "As Built" plans requirement.

i. Final inspection and acceptance.

j. Other conditions as required.

8. Include special provisions:

a. Contractor's license classification required.

b. Number of working days allowed.

c. Liquidated damages (if included, must provide that the contractor shall not be assessed liquidated damages when the delay in completing the project is caused by the failure of the State or the owner of a utility to provide for removal or relocation of the existing utility facilities.)

d. Progress payments.

e. Progress schedule.

f. Other conditions as required.

9. Prepare detailed specifications.

10. Prepare drawings (if necessary).

11. Prepare bid refusal form.

12. Prepare other provisions as required.

B. Advertise in the California State Contracts Register including:

1. Description of work to be done.

2. Bid opening date and time.

3. Contract duration.

4. Type of contractor's license required.

5. City and county in which work is to be done.

6. Contact name and phone number to obtain bid package.

C. Distribute bid packages to:

1. Prospective bidders.
2. DVBE assistance organizations.
3. Builders exchange nearest the work to be performed if contract is estimated to be more than $5,000.

D. Hold a pre-bid meeting and site inspection:

1. Hold a pre-bid meeting to explain all required forms, including the Drug-free Workplace Certification, DVBE participation and documentation, Labor Code Certification, and non-collusion affidavit (**which must be notarized**).
2. Hold a site inspection to allow all prospective contractors to see where the work is to be done.

E. Conduct the bid opening:

1. Verify that all required forms are completed and signed including:
   a. Bid proposal form.
   b. Drug-free Workplace Certification.
   c. DVBE participation (evaluate for compliance).
   d. Labor Code Certification.
   e. Non-collusion affidavit (**must be notarized**).
   f. Small Business Preference and Certification Request – STD 811.
   g. Expatriate Corporation certification.
2. Verify the status of the business as follows:
   a. Contractor's license and classification with the Contractor's License Board (PCC § 6100).
   b. Corporation status with the Secretary of State.
   c. Small business/DVBE status with the DGS/OSDS.
3. Return unopened any bids received after the due date.
4. Award the contract to the lowest responsible and responsive bidder.
5. Transmit reports:
   a. Within 10 working days of an award, send a completed STD 16 to the Department of Fair Employment and Housing if the contract award exceeds $5,000, including contracts with the University of California (2 CCR § 8117.5).
   b. Determine if a Form PWC 100 must be filed with DIR. Effective January 1, 2012, filing of the PWC 100 is done electronically, and fulfills the required public works project award notification to both the Division of Apprenticeship Standards (LC § 1773.3, replacing the former DAS-13 notification) and the Division of Labor Standards Enforcement, Compliance Monitoring Unit (8 CCR § 16451(a).) Form PWC 100 and additional information about filing requirements can be found on the DIR Compliance Monitoring Unit website.

F. Prepare the Standard Agreement – STD 213, including:

1. Statement of work;
2. Period of performance;
3. Cost and payment including:
   a. Total amount to be paid;
   b. When payment(s) will be made;
      - If making progress payments, include the provision that the State shall retain out of each payment an amount not to exceed 5% of the payment. (PCC § 7201)
   c. Address to which invoices and progress reports shall be mailed.
4. Payment Bond (if contract exceeds $25,000).
5. Performance Bond (if contract exceeds $10,000 and progress payments will be made).
6. Standard California Nondiscrimination Construction Contract Specifications for contracts exceeding $5,000 (STD 18).
7. National Labor Relations Board Certification, if not included in the General Conditions.
8. Project monitor's name and telephone number.
9. Contract amendments.
10. Resolution of disputes.
11. Final approval required before contract has force or effect.
12. Antitrust claims.
13. Americans with Disabilities Act.
14. Restrictions applying to State employees.
15. Prevailing wage rates.
16. Certificate of Insurance.
17. Audit language (if contract exceeds $10,000) and/or DVBE participation.
18. Instructions to bidders.
19. Bid proposal form.
20. Labor Code certification.
21. Non-collusion affidavit.
22. General conditions.
23. Special provisions.
24. Specifications.
25. Drawings.

