

STATE CONTRACTING MANUAL

CURRENT AS OF OCTOBER 2005

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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

SUMMARY OF 10/05 CHANGES

Location	What Changes
Cover Page	<ul style="list-style-type: none"> • Reflect SCM “current as of” date • Update information to reflect Deputy Director’s correct office name
Chapter Table of Contents	<ul style="list-style-type: none"> • Addition of “Fiscal Intermediaries” section 3.24 • Addition of “Commercial Office Moving Services” section 3.25 • Addition of “Elevator Maintenance Contracts” section 3.26 • Deleted “Standard State Contracting Process” section 5.04 • Addition of “Tie Bids” section 5.45 • Deleted “PCC Section 6611 Negotiation Authority” section 5.95 • Added “Guidelines” to section title for 6.15 • Deleted “Independent Contractors” section 7.21 • Deleted “Specialized Contract Provisions” section 7.75
Various sections	Deleted reference to Std 15 throughout the SCM
1.00	Updated introduction paragraph by adding and deleting language
1.00 A.	<ul style="list-style-type: none"> • Added words re contract types of “legal service, subventions, grants, commodities” • Deleted language referencing RESD-PSB and contact phone number
1.00 B.	<ul style="list-style-type: none"> • Deleted subsection “B.” language • Deleted “Note” box language and replaced it as the new subsection “B.” language
1.00 C.	<ul style="list-style-type: none"> • Deleted words “goods and services for” • Added words “commodities acquisitions” • Deleted language regarding reference to PCC § 12100 et seq.
1.00 D.	<ul style="list-style-type: none"> • Added new subsection “D.” language
1.02	<ul style="list-style-type: none"> • Deleted language regarding distribution of SCM copy to contact person in DGS/OLS • Added language directing contracting officials to sign up for DGS/OLS lister services
1.03 A.	<ul style="list-style-type: none"> • Deleted word “contracting and replaced with “acquisitions”
1.04	<ul style="list-style-type: none"> • Deleted word “contracting” and added words “services acquisitions” • Under role of DGS/OLS, deleted word “contract” and added word “acquisiton”
1.05 A.	<ul style="list-style-type: none"> • Deleted word “contracts” and added word “acquisitions”
1.05 B.	<ul style="list-style-type: none"> • Added word “acquisition” • Deleted words “contract to determine the appropriate classification of the contract”
1.05 B. 2. b.	<ul style="list-style-type: none"> • Delete “(currently \$120,000)?” and added word “per” and question mark after PCC designation • Deleted “General Services” and replaced with “DGS” • Deleted “contracting” and replaced with “acquiring these services”
1.05 B. 2. c.	<ul style="list-style-type: none"> • Deleted “contract” and replaced with “acquisition” • Deleted “General Services” and replaced with “DGS” • Moved reference to “Form 23” to different part of subsection “c.” paragraph
1.05 B. 4.	<ul style="list-style-type: none"> • Language added/deleted for clarification regarding information technology contracts
1.07	<ul style="list-style-type: none"> • Listed Std 213A in “Standard Contracting Forms” table • Minor corrections to language of listed forms for Std 2, 13, 15, 213 and 215
2.02	<ul style="list-style-type: none"> • Specifying “contract” and “agreement” are used interchangeably in SCM • Deleted word “It” and replaced with “A contract”
2.04 Table 2.1	Clarification of table information under “Important Factors” and “Decisions To Be Made”
2.06 A.	Deleted/added extensive language in regard to contract review and/or signing authority
2.07 Table 2.2	<ul style="list-style-type: none"> • Delete alpha designations of (C), (L), (S), (F) and (O) • Deleted some language under table section “Contracts with federal funding” • Deleted some language under table section “Interagency Agreements”

3.01 Table of Contents	<ul style="list-style-type: none"> • Corrected various section titles in Table of Contents • Added sections 3.24, 3.25 and 3.26 to Table of Contents
3.02	Remove reference to "PCC § 10335.5" from section title
3.02 B.1.	Added reference to "PCC § 10335.5"
3.02 B.4.	Deleted language
3.03 B.2.	Delete portion of language in "Note" box and add reference to SCM 3.06
3.03 C.1.	<ul style="list-style-type: none"> • Deleted "Std 13 or" • Deleted "Note" box information regarding Std 13A
3.04 A.1.	Deleted word "large"
3.04 A.5.	Added language re checking MM 03-10 guidelines
3.06 B.	Deleted some words to assist in clarifying subsection information re overhead fees
3.06 E.	Added words "the subcontract"
3.06 E.2.	Added words "has been received"
3.06 E.4.	Deleted PCC reference and also last sentence regarding NCB form use
3.06 F.	Deleted and then designated "Fiscal Intermediaries" as section 3.24
3.07 A.	Added words "unless specifically exempted by statute"
3.07 C.	Language added/deleted to clarify what/when executed legal services contract is sent to State Employees Bargaining Unit 2
3.07 D.	Added language re needing AG consent to amend legal services contract if changing scope of work.
3.07 F.	Deleted word "requirement" and words "as of"
3.09 A.3. & 4.	Correction to SCM reference from SCM 4 to SCM 4.10
3.09 A.8.	<ul style="list-style-type: none"> • Deleted reference to Std 15 • Added words "authority and the" • Language added to clarify requirements for amendments requiring DGS/OLS approval • Corrected SCM reference from 4 to 4.10
3.09 A.12	This subsection language was formerly SCM 4.10 A.4.
3.12 B.	Language in regard to availability of ORIM for consultation on insurance liability matters
3.12 B.1.	<ul style="list-style-type: none"> • Deleted words "costing \$100 or more" • Added reference to SCM section 7.40
3.12 B.2.	Deleted language and then replaced it with 3.12 C. language
3.12 C.	Language redesignated as subsection 3.12 B. 2. with some modifications
3.12 C.1.	This subsection language was formerly SCM 7.40 B.1. language with minor changes
3.12 C.2.	This subsection language was formerly SCM 7.40 B.2. language with minor changes
3.12 D.	Deleted language
3.13	<ul style="list-style-type: none"> • Added word "competitive" • Added reference of GC § 19130 to "Note" box information
3.14	Changed word "Agreements" to "Contracts" in section title and added reference to GC § 19134
3.14 F.1.	<ul style="list-style-type: none"> • Deleted words "Contracting agencies shall instruct potential bidders to" • Added words "Bidders shall"
3.18 A.	Language added regarding reimbursement at UC travel rates rather than DPA rates
3.24	This section language was formerly SCM 3.06 F.
3.25	This section language was formerly SCM 7.75 B. now with slight modification
3.26	This section language was formerly SCM 7.75 C.
4.04 5.b.	Deleted code cite of GC § 14616
4.08 B.1.a.	Clarifying distribution of copies of Std 215, Std. 213 and 213A
4.08 B.1.b.	Added reference to Std 215
4.08 B.1.c.	Deleted word "current" and added "state" in "Note" box
4.08 C.	Deleted "to the DGS/OLS Chief Counsel or an Assistant Chief Counsel" in "Note" box

4.09 B.	<ul style="list-style-type: none"> Deleted language Language of SCM 4.09 C. now designated as SCM 4.09 B.
4.09 C. thru E.	Changed alpha designations from D. to C. and E. to D.
4.09 D.3.	Corrected name of Board of Control
4.10 A.1.	Clarifying terms of exemption from DGS/OLS approval of a time extension amendment
4.10 A.2.	Deleted subsection
4.10 A.3.	Deleted subsection
4.10 A.4.	This subsection regarding approval of amendments designated as 4.10 A.2. with slight modifications.
4.10 B.	<ul style="list-style-type: none"> Deleted reference to STD 15 Added words “and all supporting documentation.” Deleted last sentence of subsection paragraph
4.10 C.	Deleted language
4.10 D.	This section with direction to see SCM 3.09 for more information designated as 4.10 C.
Chapter 4 Appendix	<ul style="list-style-type: none"> Added word “approval” to listed item “Non-competitive bid” Added reference “Std 215” to two listed items Replaced the word “COMMENTS” with “ADDITIONAL KEY INFORMATION.”
5.01 Table of Contents	<ul style="list-style-type: none"> Deleted 5.04 section for Standard State Contracting Process from Table of Contents Added 5.45 section for Tie Bids to Table of Contents Deleted 5.95 section for PCC Section 6611 Negotiation Authority
5.04	Deleted entire section 5.04
5.05 A.5.	Subsection deleted
5.05 A.6.	Redesignated as subsection 5.05 A.5.
5.08	Deleted and added language to “Note” information regarding MM 03-10
5.08 A.	Added words “A minimum of”
5.08 A.6.	Added words “(unless required by the rules of the master contract User Guide)”
5.08 A.8.	Subsection deleted
5.08 B.	Section deleted and redesignated as SCM 5.45 section for tie bids
5.09 A.	Deleted word “should” and added “shall”
5.10 A.	<ul style="list-style-type: none"> Deleted word “Documentation and replaced with “Advertising” Added language to the end of the sentence regarding approved Std 821
5.15 A.	Deleted sentence regarding reference to SCM 5.09
5.15 F.	<ul style="list-style-type: none"> Formatted subsection language to bullet style Deleted words “majority of the” and “private consultants” Added “or subject matter expertise”
5.45	Added this tie bid section language which was formerly SCM 5.05 B.
5.75 C.1.	Corrected spelling of name from Mark to “Marc”
5.75 C.3.	Corrected “Note” box information of SCM reference from 5.50 B to 5.80 C.
5.80 A.	Deleted words “the re-bid occurs”
5.80 A.1.	Added words “The re-bid occurs”
5.80 A.2.	Added words “to” and “and”
5.80 A.3.	Deleted words “There is” and added word “the”
5.80 B.2.c.	Added words “competitively bid and deleted “was and”
5.80 B.2.d.	Added words “competitively bid”
5.80 B. 2.e.	Added subsection regarding amendments to existing contract correct incidental errors
5.80 B.3.	Changed reference of alpha listing from (a) through (m) to (a) through (s)
5.80 B.3.f.	Deleted example of “ambulance service calls”
5.80 B.3.n. – s.	Added language covering types of contracts not needing advertising nor NCB approval
5.80 C.3.	<ul style="list-style-type: none"> Added words “or” and “two certified” Deleted words “or any combination thereof.”
5.95	Deleted section

6.00	<ul style="list-style-type: none"> • Clarifying language added to “Introduction” paragraph of Chapter 6 • Spelled out CCR abbreviation
6.01	Added word “Guidelines” to section 6.15 title listing in Table of Contents
6.02 1. & 2.	Clarification language to assist in regard to who can file bid protest
6.03 F.	Changes to section F. regarding contracts not subject to protest
6.10 A.	Added word “contract”
6.10 A.1. 2. & 3	Deleted and added language regarding contract award posting procedures
6.10 B.	Subsection deleted
6.10 B.2.	<ul style="list-style-type: none"> • Changed designation from 6.10 C.2. to 6.10 B.2. • Deleted and then added new language regarding public inspection access to bids
6.10 C.	This subsection language was formerly 6.10 D. language
6.10 D.	<ul style="list-style-type: none"> • This subsection language was formerly 6.10 E. language • Deleted first two sentences • Added words “Once a protest is filed the”
6.10 E.	This subsection language was formerly 6.10 F. language
6.10 F.	<ul style="list-style-type: none"> • This subsection language was formerly 6.10 G. language • Deleted words “DGS’s internal processes are as follows:” • Added “Upon receipt of a protest, DGS/Office of Legal Services (OLS):”
6.10 F.1.	<ul style="list-style-type: none"> • Deleted first sentence of subsection paragraph • Language added regarding response to protestant upon receipt of protest by DGS
6.10 F.2.	Deleted and added language regarding information required from State agencies
6.10 F.2.a.	Deleted language
6.10 F.2.b.	Deleted language
6.10 F.3.	Deleted and added language regarding DGS jurisdiction to render decision on protest
6.10 F.4.	Subsection added in regard to procedures for determining a decision on a protest
6.10 H. thru J.	Deleted all language
6.15	<ul style="list-style-type: none"> • Added word “Guidelines” to section title • Deleted first sentence of section 6.15
6.15 G.	Added “may be” and deleted “are”
6.15 H.	<ul style="list-style-type: none"> • Added “may be” and deleted “is” • Deleted last sentence of 6.15 H.
6.18	Deleted and added language regarding hearing officer’s decision being final
6.30 A.	Changed “Board of Control” to “Victim Compensation & Government Claims Board”
6.40 9.	Deleted words “or are not selected for the award.”
7.01 Table of Contents	<ul style="list-style-type: none"> • Deleted listing of section 7.21 • Deleted listing of section 7.75
7.20 B.	Corrected SCM reference to section 8.23
7.21	Deleted section
7.34	Corrected phone number of Statewide CAL-Card Administrator
7.40 A.	Deleted and added language regarding responsibility to assess insurance needs
7.40 B.	<ul style="list-style-type: none"> • Added subsection regarding insurance for hazardous activities contracts • Deleted opening sentence of former subsection 7.40 B.
7.40 B.1.	<ul style="list-style-type: none"> • This subsection language has been redesignated (formerly known as SCM 7.40 A.1) • Deleted subsection language redesignated as opening sentence of SCM 3.12.C.
7.40 B.2.	<ul style="list-style-type: none"> • Subsection added/modified using 2nd sentence language of former SCM 7.40 A.1. • Deleted subsection language redesignated as SCM 3.12 C.1. with slight modification
7.40.B.3.	This subsection language was formerly SCM 7.40 A.2.
7.40 B.4.	Added subsection regarding insurance cancellation policy
7.40 B.5.	Added subsection regarding additional insured on insurance policy
7.40 B.6.	This subsection language was formerly SCM 7.40 A.3.

7.40 C.	Deleted language
7.75	Deleted section
7.80 A.	Added words "RFP or IFB for"
8.02 Table 8.1	Deleted reference to Small Business & DVBE Outreach & Education Section
8.12 A.3.	<ul style="list-style-type: none"> • Deleted section language and replaced with language of former SCM 8.12 A.4. • Added words to clarify further government agency contracts
8.12 A.4.	This subsection language was redesignated from SCM 8.12 A.5.
8.14 C.	Deleted word "opening day" and added words "due date" to "Note" information
8.20 F.	Added new subsection language regarding NVSA agencies
8.21 B.2.	Deleted word "opening" and added word "due"
10.15 A.1.b.	Added word "permanent"
Glossary of Terms	Corrected definition of "contract"
Index	<ul style="list-style-type: none"> • Deleted references to section 7.75 along with its subsections throughout SCM index • Deleted reference to California Multiple Award Schedules (CMAS) - 7.34 C. • Added reference to section 3.25 for Commercial Office Moving Services • Deleted and moved "IT & telecommunications contracts" to proper index section • Added reference to section 3.26 for Elevator Maintenance Contracts • Added reference to section 5.15 F. for Evaluation Committee • Added reference to section 3.24 for Fiscal Intermediaries • Deleted reference to section 7.21 for Independent Contractors • Added reference to section 8.12 for Joint Powers Agreements • Added reference to section 3.25 for Moving services • Added reference to section 3.25 under Office Moving Service • Added the word Guidelines to end of Public Hearing reference • Deleted reference to Standard State Contract Process - 5.04 • Changed reference of 9.09 to 7.85 for Termination of the Contract • Added reference to section 5.45 for Tie Bids

TABLE OF CONTENTS
(Rev 11/04)

ABBREVIATIONS AND ACRONYMS

A & E	Architectural and engineering
ADA	Americans with Disabilities Act
CCR	<i>California Code of Regulations</i>
CSCR	<i>California State Contracts Register</i>
DGS	Department of General Services
DSA/AC	Division of State Architect, Access Compliance
DVBE	Disabled veteran business enterprise
EZA	Enterprise Zone Act
GC	<i>California Government Code</i>
IFB	Invitation for Bids
IRS	Internal Revenue Service
IT	Information Technology
LAMBRA	Local Military Base Recovery Area Act
LC	<i>California Labor Code</i>
MM	Management Memo
MOU	Memorandum of Understanding
MSA	Master services agreement
NCB	Non-Competitively Bid Contract Justification
NLRB	National Labor Relations Board
OLS	Office of Legal Services, DGS
ORIM	Office of Risk and Insurance Management, DGS
OSDC	Office of Small Business and DVBE Certification, DGS
OSP	Office of State Publishing
PCC	<i>California Public Contract Code</i>
PD	Procurement Division
RESD	Real Estate Services Division
RFA	Request for Applications (Grants)
RFP	Request for Proposals
RFQ	Request for Qualifications
SAM	<i>State Administrative Manual</i>
SCAN	State Contracting Advisory Network
SCM	<i>State Contracting Manual</i>
(SCM __)	<i>State Contracting Manual</i> - refer to that chapter
(SCM § __)	<i>State Contracting Manual</i> - refer to that section
SCO	State Controller's Office
SOW	Scope of work
SPB	State Personnel Board
TACPA	Target Area Contract Preference Act
UIC	<i>Unemployment Insurance Code</i>
USC	<i>United States Code</i>
W & I	<i>Welfare and Institutions Code</i>
2CCR	<i>Title 2, California Code of Regulations</i>

CHAPTER 1 – INTRODUCTION	SECTION	PAGE
Introduction	1.00	1
Table of Contents	1.01	1
Availability of the Manual	1.02	2
Guide To Usage of the Manual	1.03	2
Agency Responsibilities	1.04	3
Classification of Contracts	1.05	3
Circumvention of Responsibilities Prohibited	1.06	4
Standard Contracting Forms	1.07	5
CHAPTER 2 – THE BASIC CONTRACTING PROCESS	SECTION	PAGE
Introduction	2.00	6
Table of Contents	2.01	6
Definition of a Contract	2.02	6
Preliminary Considerations	2.03	6
Overview of the Contracting Process	2.04	8
Elements of a Valid Contract	2.05	10
Authority to Sign a Contract	2.06	11
Standard Language	2.07	11
An OLS Review Checklist	Appendix	15
CHAPTER 3 - ADDITIONAL REQUIREMENTS	SECTION	PAGE
Introduction	3.00	18
Table of Contents	3.01	18
Consultant Services Contracts	3.02	20
Interagency Agreements	3.03	23
Master Agreements for Services and Consulting Services	3.04	24
Contracts With Local Government	3.05	24
Agreements With Other Governmental Entities & Public Universities	3.06	25
Legal Services Contracts	3.07	26
Expert Witness Contracts	3.08	27
Amendments	3.09	27
Emergency Contracts	3.10	29
Federally Funded Contracts	3.11	29
Hazardous Activities Contracts	3.12	29
Joint Power Agreements	3.13	31
Agreements Contracts for Specific Types of Personal Services (GC 19134)	3.14	31
Contracts With Nonprofit Organizations	3.15	34
Revenue Agreements	3.16	34
Subvention and Local Assistance Contracts	3.17	34
UC, CSU, Community Colleges, and Their Foundations or Auxiliaries	3.18	36
IT and Telecommunications Contracts	3.19	37
Convention and Conference Services Contracts	3.20	37
Printing Services Contracts	3.21	37
Contracting for Students	3.22	38
Memberships	3.23	38

	SECTION	PAGE
<u>Fiscal Intermediaries</u>	<u>3.24</u>	38
<u>Commercial Office Moving Services</u>	<u>3.25</u>	38
<u>Elevator Maintenance Contracts</u>	<u>3.26</u>	39

CHAPTER 4 - DGS CONTRACT APPROVAL

	SECTION	PAGE
Introduction	4.00	40
Table of Contents	4.01	40
Responsibility for Contract Approval	4.02	40
Contracts Requiring DGS/OLS Approval	4.03	41
Contracts Not Requiring DGS/OLS Approval	4.04	42
Approval of Emergency Contracts	4.05	42
Certain Federally Funded Grants Exempt from Approval by DGS	4.06	43
Exemption Letters	4.07	44
Obtaining Approval from DGS/OLS	4.08	44
Approval and Commencement of Work	4.09	47
Approval of Amendments	4.10	48
Approval of Waste Recycling Agreements	4.11	49
DGS Legal Contract Package	Appendix	50

CHAPTER 5 - COMPETITIVE BIDDING METHODS

	SECTION	PAGE
Introduction	5.00	51
Table of Contents	5.01	51
Statutory and Regulatory Policy References	5.02	52
Fundamental Rules	5.03	52
Standard State Contract Process	5.04	53
Preliminary Considerations and Decisions	5.05	53
Comparison Chart of Bidding Methods	5.06	54
Differences Between IFBs and Primary RFPs	5.07	55
Competitive Bidding Options	5.08	56
Required Language in Competitive Bidding	5.09	57
Competitive Bidding Issues	5.10	57
Invitation for Bids	5.11	58
Request for Proposals	5.15	58
Primary RFP and Secondary RFP Differences	5.17	60
Requests for Proposals: Primary Method	5.20	61
Requests for Proposals: Secondary Method (Point Count or High Score)	5.25	61
Forms and Certifications for Competitive Bidding Documents	5.30	62
What to Include in an RFP	5.35	65
Guidelines for Criteria and Considerations in Evaluating RFPs	5.40	67
<u>Tie Bids</u>	<u>5.45</u>	68
Time for Completion of Competitive Bidding Process	5.60	68
Posting and Notification Requirements	5.65	68
Non-Competitively Bid (NCB) Contract Justification	5.70	69
Advertising State-Contracting Opportunities	5.75	69
Contracts Exempt from Advertising in the CSCR and/or Competitive Bidding	5.80	70

	SECTION	PAGE
Multiple Awards	5.85	72
Informal Competition	5.90	72
PCC Section 6611 Negotiation Authority	5.95	73
 CHAPTER 6 - CONTRACT AWARD PROTESTS		
	SECTION	PAGE
Introduction	6.00	74
Table of Contents	6.01	74
Grounds for Protest	6.02	75
Protest Exclusions	6.03	75
Role of DGS in Contract Protest Hearings	6.04	75
Protest Affecting Vital Services	6.05	76
Procedure for Protesting an Award	6.10	76
Public Hearing <u>Guidelines</u>	6.15	78
Decision on the Hearing	6.18	78
Costs of the Proceeding	6.19	78
Protests on Other Types Of Solicitations	6.30	79
Notification of the Right to Protest	6.35	79
Minimizing Protest Exposure	6.40	79
 CHAPTER 7 - MISCELLANEOUS ISSUES		
	SECTION	PAGE
Introduction	7.00	81
Table of Contents	7.01	81
Civil Service Considerations	7.05	82
Conflicts of Interest	7.10	82
Reporting of Contracting Practices	7.15	84
Prompt Payment	7.20	85
Independent Contractors	7.24	86
Contractor Identification Numbers	7.25	86
Equipment Purchases	7.29	86
Contract Budgets	7.30	87
Availability of Funds	7.31	87
Advance Payments	7.32	88
Progress Payments	7.33	88
Contract Payment by State Purchase Card, Cal-Card	7.34	89
Insurance Requirements	7.40	89
Contracts with No Dollar Amount	7.45	90
Audits	7.50	91
Drug-Free Workplace Act of 1990	7.55	91
Rental Agreements	7.60	93
Purchase Options	7.61	93
Lease/Purchase Analysis for Equipment	7.62	94
Nondiscrimination Program	7.65	94
Recycle Product Content	7.70	95
Specialized Contract Provisions	7.75	95
Multiple Year Contracts	7.80	96
Contract Termination Clauses	7.85	96

	SECTION	PAGE
Breach of Confidentiality by Contractor	7.90	96
CHAPTER 8 - BUSINESS PARTICIPATION PROGRAM REQUIREMENTS	SECTION	PAGE
Introduction	8.00	97
Table of Contents	8.01	97
Procurement Division Responsibility and Legal References	8.02	98
Introduction to Disabled Veteran Business Enterprise Participation Programs (DVBE)	8.10	99
DVBE Regulations	8.11	99
When to Apply DVBE Goals to a Contract	8.12	100
Bidders' Response to DVBE Requirements in a Solicitation	8.13	100
Qualifying as a DVBE	8.14	103
DVBE Bid Information	8.15	104
Management of DVBE Contract Requirements	8.16	105
Annual Report of DVBE Participation	8.17	107
Certified Small and Microbusiness Program	8.20	108
Small Business Preference Program	8.21	110
Non-Small Business Preference Program	8.22	112
Prompt Payment of Small Businesses	8.23	112
Programs Stimulating Business and Employment in Specific Geographic Areas (TACPA, EZA and LAMBRA)	8.30	113
CHAPTER 9 - CONTRACT MANAGEMENT	SECTION	PAGE
Introduction	9.00	113
Table of Contents	9.01	113
Definitions	9.02	113
Responsibilities of the Contract Manager	9.04	113
Contract Manager "Don'ts"	9.05	118
Ethics	9.07	118
Record Keeping	9.09	118
Performance of the Contractor	9.11	119
Termination of the Contract	9.12	120
Closing of Service Contracts	9.14	120
Retention of Contract Records	9.16	120
CHAPTER 10 - PUBLIC WORKS CONTRACTS	SECTION	PAGE
Introduction	10.00	121
Table of Contents	10.01	121
Definitions	10.05	121
Authorization of Public Works Contracts	10.10	122
Public Works Contracts Between \$1,000 and \$120,000	10.15	122
Public Works Contracts Between \$120,000 and \$400,000	10.20	128
Requirements of Public Works Contracts	10.25	129
Public Works Contracts Required Language	10.30	129
Non-collusion Affidavit	Appendix	133

CHAPTER 11 – ARCHITECTURAL AND ENGINEERING CONTRACTS	SECTION	PAGE
Introduction	11.00	134
Table of Contents	11.01	134
Types of Projects	11.03	134
Selection Process Based on Qualifications	11.05	135
Evaluation of Qualifications	11.06	135
Negotiating A & E Contracts (moved re-numbered from 11.06)	11.08	135
Award of Contract	11.10	135

GLOSSARY OF TERMS
INDEX

1. INTRODUCTION

1.00 • INTRODUCTION

(Rev 10/05)

This State Contracting Manual (SCM) is provided as a resource to those persons in California state government who are involved in the state's contracting process. ~~Contained herein are~~ **It provides the** policies, procedures and guidelines ~~whose purpose is 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 Executive Orders and Management Memos.

