

4. STANDARD CONTRACT FORMAT AND DGS CONTRACT APPROVAL

4.00 INTRODUCTION (Rev 1/14)

This chapter presents the policies and procedures related to standard contract format and obtaining contract approval from DGS/OLS. Exemptions from such approval are also covered.

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4.02 RESPONSIBILITY FOR CONTRACT APPROVAL

(Rev 11/12)

- A. Each State agency is responsible for making sure that its contracts comply with applicable legal requirements and are based on sound business practices. DGS/OLS provides the final approval if required by law.
- B. In some instances additional approvals may be needed, such as those from the Attorney General, State Personnel Board, State Fire Marshal, DGS/ORIM, DGS/OSP, or other DGS offices. (See SCM I, section 4.11.)
- C. Contract approval by DGS serves to assist State agencies by:
 - 1. Ensuring effective compliance with applicable laws and policies.
 - 2. Conserving the fiscal interests of the State and preventing improvident acts.
 - 3. Applying contract knowledge and legal expertise prior to final approval.
- D. Remedies and Penalties:
 - 1. PCC § 10420 - Every contract or other transaction entered into in violation of Chapter 2 of the PCC is void, unless the violation is technical or nonsubstantive.
 - 2. PCC § 10421 - Civil action may be brought in Superior Court to determine a violation of Chapter 2 of the PCC. If a violation is found the contract shall be void.
 - 3. PCC §§ 10422 - 23 - Any State employee or person contracting with the State who corruptly performs an official act or corruptly permits the violation of any contract made under Chapter 2 of the PCC is guilty of a felony.
 - 4. PCC §10424 - provides that a violation of PCC §§ 10422 or 10423 may make the employee or the person contracting with the State liable to the State for double the amount the State may have lost.
 - 5. PCC § 10425 - Willful violation of any other provision of Chapter 2 of the Public Contract Code shall constitute a misdemeanor.

4.03 CONTRACTS REQUIRING DGS/OLS APPROVAL

(Rev 04/22)

DGS/OLS has statutory authority under several sources to approve contracts. PCC §§ 10295, 10297, 10335 and GC § 11256 are the primary legal authority for DGS/OLS' review and approval of contracts. GC § 14615 is the legal authority for the supervision of the State's financial and business policies, and GC § 14616 is the legal authority for some exemptions from DGS/OLS approval of contracts.

As a general rule, DGS/OLS approval is required on all services contracts over \$50,000; or at \$150,000 and above if an agency has applied for and received this higher exemption level (see SCM 1, section 4.05). The approval requirement applies to all non-IT services contracts, including but not limited to consulting services and interagency agreements, subject to express exemptions identified in section 4.04 below.

Individual agencies may have specific statutes affecting their particular contracting programs. Some specific types of contracts which require DGS/OLS review/approval, regardless of dollar amount, include but are not limited to the following:

1. Contracts that limit the contractor's liabilities or require the State to indemnify or to hold the contractor harmless;
2. Contracts that require the State to assume liabilities beyond the State's control;
3. Contracts that provide for advance payment for services or rental;
4. Any provision creating a contingent liability against the State (e.g., those vendors' printed rental contracts obligating the user of rented equipment to serious contingent liabilities);
5. Contracts that seek to modify the State's standard terms and conditions (GTCs, CCCs, and/or GIAs).

Contracts involving a hazardous activity of \$10,000 or more require DGS/OLS and DGS/ORIM review and approval. (See SCM 1, section 3.12.)

4.04 CONTRACTS NOT REQUIRING DGS/OLS APPROVAL (Rev 04/22)

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

A services contract is exempt from DGS/OLS approval if:

1. It is specifically exempt from approval by statute (See, e.g., PCC §§ 10295(c) and 10430); or
2. It is \$50,000 or less (subject to exceptions noted in section 4.03 above). (GC §§ 11256, 14616); or
3. It has been exempted from approval by an exemption letter issued by DGS/OLS (PCC §10351); or
4. It is a federally or State-funded grant that meets the standards described by the Attorney General. (See 58 Ops.Cal.Atty.Gen. 586 (1975); 63 Ops.Cal.Atty.Gen. 290 (1980); 74 Ops.Cal.Atty.Gen. 10 (1991); see also SCM § 4.06.) Note: This exemption applies when the State is issuing a

grant, it does not exempt all agreements merely because they are paid for with federal and/or other grant funds.

