

CHAPTER 22
SERVICE AGREEMENTS/LETTERS OF AGREEMENT

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CHAPTER 22

SERVICE AGREEMENTS/LETTERS OF AGREEMENT

1. PURPOSE. The purpose of this chapter is to provide guidelines for those who initiate service agreements and letters of agreement.

2. AUTHORITY. As provided for in Section 10333 of the Public Contract Code (PCC), the authority to enter into service agreements is predicated on the Department of General Services (DGS), Office of Legal Services (OLS) (refer to State Contracting Manual [SCM], Volume 1).

3. POLICY. The Department's responsibility in preparing service agreements is to ensure the interests of the Department, and the state, are preserved through compliance with laws, rules, and regulations set forth by the state and federal government. This responsibility is assigned to the Administrative Services Division (ASD), Business Services Section (BSS), Contract Services Unit (CSU).
 - a. A contractual Agreement between an Office of Primary Interest (OPI)/requestor and a contractor shall in no way reduce the normal and regular services of the Department.
 - b. Personnel assigned to provide law enforcement services shall maintain all applicable employee rights and benefits afforded to them by the Department.
 - c. A reimbursable service contract (RSC), except for motion/film picture, may be negotiated between the affected command and the state/federal/local government, public body, or private entity (refer to Highway Patrol Manual [HPM] 11.1, Administrative Procedures Manual; Chapter 6, Reimbursable Services).
 - d. Indemnification Clause. The CHP, Office of Legal Affairs (OLA), suggests the following legal considerations:
 - (1) In any service agreement, the type of indemnification clause, unilateral or mutual, will depend on the type of service and whether the other party is a public entity or a private entity.
 - (a) Unilateral. One party (the indemnitor or the "contractor") is obligated to defend, insure, and hold harmless, the other party (the indemnitee or the "state") against any harm, and any liability resulting from that harm, and that the indemnitor (or its employees and agents) may cause during performance of the service agreement.

(b) Mutual. Both parties have agreed to equal and reciprocal defense and indemnity obligations.

(2) In a service agreement with a private entity, the unilateral indemnification clause included in the DGS General Terms and Conditions (GTC) at <https://www.dgs.ca.gov/OLS/Resources>, is recommended. The GTC shall be incorporated by reference in every service agreement with a private entity.

NOTE: Any contracts that limit the contractor's liabilities or require the state to indemnify, or to hold the contractor harmless, or any contracts that require the state to assume liabilities beyond the state's control, require DGS, OLS, review/approval (refer to SCM Vol. 1, Section 4.03).

(3) Mutual indemnification may be considered with a public entity. When a command wishes to amend the current GTC or indemnification language, the involved command shall prepare a CHP 78, Agreement Request, and forward it to CSU for processing. The CSU will then forward the requested indemnification language to CHP, OLA, for review. Once the language is reviewed by OLA, the service agreement will then be forwarded to DGS, OLS, for review and approval. Accordingly, any such modifications or amendments may delay the finalization of the service agreement.

4. TERMS AND GENERAL DEFINITIONS. Refer to Annex A.

5. TYPES OF AGREEMENTS AND ENCUMBRANCE ADJUSTMENTS.

a. Service Agreements. Service agreements are agreements to secure various noninformation technology and information technology services for the state. A CHP 78 shall be used to initiate all service agreements.

(1) For an informal means of obtaining a one-time, short-term, occasional, or annual (single state fiscal year [FY]) service under \$10,000 from any source within one state fiscal year (see paragraph 5.k. of this chapter and refer to HPM 11.1, Chapter 23, Delegation of X Number Contract Authority).

(2) Commands are exempt from submitting a CHP 78 to initiate postage equipment rental agreements as CSU automatically bids out this service. However, when the agreement needs to be amended, the OPI is responsible for submitting a CHP 78A, Agreement Amendment Request, to CSU for processing.

b. Reimbursable Services Contracts. Reimbursable services contracts are agreements for services in which the Department is reimbursed monetarily, or in

exchange of consideration with monetary value, for traffic control or other law enforcement services provided to a state/federal/local government, local public body, or private entity. A CHP 78R, Reimbursable Services Contract Request, shall be used to initiate all RSCs with the following:

- (1) Another state entity, regardless of the estimated dollar value.
- (2) A local government entity or private sector with an estimated dollar value more than \$50,000.
- (3) When special or mutual indemnification language is required.

NOTE: An RSC for traffic control that is with a local government entity or other local public body or private sector, with an estimated dollar value of \$50,000 or less, can be processed by the OPI by completing a CHP 465, Reimbursable Letter of Agreement (refer to HPM 11.1, Chapter 6).

c. Interagency Agreements. Interagency agreements (I/A) are contracts between two or more California State agencies. The I/As shall not be used for contracts with campus foundations, the federal government, local entities, or joint powers agreement (JPA). A CHP 78 shall be used to initiate all I/A agreements (refer to SCM Volume 1, Section 3.03). A CHP 78R request shall be used to initiate contracts for interagency reimbursable services.

d. Letters of Agreement. Letters of agreement (LOA) are agreements for services that typically do not involve the expenditure of funds. All LOAs, except for Reimbursable Letters of Agreement, shall be signed by the ASD chief and processed by CSU (refer to HPM 11.1, Chapter 6).

NOTE: If hazardous activity is involved or the LOA requires the state to indemnify, or to hold the contractor harmless, the LOA shall be processed through CSU.

e. Memorandums of Understanding. Memorandums of Understanding (MOU) are agreements that typically do not involve the expenditures of funds or considered a reimbursable service. An MOU can be utilized in situations where the Governor's Office requests the Department to aid a local law enforcement agency. The Commissioner's Office will contact the concerned Division to initiate a planning session with the affected local law enforcement agencies and local government leadership to discuss deployment of the CHP resources. If it is determined that departmental assistance is necessary, the appropriate Area commander will, in consultation with CSU and the appropriate Commissioner, develop an MOU between the Department and the requester. The MOU must be signed by the governing body of the requester, and applicable local law enforcement, and be accompanied by a Resolution which authorizes the requester to enter into an agreement with the Department. The MOU and signed Resolution shall

then be submitted to the appropriate Commissioner for final approval (refer to HPM 100.67, Law Enforcement Assistance and Interjurisdictional Operations; Chapter 2, Limited Term Supplemental Law Enforcement Assistance).

NOTE: If hazardous activity is involved that requires the state to indemnify, or to hold the contractor harmless, the MOU shall be submitted to CSU for review.

f. Amendments. Amendments are formal modifications or material changes to an agreement, such as the term, cost, or scope of work, in one or more provisions of an existing contract. A CHP 78A shall be used to initiate all amendments to agreements. The CHP 78A is to be submitted with required approval(s)/signature(s) to CSU for processing. Amendments must be entered into before the expiration of the original agreement. It should contain the same degree of specificity for changes the original agreement contained, for the same item. The items of work covered by the amendment should be clearly written as part of the agreement. Paragraphs being amended should be clearly identified.

(1) An amendment request is required in the following instances:

(a) To extend the length of the term of the agreement for not more than one year.

(b) To increase the original agreement's maximum amount. The amount of the increase is not to exceed 30 percent or \$250,000 of the original contract amount. If the contract is a public works contract, the amount of the increase is not to exceed 30 percent or the dollar amount established by the Department of Finance, or other project cost limit amount as may be periodically issued by the Director of Finance, pursuant to PCC Section 10105. It is recommended the OPI contact CSU for assistance before submitting the CHP 78A, as there are circumstances where this may not be possible.

NOTE: There is no limit or maximum amount of an increase for an amendment to an interagency agreement, reimbursable services agreement, or to an amendment to an agreement with a governmental agency. Amendments cannot be utilized to circumvent the competitive bidding process (refer to SCM Volume 1, Section 5.81).

