

Attachment C Management Memo 03-10

Contracts Exempt by Statute

The following contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt by statute (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80). However, the dollar limits of contracting and delegated purchasing authority still apply. Therefore, contracts exceeding your approval authority must still be submitted for DGS approval and acquisition transactions exceeding your delegated purchasing authority are required to be awarded by DGS.

1. **Emergency contracts, which are necessary for the immediate preservation of life or state property, are exempt from the Non-Competitive Bid Contract (NCB) justification process. Contracts issued as a result of an emergency may be entered into immediately. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements of this Management Memo. For the purpose of this paragraph, reporting consists of submission of an approved copy of the Notice of Contract Award (NCA).**
2. **Contracts for the work or services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**
3. **Goods and services for which the state has entered into a Master Agreement. Note: This is limited to those Master Agreements which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered. See the DGS Procurement web page at www.dgs.ca.gov/pd for Statewide Checklist. If a contract is exempt it is denoted by a "Yes" in the column titled "Exempt".**
4. **Subvention contracts (non-discretionary grants) with a private or nonprofit entity or local agency for the purpose of providing services to the public or segments thereof. This exception applies only when services are being provided to the public and not specifically to a state agency. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed this Management Memo or the attachments thereto.**

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5. Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services. Note: This exception applies only in circumstances where services to be provided are less than \$250,000.00; for services in excess of this amount, the requirements regarding non-competitively bid contracts for \$250,000.00 or more apply.
6. Proprietary software, proprietary software maintenance and/or upgrade contracts. Documentation supporting the non-competitive status of the contract (e.g. a letter from the software publisher and/or manufacturer that states maintenance or purchase is not available from any other source) must be on file either at: 1) the department if the service or purchase is being acquired through the delegated purchasing authority; or 2) at the DGS, if DGS is the approving authority. (Note: DGS-PD will be the repository for all of the software publisher/manufacturer letters when DGS is the approving authority.) It will always be the user department's responsibility to both obtain and provide such documentation to DGS.
- a.1. Acquisition of existing proprietary software maintenance and/or upgrade renewal contracts.
- No NCB justification is required.
 - Departments with delegated purchasing authority may award contracts within the department's authority limits. Transactions that are not within the department's authority limits must be submitted to DGS-PD on a Purchase Estimate (Std. 66) for PD to conduct the procurement and execute the contract. See paragraph 2 on page 1 of this Management Memo, specifically the last sentence.
 - Departments without delegated purchasing authority must submit all transactions to DGS-PD on a Purchase Estimate (Std. 66) for PD to conduct the procurement and execute the contract.
- (Note: File documentation must include the documents described in paragraph 6, or other appropriate documents to justify why the transaction is exempt, and reference this exempt category)
- a.2. Acquisition of new proprietary software, which may also include maintenance.
- No NCB justification is required for transactions \$250,000 and under. An NCB justification must be submitted to and approved by DGS-PD for transactions that exceed \$250,000.

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- **Departments with delegated purchasing authority may award contracts within the department's authority limits. An approved NCB justification must be included in the department's file documentation for transactions that exceed \$250,000. Transactions that are not within the department's authority limits must be submitted to DGS-PD on a Purchase Estimate (Std. 66) for DGS-PD to conduct the procurement and execute the contract. See paragraph 2 on page 1 of this Management Memo, specifically the last sentence. Transactions submitted to DGS-PD that exceed \$250,000 must include an NCB justification approved by the department's director and agency secretary or next highest ranking official.**
 - **Departments without delegated purchasing authority must submit all transactions to DGS-PD on a Purchase Estimate (Std. 66) for PD to conduct the procurement and execute the contract. Transactions submitted to DGS-PD that exceed \$250,000 must include an NCB justification approved by the department's director and agency secretary or next highest ranking official. (Note: File documentation must include the documents described in paragraph 6, or other appropriate documents to justify why the transaction is exempt, and reference this exempt category.)**
- a.3. Approval by the agency secretary and the department director (or next ranking official) must be secured on the purchase document (Std. 65 or Std. 213) for any transaction that exceeds \$250,000 prior to award of contracts in paragraphs a.1. or a.2. above .**
- 7. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered. Note: Shall not exceed \$5,000.**
 - 8. Contracts solely for the purpose of obtaining expert witnesses for litigation. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**
 - 9. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**
 - 10. Contracts for which services are specifically exempt by statute from the competitive bidding process. Note: Contracts entered into under this exemption are also exempt from any of the other restrictions imposed by this Management Memo or the attachments thereto.**