

STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES Administrative Order 06-05.1 TO: ALL EMPLOYEES SUBJECT: APPROVAL/NON-APPROVAL AND ACCEPTANCE OF UNTIMELY SUBMITTED PROCUREMENT AND CONTRACTING DOCUMENTS	DATE ISSUED: June 20, 2006
	EXPIRES: Until Rescinded
	REFERENCES:
	SUPERSEDES: Administrative Order 06-05

Purpose

This Administrative Order amends 06-05 regarding the Department of General Services (DGS) policy regarding requirements for approval/non-approval of untimely submitted procurement and contracting documents. Specifically, this revision:

- Adds an exception that will be accepted for approval of late contracts. That exception is, "The contract provides local assistance to a local government or aid to the public directly or through an intermediary, such as a nonprofit corporation as defined in Revenue and Taxation Code section 2211, and the funds are identified as local assistance in the agency's budget."
- Removes, "In no case will an approval for a non-exempt contract be given for work that has commenced more than 30 days."
- Adds separate section for signature and submission requirements for certifications for exceptions

This Administrative Order describes:

- The DGS policy and requirements for approval/non-approval and acceptance of untimely submitted procurement and contracting documents.*
- Exceptions to the policy and requirements and signature requirements for certification for exceptions.

***Note:** For Approval/Non-Approval of Untimely Submitted Non-Competitively Bid Contract Justifications see Administrative Order 06-06.

Background

Public Contract Code section 10295 provides that all contracts for the acquisition of goods and services are void unless and until approved by the DGS and that contracts are effective from the date of the DGS approval. When departments acquire non-IT goods under purchasing authority approved by the DGS, those departments must comply with purchasing authority requirements.

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Background
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Public Contract Code section 10335 subdivision (a) provides that all contracts for non-IT services are of no effect unless and until approved by the DGS.

Public Contract Code section 10371, subdivision (d), provides that, except in an emergency, no consulting services contract shall be commenced prior to formal approval by the DGS if such approval is legally required.

Public Contract Code section 12102 provides that the DGS must acquire all information technology goods and/or services, except when departments have delegated purchasing authority to acquire information technology. When departments acquire information technology goods and/or services under purchasing authority approved by the DGS, those departments must comply with purchasing authority requirements, including assuring timely acquisition of IT goods and services and timely approval by the DGS, when required.

Notwithstanding existing law and policy, the DGS continues to receive procurement and contracting documents for which the start date of the contract or the desired effective date of the amendment has already passed. Operating without a fully executed and properly approved contract places the State at risk.

**Policy
and
requirements**

State agencies and departments executing procurement and contracting documents (including but not limited to contracts, purchase orders and related amendments) that require the DGS approval should be submitting such procurement and contracting documents and all necessary supporting documentation prior to the contractor performing any work or delivering any goods, and in sufficient time for review and engage in information exchange with the Department as needed in the review process. Requirements for timely submittal to the DGS are listed in the table below.

If a procurement or contracting document is received less than the number of days set forth in the table below, the submitting agency or department shall be notified that work is not to be commenced or goods received prior to determination of approval/non-approval or acceptance/non-acceptance of the procurement or contracting document. Any work performed or goods received prior to the date of approval/non-approval or acceptance/non-acceptance, and not meeting one of the listed exceptions, will require submittal to the Victim Compensation and Government Claims Board.

In addition, to ensure the State's interests are adequately protected, procurement and contracting documents are not to be approved when the identified start date of the contract or effective date of the amendment has passed, except under exceptional circumstances as described below. If there is no exceptional circumstance, the agency or department is to be

**Policy
and
requirements
(continued)**

advised to file a claim with the Victim Compensation and Government Claims Board for compensation for work already performed.