G. Prepare the award letter and mail the documents to the contractor, requesting the following actions:

1. Standard Agreement – STD 213: Sign all four (4) copies.
2. Specifications and Drawings: Sign all four (4) sets.
3. Payment Bond – STD 807: Have bonding company execute two (2) copies (if contract exceeds $25,000).
4. Performance Bond: Have bonding company execute two (2) copies on standard bonding company forms (if contract exceeds $10,000 and progress payments will be made).
5. Certificate of Insurance: Have insurance agent execute for liability, workers' compensation, builders' risk and any other required insurance.
6. Asbestos notification letter if required.
7. Payee Data Record: Complete and return (sends to accounting office and retains one copy in the contract file).

H. Prepare the Contract Transmittal – STD 215 including:

1. Certificate of Insurance for liability, workers' compensation, builders' risk and any other required insurance.
2. Secretary of State corporate status check.
3. Contractor's License Board verification.
4. Small business verification (if applicable).
5. Drug-free workplace and other certificates.
6. DVBE participation package (if applicable).
7. California State Contracts Register advertisement.
8. List of contractors sent bid package.
9. All bids received.
10. Copy of bid package.

I. Route the Standard Agreement and transmittal package to the accounting office for encumbrance and to the approving authority.

J. When the approved contract is returned, send a letter to the contractor with its approved copy and distribute the remaining approved copies as necessary.

10.20 • PUBLIC WORKS CONTRACTS BETWEEN $270,000* AND $610,000*

(Rev 11/12)

A. Obtain approval from DGS/RESD on a Request for Project Undertaking by State Agency RESD FORM 23.

B. Include all requirements for contracts between $1,000 and $270,000*.

C. Place additional advertisements as follows:

1. Advertise the Notice to Contractors once a week for two (2) consecutive weeks in one local paper of general circulation published in the county where the work is to be done. Obtain an affidavit of publication (PCC § 10140).
2. Advertise the Notice to Contractors once a week for two (2) consecutive weeks as follows:

a. If the work is to be done in the counties of Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, or Ventura, advertise in a trade paper of general circulation published in Los Angeles County. Obtain an affidavit of publication (PCC § 10140).

b. If the work is located in a county other than those listed in 2(a) above, advertise in a trade paper of general circulation published in San Francisco and provide a reasonable length of time between the publication of the advertisement and the date of submission of bids to give contractors sufficient time to prepare bids. Obtain an affidavit of publication (PCC § 10140).

Note: Until further notice, exemption is given for the direct placement of such advertisements for publication by the agency without prior submission to DGS. Invoices for the cost of advertisements may be submitted directly to the Controller with the claim for payment.

D. Include in the instructions to bidders the requirement that the bid must be accompanied by one of the following forms of bidder's security: cash, a cashier's check, a certified check, or a bidder's bond executed by an admitted surety insurer and made payable to the State agency. The security must be in an amount equal to 10% of the amount bid. A bid must not be considered unless one of the forms of the bidder's security is enclosed with it (PCC § 10167).

E. Prepare the contract transmittal

1. Include all information shown in SCM 1, section 10.15(H).
2. Include an approved copy of form RESD Form 23.
3. Include the affidavits of publication for advertisements in both the local paper and the trade paper.

F. The departments of Boating and Waterways, CDCR, DGS, DOT, DWR, and the Military Department must publish progress payments made to the prime contractor in the California State Contracts Register. (PCC § 10262.3.)

10.25 • REQUIREMENTS OF PUBLIC WORKS CONTRACTS
(Rev 11/12)

A. Specifications

Ensure that whoever prepares the bid specifications is aware of the following requirements:

1. Work specifications

Prepare clear and complete written specifications for the work. The specifications must be adequate in detail to apprise the prospective bidder of the character and extent of the work to be done and to ensure that bids will be comparable and competitive. Room for speculation and conjecture must be reduced to a minimum.

2. Product specifications

Specifications may not be drafted in a manner that limits the bidding, directly or indirectly, to any one specific concern, or calling for a designated material, product, item, or service by a specific brand or trade name unless the specification is followed by the words "or equal." If the agency is aware of an

equal product manufactured in California, it must name such product in the specifications (PCC § 10129). Special rules applicable to roofing contracts are also contained in PCC §§ 3002 and 3004.

