

1. INTRODUCTION

1.00 • INTRODUCTION

(Rev 10/05)

This State Contracting Manual (SCM) is provided as a resource to those persons in California state government who are involved in the state's contracting process. ~~Contained herein are~~ **It provides the** policies, procedures and guidelines ~~whose purpose is to~~ promote sound business decisions and practices in securing necessary services **for the State**. This manual does not eliminate or override statutory requirements, or requirements implemented by way of Executive Orders and Management Memos.

- A. Volume 1 of the manual deals primarily with non-IT services, consultant services contracts, **legal services, subventions, grants** and interagency agreements. It does not cover real estate lease transactions, **commodities** or IT acquisitions. ~~Policies stated herein may not apply to such transactions. DGS Real Estate Services Division (RES D) Professional Services Branch (PSB) should be contacted for information on real estate lease transactions at (916) 375-4151.~~ Overviews of public works contracts and architectural and engineering contracts are provided in chapters 10 and 11, respectively.
- B. ~~Services contracts and Consultant Services contracts are considered Personal Services contracts. Careful analysis must be given to the justification for using contracted personnel rather than using civil service positions within state government.~~

Note: ~~DGS/OLS should be contacted for assistance in interpreting any section of volume 1 of this manual or when seeking a variance from established contracting requirements or practices.~~

B. DGS/OLS should be contacted for assistance in interpreting any section of Volume 1 of this manual or when seeking a variance from established contracting requirements or practices.

- C. Volume 2 of the manual is the Purchasing Authority Manual, and it contains information and specific provisions applicable to goods and services for Information Technology (IT) and **commodities acquisitions**. Telecommunications, as well as are covered in PCC § 12100 et seq.
- D. DGS/PD should be contacted for assistance in interpreting any section of Volume 2 of this manual.**

1.01 • TABLE OF CONTENTS

(Rev 11/99)

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1.02 • AVAILABILITY OF THE MANUAL

(Rev 10/05)

One copy of this manual has been distributed to the primary contact person registered with the DGS/OLS, in accordance with the State Administrative Manual (SAM § 1200).

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

1.03 • GUIDE TO USAGE OF THE MANUAL

(Rev 10/05)

- A. Table 1.1 provides a guide for interpreting the contracting acquisitions requirements presented in this manual.

	Requirements "must," "shall," "mandatory," or "required"	Limited Discretion "should"	Full Discretion "may," "guidelines," "recommended practices," or "examples"
Source	Statutes, regulations, state policies, DGS policies required to meet legal responsibilities	DGS policies related to requirements or considered to be good business practices	Policies, procedures, and guidelines presented as helpful aids
Compliance	Must be followed unless exempt by law or granted exemption by DGS	Need to be followed unless the agency has a good business reason for variance	Optional
Documentation	Documentation required	Brief notation in the files suffices	None required
Consequence for noncompliance	Noncompliance may cause violation of law and/or rejection of contract by DGS	Noncompliance may affect compliance with a requirement or the advisability of the contract; DGS <u>may</u> question and request documentation	None

- B. Some mandatory requirements may be waived by DGS/OLS. Agencies seeking an exemption from any mandatory requirement should apply in writing to the Chief Counsel of DGS/OLS. Any written exemptions should be kept on file for audit purposes.

1.04 • AGENCY RESPONSIBILITIES

(Rev 10/05)

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

The role of DGS/OLS includes:

- Approving contracts after execution by the state agency
- Providing up-front assistance to agencies regarding ~~contract~~ **acquisition** problems
- Overseeing state contracting practices
- Improving the state's contracting system
- Training state personnel in contract requirements

1.05 • CLASSIFICATION OF CONTRACTS

(Rev 10/05)

- A. Proper classification of ~~contracts~~ **acquisitions** is necessary as a first step in determining which solicitation process is appropriate for the contract, and what elements are required to be in the contract.
- B. Consider the following concepts for each **acquisition**: ~~contract to determine the appropriate classification of the contract:~~
1. Is it an Architectural & Engineering (A&E) Contract? Are the services sought required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental service as defined in § 4525 of the Government Code?

If so, the process contained in § 4525 of the Government Code must be followed.
Note: An agency must have adopted regulations in order to utilize the process in GC § 4525.
 2. Is it a Public Works Contract? Does the work involve erection, construction, alteration, repair or improvement of a public structure as defined in § 1101 of the Public Contract Code?

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

 - a. Does the contract estimate exceed \$400,000? If so, only the agencies listed in the State Contract Act, and agencies specifically authorized by statute, are authorized to contract for this type of work. (PCC § 10106)
 - b. Does the contract estimate meet the statutory definition of a "Project" (~~currently \$120,000~~)? per PCC § 10105? If so, unless your agency is one of the agencies listed in the State Contract Act, approval (Form 23), must be obtained from ~~General Services~~ **DGS** prior to ~~contracting~~ **acquiring these services**.
 - c. Does the ~~contract~~ **acquisition** involve development of plans and drawings? Even if the contract amount is less than the current \$120,000 limit for a "Project", **(Form 23)** approval must be obtained from **DGS** ~~General Services (Form 23)~~, prior to contracting.
 3. Is it a contract for the purchase of a Commodity or Goods? Does the contract have as its sole or main purpose the buying of some tangible items, such as equipment, parts,

(1.05 B. 3. Classification of Contracts – continued)

- supplies, or other merchandise? If so, further consideration must be made to determine whether any services are being provided as well, and which has the predominant value to the contract; the items being purchased, or the services being rendered? The dollar value associated with the services provided, or the value of the goods being supplied are factors that should be considered.
4. Is it an Information Technology (IT) ~~Contract~~ **acquisition**? Does the contract have as its sole or primary purpose, an information technology procurement or activity? If so, further consideration must be made. If the contract is determined to be an IT activity, the provisions of the State Administrative Manual in § 5200 must be adhered to. IT activities typically require some **additional** documentation. ~~Either Summary Fact Sheet, or Feasibility Study Report. These~~ **IT acquisitions** may require approval by the Department of Finance and/or the **Office of Technology Investment Review Oversight and Security (OTROS)** Unit (TIRU). When determining whether a contract is for IT, one must consider the predominant purpose or value of the activity, and whether information technology skills and knowledge are involved as the primary purpose of the contract or whether such knowledge or skills are used to further an overarching purpose, e.g. contract to manage a health benefits program may utilize software and computer hardware to fulfill services required. Example: A contract for installing cable for a local area network includes purchase of the wiring and plugs, but also includes installation. The primary value is getting the cable installed, so this would most likely be a service or Public Works contract if it were being done in a public structure.
 5. Is it a Contract for non-IT services? Does the contract have as its sole or primary purpose providing non-IT services? Services contracts are those that have someone doing something. Many Service Contracts are easily identified, e.g. waste removal services, cleaning services, etc. However, some Services contracts are more difficult to determine, especially when they involve other disciplines as well. Example: A contract for carpeting may involve purchase of carpet (commodity) as well as removal of old carpet and pad (Service), and installation of new carpet and pad (Service). The determining factor should be what is the primary focus of the contract and expertise of the contractor. Is it the Purchase of the item, or proper installation?
 6. Is it a Consulting Services Contract? Does the contract have as its sole or primary purpose some type of recommendation, or product of the mind? Is the unique knowledge of the individual and intellectual abilities of critical importance to the success of the contract?
 7. Is it a Contract for Legal Services? A legal services contract is a type of consulting services contract to obtain services which must be performed by a licensed attorney. It may also include ancillary services such as jury consultants, or expert witnesses, where such services are directed by the attorney and are necessary for the performance of attorney services.

