

**Morrison, Tom**

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**From:** Walls, Dave  
**Sent:** Wednesday, August 15, 2007 12:23 PM  
**To:** Taylor, Jane; Nearman, Michael; Frank, Russell  
**Cc:** Morrison, Tom  
**Subject:** something to consider while working on Green Building

**What Is Not Protected by Copyright?**

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

**What Is Copyright**

Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings\*, to perform the work publicly by means of a digital audio

transmission.

In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act. For further information, request Circular 40, Copyright Registration for Works of the Visual Arts.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 121 of the 1976 Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the 1976 Copyright Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the copyright law or write to the Copyright Office.

**\*Note:** Sound recordings are defined in the law as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Common examples include recordings of music, drama, or lectures. A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. The word "phonorecord" includes cassette tapes, CDs, LPs, 45 r.p.m. disks, as well as other formats.

Dave Walls, Executive Director  
California Building Standards Commission  
2525 Natomas Park Dr., Suite 130  
Sacramento, CA 95833  
(916) 263-0916

**Morrison, Tom**

---

**From:** Kerns, Deborah  
**Sent:** Friday, March 02, 2007 9:50 AM  
**To:** Walls, Dave; Matteucci, Evelyn  
**Cc:** Morrison, Tom  
**Subject:** RE: Use of State Seal on the California Binder

Hi Dave, Government Code section 402(a) prohibits the use of the State Seal for commercial purposes (sale of code books) so the State Seal should not be used anywhere in the Codes.

402. (a) Every person who maliciously or for commercial purposes uses or allows to be used any reproduction or facsimile of the Great Seal of the State in any manner whatsoever is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), the Great Seal of the State may be used for commercial purposes by the Golden State Museum Store located at 1020 O Street in Sacramento, and by the Capitol Bookstore and Gift Shop located in the rotunda of the restored State Capitol Building.

(c) Notwithstanding subdivision (a), the California Sesquicentennial Commission may enter into an agreement to use the Great Seal of the State for officially sanctioned products of the California Sesquicentennial celebration as approved by the commission. The funds received from these sales shall revert to the California Sesquicentennial Foundation and be used only for official Sesquicentennial celebration purposes.

Deborah J. Kerns  
Staff Counsel III (Specialist)  
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Department of General Services  
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-----Original Message-----

**From:** Walls, Dave  
**Sent:** Wednesday, February 28, 2007 11:00 AM  
**To:** Kerns, Deborah; Matteucci, Evelyn  
**Cc:** Morrison, Tom  
**Subject:** FW: Use of State Seal on the California Binder

Any thoughts on this? We have always used it on Title 24 Codes and other documents.

-----Original Message-----

**From:** Margi Leddin [<mailto:mleddin@iccsafe.org>]  
**Sent:** Wednesday, February 28, 2007 10:37 AM  
**To:** Walls, Dave  
**Cc:** Mary Lou Luif  
**Subject:** Use of State Seal on the California Binder

Dave,

We had a situation come up with another state that I thought I would share with you regarding the use of a state seal on a custom binder. In one particular incident, the Executive Director of the state's building department sent us the state seal and asked us to put it on their custom binder. The cover design was subsequently approved by the department. Later, after the books were printed, someone associated with the state's legal department came back to ICC with an injunction, saying we couldn't sell the books because we didn't have appropriate permission to use the state seal. As it turned out, the state building department did not have the legal authority to grant the permission (they were quite surprised by that, as they had used it in the past!). Only the governor's office had such permission.

Before I start printing California binders, I would like you to verify – do you have the legal authority to approve ICC's use of the California state seal on these binders? Both for printing and marketing purposes.

If not, can you get that permission for us?

Thanks.  
Margi

**Margaret M. Leddin**  
**Vice President, Publishing**  
International Code Council  
4051 W. Flossmoor Road  
Country Club Hills, IL 60478  
Phone 1-888-ICCSAFE (888-422-7233), ext. 4217  
Fax 1-800-214-7167  
[mleddin@iccsafe.org](mailto:mleddin@iccsafe.org)

**Morrison, Tom**

---

**From:** Kerns, Deborah  
**Sent:** Friday, June 23, 2006 3:36 PM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

I met with our Chief counsel and we need to proceed with the NCB – please prepare a draft and I will review with you and assist with the process. Thank you

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Tuesday, June 20, 2006 2:07 PM  
**To:** Kerns, Deborah  
**Subject:** RE: Publication Agreements for Title 24

Thanks, Debbie.

Thomas L. Morrison, Deputy Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, California 95833  
(916) 263-0916  
(916) 263-0959 FAX  
[tom.morrison@dgs.ca.gov](mailto:tom.morrison@dgs.ca.gov)

-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Tuesday, June 20, 2006 1:54 PM  
**To:** Morrison, Tom  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

Hi Tom, before you do any more work on the NCB, I am going to confer internally to confirm whether an NCB is required. I will keep you posted.

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Tuesday, June 20, 2006 1:24 PM  
**To:** Kerns, Deborah  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

Deborah,

Attached are three draft NCB forms, one for the International Code Council (ICC) for model code based parts of Title 24, one for the International Association of Plumbing and Mechanical Officials also for model code based parts, and one for ICC for non-model code based parts, for your review.

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-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Thursday, June 15, 2006 8:12 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Tom, The AG letter states that the BSC may arrange for publication of the Code on a sole-source basis if it obtains the appropriate administrative approvals. Do you have any written documentation from PD of the meeting 3 years ago that states BSC does not need to complete an NCB form – if you do then please fax it to me. Otherwise, please begin drafting the NCB form and I can review it. Thank you

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Wednesday, June 14, 2006 4:59 PM  
**To:** Kerns, Deborah  
**Subject:** RE: Publication Agreements for Title 24

Deborah,

The advice letter from the Department of Justice stated that the commission should discuss the issue of treating the non-model code based parts of Title 24 as proprietary documents with the Department of General Services (DGS). The commission had that discussion with DGS' Procurement Division (PD) in 2003.

In that meeting the commission was told that it did not need to complete Non-Competitive Bid forms for the publication of any part of Title 24, model code based or not. If the commission submitted Non-Competitive Bid (NCB) forms now, the forms would either confuse PD or re-open an issue that had been resolved via the meeting in three years ago.

If you think we need to revisit this with PD again, we would appreciate your assistance in completing the NCB forms. I would send you drafts to look over. Please let me know as soon as possible.

On the other matter, I will contact the State Printer regarding their continuing to not want to publish and sell Parts 1, 6, 7, 8, and 12 (non-model code based parts) of Title 24.

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[tom.morrison@dgs.ca.gov](mailto:tom.morrison@dgs.ca.gov)

-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Wednesday, June 14, 2006 3:28 PM  
**To:** Morrison, Tom  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

Hi Tom, I suggest contacting the State Printer, Geoff Brandt, and receive confirmation in writing whether or not OSP could publish the codes.

Regarding the June 6, 2001 letter from AG de La Guardia regarding the need to obtain sole source approval that you faxed to me, it looks like you will need to do the paperwork to obtain this approval from procurement. I can assist you if you get me a draft. Thank you

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Tuesday, June 13, 2006 9:39 AM

**To:** Kerns, Deborah  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

No, I have not confirmed with the Office of State Publishing (OSP). The commission actually had Title 24 published and sold by OSP back in the 1980's, when the state only printed its amendments to the model codes and none of the adopted model code language. The building industry didn't want to have to refer back and forth between Title 24 (California amendments only) and the model codes the state also adopted, so the commission had model code organizations publish Title 24; these organizations had to be the publishers because of copyrights.

OSP was only to glad to give up Title 24, because they did not like having to sell it, maintain subscription lists, and take all the telephone calls that came to them as a result of being the seller of it. This may have been resource-driven as it states in the Department of Justice's advice letter, but I also remember that having to sell Title 24 was an issue.

I don't know whether or not Stan confirmed with OSP, in 2001, that OSP did not want to take back Title 24. Should we confirm with OSP (again)? If so, do you have a suggestion as to who the commission should contact?

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-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Tuesday, June 13, 2006 8:51 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Thank you Tom, also have you checked with DGS Office of State Publishing to find out if they could publish the codes? In the June 6, 2001 letter from the AG's office Ramon de la Guardia, he recommends that BSC confirm that the State Printer cannot publish the Code.

Deborah J. Kerns  
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-----Original Message-----



**From:** Morrison, Tom  
**Sent:** Tuesday, June 13, 2006 8:11 AM  
**To:** Kerns, Deborah  
**Subject:** RE: Publication Agreements for Title 24

Bob French and his managers, I don't recall who else specifically, but it was all the players at Procurement that we had been dealing with over several months on this issue. It was a meeting that Stan attended and I participated in via teleconference. One of the other people at PD that we had been dealing with on this issue was Marnell Voss. (PD pointed the commission to the management memo that had the exemption in it for proprietary documents.)

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-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Tuesday, June 13, 2006 7:59 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Hi Tom, who at DGS did you have the discussions with? i.e. DGS stated...

Deborah J. Kerns  
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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Monday, June 12, 2006 4:55 PM  
**To:** Kerns, Deborah  
**Subject:** Publication Agreements for Title 24

Deborah,

For your information, the California Building Standards Commission (Commission) is planning to enter into agreements for the publication of the California Building Standards Code (Title 24). We are proceeding based on information that we received in an advice letter from the Department of Justice

(DOJ) in 2001 (to be faxed), in a Management Memo 03-10 (attached), and in a discussion with the Department of General Services' (DGS) Procurement Division.

DOJ's advice letter concluded that, "If it obtains the appropriate administrative approvals, the Commission may arrange for publication of the Building Standards Code [all eleven parts] on a sole-source basis." The letter stated that it may be more cost-effective and that there would be more uniformity if the parts of Title 24 not based on model codes were published by one of the model code publishers, and that this was something to be discussed with the Department of General Services and the State and Consumer Services Agency Secretary.

Management Memo 03-10 concerns the requirements for the use of California Multiple Award Schedules, Master Agreements and Non-Competitively Bid Contracts. Attachment D to the memo states that categories of contracts listed in the Attachment may be awarded without competitive bidding and that they are exempt based on a determination by DGS that competitive bidding is not feasible.

In 2003 during a discussion, DGS reasoned that the parts of Title 24 based on model codes fall into the category of proprietary publications and are therefore exempt. DGS also reasoned that the parts of Title 24 not based on model codes would be treated as proprietary publications, because no bidder could publish these parts for zero dollars, as model code publishers would, and that there would be more uniformity in the publication of Title 24.

DGS further stated that the Commission did not need to prepare sole-source contracts because of the exemption. Therefore, as the Commission did after the discussion with DGS, it is preparing again to enter into agreements with the model code publishing organizations to publish all parts of Title 24, without competitively bidding them or completing sole-source forms.

The agreements will be signed by the head of the publishing organization and the Secretary of the State and Consumer Services Agency, as before. Do you have any comments? I would appreciate your comments as soon as possible, given our extremely aggressive work schedule.