3. The specifications shall provide for a period of at least thirty-five (35) days after the award of the contract for submission of data substantiating a request of an "or equal" item. PCC § 10129 provides that if the agency makes a finding, included in the specifications, that a particular material, product, item, or service is designated by specific brand or trade name for any of the following purposes: 1) so that a field test or experiment may be made to determine the product's suitability for future use; 2) in order to match other products in use on a particular public improvement either completed or in the course of completion; 3) in order to obtain necessary item that is only available from one source; or 4) in order to respond to a declared emergency.

B. Prevailing Wages:

1. Obtain from the Department of Industrial Relations the prevailing wage rates before requesting bids. www.dir.ca.gov (LC §§ 1770 and 1773.)

2. The prevailing wage rates for each of the crafts or trade classifications involved in the proposed work to be contracted for must be set forth in the Invitation for Bids and in the contract itself.

Note: In lieu of specifying the rate of wages in the Invitation for Bids and in the contract, the agency may include a statement that copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested party on request. LC § 1773.2.

3. The general prevailing rates of wages may be obtained from the Department of Industrial Relations or any source authorized by the Department of Industrial Relations.

10.30 • PUBLIC WORKS CONTRACTS REQUIRED LANGUAGE
(Rev 11/12)

A. Instructions To Bidders

1. Employment of undocumented aliens

"No State agency or department, as defined in PCC § 10357, that is subject to this code, shall award a public works contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works contract, who has, in the preceding five (5) years, been convicted of violating a State or Federal law regarding the employment of undocumented aliens PCC § 6101."

2. Antitrust claims

"The contractor offers and agrees and will require all of his other subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 USC § 15) or under the Cartwright Act (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. The assignment made by the contractor and all additional assignments made by the subcontractors and suppliers shall be deemed to have been made and will become effective at the time the awarding

body tenders final payment to the contractor without further acknowledgment or the necessity of tendering to the awarding body any written assignments."
"If an awarding body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under GC §§ 4550 – 4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, on demand, recover from the public body any portion of the recovery, including treble damages, and attributable overcharges that were paid by the assignor but were not paid by the public body as a part of the bid price, less the expenses incurred in obtaining that portion of the recovery. On demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under GC §§ 4550 – 4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

B. General Conditions

1. Prevailing Wage (See SCM 1, section 10.25 B.).

2. National Labor Relations Certification.

"By signing the contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against the contractor within the immediately preceding two (2) year period because of the contractor's failure to comply with an order of a Federal court which orders the contractor to comply with an order of the National Labor Relations Board."

C. Other Required Contract Terms

1. Audit Language (For contracts in excess of $10,000 and/or when DVBE participation is required)

"The contractor agrees that the (awarding agency), or the Bureau of State Audits or its designated representative, shall have an absolute right of access to all of the contractor's records, files, documents, accounts, and financial affairs as deemed necessary for the purpose of conducting an audit to determine compliance with the terms and conditions of this contract. The contractor shall provide the auditor(s) with any relevant information requested without unnecessary delay and, on reasonable notice, permit access to its premises during normal business hours for the purpose of interviewing staff and inspecting and copying such books, records, accounts, and any other material as warranted to conduct the audit. The contractor further agrees to maintain such records for a period of three (3) years after final payment is made on this contract or three (3) years after resolution of all issues that may arise as a result of any litigation, claim, negotiation, or audit related to the contract, whichever is later. The State agrees to treat as confidential any proprietary information obtained as a part of any such audit."

2. Americans with Disabilities Act

"By signing this contract, the contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 USC § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA."

3. Labor Code Certifications

a. "I am aware of the provisions of LC § 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."

b. "It is hereby mutually agreed that the contractor shall forfeit to the State (enter amount from LC § 1775) dollars for each calendar day, or portion thereof, for each worker paid by him or her, or subcontractor under him or her, less than the prevailing wage so stipulated and in addition the contractor further agrees to pay to each worker the difference between the actual amount paid for each calendar day, or portion thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly, registered apprentices."

