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**Date:** 4/6/2016 1:55:40 PM

**Subject:** RE: Consideration Value of Code Publications

I did some more research in the State Contract Manual (SCO) and here are the chapters and articles that would Bruce is referring to.

This is the language that we used to supply to DGS for the NCB's and I was thinking that we could modify it and submit it to Bruce – instead of contacting the publishers and getting an estimate of the quantity of sold books.

The publication organization will not charge the State of California for the publication services, nor will the State receive royalties from sales. The actual cash value of the contract(s) to the State of California is nil and perceived value is indeterminate, but an estimated value probably would be in excess of ~~\$5,000~~ \$50,000.

This dollar amount would mean OLS would need approval but they are requesting that anyway???? What are your thoughts?

## **7.45 CONTRACTS WITH NO DOLLAR AMOUNT**

In agreements in which only in kind services are used and in which the performance is other than monetary, the consideration must be valued on a monetary basis for the purpose of determining whether DGS/OLS approval is required.

## **4.03 CONTRACTS REQUIRING DGS/OLS APPROVAL**

**(Rev 1/14)**

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; or at \$150,000 and above if an agency has applied for and received this higher exemption level (see SCM 1, section 4.05). 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 the State to indemnify or to hold the contractor harmless;

2. Contracts that require the State to assume liabilities beyond the State's control;
3. Contracts that provide for advance payment for services or rental;
4. Any provision creating a contingent liability against the State (e.g., those vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities);
5. Any hazardous activity such as found under SCM 1, section 3.12; and
6. Contracts that seek to modify the State's standard terms and conditions (GTCs, CCCs, GIAs).

#### **4.04 CONTRACTS NOT REQUIRING DGS/OLS APPROVAL**

##### **(Rev 11/12)**

A. The law requires all non-IT services contracts to be approved by DGS/OLS unless the contract is exempt from approval. (PCC § 10295.) See section 4.03 above.

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 \$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 DGS/OLS (PCC §10351); or
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. This interagency agreement 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.);
  - b. Agencies shall not use I/As to circumvent any State law or contracting requirements;
  - 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);
  - f. DGS is establishing this I/A exemption on a pilot basis, and DGS will evaluate outcomes to determine whether to modify, continue, or discontinue the exemption;

Although these 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 4.03 and 4.04 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.

**Katrina Benny**

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From: Benny, Katrina@DGS  
Sent: Wednesday, April 06, 2016 12:17 PM  
To: de la Motte, Leann@DGS; Day, Kevin@DGS; 'Biedermann, Cynthia (Cynthia.Biedermann@dgs.ca.gov)'  
Subject: RE: Consideration Value of Code Publications

Okay, went round and round with Bruce and he is just as frustrated with this as we are – the fact that we have to do so much for a \$0.0 ZERO\$ contract. However, he is following laws and regulations and this could be subject to audits from SCO and OLS and PRA's.

We need to get him some estimates (in good faith) of how many sets of 2013 code books ICC sold, and how many book IAPMO and NFPA sold as well so we can give that information to OLA.

Cynthia, I know we have a lot on our plates but is there any way you could contact the publishers and find this information out? Again – just a good faith estimate.

## Katrina Benny

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From: Betts, Bruce@DGS  
Sent: Wednesday, April 06, 2016 8:47 AM  
To: de la Motte, Leann@DGS  
Cc: Frost, Laura@DGS; Biedermann, Cynthia@DGS; Benny, Katrina@DGS  
Subject: Consideration Value of Code Publications

Good morning Leann,

SCM Vol 1 7.45 requires that we establish a monetary value of the consideration that agreements provide to the contractors. We will need to estimate, perhaps with the contractors' assistance, the value of consideration each agreement will provide. I have attached information from each vendor's web site indicating the pricing for the

2013 code books. If the 2013 contracts required reporting of sales, we could use this information to estimate the consideration value of the 2016 publications. If not, CBSC will need to estimate the future annual sales. We will need this information early next week prior to the agreements going to OLS. Thank you!

Bruce Betts

Acquisition Analyst

**Contract Services Section** *(Team 3)*

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