1.06 • CIRCUMVENTION OF RESPONSIBILITIES PROHIBITED**(Rev 3/03)**

Statutes, regulations, and policies governing the state's contracting process are designed to protect the state's interests. Therefore, it is not appropriate to seek artificial exceptions to contracting requirements or to seek loopholes. In particular, circumvention of required competitive bidding or

(1.06 Circumvention of Responsibilities Prohibited – continued)

contract approval is unlawful. Pass-through contracts in which the vendor or another governmental agency is doing something that your agency cannot lawfully do directly, such as avoiding competitive bidding, is a common type of circumvention. (PCC § 10340)

1.07 • STANDARD CONTRACTING FORMS**(Rev 10/05)**

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

Form Number – Used for
STD 2 - First Page for State Contracts (replaced by the Std 213 below)
STD 4 - Consultant Evaluation
STD 13 - Interagency Agreements (Also see Std 213 below replaced by Std 213)
STD 15 - Contract Summary and Transmittal Form (replaced by the Std 215 below)
STD 16 - DFEH Contract Reporting Form
STD 17A - Non-discrimination Certificate
STD 18 - Non-discrimination Certificate (construction)
STD 19 - Non Compliance Certification
STD 21 - Drug Free Certification
STD 23 - Request for Project Approval (Construction)
STD 204 - Payee Data Record
STD 213 – Standard Agreement (First page for state contracts and Interagency Agreements (replaces STD 2 and STD 13 under new standardized contract process))
<u>STD 213A – Standard Agreement Amendment (First page for amendment to contract agreement under standardized contract process)</u>
STD 215 - Agreement Summary (replaces STD 15 under new process)
STD 807 - Payment Bond (Construction)
STD 810 - Contract Report (Small Business Participation)
STD 811 - Small Business Preference Request (Construction)
STD 815 - Contracts Register Advertising Form
STD 821 - Request for Advertising Exemption
STD - 830 TACPA Request Form
STD - 831 EZA Request Form
STD - 832 LAMBRA Request Form
OTHER - Non-Competitively Bid (NCB) Contract Justification Form

(1.07 Standard Contracting Forms – continued)

- B. Agencies are not authorized to make revisions to the Standard Forms without prior approval from DGS. Changes to standard forms require the approval of the OSP Forms Management Unit.

THE BASIC CONTRACTING PROCESS

2.00 • INTRODUCTION

This chapter describes the basic contracting process and the principal components of the process.

2.01 • TABLE OF CONTENTS

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2.02 • DEFINITION OF A CONTRACT

(Rev 10/05)

“A contract is an agreement to do or not to do a certain thing” (CC § 1549). It gives rise to an obligation or legal duty enforceable in an action at law (CC §1428). **Contract and Agreement are used interchangeably in the SCM.** # **A contract** sets forth terms, conditions, and the statement of all work to be performed.

2.03 • 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. Key considerations include:

A. Time

When the services are needed is a critical factor. Sufficient time must be allowed for internal agency process as well as required external review(s). (See SCM 4.)

B. 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.

C. Authority and Approvals

Many decisions require authorized approval, including final, formal approval either by the agency or by DGS. Some contracts are legally exempt from DGS approval. Some may require approval by other agencies. (See SCM 4.)

D. Funding

Funding for the services is a crucial component and must be identified.

(2.03 Preliminary Considerations – continued)

E. 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. (See SCM 5.)

F. 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. (See SCM 9.)

2.04 • OVERVIEW OF THE CONTRACTING PROCESS

(Rev 10/05)

The following Table 2.1 gives a general overview of the State's contracting process. The process necessarily varies greatly depending on the circumstances of the specific contract. Table 2.1 is provided to help in planning your contract.

Table 2.1
The Contracting Process

	IMPORTANT FACTORS	DECISIONS TO BE MADE
1. Someone within the agency must identify the need for a service, whether the need is for a routine renewal of an existing essential service or the acquisition of totally new or unique services.	<ul style="list-style-type: none"> • What is the nature of the service? • What type of service is needed? • How necessary is the service? • When is the service needed? • Is this an ongoing or one-time service? • Is this an existing service, a service obtained before or a new service? • Is this service routine or extraordinary? 	<ul style="list-style-type: none"> • What internal procedures apply to requesting services? • What are the possible or probable sources for the services? • What justifications need to be developed? • Who has the authority to approve the request?
2. Services are required to be performed by civil service employees whenever feasible. Such feasibility must be considered before seeking a contract. See GC§19130.	<ul style="list-style-type: none"> • Can this service be done in house? • Is the service available within the agency <u>your department?</u> • Can another <u>state</u> agency perform the service? • Is this routine or extraordinary? • <u>What are the estimated costs of alternatives, including in-house or interagency services?</u> • <u>If in-house or interagency services are available, would contracting produce a cost savings?</u> 	<ul style="list-style-type: none"> • Is a contract with a non-state provider really necessary? • <u>Which is the best alternative? If in-house service, the contracting process stops. If inter-agency service is best, the process continues. If a contract is justified, the process continues.</u>
3. Costs and the availability of funds are always a factor. Alternatives range from using already-budgeted funds for simple services to seeking an appropriation.	<ul style="list-style-type: none"> • What are the estimated costs of alternatives, including in-house or interagency services? • If in-house or interagency services are available, would contracting produce a cost savings? • What funds are available to pay for the services? 	<ul style="list-style-type: none"> • Which is the best alternative? If in-house service, the contracting process stops. If inter-agency service is best, the process continues. If a contract is justified, the process continues. • Who has authority to approve funding?

(2.04 Overview of the Contracting Process – continued)

Table 2.1 - The Contracting Process (Cont.)

The Following Considerations Assume a Contract is Justified and Funds are Available		
4. The contractor selection method depends on the services involved and/or the circumstances. Different methods impose different requirements and procedures.	<ul style="list-style-type: none"> • What is the nature of the service? • When is the service needed? • Is this an emergency? • What is the estimated cost? • Are the sources for the service limited? • Is a contracted source already available? • Can an existing contract be amended? 	<ul style="list-style-type: none"> • Select by formal competition, such as: <ul style="list-style-type: none"> • Invitation for Bids (IFB)? • Request for Proposals (RFP)? • Request for Qualifications? • Select by informal competition, such as telephone bids and quotes? • Consider only one provider? Use other methods, such as Master Agreements or CMAS?
The Following Considerations Assume Formal Competition is Used:		
5. Formal competitive bidding is generally required by law or policy. The formal competitive bidding process involves numerous factors and decisions.	<ul style="list-style-type: none"> • The contracting opportunity must be publicized, usually by formal advertising. • A solicitation package containing all specifications must be developed and must be available to all competitors. • Competition must not be unnecessarily restricted. • Procedures must be followed to ensure a fair competition and to guard against leaks or tampering. • The competitors' responses must be judged, and a winner must be determined. • The results must be announced, and the contract awarded. • The contract must be written in accord with the specifications and the contractor's response to the solicitation. 	<ul style="list-style-type: none"> • Who develops the technical specifications describing the services to be performed? • Who ensures that the technical specifications are necessary, will achieve the desired results, and do not restrict competition? • Who develops and reviews the specifications describing general contract requirements and the solicitation requirements? • Who conducts solicitation activities, including advertising, dealing with competitors, receiving and safeguarding responses, opening responses, evaluating responses, and notifying competitors? • Who writes and processes the contract?

(2.04 Overview of the Contracting Process – continued)

Table 2.1 - The Contracting Process (Cont.)

