

Chapter 1200 - Contracts

1200 INTRODUCTION

(Revised 9/96)

This chapter provides policy direction for state agencies for services, consultant services, interagency agreements, architectural and engineering and minor public works contracts. Other types of contracts are covered in SAM Sections 5200 et seq.; 1400 et seq.; and 1300 et seq.

1205 STATE CONTRACTING MANUAL

(Revised 1/13)

Department of General Services, Office of Legal Services (DGS/OLS), has coordinated the effort to compile State Contracting Manual Volume 1 (SCM 1) which contains policies, procedures, and guidelines in securing necessary services for the state. The SCM 1 and other OLS publications are available on the Internet at <http://www.dgs.ca.gov/legal>.

1208 AUTHORIZATION OF AGREEMENTS

(Revised 09/05)

1. State Departments—Authorized Signatures

- a. Authority to sign purchase documents is limited to those executive officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority.
- b. Anyone who signs a purchase document should have knowledge in the procurement laws, policies, and procedures pertaining to the goods or services being procured. If an individual with signature authority does not possess sufficient procurement knowledge and expertise, the individual should, prior to signing, have the purchase document reviewed by someone who possesses such knowledge and expertise.
- c. Delegation of signature authority is a selective process and should be commensurate with experience with principles of sound contracting and procurement policies, demonstrated familiarity with the process of purchase document formation, execution, and administration, and completion of applicable training and/or certification.
- d. Each executive officer who has statutory authority to sign purchase documents shall ensure that his/her agency maintains a current written record of agency employees authorized to enter into and sign purchase documents on behalf of that agency. This written record shall be subject to DGS audit.
- e. State Board's and Commission's purchase documents in excess of \$5,000 must be accompanied by a copy of the resolution approving the execution of the purchase document, unless by statute the executive officer may sign the purchase document.

2. Local Governmental Entities—Authority

- a. Purchase documents to be signed by a county, city, district or other local public body must be authorized by a resolution, order, motion or ordinance for the purchase document. A copy of the authorization should be sent to DGS/OLS with the purchase document.
 - b. Where performance by the local governmental entity will be complete prior to any payment by the state a resolution is not needed. Such instances are usually one time events such as a room rental.
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1215 EXEMPTION FROM APPROVAL BY THE DEPARTMENT OF GENERAL SERVICES

(Revised 1/13)

1. All contracts must conform to the requirements for contracts as stated in statutes, regulations, and policy.
2. The law requires all contracts to be approved by DGS unless exempted or there is a delegation to an agency.
3. All contracts and interagency agreements (I/A) are subject to approval by DGS except:

- a. Contracts of \$50,000 or less, unless subject to the provisions of SAM Section 1216. See Government Code (GC) Section (§) 14616.
- b. Contracts with specific statutory exemption from DGS approval. See Public Contract Code (PCC) § 10295.
- c. Amendment to a contract or I/A that only extends the time for completion of performance for a period of one year or less. A contract may only be amended once under this exemption. See PCC § 10335.
- d. Any contract for which the agency has a specific exemption letter from DGS under GC § 14616, or PCC §10351.
- e. It is an I/A over \$50,000 and less than \$1,000,000 that uses the current GIAs (including SAM 8752 and 8752.1 cost provisions) without modification and that has no direct or indirect subcontracting (GC §11256), subject also to the following:
 1. This I/A exemption does not apply when contracting with CSU, UC, or any other state agency that is a exempt from Division 2, Part 2 Chapter 2 of the Public Contract Code (PCC § 10290 et seq.);
 2. Agencies shall not use I/As to circumvent any state law or contracting requirements;
 3. Agencies shall not use I/As to obtain any third-party IT goods or services nor any third-party non-IT goods or services;
 4. DGS reserves the right to audit exempt contracts at the contracting agency's expense;
 5. If DGS determines an agency is failing to abide by the conditions of this exemption, DGS reserves the right to revoke the exemption such that that agency would then be required to submit to DGS for approval all I/As of \$5,000 or more (or such other amount as DGS establishes when revoking or reducing this exemption);
 6. DGS is establishing this I/A exemption on a pilot basis, and DGS will evaluate outcomes to determine whether to modify, continue, or discontinue the exemption.