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**Morrison, Tom**

---

**From:** Brandt, Geoff  
**Sent:** Thursday, June 22, 2006 8:30 AM  
**To:** Morrison, Tom  
**Subject:** Title 24

The Office of State Publishing is not interested in the printing of Title 24. Geoff Brandt, State Printer

## Morrison, Tom

---

**From:** Blair, Guy  
**Sent:** Thursday, June 22, 2006 9:18 AM  
**To:** Morrison, Tom  
**Subject:** RE: Printing Procurements

I apologize for not including that section in my previous message. The section follows. It does not specifically state that printing is a commodity. It only states that it is not considered a service as it relates to GC Section 19130.

14612.5. Notwithstanding any other provision of law, for state printing procurement purposes, printing is not considered a personal service contract as defined in Section 19130.

Guy Blair  
Administration Manager  
Office of State Publishing  
323-0309 Work  
240-1468 Cell  
323-0308 Fax

-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Thursday, June 22, 2006 9:10 AM  
**To:** Blair, Guy  
**Subject:** RE: Printing Procurements  
**Importance:** High

Guy,

Can you direct me to the '97-98 budget language that Geoff was referring to where it defined printing as a commodity, not a service?

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tom.morrison@dgs.ca.gov

-----Original Message-----

**From:** Blair, Guy  
**Sent:** Thursday, June 22, 2006 8:48 AM  
**To:** Morrison, Tom  
**Cc:** Brandt, Geoff  
**Subject:** Printing Procurements

Good Morning Tom,

The State Printer, Geoff Brandt, asked that I send you information regarding your acquiring printing from a private printer. Following is a link to the Management Memo 02-22 that addresses this issue. You have the authority to contract out printing without prior approval of OSP. If the vend out is over \$5,000 in value, you must solicit a bid from OSP on that job.

[http://www.documents.dgs.ca.gov/osp/sam/mmemos/mm02\\_22.pdf](http://www.documents.dgs.ca.gov/osp/sam/mmemos/mm02_22.pdf)

Following is the current section of the Government Code related to this issue.

14612.2. (a) Notwithstanding Chapter 7 (commencing with Section 14850) of Part 5.5 of Division 3 of Title 2 of, or Section 14901 of, the Government Code, no agency is required to use the Office of State Publishing for its printing needs and the Office of State Publishing may offer printing services to both state and other public agencies, including cities, counties, special districts, community college districts, the California State University, the University of California, and agencies of the United States government. When soliciting bids for printing services from the private sector, all state agencies shall also solicit a bid from the Office of State Publishing when the project is anticipated to cost more than five thousand dollars (\$5,000).

(b) This section shall remain operative only until the effective date of the Budget Act of 2006 or July 1, 2006, whichever is later, and as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

Please call me at 323-0309 if you have any questions.

Guy Blair  
OSP Administration Manager  
Work 323-0309  
Cell 240-1468

**Morrison, Tom**

---

**From:** Kerns, Deborah  
**Sent:** Wednesday, June 14, 2006 3:28 PM  
**To:** Morrison, Tom  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

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I don't know whether or not Stan confirmed with OSP, in 2001, that OSP did not want to take back Title 24. Should we confirm with OSP (again)? If so, do you have a suggestion as to who the commission should contact?

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6/15/2006

[tom.morrison@dgs.ca.gov](mailto:tom.morrison@dgs.ca.gov)

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**From:** Kerns, Deborah  
**Sent:** Tuesday, June 13, 2006 8:51 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Thank you Tom, also have you checked with DGS Office of State Publishing to find out if they could publish the codes? In the June 6, 2001 letter from the AG's office Ramon de la Guardia, he recommends that BSC confirm that the State Printer cannot publish the Code.

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6/15/2006

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Monday, June 12, 2006 4:55 PM  
**To:** Kerns, Deborah  
**Subject:** Publication Agreements for Title 24

Deborah,

For your information, the California Building Standards Commission (Commission) is planning to enter into agreements for the publication of the California Building Standards Code (Title 24). We are proceeding based on information that we received in an advice letter from the Department of Justice (DOJ) in 2001 (to be faxed), in a Management Memo 03-10 (attached), and in a discussion with the Department of General Services' (DGS) Procurement Division.

DOJ's advice letter concluded that, "If it obtains the appropriate administrative approvals, the Commission may arrange for publication of the Building Standards Code [all eleven parts] on a sole-source basis." The letter stated that it may be more cost-effective and that there would be more uniformity if the parts of Title 24 not based on model codes were published by one of the model code publishers, and that this was something to be discussed with the Department of General Services and the State and Consumer Services Agency Secretary.

Management Memo 03-10 concerns the requirements for the use of California Multiple Award Schedules, Master Agreements and Non-Competitively Bid Contracts. Attachment D to the memo states that categories of contracts listed in the Attachment may be awarded without competitive bidding and that they are exempt based on a determination by DGS that competitive bidding is not feasible.

In 2003 during a discussion, DGS reasoned that the parts of Title 24 based on model codes fall into the category of proprietary publications and are therefore exempt. DGS also reasoned that the parts of Title 24 not based on model codes would be treated as proprietary publications, because no bidder could publish these parts for zero dollars, as model code publishers would, and that there would be more uniformity in the publication of Title 24.

DGS further stated that the Commission did not need to prepare sole-source contracts because of the exemption. Therefore, as the Commission did after the discussion with DGS, it is preparing again to enter into agreements with the model code publishing organizations to publish all parts of Title 24, without competitively bidding them or completing sole-source forms.

The agreements will be signed by the head of the publishing organization and the Secretary of the State and Consumer Services Agency, as before. Do you have any comments? I would appreciate your comments as soon as possible, given our extremely aggressive work schedule.

Thomas L. Morrison, Deputy Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, California 95833  
(916) 263-0916

6/15/2006



(916) 263-0959 FAX  
[tom.morrison@dgs.ca.gov](mailto:tom.morrison@dgs.ca.gov)

**MANAGEMENT MEMO**

<b>SUBJECT:</b> <b>REQUIREMENTS FOR THE USE OF CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS), MASTER AGREEMENTS, AND NON-COMPETITIVELY BID CONTRACTS</b>	<b>NUMBER:</b> <b>MM 03-10</b>
<b>REFERENCES:</b> <b>GOVERNOR'S TASK FORCE ON CONTRACTING AND PROCUREMENT REVIEW REPORT, August 30, 2002</b> <b>PCC 10295, PCC 12100, et seq.</b> <b>RESCINDS AND SUPERSEDES MM 02-19 REVISION 3 AND ATTACHMENTS</b>	<b>DATE ISSUED:</b> <b>MAY 28, 2003</b>  <b>EXPIRES:</b> <b>UNTIL RESCINDED</b> <b>ISSUING AGENCY:</b> <b>DEPARTMENT OF GENERAL SERVICES</b>

It is the intent of the Department of General Services (DGS) to ensure that competitive bidding processes are employed to the maximum extent required by law. The purpose of this Management Memo is to provide requirements for the acquisition of information technology and non-information technology goods and services obtained through the use of CMAS, Master Agreements, and Non-Competitively Bid acquisition methods.

In accordance with the Governor's Task Force on Contracting and Procurement Review Report, DGS is developing formal delegated purchasing authority requirements for state departments' use of the CMAS/Master Agreements known as leveraged procurement agreements (LPA), including a requirement that departments formally request the authority to use the LPA's. Those requirements will become effective July, 2003. In the interim, all departments are hereby granted delegated purchasing authority to use the state's LPA's in accordance with the relevant agreement requirements (e.g., CMAS Agency Packet, Master Agreement User Guides) and within the parameters of this Management Memo. This authority is a continuation of the authority historically granted by DGS to all departments. All PCO's will be notified when the new requirements are released. DGS cautions departments to differentiate between delegated purchasing authority for the use of LPA's and delegated purchasing authority to conduct competitive procurements.

Separate standards and processes are required for contracts \$250,000 or less and those greater than \$250,000. These are delineated in Attachments A and B. Attachment A provides requirements for acquisitions from CMAS and Master Agreements, distinguishing between information technology (IT) acquisitions and non-information technology (non-IT) acquisitions, and is further categorized by dollar threshold. Attachment B provides requirements for Non-Competitively Bid (NCB) contracts, again distinguishing between IT and non-IT acquisitions and categorized by dollar threshold. Attachments C and D identify and provide further procedures for exempting contracts from the requirements of this Management Memo, subject to specific conditions. Attachment C exempts contracts by statute and Attachment D exempts contracts by policy. Attachment D also provides direction on how to amend a contract that was previously competitively bid. Any contracts issued pursuant to this Management Memo cannot exceed a department's purchasing authority. Contracts and contract amendments exceeding a department's purchasing authority must be issued/approved by the DGS.

1. As a result of the recommendations contained in the Governor's Task Force on Contracting and Procurement Review Report, each agency/department/commission/board shall designate and maintain a Procurement and Contracting Officer (PCO) as a single point of contact. The PCO will:
  - Be responsible for all procurement and contracting activities within the department.
  - Be the person the DGS will contact for participation in procurement and contracting activities.

- Fulfill the agency officer requirement identified in Public Contract Code (PCC) section 10333(a)(1) as well as section 10351(a)(1).
- Serve as the contract officer identified in the State Contracting Manual (SCM), section 9.02A.
- Approve the department's Request for Delegated Purchasing Authority (Request) prior to submission of the Request to the DGS, including requests for any outlying offices. (Outlying offices include, but are not limited to, correctional facilities, district agricultural associations, hospitals, developmental centers, field offices, and district offices.)
- Serve as department signatory on reports for purchasing program compliance reviews conducted by the DGS, including reports for any outlying offices.

The following information was required to be submitted by 1/31/03.

Name, Working Title, State Classification, Department  
Street Address, including address, city, and zip code  
Mailing Address, including address, city, and zip code; IMS Code  
Phone Number, including area code; Fax Number, including area code  
E-mail address

This information must be kept updated. Please submit changes to Cheri Shaw, Purchasing Authority Management Section, Procurement Division, at (916) 375-4350 or [cheri.shaw@dgs.ca.gov](mailto:cheri.shaw@dgs.ca.gov).

2. Failure to comply with the procedures and requirements provided in this Management Memo **will** result in the loss of purchasing authority and/or contract approval exemptions.
3. Contracts shall not be executed, and/or work shall not be commenced until all of the approvals required by this Management Memo and Attachments have been obtained.
4. Contracts for services procured pursuant to Government Code Section 4525 et seq, are exempt from this Management Memo.
5. The departmental approval limit for Non-IT service contracts is \$50,000.00 unless DGS-Office of Legal Services (OLS) has granted increased authority. Contracts exceeding these limits must be submitted to DGS-OLS for approval.
6. Application of the requirements of this Management Memo to Master agreements shall be as follows:
  - a. Master Agreements using a Pre-qualified list of suppliers: Competition must be achieved when awarding contracts to a pre-qualified list of suppliers. To ensure that competition is achieved to the fullest extent possible, pre-qualified bidders on the master agreement must have an opportunity to compete. Follow the applicable User Guide for each Master Agreement. The dollar limit for orders using information technology master agreements is \$500,000 unless prior approval has been granted from DGS-PD to exceed that amount. See Attachment A for requirements.

Amendments to contracts based on these Master Agreements are exempt from the Non-Competitively Bid Contract process of Attachment B, if the evaluation of the original Request for Offers evaluated options for changes to the Scope of Work, e.g., quantity or time, to be undertaken by the amendment.

