

Contract Procedure and Policy Manual



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000 INTRODUCTION

This chapter provides policy and procedure direction for SCDD staff involved in the development and processing of departmental Contracts, Memoranda of Understanding and other types of Agreements collectively referred to as “Contracts” to obtain personal services to assist SCDD to achieve its program objectives. (See Section 102 for categories of contracts.)

The State of California separates purchasing in two main categories that are also distinguished by the purchase of information technology (IT) elements as follows:

1. Service Contracts
 - a. Non-IT Services
 - b. IT Services

2. Commodity Procurements
 - a. Non-IT Goods
 - b. IT Goods

This chapter deals primarily with non-IT services, consultant services, legal services, subventions, and interagency agreements. It does not cover consumer purchasing, real estate lease transactions, commodities (procurements) and some IT purchases.

001 Purpose and Intended Audience

The purpose of this chapter is to outline SCDD policies and procedures related to the components of State contracting laws for the purchase of IT and Non-IT services, enabling SCDD staff with contracting responsibility to have a clear understanding of the statutory requirements and be able to develop and process departmental contracts and agreements with maximum efficiency.

002 GOVERNING LAWS, REGULATIONS AND RULES

Contracts activities of SCDD are governed by a number of state and federal laws, regulations, and administrative processes. They include:

[California Public Contract Code](#)

[Public Records Act](#)

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[Government Code Section 19130 \(Personnel Services Contracts\)](#)

[California Code of Regulations \(CCR\) §7149](#)

[DGS Information on Government Code-Section 927 et seq.\(Prompt Payment\)](#)

[Information on Government Code 14838.5 \(Small Business-DVBE Requirements\)](#)

[California Multiple Awards Schedule Information](#)

[Leveraged Procurement Agreements \(LPAs\) Information](#)

[DVBE California Code](#)

[Small Business California Code](#)

[State Contract Manual \(Vol. 1\) Contracting](#)

[State Contract Manual \(Vol. II\) Procurement](#)

[State Contract Manual \(Vol. III\) Information Technology](#)

[State Contracting Manual \(Vol. Fi\\$Cal\) Fi\\$Cal](#)

[State Administrative Manual \(SAM\)](#)

[Equal Employment Opportunity](#)

[Clean Air Act](#)

[Byrd Anti-Lobbying Amendment](#)

[Title VI of the Civil Rights Act of 1964](#)

[Title IX of the Education Amendments of 1972](#)

[The Age Discrimination Act](#)

[Americans with Disabilities Act \(ADA\)](#)

[UNRUH Civil Rights](#)

100 AUTHORITY

The Department of General Services (DGS) has statewide statutory responsibility for contracting for goods and services including approval of the acquisition methods used and the establishment and interpretation of related procedures. State Contracting Manuals (SCM) Volumes 1, 2 and 3, and various Management Memos provide statewide contracting policies and procedures SCDD must adhere to.

The California Department of Technology (CDT) has statutory responsibility for IT Project efforts and contracting. CDT may review specifications in procurement documents before they are advertised to ensure that the specifications are consistent with the requirements and specifications identified in the Project Approval Lifecycle Stage/Gate deliverables [see Statewide Information Management Manual (SIMM) Section 19] or Special Project Reports (SPR) for the projects. CDT's decision to review procurement documents will be based on whether it believes a project requires special oversight during the procurement process. Procurement documents that CDT determines are subject to its oversight under this section may not be released until the CDT has approved their release.

However, the DGS is responsible for the overall procurement policy that sets forth the methods and procedures to be used to procure all goods and services in the State.

101 Delegation of Contract Authority

The DGS Procurement Division has delegated IT and Non-IT goods and services contract authority to SCDD based on a determination that SCDD contracting programs adhere to State statutes, regulations, executive orders, policies, procedures, sound business practices, and are cost effective. Contracts for Non-IT goods and services that exceed the established contract authority level must be reviewed and approved by DGS-OLS prior to final execution.

102 Categories of Contracts

SCDD has been granted contracting authority in the following categories of contracts for Goods and Services:

1. Interagency Agreements (IA)
2. Leveraged Procurement/Master Agreements for Services and Consulting Services

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3. Contracts with Local Government
4. Agreements with other Governmental Entities & Public Universities
5. Legal Services
6. Expert Witness Contracts
7. Amendments
8. Emergency Contracts
9. Federally Funded Contracts
10. Hazardous Activities Contracts
11. Joint Power Agreements
12. Contracts with Non-Profit Organizations
13. Revenue Agreements and Concession Contracts (Vending Machine Routes)
14. Subvention and Local Assistance Contracts
15. UC, CSU, Community Colleges, and Their Foundations or Auxiliaries
16. IT and Telecommunications Contracts
17. Convention and Conference Services Contracts
18. Printing Services Contracts
19. Contracting for Student Assistants
20. Memberships
21. Fiscal Intermediaries
22. Commercial Office Moving Services
23. Elevator Maintenance Contracts
24. Consultant Services Contracts
25. Contracts for Specific Types of Personal Services

103 DGS-OLS Review and Approval

Any contract with a total expenditure exceeding the DGS-OLS delegated contracting authority type, category, or dollar threshold of \$50,000 must be submitted to DGS-OLS for final execution.

C&PB DGS-OLS. DGS-OLS will review the contract for compliance with all statutory requirements and will approve and return the contract to C&PB. C&PB will send contract copies to the SCDD Contract Administrator and contractor.

200 ROLES AND RESPONSIBILITIES

201 SCDD Contract Officer

The Chief Deputy Director (or designee) is SCDD's Contracting Officer and is accountable and responsible for SCDD's delegated contract authority (SCM Volume 1, Section 4.02) and for administering SCDD'S statewide delegated contract authority among all SCDD contracting programs; monitoring those contracting programs granted contract authority; and providing training and guidance to program staff in all contracting programs. (SCM Volume 1, Section 1.04)

202 Contract Analyst

Contract Analysts within the Business Operations and Committee Support Unit provide guidance and direction to SCDD program staff (Contract Managers) on contract development award and approval. The Contract Analysts are available to all Contract Managers to answer questions and discuss concerns/issues related to SCDD contracting program activities.

The Contracts Analysts are responsible for the determination of contractual requirements and solicitation of the desired contract. The Contract Analyst and Contract Manager work together collaboratively to determine whether a contract is exempt from competitive bidding and identify the correct solicitation method to provide the best contract to support program goals and outcomes. They develop Invitation for Bid (IFB), Requests for Proposals (RFP), Requests for Interest (RFI), contract terms and conditions, and obtaining appropriate reviews and approvals and awarding of contracts. The Contract Analysts are the liaison with other agencies responsible for the review and/or approval of contracts, to send appropriate notifications to the organization that represent the state employees

who perform the type of work being contracted out and to keep a log of all contracts.

The Contract Analysts ensure any changes to the contract that require an amendment are identified, defined and an amendment is requested from Contract Manager before the change takes place.

203 SCDD Contract Manager (CM)

The SCDD CM is the official contract requestors and the liaison to the Contractor. The CM acts as administrator of their contract, including the request for contract services, performance, evaluation, monitoring, and invoice approval.

The CM responsibilities include:

1. Establish and prepare a clear, specific, detailed description for the scope of work;
2. Identify specific contract language, performance criteria, and deliverables to be met by the contractor;
3. Provide information to SCDD Contract Analysts in a timely manner;
4. Ensure that all necessary expenditures are included in the contract budget and that costs are reasonable and allowable;
5. Understands that extension of contract terms requires an amendment;
6. When the contract is sent to the contractor for signature, ensure the contract package is returned to the Contract Analyst in a timely manner;
7. Ensure the contractor starts work only after the contract is fully executed with exception of contracts in Section 506;
8. Ensure the contractor's staff understand the contracted job duties;
9. Monitor the contract to ensure compliance with contract provisions (i.e., amount, timeframe, deliverables, etc.);

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10. Monitor the progress of contract work to ensure that services are performed according to the quality, quantity and manner specified in the contract;
11. Ensures that all work proceeds on schedule and within the scope of work, that all deliverables will be completed and accepted by the SCDD before the contract expires;
12. Monitors all invoices to ensure sufficient funding is available to pay for all services rendered as required through the completion of the contract;
13. Ensure total payments do not exceed contract amount and accomplished all required scope of work as it was bid;
14. Request new contracts, amendments, and renewals as needed, allowing at least 60 - 120 days to process and execute before the new contract/amendment and the existing contract expires or lapses;
15. Ensure contract invoices are completed correctly, match the scope of work and billed in accordance with the approved budget, processed timely, and invoice submitted as soon as possible but no later than 60 days.
16. Coordinate with the Contractor to closeout and submit final invoices for processing as soon as possible or no later than 45 days after the contract closeout process is completed;
17. When applicable, completes a Contract/Contractor Evaluation Form, STD 4, for consultant services contracts of \$5,000 or more; and
18. Maintains contract documentation for a minimum of 7 years.

203.1 Contract Manager Authorizations

The Contract Manager is ***not*** authorized to take the following actions:

1. Instruct the contractor to start work before the contract is executed and/or approved..
2. Change any term or condition of the contract verbally or before an amendment is executed.

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3. Direct the contractor to do work that is not specifically described in the contract.
4. Sign any contractor's contract form or other agreement documents and forms.
5. Authorize payment to the contractor for any work not performed satisfactorily or in accordance with the contract scope of work, terms and conditions.
6. Send termination letters to contractor.
7. Extend the time period of the contract either verbally or in writing without a fully executed contract.
8. Allow the contractor to incur costs over the original limit set in the contract without a fully executed amendment.