	IMPORTANT FACTORS	DECISIONS TO BE MADE
6. The contract must be processed for signature, approval and distribution.	<ul style="list-style-type: none"> • The contract must be signed by the contractor. • The contract must be signed certifying availability of funds and indicating the encumbrance of funds. • The contract must be signed by the person authorized to sign for the agency. • Additional approvals must be obtained depending on the contract. • The contract must be distributed. 	<ul style="list-style-type: none"> • Who approves the contract? • Are special approvals required? • Is final approval by agency authorized or is final approval reserved to DGS? • Who distributes copies of the contract?
7. Management of the contract must be built into the contract to facilitate measurement of achievement and measurement of contractor performance.	<p>Management includes:</p> <ul style="list-style-type: none"> • Identifying the deliverables and ensuring satisfactory delivery • Monitoring progress, especially for quality and performance deadlines • Providing for audit, especially for critical compliance issues • Reviewing invoices for contract compliance, accuracy, and prompt payment • Tracking state deadlines and use of funds • Identifying contract and contractor problems 	<ul style="list-style-type: none"> • Did the contractor satisfactorily perform all required services? • Should the contractor be paid or should the invoice be disputed? • Is a formal evaluation required or needed? • Should the services be stopped or continued? • Should the contract be renewed or rebid? • How can the contract or contracted services be improved? • Should the encumbered funds be adjusted?

2.05 • ELEMENTS OF A VALID CONTRACT

Each contract must contain the following information:

- Identification of the parties
- Term for the performance or completion of the contract (dates or length of time)
- 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.)
- Scope (The work, service, or product to be performed, rendered, or provided. Clear and concise language must be used to describe the scope.)
- Other general or unique terms and conditions of the agreement
- Signature by a person for each party who is authorized to bind that party

2.06 • AUTHORITY TO SIGN A CONTRACT

(Rev 10/05)

- A. A state agency's authority to contract is limited to those officers who ~~are either have~~ **statutory authority or have been duly** authorized in writing ~~to do so by the individual agency as designated by the agency head. Agencies must maintain a written record of all persons authorized to sign contracts and transmittals.~~ **by one who has statutory authority.**

To insure the integrity of the state and its procurements, anyone who signs a contract should have sufficient knowledge and expertise in the area of contracting and the goods or services being procured. If an individual with statutory authority does not have sufficient knowledge or expertise in these areas, the individual should have the contract reviewed and approved prior to final signature by one who does.

Some important considerations for granting signature authority or assessing one's ability to effectively review a contract for approval are:

1. **Training and/or certification in accordance with guidance provided by DGS**
2. **The procurement approach used**
3. **The goods and/or services for which the department is contracting**
4. **The complexity and value of the contracts or procurements**
5. **The purchasing authority of the department**
6. **The knowledge, experience, and expertise of the individual signing the contracts**
7. **Experience with the principles of sound contracting and procurement**
8. **Familiarity with the process of contract formation, execution and administration.**

Agencies must maintain a written record of all persons authorized to sign contracts and transmittals.

- B. State boards and commissions either have statutory authority for the executive officer to sign contracts, or the authority of the executive officer to sign contracts is provided by resolution, order, or motion. Contracts in excess of \$5,000 must be accompanied by evidence of the applicable authority to sign the contract. Contracts under \$5,000 are generally deemed to pertain to ministerial duties and do not need to be accompanied by evidence of the applicable authority to sign the contract. (SCM 3.03)
- C. Local public entities authorize and approve execution of contracts through a resolution, order, motion, or ordinance. A copy of such authority must be required by state agencies unless payment will be made after performance is complete. A copy of such authority should be retained in the contract file. (SCM 3.05)
- D. 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. (SCM 3.09, 4.10)

2.07 • STANDARD LANGUAGE

(Rev 10/05)

The provisions noted in Table 2.2 are generally required. Agencies should document non-use of clauses.

(2.07 Standard Language – continued)

Table 2.2 - Contract Clauses

Contract Provisions	When Required	Law/Statute
Audit by State Auditor	All contracts over \$10,000	GC § 8546.7
Audits and access to records	For contracts subject to DVBE goals or good-faith efforts.	PCC § 10115 et seq. 2 CCR § 1896.60 et seq.
Nondiscrimination clause	All contracts	GC § 12990
Antitrust Claims	All competitively bid contracts	GC § 4550 et. seq.
Statement of compliance	Contracts \$5,000 or over when not in bid documents	2 CCR § 8113
Americans with Disabilities Act (ADA)	All contracts	42 USC § 12101 et seq.
National Labor Relations Board certification	All contracts	PCC § 10296
Drug-free workplace	All contracts	GC § 8350 et seq.
Progress payments	All contracts where progress payments will be made	PCC § 10346
Recycled paper	All contracts	PCC §§ 10233, 10308.5, 10354
Termination & amendments	All contracts	GC § 11010.5
Expatriate Corporations	All contracts	PCC § 10286.1
Priority hiring considerations	Contracts in excess of \$200,000	W&I §§ 11200, 11349, PCC § 10353, 2 CCR § 1896.30
Resolution of contract disputes	All service contracts should: consulting services must; Public works contracts may	PCC §§ 10240.5, 10381, 22200 et seq.
Validity	All contracts requiring DGS approval	PCC §§ 10295, 10335
Subject to availability of funds	All contracts signed before approval of budget	State and federal budgets
Four digit capability	IT contracts for systems, software, and instrumentation with imbedded chips	State Policy (DOF & DGS)
Convict/Forced Labor / or sweatshop labor Sweatfree Code of Conduct	All contracts for purchase of goods or commodities. All contracts for purchase or laundering of apparel or garments.	PCC § 6108
Promoting/Deterring Union organizing	Contracts of \$50,000 or more.	GC § 16645 et. seq.
Child Support Compliance	All Contracts exceeding \$100,000 (Interagency Agreements are exempt from this requirement)	PCC § 7110
Non Eligible Alien certification	All Sole Proprietor Contracts	8 USC § 1621 et. seq.
Insurance Requirements	All contracts doing hazardous works	State policy
Air/Water Pollution Violation Certification	All contracts over \$10,000	GC § 4477
Domestic Partners	All contracts over \$100,000	PCC § 10295.3

(2.07 Standard Language – continued)

Table 2.2 - Contract Clauses (Cont.)

Consultant Services (C) – Note: Needed in addition to “Contract Provisions” listed above.		
Amendment	Consultant contracts	PCC § 10335
Evaluation of contractor	Consultant services.	PCC § 10367
Evaluation criteria	Consulting services of \$1,000 or more	PCC § 10371
Progress schedule	Consulting services of \$1,000 or more	PCC § 10371
Consultant Resumés	Consulting services of \$5,000 or more	PCC § 10371
Detailed cost analysis	Consulting services of \$1,000 or more	PCC § 10371
Project coordinator	Consultant services	
Progress reports/meetings	Consultant services	PCC § 10371
Legal Services (L) - Note: Needed in addition to “Contract Provisions” listed above.		
Legal cost and billing guidelines	Contracts for legal services	PCC § 10353.5
Legal litigation plans	Contracts for legal services	PCC § 10353.5
Case phasing of activities	Contracts for legal services	PCC § 10353.5
Legal budgets	Contracts for legal services	PCC § 10353.5
Legal malpractice	Contracts for legal services	PCC § 10353.5
Legal bill & law firm audits	Contracts for legal services	PCC § 10353.5
Subvention Contracts (S) – Note: Needed in addition to “Contract Provisions” listed above.		
State purchase of equipment	Subvention aid or local assistance	State policy
Prior authorization for reimbursement over \$2,500	Subvention aid or local assistance	State policy
Prior state approval for training seminars, etc., and material	Subvention aid or local assistance	State policy
Contracts with federal funding (F) – Note: Needed in addition to “Contract Provisions” listed above.		
Cancellation 30 days	Contracts funded in whole or in part by federal government, state government, and other public entities	State policy or federal policy
Fund availability	Contracts funded in whole or in part by federal government, all contracts	Federal State policy
Disclosure requirements (Federal Reg)	All Contracts	GC § 7750
Debarment (Federal Regulations)	All contracts	GC § 4477
Disadvantaged business enterprise/small business affirmative steps	Contracts funded by federal funds	Federal policy

(2.07 Standard Language – continued)

Table 2.2 - Contract Clauses (Cont.)

