
CONTRACTS AND GRANTS MANUAL

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**Chancellor's Office
California Community Colleges
Sacramento, California**

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1000 PRINCIPLES APPLICABLE TO GRANTS AND CONTRACTS

1100 INTRODUCTION AND SCOPE

This Manual contains the policies and procedures for the administration of contracts and grants for the Chancellor's Office of the California Community Colleges. The contracting and grants policies of the Chancellor's Office of the California Community Colleges are not based upon a single statutory reference but are instead adopted to comply with a variety of statutory and policy provisions found in the State of California statutory codes (i.e., Education Code, Public Contract Code, Government Code, etc.); title 5, California Code of Regulations; the Procedures and Standing Orders of the Board of Governors; and administrative policy memoranda. First and foremost, the contracting policies and procedures of the Chancellor's Office further the legislative policies set forth in law even when the agency is expressly exempted from specific provisions.

1110 Responsibility and Authority

The Board of Governors has the authority to contract for goods and services for the California Community Colleges, as necessary.

Authority: Ed. Code, § 70901(b)(15). Reference: Pub. Contract Code, §§ 10295, 10335, 10430(c), 12100.5, and 12120.

1120 Delegation to the Chancellor

The Board of Governors has delegated authority to the Chancellor with regard to contracts and grants, as follows.

1121 Contracts

Except as described in section 2030¹, the Board of Governors has delegated to the Chancellor authority to enter into contracts where the power to contract is invested in the Board, or when, in the judgment of the Chancellor, such contracts are expressly or impliedly authorized to fulfill responsibilities or authority vested in the Office of the Chancellor. See section 2030 concerning contracts that require Board approval.

Authority: Procedures and Standing Orders of the Board of Governors, § 318(a) and (b).

1122 Grants

Except as described in sections 3500 et seq., the Board of Governors has delegated to the Chancellor authority to enter into grants whenever the power to enter into a grant is invested in the Board, or when, in the judgment of the Chancellor, a grant is expressly or impliedly authorized to fulfill responsibilities or authority vested in the Office of the Chancellor. See sections 3500 et seq. concerning grants that require Board approval.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(a) and (b).

¹ All section references are to the sections of this Manual unless otherwise stated.

1130 Who May Enter Into Agreements

In the Chancellor's Office only the Chancellor, Executive Vice Chancellor, and the Director of Internal Operations have the authority to enter into contracts, grants, and allocation agreements on behalf of the agency. Any other employee who signs a contract, grant or agreement without authorization properly delegated pursuant to this manual may be held legally liable. For this agency to make payments pursuant to agreements made by other employees would be to make a gift of public funds, which is prohibited by the State Constitution.

Reference: State Administrative Manual (SAM), § 1208; State Contracting Manual, § 2.06; Cal. Const., art. XVI, § 6.

1140 Role of the Legal Affairs Division

The Legal Affairs Division advises the Board of Governors, Chancellor, and agency staff on matters related to compliance with legal codes, statutes and regulations, and on matters related to the carrying out of Board policy. The Legal Affairs Division advises Internal Operations and program staff, as necessary, on all matters related to contracts and grants that require legal interpretation, resolution, or adjudication. The Legal Affairs Division also approves all modifications to the standard agency contract provisions, the standard agency grant provisions, and to the provisions of this Manual and is responsible for updating the Manual as appropriate.

1150 Authority of Chancellor to Waive Requirements

Public Contract Code section 10335 states that the provisions of article 4 of chapter 2 of part 2 of division 2 of the Public Contract Code do not apply to contracts exempt from approval by the Department of General Services pursuant to section 10295. Since contracts awarded by the Board of Governors are among those listed in section 10295 as exempted from review by DGS, the Chancellor's Office is not bound by the provisions of article 4 (sections 10335 through 10381 of the Public Contract Code) which sets forth rules governing contracts for services including consulting services contracts. Nevertheless, it is the general policy of the Chancellor's Office, as embodied in this Manual, to follow these statutes to the extent that they are consistent with the best interests of the agency and the California Community College system.

This Manual discusses various procedures for seeking exemptions from particular requirements (e.g. requirements for competitive bidding) for contracts and grants. In addition, the Chancellor has authority to waive any requirement of this Manual that is not based on a mandatory statute or Board of Governors' Standing Order. Requests for a waiver of the contract or grant requirements should be submitted to the Contract Manager in memo format, with copies to both the Director of Internal Operations and the General Counsel. Such requests must be reviewed and approved by the Director of Internal Operations and the Legal Affairs Division before being forwarded to the Chancellor for final approval.

1200 DIFFERENTIATING BETWEEN GRANTS AND CONTRACTS

There are two factors that need to be analyzed in deciding whether a particular transaction should be handled via a grant or a contract. One factor is the nature of the project. The other is the source of the funding. These two factors interact with each other as discussed below.

1210 Purpose of the Agreement

The purpose for which an agreement is being made can help to determine whether a contract or a grant is the appropriate method.

- (a) Generally a grant should be used whenever the purpose is to fund activities for the benefit of a local district or the community college system as a whole. This is true even if the agreement has an indirect benefit to the Chancellor's Office or assists it in carrying out its efforts to support the community college system.
- (b) A contract should be used when the principal purpose of the instrument is to acquire by purchase, lease, or barter, property or services for the direct benefit or use of the Chancellor's Office. In particular, a contract must be used to purchase or lease equipment, supplies, or office space for the Chancellor's Office or to hire staff who would be housed in the Chancellor's Office and work under the supervision of agency employees.
- (c) A contract should only be used to fund projects for the benefit of the community college system as a whole if:
 - (1) The Legislature specifically requires the use of a contract; or
 - (2) The district acts solely as a fiscal agent for distribution of funds to third parties and the agreement provides that the Chancellor's Office will manage the project and will retain day-to-day control over approval of all expenditures.² A grant may be used where a district acts as a fiscal agent for distribution of funds in accordance with the terms of the agreement without day-to-day expenditure control by the Chancellor's Office.

Reference: Cal. Const., art. XVI, § 8; The Federal Grant and Cooperative Agreement Act, 31 U.S.C. §§ 6301-6308; Chancellor's Office Legal Opinion M 99-24; 58 Ops.Cal.Atty.Gen. 586 (1975); 63 Ops.Cal.Atty.Gen. 290 (1980); 74 Ops.Cal.Atty.Gen.10 (1991).

1220 Funding Sources

Funding for a project may come from local assistance, from state operations funds, or from some other source (e.g. a private grant or a contract whereby the Chancellor's Office receives funds from some other entity).

- (a) When local assistance funds (from either the state or the federal government) are let to a community college district, the appropriate instrument is normally a grant.

² Although this degree of control over expenditures may be desirable in some circumstances, the use of a contract for this purpose will be subject to constraints not applicable to grants. In particular, even if a contract of this type is exempt from competition for one of the reasons specified in section 2211, it will still be subject to review by the State Personnel Board as discussed in section 2213, assuming it involves the provision of personal services.

- (b) Unless specifically authorized by legislation, state Proposition 98 funds must be let to a district and can never be used to fund a contract or grant to any other organization or individual. Moreover, unless expressly authorized by statute, Proposition 98 funds cannot be used to pay for office space for the Chancellor's Office, equipment or supplies to be used by Chancellor's Office employees, or staff who will work under the supervision of Chancellor's Office employees.
- (c) Grants are usually the appropriate instrument to let federal funds to a district; however, there are circumstances when a contract may be used. For example, when permitted by the particular federal program, federal funds may be used to contract with a district to supply equipment, supplies, office space or staffing for the direct use of the Chancellor's Office. Furthermore, federal funds are not subject to the Proposition 98 guarantee and, when permitted by the particular federal program, may be used in the Chancellor's Office or awarded by contract to a nondistrict entity.
- (d) A contract is only used to transfer Proposition 98 funds to a district when:
 - (1) The Legislature specifically requires the use of a contract; or
 - (2) The district acts solely as a fiscal agent for distribution of funds to third parties and the agreement provides that the Chancellor's Office will manage the project and will retain day-to-day control over approval of all expenditures. A grant may be used where a district acts as a fiscal agent for distribution of funds in accordance with the terms of the agreement without day-to-day expenditure control by the Chancellor's Office.
- (e) By contrast, state operations funds are appropriated for the support of the Chancellor's Office and transferring these funds to a district or any other entity generally requires a contract.

Reference: Cal. Const., art. XVI, § 8; The Federal Grant and Cooperative Agreement Act, 31 U.S.C. §§ 6301-6308; Chancellor's Office Legal Opinion M 99-24; 58 Ops.Cal.Atty.Gen. 586 (1975); 63 Ops.Cal.Atty.Gen. 290 (1980); 74 Ops.Cal.Atty.Gen.10 (1991).

1230 Resolving Questions About the Use of Grants and Contracts

When uncertain as to whether a contract or a grant is appropriate, ask for clarification from the Contract Manager who may, in turn, consult with the Legal Affairs Division. The determination of the Legal Affairs Division must be followed as to whether a grant or a contract is the appropriate instrument.

2000 CONTRACTS

2010 Scope

The following types of contracts are discussed in this portion of the Manual:

- Contracts for services.
- Contracts for purchase or lease of information technology, electronic data processing and telecommunications goods and/or services.

This Manual does not address the following types of contracts:

- Construction contracts, including those for alteration, improvement, repair or maintenance of real or personal property.
- Public works contracts.
- Procurement contracts, other than as discussed in sections 2300 et seq. and 2400 et seq. For contracts for goods or services where the amount is estimated to be under \$5,000, you should contact the Business Services Unit and utilize this agency's procurement processes through the use of a purchase request or services request. However, splitting larger contracts into several smaller contracts of under \$5,000 in order to take advantage of this option is prohibited. (See § 2183.)
- California Multiple Awards Schedule (CMAS) contracts, except as discussed in section 2440 of this Manual.

Reference: Pub. Contract Code, § 10329.

2020 Role of Other State Agencies

Pursuant to AB 1441, Statutes 2000, chapter 36, contracts awarded by the Chancellor's Office are exempt from review by the Department of General Services. Some contracts entered into by the Chancellor's Office are subject to requirements imposed by the Department of Finance. Personal Service Contracts are subject to State Personnel Board (SPB) review. The written consent of the Attorney General is required prior to employment of counsel for representation of the agency in a judicial proceeding.

Reference: Pub. Contract Code, §§ 10295, 10335(a), 10336, and 10430(c), 12100.5; Gov. Code, §§ 11040, 13070, 19130, 19131, and 19132.

2030 Approval by the Board of Governors

The approval of the Board of Governors must be secured before entering into any contract:

- (a) In excess of \$100,000; or
- (b) Over three years in duration, or
- (c) With respect to consulting services in excess of \$50,000.

The requirement for Board of Governors' approval shall apply to any amendment of a contract that results in the original contract exceeding the specified limits, as well as the amendment of a contract where the amendment itself exceeds the specified limits.

Under circumstances when the need to enter into the contract or amendment was not foreseeable, and when delaying approval of the contract or amendment until the next Board meeting would jeopardize the contract or amendment or frustrate its purpose, the Chancellor has the authority to enter into contracts or amendments in excess of the limits specified. Before entering into such contracts or amendments, however, the Chancellor must consult with the President of the Board. Requests to the Chancellor for such an exemption must be filed with the Contract Manager on a Request for Exemption from BOG Approval form (available on the P drive under Forms).

Authority: Procedures and Standing Orders of the Board of Governors, § 318.

2100 BASIC REQUIREMENTS, GUIDELINES AND PROCEDURES FOR CONTRACTING

This portion of the Manual sets out the basic requirements, guidelines and procedures for contracting.

2110 Competitive Bid Requirements

It is the general policy of the Chancellor's Office to promote fair and open competition for the acquisition of goods and services. This policy applies except in those limited circumstances where noncompetitive awards are specifically authorized in this Manual. In implementing its policies and procedures for the preparation and administration of contracts, the Chancellor's Office strives to achieve through public advertising, notification, and outreach, the following objectives:

- Compliance with the intent of competitive bidding statutes as a means of protecting the public from the misuse of public funds;
- Stimulation of competition in a manner conducive to sound fiscal practices by providing qualified bidders fair opportunity to participate; and
- The elimination of favoritism, fraud, and corruption in the awarding of contracts.

Reference: Pub. Contract Code, §§ 10300 et seq., 10430(c), and 12100 et seq.

2120 Solicitation Methodologies for Proposals and Bids

As discussed later in this Manual, competitive bidding is not always required. However, when bidding is necessary, there are several methods that may be used for soliciting and awarding contracts. The two most common are a Request for Proposals (RFP) and an Invitation for Bids (IFB). Generally speaking, the difference between the two is that the RFP states a general description of a problem to be solved and requests proposals based on that description, while the IFB states exactly what is wanted and invites bids based on those specifications.

Less commonly used solicitation methodologies are the Request for Quotations (RFQ) that may be utilized to obtain informal price quotes from potential providers of goods or services and a Request for Information (RFI) that may be used to obtain market information concerning the availability of a desired product or service.

2121 Request for Proposals (RFP) (commonly used at Chancellor's Office)

An RFP is used to present a problem that may have multiple solutions. The acquisition of a service, as opposed to a commodity (i.e., materials, supplies and equipment), shall be the primary intent although a commodity may be a part of the total acquisition. An RFP seeks an answer to the following question:

"Here is what we wish to accomplish. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met. How would you accomplish the job for us and how much would you charge?"

The RFP should include:

- A clear, precise description of the problem to be solved, the services to be provided, or the objectives to be achieved;
- A description of the format which the proposals shall follow and the elements they shall contain;
- The criteria, measurements, and process to be used in evaluating the proposals and awarding the contract;
- The date and time on which the proposals are due; and
- Specific instructions regarding sealed cost proposals whenever applicable.

One primary difference between the two types of RFPs, Primary and Secondary, is how the cost is presented in the bid package. In the Primary Method RFP the cost proposal is submitted in a separate sealed envelope that is only opened if the proposer achieves a specified minimum number of points on the technical proposal. In the Secondary Method RFP the price may appear as a section within the narrative proposal and while it is a significant factor (e.g., at least 30% of the total points), it does not have to be the predominant or controlling factor.

Approval to use the RFP Secondary Method must be obtained from the Contract Manager by submitting written justification in memo form addressing the following issues:

- Why the services required could be characterized as complex, uncommon, or unique;
- Why the quality of expertise and approaches, methods, and innovation used in carrying out these services is expected to differ significantly from one proposer to another;
- Why in this case using the Secondary Method instead of the Primary Method is in the state's best interest; and
- Why in this case the Secondary Method will not prejudice small businesses.

