

**Attachment D
Management Memo 02-12
Addendum #2
(August 9, 2002)**

The following contracts may be awarded without advertising or competitive bidding subject to the restrictions noted. The categories are either exempt by statute, or based on a determination by DGS that competitive bidding is not feasible (many of these were formerly referenced in State Administrative Manual Section 1233 and State Contracting Manual Section 5.80).

Emergency contracts which are necessary for the immediate preservation of life or state property. Contracts issued as a result of an emergency may be entered into immediately without completion of the required paperwork for the processes required herein. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements of the Management Memo.

- a. Contracts for the work or services of a state, local or federal agency, the University of California, the California State University, a California community college, a foundation or auxiliary organization incorporated to support the universities and colleges, or a Joint Powers Agency.
- b. Services for which the state has entered into a master service agreement; Note: This is limited to those master contracts which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered. See the DGS Procurement web page at www.dgs.ca.gov/pd for a list of *approved* exempt contracts.
- c. Subvention contracts (non-discretionary grants) with a private or nonprofit entity for the purpose of providing services to the public or segments thereof. This exception applies only when services are being provided to the public and not specifically to a state agency, and where the department budget specifies that the funds are for subvention purposes.
- d. Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services. . Note: This exception applies only in circumstances where services to be provided are less than \$100,000*; for services in excess of this amount, the guidelines regarding non-competitive bid contracts for \$100,000* or more apply.

- e. Refuse and/or sewage disposal contracts where there is no competition because they are the authorized franchise dealers providing services to a specific geographical area.
- f. Medical care services with physicians, local community hospitals, medical groups (related offsite laboratory services are not included), and *911 emergency ambulance service calls*;
- g. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety.
- h. Proprietary software maintenance *and/or upgrade* contracts. Note: This applies only to the maintenance *and/or upgrades* of existing proprietary software up to \$100,000* and only in circumstances where a competitive bid is not feasible. For software maintenance and/or upgrades of \$100,000* or more, *approval of the Department Director (only), DGS and the Department of Finance is required*. For acquisitions of new proprietary software over \$5,000 where a competitive bid is not feasible, or where maintenance *and/or upgrades* of existing proprietary software will exceed \$100,000* the guidelines for non-competitive bid contracts apply. *This last statement applies only to departments holding an information technology delegation from DGS/PD – if the department does not hold an information technology delegation from DGS/PD, then the guidelines for non-competitive bid contracts apply for all acquisitions.*
- i. Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered. Note: Shall not exceed \$5,000.
- j. Public entertainment contracts for state-sponsored fairs and expositions.
- k. Contracts solely for the purpose of obtaining expert witnesses for litigation.
- l. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff.
- m. Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to Government Code 19130a.

- n. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case shall this exemption extend beyond six months.
- o. *Amendments to existing contracts which were originally competitively bid subject to the following restrictions:*
1. *Competitively bid contracts for both information technology and non-information technology, which were evaluated and awarded with options to extend for time or time and money may be amended consistent with the terms of the original contract providing for such extension(s) if such options were evaluated during the bid process.*
 2. *Competitively bid contracts for non-information technology services which do not include options to extend may be amended as follows:*
 - *Exemption shall only apply to the first amendment.*
 - *Amendment shall add time only, not to exceed one year, and/or add not more than 30% of the original contract value, not to exceed \$100,000*.*
 - *The original contract must have permitted the amendment.*
- p. Contracts for conference or meeting facilities, including room accommodations for conference attendees. Note: This exception applies only in circumstances where facilities to be provided are less than \$100,000*; for facilities exceeding this amount, the guidelines regarding non-competitive bid contracts for \$100,000* or more apply.
- q. ****Contracts for services under the Health Insurance Portability and Accountability Act (HIPAA) MSA shall be exempt from compliance with the restrictions imposed by the Executive Order and Management Memo subject to compliance with the following requirements and limitations:**
- *Agencies must prepare their Statement of Work (SOW).*
 - *Office of HIPAA Implementation (OHI) reviews and approves all SOWs to ensure the agency complied with their HIPAA work plan.*
 - *Agencies must solicit all HIPAA MSA suppliers in a given category and award to the contractor achieving the best value to the state.*
 - *Contracts/amendments providing for contract value >\$50,000 for non-IT services are subject to review and approval by DGS.*
 - *Contracts/amendments providing for contract value between \$500,000 - \$5 million for non-IT services are reviewed by OHI and approved by DGS.*
 - *Contracts/amendments providing for contract value between \$500,000 - \$5 million for IT services are reviewed by OHI and approved by DGS.*

- ***Contracts/amendments providing for contract value > \$5 million are reviewed by OHI and DGS and approved by the Department of Finance.***

- r. ***Amendments to the California Integrated Information Network (CIIN) Agreement (CNT-001) to add products and services defined as mandatory per Management Memo 97-01 and DOIT Directive 1999-01. These mandatory services are defined as Lineside, Voice Network, Data Services, and Billing Services.***

- s. *****The CAL-Store agreement is added to the Contracts Exempt from Management Memo 02-12 list provided on the DGS-PD web site, www.dgs.ca.gov/pd.***

- * ***This amount shall increase to \$250,000 effective August 20, 2002.***
- ** ***This shall take effect August 20, 2002.***

Miscellaneous:

In determining whether the acquisitions of a particular agency/department/entity are exempt from the Executive Order (see Management Memo 02-12, paragraph No. 5) the funding source for the acquisition shall be determinative, notwithstanding the fact that DGS may be the procuring entity.