Federal disclosure statement	Contracts funded by federal funds	Federal policy
Other Contracts (Ø) – Note: Needed in addition to “Contract Provisions” listed above.		
Bargaining agreements, prevailing wages, standard conditions of employment	Moving services over \$2,500; public works	SAM § 3810 GC § 14920
State’s responsibilities for repairs, liability	Contracts for equipment rental	State policy
Equipment maintenance	Contracts for equipment rental	State policy
Interagency Agreements		
*Interagency agreements do not require other standard contract provisions		
How charges are computed	All interagency contracts	SAM §§ 8752 and 8752.1
Audit	All interagency contracts over \$10,000	GC § 8546.7
Advancing of funds	Any interagency contract	GC § 11257

CHAPTER 2 - APPENDIX

AN OLS REVIEW CHECKLIST

(Rev 4/04)

[Note: This checklist is provided to inform state agencies of the typical areas of review and/or analysis performed by OLS. It should not be viewed as a limitation of OLS contract review activities.]

A. THE CONTRACT COMPLIES WITH THE LAW.

1. Authority to contract out
 - a. Specific statute
 - b. GC § 19130 consideration
 - Cost savings 19130(a) -- State Personnel Board (SPB) approval required
 - Other reasons 19130(b)
 - (1) Exempt under Constitution
 - (2) New state function and legislative authority
 - (3) Service not available: highly specialized or technical
 - (4) Incidental to the purchase or lease
 - (5) Conflict of interest; need unbiased findings
 - (6) Emergency appointment
 - (7) Private counsel, with attorney general (AG) approval and Governors Office, if applicable. Notice provided to Bargaining Unit 2 representatives of contract
 - (8) Contractor will provide things that are not feasible for the state to provide
 - (9) Training when civil service is not available
 - (10) Urgent, temporary, or occasional services when civil service delay would frustrate the purpose
2. Budget authority
3. Legal method of procurement
 - a. Bidding not required
 - b. Bidding generally required
 - IFB
 - RFP
 - NCB
4. Legal requirements met for type of contract
5. Authority to amend

B. THE CONTRACT MAKES GOOD BUSINESS SENSE AND THE COST IS REASONABLE.

1. Good business sense
 - a. Drafted to obtain desired results

CHAPTER 2 – APPENDIX
(An OLS Review Checklist – continued)

- b. Scope of work specific and realistic
 - c. Maximum use of dollars
 - d. Deliverables clear and concise
 - e. Realistic timetable
 2. Reasonable cost
 - a. Consider whether:
 - Bid is within estimate.
 - Bids cover a wide range.
 - Low bid is very low.
 - All bids are high.
 - b. Has rebidding been considered if bids are out of line?
- C. THE CONTRACT USES CLEAR AND CONCISE LANGUAGE CONSISTENT WITH THE TERMS OF SOLICITATION AND BID.
1. Term
 - a. Within fiscal year appropriation, and
 - b. If for multiple years, contingency language as appropriate
 2. Scope of work
 - a. Specifications, requirements
 - b. Personnel, staffing
 - c. Coordination
 - d. Results, deliverables
 - e. Timelines, progress reports
 - f. Evaluation, acceptance
 3. Total amount and payment method
 4. Terms and conditions—standard and special
- D. SECONDARY ISSUES AND SUPPORTING DOCUMENTATION ARE REVIEWED.
1. Social issues (as appropriate)
 - a. Small business
 - b. DVBE
 - c. TACPA
 - d. EZA
 - e. LAMBRA
 2. Drug-free workplace, other required certifications
 3. Statement of compliance
 4. Check of corporate standing
 5. Other approvals
 - a. AG/Gov Office (if applicable)
 - b. SPB
 - c. Fleet

CHAPTER 2 – APPENDIX
(An OLS Review Checklist – continued)

- d. Insurance
- e. Records Management
- 6. Std. 204 noted
- 7. Resolution
- 8. Bonds
- 9. Ads, STD 821, or exemption noted
- 10. Negative evaluations

3. ADDITIONAL REQUIREMENTS FOR SPECIFIC TYPES OF CONTRACTS

3.00 • INTRODUCTION

This chapter covers specific requirements for various types of contracts. See Chapter 2 for the elements of a basic contract, Chapter 10 for public works contracts, and Chapter 11 for architectural and engineering contracts.

3.01 • TABLE OF CONTENTS (Rev 10/05)

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3.02 • CONSULTANT SERVICES CONTRACTS (PCC § 10335.5)**(Rev 10/05)**

- A. 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)
1. The contract calls for a product of the mind rather than the rendition of mechanical or physical skills.
 2. The product may include anything from answers to specific questions to the design of a system or plan.
 3. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services.
- B. Consultant services contracts do not include:
1. Contracts between state agencies and the federal government (**PCC § 10335.5**)
 2. Contracts with local agencies, as defined in Revenue and Taxation Code § 2211, to subvene federal funds for which no matching state funds are required.
 3. Contracts for architectural and engineering services (GC § 4525)
 4. ~~Contracts that are expressly exempted from the provisions of PCC § 10295~~
- C. Agencies shall only use private consultants when the quality of work is at least equal to that of agency resources. (PCC § 10371)

Note: Certain consultant services contracts are exempt from the statutory competitive bidding requirements. These services include contracts for expert witnesses for litigation as well as contracts for legal services. (PCC § 10335.5)

3.02.1 CONTRACT REQUIREMENTS

- A. 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 \$1,000 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.
- B. To ensure that all the legal requirements are met, the DGS 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 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: the format and number of

(3.02.1 B. 1.Contract Requirements – continued)

- 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, 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.

3.02.2 REVIEW OF TECHNICAL QUALIFICATIONS

DGS recommends that the following criteria be covered in the evaluation of technical qualifications presented in response to an RFP or IFB:

- A. Does the proposing firm understand the agency's problem? Oral presentations may be arranged, if necessary.
- B. Is the approach to the problem reasonable and feasible?
- C. Does the firm have the organization, resources, and experience to perform the assignment? Has the firm had experience in similar problem areas?
- D. What are the professional qualifications of the personnel whom the firm will commit to the assignment?

3.02.3 REVIEW OF PRIOR PERFORMANCE EVALUATIONS

- A. Before awarding a consulting services contract, of \$5,000 or more, an agency must request a copy of any negative evaluations from DGS/OLS. (PCC § 10371.)
- B. DGS/OLS shall send a copy of any evaluation report and response to the contracting manager or contracting officer, or highest-ranking contracting official of a state agency on receipt of a written, telephonic, or other form of request stating the reason for the request. On receipt of a consultant services contract submitted for DGS approval, the DGS/OLS shall notify the awarding agency within ten working days if a negative evaluation is on file for the contractor (PCC § 10370). To avoid possible delays in approvals of contracts submitted to DGS, the awarding agency should document the review of the negative evaluations in the space provided on form ~~STD 15~~ or STD 215.

3.02.4 MULTIPLE CONTRACTS WITH THE SAME CONSULTANT

(Rev 3/03)

Any agency entering into more than one consultant services contract with the same contractor within a 12-month period for an aggregate amount of \$12,500 or more must have each contract that exceeds the \$12,500 aggregate amount approved by DGS (PCC§ 10371). This applies even though any or all of the contracts would be under the applicable dollar limits exempting them from review.

3.02.5 CONTRACTOR EVALUATIONS (PCC §§ 10367 and 10369)

(Rev 4/04)

Each contractor providing consultant services of \$5,000 or more shall be advised in writing on the standard contract that the performance will be evaluated.