The boilerplate for the Primary and Secondary RFPs can only be obtained from the Contract Manager, as for the most part they are considered agency legal forms with just a few specific sections that are written or modified by staff. The Contract Manager will instruct staff on the

use of the boilerplate. Boilerplate language for the other solicitation methods will be developed under the guidance of the Contract Manager on a case-by-case basis.

An RFP should not be used when the service or equipment to be hired is standard, routine, or common, or when there is a standard associated with the service or equipment to be hired. For example, the hiring of movers for relocating from one facility to another should be accomplished through an IFB, not an RFP.

2122 Invitation for Bids (IFB)

An IFB may be used to obtain goods and services. An IFB seeks an answer to the following question:

"Here is exactly what we need to purchase or have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?"

For the acquisition of goods or services, state law generally prohibits the award of contracts to any contractor other than the lowest responsible bidder. In addition, the small business, microbusiness and Disabled Veteran Business Enterprise (DVBE) bidding and contracting preferences that apply to RFPs are also applicable to IFBs. See section 2133, below, for a discussion of those preferences and applicable laws.

The IFB should include:

- A clear, precise description of the goods or services required so that bids received in response to the IFB will be competitive; and
- The criteria, measurements, and process to be used in evaluating the bids and awarding the contract.

2123 Request for Quotations (RFQ)

An RFQ may be utilized to obtain price quotes for goods or services whenever the estimated cost is less than the threshold established in policy for acquiring formal bids (see section 2211(f)); and/or the terms and conditions, if any, may not be significant enough to require both parties to sign a contract.

2124 Request for Information (RFI)

RFIs are used to determine whether there is market availability or interest in satisfying a specific need or providing the solution to a given problem expressed in the RFI. The issuance of an RFI may be a precursor to the issuance of a formal bid invitation if there are multiple encouraging responses. If the requestor's needs can be expressed succinctly within the space of a normal ad, soliciting responses through newspaper advertising can be an alternative canvassing method.

2125 Determining the Proper Solicitation Method

Staff must consult with the Contract Manager in determining the appropriate solicitation method to use.

2130 Basic Requirements for RFPs

The basic requirements for RFPs are as follows.

2131 Work Statements Prepared by Agency Staff

The more thoroughly that staff communicate their specific needs, requirements, goals, and objectives in the RFP, the more complete, responsive, and acceptable the proposals received will be. RFP work statements should include:

- A clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met;
- An explanation in realistic terms of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence;
- Practical and policy information, technological requirements or specifications, and legal limitations, if any;
- Specific questions to be answered or issues to be addressed;
- Performance timelines or completion dates;
- Required quality control standards to be met, if applicable;
- A description of the items, products, or results to be delivered;
- The format and number of copies of the completed progress reports and final report, if applicable; and
- The extent and nature of the assistance and cooperation from the Chancellor's Office and its staff that will be available to the proposer.

2132 Information Provided by Proposers

As applicable, prospective proposers must address or include in their proposal the following:

- A description of the proposer's qualifications, including:
 - Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California;
 - For proposers that are nonprofit organizations, proof of nonprofit status;
 - Copies of current business licenses, professional qualifications, or other credentials;
 - Proof of financial solvency or stability (e.g., balance sheets and income statements for one year or more), as deemed applicable;
 - A list of current or former references for whom the proposer has performed similar work;
 - A brief list of similar types of contracts that were successfully concluded, with a sample of such work;
 - A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work;
 - Identification of a project director (recommended for all bid documents but required when consultants are sought);

- Resumes for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services (required by law for consultant contracts);
 - An overall description of the techniques, approaches, and methods to be used in performing the services. For cost reimbursement contracts with consultants, the amount of time and manpower to be expended and the equipment and facilities to be utilized, if applicable;
 - If subcontractors are contemplated, identification of those persons or firms, the portions and monetary percentages of the work to be done by the subcontractors, how and why they were selected, resumes of each major subcontract participant, and a description of how subcontracted work will be controlled, monitored, and evaluated; and
- The total cost of the project, with a detailed breakdown showing how the costs were determined. The detailed budget breakdown may include:
 - Identification of position/classification titles funded;
 - Salary rates or ranges;
 - Percentage of time devoted to the work;
 - Fringe benefits;
 - Operating expenses;
 - Travel and per diem expenses;
 - Overhead or indirect costs;
 - Subcontractors with the same type of cost details; and
 - Other costs.

2133 Small Business, Microbusiness and DVBE Bidding and Contracting Preference

The Small Business Procurement and Contract Act (Gov. Code, §§ 14835 et seq.), the Military and Veterans Code (Mil. & Vet. Code, §§ 999 et seq.), and the State Contracting Manual (SCM, §§ 8.00 et seq.) set forth considerations for certified small businesses, microbusinesses, disabled veteran business enterprises (DVBE), DVBE small businesses and DVBE microbusinesses in the bidding and contracting process. There are specific preferences set forth in the Government Code concerning contracts for the provision of goods, services and information technology. There are also preferences set forth in the Government Code with regard to nonsmall businesses that provide for certified small business or microbusiness subcontractor participation in the contract.

(a) DVBE Goals and Bidding Requirements

A DVBE goal has been established which provides that the Chancellor's Office will strive to award 3 percent of the dollar value of its contracts, including purchase orders and service orders, to DVBEs. (For a detailed discussion of the DVBE contracting requirements, see the State Contracting Manual at §§ 8.10, et seq.)

- (1) Pursuant to Military and Veterans Code section 999.7, on January 1 of each year, the agency shall report to the Governor, the Legislature, the Office of Small Business and DVBE Certification (formerly the Office of Small Business Certification and Resources), and the Department of Veterans Affairs on the level of

participation by DVBEs in contracts, including purchase orders and service orders, for the previous fiscal year.

- (2) Except where the agency has waived the DVBE requirement for a particular contract (see (3), below), every RFP shall require, in its general conditions, that primary contractors that are not DVBEs must provide the following information in their bid offers:
 - The name and location of the place of business of each subcontractor certified as a DVBE who will perform work or labor or render service to the bidder in connection with the performance of the contract, and who will be used by the bidding contractor to fulfill DVBE participation goals (Mil. & Vet. Code, § 999.10(a)(1)); and
 - The portion of work that will be done by each such certified DVBE subcontractor. The bidder may list only one subcontractor for each portion of the work defined in the bid offer (Mil. & Vet. Code, 999.10(a)(2)).
- (3) The RFP and contract provisions requiring DVBE reporting during the performance of the contract may be waived and omitted from the RFP and standard contract terms, where the Executive Vice Chancellor has determined that setting a DVBE participation goal would be likely to preclude the Chancellor's Office from obtaining needed services at a reasonable rate from the best qualified contractor. (Mil. & Vet. Code, § 999.2; SCM, § 8.12.) The decision to waive the DVBE goals must be reflected in the RFP. If the DVBE goals are included in the RFP, they apply to all bidders and may not be waived after the bid proposals are received. (SCM, § 8.13(B).) Contracts with government agencies, colleges, universities and joint powers agencies are exempt from the DVBE participation requirements. (SCM, § 8.12(A)(4).)
- (4) There are also provisions for DVBE small business and microbusiness contracting and bidding preferences pursuant to the Small Business Procurement and Contract Act. (Gov. Code, §§ 14835, et seq.; see § (b), below.)

Authority: Military and Veterans Code 999 et seq.; State Contracting Manual, §§ 8.10, et seq.

(b) Certified Small Business, Microbusiness, and Nonsmall Business Bidding Preference

In all contracts for the acquisition of goods, services and information technology that are not exempt from competitive bidding, the agency must provide a preference for certified small businesses and microbusinesses, or to nonsmall businesses that provide for certified small business or microbusiness subcontractor participation. (For detailed discussion of the bidding preference requirements, see the State Contracting Manual at §§ 8.20, et seq.)

- (1) For contracts using the RFP primary method (where an award is to be made to the lowest responsible bidder meeting specifications (see § 2121)), the preference is as follows:
 - Certified small business and microbusiness: 5 percent of the lowest responsible bidder meeting specifications; and
 - Nonsmall business: Up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined by regulations to be adopted by DGS. (Gov. Code, § 14838(b)(1); SCM, §§ 8.21(A)(2), 8.22. See also § 2121.)
- (2) For contracts using the RFP secondary method (where an award is to be made to the highest scored bidder based on evaluation factors in addition to price (see § 2121)), the preference is as follows:
 - Certified small business and microbusiness: 5 percent of the highest responsible bidder's total score; and
 - Nonsmall business: Up to a maximum of 5 percent of the highest responsible bidder's total score, determined by regulations to be adopted by DGS. (Gov. Code, § 14838(b)(2); SCM, §§ 8.21(A)(3)-(4), 8.22. See also § 2121.)
- (3) The preference may not exceed \$50,000 for any bid, and the combined cost of preferences granted pursuant to these requirements and any other provision of law may not exceed \$100,000. (Gov. Code, § 14838(b)(4); SCM, § 8.21(A)(1).)
- (4) Special consideration must be given to certified small businesses and microbusinesses by both reducing the level of experience required and the level of inventory normally required. (Gov. Code, § 14838(c).)

Authority: Gov. Code, § 14838(b); State Contracting Manual, §§ 8.20 et seq.

2140 RFP Processing Procedure (Reserved)

2145 Exclusion of Contractors from Bidding

A contractor may be removed or suspended from the Chancellor's Office list of potential bidders and be prohibited from participating in any of the agency's bid processes if there has been a failure without good cause to perform in accordance with the terms of a past contract with the Chancellor's Office. It may also be removed or suspended if its performance with respect to a previously awarded purchase order or contract has been unsatisfactory. The Chancellor's Office may also prohibit bids from firms suspended or removed from the DGS list of potential bidders. Such exclusion must remain in effect for at least 90 days after the unsatisfactory performance has been recorded, but shall not exceed a period of 360 calendar days in duration. A contractor excluded from bidding shall be relieved of the prohibition at any time after the 90-day minimum period, upon demonstrating to the satisfaction of the Chancellor's Office that the problems which resulted in the removal or suspension have been corrected. (See Pub. Contract Code, §§ 10303 and 12101. See also § 2216(d).)

2150 Elements of a Valid Contract

Each contract must contain the following information:

- Identification of the parties;
- Term for the performance or completion of the contract (dates or length of time);
- Consideration. The contract must clearly express the maximum amount to be paid and the basis on which payment is to be made, e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery;
- Scope. The work, service, or product to be performed, rendered, or provided. Clear and concise language must be used to describe the scope;
- Other general or unique terms and conditions of the agreement; and
- Signature by a person for each party who is authorized to bind that party.

NOTE: Standard contract language for various types of contracts has been developed by the agency and is available from the Contract Manager. Any deviation from or addition to these standard contract provisions must be approved by the Contract Manager, the Director of Internal Operations, and the Legal Affairs Division.

2160 Contract Processing Procedure

Contracts are to be routed and approved consistent with, and through use of, the Agreement Summary, CCC 215 form (available on the P drive under Forms).

2161 Contract Amendments

Amendments to contracts are required to comply with the same guidelines as set forth in this Manual for contracts. If a contract for \$100,000 or more is amended on or after January 1, 2007, it must contain provisions implementing Assembly Bill 17 (Stats. 2003, ch. 752) requiring that the contractor refrain from discrimination of domestic partners in the provision of employee benefits. (Pub. Contract Code, § 10295.3.) When executing an amendment that requires this additional provision, contact the Contract Manager for the text of the required provision.

Reference: Pub. Contract Code, § 10335.

2170 Progress Payments

When progress payments are made, the amount should not exceed 90 percent of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress or other payments must always be based on at least equivalent services rendered and not made in advance of service rendered. Progress payments should not be made for contracts lasting less than three months.

If the contract is written to include progress payments, it is the policy of the state to withhold 10 percent from each progress payment, the balance to be paid after receipt of the final product. It is not necessary to withhold 10 percent from payments which are tied to the completion of specific tasks or receipt of deliverable products.

Reference: Pub. Contract Code, §§ 10261, 10314, and 10346.

2180 Prohibited Practices

This portion of the Manual contains prohibited practices in the making of contracts. Other prohibitions specific to various types of contracts, or the contracting process itself, can be found throughout this Manual. See also the conflicts of interests provisions starting at section 4000.

2181 Misuse of the Name "California Community Colleges"

The name "California Community Colleges" is the property of the state. No person shall use this name, or any abbreviation of it, or any name of which these words are a part, without the permission of the Board of Governors.

Reference: Ed. Code, § 71025.

2182 Advance Payments for Other Than Interagency Agreements

Payment in arrears is the prescribed method of remitting payments for state acquisitions of work, services, materials or equipment from private firms and for interagency agreements involving transactions, which are limited to transfers of state general fund money to another state agency's non-general fund. Advance payments by the state are permitted, however, when specifically authorized in law and determined to be in the agency's best interest.

Reference: Gov. Code, §§ 11256-11263, and 11019.

2183 Splitting Contracts

Splitting of contracts in order to avoid BOG approval or the competitive bidding requirements prescribed in law, regulation, or policy, is prohibited.

Reference: Pub. Contract Code, § 10329.

2184 Restrictive Bid Specifications

No employee of the Chancellor's Office shall draft or cause to be drafted any specifications for bids in such a manner as to limit the bidding, directly or indirectly, to any one bidder.

Reference: Pub. Contract Code, § 10318.

2185 Pass-Through Contracts

Also prohibited are pass-through contracts in which the contractor/vendor or another governmental agency is doing something that the Chancellor's Office cannot lawfully do directly, such as avoiding competitive bidding. In particular, if a contract is awarded to a district on a noncompetitive basis, it must provide that all subcontractors are selected through competitive bidding processes that would have been applicable if the contract had been let directly to private firms.

Reference: Pub. Contract Code, § 10340; State Contracting Manual, § 1.06.

2186 Transferring Proposition 98 Funds to Nondistrict Entities

In general, Proposition 98 funds must be awarded to community college districts, and districts cannot be required to transfer those funds to a nondistrict entity. Situations requiring special attention are discussed below.