203.2 Splitting of Contract Services Is Prohibited

Under no circumstances shall Contract Managers split contracts to circumvent delegated contracting authority thresholds.
(SCM I 5.3)

A contract or other purchase is considered to be "split" when the required work to complete the SCDD goals is divided into two or more contracts in order to lower the dollar threshold to an amount that puts one or more of those contracts into a lower delegated authority threshold. For example, a scope of work requiring consultant services that would cost about \$9,000 is split into two contract requests for about \$4,500 each and now advertising is not required.

203.3 Ethics and Conflicts of Interest

Contract Managers are required to complete ethics training and maintain the highest professional and ethical standards. Mandatory online ethics training is provided to all SCDD staff every two years.

Newly assigned employees with contracting responsibility must sign the PS 413 Incompatible Activities Certification within five (5) working days of appointment.

The signed PS 413 must be filed with Human Resources. These signed statements shall be made available during internal/external compliance reviews.

203.4 INTELLECTUAL PROPERTY (New 6/17)

- A. Intellectual Property.** “Intellectual property” (IP) means intangible assets that are subject to statutory protection under applicable patent, copyright, and trademark law. Intellectual property includes, but is not limited to, inventions, industrial designs, identifying marks and symbols, electronic publications, trade secrets, and literary, musical, artistic, photographic, and film works. (GC § 13988.1(d).)
- B. DGS Intellectual Property Program.** DGS is charged with creating and implementing the state’s first IP program to help maximize the value of state-owned IP while at the same time promoting the public benefit. (GC § 13988.) DGS’s IP program includes:
- 1. Intellectual Property Database.** Developing a database of IP resources to track state-owned IP. The law requires state agencies to cooperate by, among other things, providing an agency list of IP resources to DGS by November 30, 2016, with updates to be provided annually thereafter on a form prescribed by DGS.
 - 2. Intellectual Property Management Plan.** DGS has created a sample management plan for state-owned IP that includes factors state agencies should consider when deciding whether to sell or license their IP and issues related to placing state-funded IP into the public domain. It is recommended state agencies adopt this plan to better protect IP assets.
 - 3. IP Outreach Campaign.** DGS is charged with developing an outreach campaign informing state agencies of their rights concerning IP created by their employees.
 - a. DGS has formed an IP Advisory Group consisting of representatives of various state agencies to assist in the development of IP policies, procedures, and contractual forms, and to guide the direction of the state’s IP efforts.
 - b. DGS will also periodically reach out to state agencies and departments about IP rights, abilities, and resources through a variety of channels.

4. **Contractual Provisions Regarding IP.** DGS has developed recommended forms and contractual provisions regarding IP ownership and related issues. With respect to Contractor obligations, it is recommended that each agency or department require the Contractor to represent that it is the owner or authorized user of any third party IP used in a project, to warrant that it has the legal right to use third party IP connected with a project, and to grant the State of California a fully-paid license to use third party IP arising from or included in a project.

5. **DGS IP Web Portal** – Further information and resources are located at the DGS IP web portal at <http://www.dgs.ca.gov/ols/Programs/IP.aspx>.

204 SCDD Signature Authority for Contracts

The Executive Director of SCDD has duly authorized the Chief Deputy Director, to sign all contracts, interagency agreements, certifications and contract transmittals on behalf of the department. A written record of all persons authorized to sign contracts and transmittals must be maintained at the SCDD offices.

1. **DGS Approval:** For non-IT service contracts over \$50,000 (SCDD delegated authority), approval by DGS –Office of Legal Services (OLS) is required. Contracts involving hazardous materials and/or transportation of individuals must be approved by DGS– Office of Risk Management (ORIM).

2. **Approval Required Before Commencement of Work:** Under no circumstances, shall an employee authorize or approve commencing work prior to the receipt of an approved (executed) contract. .

3. **Other Approvals:** Information on other required approvals of certain types of contracts, either not used or very infrequently by SCDD, can be reviewed at the SCM I (Section 4.11).

205 SCDD Contracts Training

The Contract Analyst is the point person responsible for administering SCDD contracting programs and provide expertise and policy guidance on interpreting the SCM, PAM, SAM, DGS-OLS website, Department of Finance website and IT related bulletins, and SCDD'S Administrative Manual.

The Contract Analyst is responsible for providing internal training and guidance resources to all SCDD staff who provide supervision and guidance to the Contract Managers responsible for conducting consumer and/or administrative contracting. The Contract Analyst provides guidance to staff via frequent communication with the Contract Managers and their supervisors in each contracting program.

206 DGS Cal-PCA Training

Pending the availability of courses by DGS-PD and budget resources, all Contract Analysts and Managers are required to complete the Cal-PCA and the Services Contracting Workshop.

300 CONTRACT PLANNING

301 Initiating Contracts

In an effort to provide timely processing of contract agreements, program staff should submit requests for contracts or amendments to their supervisor and the Contract Analyst as soon as the need for a contract is known or at least 90 – 120 days prior to the start date.

The 90 days allows sufficient time to:

- Fully refine the scope of work needed for the contracted services;
- Identify the appropriate competitive solicitation methodology or identify any possible exemptions to that process;
- Allow all contract parties time to resolve unexpected contract issues;
- Obtain budget expenditure approvals;
- Obtain approvals by SCDD, Department of General Services, and the contractor; and
- Reduce the number of contracts requiring submission of late justifications.

302 Distinguishing Goods from Services

SCDD contracting authority programs and this chapter have been established for the acquisition of non-IT services only. A transaction where the intent is to obtain the majority of the purchase amount is for a tangible item then it is considered to be a goods/commodities purchase and is subject to the provisions in the PAM. Refer to PAM 2.B1.7 and contact the Contract Analyst for assistance in determining goods from services.
(SCM I 1.05 B.3)

303 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.

1. **Time:** When the services are needed is a critical factor. Sufficient time must be allowed for internal processing as well as required external review(s).
2. **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. This includes verifying service is not available within the department or another state agency and a written justification outlining the factual information that demonstrates the need for contracting out.
3. **Authority and Approvals:** Many decisions require authorized approval, including final, formal approval either by the Chief Deputy Director or by DGS-OLS. Some contracts are legally exempt from DGS-OLS approval. Some may require approval by other agencies.
4. **Funding:** Funding for the services is a crucial component and must be identified.
5. **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. Contracts for Services over \$10,000 are required to be competitively bid.
6. **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.

304 Elements of a Valid Contract

Each contract must contain the following information:

1. Identification of the parties
2. Term for the performance or completion of the contract (dates or length of time)
3. Encumbrance of funds when required
4. Agreement Amount (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
5. Scope and deliverables (The work, service, or product to be performed, rendered, or delivered. Clear and concise language must be used to describe the scope, including any specific performance requirements by both function and time)
6. Other general or unique terms and conditions of the agreement
7. Signature by a person for each party who is authorized to bind that party

400 TYPES OF AGREEMENTS

401 Agreements with other Governmental Entities & Public Universities, UC, CSU, Community Colleges, and their Foundations or Auxiliaries

- A. Agreements for services and consultant services do not require competitive bids or proposals if the contract is with:
1. A California State agency, State college or State university. (See SCM 1, section 3.18 to determine whether or not the Model Agreement Template and model contract terms/UTCs apply.)
 2. A state agency, state college or state university from another state;
 3. A local governmental entity, including those created as a joint Powers Authority (JPA), and including local government entities from other states.
 4. An auxiliary organization of the CSU, or a California community college. (See SCM I, section 3.18 to determine whether or not the Model Agreement Template and model contract terms/UTCs apply.)
 5. The Federal Government;
 6. A foundation organized to support the Board of Governors of the California Community Colleges; or
 7. An auxiliary organization of the Student Aid Commission established under Education Code § 69522.
- B. Administrative overhead fees: Agencies shall assure that all administrative fees are reasonable considering the services being provided. Agencies may only pay overhead charges on the first \$25,000 for each subcontract. These overhead limitations may be waived when contracts are with the Federal government and cost recovery requirements result in higher published rates. The overhead may not exceed the published rates.
- C. No subcontracting to circumvent competitive bidding: Services to be provided by entities in Section 401 are not to be performed primarily with the staff of the public entity or, in the case of the education institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular

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education institution. Agreements with entities listed in Section 401 are not to be used by State agencies to circumvent the State's competitive bidding or other contracting requirements. (PCC § 10340)

- D. Subcontracting without limitation: Services may be subcontracted without limitation only when subcontracting is justified and not for the purposes of circumventing state contracting requirements and:
1. The primary agreement is a subvention agreement.
(SCM I 3.06)
 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; or
 3. All subcontracts are with entities listed in Section 401.
- E. **Subcontracting subject to conditions:** If the total of all subcontracts exceeds \$50,000 or 25% of the total contract, whichever is less, then higher levels of subcontracting might be permissible if the subcontract is justified and not for the purpose of circumventing state contracting requirements, still conforms to section SCM I, 3.06.B and C and:
1. Meets one of the categories in SCM I, 3.06 D.; or
 2. Prior written approval from DGS/OLS has been received; or
 3. Certification by the government entity that the subcontractor has been selected pursuant to a competitive bidding process that seeks at least three (3) bids from responsible bidders; or
 4. Approval by the agency secretary (or highest executive officer if no agency secretary exists), explaining the reason the subcontract(s) are included in the public entity contract rather than being separately bid and contracted for by the department, and attesting that the selection of the 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 or other state contracting requirements.