- b. Master Agreements based on competition: Information on how to purchase from Master Agreements based on competition, such as the CAL-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc., is published on the Procurement Division website. (See #11 below) Follow the applicable User Guide for each Master Agreement.

Amendments to contracts based on these Master agreements are exempt from the requirements of Attachment B and are not considered NCB contracts.

- c. Information on how to acquire goods through the State Price Schedules and Statewide Contracts is available on DGS-PD's website at: [www.dgs.ca.gov\pd](http://www.dgs.ca.gov\pd).

7. This Management Memo shall apply to amendments as follows:

- a. The requirements apply to amendments of existing non-competitively bid contracts based on the cumulative dollar value after including the amendment.
- b. The requirements apply to amendments to a previously competitively bid contract when the originally awarded contract is to be amended to increase the monetary value of the contract and such increase was not considered during the original evaluation process.

Amendments in a. and b. above shall be based on the cumulative value after including the amendment (e.g., a \$200,000 contract plus a \$60,000 amendment shall be considered a \$260,000 contract, and shall be subject to the requirements accordingly).

Amendments in a. and b. above may be executed for incidental omissions such as: transposition of numbers from the solicitation bid response to the purchase order, or for inadvertent failures to include such things as contact names or for mistyped addresses. This does not apply to changes in quantity or time, see Attachments A and B.

- 8. Acquisitions and contracts not addressed by this Management Memo are subject to the DGS' oversight and must be processed in accordance with existing statutory requirements as well as applicable Procurement Division Delegated Purchasing Authority requirements and/or the State Contracting Manual.
- 9. Order of precedence: In applying these Management Memo requirements, the precedence shall be applied in the following order:
  - a. Management Memo 03-10
  - b. Procurement Division Delegated Purchasing Authority Manual (a.k.a. Delegation Guidelines) for information technology (IT) goods and services and non-IT goods; State Contracting Manual for Non-IT services.

Copies of these documents are available on either the Procurement Division website at: [www.dgs.ca.gov\pd](http://www.dgs.ca.gov\pd) or the Office of Legal Services website at: [www.ols.dgs.ca.gov](http://www.ols.dgs.ca.gov).

- 10. The requirements provided in this Management Memo are subject to future revision as determined by DGS.

11. Additional information regarding this Management Memo will be published on the Procurement Division website ([www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd)) as it becomes available. Of particular interest will be the FAQ (Frequently Asked Questions) section, which will address common inquiries regarding the application of the procurement requirements addressed herein.
12. Although all Constitutional Officers, the University of California, the California State University, the Lottery Commission, the Public Employees' Retirement System, the State Teachers' Retirement System, the State Compensation Insurance Fund, and other independent state entities are exempt from this Management Memo, they are encouraged to take all necessary actions to comply with the intent of this Management Memo. This Management Memo does not cover contracts by local government entities.

Questions regarding this Management Memo may be directed to:

IT Goods & Services, Non-IT Goods:

Glenn Ford  
Customer Relations Management  
Department of General Services  
Procurement Division  
Telephone: (916) 375-4566  
e-mail: [glenn.ford@dgs.ca.gov](mailto:glenn.ford@dgs.ca.gov)

Non-IT Services:

Kathleen A. Yates, Senior Staff Counsel  
Department of General Services  
Office of Legal Services  
Telephone: (916) 376-5115  
e-mail: [kathleen.yates@dgs.ca.gov](mailto:kathleen.yates@dgs.ca.gov)

Questions related to **status** of Non-Competitive Bid (NCB) documents may be directed to:

Sallianne Salinas  
Technology Acquisitions  
Department of General Services  
Procurement Division  
Telephone: (916) 375-4486  
e-mail: [sallianne.salinas@dgs.ca.gov](mailto:sallianne.salinas@dgs.ca.gov)

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J. Clark Kelso, Interim Director  
Department of General Services

Attachments

## Dollar Thresholds -- What To Do -- Attachment A-1

### CMAS and Master Agreements

<b>IT Goods and Services*</b>	
<b>Amendments</b>	Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment. Amendments must be compliance with this MM 03-10 paragraph 7.
<b>Over \$ 500,000.00 Master Agreements ONLY</b>	<ol style="list-style-type: none"> <li>1. Obtain approval of DGS-PD to exceed the \$500,000.00 ordering limit; request must include at a minimum the following: project description, dollar value of the request, evaluation criteria to be used. All Requests for Offer (RFO) that exceed \$500,000.00 must be reviewed and approved by DGS-PD prior to release of the RFO. Prior to contract award, an Evaluation and Selection Report (E&amp;SR) must be submitted to DGS-PD for concurrence with the intended awardee. Additional measures may be required by DGS. Submit all requests for exemption and requests for examples of E&amp;SR's to DGS-PD, Technology Acquisitions Section</li> <li>2. All qualified suppliers must be contacted, unless otherwise specified in the applicable User Guide.</li> <li>3. All orders must be reported to DGS within 5 working days of award using the Notice of Contract Award form.</li> </ol>
<b>\$ 500,000.00 and under</b>	Orders may not exceed \$500,000.00 unless an exemption is granted as provided above. Exemptions to the CMAS dollar limit are not allowed.
<b>Over \$250,000.00</b>	<ol style="list-style-type: none"> <li>1. Same instructions as in item 1 of "\$5,000.00 to \$250,000.00".</li> <li>2. All orders must be reported to DGS within 5 working days of award using the Notice of Contract Award form. If only 1 offer is received, documentation required in item 1 of "\$5,000.00 to \$250,000.00" must be included with the Notice of Contract Award.</li> <li>3. No variance of model contract terms is allowed.</li> <li>4. Approval by Agency Secretary and Department Director or immediate next ranking official is required. Approval must be contained on the purchase order or contracting vehicle; the location on the ordering document for the signatures is up to each individual ordering entity.</li> </ol>
<b>\$5,000.00 to \$250,000.00</b>	<ol style="list-style-type: none"> <li>1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-1) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.</li> <li>2. No variance of model contract terms is allowed.</li> <li>3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.</li> </ol>
<b>Under \$5,000.00</b>	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000 to \$250,000.00" apply, except for best value determination.

**\*Best value criteria must be determined prior to solicitation of offers.**

## Dollar Thresholds -- What To Do – Attachment A-2

### CMAS and Master Agreements

	<b>Non-IT Services*</b>
<b>Amendments</b>	Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed. Amendments must be compliance with this MM 03-10 paragraph 7.
<b>\$5,000.00 to \$250,000.00</b>	<ol style="list-style-type: none"> <li>1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-2) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.</li> <li>2. No variance of model contract terms is allowed.</li> <li>3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.</li> <li>4. CMAS and Master Agreement orders for non-IT services may not exceed \$250,000.00.</li> </ol>
<b>Over \$50,000.00</b>	<ol style="list-style-type: none"> <li>1. CMAS orders, DGS-PD review and approval required.</li> <li>2. Master Agreements, DGS-OLS review and approval required.</li> </ol>
<b>Under \$5,000.00</b>	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000.00 to \$250,000.00" apply.

**\*Best value criteria must be determined prior to solicitation of offers.**

## Dollar Thresholds -- What To Do – Attachment A-3

### CMAS and Master Agreements

	Non-IT Goods*
<b>Amendments</b>	Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment. Amendments must be compliance with this MM 03-10 paragraph 7.
<b>\$5,000.00 to \$100,000.00</b>	<ol style="list-style-type: none"> <li>1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-3) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.</li> <li>2. No variance of model contract terms is allowed.</li> <li>3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.</li> <li>4. CMAS and Master Agreement orders for non-IT goods may not exceed \$100,000.00.</li> </ol>
<b>Under \$5,000.00</b>	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000.00 to \$100,000" apply, except for best value determination.

**\*Best value criteria must be determined prior to solicitation of offers.**



## Dollar Thresholds -- What To Do -- Attachment B-1

### Non-Competitively Bid (NCB) Contracts

<b>IT Goods and Services</b>	
<b>Amendments</b>	Amendments to contracts must be in compliance with this MM 03-10 paragraph 7 and Attachment D, paragraph 7 a.
<b>SPECIAL CATEGORY NCB All \$\$ levels Pre-Approval by Category/Type</b>	<p>1) Only source (PCC 12102(a)(1)) 2) Emergency (PCC 12102(a)(2))</p> <p>1. See Attachment D, paragraph 11. 2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>). 3. DGS must execute all contracts for approved SCR's for departments without delegated purchasing authority and for transactions exceeding a department's delegated purchasing authority. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) for IT goods and on a memo for IT services and must include the approved SCR number.</p>
<b>Emergency contracts All \$\$ levels</b>	<p>1) Emergency (PCC 12102(a)(2))</p> <p>Departments may contract for emergencies regardless of dollar limits. Departments must obtain prior approval via the Form 42 process except for natural disasters- contact DGS-PD. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5, working days. All NCA's must include a justification describing the nature of the emergency.</p>
<b>\$25,000.01 and above</b>	<p>1) Only source (PCC 12102(a)(1))</p> <p>1. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Approval by DGS-PD is required. 2. Departments with delegated authority will submit NCB's \$25,000.01 and above to DGS-PD for approval. DGS-PD will return approved NCB's to departments for execution of contracts. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for IT goods and services within 5 days of award of the contract. 3. If the contract exceeds delegated purchasing authority, the contract must be approved and issued by DGS-PD. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) for IT goods and on a memo for IT services and must include the approved NCB contract justification and, for services, must include an Exemption from Advertising (Std. 821).</p>
<b>\$5,000.00 to \$25,000.00</b>	<p>1) Only source (PCC 12102(a)(1))</p> <p>When only one source is known, an NCB is required. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Departments with delegated purchasing authority do not need DGS approval up to this limit, however the approved NCB contract justification must be maintained in the transaction file.</p>
<b>Under \$5,000.00</b>	<p>1) Only source (PCC 12102(a)(1))</p> <p>No NCB justification is required if fair and reasonable pricing has been established and documented. If fair and reasonable pricing cannot be established and documented or two bids cannot be obtained, an NCB justification is required (see \$5,000 to \$25,000). Departments without IT delegated purchasing authority must submit a procurement request to PD and attach an approved NCB contract justification.</p>

\*Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.