- (a) In those rare instances (see § 1220(d) of this Manual), where state funds covered by the Proposition 98 guarantee are used to fund contracts with community college districts, the contract may not require the district to subcontract or otherwise transfer funds to the Chancellor's Office, a private firm, or any other organization.
- (b) However, a district may choose to use Proposition 98 funds to award a subcontract to a nondistrict entity, other than the Chancellor's Office, when subcontracting is approved pursuant to the terms of the contract.
- (c) Unless expressly authorized by statute, a contract may neither permit nor require the district to pay for travel by Chancellor's Office staff or to provide staffing, equipment, or office space for direct use by the Chancellor's Office. (See also § 1220(b).)

2187 "Add-On" or "Follow-On" Consultant Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies (including information technology goods, supplies and services), or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. (Pub. Contract Code, §§ 10365.5 and 10430.)

2190 Duration of Contracts

Rules related to the duration of contracts are set forth below.

2191 Basic Rule

Contracts should normally cover not more than five years (60 consecutive months). It is recognized that some circumstances may require a contract for a longer period. In such instances, full justification must be provided on the Agreement Summary, CCC 215 form (available on the P drive under Forms). Unless exempted under Board of Governors' Standing Order section 318 and regardless of the cost, contracts extended or renewed beyond three years must be approved by the Board.

In the case of consulting services, it is important to so define the problem that it may be resolved within a five-year period. In all instances, it is generally desirable to obtain a new contractor after five years, or, at a minimum, to proceed with new, completely open, competitive bidding or proposals, to ensure the best and most objective service for the Chancellor's Office.

2192 Multi-Year Agreements Extending Beyond January 1, 2008

Any contract for \$100,000 or more that is awarded or amended for a term extending beyond January 1, 2008, must contain provisions implementing Assembly Bill 17 (Stats. 2003, ch. 752) requiring that the contractor refrain from discrimination of domestic partners in the provision of employee benefits. (Pub. Contract Code, § 10295.3.) When executing contracts or amendments that requires this additional provision, contact the Contract Manager for the text of the required provision.

2200 SERVICES CONTRACTS

For purposes of this Manual, the following contracts executed by the Chancellor's Office are services contracts:

- Personal services contracts;
- Consulting services contracts;
- Other personal services (e.g., movers, security);
- Inter Jurisdictional Exchange (IJE) agreements under Government Code section 19050.8 consisting of a temporary assignment or loan of employees within a government agency or between agencies;
- Contracts for student assistants for the part-time services of a student attending any public or private institution of higher education in California governed by Government Code section 19133; and
- Other services that are not personal (e.g., electronic research subscriptions).

In the event that a particular contract involves two or more of these types of services, the provisions of law and of this Manual for each type of contract shall all be applicable.

2201 Advertising In The California State Contracts Register (CSCR)

The California State Contracts Register (CSCR) is a Department of General Services publication that advertises both service agreements and public works contracts. It provides an equal opportunity for all businesses to compete for a share of state contracts. It is maintained and published DGS' Procurement Division.

Contract advertisements for the CSCR must be submitted on a Std. Form 815, Advertising in the Contracts Register (available from the Contract Manager or from the Publications portion of the Department of General Services' website under State Standard Forms). The agency's Contract Manager assists staff in completing this form and submits the form to DGS' Procurement Division.

Certain types of contracts are statutorily exempt from advertising in the CSCR, and are also exempt from the requirement that a Std. 821, Contract Advertising Exemption Request be filed with DGS' Procurement Division. (Gov Code, § 14827.3; State Contracting Manual (SCM) § 5.80(B).) These types of contracts include contracts with a state, local or federal agency, the University of California, the California State University, a California community college district, a foundation or auxiliary organization of a state university or a California community college district, or a joint powers agency. (SCM, § 5.80(B).) In such cases where the contract is with a community college district, all districts must be notified of the

nature of the contract and the maximum amount of funding available, and be afforded an opportunity to bid on the contract.³

This portion of the Manual does not list all types of contracts that may be exempt. State Contracting Manual section 5.80(B) sets out various types of contracts that are exempt—either by statute or by policy. Section 2211 of this Manual sets out contracts that are exempt from competitive bidding, which are also exempt from the advertising requirements, subject to the restrictions noted in State Contracting Manual section 5.80. If there is a contract that is not automatically exempt but for which an exemption from advertising is sought, a Std. 821, Contract Advertising Exemption request must be completed (available from the Contract Manager or from the Publications portion of the Department of General Services' website under State Standard Forms). The agency's Contract Manager assists staff in completing this form and submits it to DGS' Procurement Division.

Reference: Pub. Contract Code, §§ 10340, and 10371.

2202 Additional Advertising of Contract Opportunities

In order to broaden subcontracting opportunities for small business, the Contract Manager shall maintain and provide, upon request to interested parties, a list of the names and addresses of firms to whom requests for proposals or invitations to bid are to be issued in connection with all contracts for one hundred thousand dollars (\$100,000) or more. (Gov. Code, § 14826.)

2210 Personal Services Contracts

"A 'Personal Services Contract' is defined as any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services [including but not limited to consultant services] is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State." (Cal. Code Regs., tit. 2, § 547.59(a).)

Personal services contracts are used to obtain personal services (when it is appropriate to do so) outside of the civil service hiring procedures. The business or person performing these contractual services is an independent contractor and does not have status as an employee of the state. Basically, contracting for personal services in lieu of using civil service personnel is permitted, subject to SPB review as discussed in section 2213, only if the standards outlined in Government Code section 19130(a) or (b) are met as follows:

- (a) Section 19130(a) permits contracting for personal services to achieve cost savings.
- (b) Section 19130(b) permits contracting for personal services when any of the requirements of 19130(b) are met. For the Chancellor's Office purposes, sections 19130(b)(3) and 19130(b)(10) are the exceptions most likely to arise. Section 19130(b)(3) provides that personal service contracts are permissible when "[t]he

³ This may occur in those rare instances discussed in section 1220(d) when Proposition 98 funds are used to support the contract or where the Legislature specifically provides that a contract will be awarded to a district.

services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system." Section 19130(b)(10) allows personal service contracts when "[t]he services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose."

Authority: Gov. Code, § 19130(a) and (b); Cal. Code Regs., tit. 2, § 547.59 et seq.; State Contracting Manual § 7.05.

2211 Competitive Bidding

The Chancellor's Office will secure at least three competitive bids or proposals for personal services contracts, except where an exemption from competition is approved pursuant to this section. A request for such an exemption should be filed using the Request for Exemption from Competitive Processes for Contracts form (available on the P drive under Forms). After being completed by staff, this form must be signed by the vice chancellor for the division, and then submitted to the Contract Manager for review and routing. The request must also be approved by the Director of Internal Operations, and the General Counsel if advice is sought by the Director of Internal Operations. In addition, a request for an exemption pursuant to subsections (a) or (m) of this section must be approved by the Chancellor, after consultation with the President of the Board of Governors. Exemptions may be allowed only in the following circumstances:

- (a) In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or the protection of state property. (Pub. Contract Code, § 10340(b)(1).)
- (b) When the agency has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals. (Pub. Contract Code, § 10340(b)(2).)
- (c) When funds must be awarded to a community college district as discussed in section 1220(d). In such cases, a two-tier method of competition may be used. A notice is sent to all districts that indicates the nature of the project and the maximum funds available and affords a reasonable opportunity for districts to express interest in providing the needed services. The final selection is then made through simplified competition restricted to those districts responding within the specified time period. (See also § 2201.)
- (d) When the contract is with an auxiliary organization of the California Community Colleges approved by the Board of Governors, or with an auxiliary organization of the California State University. (Pub. Contract Code, § 10340(b)(3).)
- (e) When the contract is an interagency agreement. (SCM, § 3.03(B).)

- (f) For contracts with business entities operating workshops for persons with disabilities which meet the criteria stated in section 19404 of the Welfare and Institutions Code. (Pub. Contract Code, § 10340(b)(5).)
- (g) For contracts in an amount of less than twenty thousand dollars (\$20,000). (Pub. Contract Code, § 10295; Chancellor's Office Legal Opinion 99-24. See also Pub. Contract Code, § 10335(a).)
- (h) For contracts for conference or meeting facilities, including room accommodations for conference attendees, of less than \$250,000. (SCM, §§ 3.20; 5.80(B)(3)(m).)
- (i) When a contract for acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less than one hundred thousand dollars (\$100,000), is awarded to a certified small business, including a microbusiness or a disabled veteran business enterprise, provided that price quotations are obtained from two or more certified small businesses, including microbusinesses, or from disabled veteran business enterprises. (Pub. Contract Code, §§ 10335.5(c)(6) and 10340(b)(6); and Gov. Code, § 14838.5.)
- (j) For contracts which are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. (Pub. Contract Code, § 10335.5(c)(1).)
- (k) For contracts that can only be performed by a public entity as defined in subdivision (b) of section 605 of the Unemployment Insurance Code. (Pub. Contract Code, § 10335.5(c)(2).)
- (l) When a contract is for the express purpose of obtaining outside legal counsel, legal advice, or legal defense; or expert witnesses for litigation. (Pub. Contract Code, §§ 10335.5(c)(3) and (4).)
- (m) In those instances where the Chancellor and the President of the Board of Governors have authorized an exemption based on evidence that the goods or services are available from a single source only, or that competitive bidding would defeat the purpose of the contract. (Pub. Contract Code §§ 10295, 10335(a); Chancellor's Office Legal Opinion 98-24.)
- (n) For any type of contract that is exempt from competition by statute or policy. (See SCM §§ 5.70(C); 5.80.)

Reference: Pub. Contract Code, §§ 10295, 10300 et seq., 10335, 10335.5, 10340, 10430(c), 12100 et seq. See also Pub. Contract Code, §§ 10507.7.

2212 Independent Contractor Status

Government Code section 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 (at § 4) of the California Constitution, be retained under an appropriate civil service appointment. Therefore, state law and policy require that a 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. Certification of employee status and independent contractor status for each individual engaged under contract is required documentation.

Authority: Cal. Const., art. VII, § 4; Gov. Code, § 19130; Cal. Code Regs., tit. 2, §§ 547.59 et seq.

2213 Notice and Review by the State Personnel Board (SPB)

There are various contracting situations wherein the SPB must receive notice by the agency, or where contracts may be subject to SPB review, as set forth below.

- (a) In general, if the Chancellor's Office intends to award a personal services contract pursuant to Government Code section 19130(a), it must notify the State Personnel Board (SPB) of its intention to award the contract and retain all data and information relevant to the contract in the event that SPB chooses to review the matter. (Gov. Code, § 19131.) Our notification to the SPB should also include written justification containing specific and detailed factual information demonstrating that the contract will achieve an overall cost savings to the state, and that it meets all of the other requirements of 19130(a). The SPB sends notice of all proposed contract awards under section 19130(a) to state employee organizations that may then choose to request SPB review within 10 days of such notification. (Gov. Code, § 19131; Pub. Contract Code, § 10337.)

Similarly, while notice to SPB is not required for contracts awarded on the basis of Government Code section 19130(b), such contracts are still subject to review by SPB at the request of an employee organization representing state employees. Therefore all data and information must be retained. In addition, contracts let under Government Code section 19130(b) must contain a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in that subdivision. The standards of review for a personal services contract awarded outside of civil service are in Public Contract Code section 10337. SPB decisions regarding personal services contracts are published on the SPB's website at www.spb.ca.gov. These decisions provide information and are citable for persuasive value, but are not binding on the agency.

Reference: Cal. Code Regs., tit. 2, §§ 547.60, et seq.

- (b) **Application.** In SPB Personal Services Contract Decision PSC No. 97-03, the SPB found that the agreement between the Governor's Office of Emergency Services (OES) and EQE International (EQE) for review of reports in connection with the Northridge Earthquake was justified under Government Code section 19130(b)(10). The Board found that the services were urgently needed because failure to meet FEMA's deadlines would have adversely affected the financial ability of public entities and certain nonprofits to effectively repair their earthquake damaged facilities. The SPB found that the services were also both temporary and occasional since they were only provided during a short period of time to fulfill the FEMA report review requirements for the Northridge earthquake. The SPB also found that the agreement was justified under Government Code section 19130(b)(3) because EQE possessed both the necessary expertise and the extensive experience in the local construction industry that OES needed to perform the more complex report reviews. OES could not obtain the required expertise and experience by hiring staff because it did not have the classifications it needed to do so at the time the reviews had to be performed.

In SPB Personal Services Contract Decision PSC No. 99-02, the SPB found that a contract between the California Integrated Waste Management Board (CIWMB) and Price Waterhouse Coopers (PWC) to collect and compile confidential information submitted by plastic products manufacturers was not justified under Government Code section 19130(b)(3) or 19130(b)(10). The SPB found that there was no evidence that civil service employees could not have performed the information gathering and processing services as adequately and competently as PWC. The SPB also found that the record did not support the conclusion that the need for the contracted services was so urgent that CIWMB could not have implemented an information collection process using civil service employees.

Reference: Gov. Code, §§ 19130, 19131, and 19132; Pub. Contract Code, § 10337; Cal. Code Regs., tit. 2, § 547.60; see www.spb.ca.gov for SPB personal services contracts decisions.

- (c) **Exempt from Civil Service.** If the contract is for personal services that are exempt from civil service by the Constitution, the question of their being contracted is outside the SPB's jurisdiction. Consequently, the Chancellor's Office could contract with firms or individuals for such services without being subject to SPB review. However, agreements entered into by civil service agencies in which an exempt agency is the contractor are not exempt from SPB review.

Authority: Cal. Const., art. VII, § 4.

- (d) **State Contract Act.** Any project for the erection, construction, alteration, repair or improvement of any state structure, building, road or other state improvement

of any kind which will exceed \$100,000 in costs is covered by the State Contract Act (Pub. Contract Code, §§ 10100 et. seq.) and is not a personal services contract. Individual projects falling below this cost level are personal services contracts. Separate projects should not be grouped for the purpose of exceeding the \$100,000 limit, thereby avoiding the SPB's jurisdiction.

Authority: Pub. Contract Code, §§ 10100 et seq.

2214 Selecting the Contractor

Assuming a contract is to be awarded on a competitive basis, all proposals which are submitted should be evaluated to select the one proposal which will best meet the agency's needs. Oral presentations may be arranged, if considered necessary. The following are some of the criteria that shall be covered in the evaluation:

- (a) Does the bidder understand the agency's problem?
- (b) Is the approach to the problem reasonable and feasible?
- (c) Does the potential contractor have the organization, resources, and experience to perform the assignment? Has the organization had experience in similar problem areas?
- (d) What are the professional qualifications of the personnel that the bidder will commit to the assignment?
- (e) The total cost of the proposal to the agency.
- (f) If the contract is for consultant services (see § 2216), review any completed Consultant Evaluation, CCC 4 form that may be on file with the Contract Manager, or any completed Contract/Contractor Evaluation, Std. 4 form that may be on file with Department of General Services' Office of Legal Services (OLS). If there are no current contractor evaluations on file, or if the contractor has not performed a previous consultant services contract for any state entity, obtain a resume from each person who will exercise a major administrative, administrative policy, or consultant role on behalf of the contractor, as identified by the contractor. Copies of the resumes shall be attached to the contract for the public record. (Pub. Contract Code §§ 10369 and 10370.)