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- F. This section is intended to limit, not increase, the amount of subcontracting if any in public entity contracts. It is not intended to create a basis for using public entity contracts to procure third-party services or goods for state agencies. It is intended to allow some limited subcontracting on an exceptional basis, under appropriate documented circumstances, where the subcontract is integral to the work being performed under contract with the public entity and the contract work is performed primarily by staff of the public entity.

- G. If a contract submitted to DGS for approval does not identify subcontracts, but the contract subsequently involves subcontracts, then, if the subcontracted amount exceeds the limits in D.2 above, the contract shall be amended to identify the subcontracts (name, staffing, portions of the work to be performed, and budget detail) and the amendment shall be submitted to DGS for approval.

402 Intentionally left blank

403 Consultant Services Contracts

- 1. 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)
 - a. A consultant service contract calls for a product of the mind rather than the rendition of mechanical or physical skills.
 - b. The product may include anything from answers to specific questions to the design of a system or plan.
 - c. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services.

- 2. Expert witness contracts and legal services contracts are types of consulting services. (PCC § 10335.5) these two types are exempt from competitive bidding. (See SCM I, section 5.80.)

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3. Consultant services contracts do not include:
 - a. Contracts between State agencies and the Federal government (PCC § 10335.5).
 - b. Contracts with local government agencies, as defined in Revenue and Taxation Code § 2211, to subvene Federal funds for which no matching State funds are required.
 - c. Contracts for architectural and engineering services (GC § 4525).
4. Agencies shall use only private consultants when the quality of work is at least equal to that of agency resources. (PCC § 10371.) But such contracts must still also comply with GC section 19130.

403.1 Consulting Contract Requirements

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 \$5,000 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.
4. The Contractor must provide proof of \$1 million dollar Professional Liability Insurance. (SCM volume 1 7.4)

To ensure that all the legal requirements are met, C&PB 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

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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 and measurable results they are required to achieve: 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.

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, if allowed, and what restriction will be in place (e.g. 10% final payment withhold), and, if appropriate, known or estimated budgetary limitations on the contract price.

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.

404 Contracts with Local Government

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, ordinance or other similar document from the local governing body, which by law has authority to enter into the proposed contract, authorizing 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 3.05)

405 Contracts with Nonprofit Organizations

Contracts may be made between SCDD and a private entity that is a nonprofit corporation. Bidding requirements do not apply if the contract is for subvention or local assistance. (See SCM I, 3.15; IRS Code § 501C).

Contracts may be made between the State and a private entity that is a nonprofit corporation. (Int. Rev. Code 501(c)). Bidding requirements would apply unless exempt by statute or the contract is for subvention or local assistance.

406 Contracts for Personal Services

Personal services contracts are agreements, between a private contractor and the State. The purpose is to provide services to the State when no State employees are available to perform said services.

406.1 Office and Furniture Moving Services

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 collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. (GC § 14920) These requirements must be included in Invitations for Bids and contracts. Services may be available through a Leveraged Procurement Agreement. (See SCM I, 3.25)

407 Convention and Conference Facilities Contracts

Services for conventions and conference facilities, including room rentals, 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 the Chief Deputy Director. (SCM I 3.20)

The bidding exemption for facilities does not cover other types of services that may be needed for a convention or conference (e.g. training, consulting, etc.). If other types of services are needed, agencies must contract for those following standard contract requirements (e.g. GC 19130, bidding, etc.).

408 Emergency Contracts

An 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." To qualify as an emergency, a contract must meet all elements of this statutory definition.

1. SCDD is not required to obtain three bids or advertise before entering into a contract in the event of an emergency; but must make every effort to ensure rates are fair and reasonable.
2. Emergency contracts are exempt from advertising and competitive bidding, and do not require an NCB.
3. Ordinarily, 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. (SCM I 3.10)

To Request An Emergency Contract:

1. Contact the CDD or Branch Chief of HQ Operations.
2. The contract will then be issued consistent with the procedures in SCM I 3.10.

409 Hazardous Activities Contracts

These contracts require approval by DGS/OLS and DGS/ORIM.

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:

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.

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2. Excavation, drilling, or demolition.
3. Fumigation, crop or agricultural spraying, or application of chemicals of any type that may result in substantial risk of serious injury to persons or damage to property.
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.

Regardless of the contract amount, insurance is required if hazardous activities are included in the performance of a contract.

Contracts for hazardous activities must be submitted to DGS/ORIM for review to ensure that the contract and the certificate of insurance comply with the provisions of SCM I section 7.40, and that the insurance coverage meets applicable standards.

410 Interagency Agreements

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

For contracts with UC, CSU, and Authorized CSU Auxiliary Organizations, see SCM I, section 3.18 to determine whether the Model Agreement Template and model contract terms apply.
 - b. I/As may not be used for contracts with campus foundations, the federal government, local entities, JPAs, or other states.
2. Special provisions apply:
 - a. I/As are exempt from advertising in the CSCR.
 - b. I/As are exempt from competitive bidding.
 - c. Note: If the entity performing the service is using subcontracts or purchasing goods, those services and goods should be incidental and typically should be competitively bid. See SCM 3.06. Both parties to the I/A must follow State laws and State contracting requirements.
 - d. I/As may provide for advancing of funds (GC §§ 11257 through 11263 and SAM § 8758.1)
3. Requirements are as follows:
 - a. An Interagency Agreement STD 213 must be used.
 - b. Under the State's standard contracting process, the contract should reference the State's standard current interagency terms and conditions by reference to the DGS/OLS website (e.g., GIA 610).

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- c. I/As shall include a provision that the charges have been or will be computed in accordance with State requirements as noted in State Administrative Manual (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. SAM §§ 8752, and 8752.1 are included in the State's current standard terms and conditions (GIA 610).
- d. 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). This provision is included in the State's current standard terms and conditions (GIA 610).
- e. DGS approval is required for I/As of \$1,000,000 or more. Once cumulative amendments to an I/A equal or exceed \$1,000,000, the I/A must be submitted to DGS/OLS for approval (GC § 11256). (SCM I 4.03 and 4.04)

The I/A exemption from DGS approval does not apply when contracting with a CSU, UC or any other state agency exempt from Division 2, Part 2, Chapter 2 of the Public Contract Code (PCC 10290 et seq.)

411 IT and Telecommunications Contracts

- 1. SAM section 4819.2 defines information technology as “all computerized and auxiliary automated information handling, including systems design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, data communications, microwave, light wave, routers, network equipment, requisite systems controls, and simulation. In accordance with SAM section 4819.2, any of the activities listed below either individually or in combination are considered IT services contracts:
 - a. IT facility preparation, operation and maintenance.
 - b. Information management planning.
 - c. Feasibility determination, development and implementation of application systems or programs, or changes to application systems or programs to meet new or modified needs, or maintenance, including:

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Project Approval Lifecycle Stage/Gate deliverable preparation, systems analysis, systems design, purchase and installation of software, programming, conversion of data or programs, documentation of systems and procedures, and project appraisal or assessment.

- d. Operation of application systems or programs including handling, assembling, or editing of input-output data or media where IT equipment or IT personnel are used.
 - e. Information Technology Procurement.
 - f. Installation, operation, and maintenance of data processing equipment, IT equipment, goods and services, and software.
 - g. Other installation management activities including performance measurement, system tuning, and capacity management.
 - h. Preparation and administration of requests for proposals or bid solicitations for contracts for any of the above activities.
 - i. Preparation of contracts, interagency agreements, and purchase estimates for any of the above activities.
 - j. Employment of personnel in support of, or directly related to, any of the above activities, including: administration, technical services, clerical services, travel, training, and preparation of periodic and special reports.
 - k. Control functions directly related to any of the above activities.
2. 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.
 3. There is a separate acquisition authority for IT and telecommunication good and services. (See PCC 12100 et seq.)

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4. 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 I 4.04.
5. Additional information is contained in the Purchasing Authority Manual, which is Volume 2 of the SCM. Contact C&PB for more details.
6. Issuance of notices of Intent to Award and protest processes are different for procurements for IT.

412 Joint Power Authorities

Joint Powers Authorities (JPAs) are formed through agreement between two or more public agencies for the purpose of jointly exercising any power common to the contracting parties.

The State may contract with a JPA for services, without being a member of the JPA. JPAs are treated as public entities and as such, contracts with JPAs are exempt from competitive bidding. A board resolution or other similar document from the JPA 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 with JPAs must still meet all State contract requirements including GC § 19130, DGS contract approval, not using JPAs as a pass-through for other contracts (see SCM 1, section 3.06) and verification that the JPA rates are reasonable.

413 Legal Services and Expert Witness Contracts

1. Legal services contracts are not subject to competitive bidding or advertising. They must be authorized by the Attorney General (AG) unless specifically exempted by statute. In general, the law requires SCDD to use the AG as its legal counsel; however, with written consent by the AG, SCDD may contract for legal services. This consent must be obtained before seeking DGS/OLS approval. (GC § 11040 et seq.)
2. SCDD 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

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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. (GC § section 11045.)

3. A copy of the executed contract and any executed amendments must be sent to the designated representative for State Employees Bargaining Unit 2 at or before the time of submittal to DGS/OLS for approval.
4. Consent to amend the contract need not be obtained from the AG 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 AG.
5. Legal services contracts must contain the following provisions. The contractor shall:
 - a. Agree to adhere to legal cost and billing guidelines designated by the agency;
 - b. Adhere to litigation plans designated by the agency;
 - c. Adhere to case phasing of activities designated by the agency;
 - d. Submit and adhere to legal budgets as designated by the agency;
 - e. Maintain legal malpractice insurance in an amount not less than the amount designated by the agency; and
 - f. 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

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the agency or by any legal cost-control provider retained by the agency for that purpose.