(c) To change the funding information, especially in multiple year agreements, ensure the change is reflected on the CHP 78A.

(d) To decrease the original agreement's maximum amount. This is a rare occurrence. This would typically be necessary only if funds will be extracted from the agreement, thereby lowering the actual funds to be expended.

(e) To modify the scope of work, rate, or language, in any part of the agreement.

(f) To change the contractor's name or the contractor's business address in the event the contractor's business has relocated (refer to SCM Volume 1, Section 3.09 A.13).

(g) To change the location of the service address in the event the command office has relocated or closed.

(2) If the original agreement requires DGS, OLS, approval, the amendment must be approved by DGS, OLS, unless the amendment only extends the original time for completion of performance of the contract for a period of one year or less.

(3) If the original agreement does not require DGS, OLS, approval, but the dollar amount of the amendment exceeds the Department's delegation (\$50,000), the amendment must be approved by DGS, OLS.

g. Encumbrance Adjustments. Encumbrance adjustments do not require an amendment request. Encumbrance adjustments are a process for moving existing funds in a multiple FY contract from the initial FY breakdown of the contract.

(1) Encumbrance adjustments are required to:

(a) Move (decrease/increase) funds from one FY to another.

(b) Disencumber funds from a contract that is cancelled or terminated, when all the funds have not been expended.

(2) To process encumbrance adjustments, the command must complete the Encumbrance Adjustment form (this form is provided by CSU). The command must complete the form indicating the amount of funds to be moved from one FY to another. The form must be sent to CSU, via e-mail, at contractsubmittal@chp.ca.gov, for processing. The processing time for encumbrance adjustments is two months.

(3) The CSU shall revise the original STD. 215, Agreement Summary, by making the appropriate changes as requested and shall write "REVISED" at the top of the STD. 215, noting the revision number of the encumbrance request.

h. Expedite Agreements. All requests (CHP 78, CHP 78A, CHP 78R) requiring expedited processing shall have prior written approval from the appropriate Division chief to the ASD chief. Under no circumstances will service agreements or

amendments be processed as an expedite unless all required signatures and any external approvals are obtained prior to the start date of the agreement.

i. Exempt Agreements. Exempt agreements are agreements exempt from advertisement in the DGS, California State Contracts Register (CSCR), and/or are exempt from the competitive bidding process.

(1) Competitive bidding is required unless there is a legally authorized basis for a bid exemption. Key advertising and bid exemptions are identified in paragraph 5.i., of this chapter (refer to SCM Volume 1, Section 5.80).

(2) For agreements exempt from advertising in the CSCR and competitive bidding, commands shall submit the appropriate agreement request (CHP 78, CHP 78A, or CHP 78R) indicating the contractor's name (if applicable), identifying the exemption criteria as indicated in paragraph 5.i.(3) and (4), and providing any supporting documentation related to the specific exemption.

(3) Key Advertising and Competitive Bid Exemptions:

(a) Amended Agreements. Amendments to agreements do not require advertising or competitive bidding (refer to SCM Volume 1, Section 5.81., and paragraph 5.f., of this chapter).

(b) Statutory Exemptions. A statutory exemption is a legal, authorized basis for bid exemption (refer to SCM Volume 1, Section 5.80 A.1 through A.9, respectively).

1 Contracts of less than \$10,000.

2 Contracts of less than \$5,000 where only per diem or travel expenses or a combination thereof, are to be paid.

3 Emergency Agreements. The work or service is for the immediate preservation of the public health, welfare, safety, or protection, of state property (refer to paragraph 5.j., of this chapter).

4 Interagency Agreements. Contracts with other California State agencies, State Universities, and University of California campuses.

5 Contracts with other public entities, including contracts with another state, local, or federal agency; auxiliaries of California State Universities or California community colleges; or an organization acting as a governmental agency under a JPA.

6 Contracts for the sole purpose of obtaining expert witnesses for litigation.

7 Contracts for legal defense, legal advice, or legal services, by an attorney or the attorney's staff.

8 Contracts with a business entity that operates a Community Rehabilitation Program (CRP) justified under the exceptions in Government Code (GC) 19130(b), and that also meets the criteria established by Welfare and Institutions Code 19404 (PCC Section 10340).

NOTE: Contracts with CRPs that are justified under GC 19130(a) are required to be competitively bid.

9 Small Business (SB)/Disabled Veteran Business Enterprise (DVBE) Option.

a This option allows for an award under the following conditions:

1/ The contract is awarded to a certified SB, micro-business (MB), or DVBE.

2/ The contract award is \$5,000 or more, and less than \$250,000.

3/ Quotes were received from at least two certified SBs or MBs, or two certified DVBEs.

b An award based on receiving only one quote is not permitted under this method.

c Mixing quotes (e.g., one SB or MB, and one DVBE) is not permitted under this method.

d The PCC does not expressly require the award to the low quote; however, if the award will be made to a quote other than the low quote, the agency must document the business reasons and the cost-reasonableness basis for selecting the other quote.

e No specific format or timing is required under this option. Agencies have discretion as to how to obtain the quotes. Agencies should provide contractors enough information about the services which will enable the vendors to formulate a quote,

including a copy of the proposed contract (e.g., scope, payment provisions, terms).

f The SB preference or DVBE incentive are not applicable under this method.

g There is no protest right for this method.

h Use of this method is capped at \$250,000 for the entire contract term, including any option years and/or amendments. If CSU believes the contract may exceed \$250,000, they should use a different solicitation method, such as an Invitation for Bid (IFB) or Request for Proposal (RFP). If quotes come in over \$249,999.99 CSU would need to solicit again, either scaling down the project to lower the quotes, or using a different solicitation method.

i For public works only, the dollar range for which this two-quote method can be used, is \$10,000 to \$333,000 (or other project cost limit amount as may periodically be issued by the Director of Finance, pursuant to PCC Section 10105).

10 Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations (PCC Section 10340(b)(7)).

(4) Department of General Services Approved Exemptions (PCC Section 10348). The state is committed to promoting fair and open competition whenever it is required or otherwise feasible. There are, however, circumstances under which the Department may award a contract or amendment to a vendor on a noncompetitive basis even though there is no express statutory exemption from bidding. Under PCC Section 10348, DGS is authorized to determine when an award can be made without competition and may do so on a case-by-case basis for the Department's application. Non-Competitive Bid (NCB) as described below (refer to SCM, Volume 1, Section 5.80 B.1.a. through B.1.d. respectively).

(a) Non-Competitive Bid Agreement.

1 An agreement (formerly "sole source") is a contract for goods or services, or both, when only one business enterprise is afforded the opportunity to provide the specified goods and/or services.

2 The NCB form with instructions and signature requirements can be found on the DGS, Procurement Division (PD), website (refer to SCM

Volume 2 for additional information in reference to NCBs, and paragraph 5.i. of this chapter, for processing an NCB agreement.)

a The DGS Categorical Exemptions (PCC Section 10348) (historical references: SAM 1233, DGS Management Memorandum [MM] 03-10). Refer to SCM Volume 1, Section 5.80, B.2.a. through B.2.n., respectively, for items 1 through 14, below:

1/ Service Contract using a DGS Leveraged Procurement Agreement (LPA).

2/ Subvention and local assistance contracts as defined in SCM Volume 1, Section 3.17. This exception applies only when services are provided to the public and not specifically to a state agency.

3/ Maintenance agreements under \$250,000 per year 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 under \$250,000 per year.

4/ Contracts where the state is unable to compete and select a different contractor, because a contractor has already been selected by a federal, state, city, county, or other regulator entity, to perform a service in a specific geographical area (e.g., refuse and/or sewage disposal contracts where there is an exclusive franchise agreement and no exception for the state).