2215 State Standard Form 204 – Contractor Data Record

A Std. 204, Payee Data Record (available from the Contract Manager or from the Publications portion of the Department of General Services' website under State Standard Forms) must be completed by each contractor (except for a state or other governmental entity, including a community college district) doing business with this agency.

Authority: State Administrative Manual, § 8422.190; State Contracting Manual, §§ 1.07, 4.08(A)(2), and 7.25.

2216 Consultant Services Contracts

This portion of the Manual discusses consultant services contracts, the provisions of law that are applicable to such contracts, and the various procedures that must be followed.

(a) Contracts for Legal Counsel

Occasionally, state agencies will obtain private counsel under contract when a conflict of interests on the part of the Attorney General's Office prevents it from representing the agency without compromising its position. Pursuant to Government Code section 11040, such contracts require the written consent of the Attorney General.

Reference: Gov. Code, § 11040.

(b) Compensation of Consultants

The following methods may be used in paying consultants:

- (1) A lump sum or fixed price for the total project. This avoids detailed accounting and is a contract for a given result. The agency's primary concern is not with the cost incurred by the consultant, but with the end product.
- (2) Hourly rate plus cost reimbursement, with a ceiling on the total project or contract amount. The consultant agrees to charge only for hours utilized at an agreed rate of compensation and reimbursement of costs. This method is also a contract for a given result.
- (3) Daily compensation plus cost reimbursement, to work "when requested" during the term of the contract for daily rate plus cost reimbursement, with a ceiling on the total project or contract amount. This type of contract should be avoided if a given result can be contracted for.

To implement methods (2) and (3) above, the contract must provide for the following:

- The rate(s) of compensation to be paid the consultant(s), except for fees for employee physical exams required by the state as a condition of employment (SAM § 0191);
- There are no set rates for paying consultants. Amounts to be paid depend upon the complexity and difficulty of the project, the going rate for similar work both within and outside the state service, and the qualifications and reputation of the individual(s) or firms being awarded the contract. Proposals submitted by individuals and firms will list the rate of compensation to be paid staff assigned to the contract by the bidder;
- The reimbursement of transportation costs and an allowance for per diem. These costs should not exceed the amounts allowed in the Department of Personnel Administration Rules (SAM, § 0774; DPA Rule 599.634); and

- Any other expenses. These should be clearly and specifically set forth in the contract.

(c) Revolving Fund

For emergencies only, if approved by the Director of Internal Operations, payment may be made to a contractor by the Accounting Unit from the "revolving fund."

(d) Evaluation of Consultants

An evaluation must be prepared after the completion of the contract on all consultant services contracts for \$5,000 or more. The contractor should be advised that performance under the contract will be evaluated. (Pub. Contract Code, §§ 10369 and 10370.)

Evaluations should include statements:

- On the adequacy of the service or product;
- Whether the service was satisfactory;
- Whether the service or product was provided or completed within the time limitations;
- Reasons for time or cost overruns;
- Whether the product is operational or being utilized by the agency and/or the agency's plans for implementation, and
- The agency's general impression as to the competency of the firm and its staff.

An evaluation shall be prepared on a Consultant Evaluation, CCC 4 form (available on the P drive under Forms, or from the Contract Manager). The evaluation should be sent to the Contract Manager within 60 days after completion of the contract. If an evaluation is unsatisfactory, a copy of the evaluation should be sent to the contractor in a timely manner. The Contract Manager will review the evaluations and contractor responses. The Contract Manager will maintain a central depository for all agency contractor evaluations, contractor responses to evaluations, and requests for information on a contractor's record. The evaluations and contractor responses on file with the agency are not public records and should be kept in a separate file.

Reference: Pub. Contract Code, §§ 10369 and 10370; Gov. Code, § 6272.12.

(e) Review for FPPC Filing Requirements

The Director of Internal Operations, or staff working under the direction of the Director of Internal Operations, will:

- Review each consultant's duties under the contract, along with the regulations of the Fair Political Practices Commission (FPPC), and determine whether any of the contractor's personnel that will be working for this agency under the contract are covered under the definition of "consultant." For purposes of the FPPC regulations, it is not the business or firm providing services to the agency that is considered to be the consultant; rather, each individual

employee of the contractor providing consulting services for this agency may be considered a "consultant" for purposes of compliance with the regulations.

- If the consultant is covered, determine which disclosure category in the agency's Conflict of Interest Code applies to the consultant's duties. In general, most consultants will be in category 2. However, for consultants involved in facilities planning issues, they will be covered under category 1.
- If the consultant is covered, inform the consultant that he or she is designated in the agency's Conflict of Interest Code and the disclosure category, provide the consultant with the proper materials, and inform the consultant that he or she is subject to the conflict of interests provisions of the California law and must file a Form 700 within 30 days from his or her start date.
- If it is determined that a consultant is not covered by the FPPC's regulations, seek the advice of the Legal Affairs Division in order to affirm that the determination is correct.

See § 4260, in the Conflicts of Interests portion of this Manual, as well as §§ 4500 et seq.

Reference: Cal. Code Regs., tit. 2, § 18701.

2220 Student Assistants

Contracts for student assistants for the part-time services of a student attending any public or private institution of higher education in California are governed by Government Code section 19133. Such contracts are exempt from the need to justify contracting out of civil service work so long as the agency contracts with one of the types of foundations identified in the statute and the following requirements are satisfied:

- The work must be related to the student's field of study.
- Students cannot accrue civil service status.
- Students cannot be employed for more than 194 days in the 365 days beginning with the day of initial employment.
- Use of students cannot cause displacement of civil service employees.

An arrangement to provide student assistants to the Chancellor's Office has been developed with the Foundation for California Community Colleges and this mechanism should be used unless compelling circumstances justify a different approach.

Authority: Gov. Code, § 19133; SCM § 3.22.

2230 Inter Jurisdictional Exchange Agreements

Inter Jurisdictional Exchange (IJE) agreements under Government Code section 19050.8 permit the temporary assignment or loan of employees between the Chancellor's Office and other agencies, including community college districts. So-called "reverse IJE" agreements are used when a member of the Chancellor's Office staff is temporarily loaned to a community college district. Such agreements are exempt from competitive bidding requirements.

Authority: Gov. Code, § 19050.8.

2240 Other Services

Occasionally, there may be circumstances where the Chancellor's Office needs to contract for services that do not fall into any of the above categories. Such contracts would be subject to competitive bidding except as provided in section 2211.

2300 PROCUREMENT OF INFORMATION TECHNOLOGY, ELECTRONIC DATA PROCESSING AND TELECOMMUNICATIONS GOODS AND SERVICES

This portion of the Manual contains a discussion of the procedures and the laws applicable to the procurement of information technology (IT), electronic data processing (EDP), and telecommunications goods and services. Please note that the term "electronic data processing" is in the process of being amended out of the law, and the term "information technology" is the current term generally being used in its place.

Pursuant to Public Contract Code section 12100.5, and section 321 of the Procedures and Standing Orders of the Board of Governors of the California Community Colleges, the Chancellor is authorized to establish and maintain policies and procedures for procuring IT, EDP and telecommunications goods and services for the Chancellor's Office. Those policies and procedures, which are set forth below, are intended to further the legislative policies set forth in chapter 3 (commencing with section 12100) and chapter 3.5 (commencing with section 12120) of part 2 of division 2 of the Public Contract Code, but without the involvement of the Department of General Services or the Department of Finance.

Authority: Pub. Contract Code, §§ 12100.5 and 12120; Ed. Code, §§ 70901(b)(15) and 70901(d); Procedures and Standing Orders of the Board of Governors, § 321.

2310 Scope

The scope of this IT, EDP and telecommunications acquisition policy encompasses the following broad types of Chancellor's Office acquisitions:

- (a) **Equipment:** Acquisition of IT and EDP-related hardware and other capitalized tangible property items is accomplished by means of awarded purchase orders, master purchase agreements, lease/purchase agreements, or rental agreements. Acquisition of large-scale integration items (e.g., mainframe computers, network, voice, video and telecommunications infrastructure installations) may employ the use of a standard agreement to accommodate specific and unique terms and conditions.

- (b) **Materials:** IT and EDP materials are normally non-capitalized items. They are expendable supplies and low-value assets that can be readily replaced. These items are usually obtained through the issuance of a purchase order or by direct charge, rather than by the issuance of a standard agreement. (See § 2430.)
- (c) **Services:** Vendor or contractor services for IT and EDP-related functions normally require the issuance of standard agreements. They include such things as installation of hardware or software products, modifications or upgrades, equipment maintenance, repairs, network and database subscriptions, and consultant services.
- (d) **California Multiple Award Schedules (CMAS):** IT, EDP and telecommunications goods and services can also be obtained through CMAS. (See § 2440.)
- (e) **Definitions:** Except where the context otherwise requires, the definitions pertaining to IT, EDP and telecommunications as contained in Public Contract Code sections 12100 et seq. and related provisions of the State Administrative Manual shall apply to procurement of IT, EDP and telecommunications goods and services by the Chancellor's Office.

Reference: Pub. Contract Code, §§ 12100 et seq.

2320 Competitive Bidding

Policies regarding competitive bidding as well as the exemptions from competitive bidding requirements with regard to IT, EDP and telecommunications goods and services, are set forth below.

2321 Bidding Procedures

Except as provided in section 2322, acquisition of IT, EDP and telecommunications goods and services shall be conducted through competitive means consistent with the following policies:

- (a) The value-effective methodology shall be used, to the maximum extent possible, for acquisitions of IT, EDP and telecommunications goods and services. Any solicitation that employs value-effective selection criteria shall be awarded to the respondent that provides the most value-effective solution to the agency's requirements, based on life cycle costing. There is no specific formula or methodology for conducting a best value determination, but it is important that the award is consistent with the terms of the solicitation and that any price premium is justified by specific technical or value-added enhancements, as determined by the evaluation criteria contained in the solicitation document.
- (b) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published

immediately before the opening of cost proposals. The person designated by the Chancellor to administer the procurement shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official procurement file, that all cost proposals received by the agency have been maintained sealed and under lock and key until the time cost proposals are opened.

- (c) The acquisition of hardware purchased independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.
- (d) The 5 percent microbusiness, small business, and disabled veteran-owned small business or microbusiness preference provided for in chapter 6.5 (commencing with section 14835) of part 5.5 of division 3 of title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses. (See also Cal. Code Regs., tit. 2, §§ 1896.2, et seq.)
- (e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining the award of a contract for IT, EDP and telecommunications goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the Chancellor determines that a particular financing alternative should not be so considered.
- (f) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.
- (g) Bidders shall be accorded an opportunity to protest any formal, competitive acquisition conducted in accordance with this policy. Protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Chancellor or his/her designee shall consider and decide on protests. A decision by the Chancellor or his/her designee regarding a protest shall be final.
- (h) IT, EDP and telecommunications goods which have been determined to be surplus to agency needs shall be disposed of in a manner which will best serve the interests of the agency. Procedures governing the disposal of surplus goods may include auction or transfer to community college districts or other local governmental entities.
- (i) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the Chancellor using, to the extent feasible, procedures developed by the Department of General Services as set forth in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the Chancellor's

satisfaction that the problems that resulted in the supplier's exclusion have been corrected. (Pub. Contract Code, § 12102. See also § 2145.)

2322 Exemptions from Competitive Bidding

An exemption may be obtained to acquire IT, EDP or telecommunications goods or services without competitive bidding using the form and procedures described in section 2211, in the following circumstances:

- (a) The goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.
- (b) The agency has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals.
- (c) When funds must be awarded to a community college district as discussed in section 1220(d). In such cases, a two-tier method of competition may be used. A notice is sent to all districts that indicates the nature of the project and the maximum funds available, and affords a reasonable opportunity for districts to express interest in providing the needed services. The final selection is then made through simplified competition restricted to those districts responding within the specified time period. (See also § 2201.)
- (d) Contracts in an amount of less than twenty thousand dollars (\$20,000). (See Pub. Contract Code, § 12102(a)(1).)
- (e) A contract for acquisition of goods, services, or IT that has an estimated value of greater than five thousand dollars (\$5,000), but less than one hundred thousand dollars (\$100,000), is awarded to a certified small business, including a microbusiness or a disabled veteran business enterprise, provided that price quotations are obtained from two or more certified small businesses, including microbusinesses, or from disabled veteran business enterprises. (Pub. Contract Code, § 10340(b)(6); Gov. Code, § 14838.5.)
- (f) In those instances where the Chancellor and the President of the Board of Governors have authorized an exemption based on evidence that the goods or services are available from a single source only or that competitive bidding would defeat the purpose of the contract.

2323 Department of General Services, Division of Telecommunications

The Chancellor's Office shall grant to the Department of General Services, Division of Telecommunications, the opportunity to bid whenever the agency solicits bids for telecommunications goods and services.

Reference: Pub. Contract Code, § 12120.

2324 Value-Effective Acquisitions

The best value method shall be used for acquisitions of IT, EDP and telecommunications goods and services unless the application of this method would defeat the purpose of the contract.

Public Contract Code section 12102, subdivisions (b) and (c) require that contract awards for all large-scale systems integration projects be based on the proposal that provides the most value-effective solution to the awarding agency's requirements. However, hardware purchased independent of a large-scale systems integration project may be made on the basis of lowest cost meeting all other specifications. When an acquisition is based upon cost alone, an award shall be made to the lowest responsible bidder meeting the specifications.

Reference: Pub. Contract Code, §§ 12102(b) and (c), and 12100.7.

