



# Introduction to Non-IT Services Contracts

Presented by the Department of General Services –  
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# Introduction to Non-IT Services Contracts

This course provides:

- An overview of contract rules applicable to non-IT services contracts.
- An introduction to the State Contracting Manual volume 1, which is a primary resource for non-IT services contracts.

# Contract Characterization - What are you buying?

- To ensure contracts are clear and comply with state contracting requirements, it is important to first properly characterize what your agency is buying.
- Is it:
  - Services
  - Goods
  - Information Technology (IT) Goods or Services
  - Public Works/Construction
  - Architect & Engineering ( A&E)

# Non-IT Services

- This course addresses requirements for acquiring non-IT services.
- Different codes and procedures apply to acquisition of goods, IT goods, IT services, public works/construction, and Architect & Engineering (A&E) services.
- Some examples of non-IT services include:
  - Security guards
  - Translation
  - Pest control
  - Waste and recycling pickup
  - Scientific studies

# Primary Resources for Non-IT Services

- The primary resources for non-IT services contracting are:
  - Public Contract Code sections 10335-10381
  - State Contracting Manual volume 1 (SCM)
  - The DGS Office of Legal Services (DGS-OLS)
    - [www.dgs.ca.gov/ols](http://www.dgs.ca.gov/ols)
    - A DGS-OLS attorney assigned to review your agency's non-IT services contracts (listed on DGS-OLS website)

# Competitive Bidding Requirements

- Contracts for non-IT services must be competitively bid unless there is a legal exemption from bidding.
- The next sections of this training will address:
  - Competitive bid methods for non-IT services
  - Legal exemptions from competitive bidding

# Competitive Bid Methods for Non-IT Services

- The competitive bid methods for non-IT services are:
  - Invitation for Bids (IFB)
  - Request for Proposals (RFP)
    - RFP Primary
    - RFP Secondary
- See SCM Chapter 5

# IFB, RFP Primary, RFP Secondary

- Invitation for Bids (IFB)
  - Sealed cost envelope with public cost opening
  - Contract awarded to lowest responsive responsible bidder
- RFP Primary
  - Sealed cost envelope with public cost opening
  - Contract awarded to lowest responsive responsible bidder
- RFP Secondary
  - Proposals are scored
  - Cost must be worth at least 30% of total available points
  - Contract awarded to highest scored responsive responsible proposal



# Required elements for IFBs and RFPs

- Must be advertised for at least 10 full working days on the California State Contracts Register (CSCR)– located on CalProcure (see Govt. Code sections 14827.1-14827.2)
- Must include the date, time, and place bids are due
- Must include a right to protest (see Protest slides below and see SCM chapter 6)
- Must include clear description of the scope of work to be performed and contract terms (e.g., include a sample contract)
- Must include clear description of bid submittal requirements
- Must include clear description of evaluation method and criteria



## Socioeconomic Programs for IFBs and RFPs

- IFBs and RFPs must include statutory Small Business Preference (SB) and Target Area Preference (TACPA)
- Decide whether to include a Disabled Veterans Business Enterprise (DVBE) requirement and/or DVBE Incentive
- Information regarding Small Business, TACPA, and DVBE programs is in SCM chapter 8, and in codes and regulations
- The DGS Office of Small Business and Disabled Veterans Business Enterprise Services (DGS-OSDS) is an available resource

# IFB and RFP Bid Evaluations

- IFBs and RFPs cannot be drafted to limit bidding directly or indirectly to one contractor (Public Contract Code section 10339)
- Agencies must adhere to the IFB/RFP when evaluating bids
  - Agencies cannot apply hidden criteria not mentioned in the IFB/RFP
- Bids must be **responsive** to the IFB/RFP requirements
- Agencies cannot waive material deviations
- Agencies can but are not required to waive immaterial deviations

# Protests (Public Contract Code section 10345)

- The IFB/RFP must advise bidders of their right to protest and where to file the protest.
  - Protests should be filed with both the contracting agency and DGS-OLS.
  - If a contracting agency receives a protest they must promptly send a copy to DGS-OLS.
- If a bidder files a protest prior to contract award, the agency cannot award the contract until the protest is decided or dismissed by DGS-OLS.
- DGS-OLS serves as the Hearing Officer for protests filed on IFBs/RFPs.
- DGS-OLS will issue a Notice of Hearing advising the agency of the due date for protest response. DGS-OLS will issue a decision within 30 days of receiving all submittals.

