

MANAGEMENT MEMO

NUMBER:
MM 14-01

SUBJECT:

DATE ISSUED:
January 9, 2014

BARGAINING UNIT NOTIFICATION OF PROPOSED PERSONAL SERVICES CONTRACTS

EXPIRES:
UNTIL RESCINDED

REFERENCES:

California Constitution Article VII; Government Code Sections 19130, 19132, and 11045

ISSUING AGENCY:
DEPARTMENT OF GENERAL SERVICES

Purpose

This Management Memo is to inform state agencies, departments, boards, offices, bureaus, and commissions subject to oversight by the Governor of the requirements for compliance with Government Code Section 19132 as recently amended by Assembly Bill No. 906 (Pan) (Statutes of 2013, Chapter 774.)

Policy

No state agency shall execute a personal services contract until the organizations that represent the state employees who perform the type of work being contracted out have been notified and provided a full copy of the proposed contract.

For state agencies not under the oversight of the Governor, it is recommended that this Management Memo be followed.

Requirements

- Unless a personal services contract pursuant to subdivision (b) of Section 19130 is necessary due to a sudden and unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the contract shall not be executed until the state agency, department, board, office, bureau, or commission proposing to execute the contract has notified all bargaining units and organizations that represent state employees who perform the type of work to be contracted.
- The notification(s) pursuant to this statute shall be made before the proposed agreement is signed. Along with the notice, the employee organizations shall be provided a full copy of the proposed contract.
- Notifications shall be made to employee organization contacts identified pursuant to their respective bargaining unit agreements or as otherwise indicated by the employee organization. The California Department of Human Resources will maintain a list of these representatives on its website: <http://www.calhr.ca.gov/state-hr-professionals/Pages/personal-services-contracts.aspx>.
- Contracts requiring the Department of General Services (DGS) approval shall not be submitted for approval until all parties have signed and the appropriate employee organizations notified.

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**Requirements
(Cont.)**

- For contracts requiring a [DGS Standard Form 215](#) (STD. 215) (Rev. 01/2014), the highest level official of the entity proposing the contract, or his or her designee, shall certify compliance with Government Code Section 19132(b)(1) by checking the provided box and signing in the form's signature area.
- Contracts not submitted to employee organizations before execution because of an emergency situation (as described above) shall be submitted to the employee organizations as soon as possible after execution.
- For contracts not requiring a STD. 215; the following statement shall be signed by the highest level official of the entity, or their designee, and be included in the contract package using a separate sheet:

"I hereby certify compliance with Government Code Section 19132(b)(1)."

- The notification and certification of notice requirements of Government Code Section 19132 does not change the requirements for contracts under Government Code Section 11045 or require additional notification.
 - To the extent allowed by the California Public Records Act or other applicable law, specific confidential or proprietary information may be redacted from the notice and proposed contract.
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Recommendations Other than indicating that a contract cannot be executed until the notifications have occurred, the law does not specify when notifications should be made or the method for making the notifications and providing full copies of the proposed contracts.

- It is recommended that notice of proposed contracts be provided to bargaining units and organizations that represent state employees as soon as a fully developed contract is available to enable reasonable time for review. This timing could vary depending upon the type of contract, complexity, amount of funds committed, contracting methods used, for example, two quote methodology used for low dollar amount/small business procurements verses multi-phased information technology procurements.
 - The notifications to employee organizations could be done, for example, electronically by email, mailing of an electronic media (e.g., a compact disc), or posting to a website that automatically notifies the employee organization representatives of the proposed contract, and that provides easy access to the full copy.
 - Notifications should contain sufficient information to enable the employee organizations to determine the type of work proposed, estimated value of the contract, bargaining units notified, term of the contract, and the anticipated date the contract will be fully executed.
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Background

The California Constitution, Article VII, as interpreted by the California Supreme Court, has established an implied "civil service mandate" that prohibits state agencies from contracting with private entities to perform work that the state has historically and customarily performed and can perform adequately and competently. Government Code Section 19130 codifies some exceptions to this civil service mandate as recognized in various court decisions.

Questions

For further information, please contact:
Department of General Services
Office of Legal Services
916-376-5080

Signature

Fred Klass, Director
Department of General Services