- A. Volume 1 of the manual deals primarily with non-IT services, consultant services contracts, **legal services, subventions, grants** and interagency agreements. It does not cover real estate lease transactions, **commodities** or IT acquisitions. ~~Policies stated herein may not apply to such transactions. DGS Real Estate Services Division (RES D) Professional Services Branch (PSB) should be contacted for information on real estate lease transactions at (916) 375-4151.~~ Overviews of public works contracts and architectural and engineering contracts are provided in chapters 10 and 11, respectively.
- B. ~~Services contracts and Consultant Services contracts are considered Personal Services contracts. Careful analysis must be given to the justification for using contracted personnel rather than using civil service positions within state government.~~

~~Note: 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. 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.

- C. Volume 2 of the manual is the Purchasing Authority Manual, and it contains information and specific provisions applicable to goods and services for Information Technology (IT) and **commodities acquisitions**. ~~Telecommunications, as well as are covered in PGC § 12100 et seq.~~

D. DGS/PD should be contacted for assistance in interpreting any section of Volume 2 of this manual.

1.01 • TABLE OF CONTENTS

(Rev 11/99)

DESCRIPTION	SECTION
Introduction	1.00
Table of Contents	1.01
Availability of the Manual	1.02
Guide To Usage of the Manual	1.03
Agency Responsibilities	1.04
Classification of Contracts	1.05
Circumvention of Responsibilities Prohibited	1.06
Standard Contracting Forms	1.07

1.02 • AVAILABILITY OF THE MANUAL

(Rev 10/05)

One copy of this manual has been distributed to the primary contact person registered with the DGS/OLS, in accordance with the State Administrative Manual (SAM § 1200).

The **manual is available from the** Internet version is available 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/subscription service.**

1.03 • GUIDE TO USAGE OF THE MANUAL

(Rev 10/05)

- A. Table 1.1 provides a guide for interpreting the contracting **acquisitions** requirements presented in this manual.

Table 1.1 Required or Discretionary Language			
	Requirements “ <u>must</u> ,” “ <u>shall</u> ,” “ <u>mandatory</u> ,” or “ <u>required</u> ”	Limited Discretion “ <u>should</u> ”	Full Discretion “ <u>may</u> ,” “ <u>guidelines</u> ,” “ <u>recommended</u> <u>practices</u> ,” or “ <u>examples</u> ”
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 <u>may</u> 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 Chief Counsel of DGS/OLS. Any written exemptions should be kept on file for audit purposes.

1.04 • AGENCY RESPONSIBILITIES

(Rev 10/05)

Each state agency is responsible for its own ~~contracting~~ **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
- Providing up-front assistance to agencies regarding ~~contract~~ **acquisition** problems
- Overseeing state contracting practices
- Improving the state's contracting system
- Training state personnel in contract requirements

1.05 • CLASSIFICATION OF CONTRACTS

(Rev 10/05)

- A. Proper classification of ~~contracts~~ **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**: ~~contract to determine the appropriate classification of the contract:~~
 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 § 4525 of the Government Code?

If so, the process contained in § 4525 of the Government Code 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? Does the work involve erection, construction, alteration, repair or improvement of a public structure as defined in § 1101 of the Public Contract Code?

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

 - a. Does the contract estimate exceed \$400,000? If so, only the agencies listed in the State Contract Act, and agencies specifically authorized by statute, are authorized to contract for this type of work. (PCC § 10106)
 - b. Does the contract estimate meet the statutory definition of a "Project" (~~currently \$120,000~~)? **per** PCC § 10105? If so, unless your agency is one of the agencies listed in the State Contract Act, approval (Form 23), must be obtained from ~~General Services~~ **DGS** prior to ~~contracting~~ **acquiring these services**.
 - c. Does the ~~contract~~ **acquisition** involve development of plans and drawings? Even if the contract amount is less than the current \$120,000 limit for a "Project", **(Form 23)** approval must be obtained from **DGS** ~~General Services (Form 23)~~, prior to contracting.
 3. Is it a contract for the purchase of a Commodity or Goods? Does the contract have as its sole or main purpose the buying of some tangible items, such as equipment, parts,

(1.05 B. 3. Classification of Contracts – continued)

- 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.
4. Is it an Information Technology (IT) Contract-acquisition? 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 § 5200 must be adhered to. IT activities typically require some additional documentation. ~~Either Summary Fact Sheet, or Feasibility Study Report. These IT acquisitions~~ may require approval by the Department of Finance and/or the Office of Technology Investment Review Oversight and Security (OTROS) Unit (TIRU). 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, e.g. 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.
 5. Is it a Contract for non-IT services? 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? 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? A legal services contract is a type of consulting services contract to obtain services which must be performed by a licensed attorney. It may also include ancillary services such as jury consultants, or expert witnesses, where such services are directed by the attorney and are necessary for the performance of attorney services.

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. Therefore, it is not appropriate to seek artificial exceptions to contracting requirements or to seek loopholes. In particular, circumvention of required competitive bidding or contract approval is unlawful. Pass-through contracts in which the vendor or another governmental agency is doing something that your agency cannot lawfully do directly, such as avoiding competitive bidding, is a common type of circumvention. (PCC § 10340)

1.07 • STANDARD CONTRACTING FORMS

(Rev 10/05)

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

Form Number – Used for
STD 2 - First Page for State Contracts (replaced by the Std 213 below)
STD 4 - Consultant Evaluation
STD 13 - Interagency Agreements (Also see Std 213 below replaced by Std 213)
STD 15 - Contract Summary and Transmittal Form (replaced by the Std 215 below)
STD 16 - 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
STD 23 - Request for Project Approval (Construction)
STD 204 - Payee Data Record
STD 213 – Standard Agreement (First page for state contracts and Interagency Agreements (replaces STD 2 and STD 13 under new standardized contract process)
<u>STD 213A – Standard Agreement Amendment (First page for amendment to contract agreement under standardized contract process)</u>
STD 215 - Agreement Summary (replaces STD 15 under new process)
STD 807 - Payment Bond (Construction)
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 TACPA Request Form
STD - 831 EZA Request Form
STD - 832 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. Changes to standard forms require the approval of the OSP Forms Management Unit.

THE BASIC CONTRACTING PROCESS

2.00 • INTRODUCTION

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

2.01 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	2.00
Table of Contents	2.01
Definition of a Contract	2.02
Preliminary Considerations	2.03
Overview of the Contracting Process	2.04
Elements of a Valid Contract	2.05
Authority to Sign a Contract	2.06
Standard Language	2.07
An OLS Review Checklist	Appendix

2.02 • DEFINITION OF A CONTRACT

(Rev 10/05)

“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** sets forth terms, conditions, and the statement of all work to be performed.

2.03 • PRELIMINARY CONSIDERATIONS

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 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. Some contracts are legally exempt from DGS approval. Some may require approval by other agencies. (See SCM 4.)

D. Funding

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

(2.03 Preliminary Considerations – continued)

E. Competitive Bidding

Services obtained from the private sector are typically subject to a competitive selection process. Competitive bidding is often a complex and time-consuming process with specific legal requirements. (See SCM 5.)

F. Management of the Contract

The final step of managing 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 9.)

2.04 • OVERVIEW OF THE CONTRACTING PROCESS

(Rev 10/05)

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
The Contracting Process

	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.	<ul style="list-style-type: none"> • 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, a service obtained before or a new service? • Is this service routine or extraordinary? 	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • Can this service be done in house? • Is the service available within the agency your department? • Can another state agency perform the service? • Is this routine or extraordinary? • <u>What are the estimated costs of alternatives, including in-house or interagency services?</u> • <u>If in-house or interagency services are available, would contracting produce a cost savings?</u> 	<ul style="list-style-type: none"> • Is a contract with a non-state provider really necessary? • <u>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.</u>
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.	<ul style="list-style-type: none"> • What are the estimated costs of alternatives, including in-house or interagency services? • If in-house or interagency services are available, would contracting produce a cost savings? • What funds are available to pay for the services? 	<ul style="list-style-type: none"> • 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. • Who has authority to approve funding?

(2.04 Overview of the Contracting Process – continued)

Table 2.1 - The Contracting Process (Cont.)

The Following Considerations Assume a Contract is Justified and Funds are Available		
<p>4. The contractor selection method depends on the services involved and/or the circumstances. Different methods impose different requirements and procedures.</p>	<ul style="list-style-type: none"> • 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? 	<ul style="list-style-type: none"> • Select by formal competition, such as: <ul style="list-style-type: none"> • Invitation for Bids (IFB)? • Request for Proposals (RFP)? • Request for Qualifications? • Select by informal competition, such as telephone bids and quotes? • Consider only one provider? Use other methods, such as Master Agreements or CMAS?
The Following Considerations Assume Formal Competition is Used:		
<p>5. Formal competitive bidding is generally required by law or policy. The formal competitive bidding process involves numerous factors and decisions.</p>	<ul style="list-style-type: none"> • 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 and to guard against leaks or tampering. • 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. 	<ul style="list-style-type: none"> • 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?

(2.04 Overview of the Contracting Process – continued)

Table 2.1 - The Contracting Process (Cont.)

	IMPORTANT FACTORS	DECISIONS TO BE MADE
6. The contract must be processed for signature, approval and distribution.	<ul style="list-style-type: none"> • The contract must be signed by the contractor. • The contract must be signed certifying availability of funds and indicating the encumbrance of funds. • The contract must be signed by the person authorized to sign for the agency. • Additional approvals must be obtained depending on the contract. • The contract must be distributed. 	<ul style="list-style-type: none"> • 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.	<p>Management includes:</p> <ul style="list-style-type: none"> • 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 • Tracking state deadlines and use of funds • Identifying contract and contractor problems 	<ul style="list-style-type: none"> • 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

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)
- 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 (The work, service, or product to be performed, rendered, or provided. 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 10/05)

- A. A state agency's authority to contract is limited to those officers who are ~~either have~~ **statutory authority or have been duly** authorized in writing ~~to do so by the individual agency as designated by the agency head.~~ Agencies must maintain a written record of all persons authorized to sign contracts and transmittals. **by one who has statutory authority.**

To insure the integrity of the state and its procurements, 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, the individual should have the contract reviewed and approved prior to final signature by one who does.

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. (SCM 3.03)
- 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. (SCM 3.05)
- D. 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. (SCM 3.09, 4.10)

2.07 • STANDARD LANGUAGE

(Rev 10/05)

The provisions noted in Table 2.2 are generally required. Agencies should document non-use of clauses.

(2.07 Standard Language – continued)

Table 2.2 - Contract Clauses

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 or good-faith efforts.	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.
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 paper	All contracts	PCC §§ 10233, 10308.5, 10354
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 §§ 10240.5, 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
Four digit capability	IT contracts for systems, software, and instrumentation with imbedded chips	State Policy (DOF & DGS)
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
Promoting/Deterring Union organizing	Contracts of \$50,000 or more.	GC § 16645 et. seq.
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 over \$100,000	PCC § 10295.3

(2.07 Standard Language – continued)

Table 2.2 - Contract Clauses (Cont.)

Consultant Services (G) – Note: Needed in addition to “Contract Provisions” listed above.		
Amendment	Consultant contracts	PCC § 10335
Evaluation of contractor	Consultant services.	PCC § 10367
Evaluation criteria	Consulting services of \$1,000 or more	PCC § 10371
Progress schedule	Consulting services of \$1,000 or more	PCC § 10371
Consultant Resumés	Consulting services of \$5,000 or more	PCC § 10371
Detailed cost analysis	Consulting services of \$1,000 or more	PCC § 10371
Project coordinator	Consultant services	
Progress reports/meetings	Consultant services	PCC § 10371
Legal Services (L) - 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 (S) – 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 (F) – Note: Needed in addition to “Contract Provisions” listed above.		
Cancellation 30 days	Contracts funded in whole or in part by federal government, state government, and other public entities	State policy or federal policy
Fund availability	Contracts funded in whole or in part by federal government, all contracts	Federal <u>State</u> policy
Disclosure requirements (Federal Reg)	All Contracts	GC § 7750
Debarment (Federal Regulations)	All contracts	GC § 4477
Disadvantaged business enterprise/small business affirmative steps	Contracts funded by federal funds	Federal policy

(2.07 Standard Language – continued)

Table 2.2 - Contract Clauses (Cont.)

Federal disclosure statement	Contracts funded by federal funds	Federal policy
Other Contracts (O) – Note: Needed in addition to “Contract Provisions” listed above.		
Bargaining agreements, prevailing wages, standard conditions of employment	Moving services over \$2,500; public works	SAM § 3810 GC § 14920
State’s responsibilities for repairs, liability	Contracts for equipment rental	State policy
Equipment maintenance	Contracts for equipment rental	State policy
Interagency Agreements		
*Interagency agreements do not require other standard contract provisions		
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

CHAPTER 2 - APPENDIX

AN OLS REVIEW CHECKLIST

(Rev 4/04)

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

A. THE CONTRACT COMPLIES WITH THE LAW.

1. Authority to contract out
 - a. Specific statute
 - b. GC § 19130 consideration
 - Cost savings 19130(a) -- State Personnel Board (SPB) approval required
 - Other reasons 19130(b)
 - (1) Exempt under Constitution
 - (2) New state function and legislative authority
 - (3) Service not available: highly specialized or technical
 - (4) Incidental to the purchase or lease
 - (5) Conflict of interest; need unbiased findings
 - (6) Emergency appointment
 - (7) Private counsel, with attorney general (AG) approval and Governors Office, if applicable. Notice provided to Bargaining Unit 2 representatives of contract
 - (8) Contractor will provide things that are not feasible for the state to provide
 - (9) Training when civil service is not available
 - (10) Urgent, temporary, or occasional services when civil service delay would frustrate the purpose
2. Budget authority
3. Legal method of procurement
 - a. Bidding not required
 - b. Bidding generally required
 - IFB
 - RFP
 - 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

CHAPTER 2 – APPENDIX
(An OLS Review Checklist – continued)

- b. Scope of work specific and realistic
 - c. Maximum use of dollars
 - d. Deliverables clear and concise
 - e. Realistic timetable
2. Reasonable cost
- a. Consider whether:
 - Bid is within estimate.
 - Bids cover a wide range.
 - Low bid is very low.
 - All bids are high.
 - b. Has rebidding 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. Results, deliverables
 - e. Timelines, progress reports
 - f. Evaluation, acceptance
3. Total amount and payment method
4. Terms and conditions—standard and special
- D. SECONDARY ISSUES AND SUPPORTING DOCUMENTATION ARE REVIEWED.
1. Social issues (as appropriate)
- a. Small business
 - b. 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
- a. AG/Gov Office (if applicable)
 - b. SPB
 - c. Fleet

CHAPTER 2 – APPENDIX
(An OLS Review Checklist – continued)

- d. Insurance
- e. Records Management
- 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 (Rev 10/05)

DESCRIPTION	SECTION
Introduction	3.00
Table of Contents	3.01
Consultant Services Contracts	3.02
Interagency Agreements	3.03
Master Agreements <u>for Services and Consulting Services</u>	3.04
Contracts with Local Government	3.05
Agreements with other Governmental Entities & <u>Public Universities</u>	3.06
Legal Services Contracts	3.07
Expert Witness Contracts	3.08
Amendments	3.09
Emergency Contracts	3.10
Federally Funded Contracts	3.11
Hazardous Activities Contracts	3.12
Joint Power Agreements	3.13
Agreements <u>Contracts</u> for Specific Types of Personal Services	3.14
Contracts with Nonprofit Organizations	3.15
Revenue Agreements	3.16
Subvention and Local Assistance Contracts	3.17
UC, CSU, Community Colleges, and Their Foundations or Auxiliaries	3.18
IT and Telecommunications Contracts	3.19
Convention and Conference Services Contracts	3.20
Printing Services Contracts	3.21

(3.01 Table of Contents – continued)

Contracting for Students	3.22
Memberships	3.23
<u>Fiscal Intermediaries</u>	<u>3.24</u>
<u>Commercial Office Moving Services</u>	<u>3.25</u>
<u>Elevator Maintenance Contracts</u>	<u>3.26</u>

3.02 • CONSULTANT SERVICES CONTRACTS (PCC § 10335.5)**(Rev 10/05)**

- 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. 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)
 4. ~~Contracts that are expressly exempted from the provisions of PCC § 10295~~
- C. Agencies shall only use private consultants when the quality of work is at least equal to that of agency resources. (PCC § 10371)

Note: Certain consultant services contracts are exempt from the statutory competitive bidding requirements. These services include contracts for expert witnesses for litigation as well as contracts for legal services. (PCC § 10335.5)

3.02.1 CONTRACT REQUIREMENTS

- A. Consultant services contracts have certain requirements that do not apply to other contracts. For competitively bid contracts, these special conditions are usually included in the RFP or IFB (PCC § 10371):
1. Consultant services contracts of \$1,000 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. To ensure that all the legal requirements are met, the DGS recommends that a consultant contract 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: 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.

(3.02.1 B. Contract Requirements – continued)

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

DGS recommends that the following criteria 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. What are the professional qualifications of the personnel whom the firm will commit to 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 approval, the 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, the awarding agency should document the review of the negative evaluations in the space provided on form ~~STD 15~~ or STD 215.

3.02.4 MULTIPLE CONTRACTS WITH THE SAME CONSULTANT

(Rev 3/03)

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). This applies even though any or all of the contracts would be under the applicable dollar limits exempting them from review.

3.02.5 CONTRACTOR EVALUATIONS (PCC §§ 10367 and 10369)

(Rev 4/04)

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.

(3.02.5 Contractor Evaluations (PCC §§ 10367 and 10369) – continued)

- 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 evaluation form in a separate agency contract file and send one copy of the form to the DGS/OLS within five working days of the completion of the evaluation. (SCM 3.02.5.E.)
- D. On 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 prepare a statement defending his or her performance under the contract and to send it to the agency and the department. The contractor's statement 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.

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 could never be derived simply through the analysis of the consultant's formal report. Agency personnel working with the consultant can give the 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, 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 airing difficulties or special problems encountered so that remedies can be developed quickly (PCC § 10381[c]).

3.02.7 FEASIBILITY STUDIES FOR IT ACQUISITIONS

(Rev 4/04)

Solicitation documents and contracts with consultants for the preparation of feasibility studies and for recommendations for the acquisition of IT products and services must comply with PCC section 10365.5, 10430, and SAM § 5202.

3.02.8 PROHIBITED BIDS/CONTRACT PARTICIPATION (PCC §10365.5)

(Rev 4/04)

- 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:

(3.02.8 A. Prohibited Bids/Contract Participation (PCC § 10365.5) – continued)

1. A person, firm, or subsidiary may be awarded a subcontract of no more than 10 percent of the total monetary value of the consulting services contract.
2. Contracts for consulting architect or engineer services pursuant to GC § 4525 et seq., are exempted from this prohibition. Contracts for IT or telecommunications goods or services pursuant to PCC § 12100 et seq. are not exempted from this prohibition. (PCC § 10430).

3.03 • INTERAGENCY AGREEMENTS**(Rev 10/05)**

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

1. A contract with a California State University campus is always an I/A.
2. A contract with a University of California campus (UC) may be either an I/A or a standard agreement, but the contract must follow the requirements 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 an I/A. Otherwise, it will be considered a standard agreement.
3. I/As may not be used for contracts with campus foundations, the federal government, local entities, 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 competitively bid. (~~Depending on the nature of the goods or services, agencies may be required to get an NCB exemption if subcontracts are not bid.~~) **See SCM 3.06**

3. I/As are not required to meet DVBE participation goals if the entity performing the services is using its own personnel.
4. I/As may provide for advancing of funds (GC §§ 11257 through 11263 and SAM § 8758.1)
5. I/A's do not require the Child Support Certification.

C. Requirements are as follows:

1. An Interagency Agreement ~~STD 13 or~~ STD 213 must be used.

Note: ~~An interagency agreement with invoice STD 13A is used only for the renting of equipment and supportive services (SAM § 3522.1; GC § 11256).~~

2. I/As shall include a provision that the charges have been or will be computed in accordance with state requirements as noted in SAM §§ 8752, and 8752.1 unless there is a legal reason for not doing so. Such a reason might be the transfer of federal funds. The reason should be noted.
3. 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 years after final payment under the agreement (GC § 8546.7).

(3.03 C Interagency Agreements – continued)

4. DGS approval is required for I/As of \$50,000 and over unless the agency has a higher delegated authority. Once cumulative amendments to the I/A equal or exceed \$50,000 or the agency's delegated authority, the I/A must be submitted to DGS/OLS for approval (GC § 11256).

3.04 • MASTER AGREEMENTS FOR SERVICES AND CONSULTING SERVICES
(Rev 10/05)

There are two types of master agreements: statewide and intra-agency.