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

4. Considerations Related to Exempt Contracts

- a. No contract which exceeds \$75,000 will be exempt from DGS review, without specific statutory authority.
- b. A copy of each exempt contract or I/A is to be retained in the agency's file for three years from the date of the final payment.
- c. Where the performance is other than monetary, such consideration must be valued on a monetary basis for the purpose of determining whether approval of DGS is required.
- d. Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of fifty thousand dollars (\$50,000) or more, shall notify DGS in writing and shall have each contract that exceeds an aggregate amount of fifty thousand dollars (\$50,000) approved by DGS.
- e. Splitting of contracts to avoid any monetary limitations is prohibited. If it is found that more than one contract has been awarded to a single contractor in any one year for work normally considered one undertaking, and the total of the contracts exceeds \$4,999, the agency may be denied the exemptions from DGS approval as granted in this and other sections of SAM.
- f. Revenue and reimbursable contracts are to be submitted to DGS under the same dollar categories as other contracts.
- g. Master agreements are to be submitted to DGS regardless of the dollar amount. Contracts or subscription agreements pursuant to a master agreement are to be submitted to DGS under the same dollar categories as other contracts.

1216 CONTRACTS NOT EXEMPT FROM DEPARTMENT OF GENERAL SERVICES APPROVAL

(Revised 1/13)

Any contract containing any of the following provisions shall be subject to approval by DGS even though it may also be one of the types otherwise exempted from approval:

1. Contracts of hazardous nature regardless of dollar amount require review by DGS OLS.
2. Any provision whereby the state agrees to indemnify or save harmless any party to the contract or any third person against or on account of any claim, liability, or matter arising out of, or connected with the contract; or any provision which limits the contractor's liabilities.

3. Any provision whereby the state agrees to assume responsibility for matters beyond its control (e.g., in rental contracts, a promise to assume full responsibility for damage to rented equipment, regardless of the cause of damage).
4. Any provision calling for payment of rental or other services in advance.
5. Any provision creating a contingent liability against the state (e.g., vendors' printed rental contracts frequently contain clauses obligating the user of rented equipment to serious contingent liabilities).
6. Contracts that seek to modify the state's standard terms and conditions (GTCs, CCCs, GIAs).

1233 CONTRACTS EXEMPT FROM CALIFORNIA STATE CONTRACTS REGISTER ADVERTISING AND COMPETITIVE BIDDING

(Revised 1/13)

Competitive bidding is required unless there is a legally authorized basis for bid exemption. Key exemption categories are identified below.

A. Statutory Exemptions

1. Contracts of less than \$5,000 (PCC §§ 10335(a), 10335.5(c)(5)).
2. Contracts of less than \$5,000 where only per diem or travel expenses, or a combination thereof, are to be paid (PCC § 10335(a)).
3. Emergency contracts. The work or service is for the immediate preservation of the public health, welfare, safety, or protection of state property (PCC § 1102, 10340).
4. Interagency agreements. Contracts with other California state agencies, and California State University and University of California campuses (PCC §§ 10335(a), 10340(b)(3); GC § 11256; see also SCM 1, section 3.03.).
5. Contracts with other public entities, including contracts with another state, local, or federal agency, auxiliaries of CSU or the California community colleges; or an organization acting as a governmental agency under a joint powers agreement (PCC §§ 10335(a), 10340(b)(3); see also SCM 1, section 3.06.A).
6. Contracts solely for the purpose of obtaining expert witnesses for litigation (PCC § 10335.5(c)(3)).
7. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff (PCC § 10335.5(c)(4)).
8. Community Based Rehabilitation Program (CRP). Contracts with business entities operating Community Based Rehabilitation Program (CRP), that are justified under one of the exceptions in GC § 19130(b), and that meet the criteria established by Welfare and Institutions Code § 19404 (PCC § 10340). Note: Contracts with CRPs that are justified under GC § 19130(a) are required to be competitively bid.
9. Small Business/Disabled Veteran Business Enterprise (SB/DVBE) Option (GC § 14838.5; PCC §§ 10335.5(c)(6), 10340(b)(6)).
 - a. This option allows for an award under the following conditions:
 - i. The contract is awarded to a certified SB, micro-business or DVBE;
 - ii. The contract award is greater than \$5,000 and less than \$250,000; and
 - iii. Quotes were received from at least two certified SBs or micro-businesses; or two certified DVBEs.
 - b. An award based on receiving only one quote is not permitted under this method.
 - c. Mixing quotes (e.g. one SB and one DVBE) is not permitted under this method.
 - d. The code does not expressly require award to the low quote, however, if award will be made by other than low quote, the agency must document the business reasons and cost reasonableness basis for selecting the other quote.
 - e. No particular format or timing is required under this option. Agencies have discretion as to how to obtain the quotes. Agencies should provide vendors sufficient information about the services on which the vendors can formulate a quote, including copy of the proposed contract (e.g. scope, payment provisions, and terms).
 - f. The SB preference is not applicable under this method.
 - g. There is no protest right for this method. (GC § 14838.5) Therefore agencies should not cite protest provisions when soliciting quotes.