5/ Public entertainment contracts for state-sponsored fairs and expositions.

6/ Contracts that can only be performed by a public entity as defined in Section 605(b) of the Unemployment Insurance Code.

7/ Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000.

8/ Contracts for ambulance services (including, but not limited to, 911) when there is no competition because the contractor is

designated by a local jurisdiction for the specific geographic region (historical reference: DGS MM 05-04).

9/ Contracts for emergency room hospitals, medical groups, physicians, and ancillary staff providing services at emergency room hospitals, when a patient is transported to a designated emergency room hospital for the immediate preservation of life and limb, and there is no competition because the emergency room hospital is designated by a local emergency medical services agency, and medical staffing is designated by the hospital. This exemption covers only those services provided in response to the emergency room transport (historical reference: DGS MM 05-04).

10/ Contracts with health maintenance organizations, 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.

11/ Proprietary subscriptions and proprietary publications and/or technical manuals regardless of media format, up to \$250,000. This includes access to preexisting proprietary research data through a non-Information Technology (IT) services contract; however, "subscription" is not intended to include the performance of any personal services (this includes, but is not limited to, consulting, advice, and research).

12/ Rental of proprietary postage meters if they are interfaced and intermembered with existing mailing equipment, and there is only one authorized manufacturer 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 are less than \$100,000.

13/ Departmental memberships in professional organizations provided it is solely a membership and does not include the performance of any personal services.

NOTE: Memberships for represented employees are governed by applicable collective bargaining agreements

and memberships for non-represented employees are governed by California Department of Human Resources rules (refer to SCM Volume 1, Section 3.23).

14/ Contracts for non-IT services training for state personnel, if the cost of the training contract does not exceed \$50,000, and the cost of multiple training contracts with a single contractor does not exceed \$50,000 cumulatively, in any 12-month period (historical reference: DGS MM 11-05). The exemption is for preexisting training courses; it does not cover development of training or other personal or consulting services. Agencies shall not split contracts to avoid competitive bidding or other contract requirements; agencies with recurring training needs should assess the cumulative amounts departmentally, and generally should go out to bid if there are ongoing and/or department-wide needs.

j. Emergency Agreements. Emergency is defined in PCC Section 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” (refer to SCM Volume 1, Section 3.10). Except in an emergency, no service shall commence prior to formal approval of the agreement by DGS, or under its authority, the ASD. Additionally, no payment for any service agreements shall be made prior to this approval. Emergency agreement processing procedures are as follows:

(1) Prior to obtaining emergency services, commands are to contact the BSS Procurement Manager, or designee, for an emergency agreement number and to provide preliminary information.

(2) For incidents occurring after normal work hours or on weekends, commands shall contact the Emergency Notification and Tactical Alert Center for approval to obtain the required emergency service and shall contact the BSS Procurement Manager or designee on the next business day.

(3) Commands shall complete and submit the emergency CHP 78 to CSU within five business days of the incident, or upon completion of services (whichever is first), along with the following information:

(a) Contactor/vendor name and address, dates of the incident (contract term), description of services, contract amount (final invoice), and budget coding, shall be indicated on the CHP 78.

(b) Quote.

- (c) Scope of work (refer to paragraph 6.a.[4] of this chapter).
- (d) Final invoice.
- (e) Justification and explanation of the emergency agreement (refer to paragraph 5.j. of this chapter for definition of an emergency).

1 Commands are not required to obtain three bids (although two or more quotes is preferred) or advertise prior to entering into an emergency agreement.

2 Commands are not required to obtain an NCB approval prior to entering into an emergency agreement.

- (f) All required approval signatures.

(4) For facility-related emergencies, contact the ASD, Facilities Section (FS).

k. X Numbers. An informal agreement (means) of obtaining one-time, short-term, occasional, or annual (single state FY) services under \$10,000, from any source within one state fiscal year. No service provider may be issued multiple X Numbers in one fiscal year that exceeds \$9,999.99 for the performance of the same service, as outlined in HPM 11.1, Chapter 23. A CHP 78X, X Number Service Order, will be utilized to request the services.

l. Non-Competitively Bid Agreements. Pursuant to various Governor Executive Orders and DGS MMs, the competitive bidding processes will be utilized to the maximum extent required by law. The acquisition of services \$10,000 or more, where only one known contractor can provide the services and no competition exists, is called an NCB agreement. Where no competition exists and the Department determines the services are necessary to its operation, the following steps must be taken:

(1) Consult with CSU prior to beginning the NCB process.

(2) When requesting an NCB agreement for services, the requesting command should complete the NCB Contract Justification form (GSPD-09-007). All questions on the form should be addressed to establish the basis for restricting the goods or services to one supplier or group, and required signatures obtained.

(3) The NCB Contract Justification form with instructions and signature requirements can be found on the DGS Procurement Division website: <https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd09-007.pdf>.

(4) The requesting command shall then prepare and submit the following to the Contract Submittal e-mail, at ContractSubmittal@chp.ca.gov, for evaluation, recommendation, and processing.

(a) CHP 78.

(b) GSPD-09-007. Non-Competitively Bid (NCB) Contract Justification form.

(c) California State Transportation Agency (CalSTA) Issue Memorandum (Issue Memo). Contact the Division office for the current format of the Issue Memo.

(d) Any supporting documents (e.g., price quote, proprietary letter).

(5) The CSU will forward the NCB to the appropriate Commissioner. Once the NCB package is approved internally, ASD will forward the NCB package with supporting documents to the CalSTA Secretary for review and approval.

(6) Upon return receipt of the CalSTA-approved NCB, CSU, will submit to DGS, PD, for final approval via the online NCB Portal. Once CSU receives notification from DGS, PD, of the NCB approval, CSU will process the NCB service agreement.

(7) The Department shall not execute an NCB agreement or amendment until DGS approves the NCB package.

6. RESPONSIBILITY.

a. Requester. The requester, or OPI, is also considered the contract manager or project representative. Typical responsibilities of a contract manager/project representative include, but are not limited to, the following:

(1) Completing the appropriate agreement request (CHP 78, CHP 78A, or CHP 78R).

(2) Ensuring the proper budget coding and costs are provided on the request.

(3) Routing appropriate forms (CHP 78, CHP 78A, or CHP 78R) for signature approval which includes signatures of the respective budget coordinator, Information Management Division (IMD), Grants Management Unit (GMU), and appropriate Commissioner, if required. Once all approvals have been received, the contract manager, or designee, will submit the appropriate agreement request along with a complete statement of work and any pertinent

documents to CSU for processing. Required approvals include, but are not limited to:

- (a) Division and OPI.
 - (b) Non-Information Technology Services. Budget coordinator, commander, or Division chief, if applicable.
 - (c) Information Technology Services. Information Management Division, budget coordinator, commander or Division chief, if applicable.
 - (d) Non-Competitively Bid Agreements. Budget coordinator, commander, or Division chief, and if applicable OPI chief, and appropriate Commissioner.
 - (e) Non-Competitively Bid Agreements or Sole Brand Purchases (Information Technology). Information Management Division budget coordinator, commander, or Division chief, and if applicable, OPI chief and appropriate Commissioner.
 - (f) Expedites. Division chief to ASD chief approval (refer to paragraph 5.h., of this chapter).
 - (g) Reimbursable Services. Area command and Division chief approval, if required.
 - (h) Grant-Funded Agreements. Prior to the expenditure or obligation of grant funds (except for authorized personnel costs), the Operational Command Project Coordinator will obtain Special Projects Section, GMU, approval.
- (4) Developing and writing a clear, concise, detailed description of the statement of work to be performed, including any specifications. Statement of work must be attached to the appropriate agreement request prior to submitting to CSU. The typical statement of work will detail “who, what, how, where, and when.”
- (a) Providing as much detailed information as possible (e.g., list of requirements/specifications of the services to be performed, if applicable; specification of how the work will be done; list of any necessary licenses, permits, and certifications, etc.; location of where the work will be performed; who and how the contract will be monitored).
 - (b) The contract manager shall submit the detailed statement of work electronically, with the appropriate agreement request to CSU, via e-mail.