- A. Statewide master agreements are contracts bid by DGS for services and consulting services that are used by many departments.
 1. Master Agreements take advantage of the state's buying power. Prices are often less than those a single agency could obtain on its own. Any state agency can use the statewide Master Agreements through the use of a subscription agreement, typically using a Standard Agreement Form.
 2. Master Agreements 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.
 3. Master Agreements allow an agency to obtain needed services quickly and easily, avoiding the delay and uncertainty of the bid process. Some Master Agreements, 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 Master Agreement.
 4. Some subscription contracts to Master Agreements developed by the Department of Personnel Administration and the DGS Procurement Division cannot exceed certain amounts also known as "caps". Before developing a subscription contract, check with the Master Agreement Contract Manager as to the maximum amount permitted.
 - 5. Check Management Memo 03-10, regarding Guidelines for use of CMAS, Master Agreements and Non-Competitively Bid contracts for additional requirements.**

Note: In rare instances DGS has given authority to another agency to bid and supervise a Master Agreement, for example: the security guard contract administered by the CHP.
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- B. Intra-agency master agreements are contracts let by an agency for the use of the divisions of that agency. Intra-agency master agreements may differ from agency to agency, depending on program needs and statutory authority. Any agency wishing to enter into such a master agreement should discuss the agreement with its DGS/OLS attorney.

3.05 • CONTRACTS WITH LOCAL GOVERNMENT
(Rev 1/01)

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, or ordinance of the local governing body, which by law has authority to enter into the proposed contract, authorizing

(3.05 Contracts with Local Government – continued)

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. (See also SCM 3.06)

3.06 • AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES AND PUBLIC UNIVERSITIES

(Rev 10/05)

- 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 governmental agency from California or any state (PCC § 10340) or A state college or state university from California or any state.
 2. A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
 3. An auxiliary organization of the CSU, or a California community college
 4. The Federal Government
 5. A foundation organized to support the Board of Governors of the California Community Colleges, or
 6. An auxiliary organization of the Student Aid Commission established under Education Code § 69522.
- B. **Administrative overhead fees:** Agencies shall assure that ~~when services are subcontracted by entities in Section A that~~ all administrative fees are reasonable considering the services being provided. ~~and the oversight required.~~ Agencies may only pay overhead charges on the first \$25,000 for each subcontract.
- 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 requirements. (PCC § 10340)
- D. **Subcontracting without limitation:** Services may be subcontracted without restriction only when:
1. The primary agreement is a subvention agreement, 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.
 3. All subcontracts are with entities listed in Section A or the services to be provided under the subcontract are otherwise exempt from competitive bidding.
- E. **Subcontracting subject to conditions:** If the total of all subcontracts exceeds \$50,000 or 25% of the total contract, whichever is less, then subcontracting shall be permissible only if **the subcontract:**
1. Meets one of the categories in 3.06 D., or
 2. Prior written approval from DGS/OLS **has been received**, or

(3.06 E. Agreements with Other Governmental Entities and Public Universities - continued)

3. Certification that the subcontractor has been selected by the prime contractor pursuant to a bidding process requiring at least three bids from responsible bidders, or,
4. Approval by the agency secretary or highest executive officer, attesting that the selection of the particular 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 requirements. ~~(PGC 10410) The NCB form should be used for this purpose~~

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. 1. - 6.

~~F. **Fiscal Intermediaries:** 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.~~

3.07 • LEGAL SERVICES CONTRACTS**(Rev 10/05)**

- 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 business days of the request to the AG. Those state agencies not required to obtain the consent of the AG per Government Code Section 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five 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 Government Code section 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. (G.C section 11045)
- C. A copy of the **executed** contract **or any executed amendments** must be sent to the designated representative for State Employees Bargaining Unit 2. ~~when the contract is sent to DGS Legal for approval.~~
- 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.** ~~Must also be obtained from the Attorney General before seeking DGS/OLS approval of any amendment~~
- 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

(3.07 E. Legal Services Contracts – continued)

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 requirement, effective as of January 1, 2003, and pursuant to Section 6072 of the Business & Professions Code, must be included in legal services contracts of \$50,000 or more:

“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 (3) must be supported by a written justification, which demonstrates that litigation is “likely” rather than theoretical.

3.09 • AMENDMENTS**(Rev 10/05)**

- A. An amendment is a formal 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 . . . “

(3.09 A. Amendments – continued)

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 of the contract for a period of one year or less. A consulting services contract may be amended only once under this exemption (PCC § 10335). See SCM 4.**10**
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 (SCM 4.**10**).
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 (PCC § 10335 and GC § 11010.5).

Note: In some instances contracts not providing for amendments may still be amended if an approved non-competitive bid contract justification 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, 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 your agency’s delegated approval authority, the amendment must be submitted to DGS/OLS for approval.
8. When an amendment or modification is subject to DGS/OLS approval, a ~~STD 15~~ or STD 215 should be completed, explaining the **authority and the** reason for the amendment, **including any change in the DVBE goals. The amendment should be and transmitted** it to DGS/OLS in accord with the procedure detailed in SCM 4.**10**.
9. When an amendment changes or corrects contract terms by “striking” out contract terms, both parties signing the agreement must initial the “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 may be required. (See SCM 5.80 B.2)
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.)**

3.10 • EMERGENCY CONTRACTS

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.”

3.10.1. EMERGENCY CONTRACT PROCESSING PROCEDURES

(Rev 3/03)

- A. Agencies are not required to obtain three bids or advertise before entering into a contract in the event of an emergency.
- B. NCB approval is not required to enter into a contract in the event of an emergency.
- C. Ordinarily, consulting 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 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.

Note: For consultant services contracts, an emergency means an occurrence, as determined by DGS, in which the use of contracted services appeared to be reasonably necessary, but there was insufficient time to obtain prior formal approval of the contract (PCC § 10371).

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 State 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.

3.12 • HAZARDOUS ACTIVITIES CONTRACTS

(Rev 10/05)

These contracts require review by DGS/OLS and 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:

(3.12 A. Hazardous Activities Contracts – continued)

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. **The DGS/ORIM is available to provide additional consultation on all insurance and liability matters.**
1. ~~Contracts for hazardous activities costing \$100 or more must be submitted to DGS/ORIM for review to ensure that the contract and the certificate of insurance comply with the provisions of this section. **SCM section 7.40**, and that the insurance coverage meets applicable standards.~~
 2. ~~For those contracts under \$100, the appropriate certificate of insurance must be obtained and filed with the contract for possible audit by DGS.~~
- ~~C.~~ **2.** If the contract and accompanying insurance certificate are deemed appropriate, ORIM will certify the contract as meeting insurance requirements. ~~If the contract requires approval by OLS, ORIM will forward the contract to OLS for review and approval. If OLS approval is not required, the certified copy of the contract will be returned to the 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, and the contractor agrees that**

(3.12 C. 2. Hazardous Activities Contracts – continued)

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.

D. ~~Contracts for hazardous activities shall contain the insurance provisions noted in SCM 7.40.~~

3.13 • JOINT POWERS AGREEMENTS**(Rev 10/05)**

These are agreements entered into by two or more public agencies for the purpose of jointly exercising any power common to the contracting parties. Such agreements may result in the creation of a separate agency or entity with which the state may contract and are exempt from **competitive** bidding requirements. A board resolution 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 awarded to JPAs must still meet all state contract requirements including verification that the rates received from a JPA are reasonable, **and GC § 19130**

3.14 • AGREEMENTS CONTRACTS FOR SPECIFIC TYPES OF PERSONAL SERVICES (GC § 19134)**(New 10/05)**

- A. Personal services agreements, of the types listed below, are required by statute to assure that certain “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. 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. Agreements for a period greater than 90 days.
 3. Contracts meeting 1 and 2 above are also included for services provided at state leased buildings of 50,000 sq. ft. or more where the state occupies 100% of the space.
- 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, and
 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

(3.14 D. Contracts for Specific Types of Personal Services – continued)

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 the Department of Personnel Administration will publish a Schedule of Employee Benefit Rates and Wages on line at the web site www.dpa.ca.gov.
 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 the Department of Personnel Administration, 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 Government Code 19134, including the following:
1. ~~Contracting agencies shall instruct potential bidders to~~ **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 the Department of Personnel Administration). 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, and
 - 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

(3.14 F. 3. Contracts for Specific Types of Personal Services – continued)

published by the Department of Personnel Administration) 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 the Department of Personnel Administration during the term of the contract.
 5. Notice that the contract is subject to audit for compliance with the provisions of Government Code section 19134.
 6. Notice that failure to comply with the provisions of Government Code section 19134 constitutes a material breach, which could subject the contract to 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 section 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 Department of Personnel Administration 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.
 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 Government Code section 19134 may be audited by the contracting State agency, the Department of General Services, and the Bureau of State Audits.

(3.14 Contracts for Specific Types of Personal Services – continued)

- J. Breach: Government Code section 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 can result in immediate contract termination by the State of California.

3.14.1 JANITORIAL/BUILDING MAINTENANCE CONTRACTS: ADDITIONAL REQUIREMENTS
(New 3/03)

Effective for contracts entered into after January 1, 2002 any contractor or sub-contractor providing janitorial and/or building maintenance services in California, which 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 information as to employees and provide the same information to the new contractor in order for the new contractor to make the necessary notifications as required by Labor Code section 1060 et seq.

3.15 • CONTRACTS WITH NONPROFIT ORGANIZATIONS

Contracts may be made between the state and a private entity that is a nonprofit corporation. Bidding requirements would apply unless exempt by statute or the contract is for subvention or local assistance. See SCM 3; IRS Code § 501C.

3.16 • REVENUE AGREEMENTS
(Rev 3/03)

Revenue agreements generally include: Revenue, Reimbursable, Income Contracts Receivable and Cost Recovery Contracts. They typically fall into two categories:

- A. Contracts between the state and a private entity in which the private entity provides services and pays the state. This type of revenue agreement must be competitively bid (or an NCB approval obtained) if it is a profit-making venture for the contractor. [For example, state park concession contracts].
- B. Contracts between the state and a public or private entity, in which the state is providing services and receiving payment for the services.

Note: These contracts are subject to DGS/OLS review as are other contracts depending on the value of the contract.

3.17 • SUBVENTION AND LOCAL ASSISTANCE CONTRACTS
(Rev 10/05)

- 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.
- C. If the contract is a profit-making venture for the contractor, it should be awarded by competitive bidding procedures.

(3.17 Subvention Aid or Local Assistance Contract Transmittal – continued)**3.17.1 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT TRANSMITTAL**

- A. The Contract Transmittal form, ~~STD 15~~ or STD 215, for negotiated 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. The following information is provided as a guide:
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.
 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 the Department of Personnel Administration 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 SAM § 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

(3.17.2 B. 2. Subvention Aid or Local Assistance Contract Fiscal Control Provisions – cont.)

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 10/05)**

- 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 as an I/A 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 2 or 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 require DPA 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.
- 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.

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 3.06)
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3.19 • IT AND TELECOMMUNICATIONS CONTRACTS

(Rev 4/04)

- A. Information Technology (IT) and Telecommunications contracts are contracts whose primary purpose is to obtain, maintain, or enhance the agency's use of data processing or telecommunications technology. See Section 1.05 on how to determine whether a contract is for an IT Service or IT Consulting Service, or a non-IT Service or a non-IT Consultant Service.

Note: The terms EDP (Electronic Data Processing), and IT (Information Technology) are synonymous for purposes of this manual. Installation of cabling alone, is not considered an IT or EDP service contract. Depending on circumstances, installation of cabling may be a non-IT service, or a public works contract.

- B. There is a separate acquisition authority for IT and telecommunications goods and services. (See PCC §§ 12100 et seq.)
- C. Delegation authorities for the procurement of information technology (IT or telecommunications acquisitions) are issued by DGS/Procurement Division and are not the same as the contract exemptions issued under SCM 4.04.
- D. Additional information is contained in the Purchasing Authority Manual, which is Volume 2 of the State Contracting Manual. Contact the Purchasing Authority Management Section in the Procurement Division for more details.
- E. Issuance of notices of Intent to Award and protest processes are different for procurements for information technology.

3.20 • CONVENTION AND CONFERENCE SERVICES CONTRACTS

(Rev 4/04)

Services for conventions and conferences do not have to be competitively bid if under \$250,000.00. However, they must generally follow the requirements of other services contracts. Questions and information about contracting requirements for conference facilities, room rental rates, food and beverage functions, and so forth may be directed to:

<u>Name</u>	<u>Department</u>	<u>Telephone/ Email</u>
Johnna Meyer CMP	Department of Aging	(916) 322-0788/ jmeyer@aging.state.ca.us
Wendi Williamson	Department of Aging	(916) 323-8760/wwilliam@aging.ca.gov
Pamala Corona CMP	Employment Development	(916) 654-7940/pcorona@edd.ca.gov
Donna Carey	DGS Fleet Administration	(916) 327-2068/donna.carey@dgs.ca.gov

Society of Government Meeting Professionals, (Sacramento Chapter) www.sgmpsac.org

3.21 • PRINTING SERVICES CONTRACTS

(Rev 4/04)

Contracts awarded by state agencies for printing work are not personal services within the meaning of GC § 19130. (See GC section 14612.5)

State agencies must solicit a bid from the Office of State Publishing (OSP) when a printing project will exceed \$5,000. (See GC section 14612.2) Solicitations for bids from OSP should be directed to

(3.21 Printing Services Contracts – continued)

the OSP Customer Service Representative assigned to your agency. This information is on the OSP website at www.osp.dgs.ca.gov or call (916) 445-5386 or (800) 963-7860. GC section 14612.2 is inoperative on the effective date of the Budget Act of 2004.

3.22 • CONTRACTING FOR STUDENTS**(New 3/03)**

- 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 issued are not subject to competitive bid requirements.

3.23 • MEMBERSHIPS**(Rev 4/04)**

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

3.24 • FISCAL INTERMEDIARIES**(New 10/05)**

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.

3.25 • COMMERCIAL OFFICE MOVING SERVICES**(New 10/05)**

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

(3.25 Commercial Office Moving Services – continued)

collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. See Government Code Section 14920. Agencies must include such requirements in Invitations for Bids and contracts. Contact PD's Traffic Management Unit at (916) 928-5844 or www.pd.dgs.ca.gov.

3.26 • ELEVATOR MAINTENANCE CONTRACTS

(New 10/05)

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 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.

4. DGS CONTRACT APPROVAL

4.00 • INTRODUCTION

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

PCC §§ 10295, 10297, and 10335 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 business policies, and GC § 14616 is the legal authority for some exemptions from DGS/OLS approval of contracts.

Individual agencies and programs may have specific statutes affecting their particular contracting programs.

4.01 • TABLE OF CONTENTS

(Rev 10/98)

DESCRIPTION	SECTION
Introduction	4.00
Table of Contents	4.01
Responsibility for Contract Approval	4.02
Contracts Requiring DGS/OLS Approval	4.03
Contracts Not Requiring DGS/OLS Approval	4.04
Approval of Emergency Contracts	4.05
Certain Federally Funded Grants Exempt from Approval by DGS	4.06
Exemption Letters	4.07
Obtaining Approval from DGS/OLS	4.08
Approval and Commencement of Work	4.09
Approval of Amendments	4.10
Approval of Waste Recycling Agreements	4.11
DGS Legal Contract Package	Appendix

4.02 • RESPONSIBILITY FOR CONTRACT APPROVAL

(Rev 4/04)

- A. Each state agency is responsible for making sure that its contracts comply with applicable legal requirements and is 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/Office of Risk and Insurance Management, or other DGS offices.
- C. Contract approval by DGS serves to assist state agencies by:
 1. Ensuring effective compliance with applicable laws and policies.

(4.02 C. Responsibility for Contract Approval - continued)

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 Public Contract Code is void, unless the violation is technical or non-substantive.
2. PCC § 10421 - Civil action may be brought in Superior Court to determine a violation of Chapter 2 of the Public Contract Code. 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 Public Contract Code is guilty of a felony. PCC section 10424 provides that a violation of section 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.
4. 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 11/04)**

DGS/OLS has statutory authority under several sources to approve contracts. An explanation of the major sources of that authority is presented in Table 4.1.

Table 4.1

Contract Description	Approval Authority	Applicability of Approval Authority (All contracts unless specifically exempted)
All contracts by any state agency	PCC § 10295	§ 10295(a) The hiring or purchase of equipment, supplies, materials, or elementary school textbooks § 10295(b) Services, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor § 10295(c) The construction, alteration, improvement, repair, or maintenance of property, real or personal, or § 10295(d) The performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department.
All contracts whether or not subject to competitive bidding	PCC § 10297	
Services contracts	PCC § 10335	All services except: <ul style="list-style-type: none"> • Public works • A&E contracts • Contracts expressly exempted from § 10295 • Contracts of less than \$5,000 • Contracts of less than \$5,000 for per diem or travel only • Personal property maintenance or repair

(4.03 Contracts Requiring DGS/OLS Approval – continued)

Table 4.1 (cont.)

Consultant services contracts	PCC § 10335	Applies to consultant as defined by PCC § 10335.5
Contracts statutorily exempted	Varies	Prerequisites of exemption statute must be complied with
Interagency agreements	GC § 11256	Contracts with other state agencies

Some specific types of contracts which would 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 rentals
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 agreement for moving services, regardless of form used (including, but not limited to, subscription agreements, purchase orders, TRAs, etc.) (GC § 14920)
6. Any hazardous activity such as found under SCM 3.12.

4.04 • CONTRACTS NOT REQUIRING DGS/OLS APPROVAL**(Rev 10/05)**

The law requires all contracts to be approved by DGS/OLS unless the contract is exempt from approval (PCC § 10295).

A contract is exempt from DGS/OLS approval if:

1. It is specifically exempt from approval by statute; or
2. It is exempt from approval because of the monetary value of the contract by PCC § 10351, or GC § 14616; or
3. It has been exempted from approval by an exemption letter issued by the DGS/OLS; or
4. It is a federally funded grant exempted based on opinion of the Attorney General.
5. Standard contract exemptions:
 - a. \$50,000 and under for interagency agreements
 - b. \$50,000 and under for all other contracts ~~GC § 14616~~

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

4.05 • APPROVAL OF EMERGENCY CONTRACTS**(Rev 1/01)**

"Emergency" is defined in PCC § 1102 as "a sudden, unexpected occurrence that poses a clear and

(4.05 Approval of Emergency Contracts – continued)

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 §§ 1102 and 10340(b)(1)), 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 expedite basis as discussed in SCM 4.08 C.

**4.06 • CERTAIN FEDERALLY FUNDED GRANTS EXEMPT FROM APPROVAL BY DGS
(Rev 11/99)**

The Attorney General (AG) has opined that certain federally 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 subject to an authorized grant program, if the agreement provides a benefit to the state, it is not exempt from approval (unless exempted by specific statute). Common benefits are as follows:
 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.

4.07 • EXEMPTION LETTERS

(Rev 3/03)

Exemption letters are issued by DGS and define contracts exempt from DGS/OLS review. Exemptions beyond the general delegation limits described in SCM 4, are outlined in Table 4.2.

Exemption Letters
Table 4.2

Factors	Authority	General Considerations
All services, consultant services, and interagency agreements	PCC § 10351 (Services and Consultant Services) GC § 11256 (Interagency Agreements)	<ul style="list-style-type: none"> • Up to \$75,000 • Agency officer responsible for contracting program • Written policies and procedures • Management system • Contract training program • Audit every two years • Reporting procedures
Specific program or type of contract, usually repetitive in nature	GC § 14616	<ul style="list-style-type: none"> • Limited to \$50,000 • Contract format is usually a part of the exemption • Requires certification by the agency

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

4.08 • OBTAINING APPROVAL FROM DGS/OLS

(Rev 10/05)

Note: See Chapter 4 appendix for sample OLS checklist.

A. Required Supporting Documents

1. Contract Transmittal form, ~~STD 15~~ or STD 215. This form must contain an explanation sufficient to afford a basis for approval as to:
 - a. The purpose and necessity or desirability of the contract or interagency agreement;
 - b. The reasonableness of the price or cost of the services (not applicable to I/As except those with UC or CSU); and
 - c. Any other relevant information necessary to understand the proposed transaction.

The form ~~STD 15~~ or STD 215 shall also contain the name and telephone number 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 15~~ or STD 215 will be retained on file at DGS/OLS.

- d. 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 ~~STD 15~~ or **the** STD 215 that this requirement has been complied with.

(4.08 A. Obtaining Approval from DGS/OLS - continued)

2. 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 ~~STD 15~~ or **the** STD 215. The STD 204 must be retained in the agency's accounting or business affairs office.
3. 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 bids or proposals were received, document the awarding agency's efforts to obtain at least three competitive bids.
4. The California State Contracts Register 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.
5. 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 Government Code Section 12990 (a - f); and of Title 2, CCR Section 8103.

- b. Agencies may include the following provision in the contract in lieu of using STD 19 in nonbid 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 Government Code Section 12990 (a-f); and of Title 2, CCR Section 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 OLS website.
6. 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 OLS website.

Note: The Drug-Free Workplace wording can be used in the terms and conditions of a contract that is to be signed by the contractor.

(4.08 A. Obtaining Approval from DGS/OLS - continued)

- 7. 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 OLS website.
- 8. DVBE goals or good faith effort documentation. When participation goals are required in the bidding documents, as discussed in SCM 8, documentation supporting the commitment to meet the goals or performance of a good faith effort must accompany the contract.

B. Number of Copies

- 1. Under the current 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 (2) copies.
STD 213	Two (2) originals of the STD 213 face sheet alone One (1) copy of the STD 213 face sheet, attached to a complete copy of the agreement, and all relevant back up. One (1) copy of the STD 213 face sheet alone
STD 213-A	Two (2) originals of the STD 213A face sheet alone One (1) copy of the STD 213A face sheet attached to a complete copy of the agreement, and any relevant back-up One (1) copy of the STD 213A face sheet One reference copy of the original Agreement, along with copies of all prior amendments, regardless of whether or not they were exempt from DGS-OLS review.

(NOTE: At least two (2) copies of the STD 213 or 213A must bear original signatures. Stamped replicas of signatures are not acceptable as original signatures. No more than four 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 OLS.
- c. The remaining two copies of the STD 213 or 213A face sheets with original signatures will be returned to the submitting agency.

Note: See SCM 5.04 for further information and direction concerning the ~~current~~ standardized **state** contracting process.

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. ~~to the DGS/OLS Chief Counsel or an Assistant Chief Counsel.~~

(4.08 Obtaining Approval from DGS/OLS - continued)

- D. In addition to the above requirements, the DGS Office of Legal Services asks individuals involved in the preparation and transmittal of documents to OLS to keep the following in mind:
1. Ensure that all information on the ~~STD 15~~ or STD 215 is complete and specifically relates to the contract being submitted.
 2. When completing the forms, review by an 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 provide a separate explanation. This way, the length of your explanation is not predicated on 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 10/05)**A. Basic Policy**

The basic state policy is that no contractor should start work until receiving a copy of the formally approved contract. The approval by DGS/OLS is the final, formal approval of the contract. The law provides that 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 the DGS/OLS or, in the case of an exempt contract, until it is formally approved by the agency. See PCC §§ 10295, and 10335.

~~**B. Ratification of Work Done Before Approval of the Contract**~~~~Any work done before formal approval of the contract in accordance with the contract specifications is deemed ratified by the agency at the time of formal approval of the contract. This provision recognizes that on occasion there may be an unavoidable lag time between the practical need for services and the formal approval of a contract. In some cases, this lag time will make it impossible to obtain formal approval before the services are actually needed.~~~~**B.**~~ **B. Necessity of Time Management**

Contracting staff are generally aware of the necessity for timely action and effective management of time during the contracting process. It is necessary to minimize the number of situations when the contractors start work before formal approval of the contract. For contracts submitted to DGS/OLS, if the contract term starts less than two weeks after submission, it would assist the review process if an explanation were furnished regarding the reason(s) for the late submission of the contract.