Note: LC § 1771.5 allows exemptions from the general prevailing rate under specific conditions for departments with Labor Compliance Programs.

c. It is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor shall forfeit, as a penalty to the State, twenty-five dollars ($25) for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week, in violation of LC §§ 1810-1815, inclusive.

d. Properly registered apprentices may be employed in the prosecution of the work. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. The contractor and each subcontractor must comply with the requirements of LC § 1777.5 and any related regulations regarding the employment of registered apprentices.

e. Each contractor and subcontractor shall comply with the LC § 1776 regarding record keeping.

4. Other provisions from the State's current standard terms (GTCs) not covered elsewhere above, if and as applicable, such as:

a. Assignment

b. Audit

c. Indemnification

d. Disputes

e. Termination for Cause

f. Independent Contractor

g. Recycling Certification

h. Non-Discrimination Clause

i. Contractor Certification Clauses (CCCs)

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2) Drug-Free Workplace
3) Expatriate Corporations
4) Sweatfree Code of Conduct
5) Contractor Name Change
6) Corporate Qualifications to Do Business
7) Air or Water Pollution Violation
8) Payee Data Record Form Std 204

j. Timeliness

k. Compensation

l. Governing Law

m. Antitrust Claims

n. Child Support Compliance

o. Unenforceable Provision

p. Small Business and DVBE Reporting Requirements

CHAPTER 10 – APPENDIX

NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID FOR PUBLIC WORKS

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

_____, being first duly sworn, deposes and

says that he or she is _____ of
(position or title)

_____
(the bidder)

the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: _____ By: _____
(person signing for bidder)

11. ARCHITECTURAL AND ENGINEERING CONTRACTS

11.00 • INTRODUCTION

(Rev 11/12)

This chapter explains the State's process for selecting the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms. This process is commonly referred to as the A & E method.

Legal authority: Article XXII, California Constitution; GC §§ 4525-4529.20; PCC § 6106. Although a few other statutes set forth similar A & E methods in specific situations, this Chapter will focus on the A & E method set forth in GC §§ 4525-4529.20.

Each State agency must develop its own regulations for implementation in order to use the (A & E) selection process pursuant to GC §§ 4525-4529.20. If a State agency has not developed such regulations, it cannot use this A & E method set forth in GC §§ 4525-4529.20.

GC §§ 4525-4529.20 do not apply when the State agency determines that: (1) the services needed are more of a technical nature, (2) involve little professional judgment, and (3) requiring bids would be in the public interest (GC § 4529). If so, then the bidding processes set forth in the PCC for services or consulting services apply instead of the State agency's A & E regulations implementing GC §§ 4525-4529.20. See SCM 1, chapter 5.

Although each State agency's A & E regulations will be specific to that particular State agency, GC § 4525, et seq., contains overarching principles that will be discussed briefly here. While DGS approval of A & E contracts is not required by law, many agencies find value in submitting them to DGS for review. DGS' review of A & E contracts will include determining whether the agency complied with their own statutes (if applicable), GC §§ 4525-4529.20 and the State agency's implementing regulations. When submitting a copy of an A & E contract to DGS/OLS, the State agency should also include citations to its A & E statutes (if applicable) and implementing regulations.

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11.03 • TYPES OF A & E SERVICES

(New 11/12)

A. "Architectural, landscape architectural, engineering, environmental, and land surveying services" include those professional services of an architectural, engineering, environmental, or land surveying nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform (GC § 4525(d)).

B. ”Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor for managing and supervising work performed on State construction projects. Such services more specifically include **construction** project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project (GC §§ 4525(e), 4529.5).

All construction project management services performed pursuant to an A & E contract must be performed under the direction and control of a licensed architect, registered engineer, or licensed contractor (78 Ops. Cal. Atty. Gen. 48 (Opinion 94-819), February 9, 1995. The Business and Professions Code contains licensing requirements for architects (Division 3, Chapter 3, e.g. section 5551), registered engineers (Division 3, Chapter 7, e.g. section 6704), and contractors (Division 3, Chapter 9, e.g., sections 7065-7077). The Department of Consumer Affairs regulates architects (California Architects Board), engineers (Board for Professional Engineers and Land Surveyors) and contractors (Contractors State License Board).

