

MANAGEMENT MEMO

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| SUBJECT: | NUMBER: |
| | MM 07-06 |
| CONTRACTS FOR PRINTING | DATE ISSUED: |
| | JUNE 21, 2007 |
| REFERENCES: <i>S.E.I.U., ET AL. V. CALIFORNIA OFFICE OF STATE PRINTING;</i> CALIFORNIA CONSTITUTION, ARTICLE VII, SECTIONS 1-3; AND GOVERNMENT CODE § 14612.5 | EXPIRES: UNTIL RESCINDED |
| | ISSUING AGENCY: |
| | DEPARTMENT OF GENERAL SERVICES |

New Policy State agencies must now procure printing services through the Office of State Publishing (OSP). Prior to this policy, State agencies were allowed to contract out for printing services. State agencies can continue to do so only if they justify the contract to the State Personnel Board.

This policy does not affect the use of in-house printing and reproduction facilities.

Who Needs to Review Deputies for administration, procurement staff, legal staff.

State Agency Requirements State agencies must now procure printing services through the OSP or through service contracts. Justifications for the contracting out of printing services must be made under the provisions of Government Code § 19130. Sales tax must still be applied and itemized separately on procurement documents per Revenue and Taxation Code § 6006.

Background In a case entitled Service Employees International Union, Local 1000 (CSEA); Jim Hard v. California Office of State Printing, Department of General Services, California State Personnel Board, Sacramento County Superior Court Case No. 05CS01230, the Court found that Government Code §14612.5 is unconstitutional. The Court held that the Section inevitably poses a conflict with the State civil service mandate and the corresponding restrictions on private contracting. The Court further directed the State Personnel Board to review printing contracts under Government Code § 19130 et seq., without regard to the provisions of Government Code § 14612.5.

Laws Referenced

- Article VII, Sections 1 - 3 of the California Constitution.
- Government Code §§ 14612.5, 19130 – 19132.
- Service Employees International Union, Local 1000 (CSEA); Jim Hard, v. California Office of State Printing, Department of General Services, California State Personnel Board, Sacramento County Superior Court Case No. 05CS01230, August 10, 2006.
- Public Contract Code § 10335 et seq.
- Revenue and Taxation Code § 6006

STATE ADMINISTRATIVE MANUAL

Procedures Or Action Required

Agencies shall apply either Government Code § 19130 (a), demonstrating that contracting out produces cost savings based on a series of criteria, or (b) a series of exemptions, particularly section (b) 10, which allows for the contracting out of printing services only if "the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose." See Attachment A for a copy of this code section.

Any agency contracting out for printing shall prepare a clear and concise justification statement pursuant to Government Code § 19130.

Government Code § 19130(a) permits contracting to achieve cost savings based on cost calculations specified in that section. Cost comparisons must include an estimate from the Office of State Publishing. Any agency proposing to execute a contract based on cost savings must first notify the State Personnel Board of its intention, pursuant to Title 2, California Code of Regulations Section 547.9 et. seq.

Government Code § 19130(b) permits contracting for services when the requirements of that section are met. The State Personnel Board may review contracts awarded on the basis of Government Code § 19130(b) by at the request of an employee organization representing state employees. In order to ensure compliance with this section, departments and agencies must first contact the OSP to determine if the OSP can provide the printing services in question.

Attachment B provides a summary of OSP capabilities and delivery timeframes. Please check the OSP website at www.osp.dgs.ca.gov for updates and more detailed information. It is imperative that agencies plan their printing work far enough in advance to allow OSP sufficient time to determine the most efficient delivery options (in house or contracting out). OSP requires three days to produce digital printing. OSP requires a minimum of 10 days to produce lithographic printing. In the event that agencies have to contract outside of OSP for their printing products and services, agencies should review and identify the basis for contracting out for needed services using the permissible criteria contained in Government Code § 19130(b).

Please refer to Attachment C, State Contract Manual § 7.05 for further details.

State agencies must submit outside printing contracts that exceed \$50,000.00 to the Department of General Services, Office of Legal Services for review and approval.