~~**C.**~~ **C. Consultant Contracts**

The law does not permit consultants to start work before formal contract approval, except in an emergency, which is specifically defined in SCM 3.10.

(4.09 C. Approval and Commencement of Work – continued)

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).

E.D. Warning to Contractors

1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. See PCC § 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**. ~~Board of Control~~. The state has no legal obligation unless and until the contract is approved.

Note: Once the 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 10/05)**

- A. Amendments should be approved by the same level of authority that the original contract was approved unless such authority has been specifically delegated. If the original contract was approved by DGS/OLS, any amendment must be approved by DGS/OLS except for the following:
 1. If ~~the~~ **an** amendment only extends the original time for completion ~~or~~ **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.**
 - ~~2. Multiple extensions of time may be exempted so long as the cumulative extension total does not exceed one year.~~
 - ~~3. For consultant services contracts, the exemption for extension can be used only one time (PCC § 10335).~~
 - ~~4.2.~~ Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC § 16304, 2 CCR § 610, FY Budget Act.) Even though the extensions cited above ~~are~~ **is** exempt from approval, **upon completion of the amendment**, a fully executed copy of the amendment and a form ~~STD 15 or~~ STD 215 explaining the reason for the extension must be sent to DGS/OLS if the original contract was subject to DGS/OLS approval.
- B. To obtain DGS approval of an amendment, the amendment should be submitted to DGS/OLS along with a ~~STD 15 or~~ STD 215 **and all supporting documentation**. ~~and a copy of the original NCB approval authorization must be included when applicable.~~
- ~~C. The Contract Transmittal Form – STD 15 or STD 215, should focus on the changes made to the contract by that amendment and cite:~~
 - ~~1. Authority to amend the contract.~~
 - ~~2. Reason for amending the contract.~~

(4.10 C. Approval of Amendments – continued)

~~3. Any changes in meeting the DVBE goals.~~

DC. See SCM 3.09 for other information about amendments.

4.11 • APPROVAL OF WASTE RECYCLING AGREEMENTS

(Rev 11/99)

- A. Agreements for waste recycling programs similar to those of the Integrated Waste Management Board (IWMB) require prior approval of the IWMB (PCC §12165(d))
- B. A memorandum from the Integrated Waste Management Board (IWMB) approving the agreement must be transmitted with the contract when sent to OLS for approval. Contracts not accompanied by an approval memo from the IWMB will be returned to the submitting agency.

CHAPTER 4 - APPENDIX
DGS LEGAL
CONTRACT PACKAGE
(Rev 10/05)

Contract # _____ FY _____
Department/Program _____ Reviewer _____
Analyst _____

REVIEW DATE _____ DATE TO DGS LEGAL _____

Note: Highlighted items must be added to this contract and resubmitted to the Reviewer identified above for further review.

- STD 213 Contract
STD 215
Non-competitive bid approval
Copy of Advertisement or STD 821
Notice of Intent to Award
Multiyear Justification
Cost Reasonableness (Std 215)
Drug Free Certification (STD 21)
Insurance Certificate
STD 204
Other Certifications (CCCs)
Other Approval Needed
Copy of IFB/RFP
Copy of All IFB/RFP Responses
IFB/RFP Score Sheets (including evaluators)
Bid Opening Attenders List
Reason for Lateness
DVBE Evaluation and Documentation
Resolutions
AG Approval
STD 19 Statement of Compliance
CIWMB Approval (recycling contracts only)
G.C. 19130 Justification (Std. 215)
Small business certification by OSDC
Contract Registration # (eff. 7-1-03)

COMMENTS ADDITIONAL KEY INFORMATION:

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 (Rev 10/05)

DESCRIPTION	SECTION
Introduction	5.00
Table of Contents	5.01
Statutory and Regulatory Policy References	5.02
Fundamental Rules	5.03
Standard State Contracting Process	5.04
Preliminary Considerations and Decisions	5.05
Comparison Chart of Bidding Methods	5.06
Differences Between IFBs and Primary RFPs	5.07
Competitive Bidding Options	5.08
Required Language in Competitive Bidding	5.09
Competitive Bidding Issues	5.10
Invitation for Bids	5.11
Request for Proposals	5.15
Primary RFP and Secondary RFP Differences	5.17
Requests for Proposals: Primary Method	5.20
Requests for Proposals: Secondary Method (Point Count or High Score)	5.25
Forms and Certifications for Competitive Bidding Documents	5.30
What to Include in an RFP	5.35
Guidelines for Criteria and Considerations in Evaluating RFPs	5.40
<u>Tie Bids</u>	<u>5.45</u>
Time for Completion of Competitive Bidding Process	5.60
Posting and Notification Requirements	5.65
Non-Competitively Bid (NCB) Contract Justification	5.70
Advertising State-Contracting Opportunities	5.75
Contracts Exempt from Advertising in the CSCR and/or Competitive Bidding	5.80

(5.01 Table of Contents – continued)

Multiple Awards	5.85
Informal Competition	5.90
PCC Section 6611 Negotiation Authority	5.95

5.02 • STATUTORY AND REGULATORY POLICY REFERENCES**(Rev 4/04)**

- A. Public Contract Code Sections
 - 1. Disabled Veteran Business Enterprise participation (PCC § 10115)
 - 2. Service contracts (PCC §§ 10339 – (0345)
 - 3. Consultant services contracts (PCC §§ 10339 -10345)
 - 4. Conflict of interest by current and former state employees (PCC §§ 10410 - 11)
- B. Government Code Sections
 - 1. Target Area Contract Preference Act (TACPA) (GC §§ 4530 - 4535)
 - 2. Employment-Enterprise Zone Act (EZA) (GC § 7080)
 - 3. Local 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)
- C. Title 2, California Code of Regulations
 - 1. Contract protest procedures (§ 1195)
 - 2. Application of small business, TACPA, EZA and LAMBRA preferences and DVBE regulations (§ 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.
- 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.
- D. The sealed cost bids for an IFB and RFP primary must be publicly opened (PCC §§ 10341 and 10344).

5.04 • STANDARD STATE CONTRACTING PROCESS

(Rev 3/03)

Effective July 1, 2000, the DGS/OLS adopted a new standard process for state contracting. This new standard process is based on a multiple year Pilot, wherein efficiencies and benefits were identified and incorporated into the process. Currently, agencies may use either the new standard contracting process based on the STD 213, STD 213A and STD 215 Forms, or the more familiar process based on the STD 2, STD 13 and STD 15 Forms. However, in the future the latter forms will become obsolete. The most notable difference between the processes is that only one complete package, and three signed STD 213s or STD 213A need be sent for OLS review, and the permissible use of "incorporation by reference" and model IFBs and RFPs for use by state agencies. Standard language and model agreements can be downloaded from the DGS/OLS web site at www.dgs.ca.gov/ols. It is advisable to periodically check the web site for future revisions.

5.05 • PRELIMINARY CONSIDERATIONS AND DECISIONS

(Rev 10/05)

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.

A. 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? (If agency staff cannot provide the services, a justification consistent with Gov. Code § 19130 is required.)
3. Can another state agency provide the service through an Interagency Agreement?
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. ~~Will another state agency be offered an opportunity to bid on the contract, and if so, the bid document should notice other bidders of this fact.~~
- 6-5. What type of contract is involved? Commodities, goods, IT Service, IT Consulting Service, non-IT Service, non-IT Consulting Service? See SCM Section 1.05 on proper classification of contracts.

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

5.06 • COMPARISON CHART OF BIDDING METHODS

(Rev 3/03)

Comparison of Bidding Methods
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. (See Note below.)	Yes. (See Note below.)	Yes. (See Note below.)
Bidders' conference	Optional. Held if necessary to clarify service needs.	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; public bid opening
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 is predeveloped.	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.

* If DVBE documentation contains dollar amounts rather than percentages, that information should be included in the cost envelope

Note: Exception: See SCM 5.80 B for contracts under \$100,000 awarded to a certified small business or DVBE.

(5.06 Comparison Chart of Bidding Methods - continued)

Table 5.1 (Cont.)

Considerations	Invitation for Bid	Primary RFP	Secondary RFP
How small business preference is applied	The cost bid of a certified small business is reduced for evaluation purposes by 5 percent 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 percent 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?	Dependent on agency decision.	Dependent on agency decision.	Dependent on agency decision.

5.07 • DIFFERENCES BETWEEN IFBs AND PRIMARY RFPs

Rev (1/01)

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 Public Contract Code uses them interchangeably.

Differences Between IFBs and Primary RFPs

Table 5.2

Invitation for Bid	Primary Request for Proposal
Bidders may need to certify only that they meet the IFB requirements. It is optional whether to collect a certification or bidder information.	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.

(5.07 Differences Between IFBs and Primary RFPs – continued)

Table 5.2 (Cont.)

Invitation for Bid	Primary Request for Proposal
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 primary IFB.

5.08 • COMPETITIVE BIDDING OPTIONS**(Rev 10/05)**

(Note: See ~~Executive Order D-55-02 and related Management Memo 03-10~~ **or most current.**) for modifications to information herein.)

- A. **A minimum of** ~~±~~ **three** competitive bids or proposals are required unless one of the following applies:
1. Emergency. The work or service is for the immediate preservation of the public health or welfare, or the safety or protection of state property (PCC §§ 1102 and 10340).
 2. The contract is exempt from being competitively bid as listed in PCC 10348 and SCM Chapter 5.
 3. Non-competitively bid exemption (NCB). The Director of DGS has approved exemption from competitive bidding because the state's best interests are better served by exemption. (SCM Chapter 5)
 4. Governmental agency contract. The contract is with another state, local, or federal agency or with the University of California, the California State University, or a California community college or any of their auxiliary organizations (PCC § 10340).

Note: These contracts or interagency agreements cannot be used to circumvent or bypass the state's bidding requirements, SCM Chapter 1 and Chapter 3.

5. Community Based Rehabilitation Program (CRP). The exemption applies to contracts with workshops conducted in accordance with W&I Code § 19404, and which have been justified under GC Section 19130(b).

(5.08 A. Competitive Bidding Options - continued)

6. Services for which the State has entered into a master contract **(unless required by the rules of the master contract in the User Guide).**
 7. When the agency awarding the contract has advertised the contract in CSCR and has solicited all potential contractors known to the agency but has received less than three bids or proposals.
 8. ~~DVBE participation requirements apply to all contracts, even those exempt from competitive bidding.~~
- ~~B. Agencies may put a tiebreaker in the solicitation document indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are coin toss or other similar objective method. Such event must be observed by witnesses and ideally the affected bidders would be invited. See SCM 8.21 C for ties between certified small businesses and DVBEs.~~

Note: 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.

5.09 • REQUIRED LANGUAGE IN COMPETITIVE BIDDING**(Rev 10/05)**

- A. All competitive bid proposal packages ~~should~~ **shall** contain (as applicable):
1. Date, time, and place bids are due (PCC §§ 10341, and 10344).
 2. Small Business Preference Program information (GC § 14835).
 3. Conflict of Interest provisions (PCC §§ 10410, 10411).
 4. Corporate qualifications to do business in California (R&TC § 23101).
 5. Drug-free requirements (GC § 8350 et seq.).
 6. Statement of Compliance (GC § 12990(a - f), 2 CCR § 8113).
 7. Disabled Veteran Business Enterprise participation goals, if applicable (PCC § 10115 et seq.).
 8. Antitrust claims (GC §§ 4552, 4553, and 4554).
 9. TACPA preference, if applicable (GC § 4530 et seq. and 2 CCR § 1896.30).
 10. EZA (GC § 7070).
 11. LAMBRA (GC § 7118)
 12. Protest procedures (SCM 6.35).

Additional references: PCC §§ 10339, 10340, 10344, 10348.

Note: The general terms and conditions of the contract and any unique provisions should be included in the bid document to let bidders know the requirements.

5.10 • COMPETITIVE BIDDING ISSUES**(Rev 10/05)**

- A. ~~Documentation~~ **Advertising**. Potential bidders must be formally notified of the bid opportunity through CSCR advertisement, **unless an advertising exemption has been received.** **(approved Std 821)**
- B. Less than three bids. If three bids are not received, the state agency will prepare a complete explanation as to why less than three 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)

(5.10 Competitive Bidding Issues - continued)

- 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 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 8.)
- D. Information Technology (IT). In certain instances IT goods and services are exempt from competitive bidding (SAM § 5205, SCM 3).
- 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.

5.11 • INVITATION FOR BIDS**(Rev 4/04)**

- 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. Bidders should not be relieved from their bids because of fraud, or due to mistakes they make in presenting the costs for their services.

Note: Fraud includes presenting false or misleading information with the intent to trick, misrepresent, or deceive. It also includes concealment or nondisclosure of information for the purpose of misleading.

- C. All bids may be rejected whenever the determination is made that the bids received are not really competitive, when the cost is not reasonable, or when the cost exceeds the amount expected. Although many agencies reserve the right to reject any bid, 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. ~~See SCM 5.09 for the type of information to include in an RFP.~~ 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.

(5.15 Request for Proposals –continued)

- 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 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 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 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:
- The ~~majority of the~~ voting members used in the selection process shall be from the agency soliciting the proposals or awarding the contract.
 - Private consultants may not be voting members of the committee. ~~Private consultants~~ **and** may only be used to provide clarification **or subject matter expertise** to the committee members.
 - 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.

5.17 • PRIMARY RFP AND SECONDARY RFP DIFFERENCES

(Rev 3/03)

Table 5.3 outlines the differences between primary and secondary RFPs.

Table 5.3
Differences Between Primary and Secondary RFPs

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 needs and goals or objectives that must be met.
Costs offerings 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 offerings publicly opened and read.	Cost offerings are not announced or publicly read.
Following the opening and reading of cost offerings, cost offerings are then adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.	Cost offerings are adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.
A certified small business receives an amount equal to five percent of the lowest cost offering submitted by a non-certified small business reduced from its cost offering.	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.

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

- A. In addition to the requirements set out in SCM 5.09, the RFP 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 PROPOSAL: SECONDARY METHOD (POINT COUNT OR HIGH SCORE)**(Rev 4/04)**

- 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 OLS attorney before soliciting proposals where cost points (dollars/actual price component) are less than 30% of the total points.

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) \$75,000 = $\frac{3}{4}$ X 30 = 22.5 cost points awarded to (Other
proposal) \$100,000 4 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):

(5.25 C. Request for Proposal: Secondary Method (point count or high score) – continued)

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 • FORMS AND CERTIFICATIONS FOR COMPETITIVE BIDDING DOCUMENTS**(Rev 3/03)**

By law, regulation, or DGS policy, various contracts are required to contain, by reference or attachment, certain forms and/or certifications. Therefore, potential bidders and proposers should be advised of these requirements when they inquire about contracting opportunities with the state.

A. Statement of Compliance:

A Statement of Compliance - form STD 19, or an equivalent certification, must be included in all bids or proposals submitted by contractors for nonexempt contracts of \$5,000 or more. Instead of including the Nondiscrimination Compliance Statement - form STD 19, in a bid document for the bidder's or proposer's signature, the bid document or bid form may contain the following certification:

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/proposer has, unless exempted, complied with the nondiscrimination program requirements of Government Code section 12990 (a - f) and of Title 2, California Code of Regulations, section 8113. (See SCM 4)

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

B. Small Business Preference Notification

Each agency in awarding contracts for the purchase of goods, for the lease or rental of goods with the option to purchase the same, for public works, or for the performance of services shall grant to qualified small businesses a preference according to applicable regulations. Each IFB and RFP shall, as applicable, contain information about the application of the small business preference and how to obtain such preference. To be granted such preference, qualified businesses must submit an application meeting all the requirements to the DGS/Office of Small Business and DVBE Certification no later than 5:00 p.m. on the date the bids will be opened (GC § 14835, 2 CCR § 1896.2 et seq.).

For specific instructions on how to apply the small-business preference to eligible bids and proposals. (See SCM 8) The small-business preference may not exceed \$50,000.

C. Antitrust Claims

1. The Government Code chapter on Antitrust claims contains the following definitions:
 - a. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public

(5.30 C. 1. a. Forms and Certifications for Competitive Bidding Documents – continued)

agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

- b. “Public purchasing body” means the state or the subdivision or agency making a public purchase. (See Government Code section 4550)

2. The following antitrust provisions must be included in the bid documents:

- a. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 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, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (See Government Code section 4552)
- b. If the awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid
- c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part 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. (See Government Code section 4554)

- D. Corporate Qualification to do Business in California

(Note: The statement of Compliance is included in the document, “Contractor Certification Clauses” (CCC), found on the DGS/OLS website.)

1. 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.
2. “Doing business” is defined in R&TC § 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 within the state not be subject to the franchise tax.
3. 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.
4. 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.

- E. Drug-Free Workplace Certification

(Note: The statement of Compliance is included in the document, “Contractor Certification Clauses” (CCC), found on the DGS/OLS website.)

(5.30 E. Forms and Certifications for Competitive Bidding Documents – continued)

DGS recommends including either a Drug-Free Workplace Certification - STD 21, in all bid documents or using the specific language in each bid document. (See SCM 7)

F. Insurance Requirements, If Applicable

DGS/Office of Risk and Insurance Management requires that proof of insurance, meeting the requirements specified in SCM 3, be submitted with each contract for services that will involve a hazardous activity.

DGS recommends placing a statement requiring proof of adequate insurance in applicable bid documents used to procure services that will involve a hazardous activity. Likewise, any agency that requires a certificate of insurance for any other reason (e.g., medical malpractice) should consider requiring proof of applicable insurance requirements in bid documents. Examples of service contracts involving hazardous activities can be found in SCM 3.12.

G. Target Area Contract Preference Act (TACPA)

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 8). Contact DGS/Dispute Resolution/Preference Program Section for information on TACPA at (916) 375-4604 or (916) 375-4600.

H. Enterprise Zone Act (EZA)

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 8)

I. Local Agency Military Base Recovery Area Act (LAMBRA)

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.

J. Statewide Disabled Veteran Business Enterprise (DVBE) Participation Goals

Each state agency is required to have DVBE participation goals in contracts for construction, professional services, materials, supplies, equipment, alteration, repair, and 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.

(5.30 J. Forms and Certifications for Competitive Bidding Documents – continued)

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 and good-faith effort requirements, refer to applicable state agency policies, procedures, or regulations or the statutes on this topic. (See SCM 8)

K. Priority Hiring Considerations for Contracts with a Value in Excess of \$200,000

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 W&I Code § 11200 (PCC § 10353).

DGS recommends including the following paragraph or a similar provision in each bid document that will result in a contract award exceeding \$200,000:

If the resulting contract will have a total contract value of \$200,000 or more, the contractor is hereby advised that it will be obligated to give priority consideration in filling vacancies in positions funded by the resulting contract to qualified recipients of aid under Welfare and Institutions Code section 11200. This requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation for hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.

5.35 • WHAT TO INCLUDE IN AN RFP

A. 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

(5.35 A. 2. What To Include In An RFP – continued)

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 including the provisions printed on the back of the STD 2 Standard Agreement.
 - 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 that 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

(5.35 A. 5. What To Include In An RFP – continued)

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

- A. 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?

(5.40 A. Guidelines for Criteria and Considerations in Evaluating RFPs – continued)

9. Did the proposer allocate 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 able to handle and resolve 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**(New 10/05)**

Agencies may put a tiebreaker in the solicitation document indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are coin toss or other similar objective method. Such event must be observed by witnesses and ideally the affected bidders would be invited. See SCM 8.21.C for ties between certified small businesses and DVBEs.

5.60 • TIME FOR COMPLETION OF THE COMPETITIVE BIDDING PROCESS**(Rev 3/98)**

- A. The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. This time frame does not take into account internal approval steps or delays caused by protests. 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).

(5.65 Posting and Notification Requirements – continued)

- 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 working days prior to contract award. The notice should also include the reason why the lowest bidder is not being awarded the contract.
 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 • NON-COMPETITIVELY BID (NCB) CONTRACT JUSTIFICATION**(Rev 11/04)**

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.

A. 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.

- B. Information detailing the process to obtain an approved NCB (non-competitively bid) contract award may be found at www.dgs.ca.gov/pd.
- C. A non-competitively bid contract justification is required unless specifically exempted by statute or policy. (See e.g. SCM 5.80)
- D. A contract cost justification which addresses the appropriateness or reasonableness of the contract cost, is also required if the contract is exempt from the NCB process, or if fewer than three competitive bids or proposals have been received. When the contract is submitted to DGS/OLS for approval, the supporting documents should address the following factors:
1. The effort made by the awarding agency to solicit competitive bids, if appropriate;
 2. Cost information (budget), which is in sufficient detail to support and justify the cost of the contract;
 3. Cost information for similar services (any differences between the proposed services and similar services should be noted and explained);
 4. Special factors affecting the costs under the contract; and
 5. An explanation of why the awarding agency believes the costs are appropriate.

5.75 • ADVERTISING STATE-CONTRACTING OPPORTUNITIES**(Rev 10/05)**

- A. Contracts of \$5,000 or more must be advertised in the CSCR, before the contracting process begins. Contracts awarded as an NCB, and amendments that require an NCB approval will be published in the CSCR by DGS/Procurement Division as part of the NCB approval process. No agency action is required to advertise the NCB approval.
- B. Certain contracts may be exempted from the advertising requirement or exempted as NCB contracts. See SCM 5.80 (GC § 14825 et seq.; PCC § 10340)

(5.75 Advertising State-Contracting Opportunities – continued)

- C. Advertising procedures are as follows:
1. Advertising in the CSCR - The agency may submit the advertisement using Procurement Division's Internet Web page (www.pd.dgs.ca.gov), or submit Form STD 815, to DGS/Business Development Unit (contact Mark Anderson at (916) 375-4582 or marc.anderson@dgs.ca.gov).
 2. DGS charges a fee for each ad that appears in the CSCR. There is an additional fee for ads that are not submitted electronically.
 3. If DGS/Procurement Division approves a form STD 821 for an advertising exemption, DGS will publish a notice of exemption in the CSCR.

Note: Government Code section 14838.5 and 14838.7 eliminates advertising requirements for certain contracts awarded to certified small businesses and DVBEs. See SCM 5.80 **BC**, for specific information.

5.80 • CONTRACTS EXEMPT FROM ADVERTISING IN THE CSCR AND/OR COMPETITIVE BIDDING.**(Rev 10/05)**

- A. 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 ~~the re-bid occurs~~:
1. **The re-bid occurs** ~~W~~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. ~~There is~~ No material change to **the** bid.
- B. The following contracts are not required to be advertised in the CSCR, nor are they required to be competitively bid: (These exempt contracts do not need NCB justification (STD 821 approval.) (GC § 14825; PCC § 10348)
1. Contract with a Governmental Agency:
Contracts or agreements with another state, local, or federal agency; the University of California, the California State University, or a California community college or any of their auxiliary organizations; or an organization acting as a governmental agency under a joint powers agreement.
- Note that these contracts or interagency agreements cannot be used to circumvent the state's bidding requirements. (See SCM 3.06)
2. Contract Amendments:
 - a. An amendment to a contract that only extends the original time for performance for a period of one year or less.
 - b. 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 months.