- A. One Contract/Contractor Evaluation, form STD 4, must be prepared within 60 days of the completion of the contract.
- B. The agency shall document the performance of the contractor in doing the work or in delivering the services for which the contract was awarded.
- C. The evaluations shall remain on file by the agency for a period of 36 months. If the contractor did not satisfactorily perform the work or service specified in the contract, the agency conducting the evaluation shall place one copy of the evaluation form in a separate agency contract file and send one copy of the form to the DGS/OLS within five working days of the completion of the evaluation. (SCM 3.02.5.E.)
- D. On filing an unsatisfactory evaluation with DGS/OLS, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have 30 days to prepare a statement defending his or her performance under the contract and to send it to the agency and the department. The contractor's statement shall be filed with the evaluation in the agency's separate contract file and in DGS/OLS's files.
- E. The evaluations and contractor responses on file with the agencies and DGS/OLS are not public records; they should be maintained in a separate file.

3.02.6 PARTICIPATION OF AGENCY PERSONNEL

- A. Agencies receive the greatest benefits from consultants when the project is a joint undertaking and agency personnel are active participants. Their participation provides the employees with training opportunities and knowledge of what the consultant has done, why it was done, and how the agency can benefit by it. The work often represents knowledge that could never be derived simply through the analysis of the consultant's formal report. Agency personnel working with the consultant can give the project continuity at the operating level in subsequent months. Teamwork between the consultant and agency employees can also foster support for the project and enhance its chances for success.
- B. Each contract should identify a person (or position) in the agency who will be the project coordinator. This person will have the overall responsibility to evaluate and follow up on the work of the consultant. Other staff time should be allotted for the project according to the nature and complexity of each engagement.
- C. The contract shall provide a progress schedule, such as a series of progress reports or meetings on a regular basis to allow the agency to determine whether the consultant is on the right track, and whether the project is on schedule, to provide communication of interim findings, and to afford opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly (PCC § 10381[c]).

3.02.7 FEASIBILITY STUDIES FOR IT ACQUISITIONS

(Rev 4/04)

Solicitation documents and contracts with consultants for the preparation of feasibility studies and for recommendations for the acquisition of IT products and services must comply with PCC section 10365.5, 10430, and SAM § 5202.

3.02.8 PROHIBITED BIDS/CONTRACT PARTICIPATION (PCC §10365.5)

(Rev 4/04)

- A. A person, firm, or subsidiary awarded a consulting services contract shall not submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract except:
1. A person, firm, or subsidiary may be awarded a subcontract of no more than 10 percent of the total monetary value of the consulting services contract.
 2. Contracts for consulting architect or engineer services pursuant to GC § 4525 et seq., are exempted from this prohibition. Contracts for IT or telecommunications goods or services pursuant to PCC § 12100 et seq. are not exempted from this prohibition. (PCC § 10430).

3.03 • INTERAGENCY AGREEMENTS

(Rev 10/05)

- A. An interagency agreement (I/A) is a contract between two or more state agencies. (GC § 11256)
1. A contract with a California State University campus is always an I/A.
 2. 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.
 3. I/As may not be used for contracts with campus foundations, the federal government, local entities, or other states.
- B. Special provisions apply:
1. I/As are exempt from advertising in the CSCR.
 2. I/As are exempt from competitive bidding.

Note: If the entity performing the service is using subcontracts or purchasing goods, those services and goods should be competitively bid. ~~(Depending on the nature of the goods or services, agencies may be required to get an NCB exemption if subcontracts are not bid.)~~ **See SCM 3.06**

3. I/As are not required to meet DVBE participation goals if the entity performing the services is using its own personnel.
 4. I/As may provide for advancing of funds (GC §§ 11257 through 11263 and SAM § 8758.1)
 5. I/A's do not require the Child Support Certification.
- C. Requirements are as follows:
1. An Interagency Agreement ~~STD 13 or~~ STD 213 must be used.

Note: ~~An interagency agreement with invoice STD 13A is used only for the renting of equipment and supportive services (SAM § 3522.1; GC § 11256).~~

(3.03 C Interagency Agreements – continued)

2. I/As shall include a provision that the charges have been or will be computed in accordance with state requirements as noted in 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.
3. 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).
4. DGS approval is required for I/As of \$50,000 and over unless the agency has a higher delegated authority. Once cumulative amendments to the I/A equal or exceed \$50,000 or the agency's delegated authority, the I/A must be submitted to DGS/OLS for approval (GC § 11256).

3.04 • MASTER AGREEMENTS FOR SERVICES AND CONSULTING SERVICES**(Rev 10/05)**

There are two types of master agreements: statewide and intra-agency.

- A. Statewide master agreements are contracts bid by DGS for services and consulting services that are used by many departments.
 1. Master Agreements take advantage of the state's buying power. Prices are often less than those a single agency could obtain on its own. Any state agency can use the statewide Master Agreements through the use of a subscription agreement, typically using a Standard Agreement Form.
 2. Master Agreements 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.
 3. Master Agreements allow an agency to obtain needed services quickly and easily, avoiding the delay and uncertainty of the bid process. Some Master Agreements, 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 Master Agreement.
 4. Some subscription contracts to Master Agreements developed by the Department of Personnel Administration and the DGS Procurement Division cannot exceed certain amounts also known as "caps". Before developing a subscription contract, check with the Master Agreement Contract Manager as to the maximum amount permitted.
 - 5. Check Management Memo 03-10, regarding Guidelines for use of CMAS, Master Agreements and Non-Competitively Bid contracts for additional requirements.**

Note: In rare instances DGS has given authority to another agency to bid and supervise a Master Agreement, for example: the security guard contract administered by the CHP.
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- B. Intra-agency master agreements are contracts let by an agency for the use of the divisions of that agency. Intra-agency master agreements may differ from agency to agency, depending on program needs and statutory authority. Any agency wishing to enter into such a master agreement should discuss the agreement with its DGS/OLS attorney.

3.05 • CONTRACTS WITH LOCAL GOVERNMENT

(Rev 1/01)

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, or ordinance of 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 3.06)

3.06 • AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES AND PUBLIC UNIVERSITIES

(Rev 10/05)

- A. **Government entities/auxiliaries exempt from competitive bidding:** Agreements for services and consultant services do not require competitive bids or proposals if the contract is with:
1. A governmental agency from California or any state (PCC § 10340) or A state college or state university from California or any state.
 2. A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
 3. An auxiliary organization of the CSU, or a California community college
 4. The Federal Government
 5. A foundation organized to support the Board of Governors of the California Community Colleges, or
 6. An auxiliary organization of the Student Aid Commission established under Education Code § 69522.
- B. **Administrative overhead fees:** Agencies shall assure that ~~when services are subcontracted by entities in Section A that~~ all administrative fees are reasonable considering the services being provided. ~~and the oversight required.~~ Agencies may only pay overhead charges on the first \$25,000 for each subcontract.
- C. **No subcontracting to circumvent competitive bidding:** Services to be provided by entities listed in Section A, above are to be performed primarily with the staff of the public entity or, in the case of the educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular educational institution. Agreements with entities listed in Section A are not to be used by state agencies to circumvent the state's competitive bidding requirements. (PCC § 10340)
- D. **Subcontracting without limitation:** Services may be subcontracted without restriction only when:
1. The primary agreement is a subvention agreement, or
 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.
 3. All subcontracts are with entities listed in Section A or the services to be provided under the subcontract are otherwise exempt from competitive bidding.