## Dollar Thresholds -- What To Do – Attachment B-2

### Non-Competitively Bid (NCB) Contracts

	<b>Non-IT Services</b>
<b>Amendments</b>	Amendments to contracts must be in compliance with MM 03-10 paragraph 7.a. and Attachment D, paragraph 7.b.
<b>SPECIAL CATEGORY NCB All \$\$ levels Pre-Approval by Category/Type</b>	<p>1) PCC 10340 Only source or DGS Director determines compliance with the state's best interest</p> <p>1. See Attachment D, paragraph 11. 2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>).</p>
<b>Emergency contracts All \$\$ levels</b>	<p>1) PCC 10340</p> <p>Departments may contract for emergencies regardless of dollar limits. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5 working days.</p>
<b>\$5,000.00 and above</b>	<p>1) PCC 10340 Only source or DGS Director determines compliance with the state's best interest</p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.</p> <p>All Non-Competitively Bid Contract requests must be submitted to DGS-PD for approval. Attach a Std. 821.</p>
<b>Under \$5,000.00</b>	<p>1) GC 14838.5</p> <p>DGS approval not required. However, fair and reasonable pricing must be established and documented. If fair and reasonable cannot be established and documented, an NCB is required and the signed form must be maintained in the transaction files for documentation purposes</p>

**Note:** NCB's for non-IT services do not require submission of a Notice of Contract Award, except for emergencies.

## Dollar Thresholds -- What To Do – Attachment B-3

### Non-Competitively Bid (NCB) Contracts

	Non-IT Goods
<b>Amendments</b>	Amendments to contracts must be in compliance with this MM 03-10 paragraph 7.a. and Attachment D, paragraph 7. a.
<b>SPECIAL CATEGORY NCB All \$\$ levels** Pre-Approval by Category/Type</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 10301)</li> <li>2) Emergency (PCC 10302)</li> </ol> <ol style="list-style-type: none"> <li>1. See Attachment D, paragraph 11.</li> <li>2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>).</li> <li>3. DGS must execute all contracts for approved SCR's for departments without delegated purchasing authority and for transactions exceeding a department's delegated purchasing authority. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) and must include the approved SCR number.</li> </ol>
<b>Emergency contracts All \$\$ levels</b>	<ol style="list-style-type: none"> <li>1) Emergency (PCC 10302)</li> </ol> <p>Departments may contract for emergencies regardless of dollar limits. Departments must obtain prior approval via the Form 42 process except for natural disasters- contact DGS-PD. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5, working days. All NCA's must include a justification describing the nature of the emergency.</p>
<b>\$25,000.01 and above</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 10301)</li> </ol> <ol style="list-style-type: none"> <li>1. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Approval by DGS-PD is required.</li> <li>2. Departments with delegated authority over \$25,000 will submit NCB's \$25,000.01 and above to DGS-PD for approval. DGS-PD will return approved NCB's to departments for execution of contracts. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for IT goods and services within 5 days of award of the contract.</li> <li>3. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for non-IT goods within 5 days of award of the contract.</li> <li>4. If the contract exceeds delegated purchasing authority, the contract must be approved and issued by DGS-PD. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) and must include the approved NCB contract justification.</li> </ol>
<b>\$5,000.00 ** to \$25,000.00</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 10301)</li> </ol> <p>When only one source is known, an NCB is required. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Departments with delegated purchasing authority do not need DGS approval up to this limit, however the approved NCB contract justification must be maintained in the transaction file.</p>
<b>Under \$5,000.00**</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 10301)</li> </ol> <p>No NCB justification is required if fair and reasonable pricing has been established and documented. If fair and reasonable pricing cannot be established and documented or two bids cannot be obtained, an NCB justification is required (see \$5,000 to \$25,000). All departments have purchasing authority up to \$100, however departments without goods delegated purchasing authority must submit a procurement request (Purchase Estimate, Std. 66) to DGS-PD and attach an approved NCB contract justification for NCB's above \$100.</p>

\*Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.

**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](http://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.**

**Attachment C**  
**Management Memo 03-10**

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.

**Attachment C**  
**Management Memo 03-10**

- **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.**

**Attachment D**  
**Management Memo 03-10**

**Contracts Exempt by Policy**

**The following categories of contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt based on a determination by DGS that competitive bidding is not feasible (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 a department's approval authority must be submitted to DGS for approval and acquisition transactions exceeding delegated purchasing authority are required to be awarded by DGS.**

- 1. Refuse and/or sewage disposal contracts where there is no competition because there is a single authorized franchise dealers providing services to a specific geographical area.**
- 2. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), 911 emergency ambulance service calls and ambulance service calls where there is a single provider serving a geographical area.**
- 3. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.**
- 4. Public entertainment contracts for state-sponsored fairs and expositions.**
- 5. Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to Government Code 19130(a).**
- 6. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption extend beyond six months for a particular amendment.**

**Attachment D  
Management Memo 03-10**

- 7. Amendments to existing contracts which were originally competitively bid subject to the following restrictions:**
- a) Competitively bid contracts for both information technology goods and services and non-information technology goods, and which included options for changes (e.g., quantity or time) may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the solicitation process.**
  - b) Competitively bid contracts for non-information technology services which do not include options to extend may be amended as follows:**
    - Exemption shall only apply to the first amendment;**
    - Amendment shall add time only, not to exceed one year, or add not more than 30% of the original contract value, not to exceed \$250,000;**
    - The original contract must have permitted the amendment.**
- 8. Contracts for conference or meeting facilities, including room accommodations for conference attendees. Note: This exception applies only in circumstances where facilities to be provided are less than \$250,000; for facilities exceeding this amount, the requirements regarding non-competitive bid contracts for \$250,000 or more apply.**
- 9. Contracts for services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the restrictions imposed by the Executive Order and Management Memo subject to compliance with the following requirements and limitations:**
- Agencies must prepare their Statement of Work (SOW).**
  - Office of HIPAA Implementation (OHI) reviews and approves all SOWs to ensure the agency complied with their HIPAA work plan.**
  - For contracts less than \$500,000, agencies must obtain a minimum of three (3) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.**
  - For contracts greater than \$500,000, agencies must obtain a minimum of six (6) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state. If six (6) written offers cannot be obtained, the file must be documented with the reasons why suppliers did not respond. The file must contain responses and offers to equal six (6) contacts.**
  - Contracts/amendments providing for a contract value greater than \$50,000 for non-IT services are subject to review and approval by DGS.**



**Attachment D  
Management Memo 03-10**

- **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for non-IT services are reviewed by OHI and approved by DGS.**
  - **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for IT services are reviewed by OHI and approved by DGS.**
  - **Contracts/amendments providing for a contract value greater than \$5 million are reviewed by OHI and DGS and approved by the Department of Finance.**
- 10. Amendments to the California Integrated Information Network (CIIN) Agreement (CNT-001) to add products and services defined as mandatory per Management Memo 97-01 and DOIT Directive 1999-01. These mandatory services are defined as Lineside, Voice Network, Data Services, and Billing Services.**
- 11. Categories of contracts for the purchase of goods or services necessary to achieve program objectives in a timely manner, where the Department of General Services has determined in advance, in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required. Any individual order placed against a specified contract pursuant to this exemption that exceeds \$250,000 shall also require the approval of the Department of General Services. Special Category NCB Requests must be approved by the Department's Director and Agency Secretary or immediate next ranking official prior to obtaining DGS approval. Transactions placed against the approved Special Category NCB do not require these signatures. See the website [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd) for the form and instructions.**
- 12. Proprietary pharmaceuticals and proprietary vaccines for which there are no generic equivalents and for which the Department of General Services will enter into contracts/price agreements with either the manufacturer or distributor. This commodity will be for the proprietary pharmaceuticals, proprietary vaccines purchased for public health programs by the Department of Health Services, Proprietary Vaccines used by state, local and public agency governmental entities, federal contracts as described in the 1990 Sharing Act, Botulism Immune Globulin Program, and pharmaceuticals outlined in Government Code, Chapter 12 (commencing with Section 14977) to Division 3 of Title 2. There will be no dollar limit on these acquisitions; master agreements will be established only by the Department of General Services for purchasing by state and local entities.**
- 13. Proprietary subscriptions, proprietary publications and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to \$250,000.**

**Attachment D  
Management Memo 03-10**

- 14. Rental of proprietary postage meters are exempt if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area.**

**This exemption applies only in circumstances where annual postage meter rental services to be provided are less than \$100,000.**

**Rental service agreements for stand-alone proprietary postage meters, which are not interfaced, or intermembered with mailing equipment must be competitively bid.**

**Miscellaneous:**

**In determining whether the acquisitions of a particular state agency is exempt from this Management Memo, the funding source for the acquisition shall be determinative, notwithstanding the fact that DGS may be the procuring entity.**

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P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555  
Telephone: (916) 324-5467  
Facsimile: (916) 324-8835  
E-Mail: ramon.delaguardia@doj.ca.gov

June 6, 2001

Stanley T. Nishimura  
Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833-2936

RE: Contracting For Publication of State Building Standards Code

Dear Mr. Nishimura :

You have requested advice on the following question:

**Is the California Building Standards Commission required to seek competitive bids for any part of the California Building Standards Code or may the Commission arrange for publication of the Code on a sole-source basis?**

**CONCLUSION**

**If it obtains the appropriate administrative approvals, the Commission may arrange for publication of the Building Standards Code on a sole-source basis.**

**ANALYSIS**

The *California Building Standards Code* (the *Code*) is published as Title 24 of the California Code of Regulations and is comprised of twelve parts.<sup>1</sup> The Building Standards Law requires the Commission to publish or cause to be published a new edition of the *Code* every three years.<sup>2</sup>

The Commission has adopted three types of building standards: (1) standards directly adopted without change from model codes (un-amended model codes); (2) standards adopting model codes but amending them where necessary to meet California conditions (amended model codes); and, (3) standards written and adopted by California agencies to address particular California concerns that are not addressed in any model code.

The Building Standards law allows the Commission to either incorporate adopted Model Codes by reference or publish them in their entirety, but provides:

“ . . . no textual material contained in any of the model codes, as enumerated in Section 18916, shall be included in the California Building Standards Code by means other than incorporation by reference, unless the commission and the governing body of the organization that publishes the model codes first reach a written agreement concerning

the terms and conditions of the publication, including, but not limited to, whether the publication will be by the commission or the model codes organization or both.”

Health and Safety Code section 18928.1

We are informed that prior to 1989, the State Printer of California published the California Building Standards Code but that the State Printer does not have the resources to publish the *Code*. Furthermore, recent editions of the *Code* have incorporated the text of the

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<sup>1</sup> The parts of the *California Building Standards Code* are:

- Part 1 -- Building Standards Administrative Code
- Part 2 -- Building Code (based upon the *Uniform Building Code* of the International Conference of Building Officials)
- Part 3 -- Electrical Code (based upon the *National Electrical Code* of the National Fire
- Part 4 -- Mechanical Code (based upon the *Uniform Mechanical Code* of the International Conference of Building Officials)
- Part 5 -- Plumbing Code (based upon the *Uniform Plumbing Code* of the International Association of Plumbing and Mechanical Officials)
- Part 6 -- Energy Code
- Part 7 -- Elevator Safety and Construction Code
- Part 8 -- Historical Code
- Part 9 -- Fire Code (based upon the *Uniform Fire Code* of Western Fire Chiefs Association)
- Part 10 -- Building Conservation Code (based upon the *Uniform Code for Building Conservations* of the International Conference of Building Officials)
- Part 11 -- NOT USED
- Part 12 -- Reference Standards Code

<sup>2</sup>See Health and Safety Code section 18942.

Stanley T. Nishimura  
June 6, 2001  
Page 3

model codes and have been published by the organizations that publish the model code without competitive bidding. The Commission is now preparing to publish the next edition of the *Code*.

The Commission had both the authority and discretion to incorporate the text of the model codes into the *Code*. It is certainly more efficient and useful to include the text of model codes in the official California *Code*. Having the complete text in the *Code* saves users time and money and avoids the delay of cross-referencing.

The contract for publication of the *Code* is a services contract and would ordinarily be subject to the competitive bidding requirements of the Public Contract Code for services contracts. (Pub. Contract Code §§ 1010335 et seq.). However, state agencies may contract for services without competitive bidding provided they comply with the criteria of the Department of General Services for the award of contracts on a non-competitive basis. (Pub. Contract Code §§ 10348, 10339).