(5.80 B. 2. Contracts Exempt From Advertising In The CSCR and/or Competitive Bidding – Cont.)

- c. Amendments to an existing **competitively bid** contract ~~was and~~ **if** the additional years or additional tasks were anticipated and evaluated in the IFB/RFP.
- d. Amendments to an existing **competitively bid** contract if the original contract did not allow for additional years:

An approved NCB is not required for the first amendment, if the amendment adds no more than 30% of the original contract value, not to exceed \$250,000, and there is no change to the scope of work.

e. 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.

- 3. The specific types of contracts listed below in (a) through (~~m~~ **s**) do not require advertisement in the CSCR; they are not required to be competitively bid, and they do not require an approved NCB:
 - a. Emergency contracts which are necessary for the immediate preservation of life or state property;
 - b. Contracts for the work of services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated o support the universities and colleges, or a Joint Powers Agency;
 - c. Services for which the state has entered into a master service agreement;
 - d. Subvention and local assistance contracts as defined in SCM 3.17
 - e. Maintenance agreements 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.
 - f. Contracts for designated contractors that have been selected by a federal, state, city, county, or other regulatory entity, usually through a competitive process to perform a service in a specific geographical area (e.g., ~~ambulance service calls~~, garbage, refuse, etc.);
 - g. Public entertainment contracts for state-sponsored fairs and expositions;
 - h. Contracts for which only per diem and travel expenses are paid not to exceed \$5,000 and there is no payment for services rendered;
 - i. Contracts solely for the purpose of obtaining expert witnesses for litigation;
 - j. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff;
 - k. 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 Section 19404. Note: Contracts with CRPs that are justified under GC § 19130(A), are required to be competitively bid;
 - l. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code Section 605(b);
 - m. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000.00.

(5.80 B. 3. Contracts Exempt From Advertising In The CSCR and/or Competitive Bidding – Cont.)

- n. Contracts for ambulance services (including but no limited to 911) when there is no competition because the contractor is designated by a local jurisdiction for the specific geographic region. (Management Memo 05-04.)**
 - o. 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. (Management Memo 05-04.)**
 - p. 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.**
 - q. 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.**
 - r. 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.**
 - s. Departmental memberships in professional organizations. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by Department of Personnel Administration rules. (See SCM section 3.23.)**
4. Contracts for transportation services under \$5000 pursuant to a Transportation Rate Agreement (TRA), executed by DGS Procurement Division, where no additional services or additional requirements are requested beyond the normal provisions of the TRA.
- C. Contracts awarded to certified small, business, micro-business or disabled veteran-owned businesses are exempt from advertising under the following conditions (GC §§ 14838.5 and 14838.7):
- 1. The contract is awarded to a certified small businesses, micro-business or disabled veteran-owned business,
 - 2. The contract award is greater than \$5,000 and less than \$100,000 and the project amount for construction contracts as specified in PCC § 10105 and
 - 3. Quotes were received from at least two certified small businesses or micro-businesses; or two certified disabled veteran-owned businesses, ~~or any combination thereof~~. The small business preference is not applicable under this method.

5.85 • MULTIPLE AWARDS

Agencies may award multiple contracts through a bidding process when there is statutory authority to do so or when there are a variety of services or locations involved.

(5.85 Multiple Awards – continued)

An agency must have clear, concise descriptions of the work to be performed or goals and objectives to be reached. The number of awards must be identified. A clear objective standard on how awards will be made must be given in the bid documents. Bidders should be given sufficient information to be able to understand what is to be accomplished and to be able to budget accordingly.

5.90 • INFORMAL COMPETITION

(Rev 4/04)

When services are required and the maximum contract amount is below \$5,000.00, agencies should conduct a market survey of vendors and have them submit unsealed price quotes. There is no limit on the number of vendors that may be solicited. This process may be done by telephone, writing, or fax.

~~5.95 • PCC SECTION 6611 NEGOTIATION AUTHORITY~~

~~(Rev 4/04)~~

~~PCC Section 6611 provides that the Department of General Services may negotiate DGS contracts in certain defined situations. The Director of the Department of General Services has issued PCC section 6611 negotiation guidelines and procedures in Administrative Order 04-03~~

6. CONTRACT AWARD PROTESTS

6.00 • INTRODUCTION

(Rev 10/05)

This ~~The chapter explains the~~ protest process **covered in this chapter applies only to** regarding 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 CCR **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 accepted that the one challenging the decisions of an administrative agency bears the burden of proof of its charges that the awarding agency has committed an error in the bid award 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 deviation 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 award process.

6.01 • TABLE OF CONTENTS (Rev 10/05)

DESCRIPTION	SECTION
Introduction	6.00
Table of Contents	6.01
Grounds for Protest	6.02
Protest Exclusions	6.03
Role of DGS in Contract Protest Hearings	6.04
Protest Affecting Vital Services	6.05
Procedure for Protesting an Award	6.10
Public Hearing <u>Guidelines</u>	6.15
Decision on the Hearing	6.18
Costs of the Proceeding	6.19
Protests on Other Types Of Solicitations	6.30
Notification of the Right to Protest	6.35
Minimizing Protest Exposure	6.40

6.02 • GROUNDS FOR PROTEST

(Rev 10/05)

- A. Those who may protest are as follows:
1. For IFBs, the lowest responsible bidder meeting the specifications, ~~if not awarded contract.~~ **for the contract.**
 2. For RFPs, any proposer who claims ~~he/she would have been eligible for the award of the contract if the agency had scored his or her proposal correctly or if the agency had correctly followed the procedures specified in Public Contract Code.~~ **that the State agency failed to follow the procedures specified in either subdivision (b) or (c) of Public Contract Code section 10344.**
- B. There is no basis for protest if the awarding agency rejects all bids or proposals, based on the interests of the state.

The protest process covered in this chapter applies only to services or consultant services contracts that are awarded through an IFB or RFP process. The State Board of Control hears protests involving the procurement of goods, telecommunications, and IT goods and services. (See PCC § 10345)

6.03 • PROTEST EXCLUSIONS

(Rev 10/05)

Under the following circumstances, there is no jurisdiction for the DGS to consider a protest if:

- A. The protestant was not a bidder or proposer. The only recourse in that case is through the civil courts.
- 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.
- F. The contract award is for a type of contract not subject to the protest procedures. This category includes contracts for **the construction, alteration, improvement, repair or maintenance of real or personal property; goods or commodities and** ~~maintenance, modification, and so forth of real or personal property, including equipment (may be a public works contract);~~ and contracts for professional **architecture or engineering** services under GC § 4525. ~~unless both parties agree to confer jurisdiction on the department.~~

6.04 • ROLE OF DGS IN CONTRACT PROTEST HEARINGS

(Rev 10/97)

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

6.05 • PROTEST AFFECTING VITAL SERVICES

(Rev 3/03)

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. (See SCM 5.80) If the period extends past 6 months, approval by DGS/OLS is required. If there is no existing contractor or if the contractor does not wish to continue, an NCB may be obtained for a limited period until the protest is resolved.

6.10 • PROCEDURE FOR PROTESTING AN AWARD

(Rev 10/05)

- A. ~~A~~ **contract** award may not be made until one of the following occurs:
1. (IFB process) ~~At least~~ **At least** ~~Five~~ **Five** working days before making the **contract** award, the agency must notify the lowest bidder that the contract is ~~going~~ **being awarded** to another bidder. The notification must be by ~~either~~ telegram, ~~fax~~ **facsimile transmission**, overnight courier, **Internet transmission** or personal delivery.
 2. (IFB process) On written request from any bidder, the **awarding** agency shall **must** post a public 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 working days prior to awarding the contract.** ~~intent to award the contract at least five working days before making the award.~~
 3. (RFP process) ~~At least five working days before awarding a contract,~~ **the agency shall must** post a public notice of intent to award the contract. **the proposed contract award in a place accessible by the general public, including any Internet site identified in the RFP for at least five working days prior to awarding the contract.**
- B. ~~An agency should, in the solicitation document (IFB/RFP), inform all bidders of the protest procedures. (See SCM 5.09)~~
- CB.** Inspection of bids is permitted as follows:
1. After bid opening, all bids shall be available for public inspection (IFB process).
 2. ~~After proposals are evaluated, and notice of intent to award has been posted, all proposals shall be available for public inspection (RFP process).~~ **All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process (RFP process).**
- DC.** 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, but before the actual award.
- ED.** ~~The contract award is held up when a protest is received by DGS or the agency. The agency informs DGS of the written protest, or DGS informs the agency that the award is protested.~~ **Once a protest is filed** ~~the~~ **contract** may not be awarded until the protest is withdrawn or DGS has rendered a decision.
- FE.** After filing a protest, the protestant has five 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.
- GF.** ~~DGS's internal processes are as follows:~~ **Upon receipt of a protest, DGS/Office of Legal Services (OLS):**

(6.10 F. Procedure For Protesting An Award – continued)

1. ~~DGS/Office of Legal Services (OLS) assigns an attorney to review the protest to determine whether DGS has jurisdiction.~~ **Sends the protestant an acknowledgement letter which includes copies of the protest statutes and regulations and informs the protestant that there is a five calendar day limit for filing a full and complete written statement specifying the grounds for the protest.**
 2. ~~OLS sends the protestant an acknowledgment letter within 24 hours of receiving the protest and notifies the agency of the receipt of the protest. The letter either:~~
 - a. ~~Notifies the protestant of the five calendar day limit for filing the required written statement concerning all the grounds of the protest; or~~
 - b. ~~Informs the protestant that DGS has no jurisdiction over the protest.~~

Faxes to the awarding agency a request for general information regarding the proposed contract and agency contact person. The agency should complete and return the form to 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 some reason that the protest should not go forward, this would be communicated to OLS at this time (See SCM 6.03).
 3. ~~OLS requests information from the awarding agency about the intended award. If the agency is aware of some reason that the protest should not go forward; this would be communicated to OLS at this time. (See SCM 6.03)~~ **Reviews the protest to determine whether DGS has jurisdiction. If OLS does not have jurisdiction, the protest is denied.**
 4. **Assigns a Hearing Officer to the protest. The Hearing Officer determines whether the protest will be resolved by written submission or public hearing.**
 - a. **Written Submission Process: OLS sends a Hearing Notice to all interested parties, setting the due date for written submissions.**
 - b. **Public Hearing Process: OLS sends a Hearing Notice to all interested parties of the date, time and place of the hearing at least five calendar days before the hearing date. The Hearing Notice will also include a due date for written submissions. OLS will arrange for a court reporter for the hearing.**
- H. ~~On receipt of the detailed written statement from the protestant, OLS takes the following action:~~
1. ~~OLS requests the awarding state agency to forward copies of pertinent documents, including the IFB or RFP evaluation sheets, and scoring criteria.~~
 2. ~~OLS forwards the available protest material to the hearing officer, including:~~
 - a. ~~The bid protest~~
 - b. ~~Acknowledgment letter~~
 - c. ~~Detailed written statement of the grounds for protest~~
 - d. ~~The bid documents (IFB or RFP)~~
 - e. ~~Copies of the applicable laws and codes~~
- I. ~~A protest is evaluated, and a protest hearing format is determined.~~

(6.10 I. Procedure for Protesting an Award – continued)

1. ~~If the hearing officer determines that the protest is clearly insufficient on its face, without merit, or outside DGS jurisdiction, the protest is denied.~~
 2. ~~If the protest is permissible and the hearing officer determines that the protest should be resolved by written submissions, then OLS sends notices to the interested parties, including the proposed awardee, that the protest will be decided through reviewing submissions of written material to support each party's position and sets the date for submission thereof. Copies of submissions must be sent to all interested parties.~~
 3. ~~If the protest will be resolved by hearing, then: DGS notifies all interested parties of the date, time, and place of the scheduled hearing at least five calendar days before the hearing date. If possible, OLS will provide a 10 working day advance notice. The notice will establish the date on which any written submissions and accompanying documents are due. Copies of all documents must be sent to all interested parties.~~
- J. ~~Hearing procedures include the following:~~
1. ~~The hearing officer may, with proper notification, postpone or reschedule the hearing or the date written submissions are due.~~
 2. ~~OLS will arrange for a court reporter for the hearing.~~

6.15 • PUBLIC HEARING GUIDELINES

(Rev 10/05)

~~When a hearing is to be held, the hearing officer presides. The following guidelines apply:~~

- 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 are **may be** allowed from the interested parties, their witnesses, or authorized representatives.
- H. Cross-examination is **may be** permitted at the discretion of the hearing officer. ~~if it is deemed helpful to the resolution of protest issues.~~
- I. All interested parties are given the opportunity to present their positions.

6.18 • DECISION ON THE HEARING

(Rev 10/05)

The hearing officer's decision is **a final administrative decision** based on the record produced. ~~The hearing officer must decide whether the protestant demonstrated that the allegations of the protest were true. 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

- A. All the costs of the protest proceeding are charged to the state agency involved.

(6.19 Costs of the Proceeding – continued)

- B. DGS arranges for all hearings to be recorded by a hearing reporter. 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 10/05)**

- A. Protests about contracts for commodities, telecommunications, and IT goods and services are made to the ~~Board of Control~~ **Victim Compensation and Government Claims Board**.
- B. Protests about contracts for public works, grants, A&E services, repair 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 the jurisdiction.

6.35 • NOTIFICATION OF THE RIGHT TO PROTEST**(Rev 3/03)**

- A. Agencies should include information for protesting the award of contracts in all IFBs and RFPs. This should advise protestants' that 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
- B. Protests may be sent by regular mail, fax, courier or personal delivery. Protestants should include their fax numbers if they have one.

6.40 • MINIMIZING PROTEST EXPOSURE**(Rev 10/05)**

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.

(6.40 Minimizing Protest Exposure – continued)

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.
9. All inquiring bidders are informed of the reasons their bids or proposals are deemed nonresponsive. ~~or are not selected for the award.~~

7. MISCELLANEOUS CONTRACTING ISSUES

7.00• INTRODUCTION

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

7.01• TABLE OF CONTENTS (Rev 10/05)

DESCRIPTION	SECTION
Introduction	7.00
Table of Contents	7.01
Civil Service Considerations	7.05
Conflicts of Interest	7.10
Reporting of Contracting Practices	7.15
Prompt Payment	7.20
Independent Contractors	7.24
Contractor Identification Numbers	7.25
Equipment Purchases	7.29
Contract Budgets	7.30
Availability of Funds	7.31
Advance Payments	7.32
Progress Payments	7.33
Contract Payment by State Purchase Card, Cal-Card	7.34
Insurance Requirements	7.40
Contracts with No Dollar Amount	7.45
Audits	7.50
Drug-Free Workplace Act of 1990	7.55
Rental Agreements	7.60
Purchase Options	7.61
Lease/Purchase Analysis for Equipment	7.62
Nondiscrimination Program	7.65
Recycled Product Content	7.70
Specialized Contract Provisions	7.75
Multiple Year Contracts	7.80
Contract Termination Clauses	7.85
Breach of Confidentiality by Contractor	7.90

7.05 • CIVIL SERVICE CONSIDERATIONS

(Rev 3/03)

- A. Basic considerations are as follows:
1. 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.
 2. Section 19130(a) permits contracting for personal services to achieve cost savings. 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 § 19130(a)). Section 547.71 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.
 3. Section 19130(b) permits contracting for personal services when any of the requirements of 19130(b) are met. See also SPB Regulations 2 CCR § 547.60
 4. Departments or agencies submitting a proposed contract to DGS for approval must retain all data and information relevant to the contract and necessary for a specific application of the standards set forth in GC § 19130(a) in the event that the State Personnel Board's review is requested. For standards of review see PCC § 10337.
 5. 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 when a civil service appointment is not intended.
- B. 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.
- C. Contracting out for services is permissible when any of the conditions set out in GC § 19130(b) can be met.
- D. 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). (See www.spb.ca.gov).

7.10 • CONFLICTS OF INTEREST (7.10 entirely replaced as of 9/01)

(Rev 9/01)

- A. IS THERE A CONFLICT OF INTEREST? The phrase "conflicts of interest" covers several subjects. It requires state agencies to take a close look at 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 or was a former or current state employee who is prohibited from contracting under the PCC 10410 – 10411 or GC 87401 et seq.

(7.10 A. Conflicts of Interest (7.10 entirely replaced as of 9/01) – continued)

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 Government Code Section 87302.
2. **IS THERE A PROHIBITED FINANCIAL INTEREST PRESENT?** 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.
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/ethifram.htm) or live classes (DGS) are available.
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.

(7.10 C. Conflicts of Interest (7.10 entirely replaced as of 9/01) – continued)

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 3/03)**

Legislation requires contracting agencies to submit various reports on contracting practices, as follows:

- A. Fair Employment and Housing (Within Ten Days of Award Date)
 1. Under 2 CCR § 8117.5, agencies awarding contracts are required to notify the Department of Fair Employment and Housing (DFEH), Office of Compliance Programs, of any contract awarded in excess of \$5,000. Departments are required to submit one form STD 16 to the Office of Compliance Programs for each contract in excess of \$5,000 within ten days of the award date. Under some circumstances it may be possible to make other arrangements with DFEH.
- B. Small Business Report (Annually on September 7th)
 1. The Small Business Procurement and Contract Act (SBPCA), GC § 14835, provides that a fair share of state purchases and contracts or subcontracts for property and services be placed with small business enterprises.
 2. The evaluation and progress of this policy guideline is monitored through the annual reporting by all state departments on the Contracting Activity Report form STD 810, by September 7th of each year. These reports are filed with DGS/PD Small Business & DVBE Outreach and Education Section (for information regarding this report contact the report coordinator at (916) 375-4400).
- C. Consultant Report (Annually by September 24)
 1. PCC § 10359 requires state agencies to report their Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS. Departments are required to report their fiscal year contract data within 60 working days [September 24] of the end of the fiscal year. The PCC also requires DGS to report to the Legislature a list of departments and agencies that have not submitted the required report.
 2. PCC § 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000 or more. Copies of negative evaluations must be sent to DGS/OLS. In addition, the Bureau of State Audits requires agencies annually to certify compliance with these requirements.

(7.15 Reporting of Contracting Practices – continued)

D. DVBE, Minority and Women Reporting

Statute	GC 11139.8 (SB 1045)	M&V 999.7	PCC 10115.5	PCC 10116 (AB 1084)
Report Due Date	On or before July 1 each year	1. State agency reports due Jan. 1st each year 2. DGS statewide report due April 1 each year	January 1 of each year	January 1 of each year
Report Period	Not specified in the law	Previous fiscal year	Previous fiscal year	Previous fiscal year
Who Reports	Each state department or agency	1. Each awarding department 2. DGS compiles statewide report	Each awarding department	Each awarding department
Who are reports sent to?	Governor, Legislature	Governor, Legislature, DGS, CDVA	Governor and Legislature	Governor and Legislature
What is to be reported?	Level of participation by minority, women and DVBEs	Level of participation by DVBEs	Levels of participation by minority, women and DVBEs	Level of participation by race, ethnicity and gender of owner
Categories to be reported	1. Construction 2. Architecture, engineering and other professional services 3. Procurement of materials, supplies and equipment 4. Information technology	Professional bond services, contracts for construction, professional services, materials, supplies, equipment, alterations, repairs or improvement	1. Construction 2. Purchases of materials, supplies, and equipment 3. Professional services 4. All contracts for a dollar amount of less than twenty- five thousand dollars (\$25,000)	1. Construction 2. Purchases of materials, supplies, or equipment 3. Professional services 4. All contracts for a dollar amount of less than twenty- five thousand dollars (\$25,000)

7.20 • PROMPT PAYMENT**(Rev 10/05)**

- A. Prompt Payment Act and interest penalty fee. 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 SCO within 30 calendar days after receipt of the undisputed invoice. The state agency must forward the invoice for payment 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. The OLS will not approve any contracts with payment periods longer than 45 days (Management Memo 99-11).

(7.20 A. Prompt Payment – continued)

If payment is not made within the times specified above, an interest penalty fee at a rate of one percent 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. (See GC § 927.6 and SAM § 8475)

- B. Small business prompt payment. Additional provisions apply for certified small businesses. (See GC § 927.6(a) and SCM 8.23)

7.21 • INDEPENDENT CONTRACTORS

(Rev 3/03)

~~To assist state agencies in properly classifying individuals performing services, the Employment Development Department has prepared an Internet article that explains the differences between an independent contractor and an employee. This article supercedes Management Memo 95-18 and can be found at: <http://www.edd.ca.gov/ee-ic.pdf>~~

7.25 • CONTRACTOR IDENTIFICATION NUMBERS

(Rev 10/05)

- 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. Each contractor must include the taxpayer identification number on all subsequent contracts with the state regardless of the contract amount. A Taxpayer ID number is not required for a reimbursement contract.
- B. Contracting state agencies must obtain the taxpayer identification number from the contractor. The following documents must contain this information:
1. Payee Data Record - STD 204, which is to be retained in the awarding agency's accounting or business services office (if applicable)
 2. State Contract Transmittal - ~~STD 15~~ or STD 215
 3. Standard Agreement - STD 2 or STD 213
 4. Contract/Contractor Evaluation - STD 4
 5. Contract Award Report - STD 16
- C. 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 3/03)

- 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.

(7.29 A. Equipment Purchases – continued)

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 opinion, 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 police report must be filed immediately. (Refer to SAM § 2625)
- 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. (Refer to SAM Section 8600)
- D. Procedures for the handling and accounting of equipment through contracts is the same as that for handling through regular state purchasing.

7.30 • CONTRACT BUDGETS**(3/03)**

- A. If payment is on a cost reimbursement basis, the following items should be included and all unit rates must be extended and totaled (PCC § 10371[C]):
1. Personal service costs showing individual or position rates per unit of time
 2. Fringe benefits costs citing actual benefits or a percentage of personal services costs
 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 the Department of Personnel Administration 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. (PCC § 10371(c))
- C. If payment is based on a lump sum or fixed price for the total project, the contractor is paid for an agreed upon result.

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

(7.31 A. Availability of Funds – continued)

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 ten percent (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 ten percent (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 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 ten percent (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.

(7.33 D. Progress Payments – continued)

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
(Replaced 10/05)**

Cal-Card is a payment mechanism only. It shall not be used to circumvent services 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.”

Questions regarding the CAL-Card Program may be directed to the Statewide CAL-Card Administrator, Department of General Services, Procurement Division, 707 Third Street, 2nd Floor, West Sacramento, CA 95798-9052, Telephone (916) 375-**4578**

**7.40 • INSURANCE REQUIREMENTS
(Rev 10/05)**

- A. Evidence of insurance shall meet the requirements specified in the contract and shall be of a form and content acceptable to DGS/ORIM and will be presented to DGS/OLS with the contract when it is submitted for approval. Insurance for hazardous activities shall meet the following requirements: **For most types of services contracts, departments retain responsibility for assessing the need for and 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 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.
The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.
 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 affect 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.
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(7.40 B. Insurance Requirements – continued)

~~23.~~ The certificate of insurance shall show that hazardous activities are protected through commercial general liability insurance. Additional insurance, such as automobile liability insurance, may be required if motor vehicles are used in the performance of the contract.

4. The certificate of insurance must provide that the insurer will not cancel the insured's coverage without 30 days prior written notice to the State; and

5. The certificate of insurance must provide that the State of California, its officers, agents, employees, and servants are included as additional insured, but only with respect to work performed for the State of California under the contract.

~~36.~~ 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.

