

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION

Assemblymember Joan Buchanan, Chair

Tuesday, February 21, 2012

1:30 p.m. – State Capitol Room 447

Oversight Hearing

Subject: Overview of Contracting Out

1. Opening Comments
2. Overview
 - ❖ **Jim Butler**, Chief Procurement Officer, Department of General Services
 - ❖ **Henry Nanjo**, Acting Chief Counsel, Department of General Services
 - ❖ **Margarita Maldonado**, Vice President of Bargaining, Service Employees International Union Local 1000
 - ❖ **Dr. Stuart A. Bussey**, President, Union of American Physicians and Dentists/AFSCME, AFL-CIO, State Bargaining Unit 16
3. Member Questions & Comments
4. Public Comment

Overview of Contracting Out Background

State departments must seek DGS approval for a personal services contract

State departments and agencies are allowed to contract with private providers for personnel services under specific conditions set out in Government Code Section 19130. Among the allowed reasons for contracting out for services are:

- ❖ The contracting agency can demonstrate that the proposed contract will save money for the state and do not undercut state pay rates or displace civil service employees;
- ❖ The contract is for a new state function and the Legislature has authorized the work;
- ❖ To protect against a conflict of interest that might arise if state employees performed the work;
- ❖ There is an emergency;
- ❖ The contractor will provide equipment or services not provided by the state in specific locations; and,
- ❖ The contractor will conduct training courses for which civil service instructors are not available.

The Department of General Services (DGS), which conducts most procurement activities for state departments and agencies, is charged with reviewing and approving departments' requests to contract out personal services. In addition to ensuring that a department is following applicable law for contracting out, DGS also reviews proposed contracts to ensure the contract makes good business sense, the cost is reasonable, and the contract uses clear and concise language.

Information about personal-service contracts with state agencies and departments are available on the State Contract and Procurement Registration System, although the database, which is on the DGS website, is extremely difficult to navigate. According to a review of contracts conducted by SEIU Local 1000 released this month, the state currently has 14,838 personal service contracts worth \$11.8 billion.

DGS also reviews and approves contract extensions and amendments, and keeps records of performance reviews conducted by state departments and agencies of contractors' work, if the performance review is negative.

State Personnel Board also can approve or deny a contract

The State Personnel Board (SPB) also can play a role in determining whether a state department should execute a personal services contract. Employee organizations can ask the SPB to review a proposal to contract out services, and the board can deny the proposed contract if it finds that the contract does not satisfy the conditions outlined in Government Code Section 19130.

Procurement process differs depending on whether the contract is for information technology services

After DGS approval, procurement processes differ depending on whether the personal services contract is for an information technology (IT) service or a non-IT service. DGS handles the procurement for many IT services. For non-IT services, the specific department or agency typically handles the procurement. Government Code Section 19130 applies to both IT contracts and non-IT contracts.

Attachments

Attachment 1

State Contracting Manual, Chapter 2, Appendix: DGS Review Checklist

Attachment 2

State Contracting Manual, Chapter 7, Section 7.05: Civil Service Considerations

Attachment 3

State Contracting Manual, Chapter 7, Section 7.15: Reporting of Contracting Practices

Attachment 4

State Contracting Manual, Chapter 7, Section 7.80: Multiple Year Contracts

ATTACHMENT 1

CHAPTER 2 - APPENDIX

AN OLS REVIEW CHECKLIST (Rev 4/04)

[Note: This checklist is provided to inform state agencies of the typical areas of review and/or analysis performed by OLS. It should not be viewed as a limitation of OLS contract review activities.]

A. THE CONTRACT COMPLIES WITH THE LAW.

1. Authority to contract out
 - a. Specific statute
 - b. GC § 19130 consideration
 - Cost savings 19130(a) -- State Personnel Board (SPB) approval required
 - Other reasons 19130(b)
 - (1) Exempt under Constitution
 - (2) New state function and legislative authority
 - (3) Service not available: highly specialized or technical
 - (4) Incidental to the purchase or lease
 - (5) Conflict of interest; need unbiased findings
 - (6) Emergency appointment
 - (7) Private counsel, with attorney general (AG) approval and Governors Office, if applicable. Notice provided to Bargaining Unit 2 representatives of contract
 - (8) Contractor will provide things that are not feasible for the state to provide
 - (9) Training when civil service is not available
 - (10) Urgent, temporary, or occasional services when civil service delay would frustrate the purpose
2. Budget authority
3. Legal method of procurement
 - a. Bidding not required
 - b. Bidding generally required
 - IFB
 - RFP
 - NCB

4. Legal requirements met for type of contract
 5. Authority to amend
- B. THE CONTRACT MAKES GOOD BUSINESS SENSE AND THE COST IS REASONABLE.
1. Good business sense
 - a. Drafted to obtain desired results