6. A certification effective January 1, 2003, and pursuant to Business and Professions Code § 6072, must be included in legal services contracts of \$50,000 or more if they are to be performed within California:

"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."

413.1 Expert Witness Contracts

1. 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.
2. Contracts solely for the purpose of obtaining expert witnesses for litigation are exempt from advertising and bidding requirements. (PCC § 10335.5)
3. Use of litigation experts pursuant to PCC § 10335.5 (c)(3) must be supported by a written justification, which demonstrates that litigation is "likely" rather than theoretical. (SCM I 3.07-8)

414 Leveraged Procurement/Master Agreements for Services and Consulting Services

- A. Leveraged Procurement Agreements (LPAs) are statewide agreements awarded by DGS, including services and consulting services agreements that can be used by other departments. DGS has unique statutory authority to award such agreements (PCC § 10298.) There are various types of

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LPAs, including but not limited to: master contracts, CMAS, and WSCA/NASPO contracts.

1. LPAs take advantage of the State's buying power. Prices are often less than those a single agency could obtain on its own. State agencies can use the statewide LPAs through the use of a subscription agreement, typically using a Standard Agreement Form (STD 213).
 2. LPAs 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. Agencies using LPAs should ensure these requirements are documented in their own contract files.
 3. LPAs allow an agency to obtain needed services quickly and easily, avoiding the delay and uncertainty of the bid process. Most LPAs, 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 LPA and to adhere to all other applicable code and SCM requirements.
 4. Some subscription contracts to LPAs cannot exceed certain amounts also known as "caps." Before developing a subscription contract, check with the LPA User Guide, Contract Manager, and/or SCM volumes 2 and 3 regarding caps, in addition to adhering to delegated purchasing authority rules.
 5. Subscription agreements (i.e. contracts off an LPA) for services require DGS approval, just like other services contracts. (See SCM I, section 4.03.) Such approvals are done through DGS/OLS, except CMAS which is done through DGS/PD.
 6. For additional information regarding LPAs, see SCM Volume 2. For lists of available LPAs, see the DGS/PD webpage.
- B. Intra-agency master agreements are contracts awarded by a department for the use of the divisions within that department. Intra-agency master agreements may differ from agency to agency depending on program needs

and statutory authority, but all must comply with statutory and SCM contract requirements. Any agency wishing to enter into such agreements should first discuss the agreement with its DGS/OLS attorney.

415 Memberships

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 non-represented employees are governed by CalHR rules and payment is on a reimbursement basis (via a travel claim). These memberships, for both represented and non-represented 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 DGS/PD's procurement process (that is, via STD 65) as outlined in ~~Chapter 9~~. (SCM I 3.23)

416 Convention and Conference Facility Contracts

Services for conventions and conference facilities, including room rentals, do not have to be competitively bid if under \$250,000.00. However, they must generally follow the requirements of other services contracts.

The bidding exemption for facilities does not cover other types of services that may be needed for a convention or conference (e.g. training, consulting, etc.). If other types of services are needed, agencies must contract for those following standard contract requirements (e.g. GC § 19130, bidding, etc.).

417 Printing / Publishing Services Contracts

Contracts awarded by State agencies for printing work are personal services within the meaning of GC §19130. State agencies must comply with GC §19130 in contracting out for printing services. Prior to contracting out for printing services, departments must contact the DGS Office of State Publishing (DGS/OSP) to determine if DGS/OSP can perform the work. Any contract for printing services must be supported by a written exemption from DGS/OSP. For additional information, see Department of General Services (DGS) Management Memo

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07-06 including Attachments (referencing a court ruling finding GC section 14612.5 to be unconstitutional).

Contracting agencies should also be aware of MOU provisions which require advance notice to potentially affected unions. See, e.g., Bargaining Unit 1 MOU §14.8.C which requires that departments provide a copy of an IFB or RFP to a designated union representative at the time of posting, if the proposed contract calls for services provided by that bargaining unit.

On June 26, 2007, DGS released Management Memo (MM) 2007-06 outlining the requirement that all Administrative printing jobs be performed by the Office of State Publishing (OSP).

MM 07-06 mandates the utilization of OSP for all Administrative printing services to the greatest extent possible. Printing is considered a non-IT service and SCDD must procure all Administrative printing services through OSP regardless of cost.

OSP must be used for all administrative photocopying; printing requests; business cards for those employees who require them as an integral part of their job; business reply envelopes; forms and labels. Buyers may contact SCDD Forms Management Unit and the C&PB for guidance.

The mandatory use of OSP for Administrative printing can be waived when one (1) of the following conditions exist:

- In-house printing and reproduction facilities can be used
- The Buyer can demonstrate that contracting out produces cost savings based on a series of criteria identified in GC 19130(a-b)
- The Buyer can demonstrate that the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose
- OSP is unable to perform the services and a waiver has been obtained.

MM 07-06 can be accessed for your reference at:

http://www.documents.dgs.ca.gov/osp/sam/mmemos/MM07_06.pdf

418 Revenue Agreements and Concession Contracts

Revenue agreements generally include:

- A. Contracts between the State and private or public entity, in which the State is performing services and receiving payment (sometimes also referred to as a reimbursement agreement).
- B. Contracts that involve income-generating activities, where the State receives a certain percentage of the income, rebate, or other payment from the vendor, rather than paying the vendor for services, such as: recycling agreements, and State Parks concession contracts. Income-generating contracts typically must be competitively bid (or an NCB obtained) and are subject to other standard contract requirements and approvals.

Note: This section does not create authority for performing revenue, reimbursement or concession contracts, it merely describes types that may exist. Agencies typically must have statutory authority to support performance of unique agreements such as these.

Revenue agreements in excess of \$150,000 must be reviewed and approved by DGS-OLS.

419 Subvention and Local Assistance Contracts

- 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.

419.1 Subvention Aid or Local Assistance Contract Transmittal

- 1. The Agreement Summary, STD 215, for subvention aid cost-reimbursement types of contracts must:

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- a. Advise whether SCDD, 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
 - b. 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.
2. The transmittal should detail:
- a. The factual basis for SCDD's determination that the other reimbursable costs and any fixed unit rates are reasonable in amount;
 - b. The basis for selection of the particular contractor; and,
 - c. The contracting agency's compliance with any special statutory requirements applicable to the particular program. (SCM I 3.17.1)

419.2 Subvention Aid or Local Assistance Contract Fiscal Control Provisions

1. Payment provisions in subvention aid contracts should be on a cost-reimbursement basis with a ceiling specifying the maximum dollar amount payable by SCDD. Contracts must set forth in detail the reimbursable items, unit rates, and extended total amounts for each line item. Among other matters, the following information should be documented:
 - a. Identify and justify direct costs and overhead costs, including employee fringe benefits.
 - b. 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.
 - c. Rental reimbursement items should specify the unit rate, such as the rate per square foot.
 - d. 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 CalHR for comparable classes

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and that no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the agency.

2. 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).
 - a. 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.
 - b. 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 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.
3. 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.
4. 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.
5. 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

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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.

6. 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 five years. (SCM I 3.17.2)
7. If an amendment is needed, the items of work covered by the amendment should be clearly written as part of the contract.

Paragraphs being amended should be clearly identified in bold font.

Example: **"Paragraph X is hereby amended to read: The total amount of this contract is . . ."**

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421 Public Works Contracts

1. 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)
2. A project, for purposes of the State Contract Act (PCC § 10100 et seq.), 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). The current amount is \$291,000*. Note: Some contracts meet the definition of "public works" under Labor Code section 1720, thereby requiring prevailing wages, but may not meet the definition of public works under Public Contract Code § 1101 and/or the State Contract Act and, therefore, may not be subject to other provisions of the Public Contract Code and this SCM I Chapter 10.
3. SCDD typically does not have delegation to process and approve Public Works contracts that are not delegated by DGS Real Estate Services Division to the SCDD for processing. Please contact the Chief Deputy Director and HQ Branch Chief and review SCM I. chapter 10.0 for guidance.

422 Non-Competitive Bid (NCB)

An NCB transaction 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 Special Category Request (SCR) is similar to the NCB but involves a group of related contracts rather than a single contract.

DGS Categorical Exemptions (PCC §10348)

- a. Service contracts using a DGS LPA.
- b. Subvention and local assistance contracts as defined in SCM 1, section 3.17. This exemption 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 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 geographic area.
- e. Public entertainment contracts for State sponsored events.
- f. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code § 605(b).
- g. Contracts for conference or meeting facilities, include room accommodations for conference attendees, not to exceed \$250,000.
- h. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to \$250,000
- i. Rental of proprietary postage meters if they interface and intermember with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specific geographical area (less than \$100,000).

For complete listing of exemptions, please see SCM, Volume 1, Section 5.80 B.

Although competitive bidding is not required, the conditions under which a contract may be awarded without competition must include the methods and criteria used in determining the reasonableness of contract costs when a contract is awarded. Any request for an NCB should be submitted to the Chief Deputy Director.

423 Amendments

An amendment is any formal modification to a contract.