5. It is an interagency agreement over \$50,000 and less than \$1,000,000 that uses the current GIAs (including SAM 8752 and 8752.1 cost provisions) without modification and that has no direct or indirect subcontracting (GC § 11256), subject also to the following:
 - a. Note: This exemption does not apply when contracting with CSU, UC, or any other state agency exempt from Division 2, Part 2, Chapter 2 of the Public Contract Code (PCC 10290 et seq.), all of which remain at the contracting agency's standard \$50,000 or \$150,000 exemption level;
 - b. Agencies shall not use I/As to circumvent any State law or contracting requirements;
 - c. Agencies shall not use I/As to obtain any third-party IT goods or services nor any third-party non-IT goods or services;
 - d. DGS reserves the right to audit exempt contracts at the contracting agency's expense;
 - e. If DGS determines an agency is failing to abide by the conditions of this exemption, DGS reserves the right to revoke the exemption such that that agency would then be required to submit to DGS for approval all I/As of \$5,000 or more (or such other amount as DGS establishes when revoking or reducing this exemption);

Although these exempt contracts do not require DGS/OLS approval, review/approval services are available on request for any contract, regardless of value.

- B. If an exempt contract is amended, the amendment may trigger the DGS/OLS approval requirement for the same reasons noted in 4.03 and 4.04 above (e.g. increase in dollar amount, modifying GIAs, adding subcontracts, etc.).
- C. DGS reserves the right to audit agencies regarding the above-referenced exemptions.

4.05 EXEMPTION LETTERS (Rev 6/17)

DGS may exempt contracts up to \$150,000 from review if certain conditions are met. Such exemptions are provided through exemption letters.

Table 4.1

Factor	Authority	General Considerations
All Services, Consultant Services, and Interagency Agreements	PCC § 10351 (services and consultant services) GC § 11256 (state agencies)	<ul style="list-style-type: none"> • Under \$150,000 • Agency officer responsible and directly accountable for contracting program • Written policies and procedures • Management system • Contract training program • Audit every two (2) years • Reporting procedures • Follow any limitations identified in the exemption letter

Application for an exemption letter or renewal should be made by written request to the Director of DGS.

4.06 CERTAIN STATE AND FEDERALLY FUNDED GRANTS EXEMPT FROM APPROVAL BY DGS/OLS
 (Rev and renumbered 11/12)

The Attorney General (AG) has opined that certain federally and State-funded grants are not subject to approval by DGS/OLS. The AG opinions are based primarily on the nature of a grant compared with a services contract as described in the law. (See 58 Ops.Cal.Atty.Gen 586 (1974) and 63 Ops.Cal.Atty.Gen. 290 (1980).)

The AG opinions present the following factors as relevant to whether a contract qualifies as an exempt grant:

- A. The grant must fall under specific statutory authority. Without specific statutory authority, a grant is an illegal gift of public funds.
- B. The grant must not benefit the State. Even if the award was made pursuant to an authorized grant program, it is not exempt from approval (unless exempted by specific statute). Common benefits which would indicate a contract rather than a grant include:
 - 1. Services are provided to the State.
 - 2. The State obtains title to equipment, copyrights, or patents.
 - 3. The State is relieved from a statutory obligation to perform the services (usually services to the public).

- C. Performance under the grant must not be controlled by the State. The grant must fund the grantee’s program, not the State’s program.

Agencies shall not circumvent State contracting requirements by labeling contracts as “grants.” In addition, an agreement is not a grant simply because it is paid for with federal and/or grant funds, rather, the above additional factors must be considered for proper characterization of the agreement.