CHAPTER 2 – APPENDIX

(An OLS Review Checklist – continued)

- b. Scope of work specific and realistic
 - c. Maximum use of dollars
 - d. Deliverables clear and concise
 - e. Realistic timetable
2. Reasonable cost
 - a. Consider whether:
 - Bid is within estimate.
 - Bids cover a wide range.
 - Low bid is very low.
 - All bids are high.
 - b. Has rebidding been considered if bids are out of line?
- C. THE CONTRACT USES CLEAR AND CONCISE LANGUAGE CONSISTENT WITH THE TERMS OF SOLICITATION AND BID.
1. Term
 - a. Within fiscal year appropriation, and
 - b. If for multiple years, contingency language as appropriate
 2. Scope of work
 - a. Specifications, requirements
 - b. Personnel, staffing
 - c. Coordination
 - d. Results, deliverables
 - e. Timelines, progress reports
 - f. Evaluation, acceptance
 3. Total amount and payment method
 4. Terms and conditions—standard and special

D. SECONDARY ISSUES AND SUPPORTING DOCUMENTATION ARE REVIEWED.

1. Social issues (as appropriate)
 - a. Small business
 - b. DVBE
 - c. TACPA
 - d. EZA
 - e. LAMBRA
2. Drug-free workplace, other required certifications
3. Statement of compliance
4. Check of corporate standing
5. Other approvals
 - a. AG/Gov Office (if applicable)
 - b. SPB
 - c. Fleet

CHAPTER 2 – APPENDIX

(An OLS Review Checklist – continued)

- d. Insurance
 - e. Records Management
6. Std. 204 noted
7. Resolution
8. Bonds
9. Ads, STD 821, or exemption noted
10. Negative evaluations

ATTACHMENT 2

7.05 • CIVIL SERVICE CONSIDERATIONS

(Rev 3/03)

A. Basic considerations are as follows:

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

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

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

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

ATTACHMENT 3

7.15 • REPORTING OF CONTRACTING PRACTICES (Rev 3/03)

Legislation requires contracting agencies to submit various reports on contracting practices, as follows:

- A. Fair Employment and Housing (Within Ten Days of Award Date)
 - 1. Under 2 CCR § 8117.5, agencies awarding contracts are required to notify the Department of Fair Employment and Housing (DFEH), Office of Compliance Programs, of any contract awarded in excess of \$5,000. Departments are required to submit one form STD 16 to the Office of Compliance Programs for each contract in excess of \$5,000 within ten days of the award date. Under some circumstances it may be possible to make other arrangements with DFEH.
- B. Small Business Report (Annually on September 7th)
 - 1. The Small Business Procurement and Contract Act (SBPCA), GC § 14835, provides that a fair share of state purchases and contracts or subcontracts for property and services be placed with small business enterprises.
 - 2. The evaluation and progress of this policy guideline is monitored through the annual reporting by all state departments on the Contracting Activity Report form STD 810, by September 7th of each year. These reports are filed with DGS/PD Small Business & DVBE Outreach and Education Section (for information regarding this report contact the report coordinator at (916) 375-4400).
- C. Consultant Report (Annually by September 24)
 - 1. PCC § 10359 requires state agencies to report their Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS. Departments are required to report their fiscal year contract data within 60 working days [September 24] of the end of the fiscal year. The PCC also requires DGS to report to the Legislature a list of departments and agencies that have not submitted the required report.
 - 2. PCC § 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000 or more. Copies of negative evaluations must be sent to DGS/OLS. In addition, the Bureau of State Audits requires agencies annually to certify compliance with these requirements.

ATTACHMENT 4

7.80 • MULTIPLE YEAR CONTRACTS

(Rev 10/05)

- A. Contracts for services should normally not exceed two years, absent a substantial written justification for a longer term, based on business reasons.

Approval by DGS/OLS must be obtained prior to releasing any RFP or IFB solicitation ~~that contains~~ for a contract term beyond two years. A justifiable business reason must support such a request for approval. Prior approval for multiple year contracts is not required for:

1. Contracts not subject to OLS review;
2. Use of, or subscription to, Master Service Agreements (MSA);
3. Interagency Agreements (I/A), or

Agencies who wish to get prior approval from OLS should contact the attorney assigned to their department on how to proceed. Failure to obtain prior approval from DGS/OLS may be cause for non-approval of the contract.

If the additional option years are considered in the method for selecting the contractor, an agency will not need to get an NCB exemption when amending the contract to exceed two years so long as all terms, conditions, and costs are those evaluated in the bidding procedure.

- B. Unless an agency has either statutory authority or a written exemption each contract service should be re-bid after a total of thirty-six (36) months consecutive with the same contractor.
- C. For services such as fiscal audit or quality audit, it is desirable to obtain a different contractor after three years.