The contract for the publication of the *Code* is unique because the Model Code agencies own the copyright to the text of the model codes and the Legislature has directed the Commission to negotiate for the publication of the code. (Health & Saf. Code §18928.1). Because the Commission must negotiate with the authors of the model codes before it can publish the text of the model codes, it is likely that it is more cost effective to award the contract to publish the *Code* on a sole-source basis because it is doubtful a publisher who did not own the copyright to the model codes could print the *Code* for less than the copyright holders.

However, as a state agency, the Commission is subject to the requirements of Executive Order W-103-94 which requires the agency secretary's approval of sole-source contracts and compliance with Department of General Service guidelines<sup>3</sup> for sole-source contracts. There are several parts of the *Code* that are not model codes and for which no outside entity owns the copyright. We cannot determine whether these should be published on a competitive basis or on a sole-source basis. It may be that it is more cost-effective and there would be more uniformity if these parts were published by one of the model code publishers. This is something Commission staff should discuss with the Department of General Services and the Agency Secretary.

Another aspect of the Department of General Services approval are the statutory requirements<sup>4</sup> involving civil service considerations, we recommend you also confirm that the State Printer cannot publish the *Code*.

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<sup>3</sup> The guidelines are found in DGS Management Memo 96-16 (formerly 94-16) and Section 5.70 of the State Contracting Manual.

<sup>4</sup> See Public Contract Code section 10337, Government Code section 19130.

Stanley T. Nishimura  
June 6, 2001  
Page 4

Sincerely,

RAMON DE LA GUARDIA  
Deputy Attorney General

For BILL LOCKYER  
Attorney General

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June 6, 2001

Stanley T. Nishimura  
Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833-2936

RE: Contracting For Publication of State Building Standards Code

Dear Mr. Nishimura :

You have requested advice on the following question:

**Is the California Building Standards Commission required to seek competitive bids for any part of the California Building Standards Code or may the Commission arrange for publication of the Code on a sole-source basis?**

#### CONCLUSION

**If it obtains the appropriate administrative approvals, the Commission may arrange for publication of the Building Standards Code on a sole-source basis.**

#### ANALYSIS

The *California Building Standards Code* (the *Code*) is published as Title 24 of the California Code of Regulations and is comprised of twelve parts.<sup>1</sup> The Building Standards Law requires the Commission to publish or cause to be published a new edition of the *Code* every three years.<sup>2</sup>

The Commission has adopted three types of building standards: (1) standards directly adopted without change from model codes (un-amended model codes); (2) standards adopting model codes but amending them where necessary to meet California conditions (amended model codes); and, (3) standards written and adopted by California agencies to address particular California concerns that are not addressed in any model code.

The Building Standards law allows the Commission to either incorporate adopted Model Codes by reference or publish them in their entirety, but provides:

“ . . . no textual material contained in any of the model codes, as enumerated in Section 18916, shall be included in the California Building Standards Code by means other than incorporation by reference, unless the commission and the governing body of the organization that publishes the model codes first reach a written agreement concerning

the terms and conditions of the publication, including, but not limited to, whether the publication will be by the commission or the model codes organization or both.”

Health and Safety Code section 18928.1

We are informed that prior to 1989, the State Printer of California published the California Building Standards Code but that the State Printer does not have the resources to publish the *Code*. Furthermore, recent editions of the *Code* have incorporated the text of the

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- Part 6 -- Energy Code
- Part 7 -- Elevator Safety and Construction Code
- Part 8 -- Historical Code
- Part 9 -- Fire Code (based upon the *Uniform Fire Code* of Western Fire Chiefs Association)
- Part 10 -- Building Conservation Code (based upon the *Uniform Code for Building Conservations* of the International Conference of Building Officials)
- Part 11 -- NOT USED
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Stanley T. Nishimura  
June 6, 2001  
Page 3

model codes and have been published by the organizations that publish the model code without competitive bidding. The Commission is now preparing to publish the next edition of the *Code*.

The Commission had both the authority and discretion to incorporate the text of the model codes into the *Code*. It is certainly more efficient and useful to include the text of model codes in the official California *Code*. Having the complete text in the *Code* saves users time and money and avoids the delay of cross-referencing.

The contract for publication of the *Code* is a services contract and would ordinarily be subject to the competitive bidding requirements of the Public Contract Code for services contracts. (Pub. Contract Code §§ 1010335 et seq.). However, state agencies may contract for services without competitive bidding provided they comply with the criteria of the Department of General Services for the award of contracts on a non-competitive basis. (Pub. Contract Code §§ 10348, 10339).

The contract for the publication of the *Code* is unique because the Model Code agencies own the copyright to the text of the model codes and the Legislature has directed the Commission to negotiate for the publication of the code. (Health & Saf. Code §18928.1). Because the Commission must negotiate with the authors of the model codes before it can publish the text of the model codes, it is likely that it is more cost effective to award the contract to publish the *Code* on a sole-source basis because it is doubtful a publisher who did not own the copyright to the model codes could print the *Code* for less than the copyright holders.

However, as a state agency, the Commission is subject to the requirements of Executive Order W-103-94 which requires the agency secretary's approval of sole-source contracts and compliance with Department of General Service guidelines<sup>3</sup> for sole-source contracts. There are several parts of the *Code* that are not model codes and for which no outside entity owns the copyright. We cannot determine whether these should be published on a competitive basis or on a sole-source basis. It may be that it is more cost-effective and there would be more uniformity if these parts were published by one of the model code publishers. This is something Commission staff should discuss with the Department of General Services and the Agency Secretary.

Another aspect of the Department of General Services approval are the statutory requirements<sup>4</sup> involving civil service considerations, we recommend you also confirm that the State Printer cannot publish the *Code*.

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<sup>3</sup> The guidelines are found in DGS Management Memo 96-16 (formerly 94-16) and Section 5.70 of the State Contracting Manual.

<sup>4</sup> See Public Contract Code section 10337, Government Code section 19130.

Stanley T. Nishimura  
June 6, 2001  
Page 4

Sincerely,

RAMON DE LA GUARDIA  
Deputy Attorney General

For **BILL LOCKYER**  
Attorney General

**Morrison, Tom**

---

**From:** Walls, Dave  
**Sent:** Wednesday, August 15, 2007 12:23 PM  
**To:** Taylor, Jane; Nearman, Michael; Frank, Russell  
**Cc:** Morrison, Tom  
**Subject:** something to consider while working on Green Building

**What Is Not Protected by Copyright?**

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

**What Is Copyright**

Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings\*, to perform the work publicly by means of a digital audio



transmission.

In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act. For further information, request Circular 40, Copyright Registration for Works of the Visual Arts.

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 121 of the 1976 Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the 1976 Copyright Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions. For further information about the limitations of any of these rights, consult the copyright law or write to the Copyright Office.

**\*Note:** Sound recordings are defined in the law as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Common examples include recordings of music, drama, or lectures. A sound recording is not the same as a phonorecord. A phonorecord is the physical object in which works of authorship are embodied. The word "phonorecord" includes cassette tapes, CDs, LPs, 45 r.p.m. disks, as well as other formats.

Dave Wallis, Executive Director  
California Building Standards Commission  
2525 Natomas Park Dr., Suite 130  
Sacramento, CA 95833  
(916) 263-0916



*proprietary publication***Morrison, Tom**

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**From:** Kerns, Deborah  
**Sent:** Friday, June 23, 2006 3:36 PM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

I met with our Chief counsel and we need to proceed with the NCB – please prepare a draft and I will review with you and assist with the process. Thank you

Deborah J. Kerns  
Staff Counsel III (Specialist)  
Office of Legal Services  
Department of General Services  
916-376-5105 - phone  
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[deborah.kerns@dgs.ca.gov](mailto:deborah.kerns@dgs.ca.gov)

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Tuesday, June 20, 2006 2:07 PM  
**To:** Kerns, Deborah  
**Subject:** RE: Publication Agreements for Title 24

Thanks, Debbie.

Thomas L. Morrison, Deputy Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, California 95833  
(916) 263-0916  
(916) 263-0959 FAX  
[tom.morrison@dgs.ca.gov](mailto:tom.morrison@dgs.ca.gov)

-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Tuesday, June 20, 2006 1:54 PM  
**To:** Morrison, Tom  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

Hi Tom, before you do any more work on the NCB, I am going to confer internally to confirm whether an NCB is required. I will keep you posted.

Deborah J. Kerns  
Staff Counsel III (Specialist)  
Office of Legal Services  
Department of General Services  
916-376-5105 - phone  
916-376-5088 - fax  
[deborah.kerns@dgs.ca.gov](mailto:deborah.kerns@dgs.ca.gov)

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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Tuesday, June 20, 2006 1:24 PM  
**To:** Kerns, Deborah  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

Deborah,

Attached are three draft NCB forms, one for the International Code Council (ICC) for model code based parts of Title 24, one for the International Association of Plumbing and Mechanical Officials also for model code based parts, and one for ICC for non-model code based parts, for your review.

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[tom.morrison@dgs.ca.gov](mailto:tom.morrison@dgs.ca.gov)

-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Thursday, June 15, 2006 8:12 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Tom, The AG letter states that the BSC may arrange for publication of the Code on a sole-source basis if it obtains the appropriate administrative approvals. Do you have any written documentation from PD of the meeting 3 years ago that states BSC does not need to complete an NCB form – if you do then please fax it to me. Otherwise, please begin drafting the NCB form and I can review it. Thank you

Deborah J. Kerns  
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-----Original Message-----

**From:** Morrison, Tom  
**Sent:** Wednesday, June 14, 2006 4:59 PM  
**To:** Kerns, Deborah  
**Subject:** RE: Publication Agreements for Title 24





Deborah,

The advice letter from the Department of Justice stated that the commission should discuss the issue of treating the non-model code based parts of Title 24 as proprietary documents with the Department of General Services (DGS). The commission had that discussion with DGS' Procurement Division (PD) in 2003.

In that meeting the commission was told that it did not need to complete Non-Competitive Bid forms for the publication of any part of Title 24, model code based or not. If the commission submitted Non-Competitive Bid (NCB) forms now, the forms would either confuse PD or re-open an issue that had been resolved via the meeting in three years ago.

If you think we need to revisit this with PD again, we would appreciate your assistance in completing the NCB forms. I would send you drafts to look over. Please let me know as soon as possible.

On the other matter, I will contact the State Printer regarding their continuing to not want to publish and sell Parts 1, 6, 7, 8, and 12 (non-model code based parts) of Title 24.

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-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Wednesday, June 14, 2006 3:28 PM  
**To:** Morrison, Tom  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

Hi Tom, I suggest contacting the State Printer, Geoff Brandt, and receive confirmation in writing whether or not OSP could publish the codes.

Regarding the June 6, 2001 letter from AG de La Guardia regarding the need to obtain sole source approval that you faxed to me, it looks like you will need to do the paperwork to obtain this approval from procurement. I can assist you if you get me a draft. Thank you

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**From:** Morrison, Tom  
**Sent:** Tuesday, June 13, 2006 9:39 AM

**To:** Kerns, Deborah  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

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OSP was only glad to give up Title 24, because they did not like having to sell it, maintain subscription lists, and take all the telephone calls that came to them as a result of being the seller of it. This may have been resource-driven as it states in the Department of Justice's advice letter, but I also remember that having to sell Title 24 was an issue.