4.07 APPROVAL OF EMERGENCY CONTRACTS **(Rev and renumbered 11/12)**

“Emergency” is defined in PCC § 1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

The law recognizes exceptions from competitive bidding in emergencies (PCC §§ 10340 (b)(1) and 10371 (d)), but no exception is provided from contract approval. The basic policy is to respond to the emergency as circumstances demand and then to obtain the formal approval(s) as soon as practicable. However, before the start of the work, the contract must be verbally authorized by someone with authority at the agency to initiate a contract in such situations. If there is any question about whether the circumstances qualify as an emergency, DGS/OLS should be contacted as soon as possible. The contract will be processed on an expedited basis as discussed in SCM 1, section 4.08 C.

4.08 STANDARD CONTRACT FORMAT AND OBTAINING APPROVAL FROM DGS/OLS **(Rev 06/24)**

Below are general guidelines regarding the standard format for State contracts (which applies for agreements with third parties and for interagency agreements) and what documents to include when submitting a contract to DGS/OLS for approval.

A. Required Supporting Documents

1. The Contract

Under the State’s standardized contract format, the contract contains:

- a. STD 213: Contract page 1, which should identify the following attachments and number of pages:
- b. Exhibit A: Scope of Work
- c. Exhibit B: Budget Provisions
 - 1) Include sufficient budget detail to describe expenditures and justify the costs of the contract;
 - 2) Include budget contingency language. Sample language:

Budget Contingency Clause

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

- d. Exhibit C: General Terms and Conditions.
 - 1) Reference the current version of the State's standard terms and conditions (e.g., "GTC 04/2017" or subsequent version; use the GIAs for I/As; use the UTCs for agreements with UC, CSU and Approved CSU Auxiliary Organizations.)
 - 2) The GTCs (or GIAs or UTCs as applicable) should be incorporated in the contract by reference to the DGS/OLS website location.
 - 3) Some GTCs are mandated by statute and some are policy based.
 - 4) The GTCs incorporate by reference certain mandated contractor certification clauses ("CCC's"). A copy of the current CCC's must be separately executed by the contractor and retained in the contract file.
 - e. Exhibit D [optional]: Typically a department's own special terms and conditions.
 - f. Other Exhibits/Attachments (optional, as needed).
2. Contract Transmittal form, STD 215. This form must be fully completed and must contain an explanation sufficient to afford a basis for approval, including:
- a. The purpose and necessity or desirability of the contract or interagency agreement;
 - b. The reasonableness of the cost of the services;
 - c. The legal authority for the contract or amendment;

- d. Funding information and accounting officer signature;
 - e. Government Code section 19130 subsection with attached signed justification containing specific and detailed facts as required by Tit. 2 CCR § 547.60 - 547.60.1, and certification of compliance with union notice requirements; and
 - f. Any other relevant information necessary to understand the proposed transaction.
 - g. The form STD 215 shall also contain the name, telephone number, and email address of the contact person in case questions arise or additional information is needed by DGS/OLS reviewing attorney. The contact person is the staff member who regularly deals with DGS/OLS on contract matters. A copy of the STD 215 will be retained on file at DGS/OLS.
 - h. Within ten working days of an award, an agency must report the award of each contract over \$5,000 to CRD, including contracts with the University of California. Information required is specified in 2 CCR § 11114. (This requirement does not apply to contracts with other California State agencies or with the Federal government.) Use STD 16 for reporting purposes, submitted to CompliancePrograms@calcivilrights.ca.gov. Check the box on the reverse side of the STD 215 that this requirement has been complied with.
3. Bidding documents (i.e. IFB/RFP). If the contract was awarded by competitive bid, submit a copy of the IFB/RFP and a list of bids or similar evaluation summary. During review, DGS/OLS may ask for copies of bids/proposals and other evaluation materials as needed. If fewer than three (3) bids or proposals were received, document the awarding agency's efforts to obtain at least three (3) competitive bids. (See SCM I, section 5.70.B.)
4. The California State Contracts Register ("CSCR") ad. The ad as well as all other ads used to advertise the contract must accompany the contract to final approval. A printout of the electronic version of the CSCR ad or a copy of the confirmation printout is sufficient substantiation of that ad. Ad documentation should demonstrate ad(s) were posted for at least the minimum number of days required by law.
5. Documentation of other required approvals. (See, e.g. SCM 1, section 4.11.)
6. Late justification: If the contract is submitted to DGS/OLS after the start date of the contract, agencies must include a written late justification. Depending on the degree of lateness, DGS/OLS may ask for additional justification information and/or sign-offs from the agency.