# Protests (continued)

Note: The right to protest exists for bidders who bid on non-IT services IFB and RFPs issued under Public Contract Code section 10335 et seq.

There is no statutory right to protest solicitations issued under other statutes such as:

- Public works solicitations issued under the State Contract Act (Public Contract Code section 10100 et seq.)
- Architect & Engineering solicitations issued under Government Code section 4525 et seq.,
- SB/DVBE 2-quote solicitations issued under Government Code sections 14838.5 or 14838.7

# Exemptions from Competitive Bidding

- SCM section 5.80 lists exemptions from competitive bidding.
- This training mentions some of the more commonly-used bid exemptions. See SCM 5.80 for a more detailed list.
  - Contracts valued under \$10,000
  - Contracts with other California state agencies, California State Universities (CSUs) and University of California (UCs)
  - Contracts with other government entities (e.g. federal and local government, other states, other state universities)
  - Emergency contracts
  - NCBs
  - Two SB or two DVBE quotes if under \$250,000 (Govt. Code 14838.5)

# Exemptions from Competitive Bidding - Public Agencies

- Contracts with other public agencies do not have to be competitively bid. Examples include:
  - Contracts between two California state agencies
  - Contracts between California and the University of California (UC) or California State Universities (CSU)
  - Contracts between California and another state, local, or federal government agency

# Exemptions from Competitive Bidding - Emergencies

- Public Contract Code section 1102 defines “emergency” 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.”
- Contracts meeting the statutory definition of emergency do not have to be competitively bid. (See Public Contract Code section 10340(b)(1); SCM sections 3.10, 5.80.A.3.)



# Exemptions from Competitive Bidding - NCBs

- Public Contract Code section 10348 authorizes DGS to grant exemptions from competitive bidding in appropriate situations.
- “NCB” refers to a formal process established by DGS pursuant to section 10348 for agencies to request approval to do a no-bid contract. (See SCM 5.80.B.1.)
- DGS-Procurement Division oversees the NCB process for DGS. Contracting agencies seeking NCB approval must upload information into the DGS NCB Portal demonstrating why a no-bid contract is needed. If DGS approves an NCB, the contracting agency can then award a contract based on the NCB.
- Receiving approval of an NCB request is a *preliminary* step. The contracting agency must still follow state requirements for executing the contract (standard terms, etc.), and must route the contract for any required approvals (such as DGS-OLS approval).

# Exemptions from Competitive Bidding - SCRs

- “SCR” is a “Special Category Request”
- An SCR is similar to an NCB, but seeks DGS no-bid approval for more than one contract at a time.
- Like NCBs, SCRs are a formal request and approval process, overseen by DGS Procurement Division pursuant to Public Contract Code section 10348. Contracting agencies upload SCR requests and information into the DGS NCB portal.
- Like NCBs, SCRs are a preliminary step. If DGS approves an SCR, the contracting agency must still follow state requirements for executing each contract (standard terms, etc.), and must route each contract for any required approvals (such as DGS-OLS approval).

# Exemptions from Competitive Bidding - Govt. Code 14838.5

## Certified Small Business or Disabled Veteran Business Enterprise

- Government Code section 14838.5 is an alternative to formal competitive bidding [IFB/RFP]. (See SCM 5.80.A.9)
- For contracts under \$250,000, section 14838.5 authorizes agencies to obtain two informal quotes from either:
  - Two California certified Small Businesses (SBs); or
  - Two California certified Disabled Veteran Business Enterprises (DVBES)
- Lists of California certified SBs and DVBES can be found through the DGS Procurement Division website.
- Agencies should not use this method if there is a chance the contract might exceed \$250,000.

# Amendments

- Legal requirements for competitive bidding must be taken into account when evaluating whether an agency has legal authority to amend a contract or not.
- In general: The ability to amend is very limited if a contract was competitively bid. The ability to amend is not very limited if a contract was exempt from competitive bidding.