Contact

For further information contact OSP Customer Service:

<http://www.osp.dgs.ca.gov/Doing+Business/Customer+Services+Reps.htm>

or Jacque Mooney, Customer Service Manager

Phone Number: (916) 323-5098

E-mail address: Jacque.Mooney@dgs.ca.gov

Original SAM Management Memo signed by Will Bush, Interim Director

Will Bush, Interim Director

Signature

STATE ADMINISTRATIVE MANUAL

Attachments:

Attachment A: Government Code § 19130

Attachment B: Office of State Publishing Capabilities and Delivery Timeframes

Attachment C: State Contract Manual §7.05

GOVERNMENT CODE SECTION 19130

19130. The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

(1) The contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the state, provided that:

(A) In comparing costs, there shall be included the state's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the state's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in state service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut state pay rates.

(3) The contract does not cause the displacement of civil service employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location.

(4) The contract does not adversely affect the state's affirmative action efforts.

(5) The savings shall be large enough to ensure that they will not be eliminated by private sector and state cost fluctuations that could normally be expected during the contracting period.

(6) The amount of savings clearly justify the size and duration of the contracting agreement.

(7) The contract is awarded through a publicized, competitive bidding process.

(8) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination, affirmative action standards.

(9) The potential for future economic risk to the state from potential contractor rate increases is minimal.

(10) The contract is with a firm. A "firm" means a corporation,

partnership, nonprofit organization, or sole proprietorship.

(11) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government.

(b) Personal services contracting also shall be permissible when any of the following conditions can be met:

(1) The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.

(2) The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

(4) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(6) The nature of the work is such that the Government Code standards for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 of Part 2.6.

(7) State agencies need private counsel because a conflict of interest on the part of the Attorney General's office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.

(8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

(9) The contractor will conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.

(10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

(c) All persons who provide services to the state under conditions the board determines constitute an employment relationship shall, unless exempted from civil service by Section 4 of Article VII of the California Constitution, be retained under an appropriate civil service appointment.

Office of State Publishing Capabilities and Delivery Timeframes

Office of State Publishing Procedures

The Office of State Publishing (OSP) produces internally everything that it is equipped to produce and outsources only those jobs that it either cannot produce at all or cannot produce within customer time frames. OSP evaluates printing requests based on customer need, labor availability, and equipment capacities.

The list of services OSP provides, production time frames for OSP products, and a list of services that OSP does not provide are noted below. Products and services not provided by OSP are automatically exempt under Government Code section 19130(b). Products and services that must be produced in less time than OSP's published minimum production timelines will not be able to be produced by OSP. Agencies and departments will have to obtain those products and services elsewhere. For those products that OSP does produce, State agencies must contact OSP to determine if OSP can provide the printing services in question.

Office of State Publishing Services

Graphic Design: The practice or profession of designing print or electronic forms of visual information, as for an advertisement, publication, or website.

Desktop Publishing: The design and production of documents using personal computers with graphics capability.

Typesetting and Composition: The act or art of setting type and/or the combining of distinct parts or elements to form a whole document.

Electronic Pre-press: Preparing provided electronic files for press production including color correction, trapping and imposition.

Digital Printing: High speed copying in color or black and white from an electronic file or hard copy original. Excludes digital printing with delivery points outside of the Sacramento area.

Forms: A document with blanks for the insertion of details or information in either single or multiple parts. Excludes multi-part snap out or continuous forms with quantities under 5,000.

Poster: A large, printed placard, bill, or announcement, often illustrated, that is posted to advertise or publicize something.

Brochure: A small booklet or pamphlet, often containing promotional material or product information.

Flyer: An advertisement (usually printed on a page or in a leaflet) intended for wide distribution.

Publication: A copy of a printed work offered for distribution, usually a multiple page bound document.

Presentation Folders: A flexible cover folded in the center with or without glued pockets and used as a holder for loose documents. Minimum order of 5,000.

Stationary or Letterhead: A single sheet with a name, address and phone number used for letter writing. Minimum order of 5,000.

Variable Data Printing: The process of personalizing a printed piece using names, addresses or images contained within a database.

Envelopes: A flat paper container, especially for a letter, usually having a gummed flap.

Mass Mailing Services: A batch of mail dispatched at one time by a sender.