B. Electronic Submittals

1. Contracting agencies must submit contracts for approval through the DGS/OLS ServiceNow electronic submittal platform. Agencies must submit the contract and supporting documents identified in section 4.80.A above in accordance with DGS/OLS upload requirements. DGS/OLS may request additional information and documents as needed.
2. After approval by DGS/OLS, an approved version of the STD 213 will be provided to the contracting agency.
3. Agencies are responsible for submitting any documentation required by the State Controller's Office directly to that Office.

C. Contract Approval Time

DGS strives to complete the review and approval process in ten working days or less.

Note: Expedited review is available in **exceptional** circumstances on request.

D. In addition to the above requirements, DGS/OLS asks individuals involved in the preparation and transmittal of documents to DGS/OLS to consider the following:

1. Ensure that all information on the STD 215 is complete and specifically relates to the contract being submitted.
2. When completing the forms, review by a DGS/OLS attorney is made easier and more efficient if the form can be easily read. Reducing the type font in order to squeeze in an explanation is not recommended. If your narrative requires more space, enter "see attached" and include additional pages as needed. This way, the length of your explanation is not limited by the size of the box, and it makes it easier to complete the contract review.
3. When amending a contract by replacing entire sections, review is made more efficient by highlighting the changes being made. For example, if replacing an entire scope of work that is contained in several pages and only a few items are being changed, please boldface or underline the actual changes. This will expedite the review process, and focus the attorney's review on the actual changes involved in the amendment.

- E. The State is in the process of transitioning to FI\$Cal, a business transformation project in the areas of budgeting, accounting, procurement, and cash management. (See www.fiscal.ca.gov.)
 - 1. Currently, FI\$Cal has not resulted in any change to the process for submitting contracts to DGS/OLS for review and approval.
 - 2. For agencies enrolled in FI\$Cal, once DGS/OLS approves and returns a contract to the contracting agency, it is the contracting agency's obligation to upload the approved contract into Fi\$Cal.
- F. E-Signature Policy: State Administrative Manual section 1240 identifies the permissible types of e-signatures and the requirements for using e-signatures, automatic or electronic transactions, and electronic records in transacting state business. Contracting entities are responsible for complying with SAM 1240 as well as any State Controller's requirements. (Historical references: MM 17-03, MM 18-03.)

4.09 APPROVAL AND COMMENCEMENT OF WORK (Rev 04/22)

A. Legal Requirements

The approval by DGS/OLS is the final, formal approval of the contract. When DGS/OLS' approval is required, contracts for services should not begin before receipt of approval; payment for services may not be made until the contract is approved by DGS/OLS or, in the case of an exempt contract, until it is formally approved by the agency. (See PCC §§ 10295 and 10335.)

B. Necessity of Time Management

In light of the legal requirements for contract approvals, it is important for contracting departments to timely execute and timely submit contracts.

Contracts should be submitted to DGS/OLS for approval a sufficient time in advance of the contract start date to afford the opportunity for adequate review and discussion as may be needed.

C. Consultant Contracts

The law does not permit consultants to start work before formal contract approval, except in an emergency. When it is necessary for a consultant to start work before approval of the contract, the circumstances must be noted in the contract file as an emergency in accordance with PCC § 10371(d).