I don't know whether or not Stan confirmed with OSP, in 2001, that OSP did not want to take back Title 24. Should we confirm with OSP (again)? If so, do you have a suggestion as to who the commission should contact?

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-----Original Message-----

**From:** Kerns, Deborah  
**Sent:** Tuesday, June 13, 2006 8:51 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Thank you Tom, also have you checked with DGS Office of State Publishing to find out if they could publish the codes? In the June 6, 2001 letter from the AG's office Ramon de la Guardia, he recommends that BSC confirm that the State Printer cannot publish the Code.

Deborah J. Kerns  
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**Sent:** Tuesday, June 13, 2006 8:11 AM  
**To:** Kerns, Deborah  
**Subject:** RE: Publication Agreements for Title 24

Bob French and his managers, I don't recall who else specifically, but it was all the players at Procurement that we had been dealing with over several months on this issue. It was a meeting that Stan attended and I participated in via teleconference. One of the other people at PD that we had been dealing with on this issue was Marnell Voss. (PD pointed the commission to the management memo that had the exemption in it for proprietary documents.)

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**From:** Kerns, Deborah  
**Sent:** Tuesday, June 13, 2006 7:59 AM  
**To:** Morrison, Tom  
**Subject:** RE: Publication Agreements for Title 24

Hi Tom, who at DGS did you have the discussions with? i.e. DGS stated...

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**From:** Morrison, Tom  
**Sent:** Monday, June 12, 2006 4:55 PM  
**To:** Kerns, Deborah  
**Subject:** Publication Agreements for Title 24

Deborah,

For your information, the California Building Standards Commission (Commission) is planning to enter into agreements for the publication of the California Building Standards Code (Title 24). We are proceeding based on information that we received in an advice letter from the Department of Justice

(DOJ) in 2001 (to be faxed), in a Management Memo 03-10 (attached), and in a discussion with the Department of General Services' (DGS) Procurement Division.

DOJ's advice letter concluded that, "If it obtains the appropriate administrative approvals, the Commission may arrange for publication of the Building Standards Code [all eleven parts] on a sole-source basis." The letter stated that it may be more cost-effective and that there would be more uniformity if the parts of Title 24 not based on model codes were published by one of the model code publishers, and that this was something to be discussed with the Department of General Services and the State and Consumer Services Agency Secretary.

Management Memo 03-10 concerns the requirements for the use of California Multiple Award Schedules, Master Agreements and Non-Competitively Bid Contracts. Attachment D to the memo states that categories of contracts listed in the Attachment may be awarded without competitive bidding and that they are exempt based on a determination by DGS that competitive bidding is not feasible.

In 2003 during a discussion, DGS reasoned that the parts of Title 24 based on model codes fall into the category of proprietary publications and are therefore exempt. DGS also reasoned that the parts of Title 24 not based on model codes would be treated as proprietary publications, because no bidder could publish these parts for zero dollars, as model code publishers would, and that there would be more uniformity in the publication of Title 24.

DGS further stated that the Commission did not need to prepare sole-source contracts because of the exemption. Therefore, as the Commission did after the discussion with DGS, it is preparing again to enter into agreements with the model code publishing organizations to publish all parts of Title 24, without competitively bidding them or completing sole-source forms.

The agreements will be signed by the head of the publishing organization and the Secretary of the State and Consumer Services Agency, as before. Do you have any comments? I would appreciate your comments as soon as possible, given our extremely aggressive work schedule.

Thomas L. Morrison, Deputy Executive Director  
California Building Standards Commission  
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**Morrison, Tom**

**From:** Blair, Guy  
**Sent:** Thursday, June 22, 2006 9:18 AM  
**To:** Morrison, Tom  
**Subject:** RE: Printing Procurements

I apologize for not including that section in my previous message. The section follows. It does not specifically state that printing is a commodity. It only states that it is not considered a service as it relates to GC Section 19130.

14612.5. Notwithstanding any other provision of law, for state printing procurement purposes, printing is not considered a personal service contract as defined in Section 19130.

Guy Blair  
Administration Manager  
Office of State Publishing  
323-0309 Work  
240-1468 Cell  
323-0308 Fax

-----Original Message-----  
**From:** Morrison, Tom  
**Sent:** Thursday, June 22, 2006 9:10 AM  
**To:** Blair, Guy  
**Subject:** RE: Printing Procurements  
**Importance:** High

Guy,

Can you direct me to the '97-98 budget language that Geoff was referring to where it defined printing as a commodity, not a service?

Thomas L. Morrison, Deputy Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, California 95833  
(916) 263-0916  
(916) 263-0959 FAX  
tom.morrison@dgs.ca.gov

-----Original Message-----  
**From:** Blair, Guy  
**Sent:** Thursday, June 22, 2006 8:48 AM  
**To:** Morrison, Tom  
**Cc:** Brandt, Geoff  
**Subject:** Printing Procurements

Good Morning Tom,

The State Printer, Geoff Brandt, asked that I send you information regarding your acquiring printing from a private printer. Following is a link to the Management Memo 02-22 that addresses this issue. You have the authority to contract out printing without prior approval of OSP. If the vend out is over \$5,000 in value, you must solicit a bid from OSP on that job.

[http://www.documents.dgs.ca.gov/osp/sam/memos/mm02\\_22.pdf](http://www.documents.dgs.ca.gov/osp/sam/memos/mm02_22.pdf)

Following is the current section of the Government Code related to this issue.

14612.2. (a) Notwithstanding Chapter 7 (commencing with Section 14850) of Part 5.5 of Division 3 of Title 2 of, or Section 14901 of, the Government Code, no agency is required to use the Office of State Publishing for its printing needs and the Office of State Publishing may offer printing services to both state and other public agencies, including cities, counties, special districts, community college districts, the California State University, the University of California, and agencies of the United States government. When soliciting bids for printing services from the private sector, all state agencies shall also solicit a bid from the Office of State Publishing when the project is anticipated to cost more than five thousand dollars (\$5,000).

(b) This section shall remain operative only until the effective date of the Budget Act of 2006 or July 1, 2006, whichever is later, and as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

Please call me at 323-0309 if you have any questions.

Guy Blair  
OSP Administration Manager  
Work 323-0309  
Cell 240-1468



**Morrison, Tom**

---

**From:** Brandt, Geoff  
**Sent:** Thursday, June 22, 2006 8:30 AM  
**To:** Morrison, Tom  
**Subject:** Title 24

The Office of State Publishing is not interested in the printing of Title 24. Geoff Brandt, State Printer



**Morrison, Tom**

---

**From:** Kerns, Deborah  
**Sent:** Wednesday, June 14, 2006 3:28 PM  
**To:** Morrison, Tom  
**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

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**Cc:** Walls, Dave  
**Subject:** RE: Publication Agreements for Title 24

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6/15/2006



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The agreements will be signed by the head of the publishing organization and the Secretary of the State and Consumer Services Agency, as before. Do you have any comments? I would appreciate your comments as soon as possible, given our extremely aggressive work schedule.

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6/15/2006



(916) 263-0959 FAX  
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# MANAGEMENT MEMO

SUBJECT:	NUMBER:
	MM 07-06
CONTRACTS FOR PRINTING	DATE ISSUED:
	JUNE 21, 2007
REFERENCES: <b>S.E.I.U., ET AL. V. CALIFORNIA OFFICE OF STATE PRINTING; CALIFORNIA CONSTITUTION, ARTICLE VII, SECTIONS 1-3; AND GOVERNMENT CODE § 14612.5</b>	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](http://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](mailto: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

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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

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**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***

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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**

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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](http://www.spb.ca.gov)).**

**MANAGEMENT MEMO**

	NUMBER: <b>MM 03-10</b>
SUBJECT: <b>REQUIREMENTS FOR THE USE OF CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS), MASTER AGREEMENTS, AND NON-COMPETITIVELY BID CONTRACTS</b>	DATE ISSUED: <b>MAY 28, 2003</b>
REFERENCES: <b>GOVERNOR'S TASK FORCE ON CONTRACTING AND PROCUREMENT REVIEW REPORT, August 30, 2002 PCC 10295, PCC 12100, et seq. RESCINDS AND SUPERSEDES MM 02-19 REVISION 3 AND ATTACHMENTS</b>	EXPIRES: <b>UNTIL RESCINDED</b> ISSUING AGENCY: <b>DEPARTMENT OF GENERAL SERVICES</b>

It is the intent of the Department of General Services (DGS) to ensure that competitive bidding processes are employed to the maximum extent required by law. The purpose of this Management Memo is to provide requirements for the acquisition of information technology and non-information technology goods and services obtained through the use of CMAS, Master Agreements, and Non-Competitively Bid acquisition methods.

In accordance with the Governor's Task Force on Contracting and Procurement Review Report, DGS is developing formal delegated purchasing authority requirements for state departments' use of the CMAS/Master Agreements known as leveraged procurement agreements (LPA), including a requirement that departments formally request the authority to use the LPA's. Those requirements will become effective July, 2003. In the interim, all departments are hereby granted delegated purchasing authority to use the state's LPA's in accordance with the relevant agreement requirements (e.g., CMAS Agency Packet, Master Agreement User Guides) and within the parameters of this Management Memo. This authority is a continuation of the authority historically granted by DGS to all departments. All PCO's will be notified when the new requirements are released. DGS cautions departments to differentiate between delegated purchasing authority for the use of LPA's and delegated purchasing authority to conduct competitive procurements.

Separate standards and processes are required for contracts \$250,000 or less and those greater than \$250,000. These are delineated in Attachments A and B. Attachment A provides requirements for acquisitions from CMAS and Master Agreements, distinguishing between information technology (IT) acquisitions and non-information technology (non-IT) acquisitions, and is further categorized by dollar threshold. Attachment B provides requirements for Non-Competitively Bid (NCB) contracts, again distinguishing between IT and non-IT acquisitions and categorized by dollar threshold. Attachments C and D identify and provide further procedures for exempting contracts from the requirements of this Management Memo, subject to specific conditions. Attachment C exempts contracts by statute and Attachment D exempts contracts by policy. Attachment D also provides direction on how to amend a contract that was previously competitively bid. Any contracts issued pursuant to this Management Memo cannot exceed a department's purchasing authority. Contracts and contract amendments exceeding a department's purchasing authority must be issued/approved by the DGS.

1. As a result of the recommendations contained in the Governor's Task Force on Contracting and Procurement Review Report, each agency/department/commission/board shall designate and maintain a Procurement and Contracting Officer (PCO) as a single point of contact. The PCO will:
  - Be responsible for all procurement and contracting activities within the department.
  - Be the person the DGS will contact for participation in procurement and contracting activities.



- Fulfill the agency officer requirement identified in Public Contract Code (PCC) section 10333(a)(1) as well as section 10351(a)(1).
- Serve as the contract officer identified in the State Contracting Manual (SCM), section 9.02A.
- Approve the department's Request for Delegated Purchasing Authority (Request) prior to submission of the Request to the DGS, including requests for any outlying offices. (Outlying offices include, but are not limited to, correctional facilities, district agricultural associations, hospitals, developmental centers, field offices, and district offices.)
- Serve as department signatory on reports for purchasing program compliance reviews conducted by the DGS, including reports for any outlying offices.