1. Amendments require strict compliance with the State Contract Manual.
 - a. Amendments must be entered into before the expiration of the original contract.
 - b. It should contain the same degree of specificity for changes that the original contract contained for the same item.
 - 1). 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"
 - 2). Paragraphs being amended should be clearly identified. Example: "Paragraph X is hereby amended to read: The total amount of this contract is... "
 - c. 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 for completion of performance of the contract for a period of one year or less. A contract may be amended only once under this exemption (PCC § 10335). (See SCM 1, chapter 4.).
 - d. 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 I, chapter 4).
 - e. 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 (See SCM I, chapter 5; PCC § 10335 and GC § 11010.5). Contract language authorizing an amendment must be specific (such as an express option year at the

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same rates and terms), not generic (such as merely stating generally that the parties can amend).

Note: In some instances, contracts not providing for amendments may still be amended if an approved NCB contract justification is obtained.

- f. 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, and additional restrictions and approvals required for 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.
- g. If the amendment when added to the original contract and any other amendments exceeds \$50,000 (or \$149,999.99 if your agency has an exemption letter), the amendment must be submitted to DGS/OLS for approval.
- h. When an amendment is subject to DGS/OLS approval, a STD 215 should be completed, explaining the authority and the reason for the amendment. The amendment should be transmitted to DGS/OLS in accordance with the procedure detailed in SCM 1, chapter 4.
- i. When an amendment changes or corrects contract terms by "striking" out contract terms, both parties signing the agreement must initial the "strikeout."
- j. 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)."***
- k. An amendment may not be used to circumvent the competitive bidding process. A non-competitively bid contract justification (NCB) may be required. (See SCM I 5.81)
- l. Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC § 16304, 2 CCR § Title 2, Div 1, Chapter 1, Article 2, FY Budget Act.)

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- m. 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.

Specific requirements for developing contract amendments can be reviewed at SCM Vol 1- Additional Requirements for Specific Types of Contracts (Section 3.09).

SCDD CDD should be notified as early as possible when a contract amendment may be under consideration.

Amendments may be issued to extend the completion date and/or add services, etc (if authorized in the contract language). These amendments must be coordinated with the Contract Analyst and Contract Manager. Amendments must be sent to Contract Analyst for review and approval at least 90 days prior to requested effective date.

The Contract Analyst will analyze the original contract terms and provide guidance on how an amendment can be developed and approved.

With the assistance of the Contract Manager, the Contract Analyst will complete and process final amendment as appropriate.

500 CONTRACT APPROVAL

501 Responsibility for Contract Approval

Contract Analyst is responsible for making sure that SCDD contracts comply with applicable legal requirements and are based on sound business practices. DGS/OLS provides the final approval if required by law.

In some instances, additional approvals may be needed, such as those from the AG, State Personnel Board, DGS/Office of Risk and Insurance Management, or other.

502 Contracts requiring DGS/OLS Approval

DGS/OLS has statutory authority under several sources to approve contracts. PCC §§ 10295, 10297, 10335 and GC § 11256 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 financial and business policies, and GC § 14616 is the legal authority for some exemptions from DGS/OLS approval of contracts.

As a general rule, DGS/OLS approval is required on all services contracts over \$50,000. The approval requirement applies to all non-IT services contracts, including but not limited to consulting services and interagency agreements, subject to express exemptions identified in section 4.04 below.

Individual agencies may have specific statutes affecting their particular contracting programs. Some specific types of contracts which 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 SCDD to indemnify or to hold the contractor harmless.
2. Contracts that require SCDD to assume liabilities beyond its control.
3. Contracts that provide for advance payment for services or rentals.
4. Any provision creating a contingent liability against SCDD (e.g., vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities).

5. Any hazardous activity such as found under SCM I 3.12.
6. Contracts that seek to modify the State's standard terms and conditions (GTCs, CCCs, GIAs, UTCs).

503 Contracts Not Requiring DGS/OLS Approval

- A. The law requires all non-IT services contracts to be approved by DGS/OLS unless the contract is exempt from approval (PCC § 10295). A services contract is exempt from DGS/OLS approval if:
 1. It is specifically exempt from approval by statute (See, e.g., PCC §§ 10295(c) and 10430); or
 2. It is exempt from approval because of the monetary value of the contract by PCC § 10351, or GC § 14616; or it is \$50,000 or less (subject to exceptions noted in section 4.03 above). (GC §§ 11256, 14616); or
 3. It has been exempted from approval by an exemption letter issued by the DGS/OLS (PCC 10351);
 4. It is a federally or State-funded grant exempted based on opinion of the Attorney General. Note: This exemption applies when the State is *issuing* a grant, it does not exempt all agreements merely because they are paid for with federal and/or other grant funds.
 5. It is an interagency agreement 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:
 - a. Note: This exemption does not apply when contracting with CSU, UC, or any other state agency exempt from Division 2, Part 2, Chapter 2 of the Public Contract Code (PCC 10290 et seq.), all of which remain at the contracting agency's standard \$50,000 or \$150,000 exemption level;
 - b. Agencies shall not use I/As to circumvent any State law or contracting requirements;

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- c. Agencies shall not use I/As to obtain any third-party IT goods or services nor any third-party non-IT goods or services;
- d. DGS reserves the right to audit exempt contracts at the contracting agency's expense;
- e. 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);

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

- B. If an exempt contract is amended, the amendment may trigger the DGS/OLS approval requirement for the same reasons noted in 502 and 503 above (e.g. increase in dollar amount, modifying GIAs, adding subcontracts, etc.).
- C. DGS reserves the right to audit agencies regarding the above-referenced exemptions.

504 Approval of 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."

The law recognizes exceptions from competitive bidding in emergencies (PCC §§ 10340(b)(1) and 10371(d)), 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 the Chief, C&PB, to initiate a contract in such situations. If there is any question about whether the circumstances qualify as an emergency, C&PB should be contacted as soon as possible. The contract will be processed on an expedite basis.

505 Approval and Commencement of Work

SCDD policy is that no contractor should start work until receiving a copy of the formally approved contract with exception of contracts in Section 506. If 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. See PCC §§ 10295, and 10335.

Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. See PCC § 10335. 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.

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. 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.

A. Legal Requirements

The approval by DGS/OLS is the final, formal approval of the contract. 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 DGS/OLS or, in the case of an exempt contract, until it is formally approved by the agency. (See PCC §§ 10295 and 10335.)

B. Necessity of Time Management

In light of the legal requirements for contract approvals, it is important for contracting departments to timely execute and timely submit contracts.

Contracts should be submitted to DGS/OLS for approval a sufficient time in advance of the contract start date to afford the opportunity for adequate review and discussion as may be needed. Guidelines for timely submittal of

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contracts and late justification exceptions are outlined in DGS Administrative Order 06-05.1 (available by contacting DGS/OLS).

C. Consultant Contracts

The law does not permit consultants to start work before formal contract approval, except in an emergency. 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).

D. Warning to Contractors

1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. (PCC §§ 10295, 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 Government Claims Program. The State has no legal obligation unless and until the contract is approved.

Note: If a late contract is approved, authorized services provided by the contractor can be paid from the beginning date of the contract.

506 Approval of Late Contracts

It is SCDD'S goal to process contracts expeditiously to meet the Department's mission and better serve our consumers. As a general policy the SCDD does not allow contract work to start before a contract is approved and fully executed. Therefore, every effort must be made to request a contract in a timely manner and prior to the effective date of the contract.

However, if contract work starts before the contract is fully executed, due to overriding considerations (such as ensuring the continuance of mandated public

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services), then this section provides guidelines for submitting late contracts as required by the DGS. Contracts are considered "Late" if the contract is not fully executed by the effective start date of the contract. If the final contract packet with Contractor's signature(s) is not received **in HQ Ops Branch** at least 30 days prior to the effective start date of the contract, a "late justification" may be required to finalize the contract.

DGS has outlined a late contract justification process for contracts that fall under one or more of the following categories (DGS Administrative Order #06-05.1 and PCC 10295.):

- Interagency Agreements such as other State agencies
- Contracts with Other Governmental entities such as county or city, school districts, and community colleges
- Subvention Agreements, i.e., such as contracts with local government or non-profits contracts that provide direct aid to the public directly
- Revenue/Reimbursement Agreements
- Emergency Agreements/Health and Safety

Late contracts that do not fall in the above categories are subject to discretionary approval on a case by case basis by DGS Legal (contracts valued \$50,000 or more) or SCDD Directorate (contracts valued under \$50,000). In some cases signature approvals may require a later effective start date.

507 Approval of 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 I 3.10. 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). (SCM I 4.09)

508 Approval of Amendments

- A. If the original contract was approved by DGS/OLS, any amendment must be approved by DGS/OLS except for the following:
1. If an amendment only extends the original time *for completion 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. (PCC § 10335(d)(1).) Note: this exception only covers extensions of time “to complete performance,” such as extending a final report due date. It does not cover other types of amendments, such as amendments that extend time to use the contractor for additional as-needed or hourly rate type services, or amendments that change (increase, decrease, alter) the scope of work, budget, or terms and conditions. (See PCC § 10335(d)(3).)
 2. Even though the extension cited above is exempt from approval, upon completion of the amendment, a fully executed copy of the amendment and a form STD 215 explaining the reason for the extension must be sent to DGS/OLS if the original contract was subject to DGS/OLS approval. (PCC § 10335(d)(1).)
- B. To obtain DGS/OLS approval of an amendment, the amendment should be submitted to DGS/OLS with a STD 215 and all supporting documentation, along with a copy of the original agreement, any intervening amendments and the STD 215s for each.
- C. See SCM 1, chapters 3 and 5 for other information about amendments.