D. Warning to Contractors

- 1. Contracts are not valid unless and until approved by DGS/OLS if such approval is required by law. (PCC §§ 10295, 10335.)
- 2. The contractor should be warned not to start work before receipt of the

approved contract. The warning can be provided in the IFB or RFP, at the time of the award, or at the time the contract is sent to the contractor for signature.

3. If the contract is not approved and the contractor has begun work, the contractor may be considered to be a volunteer or the contractor may have to pursue a claim for payment by filing with the Government Claims Program. The State has no legal obligation unless and until the contract is approved.

Note: If a late contract is approved, authorized services provided by the contractor can be paid from the beginning date of the contract.

4.10 APPROVAL OF AMENDMENTS (Rev 11/12)

- A. If the original contract was approved by DGS/OLS, any amendment must be approved by DGS/OLS except for the following:
 1. If an amendment only extends the original time for completion of performance for a period of one year or less, the amendment is exempt from approval by DGS/OLS. This exemption can only be used once. (PCC § 10335(d)(1).) Note: this exception only covers extensions of time “to complete performance,” such as extending a final report due date. It does not cover other types of amendments, such as amendments that extend time to use the contractor for additional as-needed or hourly rate type services, or amendments that change (increase, decrease, alter) the scope of work, budget, or terms and conditions. (See PCC § 10335(d)(3).)
 2. Even though the extension cited above is exempt from approval, upon completion of the amendment, a fully executed copy of the amendment and a form STD 215 explaining the reason for the extension must be sent to DGS/ OLS if the original contract was subject to DGS/OLS approval. (PCC § 10335(d)(1).)
- B. To obtain DGS/OLS approval of an amendment, the amendment should be submitted to DGS/OLS with a STD 215 and all supporting documentation, along with a copy of the original agreement, any intervening amendments and the STD 215s for each.
- C. See SCM 1, chapters 3 and 5 for other information about amendments.

4.11 OTHER REQUIRED APPROVALS (Rev 04/22)

The following are examples of additional approvals required for certain types of contracts. Documentation of the approval must be included as supporting documentation when submitting the contract package to DGS/OLS for approval:

- A. GC §19130(a) cost savings contracts – copy of Notice to SPB and the SPB determination if a union requested review.
- B. Legal Services contracts – copy of DOJ approval memo (or statutory authority to contract out); other pre-approvals as required.
- C. Hazardous Activities – DGS/ORIM approval stamp.
- D. Fiscal Agent contracts – DOF approval.
- E. Financial Compliance Audits– prior written approval of the Controller and DOF for contracts for financial or compliance audits, unless the agency is required by State law to obtain an annual audit. (Govt. Code § 8546.4(e).)
- F. Public Entities - May require a resolution.
- G. Printing Services – DGS/OSP approval. (See SCM § 3.21.)

4.12 STATE CONTRACT AND PROCUREMENT REGISTRATION SYSTEM (New 6/17)

- A. The State Contract and Procurement Registration System (SCPRS) is an Internet-based application developed as a contract tracking system that provides a centralized database of acquisitions of goods and services.
- B. Historical Notes: In 2003, DGS issued MM 03-09 requiring state agencies to register acquisitions of goods and services above \$5,000 in SCPRS. In 2015, DGS issued MM 15-02 updating SCPRS policy. In June 2016, DGS issued MM 16-03 stating current SCPRS policy (see items C through E below), including transition instructions for agencies not yet transacting in Fi\$Cal.
- C. Effective January 4, 2016, the state transitioned from the BidSync system to the Fi\$Cal system for reporting acquisitions of goods and services in SCPRS.
- D. Effective July 1, 2016, agencies must report all acquisitions of goods and services, regardless of dollar amount, in Fi\$Cal SCPRS.
 - 1. For agencies exempt from or not yet transacting in Fi\$Cal, acquisitions paid with a credit card that are under \$2,500 and executed without a purchase document are exempt from the SCPRS reporting requirement.
- E. SCPRS Registration Number: Fi\$Cal does not generate a SCPRS registration number and therefore it is no longer a requirement to document a SCPRS registration number on contract documents (such as Std. 65 or Std. 213).