(5) Reviewing of, in a timely manner, the draft agreement for agreement provisions, statement of work, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and the final product.

(6) Assessing and requesting amendments, as required, allowing adequate time to process and execute the procedure.

(a) An amendment to add time before the contract expires to prevent a lapse in service.

(b) An amendment to add funds, before funds are depleted, to prevent a lapse in service.

(c) An amendment for changes to the agreement other than for time or funding.

(7) Assessing processing time frames for requests indicated above and submitting requests accordingly.

(8) Once a request is completed with all required approval signatures, contract manager/project representative is responsible for scanning and sending to CSU, via e-mail, at ContractSubmittal@chp.ca.gov. Requests submitted outside the time frames indicated below shall have prior expedited approval from the appropriate Division chief to ASD chief. (Refer to paragraph 5.h., of this chapter.) If expedite approval is not obtained prior to submitting the request to CSU, the request will be processed as first in, first out in accordance with the processing times below.

(a) Four months are required for processing amendments and NCB agreements exempted by statute or policy (refer to paragraph 5.i., of this chapter).

NOTE: Non-bid agreements that are not exempt by statute or policy will require an additional three-month processing time to obtain Agency and DGS approval.

(b) Seven months are required for processing agreements that are to be advertised and competitively bid.

1 When considering processing times of an agreement, the requestor should take into consideration if the agreement requires DGS approval. The DGS approval is required when an agreement or amendment exceeds the Department's delegation (\$50,000). The DGS approval

process is two weeks at minimum and should be considered in the total amount of time for processing.

2 Non-Information Technology (IT) services over \$50,000 shall be submitted to DGS, OLS, for approval (refer to SCM Volume 1, Chapter 4, Section 4.03).

3 Contact CHP Information Technology Services (ITS) for information technology services over \$500,000.

(9) Notifying CSU immediately when an emergency contract is initiated (refer to paragraph 5.j. of this chapter).

(10) Closely monitoring the agreement to ensure compliance with all agreement provisions. This includes the following:

(a) After receipt of the executed contract, notifies the contractor to begin service with contract parameters.

(b) Monitors the progress of work to ensure that services are performed according to the quality and quantity, objectives, milestones, time frames, and manner, specified in the agreement (e.g., review progress reports and interim products). If problems are encountered during the term of the agreement, the OPI should initiate informal remedies, and they should be fully documented. The OPI should contact CSU for instructions. If the informal remedies are unsuccessful, formal documentation will be prepared by CSU. The CSU will prepare a letter to the contractor which outlines any problems related to substandard or non-performance. The letter will use agreement specifications verbatim so there is no doubt about the services covered in the agreement. All letters in reference to nonperformance will be sent by certified mail with copies to all concerned parties.

(c) Ensures all work is completed and accepted by the Department before the expiration of the agreement.

(d) Monitors the agreement expenditures to ensure there are enough funds to pay for all services rendered as required by the agreement.

1 Invoices. Invoicing typically occurs after services are rendered. Advance payment shall only be rendered if stipulated in the agreement.

2 Invoice Approval. All invoices shall be reviewed and approved by the command's invoice approver, receiving processor, or designee, within three days of receipt of the invoice.

3 Financial Information System for California Receipt Identification.

A Financial Information System for California (FI\$Cal) Receipt ID is required for payment of all invoices. The command's invoice approver, receiving processor, or designee, must create a receipt of goods/services in FI\$Cal. Invoice details (quantity received and invoice receipt date) must be entered. FI\$Cal will issue a Receipt ID once the transaction is saved. The Receipt ID number must be written on the invoice in the approval stamp area. The approved invoice must be uploaded to the ASD Repository folder (refer to HPM 11.1, Chapter 24, Payment of Invoices).

4 State Controller's Office. The Receipt ID is required by the State Controller's Office (SCO) and is associated with the Purchase Order (PO) ID (provided by CSU with the executed agreement) and Voucher ID (provided by Fiscal Management Section [FMS]). The SCO will not approve the Voucher ID for payment without the associated Receipt ID (refer to HPM 11.1, Chapter 24).

5 Invoice Payment. Contractors are due payment within 45 days of the command receiving the invoice. The DGS-certified SB contractors are due payment within 30 days

6 Payment Inquiries. Upon receiving an inquiry from a vendor about an invoice payment, the requestor shall review information in FI\$Cal for details before contacting FMS.

7 Invoice Disputes. All questionable invoices shall be disputed immediately. Undisputed invoices shall not remain unattended.

(e) Identifies and approves the final invoice, as appropriate, and forwards it to FMS for payment within three days (refer to HPM 11.1, Chapter 24).

(f) Monitors the use of DVBE subcontractors and suppliers to ensure the attainment of approved DVBE participation is achieved.

(g) Contract manager/project representative is **not authorized** to take the following actions:

1 Instructing the contractor to start work before the agreement is executed, unless it is an emergency service (refer to paragraph 5.j., of this chapter).

2 Changing the description or statement of work of the agreement. Directing the contractor to do work that is not specifically described in the agreement.

3 Signing the agreement as the state agency's authorized signatory, unless authorized in writing. The CHP 465 can be signed by the Area commander or designee.

4 Signing any contractor's agreement form (e.g., maintenance and repair service agreements, IT service agreements, hotel agreements, terms and conditions). Authorizing payment for an agreement for any work not performed satisfactorily.

5 Authorizing the following without an executed agreement amendment in place:

a Extending the contract term of an agreement.

(11) Allow the contractor to incur costs over the original maximum amount authorized in the agreement. Prepares Agreement Request.

(a) Within established time frames, the contract manager must forward the appropriate completed agreement request (CHP 78, CHP 78A, or CHP 78R), which provides all pertinent information required for development of an agreement or an amendment. The CHP 78, CHP 78A, and CHP 78R are available on the CHP Intranet under Forms. Any portion which does not apply to a service, should be marked "not applicable" or "N/A."

(b) Creates and assigns an OPI tracking number. This is a tracking system implemented as a method for the OPI to track the progress of each agreement request. The tracking number will begin with the requesting command's three-digit location code, followed by "CP" for contract payable or "CR" for contract reimbursable, followed by one digit representing the fiscal year (FY), (FY 21/22 would be 1), then a consecutively assigned three-digit number. Examples of OPI tracking numbers:

076**CP**1001, 076**CP**1002, 076**CP**1003, etc.

076**CR**1001, 076**CR**1002, 076**CR**1003, etc.

(c) Indicates the previous agreement number. Insert "N/A" if there is no prior agreement.

(d) Provides the OPI contract managers contact information and the program representative designated to monitor the contractor's performance, to ensure compliance.

(e) Indicates the agreement type (bid, amendment, NCB).

(f) Indicates the term of agreement. The maximum agreement term for a service agreement is three years. Legal and reimbursable agreements do not have a maximum agreement term date or dollar amount.

(g) Provides the CHP area location(s) where the services are to be performed.

(h) Describes the purpose and/or service(s) to be performed.

(i) Attaches all required documents to the CHP 78, CHP 78A, or CHP 78R, including, but not limited to, the bidder's list, specifications/scope of work, blueprints/plans/drawings, and SB and DVBE documents, if required.

(j) Provides the CHP contact information of the invoice approver.

(k) Indicates the budgeted amount.

NOTE: The OPI should contact their Divisions budget coordinator to determine the budget amount. The CSU does not determine agreement or amendment budget amounts.