- h. Use of this method is capped at \$250,000 for the entire contract term, including any option years and/or amendments. If an agency believes the contract may exceed \$250,000, they should use a different solicitation method, such as an IFB or RFP. If quotes come in over \$250,000, the agency would need to resolicit, either scaling down the project to lower the quotes or using a different solicitation method.
 - i. For public works, the dollar range for which this two-quote method can be used is \$5,000 to \$270,000 (or other project cost limit amount as may periodically be issued by the Director of Finance pursuant to PCC § 10105) (GC § 14838.7.)
10. Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations (PCC § 10340(b)(7)).
 11. Other Specific Statutory Exemption. The STD 215 should identify the statutory citation supporting the exemption.

B. DGS Approved Exemptions (PCC §10348)

1. Non-Competitive Bid (NCB) or Special Category Request (SCR)
 - a. An NCB transaction (formerly "sole source") is a contract for goods or services or both when only a single business enterprise is afforded the opportunity to provide the specified goods or services.
 - b. Executive Order on NCB
The Governor's Executive Order, D-02-55, issued effective May 20, 2002, rescinded the previous sole source Executive Order W-103-94 and all management memos related to that Executive Order.
 - c. The NCB form with instructions and signature requirements can be found on the DGS/PD website. See also SCM volume 2 (SCM 2).
 - d. An SCR is similar to an NCB but involves a group of related contracts rather than a single contract. The SCR form and further information can also be found on the DGS/Procurement Division website and in SCM 2.
2. DGS Categorical Exemptions (PCC § 10348; historical references: SAM Section 1233, Management Memo (MM) 03-10).
 - a. Services contracts using a DGS Leverage Purchase Agreement;
 - b. Subvention and local assistance contracts as defined in SCM 1, section 3.17. This exception applies only when services are provided to the public and not specifically to a state agency;
 - c. Maintenance agreements under \$250,000 per year for equipment that is under documented warranty, or where there is only one authorized or qualified representative or where there is only one distributor in the area for parts and services under \$250,000.00 per year;
 - d. Contracts where the state is unable to compete and select a different contractor because a contractor has already been selected by a federal, state, city, county, or other regulatory entity to perform a service in a specific geographical area (e.g., refuse and/or sewage disposal contracts where there is an exclusive franchise agreement that has no exception for the state);
 - e. Public entertainment contracts for state-sponsored fairs and expositions;
 - f. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code Section 605(b);
 - g. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000;
 - h. Contracts for ambulance services (including but not limited to 911) when there is no competition because the contractor is designated by a local jurisdiction for the specific geographic region; (historical reference: MM 05-04.)
 - i. Contracts for emergency room hospitals, and medical groups, physicians, and ancillary staff providing services at emergency room hospitals, when a patient is transported to a designated emergency room hospital for the immediate preservation of life and limb and there is no competition because the emergency room hospital is designated by a local emergency medical services agency and medical staffing is designated by the hospital. This exemption covers only those services provided in response to the emergency room transport; (historical reference: MM 05-04.)
 - j. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety;
 - k. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to \$250,000. This includes access to pre-existing proprietary research data through a non-IT services contract, however "subscription" is not intended to include the performance of any personal services (such as, but not limited to, consulting, advice, research);
 - l. Rental of proprietary postage meters if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area. This exemption applies only in circumstances where annual postage meter rental services are less than \$100,000;

- m. Departmental memberships in professional organizations provided it is solely a membership and does not include the performance of any personal services. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by CalHR rules; (See SCM 1, section 3.23.)
- n. Contracts for non-IT services training for state personnel if the cost of the training contract does not exceed \$50,000 and the cost of multiple training contracts with a single contractor does not exceed \$50,000 cumulatively in any 12-month period. (Historical reference: MM 11-05.) The exemption is for pre-existing training courses; it does not cover development of training or other personal or consulting services. Agencies shall not split contracts to avoid competitive bidding or other contract requirements. Agencies with recurring training needs should assess the cumulative amounts departmentally and generally should go out to bid if there are ongoing and/or department-wide needs.