Procurement/Contracting Documents For	Requirements for Timely Submittal
Non-IT Goods	<ul style="list-style-type: none"> • Purchase Estimates requiring specifications development to the DGS/PD should be submitted a minimum of 105 working days prior to the anticipated delivery date¹ • Purchase Estimates that do not require specifications development should be submitted to the DGS/PD a minimum of 75 working days prior to the anticipated delivery date¹
IT Goods/Services	<ul style="list-style-type: none"> • Contracts should be submitted to the DGS/PD a minimum of 10 working days prior to contract start date • Purchase Estimates should be submitted to the DGS/PD a minimum of 45 working days prior to the anticipated delivery date¹ • Requests to conduct Request for Proposals should be submitted to the DGS/PD at least 6 months prior to start of integrated projects, along with approved Feasibility Study Report (FSR) and/or Information Technology Procurement Plan (ITPP). Note: ITPPs and approved FSRs should be submitted concurrently to the DGS following FSR approval by the Department of Finance, and a minimum of 60 days before requesting the DGS to conduct a Request for Proposal.
Non-IT Services	<ul style="list-style-type: none"> • Contracts should be submitted to the DGS/Office of Legal Services (OLS) a minimum of 10 working days prior to contract start date
Amendments for all of the Above	<ul style="list-style-type: none"> • Amendments should be submitted to the DGS a minimum of 10 working days prior to amendment effective date or a minimum of 10 working days before the contract expires if the amendment is to extend the contract

¹ Refer to memorandum on Fiscal Year Deadlines for Receipt of Purchase Estimates on DGS-PD's website at: www.pd.dgs.ca.gov/contracts.htm. The dates for submittal indicated in this memorandum supersede the minimum workdays indicated on the Requirements for Timely Submittal.

Exceptions for contracts and contract amendments

Contracting documents received for review outside the Requirements for Timely Submittal above will be accepted only under the following circumstances:

- Where the contracting agency or department provides factual documentation that an emergency exists, as defined by statute (see Public Contract Code section 1102; SCM Volume I, Chapter 4, section 4.05; and, SCM Volume II, Chapter 2, section B, Topic 8). An emergency within this exception is a situation involving 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. Documentation for formal approval should be received as soon as possible after the State agency or department has responded to the emergency;
- The contract involves another governmental entity, and an action or inaction of that other governmental entity delayed timely processing of the contract or amendment by the State;
- The contract is an interagency or revenue/reimbursement agreement, there are reasonable factors that caused the delay, and it is in the State's best interest to process the contract or amendment;
- The contract provides local assistance to a local government or aid to the public directly or through an intermediary, such as a nonprofit corporation as defined in Revenue and Taxation Code section 2211, and the funds are identified as local assistance in the agency's budget.
- The contract or amendment is the subject of a judicial order; or
- The contract is for consulting services and, pursuant to Public Contract Code section 10371(d), the awarding department determined there was an emergency whereby the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

A late contract may be considered on an exceptional basis, if the contracting agency or department provides in writing, certification (see "Signature and submission requirements for certification" below) that there is good cause for lateness, as demonstrated by a statement of detailed facts set forth in the certification and it is in the State's best interest to approve the contract or amendment at the time submitted. Good cause for lateness is to be evaluated on a case-by-case basis upon a review of the facts and the written justification provided. In some cases, a contract may be approved prospectively, but not approved for the period that preceded the submittal of the contract, with the agency or department/vendor liable for any work performed.

Signature and submission requirements for certification

Written certifications for exceptions must be signed and submitted as follows:

- Up to 30 days late:
 - IT Services Contracts: Signed by Department's Director (or, if the Department has no director, the equivalent highest ranking executive officer) and submitted to the PD Deputy Director
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**Signature and
submission
requirements
for certification**
(Continued)

- Non-IT Services Contracts: Signed by Department's Director (or, if the Department has no director, the equivalent highest ranking executive officer) and submitted to the Chief Counsel, OLS
 - Over 30 days late:
 - IT and Non-IT Services Contracts: Signed by the Agency Secretary* or Agency Undersecretary (or, if the agency or department does not have an Agency Secretary, the highest ranking executive officer **) and submitted to the Director, Department of General Services.
- * The Agency Secretary may designate one person, in addition to the Agency Undersecretary, to sign on his/her behalf (e.g., Assistant Undersecretary, Deputy Secretary, etc., actual title dependent upon the Agency's organizational structure).
- **The highest ranking executive officer of an agency or department that does not have an Agency Secretary may designate one person (title dependent upon agency/department organizational structure) to sign on his/her behalf subject to DGS approval.

**Funding
requirements**

DGS staff is reminded to ensure that information on the funding authority is identified on documentation accompanying procurement and contracting documents. Reference Victim Compensation and Government Claims Board Rule 610 (California Code of Regulations, Title 2, Division 2, Chapter 1, Article 2, section 610).

Signature

Ron Joseph
Director