

Memorandum

Date : July 15, 1996

File No.:

To : All Agency Secretaries
All Board and Commission Heads
All Department Directors

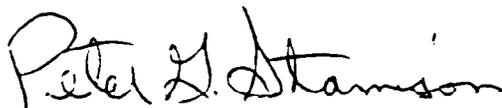
From : Department of General Services
Executive Office

Subject: **SOLE SOURCE PROCUREMENTS AND CONTRACTS, EXECUTIVE ORDER
W-103-94: RENEWAL OF MANAGEMENT MEMO 94-16**

The attached Management Memorandum No. 96-16, reissues the guidelines previously set forth in Management Memorandum 94-16. A comprehensive review of sole source policies is currently underway and may result in superseding policies. In the meantime, the policies established under Management Memorandum 94-16 are continued.

Management Memorandum No. 94-16, provides the guidelines for State Departments and Agencies to use in compliance with Governor Wilson's Executive Order No. W-103-94 pertaining to "sole source" procurements or contracts. The attached information is intended to **emphasize the seriousness of the Executive Order and is to be strictly enforced** by all State personnel to ensure compliance with this directive. The new Management Memorandum 96-16 shall apply *nunc pro tunc* to all transactions subsequent to the expiration of 94-16.

All questions concerning the attached should be addressed to the staff member identified within the Management Memorandum.



PETER G. STAMISON, Director
Department of General Services

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MANAGEMENT MEMO

	NUMBER: 96-16
	REISSUES 94-16
SUBJECT: PROCESSING SOLE SOURCE PROCUREMENTS AND CONTRACTS	DATE ISSUED: 7/1/96
	EXPIRES: UNTIL REVOKED
REFERENCES: EXECUTIVE ORDER W-103-94 STATE ADMINISTRATIVE MANUAL Sections 1200 et seq., 3500 et seq., 4500 et seq., and 5200; et seq.	ISSUING AGENCY: Department of General Services

The purpose of this Management Memo is to implement Executive Order W-103-94 governing the procurement and contracting of goods and services. This applies to documents received by the Department of General Services (DGS) on or after August 17, 1994 or, for those transactions exempt from DGS review, documents initiated by the originating department on or after August 17, 1994.

THE EXECUTIVE ORDER REINFORCES THE STATE'S POLICY WHEREBY PROCUREMENTS OR CONTRACTS OF GOODS AND/OR SERVICES ARE TO BE AWARDED THROUGH THE USE OF A COMPETITIVE PROCESS.

In addition, the Executive Order addresses the issue of approvals of "sole source" procurements or contracts, and requires the application of a high level of accountability in the decisions leading to such transactions. Except in cases of emergency response for the public health or safety, or for the protection of State property, such transactions must now be approved by a cabinet level agency Secretary (Secretary) or, for those departments not reporting to a Secretary, by the organization's highest ranking official or Chief Executive Officer (CEO). For the purpose of requiring this approval, a "sole source" transaction shall be defined as a procurement or contract for goods and/or services where only a single business enterprise is afforded the opportunity to offer the State a price for the specified goods and/or services.

Current State policy requires competitive transactions except under specific circumstances as set forth by law, or as determined to be in the best interests of the State. Purchases of goods are generally governed by Chapter 3500 of the State Administrative Manual (SAM). Contracts for services are generally governed by SAM Chapter 1200. Procurements and contracts for information technology goods and services are generally governed by SAM Chapters 4500 and 5200. These policies are to be strictly followed with the addition of the procedures set forth below.

In accordance with existing policies, departments must submit requests for certain sole source procurements or contracts of goods and services, along with full and complete justification for limiting the competition, to the DGS for approval. Existing policies are revised to require written approval by the Secretary/CEO responsible for the originating department of all sole source transaction requests received by the DGS on or after August 17, 1994 or, for those transactions exempt from DGS review which were initiated by the originating department on or after August 17, 1994. This applies to all transactions which would normally be subject to DGS review, except for emergency response transactions relating to public health or safety, or protection of State property.

Those sole source transactions not subject to submission to the DGS under current policy continue to be exempted from submission. However, the Secretary/CEO must approve those procurements or contracts and the written approval must be retained in the file by the originating department.

As an alternative to requiring that each individual request for a sole source transaction be submitted for approval, a Secretary/CEO may grant approval to process certain specified categories of sole source procurements or contracts without reviewing individual transactions. A memorandum signed by the Secretary/CEO which approves specific sole source categories must be retained by the requesting department for audit. For additional guidance, refer to the attached **EXHIBIT** which contains examples of categories of sole source transactions that may be considered for approval by category. **The allowance of approval categories for sole source transactions is at the discretion of each Secretary/CEO.**

If a transaction falls within a category approved for sole source by the Secretary/CEO and is to be submitted to the DGS, an authorized department employee must certify that the transaction request has been approved. This may be accomplished by either rubber stamping the procurement or contract document, or otherwise denoting the Secretary/CEO approval as follows: "Approved by Secretary/CEO per memorandum dated ____." If the approval covers a sole source transaction that is not required to be submitted to the DGS, a certification is not required if a copy of the signed approval memorandum is on file.