(3.06. Agreements with Other Governmental Entities and Public Universities – continued)

- E. **Subcontracting subject to conditions:** If the total of all subcontracts exceeds \$50,000 or 25% of the total contract, whichever is less, then subcontracting shall be permissible only if **the subcontract:**
1. Meets one of the categories in 3.06 D., or
 2. Prior written approval from DGS/OLS **has been received**, or
 3. Certification that the subcontractor has been selected by the prime contractor pursuant to a bidding process requiring at least three bids from responsible bidders, or,
 4. Approval by the agency secretary or highest executive officer, attesting that the selection of the particular 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 requirements. ~~(PCC 10410) The NCB form should be used for this purpose~~

Note: When determining the amounts or percentages being sub-contracted, do not include amounts or percentages sub-contracted to exempt entities in 3.06 A. 1. - 6.

- ~~F. **Fiscal Intermediaries:** State agencies must follow the guidelines provided in SAM 8002.1 whenever planning the use of other entities to receive money or make disbursements on behalf of the State.~~

3.07 • LEGAL SERVICES CONTRACTS**(Rev 10/05)**

- A. Legal services contracts are not subject to competitive bidding or advertising. They must be authorized by the Attorney General **unless specifically exempted by statute**. In general, the law requires agencies to use the Attorney General as their legal counsel; however, with written consent by the Attorney General, agencies may contract for legal services. This consent must be obtained before seeking DGS/OLS approval (GC § 11040 et seq.).
- B. State agencies 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 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. (G.C section 11045)
- C. A copy of the **executed** contract **or any executed amendments** must be sent to the designated representative for State Employees Bargaining Unit 2. ~~when the contract is sent to DGS Legal for approval.~~

(3.07 Legal Services Contracts – continued)

- D. Consent to amend the contract need not be obtained from the Attorney General 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 Attorney General. ~~Must also be obtained from the Attorney General before seeking DGS/OLS approval of any amendment~~
- E. Legal services contracts must contain the following provisions. The contractor shall:
1. Agree to adhere to legal cost and billing guidelines designated by the agency
 2. Adhere to litigation plans designated by the agency
 3. Adhere to case phasing of activities designated by the agency
 4. Submit and adhere to legal budgets as designated by the agency
 5. Maintain legal malpractice insurance in an amount not less than the amount designated by the agency
 6. 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 the agency or by any legal cost-control provider retained by the agency for that purpose.
- F. A certification requirement, effective as of January 1, 2003, and pursuant to Section 6072 of the Business & Professions Code, must be included in legal services contracts of \$50,000 or more:

“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.”

Note: The contractor may be required to submit to a legal cost and utilization review as determined by the agency (PCC § 10353.5).

3.08 • EXPERT WITNESS CONTRACTS**(Rev 3/03)**

- A. 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.
- B. Contracts solely for the purpose of obtaining expert witnesses for litigation are exempt from advertising and bidding requirements (PCC § 10335.5).
- C. Use of litigation experts pursuant to PCC § 10335.5 (3) must be supported by a written justification, which demonstrates that litigation is “likely” rather than theoretical.

3.09 • AMENDMENTS

(Rev 10/05)

A. An amendment is a formal modification to a contract.

1. It should contain the same degree of specificity for changes that the original contract contained for the same item.
 - a. 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"
 - b. Paragraphs being amended should be clearly identified. Example: "Paragraph X is hereby amended to read: The total amount of this contract is . . . "
2. Amendments must be entered into before the expiration of the original contract.

Note: Do not use such wording as, "This contract is effective from (amendment date) to ending date." Such terminology has the legal effect of moving the starting date of the entire contract up to the amendment date. The effective date of the amendment can be specified without affecting the contract period. Example: "The effective date of this amendment is . . ."

3. 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 of the contract for a period of one year or less. A consulting services contract may be amended only once under this exemption (PCC § 10335). See SCM 4.10
4. 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 4.10).
5. 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 (PCC § 10335 and GC § 11010.5).

Note: In some instances contracts not providing for amendments may still be amended if an approved non-competitive bid contract justification is obtained.

6. 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, 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.
7. If the amendment when added to the original contract and any other amendments exceeds your agency's delegated approval authority, the amendment must be submitted to DGS/OLS for approval.
8. When an amendment or modification is subject to DGS/OLS approval, a ~~STD-45 or~~ STD 215 should be completed, explaining the authority and the reason for the amendment, including any change in the DVBE goals. The amendment should be and transmitted to DGS/OLS in accord with the procedure detailed in SCM 4.10.

(3.09 A. Amendments – continued)

9. When an amendment changes or corrects contract terms by “striking” out contract terms, both parties signing the agreement must initial the “strikeout”.
10. 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).”
11. An amendment may not be used to circumvent the competitive bidding process. A non-competitively bid contract justification may be required. (See SCM 5.80 B.2)
12. **Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC § 16304, 2 CCR § 610, FY Budget Act.)**

3.10 • 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.”

3.10.1. EMERGENCY CONTRACT PROCESSING PROCEDURES

(Rev 3/03)

- A. Agencies are not required to obtain three bids or advertise before entering into a contract in the event of an emergency.
- B. NCB approval is not required to enter into a contract in the event of an emergency.
- C. Ordinarily, consulting 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.

Note: For consultant services contracts, an emergency means an occurrence, as determined by DGS, in which the use of contracted services appeared to be reasonably necessary, but there was insufficient time to obtain prior formal approval of the contract (PCC § 10371).

3.11 • FEDERALLY FUNDED CONTRACTS

(Rev 3/03)

- A. All contracts, except for state construction projects, that are funded in whole or in part by the federal government must contain a 30-day cancellation clause and the following provisions:
 1. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
 2. This contract is valid and enforceable only if sufficient funds are made available to the state by the United State Government for the fiscal year ____ for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
 3. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

(3.11 A. Federally Funded Contracts – continued)

4. The department has the option to invalidate the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction in funds.
- B. Exemptions from provisions A.1 through A.4 above may be granted by the Department of Finance provided that the director of the state agency can certify in writing that federal funds are available for the term of the contract.

3.12 • HAZARDOUS ACTIVITIES CONTRACTS**(Rev 10/05)**

These contracts require review by DGS/OLS and ORIM.

- A. 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.
 2. Excavation, drilling, or demolition.
 3. Pest control, fumigation, crop or agricultural spraying, or application of chemicals of any type.
 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.
- B. Regardless of the contract amount, insurance is required if hazardous activities are included in the performance of a contract. **The DGS/ORIM is available to provide additional consultation on all insurance and liability matters.**
1. Contracts for hazardous activities ~~costing \$100 or more~~ must be submitted to DGS/ORIM for review to ensure that the contract and the certificate of insurance comply with the provisions of ~~this section~~ **SCM section 7.40**, and that the insurance coverage meets applicable standards.
 2. ~~For those contracts under \$100, the appropriate certificate of insurance must be obtained and filed with the contract for possible audit by DGS.~~
- C. **2.** If the contract and accompanying insurance certificate are deemed appropriate, ORIM will certify the contract as meeting insurance requirements. ~~If the contract requires approval by OLS, ORIM will forward the contract to OLS for review and approval. If OLS approval is not required, the certified copy of the contract will be returned to the agency.~~

(3.12 Hazardous Activities Contracts – continued)

C. Contracts for hazardous activities shall contain the following provisions:

- 1. That the contractor must furnish to the state a certificate of insurance stating that liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the contractor. [Adjust the amount in the contract language if higher insurance is required.]**
- 2. That the contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the time of this contract, the contractor agrees to provide, at least 30 days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS, and the contractor agrees that no work or services shall be performed prior to such approval. The state may, in addition to any other remedies it may have, terminate this contract should contractor fail to comply with these provisions.**

~~D. Contracts for hazardous activities shall contain the insurance provisions noted in SCM 7.40.~~

