

1. INTRODUCTION

1.00 • INTRODUCTION

(Rev 11/12)

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

- A. Volume 1 of the manual deals primarily with non-IT services, consultant services, legal services, subventions, and interagency agreements. It does not cover real estate lease transactions, commodities or IT acquisitions. Overviews of public works contracts and architectural and engineering contracts are provided in chapters 10 and 11, respectively. DGS/OLS should be contacted for assistance in interpreting any section of Volume 1 of this manual or when seeking a variance from established contracting requirements or practices.
- B. Volume 2 (formerly the Purchasing Authority Manual) contains information about delegated purchasing authority, commodities acquisitions and protests, preference programs, non-competitive bidding, leveraged procurement agreements, and reporting requirements. DGS/PD should be contacted for assistance in interpreting Volume 2.
- C. Volume 3 contains information and provisions applicable to Information Technology (IT) acquisitions. DGS/PD should be contacted for assistance in interpreting Volume 3 of this manual.

1.01 • TABLE OF CONTENTS

(Rev 11/12)

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 11/12)

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

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

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

Table 1.1

Required or Discretionary Language			
	Requirements “ <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 Deputy Director & Chief Counsel of DGS/OLS. Any written exemptions should be kept on file for audit purposes.

1.04 • AGENCY RESPONSIBILITIES (Rev 11/12)

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

The role of DGS/OLS includes:

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

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

1.05 • CLASSIFICATION OF CONTRACTS (Rev 11/12)

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

B. Consider the following concepts for each acquisition:

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

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

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

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

- a. Does the contract estimate meet the statutory definition of a "Project" per PCC § 10105? If so, unless your agency is one of the agencies listed in the State Contract Act, approval (RES Form 23) must be obtained from DGS/RES prior to bidding for these services.
 - b. Does the acquisition involve development of plans and drawings? Even if the contract amount is less than the current "Project" limit, approval (RES Form 23) must be obtained from DGS/RES prior to bidding.
 - c. Does the contract estimate exceed \$610,000? If so, only the agencies listed in the State Contract Act, and agencies specifically authorized by statute, are authorized to contract for the work. (PCC § 10108.)
3. Is it a contract for the purchase of a Commodity or Goods? (PCC § 10300, et seq.) Does the contract have as its sole or main purpose, the buying of some tangible items such as equipment, parts, supplies, or other merchandise? If so, further consideration must be made to determine whether any services are being provided as well, and which has the predominant value to the contract; the items being purchased, or the services being rendered? The dollar value associated with the services provided, or the value of the goods being supplied are factors that should be considered. (See SCM volume 2.)
 4. Is it an Information Technology (IT) acquisition? (PCC § 12100 et seq.) Does the contract have as its sole or primary purpose, an information technology procurement or activity? If so, further consideration must be made. If the contract is determined to be an IT activity, the provisions of the State Administrative Manual in section 5200 must be adhered to. IT activities typically require additional documentation. When determining whether a contract is for IT, one must consider the predominant purpose or value of the activity, and

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

5. Is it a contract for non-IT services? (PCC § 10335 et seq.) Does the contract have as its sole or primary purpose providing non-IT services? Services contracts are those that have someone doing something. Many service contracts are easily identified, e.g. waste removal services, cleaning services, etc. However, some services contracts are more difficult to determine, especially when they involve other disciplines as well. Example: A contract for carpeting may involve purchase of carpet (commodity) as well as removal of old carpet and pad (service), and installation of new carpet and pad (service). The determining factor should be what is the primary focus of the contract and expertise of the contractor. Is it the purchase of the item, or proper installation?
6. Is it a consulting services contract? (PCC § 10335.5.) Does the contract have as its sole or primary purpose, some type of recommendation or product of the mind? Is the unique knowledge of the individual and intellectual abilities of critical importance to the success of the contract?
7. Is it a contract for legal services? (PCC § 10335.) A legal services contract is a type of consulting services contract to obtain services which must be performed by a licensed attorney.

1.06 • CIRCUMVENTION OF RESPONSIBILITIES PROHIBITED (Rev 11/12)

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

1.07 • STANDARD CONTRACTING FORMS
(Rev 11/12)

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

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

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