As a reminder, it is not necessary to obtain approval for purchases and/or contracts placed against the following types of agreements or from the following entities:

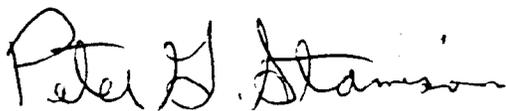
- a) Annual Procurement Division State Contracts for supplies and materials
- b) Statewide Master Agreements (MRA, MSA, MPA)
- c) California Multiple Award Schedules (CMAS)
- d) The California Computer Source
- e) The California Software Source
- f) Master Agreements originally awarded by a department on a competitive basis
- g) Procurements from or contracts with the Prison Industry Authority (PIA)
- h) Purchases from the Department of General Services, Procurement Division Material Services

Every effort must be made to limit sole source procurements and contracts to an absolute minimum. Each department is responsible for ensuring that all requests for sole source approval are fully justified and the justifications are thoroughly documented.

In summary, current policies are revised to provide that every non-emergency sole source procurement or contract of goods and/or services by a State department, regardless of the dollar amount, must be reviewed and approved by the Agency Secretary/CEO, unless a written approval for certain categories is obtained from the Secretary/CEO.

Any questions regarding this Management Memo should be directed to the following:

Standard Form 821 for services	Art Quan DGS Procurement	PUBLIC 916-324-7314 CALNET 8-454-7314
Standard Form 2 for contracts	DGS Office of Legal Services	PUBLIC 916-445-4084 CALNET 8-485-4084
Information technology goods and/or services	Pat Jones DGS Procurement	PUBLIC 916-324-6455 CALNET 8-454-6455
All other materials and supplies	Bob Hoover DGS Procurement	PUBLIC 916-323-8289 CALNET 8-473-8289



PETER G. STAMISON, Director
Department of General Services

M e m o r a n d u m

Date: March 10, 1997

To: All Agency Secretaries
All Board and Commission Heads
All Department Directors

From: Department of General Services
Executive Office

Subject: **SOLE SOURCE PROCUREMENTS AND CONTRACTS: Executive Order W-103-94 and Management Memo No. 96-16 (amendment) - Exhibit Update**

Management Memo No. 96-16 issued 7-1-96 provided guidelines for state departments and/or agencies to use for compliance with Governor Wilson's Executive Order W-103-94 pertaining to restrictions on "sole source" procurements or contracts.

Attached is an updated EXHIBIT to replace in its entirety the EXHIBIT previously included with Management Memo No. 96-16. Specifically, changes have been made to Section B, item 2; Section C, items 1 and 3; Section D, item 5.

In addition to the above changes, the contact name and telephone number listed on page 3 for information technology goods and/or services should now read as follows:

Information Technology Goods and/or Services	Dennis Ericson DGS Procurement	PUBLIC: 916-323-6297 CALNET: 8-454-6297
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Questions concerning the above should be addressed to Patricia A. Jones, Procurement Division at (916) 324-6455, CALNET 454-6455, or via the Internet (pajones@dgs.ca.gov)



PETER G. STAMISON, Director
Department of General Services

PS:JRH

Attachment

EXHIBIT

EXAMPLES OF SOLE SOURCE CATEGORIES MANAGEMENT MEMO 96-16

The descriptions of procurements and contracts provided below are not intended to be all inclusive or to fully explain the variety of different types, groups, or classifications of sole source transaction categories. These examples may be used by departments in requesting category approval by the Secretary/CEO.

A. CONTRACTS FOR SERVICES

1. Contracts exempt from advertising per SAM Section 1233 - most contracts exempted from advertising and competitive bidding as a category of transaction are described in SAM Section 1233. Some of these are exempted by statute while others are exempted by policy.
2. Contracts with a dollar value of under \$1,000 - all contracts under \$1,000 are exempted from advertising in the California State Contracts Register. Such contracts shall be informally bid whenever feasible. In addition, contracts under \$1,000 for Services and Consultant Services are exempt from competitive bidding per Public Contract Code (PCC) Sections 10335 and 10356, respectively.
3. Repairs or modifications of leased facilities - contracts for repairs or modifications of leased facilities awarded by State departments to the lessor, under the supervision of the DGS, Office of Real Estate and Design Services, are generally provided for within the lease agreement and are not subject to competitive bidding.
4. Short-term room rentals - there are no requirements for competitive bidding of short-term rental of hotel rooms or other comparable facilities for meetings, classes, etc. Such facilities are necessarily selected based on such factors as program necessity, location, and availability.