Advertising in State Publications: Placing paid advertising into any mass distributed printed material for the purpose of defraying the production cost of that material.

Office of State Publishing Production Timeframes

The following are the general timeframes needed for scheduling printing:

Digital Print – Short run digital print/copy jobs can be completed in 3 to 7 work days from receipt of the job. Shorter time frames should be vended out.

Lithographic Print Services – Generally 10 to 30 days from *ok to print*. Variables include availability of stock, equipment, and size of printing project.

NOTE: Schedules for extremely large or complicated print jobs require planning several months in advance to insure availability of stock and equipment time. Estimated production times, quantity limitations and equipment availability are subject to change based on overall plant workload, labor availability, and maintenance schedules. Upon request, OSP will evaluate printing requests based on customer need, labor availability, and equipment capacities.

Services Not Provided by the Office of State Publishing

The following services must be purchased from an outside vendor:

Multi-stitched forms: Receipt books.

Engraving: A printing process that involves carving, cutting, or etching into a printing plate.

Foil Stamping: The process of applying foil to a printed or blank piece of paper, card stock or cover material.

Die Cutting: The process of using sharp steel rules to cut shapes for labels, boxes, presentation folders and containers.

Thermography: A process for producing raised lettering, as on stationery or calling cards, by application of a powder that is fused by heat to the fresh ink.

Laminating: A plastic film bonded by heat and pressure to a printed sheet for protection or appearance.

MICR Printing: Magnetic ink character recognition.

Case Binding: Hard covers produced using board, leather, or pliable man-made materials.

Spiral Binding: A book bound with wires in a spiral form inserted through holes punched along the binding side.

Coil Binding: Similar to spiral binding with the wires and punches in a slightly different configuration.

Wire-O Binding: Similar to spiral binding with the wires and punches in a slightly different configuration.

Lay-Flat Binding: A type of perfect binding (glued spine) that allows the book to lay flat when opened.

Adhesive Labels: Mailing labels or other types of labels with gummed adhesives or peel off backing.

Carbon Forms: Forms with sheets of carbon material inserted between parts for the purpose of making long-term multiple copies.

82 STATE CONTRACTING MANUAL 10/2005

7.05 • CIVIL SERVICE CONSIDERATIONS

(Rev 3/03)

A. Basic considerations are as follows:

1. Contracting for Personal Services, in lieu of using civil service personnel is permitted only if the standards outlined in GC § 19130 (a) or (b) are met. See 2 and 3 below.
2. Section 19130(a) permits contracting for personal services to achieve cost savings. Any state agency proposing to execute a contract based on cost savings to the state as justification for not using civil service personnel, must first notify the State Personnel Board of its intention. (GC § 19130(a)). Section 547.71 of the SPB regulations provide that the cost savings achieved shall be either 10% or more of the civil service costs of performance or shall be \$50,000 in 1988 dollars and at least 5% of the civil service cost of performance. The 1988 dollar equivalent for the calendar year 2002 is at least \$75,000.
3. Section 19130(b) permits contracting for personal services when any of the requirements of 19130(b) are met. See also SPB Regulations 2 CCR § 547.60
4. Departments or agencies submitting a proposed contract to DGS for approval must retain all data and information relevant to the contract and necessary for a specific application of the standards set forth in GC § 19130(a) in the event that the State Personnel Board's review is requested. For standards of review see PCC § 10337.
5. GC § 19130(c) requires that all persons who provide services to the state under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment. Therefore, state law and policy require that each state agency's contract for services with individuals be executed and administered in a manner consistent with the establishment of an independent contractor status when a civil service appointment is not intended.

B. Contracts awarded on the basis of GC § 19130(b) are subject to review at the request of an employee organization representing state employees. For standards of review see PCC § 10337.

C. Contracting out for services is permissible when any of the conditions set out in GC § 19130(b) can be met.

D. SPB regulations require agencies, when submitting contracts let under GC § 19130(b) for DGS approval, to attach a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in GC § 19130 (b). (See www.spb.ca.gov).