# Amendments to Competitively Bid Contracts (SCM section 5.81.A)

- If a solicitation for a contract advised bidders that the agreement would have a specified # of option years (e.g. 2-year term with a 1-year option to amend at the same rates), the agency could exercise the 1-year option to amend. (SCM 5.81.A.1.a)
  - Note: option year language must be carefully crafted, including clarity of scope, rates, and # of years, and must be part of the original bid evaluation (i.e. evaluate pricing for original term and option years). A general statement about ability to amend does not suffice as a competitively bid option year.
- Under *limited circumstances* a competitively bid contract can be amended for time to complete performance (one time, not to exceed 1 year) OR for 30% additional funds (not to exceed \$250,000). See SCM 5.81.A.1.b for details.
  - There are restrictions on use of these amendment authorities. They are for unanticipated circumstances. They should not be standard operating procedure.

# Amendments to Contracts that were Exempt from Bidding

- If a contract was statutorily exempt from competitively bidding, generally the amendment will likewise be statutorily exempt from bidding.
  - Example: Expert witness contract for litigation is statutorily exempt from competitive bidding. Amendments to expert witness contracts are likewise statutorily exempt from competitive bidding.
- If a contract was exempt from bidding based on a categorical exemption established by DGS in SCM 5.80.B, an agency must evaluate whether the agreement would still fit within that categorical exemption with the amendment.
  - Example: One-time training contract under \$50,000 exempt from bidding. An agency could add money to the contract to increase training hours as long as the total contract including the amendment doesn't exceed \$50,000.
- If a contract was exempt from bidding based on an approved NCB, an agency usually must get a new NCB in order to amend that contract. ("Once an NCB, always an NCB.")

# Creating the Contract Document

- A contract is the binding legal document showing the duties and rights of the contracting parties. It is the document parties use to control performance and payments, to help resolve disputes, and to defend a party's position in court if legal proceedings are brought.
- Accordingly, contracts must be carefully created and clear.

# Standardized State Services Contract Format (SCM 4.08)

- State agencies are required to follow standard format which is:

- Std 213 [contract page 1]
- Exhibit A [Scope of Work]
- Exhibit B [Budget and Payment Provisions]
- Exhibit C [California's standard terms incorporated by reference]

The current terms required for all Non-IT services contracts are located on the DGS-OLS webpage. The General Terms (GTCs) are used unless the contract is with another California state agency (GIA) or is a UC or CSU (UC):

- Non-IT services contracts: GTC 04/2017
- Interagency agreements: GIA 11/2022
- UC and CSU: UTC 220
- Exhibit D etc. [Additional special terms as needed]
  - Examples: Statutorily required terms for consulting contracts; statutorily required terms for a specific department; termination for convenience/30-day cancellation by the state; security; intellectual property; HIPAA and privacy
- Agencies may add additional exhibits/attachments as needed



# Exhibit C - GTCs and Contractor Certification Clauses

- The GTCs must be used for all non-IT services contracts, except interagency agreements (which use the GIAs) and UC/CSU agreements (which use the UTCs).
- The GTCs incorporate by reference an additional set of terms called Contractor Certification Clauses (CCCs).
  - The current GTCs and CCCs are available on the DGS-OLS website, along with archived versions.
- As a general rule, GTCs and CCCs are not negotiable. If an agency has a unique circumstance they believe warrants a modification, the agency must seek pre-approval from DGS-OLS, supported by a written justification.

# Contract signatures

- Contracts must be signed by both contracting parties.
- The Std 213 form has signature blocks that should be fully completed [Agency name, address, signature and printed name, title, date].
- Authority to sign a contract - See SCM 2.06.
- Persons signing on behalf of the state should have documented delegated signature authority from the head of the agency/department.
- If the agency or contractor is an entity such as a board or commission, the person signing must have documented authority from the entity to sign on its behalf (such as an enacted board rule or a resolution). See SCM 2.06.B and C.

# Format for Amendments

- Use Std 213A form for page 1. Attach exhibits as needed.
- Same clarity, formality and signature requirements as an original contract.
- Use common-sense approach to content and clarity. For example:
  - Some amendments only require 1 page. Such as exercising an option year where the scope, timing of performance, and rates are identical to the original term.
  - Some amendments require additional pages to explain what the amendment is adding or changing
    - For example in a no-bid contract with UC, the parties might be adding a new task with a detailed budget for the new task.
  - Some amendments use strike-through to clearly show parts are removed and underline to show parts added.