The following information was required to be submitted by 1/31/03.

Name, Working Title, State Classification, Department  
Street Address, including address, city, and zip code  
Mailing Address, including address, city, and zip code; IMS Code  
Phone Number, including area code; Fax Number, including area code  
E-mail address

This information must be kept updated. Please submit changes to Cheri Shaw, Purchasing Authority Management Section, Procurement Division, at (916) 375-4350 or [cheri.shaw@dgs.ca.gov](mailto:cheri.shaw@dgs.ca.gov).

2. Failure to comply with the procedures and requirements provided in this Management Memo **will** result in the loss of purchasing authority and/or contract approval exemptions.
3. Contracts shall not be executed, and/or work shall not be commenced until all of the approvals required by this Management Memo and Attachments have been obtained.
4. Contracts for services procured pursuant to Government Code Section 4525 et seq, are exempt from this Management Memo.
5. The departmental approval limit for Non-IT service contracts is \$50,000.00 unless DGS-Office of Legal Services (OLS) has granted increased authority. Contracts exceeding these limits must be submitted to DGS-OLS for approval.
6. Application of the requirements of this Management Memo to Master agreements shall be as follows:
  - a. **Master Agreements using a Pre-qualified list of suppliers:** Competition must be achieved when awarding contracts to a pre-qualified list of suppliers. To ensure that competition is achieved to the fullest extent possible, pre-qualified bidders on the master agreement must have an opportunity to compete. Follow the applicable User Guide for each Master Agreement. The dollar limit for orders using information technology master agreements is \$500,000 unless prior approval has been granted from DGS-PD to exceed that amount. See Attachment A for requirements.

Amendments to contracts based on these Master Agreements are exempt from the Non-Competitively Bid Contract process of Attachment B, if the evaluation of the original Request for Offers evaluated options for changes to the Scope of Work, e.g., quantity or time, to be undertaken by the amendment.



- b. **Master Agreements based on competition:** Information on how to purchase from Master Agreements based on competition, such as the CAL-Store, the Master Rental Agreement, Western States Contracting Alliance (WSCA), etc., is published on the Procurement Division website. (See #11 below) Follow the applicable User Guide for each Master Agreement.

Amendments to contracts based on these Master agreements are exempt from the requirements of Attachment B and are not considered NCB contracts.

- c. Information on how to acquire goods through the State Price Schedules and Statewide Contracts is available on DGS-PD's website at: [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd).

7. This Management Memo shall apply to amendments as follows:

- a. The requirements apply to amendments of existing non-competitively bid contracts based on the cumulative dollar value after including the amendment.
- b. The requirements apply to amendments to a previously competitively bid contract when the originally awarded contract is to be amended to increase the monetary value of the contract and such increase was not considered during the original evaluation process.

Amendments in a. and b. above shall be based on the cumulative value after including the amendment (e.g., a \$200,000 contract plus a \$60,000 amendment shall be considered a \$260,000 contract, and shall be subject to the requirements accordingly).

Amendments in a. and b. above may be executed for incidental omissions such as: transposition of numbers from the solicitation bid response to the purchase order, or for inadvertent failures to include such things as contact names or for mistyped addresses. This does not apply to changes in quantity or time, see Attachments A and B.

8. Acquisitions and contracts not addressed by this Management Memo are subject to the DGS' oversight and must be processed in accordance with existing statutory requirements as well as applicable Procurement Division Delegated Purchasing Authority requirements and/or the State Contracting Manual.
9. Order of precedence: In applying these Management Memo requirements, the precedence shall be applied in the following order:
  - a. Management Memo 03-10
  - b. Procurement Division Delegated Purchasing Authority Manual (a.k.a. Delegation Guidelines) for information technology (IT) goods and services and non-IT goods; State Contracting Manual for Non-IT services.

Copies of these documents are available on either the Procurement Division website at: [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd) or the Office of Legal Services website at: [www.ols.dgs.ca.gov](http://www.ols.dgs.ca.gov).

10. The requirements provided in this Management Memo are subject to future revision as determined by DGS.





11. Additional information regarding this Management Memo will be published on the Procurement Division website ([www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd)) as it becomes available. Of particular interest will be the FAQ (Frequently Asked Questions) section, which will address common inquiries regarding the application of the procurement requirements addressed herein.
12. Although all Constitutional Officers, the University of California, the California State University, the Lottery Commission, the Public Employees' Retirement System, the State Teachers' Retirement System, the State Compensation Insurance Fund, and other independent state entities are exempt from this Management Memo, they are encouraged to take all necessary actions to comply with the intent of this Management Memo. This Management Memo does not cover contracts by local government entities.

Questions regarding this Management Memo may be directed to:

IT Goods & Services, Non-IT Goods:

Glenn Ford  
Customer Relations Management  
Department of General Services  
Procurement Division  
Telephone: (916) 375-4566  
e-mail: [glenn.ford@dgs.ca.gov](mailto:glenn.ford@dgs.ca.gov)

Non-IT Services:

Kathleen A. Yates, Senior Staff Counsel  
Department of General Services  
Office of Legal Services  
Telephone: (916) 376-5115  
e-mail: [kathleen.yates@dgs.ca.gov](mailto:kathleen.yates@dgs.ca.gov)

Questions related to **status** of Non-Competitive Bid (NCB) documents may be directed to:

Sallianne Salinas  
Technology Acquisitions  
Department of General Services  
Procurement Division  
Telephone: (916) 375-4486  
e-mail: [sallianne.salinas@dgs.ca.gov](mailto:sallianne.salinas@dgs.ca.gov)

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J. Clark Kelso, Interim Director  
Department of General Services

Attachments

## Dollar Thresholds -- What To Do -- Attachment A-1

### CMAS and Master Agreements

	<b>IT Goods and Services*</b>
<b>Amendments</b>	Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment. Amendments must be compliance with this MM 03-10 paragraph 7.
<b>Over \$ 500,000.00 Master Agreements ONLY</b>	<ol style="list-style-type: none"> <li>1. Obtain approval of DGS-PD to exceed the \$500,000.00 ordering limit; request must include at a minimum the following: project description, dollar value of the request, evaluation criteria to be used. All Requests for Offer (RFO) that exceed \$500,000.00 must be reviewed and approved by DGS-PD prior to release of the RFO. Prior to contract award, an Evaluation and Selection Report (E&amp;SR) must be submitted to DGS-PD for concurrence with the intended awardee. Additional measures may be required by DGS. Submit all requests for exemption and requests for examples of E&amp;SR's to DGS-PD, Technology Acquisitions Section</li> <li>2. All qualified suppliers must be contacted, unless otherwise specified in the applicable User Guide.</li> <li>3. All orders must be reported to DGS within 5 working days of award using the Notice of Contract Award form.</li> </ol>
<b>\$ 500,000.00 and under</b>	Orders may not exceed \$500,000.00 unless an exemption is granted as provided above. Exemptions to the CMAS dollar limit are not allowed.
<b>Over \$250,000.00</b>	<ol style="list-style-type: none"> <li>1. Same instructions as in item 1 of "\$5,000.00 to \$250,000.00".</li> <li>2. All orders must be reported to DGS within 5 working days of award using the Notice of Contract Award form. If only 1 offer is received, documentation required in item 1 of "\$5,000.00 to \$250,000.00" must be included with the Notice of Contract Award.</li> <li>3. No variance of model contract terms is allowed.</li> <li>4. Approval by Agency Secretary and Department Director or immediate next ranking official is required. Approval must be contained on the purchase order or contracting vehicle; the location on the ordering document for the signatures is up to each individual ordering entity.</li> </ol>
<b>\$5,000.00 to \$250,000.00</b>	<ol style="list-style-type: none"> <li>1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-1) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.</li> <li>2. No variance of model contract terms is allowed.</li> <li>3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.</li> </ol>
<b>Under \$5,000.00</b>	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000 to \$250,000.00" apply, except for best value determination.

**\*Best value criteria must be determined prior to solicitation of offers.**



## Dollar Thresholds -- What To Do – Attachment A-2

### CMAS and Master Agreements

	<b>Non-IT Services*</b>
<b>Amendments</b>	Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed. Amendments must be compliance with this MM 03-10 paragraph 7.
<b>\$5,000.00 to \$250,000.00</b>	<ol style="list-style-type: none"> <li>1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-2) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.</li> <li>2. No variance of model contract terms is allowed.</li> <li>3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.</li> <li>4. CMAS and Master Agreement orders for non-IT services may not exceed \$250,000.00.</li> </ol>
<b>Over \$50,000.00</b>	<ol style="list-style-type: none"> <li>1. CMAS orders, DGS-PD review and approval required.</li> <li>2. Master Agreements, DGS-OLS review and approval required.</li> </ol>
<b>Under \$5,000.00</b>	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000.00 to \$250,000.00" apply.

**\*Best value criteria must be determined prior to solicitation of offers.**



## Dollar Thresholds -- What To Do – Attachment A-3

### CMAS and Master Agreements

	<b>Non-IT Goods*</b>
<b>Amendments</b>	Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment. Amendments must be compliance with this MM 03-10 paragraph 7.
<b>\$5,000.00 to \$100,000.00</b>	<ol style="list-style-type: none"> <li>1. Solicit a minimum of 3 offers including one small business and/or DVBE (if available) and document responses. If only 1 offer is received, the file documentation must include the reasons why the other 2 suppliers did not respond with an offer. Likewise, if only 2 offers are received, the file documentation must include the reasons why the third supplier did not respond. If more than 3 suppliers are solicited, the file need only document the responses or rationale to equal the minimum 3 offers required. If only one source is known (competing offers cannot be obtained), the non-competitive bid contract process must be followed (see Attachment B-3) or departments must conduct a competitive solicitation, if suppliers are known outside of CMAS contractors or Master Agreement contractors that can meet the department's requirements.</li> <li>2. No variance of model contract terms is allowed.</li> <li>3. Department officials must make a valid attempt to secure competition from viable contractors who are able to supply the goods and/or provide services. Neither a lack of sufficient CMAS contracts or Master Agreements nor the use of restrictive requirements meets the intent for achieving competition under this Management Memo.</li> <li>4. CMAS and Master Agreement orders for non-IT goods may not exceed \$100,000.00.</li> </ol>
<b>Under \$5,000.00</b>	Only one offer is required if it is established and documented that the price is fair and reasonable. If fair and reasonable cannot be established and documented, the requirements in "\$5,000.00 to \$100,000" apply, except for best value determination.

