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

(Rev 11/12)

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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 1/14)

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.)

D. Department of Finance Exception:

According to DOF, pursuant to Government Code section 13295.5, departments requiring services from DOF are not required to execute formal interagency agreements.

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 4/15)

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, including those created as a Joint Powers Authority (JPA), and including local government entities from other states.
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 1/14)

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 $149,999.99 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 1/15)

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. Fumigation, crop or agricultural spraying, or application of chemicals of any type that may result in substantial risk of serious injury to persons or damage to property.

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.