(l) Indicates the estimated project amount.

(m) Indicates the amendment increase/decrease, if applicable. The amendment amount is not to exceed 30 percent (\$250,000) of the original agreement amount. (Refer to SCM Volume 1, Section 5.81 A.1.b.ii.)

(n) Provides the amendment term, if changed.

(o) Provides the maximum project amount.

(p) Provides breakdown of funding per FY and budget coding to include:

1 Appropriation Reference (REF).

2 Fund, Enactment Year (ENY).

3 Account.

- 4 Alternate Account (ALT).
- 5 Program.
- 6 Reporting Structure.

These codes are provided and updated by FMS via CHP Intranet and are used to determine which cost pool to expend the funds.

- 1 Example of FY (July-June) funding breakdown for a three-year agreement with a maximum amount of \$50,000:

FY 21/22	\$20,000	FY 22/23	\$30,000	FY 23/24	\$10,000
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- 2 Example of budget (FI\$CAL accounting) codes:

Appropriation REF	001
Fund	0044
ENY	2022
Account	5324100
ALT Account	5324100001
Program	A9999000A05
Reporting Structure	27203078

- 3 Example of funding breakdown to amend a contract (above) for time and money:

FY 21/22	\$20,000.00	(Original contract amount)
FY 22/23	\$30,000.00	(Adding money only)
FY 23/24	<u>\$10,000.00</u>	(Adding time and money)
Total	\$60,000.00	

NOTE: The CSU does not determine funding or coding information. The OPIs are to ensure that adequate funding is available when establishing multi-year agreements.

(q) With the exception of services to be bid out by CSU, the requester indicates in the "Agreement With" field, the contractor's business name, contact name, business address, telephone number, and fax number.

NOTE: An agreement request may be submitted at any time within the processing time frames referenced in paragraph 6.a.(8) of this chapter.

(r) An agreement request **may be returned** to the originator if the service request does not contain the following:

- 1 Budget coding (refer to paragraph 6.a.[11][p]).
- 2 Estimated price.
- 3 Appropriate approvals.
- 4 Contractor information for non-competitive services.
- 5 Adequate scope of work/specification (description).
- 6 List of at least three bidders for a competitive bid or at least one bidder for a non-competitive bid.

b. Contract Services Unit. The CSU supports the Department by providing consultative and technical assistance on CHP service contracts and the contracting process. The responsibilities of CSU include, but are not limited to, the following:

- (1) Processes agreement requests (CHP 78, CHP 78A, CHP 78R) for the Department on a statewide basis.
- (2) Provides consultation/technical assistance in the development of the specifications and/or the scope of work.
- (3) Goes out to bid (advertises) for service contracts \$10,000 or more to ensure fair competition.
 - (a) Utilizes SB/DVBE option where applicable.
- (4) Ensures compliance with, but not limited to, all state, federal, or special codes and regulations.
- (5) Obtains all applicable contract documents that are required for each service contract (e.g., SB/DVBE DGS Certification, insurance, licensing certificates, payment bond).

(6) Verifies that funding is available, and the agreement is encumbered in conformance with CHP policy.

(7) Secures all signatures, approvals and disburses copies to appropriate parties.

(8) Creates and maintains a contract file for each contract.

(9) Once the contract is executed (approved), CSU will create a contract shell and a PO and will enter the details of the contract (vendor name, contract amount, agreement number, description of services, accounting codes), and other information required by FI\$CAL.

NOTE: The PO is the mechanism that encumbers the funds so once the requestor acknowledges receipt of the services in FI\$Cal, payment of an invoice for services can be made. (Refer to HPM 11.1, Chapter 24.) At the beginning of each month, CSU distributes via e-mail an Expiring Contracts Report. The report lists agreements set to expire in nine months

This report is sent to Division commanders who in turn are to notify the appropriate OPI of their expiring agreement(s). The intent of this monthly report is a courtesy to the OPI to ensure a repetitive service agreement does not lapse.

(10) Coordinates all protests to agreement awards between the Department, contractors, and DGS.

(11) Prepares all formal correspondence regarding non-performance and, if necessary, prepares cancellation/termination letters.

7. CERTIFIED SMALL BUSINESS AND DISABLED VETERAN BUSINESS ENTERPRISE.

a. Pursuant to the Small Business Procurement Contract Act (GC Sections 14835 through 14843) and Section 999 of the Military and Veterans Code (M&VC), all state agencies must offer procurement opportunities to California-certified SB, MB, and DVBE whenever possible. Unless otherwise directed, any reference to certified SBs also includes certified MBs as defined by GC Section 14835.

b. Small Business/Disabled Veteran Business Enterprise First Policy. The Department shall make every effort to seek out and include California-certified SB, MB, and DVBE participation **first** before utilizing a large or non-certified contractor/supplier when conducting any procurement activity within its approved procurement authority.

c. Pursuant to EO S-02-06 and M&VC Section 999.2, each state agency shall have an annual statewide participation goal in state contracting of no less than 25 percent for SB/MB and no less than three percent for DVBE. The Department's statewide participation goal in state contracting is no less than five percent for DVBE. These goals apply to the **overall** dollar amount expended each year by the Department. These goals were established to enhance and encourage competition by creating an optimum environment that affords all businesses equal access to state contracting opportunities

d. Certified Business Advocate. The BSS certified business advocate has the responsibility of working with staff, SBs, MBs, and DVBEs to maximize SB, MB, and DVBE participation in the Department's procurement process (refer to SCM Volume 1, Section 8).

(1) In accordance with GC Section 14846 and M&VC Section 999.12, the certified business advocate has the responsibility of, but not limited to:

(a) Assisting staff in identifying potential SB, MB, and/or DVBE prime contractors or subcontractors and potential contracting opportunities.

(b) Ensuring payments due on procurement documents with SB or MB suppliers are promptly made as provided by GC Section §927.

(c) Responding to all concerns a SB, MB, or DVBE may have regarding the Department's procurement activities and responsibilities in fulfilling the Executive Order S-02-06 and Section M&VC 999.2 established annual expenditure goals.

(d) Requesting contractor to complete and return form STD 817, Prime Contractor's Certification – DVBE Subcontractor Report after completion of the agreement.

(e) Completing the required Annual Contract Activity Report on behalf of the Department.

e. Disabled Veteran Business Enterprise Waiver. The DVBE minimum participation goal of five percent shall be included in **all** formal solicitations unless exempt by statute (refer to SCM Volume 1, Section 5.80) or waived by the Commissioner or BSS certified business advocate. **No exceptions.**

NOTE: Requesting to waive DVBE Program Requirement **does not waive DVBE incentive**. The DVBE incentive shall be included in **all** formal solicitations. **No exceptions.**

(1) To request a waiver, A CHP 229, DVBE Program Waiver, is to be completed and submitted via e-mail or faxed to the Department's BSS certified business advocate. The BSS certified business advocate will review the CHP 229 for appropriateness, research in DVBE participation options, and within two business days return the CHP 229 to the requester via e-mail or fax as approved or denied.

f. Prompt Payment Act. All invoices shall be reviewed, approved and forwarded to FMS within three days. **All questionable invoices shall be disputed immediately. Undisputed invoices shall not sit in an employee's inbox unattended.** Contractors are due payment within 45 days of the command receiving the invoice. If the contractor/supplier does not receive payment within 45 days of receipt of the invoice, the Department will automatically be assessed late payment penalties fees by the SCO. Once the invoice is disputed, the 45-day-clock stops and does not restart until the disputed invoice is resolved. Disputing the invoice eliminates or minimizes late payment penalties.

NOTE: If a certified SB/DVBE has a payment/invoice concern that a Division, Area command, or FMS cannot resolve, the invoice shall be disputed immediately, and the contractor/supplier can be referred to the certified business advocate for assistance.