C. “Environmental Services” means those services performed in connection with project development and permit processing in order to comply with Federal and State environmental laws.

11.05 • COMPETITIVE SELECTION PROCESS BASED ON QUALIFICATIONS

(Rev 11/12)

Selection for professional services of A & E contractors by public agencies must be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price.

Projects requiring A & E professional services must be published in a statewide announcement through publications of the respective professional societies. (GC § 4527.) This requirement is in addition to advertising in the California State Contracts Register.

The Request for Qualifications (RFQ) or the Solicitation of Interest (SOI) is the solicitation document that sets out the criteria for determining the best qualified professional firm for the project.

Criteria for selecting an A & E firm should include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards, and other relevant considerations. Such factors shall be weighed according to the nature and complexity of the project, the needs of the State, and the special requirements of the specific project. See, e.g., 2 CCR § 1311.

The contracting restrictions imposed by Article VII of the California Constitution and GC § 19130 do not apply, since Article XXII of the California Constitution expressly removed these restrictions on the ability of State agencies to contract with qualified private entities for architectural and engineering services for all public works of improvement. *Professional Engineers in California Government v. Kempton*, (2007) 40 Cal.4th 1016, 1037.

11.06 • EVALUATION OF QUALIFICATIONS

(Rev 11/12)

The statements of qualifications received by the date specified in the RFQ or SOI are evaluated together with any performance data on file. The State agency shall conduct discussions with no

less than three (3) firms. Based on the established criteria, the State agency shall select from among the firms with which discussions were held, in order of preference, no less than 3 firms deemed to be the most highly qualified to provide the services required. (GC § 4527(a).)

11.08 ● NEGOTIATING A&E CONTRACTS

(Rev 11/12)

After the discussions, the public agency shall negotiate a contract with the best qualified firm at compensation that the agency determines to be fair and reasonable. (GC § 4528(a)(1).)

After providing notification to the successful firm of its selection, the State agency shall provide written instructions for the fee negotiations which are to follow. These instructions shall provide the private consulting firm with necessary information which shall allow the fee negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin fee negotiations. (PCC § 6106(b).)

Upon the completion of fee negotiations, the State and the private firm shall proceed to execute a contract so that the contract may be completed by the State within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The State and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion. (PCC § 6106(c).)

If the agency is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated and fee negotiations undertaken with the second most qualified firm (and then the third most qualified if necessary). If the agency is unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue fee negotiations until an agreement is reached. (GC § 4528(a); PCC § 6106(d).)

GLOSSARY OF TERMS

(Rev 11/12)

The following is a listing of definitions commonly used in the contracting process:

Advance payment	Any payment made to a contractor before work has been performed or goods have been delivered. Advance payments are permitted only if authorized by statute. (For example, interagency agreements may provide for advance payments under (GC § 11257.)
Agreement	A contract.
Amendment	A formal modification or change of a material term, such as the term, cost, or scope of work, in one or more provisions of an existing contract.
Assignment	Transfer of contractual rights from one person to another.
Authorized service representative	A term used in relation to those persons who may perform repair and maintenance of equipment and are so designated by the equipment manufacturer.
Awarding agency	The contracting State agency, the agency soliciting the contract and making the contract award.
Bid	A potential contractor's reply to a solicitation for purchase of goods or services, which represents what the contractor would charge to provide those goods or services.
Bidder	An individual, sole proprietorship, firm, partnership, corporation, or any other business venture that responds to an Invitation for Bids or Request for Proposals by submitting a bid to the contracting agency. A potential contractor.
Bidder's conference	A meeting with potential bidders before the bid submission date.
Bidder's security	A bond or undertaking required for public works projects (SCM 1, chapter 10).
Board resolution	A formal decision by the governing body of a public agency often required to authorize the purchase of goods or services.
Breach of contract	Failure, without legal reason, to comply with the terms of the contract.
California State Contracts Register	The State publication (now electronic) containing advertisements for contract solicitations and a list of contracts for which exemptions from bidding have been approved.
Certified small or microbusiness	A business that has been certified by the Office of Small Business and DVBE Certification, Department of General Services, as a small or microbusiness as defined in GC § 14837 and 2 CCR § 1896. DGS/OSDS issues the business a letter of certification that allows the business to claim the small business preference when submitting bids and to obtain statutory penalties for late payments on contracts (SCM 1, chapter 8).
Circumvention	The act of avoiding the effect or intent, going around, defeating by ingenuity or strategy, or nullifying the purpose.
Commercially useful function	Person or entity doing all of the following: the execution of a distinct element of the work of the contract; carrying out obligation by actually performing, managing or supervising work involved; perform work normal for business services and functions; and not further subcontracting a portion of work greater than expected to be subcontracted by normal industry standards.
Commodities	Goods, including such tangible items as movable or personal property, as opposed to services.