**\*Best value criteria must be determined prior to solicitation of offers.**



## Dollar Thresholds -- What To Do – Attachment B-1

### Non-Competitively Bid (NCB) Contracts

	<b>IT Goods and Services</b>
<b>Amendments</b>	Amendments to contracts must be in compliance with this MM 03-10 paragraph 7 and Attachment D, paragraph 7 a.
<b>SPECIAL CATEGORY NCB All \$\$ levels Pre-Approval by Category/Type</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 12102(a)(1))</li> <li>2) Emergency (PCC 12102(a)(2))               <ol style="list-style-type: none"> <li>1. See Attachment D, paragraph 11.</li> <li>2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>).</li> <li>3. DGS must execute all contracts for approved SCR's for departments without delegated purchasing authority and for transactions exceeding a department's delegated purchasing authority. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) for IT goods and on a memo for IT services and must include the approved SCR number.</li> </ol> </li> </ol>
<b>Emergency contracts All \$\$ levels</b>	<ol style="list-style-type: none"> <li>1) Emergency (PCC 12102(a)(2))</li> </ol> <p>Departments may contract for emergencies regardless of dollar limits. Departments must obtain prior approval via the Form 42 process except for natural disasters- contact DGS-PD. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5, working days. All NCA's must include a justification describing the nature of the emergency.</p>
<b>\$25,000.01 and above</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 12102(a)(1))</li> <li>1. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Approval by DGS-PD is required.</li> <li>2. Departments with delegated authority will submit NCB's \$25,000.01 and above to DGS-PD for approval. DGS-PD will return approved NCB's to departments for execution of contracts. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for IT goods and services within 5 days of award of the contract.</li> <li>3. If the contract exceeds delegated purchasing authority, the contract must be approved and issued by DGS-PD. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) for IT goods and on a memo for IT services and must include the approved NCB contract justification and, for services, must include an Exemption from Advertising (Std. 821).</li> </ol>
<b>\$5,000.00 to \$25,000.00</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 12102(a)(1))</li> </ol> <p>When only one source is known, an NCB is required. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Departments with delegated purchasing authority do not need DGS approval up to this limit, however the approved NCB contract justification must be maintained in the transaction file.</p>
<b>Under \$5,000.00</b>	<ol style="list-style-type: none"> <li>1) Only source (PCC 12102(a)(1))</li> </ol> <p>No NCB justification is required if fair and reasonable pricing has been established and documented. If fair and reasonable pricing cannot be established and documented or two bids cannot be obtained, an NCB justification is required (see \$5,000 to \$25,000). Departments without IT delegated purchasing authority must submit a procurement request to PD and attach an approved NCB contract justification.</p>

\*Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.





## Dollar Thresholds -- What To Do -- Attachment B-2

### Non-Competitively Bid (NCB) Contracts

	<b>Non-IT Services</b>
<b>Amendments</b>	Amendments to contracts must be in compliance with MM 03-10 paragraph 7.a. and Attachment D, paragraph 7.b.
<b>SPECIAL CATEGORY NCB All \$\$ levels Pre-Approval by Category/Type</b>	<p>1) PCC 10340 Only source or DGS Director determines compliance with the state's best interest</p> <p>1. See Attachment D, paragraph 11. 2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>).</p>
<b>Emergency contracts All \$\$ levels</b>	<p>1) PCC 10340</p> <p>Departments may contract for emergencies regardless of dollar limits. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5 working days.</p>
<b>\$5,000.00 and above</b>	<p>1) PCC 10340 Only source or DGS Director determines compliance with the state's best interest</p> <p>Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials.</p> <p>All Non-Competitively Bid Contract requests must be submitted to DGS-PD for approval. Attach a Std. 821.</p>
<b>Under \$5,000.00</b>	<p>1) GC 14838.5</p> <p>DGS approval not required. However, fair and reasonable pricing must be established and documented. If fair and reasonable cannot be established and documented, an NCB is required and the signed form must be maintained in the transaction files for documentation purposes</p>

**Note: NCB's for non-IT services do not require submission of a Notice of Contract Award, except for emergencies.**



## Dollar Thresholds -- What To Do -- Attachment B-3

### Non-Competitively Bid (NCB) Contracts

Non-IT Goods	
<b>Amendments</b>	Amendments to contracts must be in compliance with this MM 03-10 paragraph 7.a. and Attachment D, paragraph 7. a.
<b>SPECIAL CATEGORY NCB All \$\$ levels** Pre-Approval by Category/Type</b>	<p>1) Only source (PCC 10301) 2) Emergency (PCC 10302)</p> <p>1. See Attachment D, paragraph 11. 2. Departments must use the Special Category NCB Request (SCR) document provided by PD (available on PD's webpage at <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>). 3. DGS must execute all contracts for approved SCR's for departments without delegated purchasing authority and for transactions exceeding a department's delegated purchasing authority. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) and must include the approved SCR number.</p>
<b>Emergency contracts All \$\$ levels</b>	<p>1) Emergency (PCC 10302)</p> <p>Departments may contract for emergencies regardless of dollar limits. Departments must obtain prior approval via the Form 42 process except for natural disasters- contact DGS-PD. The department must submit the Notice of Contract Award (NCA) within 5 working days of award. If the emergency purchase is required to be made by the department in response to a natural disaster (earthquake, fire, flood, etc.) the department must submit the NCA within 20, rather than 5, working days. All NCA's must include a justification describing the nature of the emergency.</p>
<b>\$25,000.01 and above</b>	<p>1) Only source (PCC 10301)</p> <p>1. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Approval by DGS-PD is required. 2. Departments with delegated authority over \$25,000 will submit NCB's \$25,000.01 and above to DGS-PD for approval. DGS-PD will return approved NCB's to departments for execution of contracts. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for IT goods and services within 5 days of award of the contract. 3. Notice of Contract Award (NCA) reports must be submitted to DGS-PD for all DGS-PD approved NCB's for non-IT goods within 5 days of award of the contract. 4. If the contract exceeds delegated purchasing authority, the contract must be approved and issued by DGS-PD. Procurement requests must be submitted to PD on a Purchase Estimate (Std. 66) and must include the approved NCB contract justification.</p>
<b>\$5,000.00 ** to \$25,000.00</b>	<p>1) Only source (PCC 10301)</p> <p>When only one source is known, an NCB is required. Requires approval by Agency Secretary and Department Director or immediate next ranking official OR, for entities not reporting to an Agency Secretary, approval authority is limited to the highest two ranking executive officials. Departments with delegated purchasing authority do not need DGS approval up to this limit, however the approved NCB contract justification must be maintained in the transaction file.</p>
<b>Under \$5,000.00**</b>	<p>1) Only source (PCC 10301)</p> <p>No NCB justification is required if fair and reasonable pricing has been established and documented. If fair and reasonable pricing cannot be established and documented or two bids cannot be obtained, an NCB justification is required (see \$5,000 to \$25,000). All departments have purchasing authority up to \$100, however departments without goods delegated purchasing authority must submit a procurement request (Purchase Estimate, Std. 66) to DGS-PD and attach an approved NCB contract justification for NCB's above \$100.</p>

\*Non-Competitively Bid Contracts (NCB's) over \$500,000 may reference CMAS/Master terms and conditions but can only be awarded by DGS.



**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](http://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.**



**Attachment D  
Management Memo 03-10**

**Contracts Exempt by Policy**

**The following categories of contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. These categories are exempt based on a determination by DGS that competitive bidding is not feasible (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 a department's approval authority must be submitted to DGS for approval and acquisition transactions exceeding delegated purchasing authority are required to be awarded by DGS.**

- 1. Refuse and/or sewage disposal contracts where there is no competition because there is a single authorized franchise dealers providing services to a specific geographical area.**
- 2. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), 911 emergency ambulance service calls and ambulance service calls where there is a single provider serving a geographical area.**
- 3. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.**
- 4. Public entertainment contracts for state-sponsored fairs and expositions.**
- 5. Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to Government Code 19130(a).**
- 6. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption extend beyond six months for a particular amendment.**



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- 7. Amendments to existing contracts which were originally competitively bid subject to the following restrictions:**
- a) Competitively bid contracts for both information technology goods and services and non-information technology goods, and which included options for changes (e.g., quantity or time) may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the solicitation process.**
  - b) Competitively bid contracts for non-information technology services which do not include options to extend may be amended as follows:**
    - Exemption shall only apply to the first amendment;**
    - Amendment shall add time only, not to exceed one year, or add not more than 30% of the original contract value, not to exceed \$250,000;**
    - The original contract must have permitted the amendment.**
- 8. Contracts for conference or meeting facilities, including room accommodations for conference attendees. Note: This exception applies only in circumstances where facilities to be provided are less than \$250,000; for facilities exceeding this amount, the requirements regarding non-competitive bid contracts for \$250,000 or more apply.**
- 9. Contracts for services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the restrictions imposed by the Executive Order and Management Memo subject to compliance with the following requirements and limitations:**
- Agencies must prepare their Statement of Work (SOW).**
  - Office of HIPAA Implementation (OHI) reviews and approves all SOWs to ensure the agency complied with their HIPAA work plan.**
  - For contracts less than \$500,000, agencies must obtain a minimum of three (3) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.**
  - For contracts greater than \$500,000, agencies must obtain a minimum of six (6) written offers, including one from a small business/DVBE if available, from the HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state. If six (6) written offers cannot be obtained, the file must be documented with the reasons why suppliers did not respond. The file must contain responses and offers to equal six (6) contacts.**
  - Contracts/amendments providing for a contract value greater than \$50,000 for non-IT services are subject to review and approval by DGS.**



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- **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for non-IT services are reviewed by OHI and approved by DGS.**
  - **Contracts/amendments providing for a contract value between \$500,000 and \$5 million for IT services are reviewed by OHI and approved by DGS.**
  - **Contracts/amendments providing for a contract value greater than \$5 million are reviewed by OHI and DGS and approved by the Department of Finance.**
- 10. Amendments to the California Integrated Information Network (CIIN) Agreement (CNT-001) to add products and services defined as mandatory per Management Memo 97-01 and DOIT Directive 1999-01. These mandatory services are defined as Lineside, Voice Network, Data Services, and Billing Services.**
- 11. Categories of contracts for the purchase of goods or services necessary to achieve program objectives in a timely manner, where the Department of General Services has determined in advance, in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required. Any individual order placed against a specified contract pursuant to this exemption that exceeds \$250,000 shall also require the approval of the Department of General Services. Special Category NCB Requests must be approved by the Department's Director and Agency Secretary or immediate next ranking official prior to obtaining DGS approval. Transactions placed against the approved Special Category NCB do not require these signatures. See the website [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd) for the form and instructions.**
- 12. Proprietary pharmaceuticals and proprietary vaccines for which there are no generic equivalents and for which the Department of General Services will enter into contracts/price agreements with either the manufacturer or distributor. This commodity will be for the proprietary pharmaceuticals, proprietary vaccines purchased for public health programs by the Department of Health Services, Proprietary Vaccines used by state, local and public agency governmental entities, federal contracts as described in the 1990 Sharing Act, Botulism Immune Globulin Program, and pharmaceuticals outlined in Government Code, Chapter 12 (commencing with Section 14977) to Division 3 of Title 2. There will be no dollar limit on these acquisitions; master agreements will be established only by the Department of General Services for purchasing by state and local entities.**
- 13. Proprietary subscriptions, proprietary publications and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to \$250,000.**





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**14. Rental of proprietary postage meters are exempt if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area.**

**This exemption applies only in circumstances where annual postage meter rental services to be provided are less than \$100,000.**

**Rental service agreements for stand-alone proprietary postage meters, which are not interfaced, or intermembered with mailing equipment must be competitively bid.**

**Miscellaneous:**

**In determining whether the acquisitions of a particular state agency is exempt from this Management Memo, the funding source for the acquisition shall be determinative, notwithstanding the fact that DGS may be the procuring entity.**