3.13 • JOINT POWERS AGREEMENTS

(Rev 10/05)

These are agreements entered into by two or more public agencies for the purpose of jointly exercising any power common to the contracting parties. Such agreements may result in the creation of a separate agency or entity with which the state may contract and are exempt from **competitive** bidding requirements. A board resolution 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 awarded to JPAs must still meet all state contract requirements including verification that the rates received from a JPA are reasonable. **and GC § 19130**

3.14 • AGREEMENTS CONTRACTS FOR SPECIFIC TYPES OF PERSONAL SERVICES (GC § 19134)

(New 10/05)

- A. Personal services agreements, of the types listed below, are required by statute to assure that certain “employee benefits” and wage levels are provided to the Contractor’s employees who perform the services of the agreement (covered employees). This requirement applies to the following types of contracts:
1. Janitorial, housekeeping, custodian, food service, security guard, laundry or window cleaning services, including but not limited to the job classes identified in the current Memorandum of Understanding between the State and Bargaining Unit 15, and
 2. Agreements for a period greater than 90 days.
 3. Contracts meeting 1 and 2 above are also included for services provided at state leased buildings of 50,000 sq. ft. or more where the state occupies 100% of the space.

(3.14 Contracts for Specific Types of Personal Services (GC § 19134 – continued)

- B. The Contractor must provide the following “employee benefits” to covered employees:
1. Basic health care, as identified in 10 CCR § 1300.67
 2. Dental services
 3. Vision services
 4. Holiday Pay
 5. Vacation, and
 6. Retirement
- C. The Contractor can provide these benefits either through a purchased plan, or by self-insurance.
- D. The Contractor can meet the “benefits requirement” and 85% wage requirement by:
1. Providing “employee benefits” and wages costing not less than 85% of the State cost for employees doing similar work, or
 2. Cash Payment in lieu of providing benefits, in an amount not less than 85% of the State of California’s cost for employees doing similar work, or
 3. A combination of Employee Benefits and Cash Payments totaling not less than 85% of the State cost for employee benefits for a State of California employee performing similar work, in addition to at least 85% of state wages.
- E. Benefits and Cash Payment Calculations
1. By February 1 of each year the Department of Personnel Administration will publish a Schedule of Employee Benefit Rates and Wages on line at the web site www.dpa.ca.gov.
 2. State agencies must use this Schedule to determine the required Employee Benefits and/or Cash Payments in Qualifying Contracts during the year in which they are published.
 3. Agencies may select for any Qualifying Contract either the Detailed Rates or the Blended Rate appearing on the most recent Schedule.
 4. Based on the hourly rates published by the Department of Personnel Administration, the Department of Finance shall issue an annual Budget Letter providing State agencies with budget instructions regarding reimbursements to State agencies for the costs of Employee Benefits and/or Cash Payments under Qualifying Contracts.
- F. Solicitations for Qualifying Contracts shall include provisions requiring compliance with Government Code 19134, including the following:
1. ~~Contracting agencies shall instruct potential bidders to~~ **Bidders shall** include in their bids provision for Employee Benefits and/or Cash Payments to all Covered Employees as well as the 85% wage requirement. Contracting agencies shall provide to bidders the state employee benefit cost amounts and 85% wage amounts to be used in preparing the bids (based on the Schedule of Employee Benefits Rates published by the Department of Personnel Administration). Rate changes for benefits or wages occurring subsequent to issuance of a solicitation, but prior to the bid due date, shall be included in an addendum to the solicitation.

(3.14 F.Contracts for Specific Types of Personal Services – continued)

2. Solicitations for Qualifying Contracts and Resulting Contracts shall contain: A provision that the contractor must submit monthly reports to the contracting agency documenting:
 - a. The number and names of Covered Employees receiving Employee Benefits and/or Cash Payments in the preceding month
 - b. The number of hours each Covered Employee worked on the Qualifying Contract in the preceding month, and
 - c. The employer's cost of required Employee Benefits and/or Cash Payments directly provided to Covered Employees in the preceding month. These reported costs shall not include administrative or other indirect costs incurred by providing Employee Benefits.
 - d. That wages paid are at least 85% of state wages for similar work.
 3. Rates and wages in effect at the time of the bid due date shall remain in effect for the first year of the contract term, at a minimum. At the end of the first year of the contract term, and each subsequent year thereafter, any intervening and/or rate changes (as published by the Department of Personnel Administration) shall be given effect by contract amendment. If the contract term is less than one year, the rates and wages in effect at the time of the bid due date shall apply for the entire contract term.
 4. A provision allowing for adjusting Employee Benefits and/or Cash Payment amounts in the event of an amendment to the Schedule of Employee Benefit Rates published by the Department of Personnel Administration during the term of the contract.
 5. Notice that the contract is subject to audit for compliance with the provisions of Government Code section 19134.
 6. Notice that failure to comply with the provisions of Government Code section 19134 constitutes a material breach, which could subject the contract to immediate termination by the State.
- G. Bids for Qualifying Contracts shall include, in addition to all other requirements specified in the solicitation:
1. The method the bidder has chosen to fulfill the requirements of Government Code section 19134, either by (a) providing Employee Benefits, or (b) providing Cash Payments, or (c) providing a combination of Employee Benefits and Cash Payments.
 2. The total cost of Employee Benefits and/or Cash Payments based on the Department of Personnel Administration Rate Schedule in effect at the time the bids are due. For purposes of bidding only, the contracting agency may instruct the bidder to assume that the rates in effect at the time bids are due will be effective through the life of the contract, notwithstanding that the rates are in fact subject to change.
 3. Before execution of the contract employers choosing to offer Employee Benefits, shall provide the names of insurance providers and terms of the coverage.
- H. Reporting and Monthly Statements: Contractors shall provide monthly statements to the contracting agency during the term of a Qualifying Contract. These statements shall include:

(3.14 H. Contracts for Specific Types of Personal Services – continued)

1. The number of Covered Employees who received Employee Benefits and/or Cash Payments in the preceding month.
 2. The name of each Covered Employee who received Employee Benefits and/or Cash Payments in the preceding month.
 3. The number of hours each Covered Employee worked on the Qualifying Contract in the preceding month.
 4. The amount paid to each Covered Employee for Employee Benefits and/or Cash Payments in the preceding month.
 5. The total monthly cost of Employee Benefits and/or Cash Payments in the preceding month, excluding any administrative cost.
 6. The number of employees working on a Qualifying Contract and the hourly wage paid to each in the preceding month.
- I. Audits: Qualifying Contracts and documents relating to implementing Government Code section 19134 may be audited by the contracting State agency, the Department of General Services, and the Bureau of State Audits.
- J. Breach: Government Code section 19134(e) states that failure to provide benefits or cash-in-lieu payments to employees constitutes a “material breach” for any contract for personal services covered by that section. A breach can result in immediate contract termination by the State of California.

3.14.1 JANITORIAL/BUILDING MAINTENANCE CONTRACTS: ADDITIONAL REQUIREMENTS (New 3/03)

Effective for contracts entered into after January 1, 2002 any contractor or sub-contractor providing janitorial and/or building maintenance services in California, which is awarded a contract to provide such services at a new site(s) must retain for 60 days the current employees employed at that site(s) by the previous contractor/sub-contractor. The awarding authority shall obtain from the previous contractor information as to employees and provide the same information to the new contractor in order for the new contractor to make the necessary notifications as required by Labor Code section 1060 et seq.

3.15 • CONTRACTS WITH NONPROFIT ORGANIZATIONS

Contracts may be made between the state and a private entity that is a nonprofit corporation. Bidding requirements would apply unless exempt by statute or the contract is for subvention or local assistance. See SCM 3; IRS Code § 501C.