509 Regulations for State and Federal Tax Delinquency Verification

Public Contract Code Section 10295.4 provides that a state agency shall not enter into any contract for goods or services with a contractor whose name appears on either list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. This prohibition applies to contracts executed on or after July 1, 2012. FTB and BOE will post and periodically update lists of the 500 largest tax delinquencies on their websites as required by law. Starting July 1, 2012, prior to executing contracts, state agencies must check the FTB and BOE lists to ensure the proposed awardee/vendor is not on either list.

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The Federal Department of Labor requires all State agencies which are expending Federal funds to have in the contract file a certification by the contractor that they have not been debarred nor suspended from doing business with the Federal government. Prior to state agreement or renewal for non-IT goods or services, the contracting department must verify that the contractor/vendor is not on a prohibited list by checking the System for Award Management (SAM) website, <http://www.sam.gov>. This requirement applies regardless of the procurement approach, method, or solicitation format used.

600 COMPETITIVE BIDDING METHODS

601 Fundamental Rules

1. 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).
2. 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.
3. 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.
4. The sealed cost bids for an IFB and RFP primary must be publicly opened (PCC §§ 10341 and 10344).
5. A minimum of three competitive bids or proposals are required. If three (3) competitive bids are not received, SCDD must prepare a complete explanation as to why less than three (3) competitive bids were received; provide 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. (SCM 5.70) (PCC §§ 10340).

Competitive Bidding Requirements and Alternatives

Contracts must be competitively bid using the Public Contract Code process, unless there is a legally authorized basis for bid exemption. (PCC § 10340(a).)

Basic grounds for exemption include:

- A. Statutorily exempt;
- B. DGS Approved Exemptions (PCC § 10348)
 - 1. Categorical Exemptions
 - 2. Non-competitively bid exemption (NCB) or Special Category (SCR) approval.

See SCM I, section 5.80 for more information regarding exemptions and alternative methods for award.

- C. Contracts may be competitively bid using one of the following solicitation methods:
 - 1. Invitation for Bid (IFB)
 - 2. Request for Proposal (RFP)
 - 3. Master Service Agreement – Request for Offer (MSA-RFO)
 - 4. SB/MB/DVBE Option

Potential contract users should contact Contract Analyst to determine the alternative that is required for the agreement necessary to accomplish the desired results. If the contract is for under \$10,000, please consult SCDD's contract analyst.

602 Invitation for Bids (IFB)

- A. An Invitation for Bid (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:
 - 1. Here is exactly what we need to have done.

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2. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met.
 3. 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.

- C. All bids may be rejected whenever the agency determines that the cost is not reasonable, the cost exceeds the amount estimated, or otherwise in the best interest of the State. Although many agencies reserve the right to reject all bids, no bid may be rejected arbitrarily or without reasonable cause.

603 Request for Proposals (RFP)

- A. A Request for Proposal (RFP) must be as precise as possible to ensure that all proposals are accomplishing the same goal. 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.
- B. A RFP seeks an answer to the following:
1. Here is what we wish to accomplish.
 2. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met.
 3. How would you accomplish the job for us and for how much?
- C. A 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-

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control firm to do routine exterminations should be accomplished through an IFB, not a RFP.

- D. There are two (2) 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.
 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.
- E. Before soliciting proposals, agencies must determine which method of evaluation will be used and the procedures contained in [SCM I Chapter 5 \(Section 5.20-5.25\)](#) must be followed based on the specific circumstances of each RFP.
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:
1. The voting members used in the selection process shall be from the agency soliciting the proposals or awarding the contract.
 2. Private consultants may not be voting members of the committee and may only be used to provide clarification or subject matter expertise to the committee members.
 3. 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.

604 Master Service Agreements – Request for Offer (MSA-RFO) For Ongoing Services

A Non-Mandatory MSA is available for Office Moving Services.

SCDD must obtain an offer from an Approved Provider prior to execution of a contract. While it is not required, the Contract Analyst/Contract Manager may request offers from multiple providers, if available, to ensure fair and reasonable pricing or best value.

Each Request for Offer (RFO) shall be issued with a scope of work detailing services requested including the estimated term of the contract and any special conditions of the existing and future facilities (stairs, elevators, access, parking, Masonite, etc.).

The RFO should include the following information: (SCM Volume 2)

1. Agency contact information
2. Requested date of move
3. Work Hours:
 - Will overtime be allowed?
 - Is work to be performed on the weekend?
Per Department of Industrial Relations prevailing wage determination, any work on Saturday or Sunday requires payment of overtime.
4. Locations (from and to)
5. Inventory of items (recommended)
6. Will work involve modular furniture? (see the SOW for services covered)
7. Statement of Work
8. Who will be responsible for packing contents of desks and files? (Usually the agency staff handles this.)
9. Any special conditions of the job or work site (stairs, elevators, parking, bonds, security issues, etc.)

C&PB must obtain approval from the DGS Office of Legal Services (OLS) for contract amounts exceeding \$50,000.

Please see the procurement process outlined in RAM 9 for one-time services.

Small Business/Disabled Veteran (SB/DVBE) Option

Small Business/DVBE Option (GC §§ 14838.5; PCC §§ 10335.5(c)(6), 10340(b)(6)).

- a. This option allows for an award under the following conditions:
 - 1) The contract is awarded to a certified small business, micro-business or disabled veteran-owned business;
 - 2) The contract award is greater than \$5,000 and less than \$250,000; and
 - 3) Quotes were received from at least two certified small businesses or micro-businesses; or two certified disabled veteran-owned businesses.
- 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 small business 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.

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- 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 \$291,000 (or other project cost limit amount as may periodically be issued by the Director of Finance pursuant to PCC § 10105). (GC § 14838.7.)

605 DVBE /MB/SB Solicitation Requirements

The State of California has established the Disabled Veteran Business Enterprise (DVBE), Micro Business (MB) and Small Business (SB) programs 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 SB/MB/DVBE Advocate in C&PB.

605.1 DVBE Program

- 1. The California Disabled Veteran Business Enterprise Program requires that agencies take all practical actions necessary to meet or exceed a Disabled Veteran Business Enterprise (DVBE) participation goal of 3% of the agency's overall contract dollars. (See Mil & Vet Code § 999, et seq.; PCC § 10115; Tit. 2 CCR § 1896.60, et seq.)
- 2. An agency has the discretion to apply this goal to a specific contract, but is expected to meet the goal 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 goal in the future.

A. WHEN TO APPLY THE DVBE GOAL TO A CONTRACT

- 1. Agencies should develop a plan or strategy to ensure goal achievement for their overall departmental contract program.

2. 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 the overall DVBE goal attainment at the end of each year. When an awarding agency decides to waive the DVBE requirement, this must be noted in the solicitation.
3. Awarding agencies have sole discretion to exempt contracts from the DVBE participation requirements. In reviewing contracts, DGS services will rely on the awarding agency's decision to exempt contracts.
4. Contracts with government agencies, including public colleges and universities, and joint power authorities, are exempt from the DVBE participation requirements.
5. Additional information regarding DVBE participation requirements can be found in SCM 2, chapter 3.

B. BIDDERS' RESPONSE TO DVBE REQUIREMENTS IN A SOLICITATION

1. When the DVBE participation requirements have been included in the solicitation, bidders must commit to meeting or exceeding the minimum DVBE participation goal.
2. Meeting the minimum participation goal
There are two (2) methods of meeting the goal. If a bidder is:
 - a. Non-DVBE: Commit to use DVBEs for the amount stated in the bid document; or
 - b. DVBE: Commit to perform not less than the amount stated in the bid document with its own forces or in combination with other DVBEs.

605.2 Certified Small Business and Micro Business Program

Definition

1. Small business means a business certified by DGS/OSDS in accordance with GC § 14837 (d)(1) and 2 CCR 1896.12(a).

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2. Microbusiness means a small business certified by DGS/OSDS in accordance with GC § 14837 (d)(2) and 2 CCR 1896.12(b).
3. 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.”

Commercially useful function is defined as: 1) Is responsible for the execution of a distinct element of the work of the contract (including the supplying of service and goods); 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; 4) Is responsible, with respect to products, inventories, materials and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and 5) 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 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. (GC § 14837(d)(4); Tit. 2 CCR § 1896.15.)

4. Eligibility

A business must be formally certified by DGS/OSDS to be considered for the small business or microbusiness preference.

5. Benefits of Certification

A certified small business or microbusiness is entitled to claim a 5% preference in bidding on State contracts as explained in SCM 1, section 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.

6. Nonprofit Veteran Service Agency Small Business Certification

Nonprofit Veteran Service Agencies (NVSA) can qualify for small business certification through the DGS/OSDS if the NVSA meets the requirements of Mil. & Vet. Code § 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

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standards as other certified small businesses. SB/NVSA standards are identified in Mil. & Vet. Code § 999.51(a)(3).

7. 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).
8. Upon completion of a contract for which a commitment to achieve SB or DVBE participation was made, the contractor shall report to the awarding department the actual percentage of SB and DVBE participation that was achieved. (GC § 14841; GTCs.)

605.3 Commercially Useful Function (CUF)

In accordance with [GC](#) §14837 and MVC §999, all SB and DVBE contractors, subcontractors and suppliers that bid on or participate in a state contract, regardless of whether it is a verbal or written solicitation and/or paid for using the P-Card as a payment method, must perform a commercially useful function (CUF). In addition, the requirement to determine CUF is not affected by the applicability of the 5% SB and/or the DVBE participation preference program. There is no exception to this requirement. Consequently, certified SB/MB/DVBE businesses must perform a CUF. Buyers must determine that a CUF will be performed prior to contract award.