8. CONTRACTUAL ETHICS. A contract manager will not accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with the Department. Such circumstances could be construed as intent to influence the contract manager. Favors should be courteously refused (refer to GC Section 19990). Other ethical issues include the following:

a. The contract manager shall not make outside purchases of materials or service from any business entity in which they have a financial interest.

b. Employees are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship.

c. The appearance of questionable or unethical practices is detrimental to both the employee and the Department.

d. Resolution of any questionable relationships or practices should be referred to CSU.

e. At the direction of the appropriate Commissioner, except for reimbursable services, all service agreements are required to contain:

(1) CHP 78S, Conflict of Interest and Confidentiality Statement – Employee. The CHP 78S is required to be filled out by each CHP employee participating in the bidding/contracting process, including, but not limited to, bid openings, bid evaluations, and obtaining price quotes.

(2) CHP 78V, Conflict of Interest and Confidentiality Statement – Vendor. A mandatory completion of the CHP 78V is required by all vendor personnel that help to develop, process, and approve the acquisition. The CHP 78V must be attached to every procurement/contract file. Vendors/contractors failing to comply with this requirement will be disqualified from the Agreement award. Exception to this disqualification shall be on a case-by-case basis with ASD's approval. To request ASD approval for exemption:

(a) The CSU shall forward an email through their chain-of-command to ASD requesting vendor to be exempt from signing the CHP 78V. The e-mail must contain a detailed justification.

(b) The CSU shall document the file as to why the vendor would not sign CHP's internal form.

(c) Once the approved/denied email is returned, CSU shall use the approved/denied email to move the Agreement forward or to cancel the Agreement.

NOTE: Interagency Agreements (IA) and Leverage Procurement Agreement (LPA) are exempt from CHP 78V requirements.

(3) STD. 204, Payee Data Record. A completed STD. 204, Payee Data Record is required for payments to all non-governmental entities and shall be kept on file in each procurement file. Payees (contractors/suppliers) who do not wish to complete the STD. 204 may elect not to do business with the state. If the payee does not complete the STD. 204 and the required payee data is not otherwise provided, payment may be reduced for federal backup withholding and nonresident state income tax withholding.

(4) STD. 205, Payee Data Record Supplement (optional). This form is used to provide remittance address information if different than the mailing address on the STD. 204. Use this form to provide additional remittance addresses and additional Authorized Representatives of the Payee not identified on the STD. 204.

(5) CHP 28, Voluntary Statistical Data. The PCC Section 10111 requires state agencies to capture information on ethnicity, race, and gender, and sexual orientation of business owners on all awarded contracts and procurements to the extent that the information has been voluntarily reported to the Department. The

Department is prohibited from using this data to discriminate, provide a preference in the solicitation or from acceptance of bids, quotes, or estimates for services, construction, and/or information technology. It is the Department's policy when forwarding the executed contract documents to the awarded contractor to include the CHP 28. This information shall not be collected by the Department until after the contract award is made. The CHP 28 is mandatory for the Department to send to the contractor/supplier each time a new service agreement is provided. However, this form is voluntary for the contractor/vendors to complete and return to the Department.

(6) STD. 16, Contract Award Report. Pursuant to Title 2, Division 4.1, Chapter 5, Section 11114 of the California Code of Regulations requires, within ten business days of award date, contract awarding agencies to notify the Department of Fair Employment and Housing, Office of Compliance Programs of any contract award in excess of \$5,000.

(7) Contractor Certification Clause. A contractor who enters into a service agreement with the state shall certify the Contractor Certification Clause (CCC 04/2017) under penalty of perjury that the person signing is duly authorized to legally bind the prospective contractor to the clause(s) identified within the CCC 04/2017 (e.g., Statement of Compliance, Drug-free Workplace Requirements, Sweat free Code Of Conduct, Labor Code/Workers' Compensation, Americans With Disabilities Act, Corporate Qualifications To Do Business In California and Expatriate Corporations). This certification is made under the laws of the State of California.

NOTE: The State of California is not permitted to do business with an expatriate corporation per PCC Section 10286.1

(8) Darfur Contracting Act Certification. Contract analysts/procurement buyers must require vendors to certify whether they are a scrutinized company for all acquisitions of non-IT goods or services, except for 1) public works contracts, and 2) contracts awarded using DGS LPAs. This requirement applies regardless of the procurement approach, method, or solicitation format used, including, but not limited to: Formal Bids; Informal Bids; Request for Proposals.

(9) Request for Quotes; Invitation for Bids; NCB, SB/DVBE Option; under \$10,000 Fair and Reasonable Pricing and under \$10,000 for procurement card, or P-Card; and X Numbers.

(a) Public Works contracts—The Darfur Contracting Act does not apply to public works as it does not reside in the PCC impacting public works. If you

need further assistance, please contact your CHP's assigned DGS Legal Counsel.

(b) The DGS PD obtains this information from LPA contractors so state agencies do not have to obtain it at their transaction level.

(c) A scrutinized company is a company doing specified types of business in Sudan as defined in PCC Section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a state agency for non-IT goods or services (PCC Section 10477[a]). The PCC Section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a scrutinized company in order to submit a bid or proposal to a state agency. A scrutinized company may still, however, submit a bid or proposal for a contract with a state agency for goods or services if the company first obtains permission from the DGS, according to the criteria set forth in PCC Section 10477(b).

(10) Commercially Useful Function. The purpose of the commercially useful function (CUF) requirement is to prevent certified SBs/MBs/DVBEs from acting as a "pass through" or "front"; and prevents the prime contractor or the subcontractor from providing artificial or incidental participation to meet the socio-economic objective of a solicitation or contract. A contractor, subcontractor, or supplier will not be considered to perform a CUF if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a DVBE participation. A CUF is defined as a contractor/supplier who does all but not limited to the following:

(a) Is responsible for the execution of a distinct element of the work to be performed.

(b) Carries out its obligation by performing, managing, or supervising the work to be completed.

(c) Performs work that is normal for its business services and functions.

(d) Negotiates price, determines quality and quantity, and install, if applicable.

(e) Is not further subcontracting a portion of the work that is greater than expected to be subcontracted by normal industry practices.

(11) Fingerprint/Driver License Checks.

(a) Commands are to conduct (at its own expense) a California Department of Justice (DOJ), Bureau of Criminal Identification fingerprint check, Federal Bureau of Investigation (FBI) fingerprint check, and California Department of Motor Vehicles driver license check on all contractors and their personnel who provide unrestricted and/or unsupervised maintenance or service to CHP on a regular basis or for more than 90 days. Commands shall conduct DOJ and FBI fingerprint checks and a driver license check for the following types of agreements: Avionics Maintenance and Repair.

- 1 Helicopter Maintenance and Repair.
- 2 Instructor Services (on-site).
- 3 Janitorial Service.
- 4 Consulting Services.
- 5 Evidence Impound Tow and Storage Service.
- 6 Public Works.

(b) For agreements requiring intermittent maintenance or service, fingerprint checks are not required, but a driver license check is required if the contractor and/or specifically assigned personnel are scheduled to be on-site for more than 30 days. If an agreement meets this criterion, commands shall conduct a driver license check for, but not limited to, the following types of agreements:

- 1 Alarm and Fire Alarm Monitoring.
- 2 Camera Maintenance and Repair.
- 3 Carpet Installation.
- 4 Diesel Generator Maintenance and Repair.
- 5 Dishwasher Maintenance and Repair.
- 6 Elevator Maintenance and Repair.
- 7 Fire Extinguisher Service.
- 8 Garage Door Maintenance and Repair.
- 9 Graphic Arts Equipment Maintenance and Repair.