Competitive bidding	An acquisition process in which the opportunity to make offers to supply goods or services is not limited to any one bidder. All bidders are evaluated on the same fixed criteria.
Consideration	Something of value that induces a person to enter into a contract. The consideration may include some right, interest, profit, or benefit obtained by one party, or some forbearance, detriment, loss, or responsibility assumed by the other party.
Consulting services contract	A contract for services of an advisory nature, which provides a recommended course of action or personal expertise. The definition does not include A&E contracts (PCC § 10335.5).
Contract	A contract is an agreement to do or not to do a certain thing. (CCP § 1549)
Contract manager	A person designated by the responsible State agency or department to manage performance under a contract.
Contractor	A party contracting with the awarding agency. ***Vendor*** is often used synonymously, with ***contractor.***
Contractor identification number	The number assigned to the contractor for tax purposes. This may be the social security number or the Federal identification number.
Cooperative agreements	A special agreement with the Federal government in which there is a general public benefit, as opposed to a specific benefit accruing only to the contracting Federal agency.
Corporation	A fictional entity, created by or under the authority of the laws of a State, which has the legal authority to engage in certain activities.
Debarment	Under Federal contracting law, a process in which a contractor is precluded from bidding on or entering into contracts with the Federal government. Federal rules also prohibit Federal contractors from contracting with debarred businesses.
Default	Failure to perform an obligation in a contract.
Disabled Veteran Business Enterprise (DVBE)	A business that meets all of the following criteria: (1) at least 51% of the business is owned by one or more disabled veterans or, in a business whose stock is publicly held, at least 51% or more of the stockholders are disabled veterans; (2) the management and control of the business are exercised by one or more disabled veterans; (3) the business is domestically owned and its home office is in the United States; and (4) the business has been certified as a DVBE by DGS/OSDS (Military and Veterans Code § 999[g]).
Encumbrance	A commitment of funds guaranteeing a source of payment for a specific transaction.
Enterprise Zone Act (EZA)	(Government Code § 7080 et seq.) Provides preferences for State contracting opportunities in designated enterprise zones.
Evaluation committee	A committee or panel that convenes to evaluate the qualifications of bidders who respond to a Request for Proposals.
Execution of a contract	The act of signing a contract, which provides a legal basis for required performance by parties to the contract.
Executive order	A directive issued by the Governor that establishes binding policy for government agencies covered therein.