3.16 • REVENUE AGREEMENTS (Rev 3/03)

Revenue agreements generally include: Revenue, Reimbursable, Income Contracts Receivable and Cost Recovery Contracts. They typically fall into two categories:

- A. Contracts between the state and a private entity in which the private entity provides services and pays the state. This type of revenue agreement must be competitively bid (or an NCB approval obtained) if it is a profit-making venture for the contractor. [For example, state park concession contracts].

(3.16 Revenue Agreements – continued)

- B. Contracts between the state and a public or private entity, in which the state is providing services and receiving payment for the services.

Note: These contracts are subject to DGS/OLS review as are other contracts depending on the value of the contract.

3.17 • SUBVENTION AND LOCAL ASSISTANCE CONTRACTS**(Rev 10/05)**

- 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.
- C. If the contract is a profit-making venture for the contractor, it should be awarded by competitive bidding procedures.

3.17.1 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT TRANSMITTAL

- A. The Contract Transmittal form, ~~STD 15~~ or STD 215, for negotiated subvention aid cost-reimbursement types of contracts must:
1. Advise whether the contracting agency, 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
 2. 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.
- B. The transmittal should detail:
1. The factual basis for the contracting agency's determination that the other reimbursable costs and any fixed unit rates are reasonable in amount;
 2. The basis for selection of the particular contractor; and;
 3. The contracting agency's compliance with any special statutory requirements applicable to the particular program.

3.17.2 SUBVENTION AID OR LOCAL ASSISTANCE CONTRACT FISCAL CONTROL PROVISIONS

- A. Payment provisions in subvention aid contracts should be on a cost-reimbursement basis with a ceiling specifying the maximum dollar amount payable by the agency. Contracts must set forth in detail the reimbursable items, unit rates, and extended total amounts for each line item. The following information is provided as a guide:
1. Identify and justify direct costs and overhead costs, including employee fringe benefits.
 2. 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.

(3.17.2 Subvention Aid or Local Assistance Contract Fiscal Control Provisions)

3. Rental reimbursement items should specify the unit rate, such as the rate per square foot.
 4. 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 the Department of Personnel Administration for comparable classes and that no travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the agency.
- B. 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).
1. 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.
 2. 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.
- C. 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.
- D. 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.
- E. 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 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.
- F. 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 three years.

3.18 • UC, CSU, COMMUNITY COLLEGES, AND THEIR FOUNDATIONS OR AUXILIARIES

(Rev 10/05)

- A. Agreements with the Regents of the University of California (UC) do not require bidding when the agency directly contracts with the UC to do the work utilizing UC faculty, staff and/or students. Agreements with the UC may be done as an I/A where cost calculations are in accordance with SAM § 8752. Where costs are not calculated in accordance with SAM § 8752, or where UC participates in a bid for the contract opportunity, the contract must be done using a Std 2 or STD 213 and meet all standard requirements for other Services or Consulting Services Contracts. **Agreements with UC may allow reimbursement at UC travel rates rather than require DPA travel rates.**
- B. Agreements with the Trustees of the California State University (CSU) do not require bidding when the agency directly contracts with CSU to do the work utilizing CSU faculty, staff, and/or students.
- C. Agreements with auxiliary organizations or foundations of the UC, CSU, or the California Community Colleges that aid the mission of the institutions with which they are affiliated do not require bidding when the agency directly contracts with the auxiliary organization or foundation to do the work utilizing the organization's regular staff or students.

Note: These contracts and agreements cannot be used to circumvent the state's competitive bidding requirements. Subcontracting and purchases under these contracts and agreements should be competitively bid in a manner similar to that required by the state. (See also SCM 3.06)

3.19 • IT AND TELECOMMUNICATIONS CONTRACTS

(Rev 4/04)

- A. Information Technology (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. See Section 1.05 on how to determine whether a contract is for an IT Service or IT Consulting Service, or a non-IT Service or a non-IT Consultant Service.

Note: The terms EDP (Electronic Data Processing), and IT (Information Technology) are synonymous for purposes of this manual. Installation of cabling alone, is not considered an IT or EDP service contract. Depending on circumstances, installation of cabling may be a non-IT service, or a public works contract.

- B. There is a separate acquisition authority for IT and telecommunications goods and services. (See PCC §§ 12100 et seq.)
- C. 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 4.04.
- D. Additional information is contained in the Purchasing Authority Manual, which is Volume 2 of the State Contracting Manual. Contact the Purchasing Authority Management Section in the Procurement Division for more details.
- E. Issuance of notices of Intent to Award and protest processes are different for procurements for information technology.

3.20 • CONVENTION AND CONFERENCE SERVICES CONTRACTS

(Rev 4/04)

Services for conventions and conferences 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:

<u>Name</u>	<u>Department</u>	<u>Telephone/ Email</u>
Johnna Meyer CMP	Department of Aging	(916) 322-0788/ jmeyer@aging.state.ca.us
Wendi Williamson	Department of Aging	(916) 323-8760/wwilliam@aging.ca.gov
Pamala Corona CMP	Employment Development	(916) 654-7940/pcorona@edd.ca.gov
Donna Carey	DGS Fleet Administration	(916) 327-2068/donna.carey@dgs.ca.gov

Society of Government Meeting Professionals, (Sacramento Chapter) www.sgmpsac.org

3.21 • PRINTING SERVICES CONTRACTS

(Rev 4/04)

Contracts awarded by state agencies for printing work are not personal services within the meaning of GC § 19130. (See GC section 14612.5)

State agencies must solicit a bid from the Office of State Publishing (OSP) when a printing project will exceed \$5,000. (See GC section 14612.2) Solicitations for bids from OSP should be directed to the OSP Customer Service Representative assigned to your agency. This information is on the OSP website at www.osp.dgs.ca.gov or call (916) 445-5386 or (800) 963-7860. GC section 14612.2 is inoperative on the effective date of the Budget Act of 2004.

3.22 • CONTRACTING FOR STUDENTS

(New 3/03)

- A. When contracting for students, GC § 19133 requires that:
1. work must be related to the student's field of study
 2. students cannot accrue civil service status
 3. students cannot be employed for more than 194 days in the 365 days beginning with the day of initial employment
 4. use of students cannot cause displacement of civil service employees
- B. GC § 19133 provides:
- “Any state agency may enter into an agreement with any public or private institution of higher education in California, nonprofit campus foundation, or state higher education foundation to provide part-time employment to students attending a public or private institution of higher education that contracts with the state agency, or to students attending a public or private institution which is affiliated with a nonprofit campus foundation, or a state higher education foundation, that contracts with a state agency, in work related to the field of study of the student.”
- C. Contracts issued are not subject to competitive bid requirements.

3.23 • MEMBERSHIPS

(Rev 4/04)

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 nonrepresented employees are governed by DPA rules and payment is on a reimbursement basis (via a travel claim). These memberships, for both represented and nonrepresented 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 PD's procurement process (that is, via STD 65).

3.24 • FISCAL INTERMEDIARIES

(New 10/05)

State agencies must follow the guidelines provided in SAM 8002.1 whenever planning the use of other entities to receive money or make disbursements on behalf of the State.

3.25 • COMMERCIAL OFFICE MOVING SERVICES

(New 10/05)

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. See Government Code Section 14920. Agencies must include such requirements in Invitations for Bids and contracts. Contact PD's Traffic Management Unit at (916) 928-5844 or www.pd.dgs.ca.gov.

3.26 • ELEVATOR MAINTENANCE CONTRACTS

(New 10/05)

Contracts for elevator maintenance shall include the following provision:

Commencement and termination of contract:

The service to be performed under this contract shall begin on the date specified and continue for a period of five years. The State may terminate this contract at any time by giving the contractor at least thirty (30) days written notice of its intention to do so.