- 10 Heating, Ventilation, and Air Conditioning Service.
- 11 Laundry/Line Service.
- 12 Office Machine Maintenance and Repair.
- 13 Painting Services (interior of facility).
- 14 Plumbing Services.
- 15 Scale Maintenance and Repair.
- 16 Carpet Steam Cleaning Services.
- 17 Telephone Services (cellular, satellite, and regular).
- 18 Television Equipment Maintenance and Repair.
- 19 Uninterruptible Power Supply Maintenance and Repair. Instructions to bidders contained in departmental bid packages reflect that a successful bidder and any personnel who will be assigned to the agreement are subject to fingerprint and driver license checks upon award of an agreement. Upon award of an agreement, CSU will provide a copy of the agreement and transmittal to the prospective contractor. The contractor will use the transmittal to make an appointment for (or other arrangements if the command is unable to accommodate) fingerprint and/or driver's license checks for all personnel who meet the above criteria. Commands are to conduct the following:
 - 20 Immediately conduct fingerprint and/or driver license checks to ensure assigned personnel do not have adverse information. The fingerprint and/or driver license checks are to be processed through channels like a new nonuniformed hire (refer to HPM 10.1, Applicant Investigation Manual, Chapter 8, Applicant Investigation Process: Nonuniformed Classifications). Responses to the fingerprint and/or driver license checks will be sent to the requesting commander's attention.
 - 21 After reviewing all driver license and fingerprint information, the Area command shall keep all driver license and fingerprint information at the Area command in the agreement file for auditing and retention purposes. The driver license and fingerprint information are required before contractual work can commence.
 - 22 If an adverse driver license and/or criminal history information is received regarding the contractor or the contractor's personnel, including

subcontractors, the affected command shall advise CSU if the adverse information is grounds for canceling the agreement.

9. **CONTRACTOR PERFORMANCE**. Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's agreement file. The contract manager must forward all formal documentation (correspondence) submitted to and received from the contractor to CSU. All formal documentation submitted to the contractor must be made a part of the contract manager's agreement file and the CSU agreement file. It is critical that performance issues be dealt with as expeditiously as possible. When the contract manager has determined the work under an agreement is unsatisfactory and initial contact with the contractor has not resolved the performance issues, the contract manager shall notify CSU to prepare written notification to the contractor. The written notification shall be delivered to the contractor by **certified mail or UPS ground**. The notification must:

a. For Consultant Service Agreements, include a completed STD. 4, Contract/Contractor Evaluation, form in the procurement file. This form is to be completed for consultant service agreements \$5,000 or over, and within 60 days of completion of the agreement. A fully completed STD. 4 shall remain in the procurement file. If there is a negative report, a copy shall be forwarded to CSU who will in turn forward a copy to DGS OLS within five days of completing the evaluation (refer to SCM, Volume 1, Section 9.09).

NOTE: The STD. 4 shall also be used for all other agreements where work was completed unsatisfactorily.

b. Explain why the work is not satisfactory and what corrective action is expected. Any previous contact with the contractor by the contract manager will be documented in the letter at this time (e.g., e-mails, telephone conversations, and letters).

c. Provide a deadline of when corrective action is to be completed.

d. Inform the contractor that if the problem(s) is not corrected or if performance does not satisfactorily improve by the said date, CHP will terminate the agreement; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including administrative fees and the related costs of rebidding the work.

10. **CANCELLATION OF AN AGREEMENT**. If a command determines that a service earlier requested on a CHP 78, CHP 78A, or CHP 78R is no longer needed, and an agreement has not yet been executed by CSU, CSU shall be notified immediately by telephone, followed in writing either by a memorandum or e-mail, requesting cancellation of

the agreement request. The CSU will cancel the agreement request and will return a copy of the unprocessed agreement request to the requesting command.

- a. If a command determines that an agreement request is no longer needed (in the best interest of the state and through no fault of the contractor) and CSU has already executed an agreement, the command shall notify CSU by telephone, followed in writing either by a memorandum or e-mail, requesting cancellation of the agreement and providing the reason for the cancellation. The CSU will review and determine appropriateness. When appropriate, CSU will cancel the agreement.
- b. If a command determines that an agreement needs to be cancelled due to non-performance or violation of an executed agreement, the command shall notify CSU by telephone, followed in writing either by a memorandum or e-mail, requesting cancellation of the agreement and provide the required documentation per paragraph 9., of this chapter; CSU will review the documentation and determine appropriateness of the request. When appropriate, CSU will cancel the agreement.

11. RENTAL OF COMMERCIAL ROOMS. If adequate CHP facilities are not available, rooms may be rented for testing, training purposes, conferences and meetings. The Department has established an expenditure cap of \$500 per room, per day, for the rental of commercial meeting/conference rooms, not to exceed \$250,000. Requests to exceed this daily cap shall be forwarded through channels to the appropriate Commissioner for pre-approval.

- a. Any commercial meeting/conference room rental which is expected to exceed \$9,999 in total cost shall be initiated as a service agreement on a CHP 78. (Refer to paragraph 5.a., Service Agreements, of this chapter.)
- b. If the same facility is to be used, commands requesting commercial meeting/conference room rentals for repetitive monthly, quarterly or semi-annually meeting/conferences will submit one CHP 78 to cover one fiscal year of events to be held at the same facility.
- c. If it is a one-time room rental and the total cost is less than \$10,000, the X Number process may be utilized. (Refer to HPM 11.1, Chapter 23).
- d. If it is a one-time room rental and the total cost is less than \$10,000, the X Number process may be utilized. (Refer to HPM 11.1, Chapter 23).

12. FACILITY MAINTENANCE/REPAIR SERVICE. Service request for facility maintenance/repairs should be submitted through ASD, FS, in accordance with HPM 11.1, Chapter 14, Facilities Development, Repairs and Maintenance.

13. RECORD KEEPING. Each contract manager is responsible for maintaining all invoices, records and relevant documentation for three years after the final payment under the agreement (GC Section 8546.7). The following format is recommended for the maintenance of agreement records:

a. A labeled file folder should be created for each agreement administered. Each file folder should include:

(1) A log for a diary of activities related to the agreement. Make notes of the date of the discussion and the subject matter every time the agreement is discussed.

(2) A file guide labeled "Invoices." Retain copies of all invoices in this file guide.

b. A copy of the executed agreement and other pertinent documentation, such as a copy of the original agreement request and any correspondence related to the agreement or contractor. A computer file of all agreements administered. This practice allows easy access to management information, such as expenditures and agreement expirations.

c. A spreadsheet of expenditures. This practice is especially necessary if electronic tracking is not used. The spreadsheet can be a simple document showing the agreement amount encumbered and the deduction for each invoice as it is approved for payment.

d. Documentation notifying the contractor of the start date of the agreement.

e. Copies of correspondence with the contractor. All communications about the agreement and/or the contractor should be in writing, or followed up on in writing, and a copy placed in the agreement file. This practice protects the agency and the contract manager in the event of legal problems or an audit.

f. To finalize/oversee completion of the agreement process, the command shall contact the contractor to confirm that all invoices have been issued and received.

ANNEX A

TERMS AND GENERAL DEFINITIONS

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Advance Payment	When payment is made under an agreement before work has been performed or a product delivered, it is considered payment in advance. Payments by the state in advance are permitted only when specifically authorized by law, and as a matter of policy, and should be made only when absolutely necessary.
Agreement	Agreement and contract are interchangeable. An agreement is a legally binding document between a state agency or another entity, public or private, for the provision of obtaining services. It sets forth terms, conditions, and the statement of all work to be performed.
Agreement Term	Agreement beginning and ending dates.
Amendment	An amendment is a formal modification of an agreement. It should contain the same degree of specificity for changes that the original agreement contained for the same item. The items of work covered by the amendment should be clearly written as part of the agreement. Paragraphs being amended should be clearly identified.
Bid	A contractor's response to a solicitation for the purchase of services which represents what the contractor will charge to provide what is needed. Bids may be written or verbal depending upon the circumstances.