# Concepts to Consider Before Contracting

## (SCM 2.03, SCM chapter 2 Appendix)

- Timing – When are services needed? Sufficient time must be allowed for internal processes, bidding, and approvals.
- Civil Service mandate – Government Code section 19130; SCM 7.05
- Funding – Must be identified and encumbered in advance
- Approvals – What internal and external approvals will be needed
- Specifically what services and deliverables are needed?
- What qualifications and experience should contractor have?
- What methods for award are available?
- Do any unique codes and terms apply based on type of service?

# Special rules and provisions applicable to certain types of contracts

Some types of contracts have additional specific required steps and/or language. Examples include:

- Consulting services - see SCM 2.07 and 3.02
- Services listed in Govt. Code §19134 (janitorial, housekeeping, custodian, food service, security guard, laundry, window cleaning) – see SCM 3.14
- Legal services – see SCM 3.07

Some services require Labor Code prevailing wages (e.g., moving, construction, installation of modular furniture) – see, e.g., SCM 3.25 and SCM chapter 10

# Other statutory contract requirements

There are laws that impose additional specific language and/or steps for state contracts. These must be built into agencies' processes and templates. For example:

- Civil Rights (Public Contract Code § 2010, SCM 3.33 and 7.65)
  - For contracts  $\geq$  \$100,000, have contractor execute Civil Rights form
- Darfur Contracting Act (Public Contract Code § 10475, SCM 3.29)
  - Provide contractors the Darfur Certification form
- Iran Contracting Act (Public Contract Code § 2202, SCM 3.30)
  - For contracts of  $\geq$  \$1,000,000, check list and have contractor certify
- Loss Leader (Public Contract Code § 10344)
  - Include statutory wording in RFPs
- Tax Delinquencies (Public Contract Code § 10295.4, SCM 3.32)
  - Check FTB and CDTFA websites for list of top 500 tax debtor lists before making award

# Required approvals

When planning contracts, agencies need to be mindful of both internal and external approvals that are required

- Internal – To help ensure compliance with laws and SCM, agencies should establish and follow their own internal procedures. For example: how to initiate a contract amendment, approving a solicitation prior to release, approving bid evaluation/selection, and required routing for decisions, approvals, and signatures
- External – Agencies must also be aware of when approvals by other departments are required [see next slide]

# External approvals - DGS

California law requires that non-IT services contracts be sent to DGS for approval. See SCM 4.03

- The basic rule is non-IT services contracts over \$50,000 require DGS approval.
  - Agencies can apply to DGS to raise the approval threshold to \$150,000 – see SCM 4.05
  - DGS approval is not required if an agency has a clearly stated statutory exemption from Public Contract Code section 10295 and 10335 approval requirements
  - Interagency agreements that meet certain conditions are exempt from DGS approval if under \$1,000,000 – see SCM 4.04.A.5
- The DGS Office of Legal Services (DGS-OLS) is the division that receives and makes approval decisions on non-IT services contracts.



# External approvals – Other (besides DGS)

Some types of non-IT services contracts require additional approvals before submitting the final contract package to DGS-OLS for approval. (See, e.g., SCM 4.11.) For example:

- Contracts for hazardous activities require review and approval of the insurance by the DGS Office of Risk and Insurance Management (DGS-ORIM). (SCM 3.12, 7.40.)
- The DGS-Office of State Publishing (DGS-OSP) preapproval is required before contracting out printing services. (See Govt. Code § 14850; State Administrative Manual (SAM) 2800 et seq.)
- Unless statutorily exempt, agencies must obtain Department of Justice (DOJ) approval before contracting out legal services. (See Govt. Code § 11040 et seq. and SCM 3.07.)
- Use of a “fiscal agent” [contractor collecting or disbursing funds] requires preapproval from the Department of Finance (DOF). (SCM 3.24, SAM 8002.1)

# DGS-OLS ServiceNow Portal

- To obtain DGS-OLS approval of non-IT services contracts, agencies must upload the contract package to the DGS-OLS ServiceNow Portal.
  - Portal instructions are available from DGS-OLS on an as-needed basis.
- The contract package includes, but is not limited to: The signed contract with exhibits and a completed Std Form 215.
- See SCM chapter 4 for additional information about contract packages and approvals.