2330 Evaluation Criteria

The solicitation document for procurement of IT, EDP and telecommunications goods and services shall set forth the evaluation criteria to be used in judging proposals. Except as provided in section 2321(c), the criteria shall be designed to result in the selection of a vendor on an objective basis not limited to cost alone. Such criteria shall include, but are not limited to, the following:

- (a) The operational cost that the agency would incur if the bid or proposal is accepted.
- (b) Quality of the product or service, or its technical competency.
- (c) Reliability of delivery and implementation schedules.
- (d) The maximum facilitation of data exchange and systems integration.
- (e) Warranties, guarantees, and return policy.
- (f) Vendor financial stability.
- (g) Consistency of the proposed solution with the agency's planning documents and announced strategic program direction.
- (h) Quality and effectiveness of business solution and approach.
- (i) Industry and program experience.
- (j) Prior record of vendor performance.
- (k) Vendor expertise with engagements of similar scope and complexity.
- (l) Extent and quality of the proposed participation and acceptance by all user groups.
- (m) Proven development methodologies and tools.
- (n) Innovative use of current technologies and quality results.

2340 Standard Contract Provisions

The Chancellor's Office has developed standard contract language for procuring IT, EDP or telecommunications goods and services which are similar to model contract provisions and procurement documents developed by the Department of General Services. The standard provisions for IT services contracts may be obtained from the Contract Manager. The standard terms for procurement of IT goods and incidental services may be obtained from the Business Services Officer. Terms and conditions in these standard agreements remain operational unless and until the Chancellor notifies vendors in a timely manner that new or different terms will be used for a particular procurement or for all subsequent procurements.

If, for a particular procurement, the agency seeks to make any further changes to the standard contract language, or both, it shall identify those changes to each bidder or proposer prior to the due date for the bid or proposal. If, for a particular procurement, a bidder or proposer seeks to propose a change in the standard contract language, it shall make this identification within the time frame identified in the solicitation document.

Reference: Pub. Contract Code, § 12101.2.

2350 Grants for Systemwide Provision of Goods or Services

The provisions of this Manual concerning procurement of IT, EDP and telecommunications goods and services need not be applied when the Chancellor's Office utilizes services which are available as an incidental benefit resulting from a grant awarded to a community college district or other entity to provide IT, EDP or telecommunications goods or services for the California Community College system as a whole. (See §§ 1210 and 3327.)

2360 Accessibility for Persons with Disabilities

All agreements for the procurement or development of IT, EDP or telecommunications equipment or software shall ensure accessibility for persons with disabilities by including a provision requiring compliance with the regulations implementing Section 508 of the Rehabilitation Act of 1973, as amended, set forth at 36 Code of Federal Regulations, sections 1194.1 et seq.

Reference: 29 U.S.C. § 794d; 36 C.F.R. §§ 1194.1 et seq.; Gov. Code, § 11135.

2400 PROCUREMENT

The governing law for the procurement of goods can be found in Public Contract Code sections 10300 et seq.

Authority: Pub. Contract Code, §§ 10300 et seq.; Procedures and Standing Orders of the Board of Governors, § 318.

2410 Role of Business Services

The Business Services Unit is responsible for procurement of goods and procurement of services. This includes those limited circumstances discussed in sections 2430 and 2440 of this Manual.

2420 Board of Governors Review

Approval by the Board of Governors is required for agreements for the procurement of goods and services in excess of \$100,000. (See Standing Order, § 318.)

2430 Purchase Orders and Service Orders

A purchase order or service order may be used to obtain goods or services in an amount of less than \$5,000. (See §§ 2010 and 2410.)

2440 Multiple Awards; California Multiple Award Schedules (CMAS)

Multiple awards are contract awards of an indefinite quantity for one or more similar goods, information technology, or services to more than one supplier. (Pub. Contract Code, §§ 10290, 10290.1, 10298, 10299 and 12101.5(b).) Multiple awards may be used in instances where awarding to a single contractor would fail to meet the requirements of the Chancellor's Office. Multiple awards must comply with all other requirements of statute and policy, including Standing Order section 318.

Before placing orders under the CMAS program, the Chancellor's Office must first consider offers from small businesses that have established multiple award schedules whenever practicable. (Gov. Code, § 14846(b).)

2500 AWARDING AND PROCESSING CONTRACTS (RESERVED)**2550 Protests, Disputes, and Complaints Related to the Award of a Contract**

The following portion of the Manual concerns the authority of the Chancellor's Office and its procedures regarding protests, disputes and complaints. See also section 2600, below, regarding disputes that occur after the award of a contract.

2551 Authority

The Chancellor's Office has final authority to resolve protests, disputes, and complaints arising from the solicitation or award of a contract. Solicitation documents must contain provisions for the resolution of protests and disputes.

2552 Inspection of Bids

Inspection of bids is permitted as follows:

- (a) After bid opening, all bids shall be available for public inspection (IFB process).
- (b) After proposals are evaluated, and notice of intent to award has been posted, all proposals shall be available for public inspection (RFP process).

Reference: State Contracting Manual, § 6.10.

2553 Protest of Requirements Prior to Award

The solicitation document shall provide potential bidders with the opportunity to take exception to specifications and/or requirements. Protests of requirements received after the time identified in the solicitation document shall be considered untimely and shall be rejected.

2554 Protest of Award

If, prior to the award of a contract, a protest is received in writing and filed on the grounds that the award is not in conformance with the provisions of the solicitation document, the contract shall not be awarded until the protest has been withdrawn or a decision has been reached by the Chancellor's Office.

Complaints lodged by a bidder prior to award may be resolved informally. However, in the event that the matter is not resolved, bidders shall be advised of the timeframe for submitting a full and complete formal statement of the grounds for the protest within the timeframes specified in the solicitation document.

2555 Decisions

The Chancellor's Office shall review the merits and timeliness of the protest and submit a decision in writing within a reasonable period of time following receipt of the protest. The Chancellor's Office shall issue a decision in writing or otherwise furnish the decision to the bidder in such a manner as to ensure receipt. The decision of the Chancellor's Office is final.

2600 DISPUTES SUBSEQUENT TO AWARD

Disputes subsequent to award may include, but not be limited to, contention over terms, pricing, payment, scope and/or deliverables. A dispute resolution and escalation clause, describing resolution procedures and the appropriate parties to which the matter may be escalated, shall be included in solicitation documents and contracts, as applicable.

3000 GRANTS

3010 Scope and Purpose

This portion of the Contracts and Grants Manual serves as an agency-wide reference for grants policy and procedures. It is organized to follow, as closely as possible, the chronological steps in the grant process from development of a Request for Applications (RFA) to the submission and review of reports. Certain provisions in this portion of the Manual will be made available on the agency's website to assist college staff in preparing applications or administering grants.

3020 Purposes for which Grants Should be Used

Whenever the purpose of an agreement is to fund activities at a local district or for the benefit of the community college system, a grant should be used. When local assistance funds covered by the Proposition 98 guarantee are transferred by written agreement, the appropriate instrument is almost always a grant, rather than a contract. For a full discussion of the distinction between grants and contracts, see sections 1200 et seq. of this Manual.

3030 The Grants Process Workgroup

The Chancellor has established a permanent Grants Process Workgroup consisting of the vice chancellors from Legal Affairs; Educational Services; Student Services; Technology, Research and Information Systems; and Human Resources; as well as the Executive Vice Chancellor; and the Director of Internal Operations. This group is responsible for reviewing the agency-wide grants calendar, reviewing RFAs which propose projects with implications for future changes in grant processes, monitoring compliance with agency policy, approving changes to such policies, and addressing new issues relating to processing of grants.

3040 Staff Training

The Legal Affairs Division and Internal Operations Unit will provide training for staff that work with grants regarding the contents of this Manual. Training on day-to-day grant processing should be provided by a group of seasoned grant staff with a rotating chair.

3100 GRANT AGREEMENTS

The following portion of the Manual sets out elements that must be included in grant agreements.

3110 Standard Elements

The Chancellor's Office has developed a standard format for grant agreements, which consists of the three elements listed below. These elements must be included in all grants, whether or not they are awarded through a competitive process. The basic elements are:

- (a) A face sheet which is completed by filling in certain basic information such as the name of the grantee, the dollar amount of the grant, its term, and the funding source. In order for a grant to be legally effective, the face sheet must be signed by the Executive Vice Chancellor or the Director of Internal Operations for the Chancellor's Office and by the Chief Executive Officer or designee for the grantee.

- (b) Article I, which sets forth the program-specific terms of the grant. The contents of Article I are controlled by the vice chancellor for the division administering the grant program, subject to review and approval by the Contract Manager and the Legal Affairs Division. (See § 3355.)
- (c) Article II, which sets forth the standard provisions applicable to all grants awarded by the Chancellor's Office. Provisions in Article II may only be changed by the Legal Affairs Division.

3120 Additional Elements of Individual Grant Agreements

The face sheet generally incorporates by reference the grantee's application. In most instances the grant application will consist of the grant narrative, work plan, and budget. Together these documents describe the work to be performed, the costs to be paid out of the grant funds, and (if applicable) any matching funds that the grantee will contribute.

3200 METHODS OF DISTRIBUTING GRANTS

The following portion of the Manual sets out the law, policy and procedures regarding the award of grants.

3210 Legal Requirements

In most cases, the method to be used in distributing grant funds is specified by the Legislature in statute or in the Budget Act. In those instances where the Legislature does not specify the methodology, this is controlled by Board of Governors Standing Order section 319.

3220 General Policy Favoring Competition

In those instances where the distribution method for grant funds is not determined by law, Standing Order section 319 generally requires that grants be awarded through a competitive process.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(d).

3230 Exceptions

There are a few exceptions to the general requirement for competition in Standing Order section 319. In these circumstances competition is not necessary unless required by statute or in the Budget Act. These exceptions are:

- (a) Competition is not required where an allocation formula has been reviewed and approved by the Board of Governors.
- (b) Competition may be limited to districts in a particular region.
- (c) Grants for regional or statewide coordination activities for Extended Opportunity Programs and Services (EOPS), Disabled Students Programs and Services (DSPS), Matriculation, and Economic Development programs need not be competitively bid.

- (d) In the case of other projects involving statewide coordination or technical assistance activities, a simplified two-tier method of competition may be used. A notice is sent to all districts that indicates the nature of the project and the maximum funds available and affords a reasonable opportunity for districts to express interest in providing the needed services. The final selection is then made through competition restricted to those districts responding within the specified time period.
- (e) Where there are conditions beyond the control of the Chancellor which limit competition, the Chancellor, in consultation with the President of the Board and the Chairperson of the appropriate committee, shall have authority to award grants without competition or to appropriately limit competition. This includes, but is not limited to, the following situations:
 - (1) The funding source or controlling legislation requires grants to be made to districts with matching funds from a particular source.
 - (2) The funding source or controlling legislation requires another agency to select grantees.
 - (3) The Legislature requires in statute or in the Budget Act that funds be awarded to one or more specific districts.
 - (4) A notice has been sent to all districts that indicates the nature of the project and the maximum funds available and affords a reasonable opportunity for districts to express interest in the project, but the number of responses is such that all districts expressing interest can be fully funded.
 - (5) The funding source or controlling legislation establishes eligibility criteria which will limit competition to a group of districts that can be identified with certainty in advance (e.g. districts with more than a certain number of FTES in a given year).

Authority: Procedures and Standing Orders of the Board of Governors, § 319(d).

3240 Requesting an Exemption from the Competitive Process

When program staff wishes to award a grant without competition, an exemption from competition must be requested using the Request for Exemption from Competitive Processes for Grant Award form (available on the P drive under Forms). In the circumstances described in paragraphs (a) through (d) of section 3230 it is mainly necessary to confirm that the grant fits into the category in question and that there is no requirement for competition in statute or in budget language. If not, such requests will generally be approved by the Director of Internal Operations, and the General Counsel, if advice is sought by the Director of Internal Operations. When an exemption from competition is sought under section 3230(e) the program staff must include a statement explaining the circumstances beyond the control of the Chancellor's Office that justify the exemption.

After being completed by program staff, this form must be signed by the vice chancellor in charge of the division administering the program in question. It is then routed to the Contract Manager for review. This review will include a check to be sure that competition is not required by statute or budget language and a determination as to whether the justification statement addresses the requirements of Standing Order section 319. If these requirements are not met, the request may be returned to program staff. Otherwise, it will be routed to the Director of Internal Operations. Exemptions requested pursuant to section 3230(a)-(d) of this Manual must be approved by the Director of Internal Operations, and the General Counsel if advice is sought by the Director of Internal Operations. If the exemption is requested pursuant to section 3230(e)(1)-(5) of this Manual, the Director of Internal Operations will forward the form to the Chancellor who, after consultation with the Board President, will either approve or deny the requested exemption.

3300 REQUEST FOR APPLICATIONS (RFA)

The following portion of the Manual sets out the law, policy and procedures with regard to the Request for Applications (RFA) process.

3310 Definition and Purpose

Where competition is required, either by law or by Standing Order section 319, the Chancellor's Office will announce the availability of such funds through a Request for Applications (RFA). An RFA is a formal solicitation for grant applications in a well-defined area to accomplish specific program objectives. The RFA indicates the estimated amount of funds set aside for the project, the estimated number of awards to be made, and the date by which applications must be received.

3320 Content of RFAs

Provisions relating to the content of RFAs and the use of agency-standardized provisions are set out below.

3321 Instructions and Specifications

Each RFA typically consists of a set of instructions and one or more RFA specifications that describe the particular programmatic purposes for which the funds are to be used, and the standard grant agreement (consisting of the face sheet and Articles I and II). The instructions document contains the basic requirements, information, and directions college personnel need in order to prepare their applications. The RFA specifications provide greater detail about the specific requirements applicable to a particular programmatic area.

3322 Standardized Documents

An agency-wide instructions document has been developed which is to be used to the maximum extent possible. In addition, there is a standard framework for a grant agreement consisting of the template for a face sheet, the template for Article I, and the most current version of the standard agency-wide Article II provisions discussed in section 3110(c). These instructions and standard documents are available on the P drive under Forms. Approval must be obtained from the Legal Affairs Division to make any modification of Articles I or II of the standard grant agreement. (See § 3355 of this Manual.)

3323 Commencement of Grants

Normally, staff should make all arrangements necessary to enable grants to begin on July 1st so as to coincide with the commencement of the fiscal year for which funds are provided. Indeed, there are some programs (such as the Fund for Instructional Improvement and those funded under the Carl D. Perkins Career and Technical Education Improvement Act) where grants must be awarded on a fiscal year basis.⁴ However, where allowed by law, agency policy permits use of an alternative grant cycle where grants begin January 1st and end December 31st. One of these two cycles should be used unless there are compelling circumstances requiring a different schedule and the vice chancellor for the division administering the program approves use of a different commencement date.