~~B. Contracts for hazardous activities shall contain the following provisions:~~

~~1. 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.~~

~~2. 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, 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 on the occurrence of such event.~~

~~C. The certificate of insurance must include the following provisions stating that:~~

~~1. The insurer will not cancel the insured's coverage without 30 days prior written notice to the State; and~~

~~2. The State of California, its officers, agents, employees, and servants are included as additional insured, but only with respect to work performed for the State of California under this contract.~~

<p>Note: DGS/ORIM is available to provide additional consultation on all insurance and liability matters.</p>
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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 11/99)

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 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 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.

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, Section 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 11/99)

A. The Drug-Free Workplace Act of 1990 (GC § 8350 et seq.) requires state contractors and grantees to certify that they will provide a drug-free workplace. Contractors and grantees may satisfy this requirement in one of the following ways:

1. Use the Drug-Free Workplace Certification form, STD 21. This form may be in effect for the duration of the contract or for a period up to 36 months as provided for below, or

(7.55 A. Drug-Free Workplace Act of 1990 – continued)

2. In lieu of the STD 21, use the following standard language in bid forms and contracts:

Drug-Free Workplace Certification

By signing this contract, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed contract will:
 - Receive a copy of the company's drug-free workplace policy statement; and
 - Agree to abide by the terms of the company's statement as a condition of employment on the contract.
3. A purchase or sub-purchase order is a contract subject to the certification requirements of the Drug-Free Workplace Act of 1990. To comply with these requirements, state agencies purchasing commodities using purchase or sub-purchase orders may allow a contractor or grantee (vendor) to file a STD 21 to be in effect for 36 months from the date executed. State agencies may issue a STD 21 for a period up to 36 months in lieu of requiring a STD 21 for each individual state purchase.

If the vendor elects to have the STD 21 on file as provided above, the terms and conditions of the STD 21 shall have the same force, meaning, effect and enforceability as if a certification were separately, specifically, and individually provided for each purchase or grant between the vendor and this state agency.

- B. Any contract or grant may be subject to suspension of payments or termination, or both, and the contractor or grantee may be subject to debarment if the contracting or granting agency determines that:
1. The contractor or grantee made a false certification, or
 2. The contractor or grantee violates the certification by failing to carry out its requirements.

(7.55 Drug-Free Workplace Act of 1990 – continued)

- C. The Drug-Free Workplace Act shall not be construed to require any contractor or grantee to ensure that other businesses with which it subcontracts also provide drug-free workplaces.

7.60 • 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 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.

(7.61 D. Purchase Options – continued)

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 months. This requirement does not apply to contracts for equipment rented in accordance with PCC section 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 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 10/98)**

- 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 Section 8104; unless specifically exempted pursuant to Title 2, CCR Section 8115, which includes contracts under \$5,000 and contracts with licensed Community Based Rehabilitation Program (CRP). See Government Code Sections 12935(a) and 12990(d); and Title 2, CCR Section 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 Section 8103; and Government Code Sections 12935(a) and 12990(d).
- C. If there is no statement of compliance with the bid or proposal, the bid is unresponsive.

(7.65 Nondiscrimination Program – continued)

- 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 1/01)**

- A. Effective September 1, 1999, per administrative policy, the following service contracts must contain language requiring the use of recycled products.
1. Janitorial contracts must contain terms requiring the use of janitorial supplies containing recycled paper products only.
 2. Printing contracts must contain terms requiring recycled paper only, unless the proposed printing job cannot be done on recycled paper.
 3. Contracts involving parts cleaning must contain terms requiring the use of recycled solvents.

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

- B. In addition, the contractor must agree to certify in writing, upon completion of performance under the agreement, the minimum percentage, or the exact percentage of post-consumer and secondary materials provided, or used in the services provided under the agreement. (PCC § 12205) This certification must be under penalty of perjury.

7.75 • SPECIALIZED CONTRACT PROVISIONS**(Rev 4/05)**~~A. Commercial Office Moving Services~~

~~Contracts exceeding \$2,500 with a carrier for commercial office moving services must conform to the requirements contained in SAM § 3840 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. See Government Code Section 14920. Agencies must include such requirements in Invitations for Bids and contracts.~~

~~B. Pest Control and Fumigation Contracts~~

~~Pest control and fumigation contracts must contain the insurance provisions found in SCM 7.40.~~

~~C. Elevator Maintenance Contracts~~

~~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 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.~~

7.80 • MULTIPLE YEAR CONTRACTS

(Rev 10/05)

- A. Contracts for services should normally not exceed two years, absent a substantial written justification for a longer term, based on business reasons.

Approval by DGS/OLS must be obtained prior to releasing any **RFP or IFB** solicitation that contains for a contract term beyond two years. A justifiable business reason must support such a request for approval. Prior approval for multiple year contracts is not required for:

1. Contracts not subject to OLS review;
2. Use of, or subscription to, Master Service Agreements (MSA);
3. Interagency Agreements (I/A), or

Agencies who wish to get prior approval from 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.

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 exceed two years so long as all terms, conditions, and costs are those evaluated in the bidding procedure.

- B. Unless an agency has either statutory authority or a written exemption each contract service should be re-bid after a total of thirty-six (36) months consecutive with the same contractor.
- C. For services such as fiscal audit or quality audit, it is desirable to obtain a different contractor after three years.

7.85 • CONTRACT TERMINATION CLAUSES

- A. Agencies should carefully consider the types of termination clauses to be used in each contract.
1. **TERMINATION FOR CAUSE.** The preprinted language on the Std. Form or STD 213, and the General Terms and Conditions available on the internet at (www.dgs.ca.gov/contracts) are satisfactory for a termination for cause. Agencies should not change or modify this language due to the possibility of accidentally changing a legal requirement.
 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. Whether or not to provide the same right to the contractor (mutual termination), must be given careful consideration in that considerable effort may have been expended in establishing the contract. It is not recommended that mutual termination, without cause, be included in the contract.

7.90 • BREACH OF CONFIDENTIALITY BY CONTRACTOR

(New 3/03)

Per AB 2578, [Chap. 1097, Stats 2002], 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.

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)

DESCRIPTION	SECTION
Introduction	8.00
Table of Contents	8.01
Procurement Division Responsibility and Legal References	8.02
Introduction to Disabled Veteran Business Enterprise (DVBE) Participation Program	8.10
DVBE Regulations	8.11
When to Apply DVBE Goals to a Contract	8.12
Bidders' Response to DVBE Requirements in a Solicitation	8.13
Qualifying as a DVBE	8.14
DVBE Bid Information	8.15
Management of DVBE Contract Requirements	8.16
Annual Report of DVBE Participation	8.17
Certified Small and Microbusiness Program	8.20
Small Business Preference Program	8.21
Non-Small Business Preference Program	8.22
Prompt Payment of Small Businesses	8.23
Programs Stimulating Business and Employment in Specific Geographic Areas (TACPA, EZA and LAMBRA)	8.30

8.02 • PROCUREMENT DIVISION RESPONSIBILITY AND LEGAL REFERENCES

(Rev 10/05)

Note:-Effective July 1, 2000 the OSBCR became part of the DGS Procurement Division (PD). OSBCR changed its name to OSDC, and narrowed its focus to Small Business and DVBE certification. Other programs previously administered by the OSBCR merged with existing programs within the PD. See Table 8.1 for information.

Table 8.1 indicates responsibilities for various programs.

Table 8.1

Disabled Veteran Business Enterprise (DVBE) Participation Program		
Function or Service	Office/Unit	Authority
Act as a resource. Disseminate policies and procedures.	Small Business & DVBE Outreach & Education Section (916) 375-4400	<i>PCC § 10115 et seq.; 2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98. Military and Veterans Code § 999.7.</i>
Coordinate reporting	Small Business & DVBE Outreach & Education Section (916) 375-4400	<i>PCC § 10115 et seq.; 2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98.</i>
Report Compliance Violations	Office of Small Business & DVBE Certification (OSDC) (916) 375-4940	<i>2 CCR §§ 1896.60 - 1896.67; 2 CCR §§ 1896.90 - 1896.98.</i>
Certification	Office of Small Business & DVBE Certification (OSDC) (916) 375-4940	<i>California Military and Veterans Code § 999 et. seq. PCC § 10115 et seq.; 2 CCR §§ 1896.60 -1896.67; 2 CCR §§ 1896.90 - 1896.98.</i>
Review and approve DVBE Utilization Plans	Small Business & DVBE Outreach & Education Section (916) 375-4400	<i>PCC § 10115.15</i>
Administer the five percent Small Business Preference Small Business issues and questions; Outreach Program	Small Business & DVBE Outreach and Education Section (916) 375-4400	<i>GC § 14835 et seq.; 2 CCR § 1896 et seq.</i>
Certification	Small Business & DVBE Certification (OSDC) (916) 375-4940	<i>GC § 14835 et seq; 2 CCR § 1896 et seq.</i>

(8.02 Procurement Division Responsibility and Legal References – continued)

Table 8.1 (cont.)

Small Business Advocate Program	Small Business & DVBE Outreach and Education Section (916) 375-4400	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 1/01)

California establishes statewide DVBE participation goals by statute based on an awarding agency's overall contract dollars awarded as follows:

Disabled Veteran Business Enterprises (DVBE)	<u>At Least:</u> 3%
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An agency has the discretion to apply these goals to a specific contract, but is expected to meet the goals 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 goals in the future. See SCM 8.17 for additional reporting information.

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 DVBE GOALS TO A CONTRACT

(Rev 10/05)

- 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 their overall 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 Program requirements. In reviewing contracts, the Department of General 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 JPAs are exempt from the DVBE Participation requirements.
 4. Standard contract language for DVBE participation requirements can be found at the web site: <http://www.pd.dgs.ca.gov>.

8.13 • BIDDERS' RESPONSE TO DVBE REQUIREMENTS IN A SOLICITATION

(Rev 3/03)

A. General Options

When the DVBE participation requirements have been included in the IFB or RFP, there are three basic ways for bidders to meet the requirements for this program (See SCM 8.10):

1. Achieve the minimum DVBE participation goals.
2. Make and document a "good faith effort" to achieve participation.
3. Submit and have approved a DVBE Utilization Plan. Utilization Plans are administered by DGS Procurement Small Business/DVBE Outreach & Education Section and apply to contracts for goods and information technology.

B. Meeting Goals

There are two methods of meeting the goals. If a bidder is a:

1. Non-DVBE: Commit to use DVBEs for not less than three percent of the dollar amount of the bid or
2. DVBE: Commit to perform not less than three percent of the dollar amount of the bid with its own forces or in combination with other DVBEs.

Note: A department may require greater or lesser (even zero) goals on an individual contract, so long as this decision is reflected in the IFB/RFP. If the goals are included in the IFB/RFP, they apply to all bidders and they may not be waived after the bids/proposals are received.

C. Making A Good Faith Effort

The five legally defined "good faith effort" steps and applicable processes are:

1. Contact was made with the awarding agency to identify DVBEs. The contact purpose is to identify potential DVBE subcontractors and/or suppliers, not merely to request the bid package. Awarding agency responses may include but are not limited to the following:

(8.13 C. 1. Bidders' Response to DVBE Requirements in a Solicitation – continued)

- a. A list of DVBEs who have expressed interest in the contract by phone, writing, or bid conference attendance.
 - b. A list of DVBEs who have participated, considered, or represented interest for prior contracts.
 - c. Use of an internal database or directory.
 - d. Referral to other resource or service providers. Including the PD web site: www.dgs.ca.gov/pd
2. Contact was made with other state and federal agencies, and with local DVBE organizations to identify DVBEs. The contact purpose is to identify potential DVBE subcontractors and/or suppliers. Agency responses may include but are not limited to the following:
- a. Use of an internal database or directory.
 - b. Notices on bulletin boards or in newsletters.
 - c. Sharing of association.
 - d. Referral to other resources or service providers.

Currently, a federal contact is available that allows for compliance with the Step 2 requirement of the good faith effort. The Small Business Administration (SBA) provides an electronic search engine, containing business profiles on nearly 200,000 businesses, including certified and non-certified disabled veteran owned businesses. The electronic search engine, PRO-Net, may be accessed at <http://pronet.sba.gov>

Agencies should be careful to verify that firms identified on PRO-Net are State of California certified DVBEs. Qualifying, non-certified DVBE firms should be encouraged to seek certification.

The SBA requests Internet contact only. A list of potential firms downloaded from PRO-Net will verify that the bidder made contact with the SBA.

3. Advertisements were published in trade papers and papers focusing on DVBEs, unless time limits imposed by the awarding agency did not permit that advertising. This is the only good-faith-effort step that state agencies have discretion to waive. Specific advertising requirements are noted in SCM 8.13.D.
4. Invitations to bid Solicitations were submitted to potential subcontractors identified in steps 1-3. Solicitations must be specific so that a bid reply may be made. Solicitations must also be equal. For example, if bonding assistance is offered to one potential subcontractor, it must be offered to all.
5. Available DVBEs were considered. The bidder must apply the same information and evaluation criteria in considering all responding subcontractors for a specified service. Subcontractors that are selected should be identified according to solicitation requirements. Each selected subcontractor must contribute to the fulfillment of the contract by performing a commercially useful function. If the bidder decides not to select a potential subcontractor, the business reasons for non-selection must be documented and submitted in its bid to the awarding agency.

(8.13 Bidders' Response to DVBE Requirements in a Solicitation – continued)

D. Program Compliance Clarification

1. Advertising

- a. Bidders must publish advertisements in trade and focus publications at least 14 calendar days before the date the bid or proposal is due, unless a different time frame is specified in the solicitation.
- b. Typically, advertisements should be specific enough to encourage responses from potential DVBE subcontractors and suppliers and include information such as the following:
 - Identify the awarding department.
 - Identify the solicitation.
 - State the bid opening date.
 - Identify the type of work available for subcontracts or the supplies needed.
 - Request bids or quotes from DVBE subcontractors or suppliers.
 - Specify the geographical area and location in which the work will take place.
 - Identify the focus group or groups needed for participation.

2. Trade Paper:

A paper meeting all the following criteria qualifies as a trade paper:

- a. Has a business orientation relating to the trade or industry for which the advertisement is being placed;
- b. Is known and used by the members of the trade or industry;
- c. Primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at the trade or industry; and
- d. Is available within the geographic area for which the advertisement is placed and in which the services are to be performed.

3. Focus Paper:

A paper focusing on disabled veteran business enterprises that meets all the following criteria qualifies as a focus paper:

- a. Has an orientation relating to disabled veteran business enterprises;
- b. Is known and used by the members of the disabled veteran business enterprise community;
- c. Primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and
- a. Is available within the geographic area for which the advertisement is placed and in which the services are to be performed.

<p>Note: Typically, advertisements in at least one trade paper and at least one DVBE focus paper are required. However, the awarding agency has discretion to modify these requirements provided the specific requirements are clearly explained in the solicitation.</p>

(8.13 Bidders' Response to DVBE Requirements in a Solicitation – continued)

E. Resource Packet

DGS Procurement Division maintains the Resource Packet that is useful in attaining program compliance. The Resource Packet provides listings of referral organizations (state, federal, and local), trade papers, and focus papers that may be used to identify potential subcontractors and suppliers.

Note: The solicitation document must contain one of the following:

1. Procurement Division Resource Packet for trade and focus publications,
2. A list of trade and focus publications specific to the business of the awarding department, or
3. The following paragraph:
“In accordance with PCC § 10115.2(b)(3), bidders must advertise in trade and focus publications unless all DVBE goals are satisfied. The Procurement Division publishes a list of trade and focus publications to assist bidders in meeting these contract requirements. To obtain this list, please contact the Procurement Division and request the “Resource Packet”. The Procurement Division may be contacted at: (awarding agency to list current address and telephone number of PD).”

8.14 • QUALIFYING AS A DVBE**(Rev 10/05)**

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 ten percent or more, and is a resident of California.
2. Disabled Veteran Business Enterprise: A business concern certified by OSDC as meeting all of the following requirements:
 - a. It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent 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 percent 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 percent 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

(8.14 A. 2. d. Qualifying as a DVBE – continued)

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 are passed in order to obtain the appearance of DVBE participation. (Military and Veterans Code section 999(e)(2))

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 are required to be formally certified by OSDC. DVBEs are asked to include a copy of their OSDC certification letter.

Note: By regulation, DVBEs have until 5:00 p.m. on the bid opening day due date to submit a complete certification application. If they are certified they would have DVBE Participation Program eligibility. In this instance, the firm would not have a copy of their OSDC certification letter and should indicate their certification is pending. Verification can then be made by the agency with OSDC.

8.15 • DVBE BID INFORMATION**(Rev 11/04)**

- 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 or with OSDC.
- 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 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 Military and Veterans Code section 999.2(3)
- C. In evaluating the program compliance by the bidder, the awarding agency must require written evidence of completion of steps 1 through 5 of the good faith effort (SCM 8.13.C), including evidence of advertising, unless waived by the awarding department.
- D. Based on the evaluation, the awarding agency, in its sole discretion, may find that the bidder has complied with the program requirements. If a bidder fails to meet the participation program requirements, the bidder must be deemed non-responsive for purposes of an awarding agency’s evaluation and is not eligible for the contract award.

(8.15 D. DVBE Bid Information – continued)

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 11/04)****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, either for federal, state or local organization contacts, or for DVBE solicitations or bid consideration.
 - b. Review of multiple bids submitted by the same vendor to verify independent effort and documentation. Evidence of insincere efforts may include:
 - Repeating unsuccessful contacts rather than trying a new contact.
 - Use of contacts that are out of business.
 - Business solicitations not relevant to the contract.
 - Copying of identical DVBE documentation packages.
 - c. Review of job related bid evaluation criteria and how it was applied to subcontractor/supplier bids.
 - d. Contacting DVBEs listed for participation upon award of contract.
 - e. Post award audits.
2. Awarding agencies must investigate and report program violations as follows to the DGS-OSDC. The OSDC 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 section 999.2.

(8.16 A. 2. Management of DVBE Contract Requirements – continued)

- 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-OSDC 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-OSDC 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

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 the awarding agency must approve the substitution in writing prior to commencement of any work by the proposed subcontractor/supplier. At a minimum, the substitution 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. If applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.
 - d. 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 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.
3. The awarding agency may consent to the substitution of another person or business as a subcontractor in any of the following situations:
 - a. When the subcontractor listed in the bid, after having a reasonable opportunity to do so, fails or refuses to execute a written contract, when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(8.16 B. 3. Management of DVBE Contract Requirements - continued)

- b. When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.
 - c. When the listed subcontractor fails or refuses to perform his/her subcontract.
 - d. When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.
 - e. When the prime contractor demonstrated to the awarding agency, or its duly authorized officer, that the name of the subcontractor was listed as a result of an inadvertent clerical error.
 - f. When the listed subcontractor is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.
 - g. When the awarding agency, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.
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 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 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. 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 7 meets this requirement.

8.17 • ANNUAL REPORT OF DVBE PARTICIPATION**(Rev 1/01)****A. Due Date and General Content**

On January 1 of each year, each agency must report to the Governor and the Legislature on the level of participation by DVBEs in contracts for the fiscal year beginning July 1 and ending June 30.

In addition, the report must contain the levels of participation by DVBE for the following categories of contracts:

1. Construction
2. Purchases of materials, supplies, and equipment

(8.17 A. Annual Report of DVBE Participation – continued)

3. Professional services
4. All contracts for a dollar amount of less than \$25,000

If the established goals are not being met, the agency shall include in the report the reasons for its inability to achieve the standards and identify the remedial steps it shall take.

B. Consolidated Statewide Report

State agencies are also required to report participation to the DGS and the Department of Veteran Affairs by January 1. The DGS compiles statistics on all agencies and submits an annual report to the Governor, Legislature and Department of Veterans Affairs by April 1st (Military and Veterans Code § 999.7).

**8.20 • CERTIFIED SMALL AND MICROBUSINESS PROGRAM
(Rev 10/05)****A. Definition**

Small business means a business certified by OSDC in which:

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 \$10,000,000 (10 million) or less over the previous three years, or
 - b. The business is a manufacturer with 100 or fewer employees.

B. Microbusiness means a small business certified by OSDC in which:

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 \$2,500,000 (2.5 million) or less over the previous three 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

(8.20 C. Certified Small and Microbusiness Program – continued)

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. (Government Code Section 14837(d)(4))

D. Eligibility

A business must be formally certified by OSDC 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 five percent preference in bidding on state contracts as explained in SCM 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

Effective January 1, 2005, nonprofit veteran service agencies (NVSA) can qualify for small business certification through the OSDC if the NVSA meets the requirements of Military and Veterans Code Section 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 Military and Veterans Code Section 999.51(a)(3).

8.21 • SMALL BUSINESS PREFERENCE PROGRAM (Rev 10/05)

A. How The Preference Works

1. Certified small businesses or microbusinesses can claim the five percent preference when submitting a bid on a state contract. A non-small business, may receive a preference of five percent if the business commits to subcontract at least twenty-five percent of its net bid price with one or more small businesses or microbusinesses. The five percent 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 five percent 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:

Small Business Preference Program
8.21 Table

<u>Bidder</u>	<u>Bid Amount</u>	<u>Bid after preference</u>	
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	\$29,520	Claims non-small business subcontractor preference and does commit to 25% certified small business or microbusiness participation
Four	\$29,870	\$28,421	Claims small business or microbusiness status and is a certified small business or microbusiness

For evaluation purposes, five percent of the low responsible bid of \$28,975 would be \$1,448.75 ($\$28,975 \times .05$); that amount would be subtracted from the bids of Three and Four for a computed total of \$28,421.75 ($\$29,870$ less $\$1,448.75$). 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 five percent (5%) of the highest responsible bidder's total score.

(8.21 A. 3. b. Small Business Preference Program – continued)

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
Criteria 1(15 Max. points)	11	14	13	12
Criteria 2 (25 Max. points)	21	21	14	19
Criteria 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 five percent 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 OSDC website
2. Bidders claiming the small business preference may be requested, but not required, to submit a copy of their certification approval letter from OSDC 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 OSDC by 5 p.m. on the bid opening **due** date. Therefore, the awarding agency should check the status of the application with OSDC 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 8.20 C.

C. Procedures for Tie Bids Between Small Business and DVBE or Microbusiness

(8.21 C. Small Business Preference Program – continued)

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 business enterprise (DVBE), or microbusiness, the contract must be awarded to the DVBE or the microbusiness (GC § 14838 (f))

8.22 • NON-SMALL BUSINESS PREFERENCE PROGRAM

(New 11/04)

Revisions to Government Code Section 14838(b)(1)(2) now provide for a non-small business preference.

The preference to a non-small business bidder that commits to small business or microbusiness subcontractor participation of twenty-five percent (25%) of its net bid price shall be five percent (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.

8.23 • PROMPT PAYMENT OF SMALL BUSINESSES

(Rev 4/04)

A. Reason for the Program

Typically, small business and nonprofit organizations do not have the resources or cash flow to carry the state as an account receivable for an extended period of time. Therefore, 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 OSDC (contracts less than \$500,000) (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. (See SCM 7.20) 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 percent 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). See SCM 7.20 for required payment times.

Note: The time starts to run when the invoice is first received by the agency, not when it gets to your business or accounting office.
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The program encourages small businesses or recognized 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 OSDC for a fee. However, the invoices are not to payment of the penalty without any further demand for payment when the invoices are not paid within the prescribed time.

C. Involvement of DGS Procurement Division (PD)

PD, Acquisition Quality Assurance Program 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

(8.23 C. Prompt Payment of Small business – continued)

require contacting PD. The PD does not investigate, arbitrate, or advocate for business firms or state agencies in the resolution of payment disputes.