MEMORANDUM

Date: February 1, 2008

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

From: Department of General Services
Office of State Publishing

Subject: DGS MANAGEMENT MEMO 07-06 (updated Frequently Asked Questions)

The purpose of this memorandum is to provide further clarification for Management Memo 07-06 regarding the acquisition of printing services as a consequence of the recent court decision, which overturned a statute that determined printing was not a personal service.

What has changed at this time?

The procedure for entering into printing service contracts has changed. As a result of the Court's decision, state agencies that contract for printing must do so under the services contract provisions of Public Contract Code 10335 et seq. and must justify contracting out for those services subject to the conditions of GC Section 19130 (a) or (b).

What printing projects must I send to the Office of State Publishing (OSP)?

All printing projects must now be submitted to the OSP. The OSP will offer to produce all printing that conforms to the OSP's equipment, available inventory, and scheduled resources. Printing projects that are not suitable may be procured through the OSP or a requesting agency will be provided a numbered authorization for exemption to procure the printing project individually. Printing services can also be contracted with an outside vendor when Government Code Section 19130 (a) or (b) conditions have been satisfied.

How will OSP schedule agencies work?

Agencies are responsible to provide OSP with complete job specifications in accordance with OSP's Production Timeframes (Attachment A). This should include any substantiation for statutory, legal or mandated deadlines. These timeframes allow OSP to review the specifications of each individual printing project and establish a schedule in advance of beginning production. Customer changes in scope, and schedules, will be conveyed through the assigned Customer Service Representative (CSR) as soon as practical.

Can I contract with a private printer instead of the OSP?

Only when an exemption is given by OSP. Agencies are responsible to provide OSP with complete job specifications in accordance with OSP's Production Timeframes (Attachment A). This should include any substantiation for statutory, legal or mandated deadlines. OSP will issue exemptions on an individual basis, for projects that do not conform to the OSP's equipment, available inventory, and scheduled resources. To contract with a private printer you must have a numbered authorization for exemption from OSP.

How do I request an exemption?

Your requests for exemption should be directed through your Customer Service Representative (CSR). If you do not know your CSR's phone number, you may also contact the Customer Service unit by calling (916) 445-5386 or toll free (800) 963-7860 or visit our website at www.dgs.ca.gov/osp

How long does an exemption decision take?

The OSP has established an internal process to review agency requests and respond to their request within two business days after receipt of complete job specifications. OSP's goal is to provide a same day response when possible. The OSP will partner with the agency to see that their printing needs are met. The intent is to provide customers with the best printing options to meet their needs.

What happens if I contract with a private printer without an OSP authorization for exemption?

All exemptions will be recorded and reported to the DGS Office of Legal Services (OLS) Non-compliance with Management Memo 07-06 may result in non-approval of a contract by the OLS and non-payment of your contract invoices. In the best interest of your vendor and your agency, it is imperative that you obtain a numbered authorization for exemption from the OSP.

What happens if OSP commits to a project and then decides to vend the project out?

If OSP determines that the project is best suited for OSP equipment but later is governed to produce another project, OSP will vend the committed project on your behalf and will waive the OSP procurement fee. A requesting agency can also be provided a numbered authorization for exemption to procure the printing project individually.

Does this management memo apply to printing only?

The management memo and the court decision specifically address printing contracts, however other services provided by the OSP, such as mass mailing are also subject to GC 19130. See the Office of State Publishing Services (Attachment A) or contact your assigned CSR for further information. The court decision and GC 19130 are the controlling factors, not the management memo.

How does this impact GC14838.5, permitting small business purchases?

GC 14838.5 does not supercede GC 19130. You must first comply with GC 19130 (a) or (b). You must obtain an exemption from the OSP before any application of GC 14838.5 may be considered.

Now that printing is considered a service rather than a commodity and my printing project is vended out to a private printer, will I be charged sales tax?

Yes, even though printing will be procured as a service, sales tax must still be applied and itemized separately on the agency's invoice or procurement document per Revenue and Taxation Code 6006.

Can printing projects worth less than \$5,000 be contracted out?

No. All printing projects must be submitted to the OSP for retention or exemption.

Can I send printing projects to Prison Industry Authority (PIA) without getting an exemption from the OSP?

Yes. A numbered authorization for exemption is not required from the OSP before sending printing projects to PIA.

Enclosure: Management Memo 07-06