Exemption	A formal waiver by DGS, of DGS responsibilities required by statute, regulation, or policy, or a delegation of such responsibilities by DGS to a State agency. Some common exemptions awarded by DGS involve contract approval, advertising, and competitive bidding requirements.
Exemption letter	The letter of authorization establishing an exemption issued by DGS.
General provisions	Terms and conditions that apply to all contracts for services and are included in any final document.
Goods	Commodities (tangible items, such as movable or personal property), as opposed to services
Grant	To bestow or confer a benefit on another, with or without consideration. In contrast, a contract requires an exchange of consideration. Grants provided by State agencies must be authorized by the Legislature.
Hazardous activity	An activity that unduly exposes the contracting agency to liability for personal injury or property damage, an ultra-hazardous or dangerous activity. Contracts for hazardous activities must be accompanied by a certificate of insurance that names the State as an additional insured and financially protects the State in the event of a legal action arising out of performance of services under the contract.
Indemnification	Contractual provision in which one party will reimburse the other party for settlements or judgments on claims arising from the contract.
Independent contractor	A person working for an entity under contract and not an employee of the contracting agency. The contracting entity does not pay unemployment, disability, or workers' compensation insurance or withhold taxes from payments to the person. An independent contractor normally follows the contracting agency's direction on the results of the work but not on the means of accomplishing the work.
Information Technology (IT)	A contract for the acquisition of goods or services related to information technology: computer hardware, software licenses, software development, and maintenance of hardware and software.
In-kind services	Services performed in exchange for other services in lieu of money.
Interagency agreement	An agreement between two (2) or more State agencies (GC §§ 11256 – 11263.
Invitation For Bids (IFB)	A type of solicitation document used in a formal competitive bidding process, which contains a detailed statement of what the agency is attempting to purchase. Qualifying bidders compete solely on the basis of cost.
Joint Powers Agency (JPA)	An agency formed by agreement of two (2) or more public agencies. Under this agreement, the joint powers authority may exercise any power common to the contracting parties (GC § 6502).
Lease	A contract for the exclusive use or possession of real or personal property for a limited period of time in exchange for a valuable consideration.
Legal services	Services rendered by an attorney.
Local Agency Military Base Recovery Area Act (LAMBRA)	Provides preference for State contracting opportunities in designated local agency military base areas.
Local assistance contract	An agreement financed out of the local assistance portion of the budget, includes agreements providing assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose.

Master Service Agreement (MSA)	An agreement entered into by the Department of General Services pursuant to PCC § 10298 for use by other State agencies that wish to use the same services.
Microbusiness	See certified small or microbusiness
Non-collusion affidavit	An affidavit required of bidders on public works contracts, which asserts that the bidders did not conspire with each other in preparing and submitting bids.
Non-Competitive Bid (NCB)	NCB refers to the form and statutory process by which agencies apply to DGS for approval to make an acquisition without competitive bidding.
Non-profit	A group, often a corporation, organized for purposes other than generating profits; for example, a charitable, educational, religious, or scientific organization. Certification by the IRS or Franchise Tax Board is a common attribute.
Notice to contractors	The cover letter or instruction for prospective bidders that is attached to an Invitation for Bids or Request for Proposals.
Payment bond	A bond required for public works contracts in excess of $25,000. The bond covers the costs of labor and/or materials provided by the contractor's employees, subcontractors, and suppliers in the event that the contractor fails to make those payments.
Performance bond	A bond required for public works contracts in which progress payments are made; the bond guarantees the contractor's performance of the work required by the contract.
Person	An individual or a business entity, including but not limited to a sole proprietorship, partnership, corporation, or joint venture. For purposes of SCM 1, "person" may also refer to a government agency or a nonprofit association.
Personal property	Property consisting of any moveable or intangible items as opposed to land or fixtures on land (real property).
Prevailing wage	The wages paid, as and determined by the California Department of Industrial Relations to a distinct trade, craft, classification, or type of worker in the specified geographic area in which a public work is performed.
Progress payments	Partial payments related to steps or phases toward the completion of the required services under a contract.
Prompt Payment Act	Statutory provisions that establish late payment penalties for late payments made by State agencies or State contract. (GC § 927, et seq.)
Proprietary software	Software that is owned and copyrighted by the contractor who in turn sells licenses for the use of this product.
Protest	A formal challenge by a bidder to the intended award of a contract solicited by an Invitation for Bids or a Request for Proposals.
Protestant	A bidder who files a protest.
Real property	Land and fixtures on land.
Request for application	A document that solicits potential grantees to apply for a grant.
Ratification	An act or an agreement by which something previously done is confirmed or adopted.

Responsive bid	A bid that meets the specifications and other requirements contained in the IFB or RFP.
Service contract	A contract in which the contractor provides a duty or labor, as opposed to commodities or goods.
Small business	See *certified small business*.
Subscription agreement	Standard agreement form used by State agencies to acquire services from a contractor providing services on a master service agreement (MSA) or Leveraged Procurement Agreement (LPA).
Subvention contract	See *local assistance contract*.
Target Area Contract Preference Act (TACPA)	TACPA (GC § 4530 et seq.) provides preferences for contracting opportunities in distressed areas.

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