3324 Modifications

Each vice chancellor is responsible for ensuring that program staff use the standard documents described in section 3322 whenever possible and authorizing exceptions or modifications when necessary. Such modifications are subject to review as provided in section 3355. Where changes in an RFA document involve deviation from policy established in this Manual, the approval of the Chancellor must be obtained pursuant to section 1150.

3325 Prohibition Against Restrictive Specifications

No employee of the Chancellor's Office shall draft or cause to be drafted any Request for Application in a manner which will limit the applications, directly or indirectly, to any one applicant.

3326 Prohibition Against Pass-Through Grants

An RFA may not be drafted in a manner designed to "pass" funds through a district in an attempt to circumvent procurement or contracting requirements applicable to the Chancellor's Office. In particular, it is inappropriate for an RFA to specify that a district must subcontract all or the vast majority of the funds under a grant to a consultant or subcontractor unless this is explicitly required by the Budget Act or by a separate statute.

3327 Restrictions on Use of Grant Funds for Support of the Chancellor's Office

The use of grant funds for support of the Chancellor's Office is restricted, as follows:

- (a) As discussed in section 1220, funds covered by the Proposition 98 guarantee may not be used to award a grant for the primary purpose of purchasing or leasing equipment, supplies, or office space for the Chancellor's Office, or to hire staff who would be housed in the Chancellor's Office and work under the supervision of agency employees. However, as indicated in section 1210, this prohibition does not preclude awarding a grant to one district for the provision of services to the California Community Colleges system as a whole, even though the arrangement incidentally provides services to the Chancellor's Office. (See also § 2350.)

⁴ In the case of FII, title 5, section 56676 specifies the use of the fiscal year cycle, but permits the Chancellor to authorize grants to be awarded on a different schedule, where this is justified by extenuating circumstances.

- (b) A grantee may not be required to use grant funds to pay for travel expenses for Chancellor's Office staff. However, spending grant funds for this purpose is permissible provided that the following conditions apply:
- (1) The travel is related to the purposes of the grant;
 - (2) The travel is necessary to allow Chancellor's Office staff to provide services or technical assistance beyond the scope of normal grant monitoring;
 - (3) The request is made by the grantee without duress from Chancellor's Office staff;
 - (4) The grantee does not seek or receive any favorable treatment in exchange for paying for travel; and
 - (5) Travel is arranged and paid for through ordinary agency processes and the grant funds are used to reimburse the Chancellor's Office using Accounting form ACCT- RT/01, Request for Services/Agreement to Pay Travel Expenses (available on the Agency Intranet under Forms).

Authority: Chancellor's Office Legal Opinion O 99-24.

3330 Duration of Grants

Policies related to the duration of grants are set forth below.

3331 Basic Policy

In the absence of contrary legislative direction, Standing Order section 319 requires that grants for the performance of functions that are ongoing in nature will be awarded in cycles of between one and five years in length. The RFA must specify the maximum length of time for which funding will be provided and the level of funding anticipated to be available for the duration of the project.⁵ Extending a grant beyond the maximum length of time specified in the RFA requires subsequent approval by the Board of Governors or processing a Request for Exemption from Competitive Processes for Grant Award pursuant to section 3240 (available on the P drive under Forms). However, the Standing Order makes clear that specifying the projected funding level does not preclude subsequent adjustments of the actual funding levels to reflect unforeseen circumstances. The RFA must also state that continuation of the grant will depend on year-to-year funding, and continued satisfactory performance.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(f).

3332 Exceptions

Under Standing Order section 319, the Chancellor has the authority to exempt certain types of grants from the general five-year limitation. This authority applies to grants for regional or statewide coordination activities for Extended Opportunity Programs and Services (EOPS), Disabled Students Programs and Services (DSPS), Matriculation, and Economic

⁵ In some instances, the maximum length of a grant may be limited by law. For example, grants under the Fund for Instructional Improvement (FII) program may not exceed one year in length. (Cal. Code Regs., tit. 5, § 56676.)

Development programs or those awarded under the Mathematics, Engineering, and Science Achievement (MESA) program, the Middle College High School program, or the Puente project. Funding for other projects (such as the base funding for the Academic Senate for the California Community Colleges) is provided indefinitely either by statute or by annual appropriation in the Budget Act.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(f).

3333 Multi-Year Awards

In order to reduce the number of RFAs and grant amendments, RFAs should provide for multi-year awards whenever possible and appropriate given the funding source. (Note: This is not allowed in the case of the Fund for Instructional Improvement. See Cal. Code Regs., tit. 5, § 56676.) The RFA and grant agreement must make clear that funding in the second and subsequent years is contingent upon satisfactory performance and availability of funds. It is the responsibility of program staff to manage funding so as to account for the fact that funds in subsequent years are already committed to previously funded projects.

3340 Eligibility to Apply for Grants

Ordinarily, all funds covered by the Proposition 98 funding guarantee must go to community college districts. As a result, the general rule is that only California community college districts are eligible to submit applications for funding under RFAs issued by the Chancellor's Office. One exception to this rule is that program staff may, on occasion, authorize nondistrict entities to apply for grants under programs supported with federal funds or funds from private foundations. There are also rare instances where the Legislature expressly authorizes Proposition 98 funds to go to nondistrict entities. Where nondistrict entities are allowed to apply, the eligibility criteria will be clearly spelled out in the applicable RFA specification.

3350 Steps to be Taken Prior To Release of an RFA

The following steps must be taken prior to the release of an RFA.

3351 Identification of Funding Priorities

Staff in the Chancellor's Office should make every effort to ensure that the funding resources available are used in a way which best supports the priorities of the Board of Governors, insofar as that is possible within the constraints imposed by statute and budget language. Staff should also consult the appropriate Chancellor's Office advisory committee(s) or other appropriate groups (e.g. intersegmental committees) when making decisions about funding priorities.

3352 Technology-Related Projects

RFAs proposing projects with potential systemwide implications in the area of technology should be reviewed by the Technology and Telecommunications Advisory Committee (TTAC) prior to release.

3353 Grants Calendar

Program staff in each division should use the template developed by the Educational Services Division to lay out the schedule for issuance of RFAs from that Division. This material will be submitted to the person who handles the calendar for the Educational Services Division who will then be responsible for combining them into one calendar covering all grants for the entire agency. This calendar will be posted on the agency's website and will be periodically reviewed by the Grants Process Workgroup. The objective is to ensure that all funds are distributed in a timely manner and that workload is spread as evenly as possible throughout the year.

This calendar, which will be linked to the Grants button on the front page of the agency's website, will provide standard information on all grants, including these elements:

- Funding source;
- Purpose of the funds;
- Amount of money available;
- Release date of RFA;
- Dates/locations of bidders workshops;
- Deadline dates;
- Agency contact person;
- Applicant notification dates;
- The downloadable RFAs; and
- Applicable portions of the agency's Grants Manual.

To the extent feasible, it should also include a search function by topic.

3354 Review by Board of Governors

Prior to the release of an RFA, the Board of Governors must be provided with an opportunity to review the proposed use of funds. This can occur in one of two ways:

- (a) Staff may prepare an agenda item asking the Board to review and approve an expenditure plan outlining the nature, extent and need for the proposed award of grants; or
- (b) The Board must be provided with a copy of the proposed RFA, or with a summary of the RFA describing the purpose and need for the project, prior to the release of the RFA. The Chancellor may proceed with release of the RFA unless the Board President, with or without the advice of any appropriate Board Committee designated by the President, directs the Chancellor to withhold action within a 10-day period from the date the summary is provided to the Board.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(c).

3355 Legal Review

Each RFA must be reviewed by the Contract Manager to ensure that the standard grant agreement contained in the RFA will create an appropriate and enforceable contractual relationship and that the documents are consistent with legal requirements and agency policy.

To facilitate this process all proposed modifications to the standard RFA documents described in section 3322 must be approved by the vice chancellor for the division administering the program (see § 3324) and should be indicated in strikeout and underline format. Where changes in an RFA document involve deviation from policy established in this Manual, the approval of the Chancellor must be obtained pursuant to section 1150.

The Legal Affairs Division will assist in this review if the Contract Manager or the program staff who prepared the RFA identifies specific issues requiring legal review. Approval must be obtained from the Legal Affairs Division to make any modification of Articles I or II of the standard grant agreement.

When the RFA is submitted to the Contract Manager it must be accompanied by a statement signed by the division vice chancellor specifying the date on which the Board approved an expenditure plan describing the proposed use of funds or the date on which a summary of the RFA was sent to the Board for review. (See § 3354.)

3360 Dissemination

Information about the availability of RFAs and, in some cases, the full text of the RFA itself will be posted on the agency's website. In addition, all RFAs will be disseminated electronically to the grants contact person, the librarian, and the public information officer at each college. In addition, each RFA will be distributed to lists of directors/coordinators (maintained by program units in the Chancellor's Office) for programs expected to be particularly interested in that RFA.

3370 Length of Time Allowed for Applications

Whenever possible, the Chancellor's Office will allow at least 90 days from the date of publication of the RFA to the deadline for submission of proposals. Where grants are targeted primarily at faculty, the timeline should reflect sensitivity to the academic calendar.

3380 Questions and Clarification

The RFA will designate a contact person to whom questions may be directed. That person will respond individually to questions for which answers are already provided in the RFA. When an inquiry requires a clarification of the RFA, an addendum will be sent to all those to whom the RFA was initially sent.

3400 PROPOSAL REVIEW PROCESS

The grant proposal review process is set forth below.

3410 Preliminary Review and Rejection of Applications

When applications are first received, staff must perform a preliminary review of the applications to determine if they are eligible for reading and scoring. The Chancellor's Office reserves the right to reject any and all applications received. However, agency policy is that applications should only be rejected before scoring under the following limited circumstances:

- (a) The application is received at the Chancellor's Office after 5:00 p.m. on the date specified in the RFA as the deadline for submission of applications. This is true even if the application is postmarked on or before the deadline date. However, an application may be accepted if it is late because the applicant used a commercial carrier that guaranteed to deliver it by the application deadline, but failed to do so;
- (b) The RFA Specification Number cannot readily be ascertained;
- (c) The application does not include three (3) originals and five (5) copies of the following documents:
 - (1) Grant Agreement Face Sheet (originals signed by the Chief Executive Officer or designee in an ink color other than black);
 - (2) Application Budget Summary (originals signed by the Chief Business Officer or designee in an ink color other than black);
 - (3) Contact Page;
 - (4) The statement of need; and
 - (5) The work plan or statement of work to be performed.

3420 Reader Panels

The procedures for assembling and recruiting panels of grant readers are set forth below.

3421 Assembling Panels

Program staff for the division issuing the RFA is responsible for assembling evaluation panels. The general agency policy is that panels should consist of three readers, but a vice chancellor may authorize use of fewer readers where it would be impractical to obtain three readers for each panel. The panel will include outside readers as appropriate and will be comprised so as to assure objectivity and prevent conflicts of interests. In the event that outside readers are not used, the evaluation panel shall include staff from more than one division in the Chancellor's Office. (Note: Due to the specialized nature of the subject matter, this rule is not applied to grants awarded by the Facilities Planning Unit.)

3422 Reader Recruitment

An agency-wide, year-round process will be utilized which includes various approaches to soliciting readers for all grant programs (except for the Fund for Instructional Improvement program where reviewing proposals is specified as a responsibility of the FII Advisory and

Review Council pursuant to Cal. Code Regs., tit. 5, § 56658). Policies governing reader recruitment include:

- (a) The Chancellor and vice chancellors will formally request reader nominations through appropriate groups and organizations, including an explanation of the value to participants of the reader experience;
- (b) All reader recruitment will utilize the Grant Reader Application/Nomination form. This form will be available on the agency's website. The recruitment form will also be distributed at all appropriate statewide and regional meetings and conferences attended by agency staff;
- (c) Readers will be selected from representation of a wide range of expertise in education, program practitioners and Chancellor's Office staff;
- (d) Reader pools will be established to allow readers to build up experience and become more skilled;
- (e) Annual reading dates will be established early in order to permit readers to plan their calendars. These dates will be published as part of the agency-wide grants calendar;
- (f) Whenever possible, readers will be notified of their selection at least 4 weeks in advance of the proposal submission deadline, and then of their actual assignment to a reading process soon after the deadline (when the number of proposals, and therefore the number of readers needed, are both known); and
- (g) A reader recruitment coordinator will be designated to ensure that all of the above elements are implemented.

3423 Reading Processes

Each Unit shall, consistent with the general principles below, assume responsibility for the management and oversight of the actual reading process for grant programs it administers.

- (a) All readers will be provided with reader orientation materials accompanied by a FAQ (Frequently Asked Questions) piece (which will also be available on the agency's website).
- (b) A reasonable amount of time will be allowed for reading given the number of grants to be read in a session.
- (c) All readers will be given the same rules, scoring criteria, and maximum possible point values assigned to each criterion, and use the same proposal evaluation form.
- (d) Reading locations should be comfortable, well lighted and well ventilated.
- (e) The role of staff should be made clear during the training process.

- (f) Readers are required to sign a Conflict of Interests/Confidentiality Statement form stating that they will disqualify themselves from reading any proposal that might involve a conflict and will keep all information confidential.
- (g) Each unit is responsible for arranging for the travel reimbursement for its readers. To expedite the travel reimbursement process the Business Travel Account (BTA) should be used to eliminate the out-of-pocket travel cost to the reader.

3430 Scoring of Proposals

The procedures and methods for reviewing and scoring grant proposals are set forth below.

3431 Scoring Criteria

All applications will be evaluated and ranked on the basis of a 100-point scale. Unless the vice chancellor for the division administering the program approves the use of different criteria, the scoring criteria and point values listed below shall be used. Altered criteria or point values which have been approved by a vice chancellor will remain in use unless and until the program staff receive approval from the vice chancellor to make another change.

- (a) Need (Statement of Problem): 10 points
- (b) Response to the Need: 10 points
- (c) Workplan-Objectives: 15 points
- (d) Workplan-Procedures Activities: 10 points
- (e) Workplan-Performance Outcomes: 15 points
- (f) Project Management: 15 points
- (g) Application Budget: 10 points
- (h) Dissemination: 5 points
- (i) Overall Feasibility of the Project: 10 points

3432 Averaging Reader Scores

The score assigned to a given application is the average of the scores determined by the individual readers. Where three readers are used, if the scores of the readers differ by more than 10 points, the score that deviates the furthest will not be considered in the average score, or, if the deviations are exactly equal, the lowest score will be disregarded.