606 Advertising State-Contracting Opportunities

1. Contracts of \$10,000 or more must be advertised in the California State Contracts Register (CSCR) for at least 10 working days unless exempt from bidding. Agencies cannot release solicitations prior to publication in the CSCR. Contracts awarded as an NCB and amendments that require an NCB approval, will be published in the CSCR by DGS/PD as part of the NCB approval process. No agency action is required to publish the NCB approval. (GC §§ 14827.1, 14827.2; PCC § 10335(a).)
2. CSCR advertising procedures are as follows:
 - a. Advertising in the CSCR is now done through the DGS eProcurement system. Agencies should submit advertisements using the DGS Procurement Division's Internet Web page:
<http://www.dgs.ca.gov/pd/Programs/eprocurement.aspx>. Agencies may

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contact CSCR eProcurement help desk at (916) 375-2000 or eprocure@dgs.ca.gov for additional information.

- b. DGS charges a fee for each ad that appears in the CSCR.
3. Under appropriate circumstances, agencies may obtain an exemption from advertising. This is done on a STD 821 submitted to DGS/Procurement Division. An exemption from advertising eliminates the CSCR advertising requirement only; it is not an exemption from bidding. If DGS/Procurement Division approves a form STD 821 for an advertising exemption, DGS will publish a notice of exemption in the CSCR.
4. 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:
 - a. The re-bid occurs within three (3) months of the publication of the original CSCR advertisement;
 - b. Notice of rebid is provided to persons who are a UNSPSC match in eProcurement in addition to anyone who otherwise notified the contracting agency of their interest in the original solicitation; and
 - c. No material change to the solicitation.

607 Recycled Products (SCM I, 7.70)

1. Effective September 1, 1999, per administrative policy, the following service contracts must contain language requiring the use of post-consumer recycled content products:
 - a. Janitorial contracts must contain terms requiring the use of janitorial supplies containing post-consumer recycled paper products only;
 - b. Printing contracts must contain terms requiring post-consumer recycled paper only, unless the proposed printing job cannot be done on recycled paper;

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

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2. Contractors must certify in writing under penalty of perjury the minimum percentage, or the exact percentage, of post-consumer material in the product, materials, goods, or supplies provided under the agreement (PCC § 12205(a)-(b)) regardless of whether the product meets the requirements of PCC section 12209. Applicable certification language appears in the State's General Terms and Conditions (GTCs).

700 PROTEST OF PROPOSED AWARD DISPUTES

A protest of proposed award is a challenge brought by a bidder or proposer during the competitive solicitation process, asserting that the protestant should have been selected for award. Protests are rare and are only applicable to non-IT services.

Contract Manager shall notify contract analyst whenever a protest of proposed award is received. The Contract Analyst will work with the Contract Manager to evaluate the protest and take appropriate action as defined in PCC §§ 10341 - 10345 and Title 2 California Code of Regulations § § 1195 - 1195.6.

800 CONTRACT DOCUMENTATION AND REPORTING REQUIREMENTS

801 Financial Information System of California (Fi\$Cal)

Fi\$Cal is the statewide integrated financial management system created to optimize California's business management, encompassing the management of resources and dollars in the areas of budgeting, accounting, procurement, cash management, financial management, financial reporting, cost accounting, asset accounting, project accounting, grant accounting.

802 Payee Data Record (STD 204)

A STD 204 - Payee Data Record is to be completed by all suppliers. -Suppliers cannot be paid unless a STD 204 is on file with the CO Accounting Services. The Contract Analyst/Contract Manager is responsible for obtaining the STD 204 from the supplier.

803 Record Retention

Contract Managers and Analysts shall retain all contract documents (copy of contract, communications with the contractor, requests for amendments of time, money and/or scope of work, invoices, etc.) during the active period of the contract in the file and after that in accordance with the records retention schedules identified at: <http://www.osp.dgs.ca.gov/calrim/default.htm>.

Records shall be retained for seven (7) years from either the closeout date or the payment date on the last invoice, or when audited by the California State Audits or DGS-OLS, whichever occurs first. The Contract Analyst shall retain contract documents in-house for a total of three (3) fiscal years then forward to the State Records Center for four (4) years.

804 Voluntary Statistical Data (VSD) form

Public Contract Code 10111 requires state agencies to request information on ethnicity, race, and gender of business owners on all awarded contracts except for IT goods and services. SCDD is prohibited from using this data to discriminate or provide a preference in the solicitation or acceptance of bids, quotes, or estimates for goods, services, and/or construction.

The information shall not be requested until after the contract award is made. While it is mandatory for SCDD to request this information, contractors/suppliers are not required to return the VSD form. Contract Managers shall include a copy of the VSD form with all purchase documents along with a self-addressed return envelope. Contract Managers shall maintain a file of all returned VSD forms for reporting to the SB/MB/DVBE Advocate. The current VSD form is available at the DGS Office of Small Business and DVBE Services website:

<http://www.documents.dgs.ca.gov/pd/smallbus/reportspage/ERGinfosheet.doc> .

805 SB/MB/DVBE Reporting

SCDD is required to report its usage of certified SB/MB/DVBEs annually. Therefore, Contract Analysts shall track non-exempt purchases from certified SB/MB/DVBE suppliers/contractors. Contract Managers and Contract Analysts will report the dollar amount and number of awards given to SB/MB/DVBEs to the SB/MB/DVBE Advocate.

806 Consulting Services Contract Report and Evaluation

The SB/DVBE Advocate, in coordination with the contract analyst is responsible for compiling consultant services contract data obtained from the Contract Manager and reporting to DGS-OLS SB/MB/DVBE Services Branch as required by PCC 10111.

Any consultant services contract of \$5,000 or more requires the Contract Manager and Analyst to complete a Contract/Contractor Evaluation – STD 4, and submit it to the Chief Deputy Director and Branch Chief of Headquarters Operations and State Plan (HQ Branch Chief) 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 (5) days of completion of the evaluation. Contract/Contractor Evaluation forms are not public documents and should not be kept in the contract file.

900 PAYMENT PROVISIONS

901 Encumbered Contracts

The Contract Analyst will complete the [Agreement Summary \(STD 215\)](#) and submit to the Fiscal Systems Bureau to encumber funds. Once the STD 215 is approved by the SCDD signatory, an executed copy of the STD 215 is sent to Accounting, Budget Officer, HQ Branch Chief and the Contract Manager.

902 Reviewing and Payment of Contractor Invoices

Invoices should be date stamped when received by any SCDD office. Contract and Regional Managers are responsible for reviewing and approving invoices submitted by the contractor. Invoices must accurately reflect completed work in Exhibit A as outlined in Exhibit B of the contract. When the contract contains a detailed budget page, the invoice must be submitted in accordance with the line items. Payment provisions vary with each contract; the HQ Branch Chief should be familiar with the payment provisions of the contract when reviewing and approving or disputing a contractor invoice.

Federal and State funds are time limited; therefore, invoices must be submitted as soon as possible, but no later than 60 days after the service month.

Within 3 working days of the receipt of the invoice, send the approved invoice to the Accounting Unit to avoid any potential late penalties.

903 Prompt Payment

The Prompt Payment Act, as stated in the [Government Code-Section 927 et seq. \(Prompt Payment\)](#), requires state agencies which acquire property or services pursuant to a contract with a business to pay 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 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.

NOTE: The clock starts to run when an invoice is received by the department and not when it is received by the accounting office. DGS will not approve any contracts with payment periods longer than 45 days.

To facilitate the timely processing and payment of contract invoices, the following timeframes have been established by Accounting Services to ensure SCDD does not incur any penalties for late payments.

- Headquarters and Regional Office's who receive an invoice for goods or services must approve and submit the invoice or other confirmation of receipt of goods or services to the Accounting Unit immediately and no later than 3 working days after receipt unless staff disputes the invoice.
- The State Controller has 15 days to process the invoice and issue the warrant.

905 Progress Payments

A progress payment is a partial payment for a portion or segment of the work needed to complete a task and must be consistent with contract terms.

Not less than 10% of the contract amount shall be withheld pending final completion of the contract (PCC §10346)

If a contract consists of the performance of separate and distinct tasks with separate deliverables, then any funds identified for a particular task may be paid upon completion of that task as long as the regulatory 10% withhold for final payment is still applied.

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 10% withhold should not be paid until the manual is completed satisfactorily.

906 Final Payment

When a Contract Analyst receives a final invoice, the Contract Manager should be notified, the invoice should be notated on the face, preferably by the contractor, and any remaining contract funds after final payment should be disencumbered. Funds should not be disencumbered if there is any question as to whether an invoice is the final billing for the contract work.

BID SOLICITATION/AWARD OF CONTRACTS

It is State law that at least three competitive bids or proposals must be secured for all contracts, whether or not the contracts must be submitted to DGS for approval. Interagency Agreements and Subvention Agreements are exempt from advertising.

When three bids or proposals cannot be obtained, or the award is not to the lowest bidder, a full explanation and justification must accompany the contract. When only one bid is secured, an explanation of why the bid is considered reasonable must accompany the contract.

Advertising

All contracts of \$10,000 and over must be advertised in the California State Contracts Register (Fi\$Cal), in accordance with the Department exemption. Procedures for advertising or obtaining exemption from advertising are detailed in Section 601.

Public works contracts, in addition to advertising in the California State Contracts Register, require specific notification and advertising in various publications based on the estimated contract price.