The Prompt Payment Advocate in PD works with agency Small Business Advocates to provide information about the Act and assistance to contractors who have difficulty resolving payment problems.

Effective January 1, 1999, 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).

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 about 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 3/03)****A. Introduction**

The state has three programs designed to stimulate business and employment in geographic areas determined to be economically distressed, with areas of high unemployment. These programs are 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/Preference Program Section administers these programs and provides resource information about the programs.

B. Applicability to contracts

The TACPA, EZA and LAMBRA preferences apply to goods and service contracts that meet specific criteria. The criteria are described in Table 8.2.

Summary of TACPA, EZA and LAMBRA Preferences
Table 8.2

Criterion	TACPA	EZA	LAMBRA
Contract Amount: The dollar threshold or applicability	\$100,000 or more	Same as for TACPA	Same as TACPA and EZA
Excluded Contracts: Contracts not covered by the program	Construction contracts and contracts with a designated work site	Same as for TACPA	Same as TACPA and EZA

(8.30 B. Programs Stimulating Business and Employment in Specific Geographic Areas (TACPA, EZA AND LAMBRA) – continued)Summary of TACPA, EZA and LAMBRA Preferences
Table 8.2

Geographic Areas: The work site to be used by the contractor to qualify for the preference must be located within a designated area	Distressed areas as specified by the Office of Planning and Research	Enterprise zones as specified by the Trade and Commerce Agency	Work site(s) must be located in a Local Agency Military Base Recovery Area as specified by Trade and Commerce Agency
Percent Of Work: The percentage of the contracted work (hours in to perform the contract) that the contractor must agree to perform at the qualifying work site	Commodities 50% Services 90%	Same as for TACPA	Goods 50% Services 100%
Company Base: The home base of the company	Must be in California	Same as for TACPA	Same as TACPA and EZA
Work Site Preference: The percentage of preference associated with the work site	5 percent	Same as for TACPA	Same as TACPA and EZA
Work Force Preference: An additional preference of one to four percent available if the contractor agrees to perform the contract with persons with a high risk of unemployment	Depends on percent of work force: Percent Hired Preference 5 to 9 1% 10 to 14 2% 15 to 19 3% 20 or more 4%	Same as for TACPA	Same as TACPA and EZA
Preference Limits: The highest preference that can be given	9 percent up to \$50,000	Same as for TACPA	Same as TACPA and EZA
Maximum Combined Preferences: TACPA plus EZA plus LAMBRA plus small business	15% up to \$100,000	Same as for TACPA	Same as TACPA and EZA

C. Preference Procedures

TACPA, EZA and LAMBRA preference notices and request forms STD 830, 831, and 832 must be included in all IFBs and RFPs when the estimated cost exceeds \$100,000, unless the work

(8.30 C. Programs Stimulating Business and Employment in Specific Geographic Areas (TACPA, EZA AND LAMBRA) – continued)

site 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 as part of the contract.

Standard contract language for TACPA, EZA and LAMBRA preferences can be found at the Procurement website of <http://www.pd.dgs.ca.gov>

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)

DESCRIPTION	SECTION
Introduction	9.00
Table of Contents	9.01
Definitions	9.02
Responsibilities of the Contract Manager	9.04
Contract Manager "Don'ts"	9.05
Ethics	9.07
Record Keeping	9.09
Performance of the Contractor	9.11
Termination of the Contract	9.12
Closing of Service Contracts	9.14
Retention of Contract Records	9.16

9.02 • DEFINITIONS

- A. Contract Officer: person designated by the Department to have full responsibility for the management and approval of the Department's contracts. Authorized to sign contracts on behalf of the Department.
- B. Contract Manager: person designated by the Department to monitor the contractor's performance to ensure compliance with all contract provisions (usually a program staff member familiar with the requirements of the contract). Duties may or may not include authority to sign contracts.

9.04 • RESPONSIBILITIES OF THE 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.

(9.04 A. Responsibilities of the Contract Manager – continued)

3. Ensure compliance with all federal or special 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 months are required for amendments and renewals, and four to six months for new contracts.
 9. Review and approve invoices for payment to substantiate expenditures for work performed and to prevent penalties being assessed under GC § 926.17. (See SCM 8)
 10. 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.
 11. Notify appropriate personnel of equipment purchase, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.
 12. Monitor use of DVBE subcontractors and suppliers to ensure attainment of approved contract participation goals. Contract Managers should ensure that language for verification of DVBE participation is included in the contract. (See SCM 8.16 A.2.f.)
 13. Contact the Contracts Office for assistance with contract problems.
 14. Verify that the contractor has fulfilled all requirements of the contract before approving the final invoice.
 15. Identify and approve the final invoice, as appropriate, and forward it to accounts payable for payment.
 16. 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 3.02.5.)
 17. Approve the final products or service.
- B. Each agency must prepare the following reports required by legislation (See SCM 7):
1. Fair Employment and Housing (Contract Award Report – STD 16, due within ten working days of the award date) where applicable.
 2. DVBE Report (annual, due January 4)
 3. Small Business Report (annual, due August 1)
 4. Consultant Report (annual, due August 12)

9.05 • CONTRACT MANAGER “DON'TS”

- 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 the description or scope of work 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 must 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 3/03)

No contract manager shall accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with the contract manager's agency. Such circumstances could be construed as intent to influence the contract manager in his or her official duties or as a reward for any official action performed by the contract manager. Favors should be courteously refused. (See GC § 19990 et seq.) Other ethical issues include the following:

- A. Contract managers shall not make outside purchases of materials or services from any business entity in which they have a financial interest.
- B. Employees are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship.
- C. Even the appearance of questionable or unethical practices is detrimental to both employees and the department.
- D. Resolution of any questionable relationships or practices should be referred to your supervisor.

9.09 • RECORD KEEPING

(Rev 11/04)

- A. Each agency is responsible for maintaining all invoices, records, and relevant documentation for three years after the final payment under the contract. (GC § 8546.7) 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.

(9.09 A. 1. Record Keeping – continued)

- 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 legal problems 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. Use contract specifications verbatim in letters so that there is no doubt about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all concerned parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment. (See SCM 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. Dis-encumbrance 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 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

- A. Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file.

(9.11 A. Performance of the Contractor – continued)

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.
 - 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

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 years after final payment under the agreement. Therefore, records must be retained for this period. 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 (PCC § 10115 et seq.; 2 CCR §§ 1896.60 et seq. and 1896.75).

An exception to the three-year status is when a contract audit is in dispute or litigation. In those instances the time records are to be retained is extended.

10. PUBLIC WORKS CONTRACTS

10.00 • INTRODUCTION

This chapter is intended to provide guidance in the preparation, administration, and execution of small or minor public works contracts that do not exceed \$400,000 for most agencies, and \$500,000 for Resources Agency Departments. 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, those agencies are: the Department of General Services, Department of Transportation (DOT), Department of Water Resources (DWR), Department of Boating and Waterways (DB&W), and Department of Corrections (DOC). 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

(Rev 3/03)

DESCRIPTION	SECTION
Introduction	10.00
Table of Contents	10.01
Definitions	10.05
Authorization of Public Works Contracts	10.10
Public Works Contracts Between \$1,000 and \$120,000	10.15
Public Works Contracts Between \$120,000 and \$400,000	10.20
Requirements of Public Works Contracts	10.25
Public Works Contracts Required Language	10.30
Non-collusion Affidavit	Appendix

10.05 • DEFINITIONS

(Rev 3/03)

- 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).
- B. A project 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). Budget Letter 00-02 has established this amount as \$120,000

10.10 • AUTHORIZATION OF PUBLIC WORKS CONTRACTS (Rev 3/03)

NOTE: There is no NCB process available for Public Works Contracts.

Table 10.1
Authorization and Legal References

Type of Contract	Authorization Required	Legal Reference
Under \$120,000	DGS/OLS	PCC § 10295
Between \$120,000 and \$400,000	DGS/RESD STD. 23 & DGS/OLS	PCC § 10108
Up to \$500,000	Resources Agency department with consent of DGS	PCC § 10108.5
Public works by: DWR DB&W DOC DOT DGS	Attorney General or Department attorney	PCC §§ 10106, 10108, and 10220 Water Code § 120 et seq. Harbor and Navigation Code § 50 Penal Code § 7000 et seq. GC § 14000 et seq. GC § 14600 et seq.

10.15 • PUBLIC WORKS CONTRACTS BETWEEN \$1,000 AND \$120,000 (Rev 10/05)

A. Prepare the bid package as follows:

1. Prepare detailed plans and specifications. Obtain approval from:
 - a. The State Fire Marshal (SFM):

SFM approval 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.

Note there may be a 30-45 day turnaround on plan reviews; over-the-counter services can be arranged for plans of 3 pages or less with an appointment; property development without structures or fences does not require plan review and approval;

- 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.
2. Prepare the Notice to Contractors, including the following notifications:
 - a. A statement that the five percent small business preference will be granted to properly certified small businesses (a completed form STD 811 must be submitted with the bid proposal to request this preference)

(10.15 A. 2. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- b. The State Contractors License Board license classification necessary to bid on the contract
 - 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 2 or STD 213
 - f. List of prevailing wage rates from the Department of Industrial Relations or a statement that the prevailing rate of per diem wages are on file and available for inspection
 - g. Date, time, and place of a pre-bid meeting and/or site inspection. Mandatory pre-bid meetings must occur at least 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:
 - Necessity of providing a payment bond (STD 807) equal to 100% of the total amount payable under the contract
 - Statement that the contract is subject to state contractor nondiscrimination and compliance requirements (2 CCR § 8201)
3. 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
 - Drug-free workplace certification
 - Restrictions applying to state employees
 - Restrictions on employment of undocumented aliens
 - 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
4. 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 one percent of the general contractor's total bid; and the portion of the work that each will perform

(10.15 A. 4. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- d. General contractor's name, business address, federal employer identification number, and contractor's license number, classification, and expiration date
- e. Statement of Compliance, which may be printed on the bid proposal form in lieu of using a STD 19
- f. Signature block, including the printed name of the officer signing the bid, the officer's title and telephone number, and the date.
- g. Compliance with PCC § 10126, whenever additive and deductive items are included in a bid, the bid document shall specify method to determine lowest bid.

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.
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5. Include all forms required to be submitted with the bid proposal:
 - a. Drug-free Workplace Certification – STD 21
 - b. DVBE participation certifications and/or good faith effort documentation
 - 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
 - f. Small Business Preference and Certification Request (STD 811)
 - g. Standard Form of Guarantee
 - h. Expatriate Corporation certification
6. Prepare General Conditions, including:
 - a. Insurance requirements; liability and workers compensation
 - b. Bond requirements
 - Payment Bond (Std 807) if contract exceeds \$5,000 – 100% of contract amount
 - Performance Bond if contract exceeds \$10,000 and progress payments will be made – 100% of contract amount
 - c. Prevailing wage rates
 - d. National Labor Relations Certification
 - e. Standard California Nondiscrimination Construction Contract Specifications STD 18
 - f. Use of apprentices
 - g. Guarantee
 - h. "As Built" plans
 - i. Final inspection and acceptance
 - j. Other conditions as required
7. Include special provisions:
 - a. Contractor's license classification required

(10.15 A. 7. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- 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
8. Prepare detailed specifications.
 9. Prepare drawings (if necessary).
 10. Prepare bid refusal form.
 11. 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

(10.15 E. 1. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- 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 Contractors License Board
 - b. Corporation status with the Secretary of State
 - c. Small business status with the OSDC.
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.
 - b. Within five working days of an award, send a completed Division of Apprenticeship Standards – DAS 13, to the Department of Industrial Relations if the contract award exceeds \$30,000 or 20 working days.
- F. Prepare the Standard Agreement – STD 2 or 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 equal to ten percent of the payment.
 - The departments of Boating and Waterways, Corrections, General Services, Transportation, and Water Resources must publish progress payments made to the general contractor in the California State Contracts Register.
 - c. Address to which invoices and progress reports shall be mailed
 4. Standard California Nondiscrimination Construction Contract Specifications for contracts exceeding \$5,000 (STD 18)
 5. National Labor Relations Board Certification
 6. Project monitor's name and telephone number
 7. Contract amendments
 8. Resolution of disputes
 9. Final approval required before contract has force or effect
 10. Antitrust claims
 11. Americans with Disabilities Act

(10.15 F. Public Works Contracts Between \$1,000 and \$120,000 – continued)

12. Restrictions applying to state employees
 13. Prevailing wage rates
 14. Certificate of Insurance
 15. Audit language (if contract exceeds \$10,000) and/or DVBE participation
 16. Instructions to bidders
 17. Bid proposal form
 18. Labor Code certification
 19. Non-collusion affidavit
 20. General conditions
 21. Special provisions
 22. Specifications
 23. Drawings
- G. Prepare the award letter and mail the documents to the contractor, requesting the following actions:
1. Standard Agreement – STD 2 or STD 213: Sign all four copies.
 2. Specifications and Drawings: Sign all four (4) sets.
 3. Payment Bond – STD 807: Have bonding company execute two copies (if contract exceeds \$5,000).
 4. Performance Bond: Have bonding company execute two 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 and workers compensation insurance.
 6. Asbestos notification letter.
 7. Payee Data Record: Complete and return (send to accounting office and retain one copy in the contract file).
- H. Prepare the Contract Transmittal – ~~STD 15~~ or STD 215 including:
1. Certificate of Insurance for liability and workers compensation insurance.
 2. Payment Bond (if contract exceeds \$5,000).
 3. Performance Bond (if contract exceeds \$10,000 and progress payments will be made).
 4. Secretary of State corporate status check.
 5. Contractor's License Board verification.
 6. Small business verification (if applicable).
 7. Drug-free workplace and other certifications.
 8. DVBE participation package (if applicable).
 9. California State Contracts Register advertisement.

(10.15 H. Public Works Contracts Between \$1,000 and \$120,000 – continued)

10. List of contractors sent bid package.
 11. All bids received.
 12. 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 \$120,000 AND \$400,000
(Rev 3/03)**

- A. Obtain approval from DGS/RESO on a Request for Project Undertaking by State Agency STD 23.
- B. Include all requirements for contracts between \$1,000 and \$120,000.
- C. Place additional advertisements as follows:
 1. Advertise the Notice to Contractors once a week for two 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.
 2. Advertise the Notice to Contractors once a week for two 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.
 - 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.

Note: Until further notice, exemption is given for the direct placement of such advertisements for publication by the agency without prior submission to the Department of General Services. 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 ten percent of the amount bid. A bid must not be considered unless one of the forms of the bidder's security is enclosed with it.
- E. Prepare the contract transmittal
 1. Include all information shown in SCM Section 10.15(H).
 2. Include an approved copy of form STD 23.
 3. Include the affidavits of publication for advertisements in both the local paper and the trade paper.

10.25 • REQUIREMENTS OF PUBLIC WORKS CONTRACTS**(Rev 4/04)****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

a. Specifications calling for a designated material, product, item, or service by a specific brand or trade name must list at least two brands or trade names of comparable quality or utility followed by the words "or equal."

b. In cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the agency, the specification may list only the one followed by the words "or equal."

3. The specifications shall provide for a period of at least 35 days after the award of the contract for submission of data substantiating a request of an "or equal" item. PCC § 3400(b) 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; and 4) in order to respond to an emergency. If the agency is aware of an equal product manufactured in California, it must name such product in the specifications.

B. Prevailing Wages:

1. Obtain from the Department of Industrial Relations the prevailing wage rates before requesting bids. (www.dir.ca.gov) (Labor Code §§ 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.

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 3/03)****A. Instructions To Bidders**

1. Employment of undocumented aliens

(10.30 A. 1. Public Works Contracts Required Language – continued)

“No state agency or department, as defined in Public Contract Code § 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 years, been convicted of violating a state or federal law regarding the employment of undocumented aliens. See Public Contract Code § 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 § 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 Government Code sections 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 Government Code sections 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 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 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. Standard Agreement – STD 2 or STD 213

1. National Labor Relations Certification
(Use the same wording as provided in 10.30 B.2. above)
2. 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

(10.30 C. 2. Public Works Contracts Required Language – continued)

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 years after final payment is made on this contract or three 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.”

3. 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.”

4. Labor Code Certifications

- a. I am aware of the provisions of Section 3700 of the Labor Code, which require 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 Labor Code Section § 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: Labor Code Section 1771.5 allows exemptions from the general prevailing rate under specific conditions for departments with Labor Compliance Programs.
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- 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 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 Labor Code Sections 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.

(10.30 C. 4. d. Public Works Contracts Required Language – continued)

The contractor and each subcontractor must comply with the requirements of Labor Code Section 1777.5 and any related regulations regarding the employment of registered apprentices.

- e. Each contractor and subcontractor shall comply with the Labor Code Section 1776 regarding record keeping.

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 1/01)

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: GC § 4525 et seq.; PCC § 6106.

Each state agency must develop its own regulations for implementation in order to use the (A & E) selection process. DGS' review of A&E contracts will include determining whether the agency complied with their own regulations.

11.01 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	11.00
Table of Contents	11.01
Types of Projects	11.03
Selection Process Based on Qualifications	11.05
Evaluation of Qualifications	11.06
Negotiating A&E Contracts	11.08
Award of Contract	11.10

11.03 • TYPES OF PROJECTS

(New 1/01)

- A. Specific Projects. A project that involves a single subject matter, such as a building or improvement at a designated site, will result in a single contract.
- B. Single Firm. Contract must be let to the single most qualified firm.
- C. Multiple Contracts / Multiple Firms
 1. Circumstances for which you can award to multiple firms would be as follows:
 - a. Multiple contracts with each contract covering a different, specific geographic region.
 - b. Multiple contracts with each contract covering a specific, unique discipline.
 - c. Multiple contracts for which there would be a primary contractor, with a backup contractor in the event the primary contractor is unavailable for an assignment.
 2. An agency must have regulations supporting multiple award contracting.
- D. On-Call" Contracts

When a project can be shown to involve more than one component, site or activity, an "on-call" contract (sometimes referred to as a "retainer" contract) may be appropriate. An

(11.03 D. Types of Projects – continued)

agency must have regulations to support on-call contracting. Various components may appropriately be designated a project if they involve the same kind of design work at several locations.

11.05 • SELECTION PROCESS BASED ON QUALIFICATIONS

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. This requirement is in addition to advertising in the California State Contracts Register.

The Request for Qualifications (RFQ) is the solicitation document that sets out the criteria for determining the best qualified professional for the project

Criteria 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.

11.06 • EVALUATION OF QUALIFICATIONS

(Rev 1/01 portion moved to new 11.08)

The statements of qualifications received by the date specified in the RFQ are evaluated together with performance data on file. Generally, the statements of qualifications are scored and ranked by a panel of individuals from the public agency, although professionals from outside the agency may also participate, depending on the nature of the project.

11.08 • NEGOTIATING A&E CONTRACTS

(New 1/01 moved & renumbered from 11.06)

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. PCC § 6106 sets forth relevant time frames that must be adhered to in the negotiation and contracting process.

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 negotiations undertaken with the second most qualified firm. 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 negotiations until an agreement is reached.

11.10 • AWARD OF CONTRACT

(Rev 3/03)

A. Contract Award

Award of contract will be made to the A & E firm that:

1. Successfully negotiated a fee, and
2. Has complied with the DVBE requirements (if required).

(11.10 Award of Contract – continued)**B. Processing A&E Contracts**

On determining a need for services, the agency should prepare a contract that contains:

1. Names of the project manager, field representative, and project analyst
2. An accurate work description
3. Specifics of when, where, and for whom work is to be performed
4. Description of the required completion or inspection report
5. Time limitation
6. Monetary limitation
7. Expenses allowed
8. Payment clause, including progress payments
9. Extra work
10. Other special provisions

C. Review and Approval

The contract and copies are prepared and sent to the A & E firm. On return from the (A & E) firm, agency approvals are obtained. Then the contract is sent to DGS/OLS for review if required. The package consists of:

1. California State Contracts Register advertisement, and professional trade societies/trade publications ads
2. Contract
3. DVBE package (if applicable)
4. RFQ package and replies

These documents are used to substantiate compliance by the contracting agency with all procedural requirements.

GLOSSARY OF TERMS

(Rev 10/05)

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 10.05 and 10.20).
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 micro business as defined in GC § 14837 and 2 CCR § 1896. OSDC 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 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	A purchasing 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 (<i>PCC § 10335.5; SCM 3</i>).
Contract	<u>A contract is an agreement to do or not to do a certain thing. (CCP § 1549)</u> A legally binding agreement between the state and another entity, public or private, for the provision of goods or services.
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. <i>Vendor</i> is often used synonymously, with <i>contractor</i> .
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.
Direct cost	Any cost that can be specifically identified as generated by and in accordance with the provisions or activity requirements of the contract.
Disabled veteran business enterprise (DVBE)	A business that meets all of the following criteria: (1) at least 51 percent of the business is owned by one or more disabled veterans or, in a business whose stock is publicly held, at least 51 percent 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 OSDG (<i>Military and Veterans Code § 999[g]</i>).
Emergency	A sudden, unexpected occurrence that creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
Encumbrance	A commitment of funds guaranteeing a source of payment for a specific transaction.
Enterprise zone act (EZA)	(<i>GC § 7080 et seq.</i>) 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.
Good faith effort (GFE)	A sincere effort meeting the legal steps made by a bidder or potential contractor to meet DVBE goals as defined in <i>PCC</i> § 10115.2(b) and the implementing regulations.
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. Examples of such activities are listed in <i>SCM</i> 3.12. 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.
Hearing	A formal proceeding, customarily public, in which evidence is presented and issues of fact or law are adjudicated.
Income contract	A contract in which the contracting agency is receiving money in exchange for services provided by that agency. Such contracts are also known as revenue contracts or receivable contracts.
Indemnification	Contractual provision in which one party will reimburse the other party for settlements or judgments on claims arising from the contract.
Indirect cost rates/overhead	An amount or pro rata share of existing salaries and benefits, rent, equipment, materials, and utilities attributable to a function or activity but not necessarily generated directly by the function or activity.
Independent contractor	A person working for an entity under contract and not an employee of the contracting entity. 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 or more state agencies (<i>GC</i> §§ 11256 - 11263; <i>SCM</i> 3.03).
invitation for bids (IFB)	A type of solicitation document, used in a formal competitive bidding process, which contains a precise statement and complete specification 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 or more public agencies. Under this agreement, the joint powers authority may exercise any power common to the contracting parties (<i>GC</i> § 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.
License	A contract for the temporary use of real or personal property.
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 or another state agency for use by other state agencies that wish to use the same services. It may also be an agreement by a state agency for use by divisions of that agency (<i>SCM</i> 3.4).
memorandum of understanding (MOU)	A contract.
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)	A situation in which only a single business enterprise is afforded the opportunity to offer the state a price for the specified goods or services.
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.
Party	A participant in a contract who incurs obligations or receives benefits under the contract.