3433 Process for Breaking Ties

In the event of a tie that will affect funding, the application will be read by an additional reader, and the score of the additional reader will be averaged in with the other scores.

3440 Ranking and Listing of Proposals

Once scoring is complete, program staff will rank proposals and develop a list that includes four categories for each RFA Specification. The categories are:

- (a) Funded (F);
- (b) Eligible-Not Funded (E-NF). A proposal will be placed in this category when it receives at least the minimum number of points necessary for funding (normally 75 points) but funding is insufficient to fund proposals down to that level;
- (c) Not Eligible (NE). This category includes proposals which did not achieve the minimum number of points on their application evaluation; and
- (d) Not Scored (NS). This category designates proposals that were rejected before being read for reasons listed in the RFA (see § 3410).

3450 Surplus Funds

If an RFA contains multiple specifications or funding categories, and there are funds remaining under any specification/category after all of the eligible applicants have been funded, the Chancellor's Office may, subject to restrictions in the applicable statutes or Budget Act provisions, elect to award the remaining funds under a different RFA specification. The additional awards will be made by taking proposals in ranked order from the E-NF lists already established.

If the RFA does not have multiple specifications, or if reallocation of funds still does not exhaust all funds, remaining funds must be readvertised through another RFA or an exemption must be sought as provided in section 3240 permitting the funds to be awarded on a noncompetitive basis. In the case of funding under the Vocational and Technical Education Act (VTEA), there is a mechanism for carrying over excess funds to the subsequent year.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(d)(3).

3460 Notification of Intent to Award Grant

A master list of the scoring results for each of the RFA specifications will be posted on the agency's website along with notification of intent to award those grants listed as "Funded." The notice will be posted for at least 10 business days. If appeals are filed during this period, the grants affected will not be awarded until the appeal is resolved. Final approval of a grant is contingent on the signature of the appropriate official representing the grantee and the Executive Vice Chancellor or his/her designee as described in section 3600.

3470 Grant Appeal Procedures

An applicant may file an appeal of the proposed grant awards. The appeal must be in writing and be signed by the college president or designee, or by the head of a nondistrict entity in those rare instances where such entities are eligible to apply under the particular RFA. The appeal must be filed within 10 business days after the date notice of intent to award is posted. Appeals must be filed with the vice chancellor of the division responsible for funding the project (as identified in the RFA). The appeal must specify the grounds of appeal and must be based on the process and/or procedures used in the review and recommendation of applications for awards. The vice chancellor shall review all the information submitted with the appeal, consult with the Legal Affairs Division where necessary, and render a decision

within 30 calendar days of the date of receipt of the appeal. The decision of the vice chancellor is final.

3500 APPROVAL BY BOARD OF GOVERNORS

The procedures and requirements for obtaining the approval of the Board of Governors prior to award of a grant are set forth below.

3510 Basic Requirements

Except as provided in sections 3550 and 3560, approval by the Board of Governors must be secured before entering into any grant or amendment that is:

- (a) In excess of \$100,000; or
- (b) Over three years in duration.

3520 Splitting Grants

Splitting of grants in order to avoid the requirements for Board approval as specified in section 3510 is strictly prohibited.

3530 Approval of Amendments

Board approval is also required for amendments to existing grants where the amendment itself exceeds the limits specified in section 3510(a) or (b) or where the amendment would cause the augmented grant to exceed those limits.

3540 Submission of Grants for Board Approval

All grants or grant amendments requiring Board approval must be submitted for inclusion in the Grants and Contracts agenda item for a Board meeting prior to the commencement date of the grant or amendment. The information must be provided in the standard agency template and submitted to the Contract Manager by the deadline established approximately four weeks prior to the Board meeting. In rare instances where the Board is being asked to approve a grant or amendment under unusual circumstances (e.g. approval is sought after performance has already commenced), the Contract Manager may require the development of a separate agenda item.

3550 Exemption from Board Approval

The agency has developed a standard form to be used in requesting an exemption from Board approval. The Request for Exemption from BOG Approval form (available on the P drive under Forms) must be filed with the Contract Manager. The request will first be reviewed by the vice chancellor for the division making the request for exemption, and then routed to the Contract Manager. The exemption request must include a justification statement showing that the need to award or amend the grant was not foreseeable and that delaying approval of the amendment or grant until the next Board meeting would jeopardize the amendment or grant or frustrate its purpose. If the justification is adequate, the Contract Manager will forward the exemption request to the Director of Internal Operations and then to the Chancellor. After consultation with the Board President, the Chancellor may approve the exemption.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(a).

3560 Allocation Formulas

Where an allocation formula has been approved by the Board of Governors, noncompetitive grants may be used to control the use of such funds. Such agreements may be executed without additional Board approval regardless of whether the grant exceeds the limits specified in section 3510.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(i).

3600 AUTHORIZED AGENCY SIGNATURE FOR GRANT AGREEMENTS

Once the award/approval process is complete and any appeals have been resolved, the actual grant agreement will be developed and routed for approval. All grant agreements must be approved by the vice chancellor for the division initiating the grant. The grant face sheet will be signed on behalf of the Chancellor's Office in accordance with the following:

- (a) The Executive Vice Chancellor hereby delegates to each division vice chancellor authority to sign grants awarded by his/her division if the grant is of one of the types listed below and is not selected for further review pursuant to subdivision (b):
 - (1) Grants awarded pursuant to an allocation formula or expenditure plan approved by the Board of Governors;
 - (2) Grants awarded after competitive bidding in response to an RFA which was reviewed and approved prior to release by the Contract Manager;
 - (3) Noncompetitive grants of less than three years in duration with a total value of less than \$100,000.
- (b) The Budget Office will forward all grants to the Contract Manager for review prior to processing by the Accounting Office. The Contract Manager may permit a grant to be signed by the division vice chancellor pursuant to subdivision (a) or forward it to the director of Internal Operations or the Executive Vice Chancellor for additional review.
- (c) A grant excluded from subdivision (a) or one found to merit further review pursuant to subdivision (b) must be signed by the Executive Vice Chancellor or a designee who is outside the division initiating the grant, such as the Director of Internal Operations, the General Counsel, or the Contract Manager. In the event that the person delegated this responsibility has concerns about a particular grant, he or she shall consult with the vice chancellor for the division initiating the grant and, if the issues cannot be resolved, the matter shall be referred to the Executive Vice Chancellor for resolution.

3700 PERFORMANCE, MONITORING, PAYMENTS

Procedures regarding the performance and monitoring of grants, and payments pursuant to grant agreements, are set forth below.

3710 Reports

With regard to grant agreements, the following types of reports are required.

3711 Progress Reports

The general agency policy is that all grants will require two progress reports during each year of the project—one after six months and another after nine months. Vice chancellors may authorize fewer reports where other methods (e.g. routine data collection) are available to adequately monitor grant performance. Quarterly reports are required for projects funded under the Carl D. Perkins Career and Technical Education Improvement Act where payments are made through the apportionment process. The Economic and Workforce Development Program also requires quarterly progress reports to meet legislatively established accountability and monitoring requirements. More than the standard two progress reports may also be required by a grant agreement where this is necessary to comply with federal or state law or contractual obligations to a funding source.

Please note that the report forms have been revised to permit electronic submission.

3712 Annual Reports

Multi-year grants will require a year-end report within 60 calendar days after the close of each year.

3713 Final Report

Upon the completion of each project, a final report must be filed with the project monitor documenting the extent to which the objectives of the grant have been achieved. Generally, the final report will be due within 60 calendar days after the end of the period of performance of the grant.

3714 Additional Reports

Some grant programs may require the filing of additional reports detailing expenditures.

3720 Monitoring

Each grant must specify the Chancellor's Office staff member designated as the project monitor. The project monitor is responsible for reviewing reports submitted by the grantee and determining whether the objectives of the grant have been satisfactorily met. In the case of multi-year projects, funding for the second or subsequent years of the project may only be authorized if the project monitor determines that the grantee has made satisfactory progress toward achieving the grant objectives.

3730 Payments

- (a) Invoices or requests for advance payments (not to exceed 40% of the total dollar value of the grant) are routed to the appropriate program unit for payment except in cases where payments are made through the apportionment process.
- (b) District submission and agency approval of claims may be accomplished by use of a system involving electronic signatures, provided that the following internal controls are in place:

- (1) Competent, trustworthy people are assigned to process transactions with clear lines of authority and responsibility;
 - (2) Procedures provide for adequate separation of duties;
 - (3) Proper procedures are in place for authorizing financial transactions;
 - (4) Adequate documents and records are maintained;
 - (5) Appropriate software controls (e.g. password protections) are established and maintained;
 - (6) Independent checks on performance are conducted.
- (c) The term “separation of duties” means that one person’s work serves as a complimentary check on another’s work. The concept is that no one person should have complete control over any transaction from initialization to completion. Having adequate segregation of duties has a major impact on ensuring that transactions are valid and properly recorded.
- (d) The electronic capital outlay claim submittal process and FUSION Spreadsheet Interface for Claims Processing developed by the Facilities Planning Unit satisfies the requirements set forth in subsection (b) and should be used as a model for implementation of electronic claims processing systems by other units.

3740 Subgrants or Subcontracts

If a grantee wishes to contract with a private or public entity to perform certain parts of the work required under the grant, the standard agency grant agreement requires that the grantee obtain the written approval of the grant project monitor prior to the selection of subcontractors or subgrantees to perform services under the grant. Approval may be granted based upon a written request wherein the grantee discloses the intended purpose and amount of such subcontracts or subgrants, agrees to follow locally applicable competitive bidding processes, and identifies the subcontractors or subgrantees chosen.

In addition, the standard agency grant agreement requires grantees to include certain specific provisions in their subcontract or subgrant agreements and makes subcontracts and subgrants subject to audit. Subcontractors or subgrantees specifically identified in either a grant or grant exhibits and that are secured in accordance with applicable legal requirements and the grant provisions (such as those discussed above) are deemed approved upon execution of the grant agreement.

Authority: Procedures and Standing Orders of the Board of Governors, § 319(h).

3750 Modifications and Amendments

The conditions under which a grant agreement may be modified or amended are set forth below, as well as the procedures that must be followed.

3751 Changes in Work to be Performed

Usually the work to be performed under a grant is set forth in a work plan developed by the grantee and submitted as part of the grant application. The grantee may make changes in the work plan with the written approval of the project monitor. If the project monitor determines that the modification would materially affect the outcomes of the grant, the project monitor may require the completion of a formal amendment to the grant.

3752 Budget Changes

All grant funds must be spent consistent with the requirements specified in the RFA specification under which the grant was awarded.

For most program areas, the grantee may make changes to any budget category amounts (Object of Expenditure, line items 1-7, Application Budget Summary) without the approval of the project monitor, so long as budget categories are not added or deleted, the total dollar amount of the grant is not affected, and the outcomes of the grant will not be materially affected. However, all such budget changes shall be reported to and approved by the project monitor. Additionally, the next progress report must show the new budget changes.

For grants administered by the Facilities Planning Unit, approval by the project monitor is required in advance of any budget changes.

3753 Amendments

A request for a grant amendment must be mailed to the appropriate program unit for approval by the project monitor. The grantee will be notified if the request is approved or if additional information is required. In any event, the grantee shall implement changes only upon written notification by the project monitor.

Grant amendment documents for budget changes must be processed when there are changes in the total dollar amount of the grant and/or the outcome of the grant is materially affected. The request for such changes should include a letter of justification; three copies of a revised Application Budget Summary form (available on the agency website), all of which have been signed by the Chief Business Officer or designee, in an ink color other than black; and a revised Application Budget Detail Sheet form (available on the agency website).

It should be noted that no amendment may allow a district to expend funds beyond the end of the second fiscal year after the period for which the funds were originally appropriated. For grants awarded under the Carl D. Perkins Career and Technical Education Improvement Act of 2006, extensions of time are not allowed beyond June 30th of the year for which the funds are awarded.

3760 Recovery of Unused Funds

If a grantee cannot use or account for all funds received, the grant agreement authorizes the Chancellor's Office to recover the unused funds.

4000 CONFLICTS OF INTERESTS

The following provisions set out various conflict of interests issues that should be considered in the contracting and granting process.

4100 INTRODUCTION

When working with contracts and grants entered into by the Board of Governors and the Chancellor, an officer or employee's actions are governed by several sets of laws and regulations: the conflicts of interests provisions of the Political Reform Act (Gov. Code, §§ 81000, et seq. and 87100 et seq.; Cal. Code Regs., tit. 2, §§ 18700, et seq.), Public Contract Code sections 10410, et seq. (restrictions on current and former state employees in state contracts), Government Code sections 1090 et seq. (prohibition against "self-dealing" in contracts), and Government Code section 19990 (incompatible activities).

In some situations, the application of this complex set of laws and regulations can only be determined through an analysis of the employee's or the proposed contractor or grantee's exact factual situation. Any questions in this regard should be brought to the attention of an officer or employee's immediate supervisor and the Legal Affairs Division for a determination regarding the appropriate course of action.

However, some general rules will apply. It is important to note that although one set of statutes may not prohibit a given action or involvement, it may be prohibited under other conflicts statutes. The following is by no means conclusive, but can serve as a general guideline for actions that are prohibited.

4200 POLITICAL REFORM ACT (PRA)

The PRA concerns the involvement of officers or employees in decisions that affect their financial interests. The Fair Political Practices Commission (FPPC) is the agency primarily charged with the responsibility for advising state officials and employees, as well as the public, and enforcing the conflict of interest provisions of the PRA.

4210 General Prohibitions

The PRA generally prohibits an officer or employee's involvement in any decision that affects his or her financial interests. It is not necessary for the officer or employee to be the actual decisionmaker or to work in the same general program area; any involvement or influence, however slight, may trigger the PRA's prohibitions against such activity. (Gov. Code, § 87100.) The main consideration under the PRA in this context is the effect of a state contract or grant on the financial interests of an officer or employee of the Chancellor's Office.

Besides obvious financial interests, any prospective employer with which an officer or employee is negotiating, or has any arrangement concerning employment, is considered to be

a financial interest. (Gov. Code, § 87407, as amended by Stats. 2003, ch. 778; Cal. Code Regs., tit. 2, § 18747.) In addition, the salary of a spouse or immediate family member of a state officer or employee is generally considered to be a financial interest under the PRA. Thus any involvement in a contract or grant involving one's prospective employer, or one's spouse or immediate family member would, in general, be prohibited by the PRA. One notable exception is when a family member is working under a contract or grant as a salaried government employee—for example, as a salaried employee of a college district. The PRA also contains provisions concerning other types of financial interests, such as business interests and real estate.