B. PURCHASES OF GOODS

1. Purchases with a dollar value of \$100 or less - PCC Section 10308 states that except as provided otherwise in the chapter, all purchases in excess of \$100 shall be made by or under the supervision of the DGS. Current statutes do not require competitive bidding for purchases of \$100 or less.
2. Commodities delegation program purchases - as required by PCC Section 10331, the DGS has delegated purchasing authority to many State departments and some operational units within departments (particularly institutions) with a current minimum delegation of \$2,500 and a maximum delegation as defined by the individual delegation issued by the DGS (reference PCC 10330). For purchases under \$15,000, two quotes are generally required, but proprietary purchases are permitted with documentation as to why the purchase was proprietary. Purchases of \$1,000 or less may be sole-sourced without documentation or prior approval by the DGS.
3. Temporary extension of annual statewide supply contracts - temporary extensions of annual supply contracts for use by any State department to avoid disruption of necessary deliveries.
4. Live Animals - purchases of live animals or specific breeds.

C. GOODS AND SERVICES

1. Small purchase bankcard program - many departments use the Cal-Card program for procuring goods and services up to \$15,000 per transaction or as defined by an individual delegation granted by the DGS. Use of this program does not preclude the need to follow all other procurement rules and guidelines (i.e. competitive bidding). Current policy (via the delegation program) does not require competitive bidding for purchases of less than \$1,000.
 2. Bank drafts - as provided in SAM Section 8123, some departments use a bank draft instrument for the procurement of goods and services up to \$500 per transaction. While current policies do not require competitive bidding, it is understood that departments seek competition on these transactions whenever feasible.
 3. Proprietary equipment repair parts and associated labor - procurements or contracts for non-competitive and proprietary equipment repair parts, equipment component parts, and component parts of items currently being manufactured for resale, which are only available from the manufacturer. This may also include, and is specifically limited to a reasonable amount of labor that is required for the installation of the proprietary part(s).
 4. Federal Government supplier mandates - procurements or contracts with suppliers mandated by the federal government.
 5. Government agency transactions - procurements or contracts with another governmental agency.
 6. Statutory exemption - procurement or contracting of items where current statutes specifically authorize procurement without competition.
 7. Regulated utility - procurements or contracts with regulated utilities.
 8. Legislative or judicial mandate - procurements or contracts resulting from a court order or legislative mandate.
- D. ADDITIONAL EXAMPLES
1. Amendments for sales taxes - amendments or revisions to procurements or contracts to add sales tax which was not previously included.
 2. Amendments without monetary value nor increase in value - amendments or revisions to existing procurements or contracts without monetary value or no increase in the monetary value.
 3. Continued license or maintenance of existing software - procurements and/or contracts for the continued license or maintenance of proprietary application or operating system software already in use. This also includes families additions or changes, revisions, renamed products, bundled products, upgrades and additional copies of installed software products for newly acquired equipment.
 4. Proprietary pharmaceuticals, vaccines, and reagents - procurements or contracts for proprietary pharmaceuticals, vaccines, and/or reagents. Reagents or assays as required by instrumentation and/or procedural methods used for testing.
 5. Subscriptions, publications, and/or technical manuals - procurement or contracts for subscriptions, publications, and/or technical manuals, and/or law book set updates, excluding new law book sets, required so as to not impede continuous effective operation within the State organization.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA



EXECUTIVE ORDER W-103-94

WHEREAS, state government has an obligation to safeguard the trust of the people of California; and

WHEREAS, state procurement and contracting procedures are an integral and substantial element of State operations; and

WHEREAS, employees of the State of California at all levels are entrusted with this considerable responsibility; and

WHEREAS, contracting procedures established by State law are designed to provide efficient and cost-effective means to procure goods and services for State operations; and

WHEREAS, it is incumbent upon all employees of the State of California to implement these regulations to the fullest extent possible;

NOW, THEREFORE, I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. No "sole-source" contracts or procurements, as defined by State law, are to be authorized for the State of California, except in the case of State Emergency, or where public health and safety so requires.
 - a. To ensure that these conditions are met, and that accountability for such decisions is at the highest possible level, any and all "sole-source" contracts entered into by the State of California shall, without exception, require the express written approval of the Cabinet-level Agency Secretary with jurisdiction over the contract, as well as the Department of General Services.
 - b. Departments which do not report to a Cabinet Agency shall require express written approval by the highest ranking full-time employee of the organization.
2. All employees of the State of California are directed to follow, without fail, the strict guidelines and procedures established by the Department of General Services (DGS) regarding State contracts and procurements.

PAGE TWO

3. Employees of the State of California, at all levels, are directed to comply with this order. Failure to comply with State regulations shall be the basis for personnel actions or termination of employment.

IN WITNESS WHEREOF I have hereunto set my hand
and caused the Great Seal of the State of
California to be affixed this 17th day of
August 1994.

Peter Wilson
Governor of California

ATTEST:

Tony Miller
Acting Secretary of State