Competitive Bidding

No IFB or RFP shall be drafted in such a manner as to limit the bidding, directly or indirectly, to one bidder. Contracts awarded in violation of this criterion shall be void.

Fi\$Cal Solicitation Approval

All solicitations must be approved by either a manager or a lead analyst. Under no circumstances should an analyst approve their own solicitation.

Invitation for Bid (IFB)

An IFB must be precise in order to ensure that bids received in response to the invitation are competitive as the result of all bids being based on exactly the same work or equipment.

Small Business and DVBE Participation requirements or incentives should be included in the Bid Package.

Addenda

Clarification of omissions, discrepancies, apparent errors in the specifications, or other matters in connection with the bidding documents is given to all bidders in the form of addenda, prior to the date set for the bid opening.

Opening of Bids

As the bids are received at the location designated in the solicitation, the person receiving them must ensure that the envelopes are not opened, and that they are stored in a safe place until the time set for the bid opening.

Bidders are encouraged to attend the bid opening. A Departmental representative must ensure that there are no oversights or variations in the bid opening which could be misinterpreted by any bidder present.

At least two SCDD representatives must be present at the time of bid opening. The bids are closed as of the bid opening time, and under no circumstances may he/she accept bids after this time. One SCDD representative randomly selects one of the envelopes, opens it, and announces the name of individual or firm and the bid price. The other SCDD representative records the information on the Bid Opening Sheet.

The SCDD representatives follow the above procedure until all bids have been opened and recorded. At the conclusion of the bid opening, the representative announces, "All bids will be evaluated to determine its responsiveness to the published requirements of the solicitation, and the award, if any, will be made after the review period."

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When using the RFP process, bids do not become public record until after the evaluation and the determination of the lowest responsive, responsible bidder has been made and notice of intent to award has been given. At that time, the bids become public record and can be viewed by the public and copied, upon request. If a request is made to view the bid documents, the Department representative who is accommodating the request should never let the documents out of his/her sight during review.

When using the Invitation for Bids process, all bids shall be made available for public inspection after the bid opening. If a request is made to view the bid documents, the Department representative who is accommodating the request should never let the documents out of his/her sight during review.

Evaluation of Bids

An IFB sets forth the specific requirements of the State. The evaluation determines which vendors meet those requirements. The selection process is the identification of the vendor who meets the specifications at the lowest monetary level, and who is not relieved from his/her bid by error, fraud, etc.

If it is determined that the bids are not competitive, or the lowest bid significantly exceeds the cost anticipated, all bids may be rejected.

COMMERCIALLY USEFUL FUNCTION (CUF)

Prior to completing this worksheet, read the instructions on the last page. CUF evaluation and determination is only for this supplier's portion of the contract. SB and DVBE certification is not CUF compliance. The CUF Evaluation and Determination Worksheet must be evaluated for each contract prior to award. See Section 605.3.

LATE JUSTIFICATION LETTER

A "Late Justification Letter" is required if a final GEN 704 packet with signature(s) is not received in the C&PB at least 90 days prior to the contract's effective start date. See Section 506 for additional information.

INVOICING CHECKLIST

Contract Analyst or Manager, as appropriate, will review the invoice against the contract provisions, scope of work, technical requirements, completion dates, contract number, timelines, and verify work performed and costs claimed in accordance with the contract. Verify mathematical calculations, balances, rates charged and total amounts claimed are correct.

STD 4 CONTRACT/CONTRACTOR EVALUATION

Any consultant services contract of \$5,000 or more requires the Contract Analyst or Manager, as appropriate to complete a Contract/Contractor Evaluation – STD 4, and submit it to the HQ Branch Chief within 60 days after completion of the contract (PCC § 10369). See Section 806 for additional information.

<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std004.pdf>

APPENDIX A
Acronyms

ADA	Americans with Disabilities Act
CCR	California Code of Regulations
Cal-PCA	California Contract and Procurement Academy
SCDD	California Department of Social Services
CDT	California Department of Technology
CMAS	California Multiple Award Schedules
CO	Central Office
CSCR	California State Contracts Register
CUF	Commercially Useful Function
DGS	Department of General Services
DGS-OLS	Department of General Services - Office of Legal Services
DGS-PD	Department of General Services - Procurement Division
DVBE	Disabled Veteran-Owned Business Enterprise
Fi\$Cal	Financial Information System for California
GIA	I/A General Terms and Conditions
GC	Government Code
GTC	General Terms and Conditions
IFB	Invitation for Bids
IT	Information Technology
LPA	Leveraged Purchase Agreement
MA	Master Agreement
MB	Micro-Business
MM	DGS Management Memo
MOU	Memorandum of Understanding
MSA	Master Service Agreement
MVC	Military & Veterans Code
NCB	Non Competitively Bid
OLS	DGS Office of Legal Services
ORIM	DGS Office of Risk and Insurance Management
OSDC	DGS Office of Small Business and DVBE Certification
OSP	Office of State Publishing
PAM	Contracting Authority Manual
PCC	Public Contract Code
PCO	Procurement and Contracting Officer
PIA	Prison Industry Authority
RCP	Recycled Content Products
RFO	Request for Offer
RFP	Request for Proposals

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SAM	State Administrative Manual
SB	Small Business
SCM I	State Contract Manual Volume I
SCM II	State Contract Manual Volume II
SCM III	State Contract Manual Volume III
SCO	State Controller's Office
SCPRS	State Contract & Procurement Registration System
SOW	Statement of Work
SPS	State Price Schedule
UTC	University Terms and Conditions
WIC	Welfare and Institutions Code
WSCA	Western States Contracting Alliance

APPENDIX B

Glossary of Terms

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.

Awarding Agency:

The contracting state agency, the agency soliciting the contract and making the award.

Bid:

A potential contractor's reply to a solicitation event 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. Can be voluntary or mandatory.

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.

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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 or 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.

Commercially Useful Function (CUF):

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 and price is always a factor in selecting a contract, if not the only factor.

Consideration:

Something of value that induces a person to enter into a contract. The consideration is classically cash payment but may include some right, interest, other 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.

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Contract:

A legally binding obligation or agreement by whatever name known or in whatever format used (including purchase orders), between SCDD and another entity, public or private, for the provision of goods or services.

Contract Administrator:

A person designated by SCDD to requisition and manage performance under a contract.

Contracting Authority - IT:

The SCDD authority contract for goods and services is granted by DGS-OLS.

Contracting Authority - Non-IT:

The SCDD authority as granted by DGS-OLS, to purchase Non-IT goods and services that are less than \$50,000 or less, excluding tax and shipping.

Contractor:

A party contracting with SCDD; is often used synonymously, with contractor.

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 SCDD contracts paid wholly or in part by federal funds. All SCDD contracts include federal funds.

Disabled Veteran Business Enterprise (DVBE):

A business that meets all of the following criteria: (1) at least 51% of the business is owned by one or more disabled veterans or, in a business whose stock is publicly held, at least 51% 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 OSDC (Military and Veterans Code § 999), and registered with DGS.

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.

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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.

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.

Fi\$Cal:

The statewide integrated financial management system created to optimize California's business management, encompassing the management of resources and dollars in the areas of budgeting, accounting, procurement, cash management, financial management, financial reporting, cost accounting, asset accounting, project accounting, grant accounting.

General Provisions:

Terms and conditions that apply to all contracts for services and are included in any final document.

Goods:

Commodities (tangible items, such as movable or personal property), as opposed to services.

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 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 and must be approved by the DGS Office of Risk Management (ORIM).

Indemnification:

Contractual provision in which one party will reimburse the other party for settlements or judgments on claims arising from the contract.

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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.

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.

Interagency Agreement:

An agreement between two or more state agencies (GC §§ 11256 - 11263; SCM I, 3.03 and 4.04).

Invitation for Bids (IFB) / Event:

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.

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.

Leveraged Purchase Agreements:

Contracts awarded by DGS that offer Non-IT goods, Non-IT services, IT-goods, and IT-services that have been competitively assessed, negotiated, or bid and are structured to comply with California procurement codes, policies, and guidelines.

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.

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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 (SCM I 3.4).

Memorandum of Understanding (MOU):

A contract without the exchange of funds.

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.

P-Card (formerly CAL-card):

A payment mechanism (VISA payment card) that can be used in conjunction with SCDD delegated contracting authority.

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.

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. (GC §§ 927)

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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.

Public Entity:

A county, city, district, local public body, state board, state commission, federal agency, or joint powers authority.

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 (PCC § 1101).

Real Property:

Land and fixtures on land.

Request for Offer (RFO):

A document generated when using a Leveraged Procurement Agreement (LPA), such as CMAS or MSA. It is sent to LPA contractors, contains requirements for a specific transaction, and requests a response or offer.

RFP Primary Method:

This solicitation method 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.

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 I, section 5.20.

RFP Secondary Method

The secondary RFP method is 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)

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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 1, section 5.25.

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 Agreement:

A contract in which the contracting agency is receiving money in exchange for services provided by that agency.

Scope of Work (SOW)

A written description of work to be performed under a contract to satisfy the State's needs. It should include what is to be done, when, where, and how, plus define the roles and responsibilities of the State and the contractor.

Service Contract:

A contract in which the contractor provides a duty or labor, as opposed to commodities or goods. However, a Service Contract may include a combination of services and goods.

Subvention Contract:

See local assistance contract.

Additional contract related terms can be found at the DGS-OLS website:

http://www.documents.dgs.ca.gov/pd/poliproc/CaliforniaAcquisitionGlossary13_1213.pdf