4220 Inter Jurisdictional Exchange (IJE or Reverse IJE)

An officer or employee working pursuant to an Inter Jurisdictional Exchange (IJE) is either a state employee loaned to a district (commonly referred to by Chancellor's Office staff as a "reverse IJE"), or a local district employee working in a state employment capacity (commonly referred to by Chancellor's Office staff as an IJE). (See §§ 2200 and 2230.) An individual on an IJE or a reverse IJE is a "public official," subject to the provisions of the PRA. (Gov. Code, § 82048.)

4230 Notification to Supervisor and Legal Affairs Division

An officer or employee of the Chancellor's Office, including an individual on an IJE or reverse IJE, should notify his or her supervisor and the Legal Affairs Division, as well as refrain from any involvement in a contract or grant, if there is a possible effect on a personal financial interest of the officer or employee (including a prospective employer, or his or her spouse or immediate family). This is especially important if:

- The officer or employee is at the decisionmaking level (i.e., is a designated employee in the agency's Conflict of Interest Code);
- The officer or employee is a project monitor for grants or contracts; or
- The officer or employee's program area has development, oversight involvement or monitoring functions regarding grants or contracts.

4240 Prohibition Against Influencing Contract or Grant

Please note, however, that the PRA prohibits influencing a contract or grant in any way, regardless of one's program area, if a financial interest or a potential financial interest is present.

It is also important to note that even if an officer or employee, or an officer or employee's family member, enters into a permissible contract or subcontract in his or her private capacity with a government agency, college district, college, auxiliary organization, the Foundation for California Community Colleges, or other nonprofit or private employer, an officer or employee should refrain from involvement in any governmental decision that would affect the officer or employee's financial interest.

4250 Reference Materials for Designated Employees

The discussion of the PRA in this manual is abbreviated and focuses on conflicts which may arise in the context of handling grants and contracts. For a broader and more detailed

discussion of the PRA, all designated employees should refer to the agency's Conflict of Interest Code (set forth in title 5, section 50500), as well as the Fair Political Practices Publication entitled, "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Members of State Boards and Commissions and Designated Employees of State Agencies," which is available from Personnel or the FPPC's website (<http://www.fppc.ca.gov>).

4260 Former Chancellor's Office Employee, Chancellor's Office Employee on Leave of Absence, Individual Formerly on an IJE or Reverse IJE in a Policymaking Position, Consultants Covered by COI Code

The PRA places restrictions on state officers and employees who leave state service, are on a leave of absence from state service, or who are anticipating leaving state service or commencing a leave of absence from state service. It also places certain restrictions on officers and employees who permanently leave state service. These restrictions also cover individuals on IJEs or reverse IJEs, and consultants covered by the agency's COI Code.

- One-Year Ban (after leaving state service or commencing a leave of absence from state service, includes individuals that were on IJEs or reverse IJEs, and consultants): Such individuals are restricted for one year from appearing before the Board of Governors or communicating with the Board or Chancellor's Office, for compensation, for the purpose of influencing the award or amendment of a contract or grant. (Gov. Code, § 87406; Cal. Code Regs., tit. 2, §§ 18746.1 and 18746.2.)
- Permanent Ban on "Switching Sides" (applies to those who have left state service or who are on leave of absence of over one year, includes individuals that were on IJEs and reverse IJEs, and consultants): These provisions permanently prohibit being involved in a specific "proceeding" in which you were involved as a state officer or employee. The definition of a "proceeding" includes the award or amendment of a contract or grant. Unlike the one-year ban, which limits involvement in *any* type of covered activity, the permanent ban only limits involvement where the officer or employee would be involved at both ends of a specific transaction. For example, if you were involved in negotiations or discussions concerning the award of a grant or contract for the agency, you are permanently prohibited from participating in such negotiations from the other side once you leave the agency. (Gov. Code, §§ 87400-87405; Cal. Code Regs., tit. 2, § 18741.1.)
- Influencing prospective employment (applies to current and former officers and employees, individuals on IJEs or reverse IJEs, and consultants): This provision prohibits making, participating in making, or influencing governmental decisions directly relating to a prospective employer, while negotiating employment or after having reached an employment arrangement. (Gov. Code, § 87407; Cal. Code Regs., tit. 2, § 18747.) Note that the "prospective employer" restrictions do not apply if your prospective employer is a state, local, or federal government agency, including a college district. (Cal. Code Regs., tit. 2, § 18747(d)(3).) However, Government Code section 1090 narrows this exemption considerably; thus this exemption does not cover prospective employment as a consultant or contractor of a college district or other government agency. Moreover, Government Code

section 1090 places additional restrictions on this exemption, even for prospective employment as a regular, salaried employee of a college district or other government agency. See sections 4540 and 4550, below.

The FPPC Fact Sheet, "Revolving Door and Other Post-Employment Issues" has more information and examples of situations that would or would not be in violation of these PRA provisions. (See [FPPC website](#).)

4270 Consultants

The Director of Internal Operations, or staff working under the direction of the Director of Internal Operations, will review each consultant's duties, along with the regulations of the FPPC, and determine whether he or she is covered under the definition of "consultant." (Cal. Code Regs., tit. 2, § 18701.) If the consultant is covered, he or she will be informed that they are designated in the agency's Conflict of Interest Code and the disclosure category, provided with the proper materials, and informed that he or she is subject to the conflict of interests provisions of the California law and must file a Form 700 within 30 days from his or her start date. (See § 2216(e) of this Manual, as well as §§ 4500 et seq. below.)

4300 PUBLIC CONTRACT CODE SECTION 10410

Public Contract Code section 10410 places restrictions on officers and employees of the Chancellor's Office with regard to entering into contracts, or performing work with regard to any contract or grant that is funded by the agency or the state.

4310 Officers or Employees of the Chancellor's Office, Individuals on an IJE or Reverse IJE

Officers or employees of the Chancellor's Office, district employees at the Chancellor's Office on an IJE, or officers or employees of the Chancellor's Office at a college district on a reverse IJE,⁶ cannot:

- Enter into a contract with this office, or with any state agency; or
- Enter into a contract or subcontract with a local government agency, college district, college, an auxiliary organization of a college district or college, the Foundation for the California Community Colleges, a nonprofit organization, or a private entity, to perform work which is funded, in whole or in part by a state grant or contract, including a Chancellor's Office grant or contract.

⁶ A Chancellor's Office employee on a reverse IJE at a college district is on the state payroll and is considered a state employee. An individual on an IJE is on the district payroll, but the individual on an IJE can either be considered an "appointed state official" under section 10410 or, due to the fact that he or she is standing in the place and stead of a state civil service employee and performing the same work, may from a policy standpoint be considered to be under the same restrictions as state employees for purposes of section 10410.

4400 PUBLIC CONTRACT CODE SECTION 10411

Public Contract Code section 10411 places certain restrictions on former officers and employees of the Chancellor's Office, including individuals on IJEs or reverse IJEs, in the contracting process. (See §§ 4500 et seq., and in particular § 4540, with regard to subcontracts.)

4410 General Prohibition

Former state officers or employees, including district employees who worked at the Chancellor's Office on an IJE,⁷ or officers or employees of the Chancellor's Office who worked at a college district on a reverse IJE, are under the restrictions of Public Contract Code section 10411 for a period of up to two years when contracting with this office, and should apply its provisions to their factual scenario. A brief overview is set out below.

4420 Former Chancellor's Office Employee, Individual on an IJE or Reverse IJE in Policymaking Position

A former officer or employee of the Chancellor's Office, including a district employee working for the Chancellor's Office on an Inter Jurisdictional Exchange (IJE), or a reverse IJE, may not enter into a contract with the Chancellor's Office:

- For one year from the date the officer or employee left state employment, if the officer or employee was in a policymaking position in the same general subject area within the 12-month period prior to leaving state employment.

4430 Any Former State Employee, Individual on an IJE or Reverse IJE Involved in Decisionmaking Process

A former state officer or employee (including a former officer or employee of the Chancellor's Office, including a former Chancellor's Office employee whose last assignment was at a district on an IJE, or a district employee who formerly worked for the Chancellor's Office on an Inter Jurisdictional Exchange (IJE)) cannot enter into a contract with the Chancellor's Office:

- For two years, beginning on the date the officer or employee left state employment, if that employee was engaged in the negotiations, transactions, planning, arrangements or any part of the decisionmaking process relevant to the contract while employed by the state.

4500 GOVERNMENT CODE SECTIONS 1090 ET SEQ. (FINANCIAL INTEREST IN CONTRACTS AND GRANTS)

Government Code sections 1090 et seq. concern "self-dealing" in the agency's contracting or grant process.

4510 General Prohibitions

Government Code sections 1090 et seq. contain prohibitions against an officer's or employee's involvement in contracts or grants which affect his or her financial interests, including financial interests in subcontracts or subgrants. In addition to officers and employees of the Chancellor's Office, the prohibitions of section 1090 are applicable to

⁷ An individual on an IJE is on the district payroll, but can be considered to be "otherwise appointed to serve in state government" for purposes of the prohibitions of section 10411.

officers or employees working at this office or at a college district under an IJE or a reverse IJE, as well as to consultants covered under this agency's Conflict of Interest Code. (See §§ 2216(e) and 4260 of this Manual.) The term "financial interests" includes the salary of an officer or employee's spouse, except for certain technical exceptions for salaries of government officials (see Gov. Code, § 1091.5(a)(6)); however, the law also contains disclosure requirements.

4520 Notification to Supervisor and Legal Affairs Division

An officer or employee (including an individual on an IJE or reverse IJE, or a consultant covered under the agency's Conflict of Interest Code) should notify his or her supervisor and the Legal Affairs Division, as well as refrain from any involvement in a contract or grant, if there is a possible effect on a personal financial interest (including that of one's spouse or minor child). This is especially important if:

- The officer or employee is at the decisionmaking level (i.e., a designated employee in the agency's Conflict of Interest Code);
- The officer or employee is a project monitor for contracts or grants; or
- The officer or employee's program area has development, oversight involvement, or monitoring functions regarding contracts or grants.

Depending upon the exact factual circumstances, failure to notify may create a violation of the laws where no violation might otherwise exist. (See, for example, Gov. Code, § 1091.5(a)(9).)

4530 Prohibition Against Influencing a Contract or Grant

The prohibitions of section 1090 include influencing a contract or grant in any way, regardless of one's program area.

It is also important to note that even if an officer or employee, or an officer or employee's family member, enters into a permissible contract or subcontract in his or her private capacity with a government agency, college district, college, auxiliary organization, the Foundation for California Community Colleges, or other nonprofit or private employer, an officer or employee should refrain from involvement in any governmental decision that would affect the officer or employee's financial interest.

4540 Prohibitions Not Avoided by Leaving State Employment or IJE

An officer, employee (including an employee on a reverse IJE), an individual on an IJE or a consultant covered under this agency's Conflict of Interest Code will not be able to circumvent the prohibitions of section 1090 by leaving state employment in order to consummate a contract or subcontract in which he or she had a financial interest [direct interest (§ 1090), or an undisclosed noninterest (§ 1091.5(a)(7)-(9))] during the period when he or she was working for the Chancellor's Office.

4550 Exemption for Contracts Between Government Agencies

This exemption in Government Code section 1091.5(a)(9) covers contracts between two government agencies, which includes contracts between this agency and a college district. It

provides that the officer or employee of one government agency is not financially interested in the contracts of the other government agency unless the contract directly involves the department that provides salary, reimbursement or per diem to the employee in question. Note that the term "employee" does not include a contractor or a consultant of a college district or other government agency.

**4600 GOVERNMENT CODE SECTION 19990
(INCOMPATIBLE ACTIVITIES)**

Government Code section 19990 prohibits incompatible activities, and is concerned with an officer or employee's activities in state employment as well as in outside employment. Officers and employees are prohibited from engaging in activities or outside employment that is prohibited by law.

**4610 Prohibitions Contained in Law and Agency's
Incompatible Activities Statement**

The prohibitions of Government Code section 19990 are set forth in the law as well as in this agency's Incompatible Activities Statement (IAS) contained in the agency's Administrative Manual under "Major Area: Performance and Conduct," at sections 1300 et seq. The IAS contains procedures for seeking and obtaining prior approval for outside employment. If you would like another copy of that statement, please contact Personnel.

4620 District Employees on Inter Jurisdictional Exchange (IJE)

District employees working at the Chancellor's office on an Inter Jurisdictional Exchange would come under the prohibitions of Government Code section 1125, et seq., as promulgated in their home district's Incompatible Activities Statement.

4630 Interaction of Prohibitions and Contract or Grant Process

With regard to Chancellor's Office contracts and grants, the prohibitions of section 19990 come into play when an officer or employee enters into a contract or employment situation with a contractor, subcontractor, grantee or subgrantee (such as a local government agency, college district, college, auxiliary organization, the Foundation, or a private entity), or influences the awarding of such a contract, grant, subcontract or subgrant for private gain or advantage, or the private gain or advantage of others.

4640 General Prohibitions

Section 19990 and the IAS prohibit such activities as:

- Section 19990(a), IAS section 1301.a.: Using the prestige or influence of the state, the Board of Governors, or the Chancellor's Office for private gain or advantage or the private gain of another;
- Section 19990(b), IAS section 1301.b.: Using state time, facilities, equipment or supplies for private gain or advantage, or the private gain or advantage of another;
- Section 19990(c), IAS section 1301.c.: Using, or acquiring access to, confidential information available by virtue of state employment for private gain or advantage, or providing it to persons that are not authorized to receive such information;

- Section 19990(d), IAS section 1301.d.: "Double dipping," i.e. being paid (or receiving other consideration) by anyone other than the state for work one is already required or expected to perform as a state officer or employee;
- Section 19990(e), IAS section 1301.e.: Performing acts under a contract, grant, subcontract or subgrant knowing that they may come under audit or review in one's state capacity, or under audit or review by the Board of Governors or the Chancellor's Office;
- Section 19990(f), IAS section 1301.f.: Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing business with the state or seeking to do business of any kind with the Board of Governors or the Chancellor's Office, where it "reasonably could be substantiated" that it was intended to influence an officer or employee in his or her official duties or to reward an officer or employee for actions already taken; or,
- Section 19990(g), IAS section 1301, third introductory paragraph: not devoting full time or attention to one's state job during hours the officer or employee should be working for the state.