Payment bond	A bond required for public works contracts in excess of \$5000. The bond covers the costs of the contractor's employees, subcontractors, and suppliers in the event that the contractor fails to make those payments. The payment bond must equal the contract price.
Performance bond	A bond required for public works contracts in which progress payments are made; the bond insures costs in the event that the contractor abandons the work before its completion or fails to complete the work as required by the contract. The performance bond must equal the contract price.
Periodic payments	Payments made at specified intervals during the term of a contract.
Person	An individual or a business entity, including but not limited to a sole proprietorship, partnership, corporation, or joint venture. For purposes of the <i>SCM</i> , "person" may also refer to a government agency or a nonprofit association.
Personal property	Property consisting of tangible items as opposed to land or fixtures on land (real property).
Prevailing wage	The average 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.
Principal	The highest in rank, the chief, the main participant in a given situation, the individual having prime responsibility for an obligation.
Primary RFP method	The two-envelope method for evaluating proposals in which qualifications and cost proposals are submitted in two separate sealed envelopes. Qualifications are first evaluated according to criteria set in the RFP. For bidders who meet the minimum qualifications standards, the awarding agency then evaluates the cost proposals. The award is made to the lowest bidder meeting the minimum qualifications.
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 set interest penalties on late payments for state contracts (<i>GC</i> §§ 926.15, 926.17).
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.
Public entity	A county, city, district, local public body, state board, state commission, federal agency, or joint powers authority.
Public policy	The general principles of right and wrong, which prevail within the jurisdiction of a governmental entity.
Public works contract	A contract for the erection, construction, alteration, repair, or improvement of any state structure, building, road, or for other state improvement of any kind (<i>PCC</i> § 1101).
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.

Reimbursement contract	A contract in which the contracting agency is paying for the services of the contractor or for some burden incurred by the contractor. Such contract is also called a payable contract.
Request for proposals (RFP)	The solicitation document that is most appropriate in those situations in which it is necessary and appropriate to evaluate bidders on the basis of their qualifications as well as their price. The RFP describes the qualification requirements, performance specifications, time frames, and other requirements and asks bidders to describe how they would accomplish the services and at what price.
Responsible bidder	A bidder who is fully capable of performing the contract. When there is documented evidence that a bidder is not financially qualified or is otherwise unable to perform the required services, the bidder may be deemed not responsible and the bid may be rejected by the awarding agency. The bidder may then protest the intended award of the contract and is entitled to a hearing.
Responsive bidder	A bidder whose bid meets the specifications and other requirements contained in the IFB or RFP.
Revenue contract	See <i>income contract</i> .
Secondary RFP method	The method for evaluating proposals obtained through an RFP in which an evaluation panel assesses each proposal according to a set of criteria, of which one must be the cost. Each criterion is assigned a weight, with substantial weight going to cost. The award is made to the bidder whose proposal is given the highest score.
Service contract	A contract in which the contractor provides a duty or labor, as opposed to commodities or goods.
Signature	The act of writing one's name on a document to attest to its validity; the written name.
small business	See <i>certified small business</i> .
Specific performance	The fulfillment or achievement of a contract in accordance with its terms, relieving the party from further obligation or liability under that contract.
State agency	A part of the executive branch of the government of the State of California, including the Governor's office, agencies, departments, boards, and commissions.
Subscription agreement	Standard agreement form used by state agencies to acquire services from a contractor providing services on a master service agreement (MSA).
Subvention contract	See <i>local assistance contract</i> .
Target Area Contract Preference Act (TACPA)	TACPA (GC § 4530 et seq.) provides preferences for contracting opportunities in distressed areas.

Index - Rev (10/05)
- A -

Advance payments	7.32
DGS/OLS approval	4.03(4)
Advertising State-contracting opportunities	5.75
Exemption from advertising in the CSCR	5.80
Agency responsibilities	1.04
Amendments	
Advertising, may be required in some cases	5.75.A
Advertising, when not required	5.80 A., 5.80 B.2
Approval of Amendments	4.10
Contract manager's responsibility	9.02.A.8; 9.03.C
IT & telecommunications contracts	3.19.D.3
Federal funds, reduction of	3.11.A.3
Legal services contracts, consent of AG to amend	3.07.A
Non-Competitive Bid Approval Requirement	3.09 A.11, 5.75 A.
Standard language	2.07(Table 2.2)
Vendor name change or vendor change	2.06.D
Americans With Disabilities Act	2.07(Table 2.2)
Annual consultant report	7.15.D
Annual report of DVBE participation	8.17; 7.15.B
Anti-trust claims	5.30.C
Approvals	
Agency responsibilities	1.04
Amendments, approval of	4.10
Architectural & Engineering contracts, approval of	11.10.C
Emergency contracts, approval of	4.05
Emergency contract processing procedures	3.10.1
Checklist, OLS review	Chapter 4 Appendix
Circumvention prohibited	1.05
Commencement of work prior to approval	4.09
Contracting process, approvals in the	2.04(Table 2.1#6)
Contracts not requiring DGS/OLS approval	4.04
Contracts requiring DGS/OLS approval	4.03(Table 4.1)
Contracts with no dollar amount	7.45
DGS contract approval	Chapter 4
Exemptions from DGS/OLS approval	4.07
Grants exempt from DGS approval	4.06
Hazardous contracts, review by ORIM	3.12
Insurance requirements, when needed for DGS/OLS approval	7.40
Interagency agreements, DGS approval of	4.03(Table 4.1)
Lease/purchase analysis, when needed for DGS approval	7.62
Legal services contracts, Attorney General approval	3.07
Obtaining approval from DGS/OLS	4.08
Preliminary considerations	2.03
Public works project approvals	10.20.A; 10.20.E.2
Purchase options, approval of	7.61.B
Responsibility for contract approval	4.02
Non-competitively bid (NCB) contract	5.70

Index - Rev (10/05)

Waste recycling agreements, approval of	4.11
Architectural and engineering (A&E) contracts	Chapter 11
Award of an A&E Contract	11.10
Classification as a type of contract	1.45.B.1
Asbestos	
Hazardous contracts	3.12.A.8
Notification letter	10.15.G.6
Attorney General	
Approval of legal services contracts	3.07
Approval of public works projects	10.20
Grants exempted from DGS approval per opinions	4.06
Audits	7.50
Contract clause	2.07(Table 2.2); 7.50
DVBE requirements	8.16.C
Records retention for audit purposes	7.50
Authority to contract	
Joint Powers Agreement (JPA)	3.13
Local governments	2.06.C; 3.05
State agencies	2.06.A
State boards and commissions	2.06.B
Authorization of public works contracts	10.10
Authorized service representative	7.75.A.2
Authorizing resolutions	See Authority to contract
Availability of funds	7.31
Availability of the State Contracting Manual	1.02
Award(s)	
Multiple awards	5.85
Posting of intent to award	6.10.A
Procedure for protesting	6.10
 - B -	
Basic contracting process	Chapter 2
Bid opening	5.06(Table 5.1); 6.10.C.1; 8.13.3; 8.14.C; 8.21.B.2; 10.15.E
Bid protest(s)	6.0
Bidding issues	5.10
Bidding methods	5.06(Table 5.1)
Bidding options	5.08
Bonds	10.15.A.6.b; 10.20.D
Breach of confidentiality by contractor	7.90
Budgets	7.30
Builders Exchange	10.15.C.3
Building Maintenance	3.14.1
 - C -	
CAL-card	7.34
California Multiple Award Schedules (CMAS)	7.34.C

Index - Rev (10/05)

California State Contracts Register (CSCR)	4.08.A.4; 5.02; 5.06(Table 5.1); 5.08; 5.10; 5.75; 5.80; 10.15B
Cancellation clause	
Bid package	9.09
Federal funding	2.07(Table 2.2)
Standard with cause	2.07(Table 2.2)
Types and considerations for use	7.85
Certifications	
Disabled Veteran	8.14
Drug Free Work Place	4.08.A.6; 7.55
National Labor Relations Board (NLRB)	2.07(Table 2.2);10.15.A.6.d; 10.30.B.2
Small Business/Microbusiness	8.20
Checklist, OLS contract review	Chapter 4 Appendix
Child Support Language, when required	2.07(Table 2.1), 3.03B 5
Circumvention of responsibilities prohibited	1.05
Civil Service considerations	7.05
Classification of contracts	1.45
Closing of service contracts	9.10
Colleges and universities, contracts with	3.18
Commencement of work prior to approval	
Basic policy	4.09.A
Necessity of time management	4.09.C
Ratification at the time of approval	4.09.B
Warning to contractors	4.09.E
Commercial office moving services	7.75 3.25
Commercially useful function	8.14.A.d.e.; 8.15.B; 8.20 C; 8.21.B.2
Commodity and goods, purchase of	1.45
Competitive bidding	
Bid opening	4.11; 5.06(Table 5.1); 6.10; 8.13.3; 8.14; 8.21; 10.15
Comparison of bidding methods	5.06; (Table 5.1)
Competitive bidding issues	5.10
Competitive bidding options	5.08
Differences between IFBs and primary RFPs	5.07(Table 5.2)
Evaluation committee	5.15.D.2; 5.15.G;5.25.D.2
Exemption from advertising, obtaining for a contract	5.70; 5.80
Exemption from competitive bidding	3.03.B.1; 3.07.A; 3.08.B; 3.10.1.A; 3.13; 3.18; 3.20; 5.08; 5.80
Exemptions from advertising, types of contracts	3.03.B.1; 3.07.A; 3.08.B; 3.10.1.A; 3.20; 5.80
Fundamental rules	5.03
Posting of intent to award	6.10.A
Required language in competitive bidding	5.09
Time for completion of competitive bidding process	5.60
Conflicts of interests	7.10
Consultant services contracts	
Commencement of work prior to approval	4.09.D-C
Dispute resolution clause	2.07(Table 2.2)

Index - Rev (10/05)

Disputes	3.02.1.B.4
Evaluations	3.02.5
Consultant services report	7.15.D
Contract(s)	
Definition of	2.02
Flagging small business contracts	8.23.D
Not requiring DGS approval	4.04
Number of copies to DGS for approval	4.08.B
Requiring DGS approval	4.03(Table 4.1)
Review, OLS checklist for	Chapter 4 Appendix
Subscription to master agreement	3.04.A.4
Termination/Cancellation	2.07(Table 2.2); 9.09
With no dollar amount	7.45
Contract Manager/officer	
Definitions	9.0.1
Manager "Don'ts"	9.03
Responsibilities	9.02.
Contracting process, overview of	2.04(Table 2.1)
Contractor	
Evaluation	3.02.5
Identification numbers	7.25
Name change	2.06.D
Breach of confidentiality	7.90
Construction contracts	See Public works & Chpt. 10
Consideration	2.05
Contingent liability	4.04.4.c
Convention and conference services contracts	3.20
Corporate qualification to do business in California	5.30.D
Credit card, state	7.34
Cost justification (reasonableness of price/cost)	5.70.D

- D -

Differences between IFBs and primary RFPs	5.07(Table 5.2)
Disabled Veteran Business Enterprise (DVBE)	See DVBE program
DVBE program	
Advertising	8.13.3.A
Bid information	8.15
Bidders' response to DVBE participation requirements	8.13
Certification/Qualification as a DVBE	8.14
Focus paper	8.13.3.A.3
Regulations	8.11
Good faith effort	4.08.A.6; 8.13.2
Introduction to DVBE participation programs	8.10
Management of DVBE contract requirements	8.16
Participation report, annual	7.15.B; 8.17
Resources packet	8.13.3.B
Substitution of DVBE subcontractors	8.16.B
Trade Paper	8.13.3.A.2
Utilization plans	8.13
When to apply DVBE goals to a contract	8.12

Index - Rev (10/05)

Disencumbrance of funds	9.02.A.4; 9.10; 2.04(Table 2.1)
Disputes	2.07(Table 2.2);3.02.1.B.4 3.2.1.B.4
Drug Free Work Place	4.08.A.6; 7.55
- E -	
IT & telecommunications contracts	1.05.B.4; 3.19; 5.10
Elevator maintenance contracts	7.75.D , 3.12.A.4, 3.26
Emergency contracts	3.10; 3.10.1; 4.05; 5.08.A.1; 5.80.A.3.a
Encumbrance	9.02.A.4; 9.10; 2.04(Table 2.1)
Enterprise Zone Act (EZA)	8.30
Elements of a valid contract	2.05
Equipment	7.29; 7.30; 7.60; 7.61; 7.62
Lease/purchases	7.62
Rental	7.61
Option to buy	7.61
Purchase	7.29; 7.30.A.4
Standard language	2.07(Table 2.2)
Subvention & local assistance contracts	3.17.2.B
Ethics	9.04
Evaluation committee	5.15.D.2; 5.15.F ; 5.15.G; 5.25.D.2
Evaluation of a contractor	3.02.5
Evaluation of qualifications	11.06
Exemption from advertising	
Contracts exempt from advertising	3.03.B.1; 3.07.A; 3.08.B; 3.10.1.A; 30; 5.75.B; 5.80
Obtaining exemption for a contract	5.70; 5.80
Exemption from competitive bidding	3.03.B.1; 3.07.A; 3.08.B; 3.10.1.A; 3.13; 3.18; 3.20; 5.08; 5.80
Exemption from DGS approval	4.07
Exemption letters	4.07
Expert witness contracts	3.08; 5.80
- F -	
Fair Employment and Housing, reporting to	7.15.A
Federally funded contracts	3.11
<u>Fiscal Intermediaries</u>	<u>3.24</u>
Focus paper	8.13.3
Forms	
Commonly used in contracting	1.07
2, Standard Agreement	5.35.A.4.a; 7.25.B.3; 10.15.A.2.e
4, Contract/Contractor Evaluation	7.15.D.2; 7.25.B.4; 9.02.A.16; 9.05.A.9; 9.10
13, Interagency Agreement	2.07(Table 2.2); 3.03.C; 4.03(Table 4.1); 4.04.3; 4.07; 4.08.A
15, State Contract Transmittal	3.02.3.B; 3.17.1.A; 4.08.A.1.c;

Index - Rev (10/05)

16, Contract Award Report	4.08.D.1; 7.25.B.2; 10.15.H 4.08.A.1.d; 7.15.A; 7.25.B.5; 9.02.B.1; 10.15.E.4.a
18, Std. Calif. Nondiscrimination Construction Contract Specifications	10.15.A.6.e
19, Statement of Compliance	4.08.A.5; Appendix: 5.30.A;
21, Drug Free Workplace Certification	4.08.A.6; 4.11; Chpt 4 Appendix; 5.30.E; 7.55; 10.15
23, Request for Project Undertaking By State Agency	1.45.B.2.c; 10.20.E.2
204, Vendor Data Record	7.25.B.1
213, Interagency Agreement	2.07(Table 2.2); 3.03.C; 4.03(Table 4.1); 4.04.3; 4.07; 4.08.A
215, State Contract Transmittal	3.02.3.B; 3.17.1.A; 4.08.A.1.c; 4.08.D.1; 7.25.B.2; 10.15.H
807, Payment Bond	10.15.A.2.h
810, Small Business Monitoring Report	7.15.C.2
811, Small Business Preference Certification Request	10.15.E.1.f
815, Advertising in the Contracts Register	5.75.C.1
821, Request For Exemption From Contract Advertising	5.75.C.3
830 TACPA preference Request Form	8.30.C
831 EZA preference Request Form	8.30.C
832 LAMBRA preference & Request Form	8.30.C
Forms & certifications for competitive bidding	5.30
Foundations, Contracts with	3.18.C
Exemptions	5.80.A.1; 5.80.A.3
Interagency agreements prohibited	3.03.A.3
Four digit capability	2.07 (Table 2.2)
Fumigation contracts	7.75.C
Fundamental rules of competitive bidding	5.03
Funding	2.03.D; 7.31; also see Budgets & Federally funded contracts
 - G -	
Government Entities & public universities, agreements with	3.06
Good faith effort (DVBE)	8.13.2
Grants	
Exempt from DGS approval	4.04.A.1.d; 4.06
Limited applicability of protests	6.30.B
 - H -	
Hazardous services contracts	3.12; 7.40
 - I -	
<u>IT & telecommunications contracts</u>	<u>1.05.B.4; 3.19; 5.10</u>
Identification numbers (contractor & taxpayer)	7.25

Index - Rev (10/05)

Independent contractors	7.21; also see Civil Service considerations & Conflict of Interests
Informal competition	5.90
Information technology	3.19; 1.45.B.4
Inspection of records	7.50
Insurance	
Legal malpractice insurance	3.07.B.5
Public works contracts	3.12; 10.15
Requirements	3.12; 7.40
Intent to award	6.10.A
Interagency agreements	
DGS approval	4.03(Table 4.1); 4.04.A.2.a
Standard language	2.07(Table 2.2)
Use of	3.03
Interest penalties	7.20; 8.23.B.1
Invitation for bid (IFB)	5.11
Bidding requirements	5.30.F
Contracts for	5.80
Posting requirements for	5.65
Information Technology (IT) contracts	See IT & telecommunications contracts
- J -	
Janitorial/Building Maintenance Contracts	3.14.1
Joint Powers Agreements	3.13; <u>8.12</u>
- L -	
LAMBRA preference	8.30
Lease/purchase analysis for leases of equipment	7.62
Legal malpractice insurance	3.07.B.5
Legal services contracts	3.07
Local Agency Military Base Recovery Area (LAMBRA)	8.02(Table 8.1)
Local assistance contracts, subventions	3.17; 5.80.A.3.d
Local government, contracts with	3.05; 5.80.A.1
- M -	
Management, contract	2.03.F; Chpt. 9
Manager, contract	See Contract manager/officer
Master agreements for services & consulting services	3.04
Subscription contracts	3.04.A.4
Memberships	3.23
Microbusiness	8.20
Certification	8.20
Exemption from Advertising	5.80.C
Flagging of Contracts	8.23.D

Index - Rev (10/05)

Participation Report	7.15.C
5% Preference	5.10.C; 8.22
Moving services	7.75 3.25
Multiple awards	5.85
Multiple year contracts	7.80
- N -	
National Labor Relations Board (NLRB)	2.07(Table 2.2);10.15.A.6.d; 10.30.B.2
No dollar amount, contracts with	7.45
Nonprofit organizations, contracts with	3.15
Non-collusion affidavit	Chapter 10 Appendix
Non-competitively bid transactions	5.70
Nondiscrimination program	7.65
Non-Small Business Preference Program	8.22
Notification letter, asbestos	10.15.G
- O -	
Obtaining approval from DGS/OLS	4.08
Office moving service	7.75 3.25
OSDC (Office of Small Business and DVBE Certification	Chapter 8
California State Contracts Register (CSCR) Program	See CSCR
Consultant services report, annual	7.15.D
DVBE participation program	See DVBE Program
DVBE participation report	7.15.B; 8.17
Enterprise Zone Act (EZA)	8.30
Local Agency Military Base Recovery Area (LAMBRA)	8.02(Table 8.1)
Responsibility and legal references	8.02(Table 8.1)
Small business participation report	7.15.C
Small business preference	8.21
Small business qualification/certification	8.20
Summary of TACPA and EZA	8.02(Table 8.1)
Target Area Contract Preference Act (TACPA)	8.30
Officer, contract	See contract manager/officer
Office of Small Business and DVBE Certification (OSDC)	See OSDC (formerly OSMB and OSBCR)
Overview of the contracting process	2.04(Table 2.1)
- P -	
Payee data record	See Vendor data record
Payment by state credit card (CAL-card)	7.34
Payment, prompt	See Prompt payment
Per diem expenses	See Travel and per diem
Performance of the contractor	9.08; 3.02.5
Personal Services	3.14
Pest control contracts	7.75-G
Posting Requirements IFB, RFP	5.65

Index - Rev (10/05)

Point count method (secondary & high score RFP's)	5.25
Preferences	
EZA (Enterprise Zone Act)	8.03
Small Business	8.21; 8.22
TACPA (Target Area Contract preference Act)	8.30
Preliminary considerations	2.03
Preliminary considerations and decisions	5.05
Prevailing wages	10.15; 10.25
Printing services contracts	3.21
Progress payments	7.33; 3.02.1.B.3
Prompt payment	
Non-small businesses	7.20
Small businesses	8.22
Protests	Chapter 6
Affecting vital services	6.05
Costs of the proceeding	6.19
Decision on the hearing	6.18
Exclusions	6.03
Grounds for protest	6.02
Minimizing protest exposure	6.40
Notification of the right to protest	6.35
Posting of awards	5.65, 6.10.A
Procedure for protesting an award	6.10
Public Hearing Guidelines	6.15
Role of DGS in contract protest hearings	6.04
Public works	Chapter 10
Public works contracts between \$1,000 and \$107,000	10.15
Public works contracts between \$107,000 and \$250,000	10.20
Required language in public works contracts	10.30
Requirements of public works contracts	10.25
Purchases of commodities, goods, or equipment	1.45; Also see equipment
Purchase options	7.61; Also see equipment
 - Q -	
Qualification to do business in California, Corporate	5.30.D
Qualifications, request for	2.04(Table 2.1); 3.19.F.1; 11.5; 11.06; 11.10.C.4
Qualifications, review of technical	3.02.2
Qualifying as a DVBE	8.14
Qualifying as a small business	8.20
 - R -	
Reasonableness of price/cost (cost justification)	5.70.D
Record keeping	9.09
Recycled product content	7.70
Rental agreements	7.60
Reports	
Annual consultant report	7.15.D

Index - Rev (10/05)

Annual DVBE participation report	7.15.B
Fair Employment and Housing, reports of awards	7.15.A
Quarterly/Annual report of small business participation	7.15.C
Requests for proposals (RFP)	
Evaluation committee	5.15.D.2; 5.15.G;5.25.D.2
Primary RFP and secondary RFP differences	5.17
Guidelines, criteria & considerations in evaluating RFPs	5.40
Point count method (secondary or high score)	5.25
Posting requirements for	5.65
Primary method (two envelope method)	5.20
Secondary method (point count or high score)	5.25
Suggested prior approval for secondary method	5.25.A
Two envelope method	5.20
What to Include in an RFP	5.35
Resolutions, authorizing	See authority to contract
Requests for qualifications	2.04(Table 2.1); 3.19.F.1; 11.5; 11.06; 11.10.C.4
Responsibilities of the contract manager	9.02
Responsibility for contract approval	4.02
Retention of contract records	9.11
Revenue agreements	3.16
Role of DGS in contract protest hearings	6.04
 - S -	
Secondary method (point count or high score RFP)	5.25
Secretary of State, contacting	5.30 D
Selection process based on qualifications	11.05
Small business	8.21
Certification	8.20
Exemption from advertising	5.80.C
Flagging of contracts	8.23 D
Participation report	7.15.C
5% preference	5.10.C
Social Security number	7.25
Specialized contract provisions	7.75
Standard State Contract Process	5.04
Standard language	2.07(Table 2.2)
Standard forms	See Forms
Starting work prior to approval	See commencement of work prior to approval
Statutory and regulatory policy references	5.02
Student contracts	3.22
Subcontractors, substitution of	8.16.B;
Subscription contracts per a master agreement	3.04.A.4
Subvention and local assistance contracts	3.17
 - T -	
Target Area Contract Preference Act (TACPA)	8.30

Index - Rev (10/05)

Taxpayer identification number	7.25
Telecommunications contracts	1.45.B.4; 3.19
Termination of the contract	9.09; 7.85 Also, see cancellation clause
Terms and conditions	2.07(Table 2.2)
<u>Tie Bids</u>	5.45
Time for completion of competitive bidding process	5.60
Travel and per diem	7.30, 3.17.2 A.4
 - U -	
UC, CSU, community colleges, and their foundations	3.18; Also see Foundations
Use of manual (SCM), guide to	1.03
Universities	3.18
 - V -	
Valid contract, elements of	2.05
Vendor Data Record, STD 204	7.25.B.1
Vendor name change or vendor change	2.06.D
Void contracts, causes	4.02.B
 - W -	
Waste recycling agreements	4.11
When to apply DVBE goals to a contract	8.12