ANNEX A

TERMS AND GENERAL DEFINITIONS (*continued*)

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Bidder's Conference	A planned, formally conducted meeting held by the contracting agency after bid documents have been released. The purpose is to clarify the bid/proposal request and to answer any questions from bidders. If new or correcting information is related to those attending, it must also be provided to all who have requested a bid/proposal package. Additional information regarding this procedure can be obtained from the Contract Services Unit (CSU).
Cal eProcure California State Contracting Register (CSCR)	A statewide online procurement portal. State agencies are required to use to advertise procurements and contract services with a dollar value of \$10,000 or more.
Cancellation of a Contract	A procedure in which the state exercises its option to cancel (terminate) a contract prior to the expiration date.
Civil Service	Consideration must be given first to state civil service employees before work is contracted out.
Competitive Bidding	The process of soliciting bids; not limiting the bidding directly or indirectly to any one bidder; and award the contract to a responsible entity offering the lowest price.

ANNEX A

TERMS AND GENERAL DEFINITIONS (*continued*)

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Contract (Agreement)	Contract and agreement are interchangeable. A contract is a legally binding agreement between a state agency and another entity, public or private, for the provision of obtaining services. It sets forth terms, conditions, and the statement of all work to be performed.
Contract Award	Notice to contractor or firm that they have been awarded a contract.
Contract Manager (project representative)	A person designated to monitor the agreement and the contractor's performance to ensure compliance with all agreement provisions.
Cost	The dollar amount which must be stated in the contract, and which limits the financial obligation the state will incur for a given agreement/contract.
Disabled Veteran Business Enterprise (DVBE)	A firm certified by Department General Service (DGS) as a DVBE. To qualify as a DVBE, a firm must have requested and maintain certification in good standing as a DVBE through the DGS Office of Small Business and DVBE Services (OSDS). As a certified DVBE, a firm is eligible for the DVBE Participation Program, with a goal to award to DVBE contractors, subcontractors, and suppliers at least five percent of the Department's overall annual contract dollars.
Emergency Service	Any service which is necessary for the immediate preservation of the public health, welfare, safety, or protection of state property as defined in PCC 1102.

ANNEX A

TERMS AND GENERAL DEFINITIONS *(continued)*

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Evaluation Committee	A group of individuals, consisting of departmental personnel, whose purpose is to review and score proposals submitted by various firms in response to a Request for Proposal (RFP).
Exemption from Advertising	A request to be exempted from the advertising requirements obtained when a desired service is of a unique nature or involves extenuating circumstances which virtually limit the possible contractors.
Financial Information System for California (FI\$Cal)	California's statewide accounting, budget, cash management and procurement IT system.
Indemnification (Hold Harmless)	When one party or both parties (mutual indemnification) of the contract is not held responsible for any accidents, damages or claims filed due to negligence or fault of the other party.
Insurance Requirements (Hazardous Activities)	Insurance is required if hazardous activities are to be conducted in the performance of a contract. Hazardous activities are defined as activities performed by a contractor which may result in substantial risk of serious injury to persons or damage to property.
Invitation for Bid (IFB)	An IFB is a type of formal services contract solicitation, used to obtain simple services valued at \$10,000 or more; calling for routine, standard, common, personal or mechanical skills. Little discretion exists in terms of how the work is to be performed. (Refer to SCM Volume 1, Section 5.11.)

ANNEX A

TERMS AND GENERAL DEFINITIONS *(continued)*

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Letter of Agreement (LOA)	A LOA is utilized mostly for services provided to public entities as a reimbursable service. Can also be used for providing services to private entities that typically do not involve the expenditure of funds.
Lowest Cost to the State	The amount of the bid accepted by the Department after all factors have been considered (e.g., does the bid cover all services requested; can the small business preference and/or DVBE incentive be applied?)
Lump Sum Payment	Represents total (one) payment after all work under the contract has been completed and an invoice submitted.
Micro Business (MB)	To qualify as a MB, a firm must request and maintain certification in good standing as a MB through DGS, OSDS. A microbusiness means a small business which, together with affiliates, average annual gross receipts of five million dollars (\$5,000,000) or less, over the previous three years, or is a manufacturer with 25 or fewer employees. A contract must be awarded to a certified MB in good standing if their bid is within five percent of the low bid.
Non-Competitive Bid (NCB)	A contract for services entered into without the benefit of having obtained more than one bid or proposal, or a contract with an entity determined to be the only known source available to perform the work as required. The requestor must explain, in detail, why there is only one entity capable of supplying the service.

ANNEX A

TERMS AND GENERAL DEFINITIONS (*continued*)

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Progress Payments	A progress payment is a partial payment for a portion or segment of work needed to complete a specific task. Not less than 10 percent of the contract amount is withheld from the contract or progress payment pending completion of the contract or completion of a separate and distinct task.
Request for Proposal	An RFP is a type of services contract solicitation used to obtain complex or unique services in which professional experience is needed and may vary.
Request for Quote (RFQ)	An RFQ is an informal type of services contract solicitation used to obtain services. This method of solicitation is used when using the SB or DVBE Option. Contract non-public works (\$9,999.99 to \$249,999.99) and public works (dollar amount established by the Department of Finance).
Responsible Bidder	A bidder who is fully capable of performing the contract. When there is documented evidence that a bidder is not financially qualified or is otherwise unable to perform the required services, the bidder may be deemed not responsible, and the bid may be rejected by the awarding agency.
Responsive Bidder	A bidder whose bid meets the specifications and other requirements contained in the IFB, RFP, or RFQ.
Scope of Work (SOW)	A clear and concise detailed description of work to be performed.

ANNEX A

TERMS AND GENERAL DEFINITIONS (*continued*)

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Secure Area	Any location (file drawer, desk, safe, etc.) which can contain responses to solicitations or confidential documents and does not allow general access.
Service Agreement (Contract)	A legal document, signed by all interested parties, in which the procurement of a service is the main objective and reason for payment.
Signature Authority	<p>To ensure the integrity of the state and its procurements. Anyone who signs a contract should have adequate knowledge and expertise in the area of contracting and the goods and services being procured.</p> <p>NOTE: All CHP Divisions and commands shall ensure that an updated memorandum is provided to CSU showing the typed name, title, and signature of those authorized to sign and approve the agreement request, agreement or the expenditure of Division allocated funds.</p>
Site Inspection	Site inspection, walk-through, job-walk and bidders conference are interchangeable. A site inspection is a meeting which gives the prospective bidders an opportunity to view the site and ask questions.
Small Business (SB)	A firm certified by DGS to be a small business. To qualify as a SB, a firm must request and maintain certification in good standing as a SB through DGS, OSDS. A contract must be awarded to a certified SB in good standing if their bid is within five percent of the low bid.

ANNEX A

TERMS AND GENERAL DEFINITIONS (*continued*)

<u>TERM</u>	<u>GENERAL DEFINITION</u>
Solicitation	The conducting of a solicitation is the process of inviting (Invitation for Bid) contractors to bid on a service contract via formal (IFB/RFP) and informal (SB/DVBE Option).
Starting Date	In most situations, work should not begin, nor any payment be made until all required approvals, including DGS and Office of Risk Management, are obtained. Exceptions are for emergencies and, in some cases, consulting services.
Walk-Through	Walk-Through, site inspection, job-walk and bidders conference are interchangeable. This is a meeting which gives the prospective bidders an opportunity to view the site and ask questions. This is often used with public works contracts and when soliciting janitorial and landscaping services as a requirement for bid submittal.