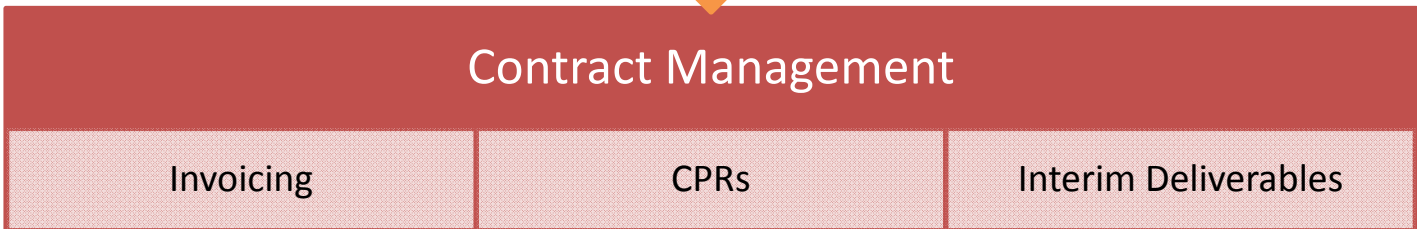
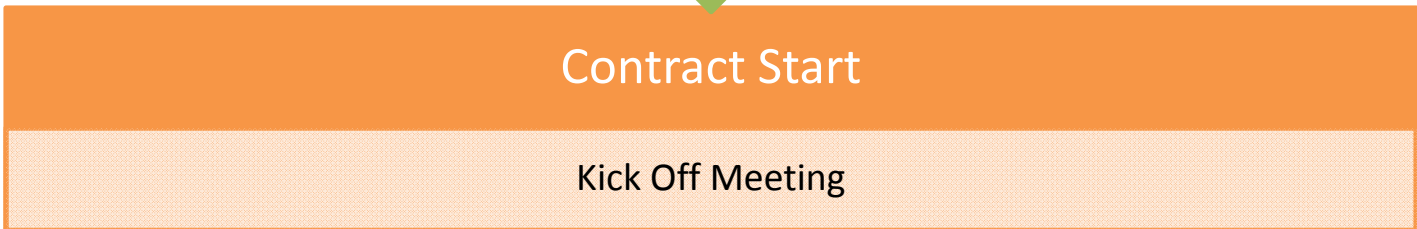
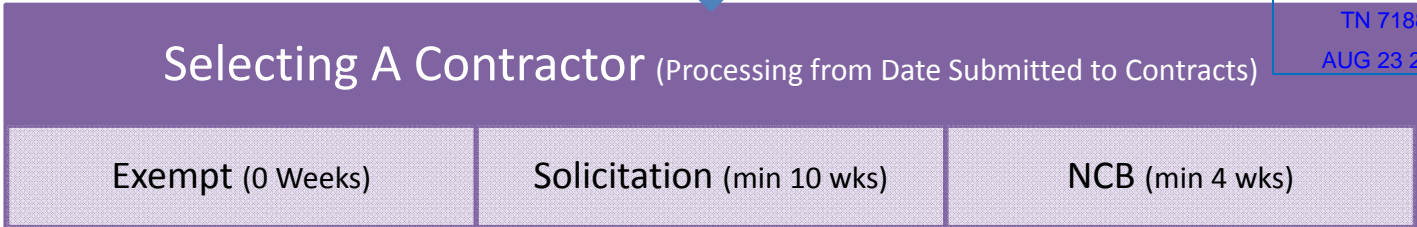




California Energy Commission  
**DOCKETED**  
**12-OIR-02**  
TN 71880  
AUG 23 2013



## Table of Contents

DESCRIPTION	SECTION
<b>CONTRACT MANUAL</b>	
<b>SECTION 1 INTRODUCTION</b>	<b>1</b>
Introduction	1.0
Table of Contents	1.1
Circumvention of Responsibilities Prohibited	1.2
Contracts Versus Grants	1.3
Preliminary Considerations and Decisions	1.4
Energy Commission Authority	1.5
Authority to Sign a Contract	1.6
Commission Business Meetings	1.7
Other Prohibited Items	1.8
<b>SECTION 2 TYPES OF CONTRACTING</b>	<b>2</b>
Introduction	2.0
Table of Contents	2.1
Preliminary Considerations	2.2
Consultant Services Contracts	2.3
Expert Witness Contracts	2.4
Interagency Agreements	2.5
Other Government Agencies and Public University Contracts	2.6
Revenue Contracts	2.7
Memorandums of Understanding	2.8
Cooperative Agreements	2.9
Information Technology and Telecommunications Contracts	2.10
License Agreements	2.11
Co-sponsorship Contracts	2.12
Membership and Sponsorship Contracts	2.13
<b>SECTION 3 SELECTING A CONTRACTOR</b>	<b>3</b>
Introduction	3.0
Table of Contents	3.1
Fundamental Rules	3.2
Contracts Exempt from Advertising and Competitive Bidding	3.3
Information Technology (IT) Services	3.4
Contract Opportunity Notice (CON)	3.5

## Table of Contents

DESCRIPTION	SECTION
Solicitations	3.6
Solicitation Process Steps	3.6.1
Master Agreements	3.6.2
CMAS	3.6.3
SB/DVBE Option	3.6.4
IFB	3.6.5
RFP Primary	3.6.6
RFP Secondary	3.6.7
RFQ	3.6.8
Non-Competitive Bid (NCB) Contracts	3.7
Initiating the Contract	3.8
Section 3 Attachments	
Table 3-1, Standard Solicitation Flowchart	3-1
Table 3-2, Standard Solicitation Calendar	3-2
Table 3-3, Solicitation Variations	3-3
Table 3-4, Time Line for CMAS or MSA Process	3-4
Table 3-5, Time Line for SB-DVBE Option and IFB Process	3-5
Table 3-6, Time Line for RFP Process	3-6
Table 3-7, Time Line for RFQ Process	3-7
Table 3-8, Time Line for CNS Process	3-8
Table 3-9, Time Line for NCB Process	3-9
Attachment A-1, Process for Establishing A Reasonable Rate for RFQ	A-1
<b>SECTION 4 CONTRACT REQUEST PACKAGE</b>	<b>4</b>
Introduction	4.0
Table of Contents	4.1
Contract Request Form (CRF)	4.2
Funding Redirections	4.3
Preparing a Scope of Work	4.4
Preparing a Contract Budget	4.5
Table 4-1, Contracts <u>not considered a project</u> Under CEQA	4-1
Table 4-2, Contracts <u>considered a project</u> Under CEQA, Need to Analyze for Possible <u>exemptions</u>	4-2

## Table of Contents

<b>SECTION 5 CONTRACT APPROVAL PROCESS</b>	<b>5</b>
Introduction	5.0
Table of Contents	5.1
Approval and Commencement of Work	5.2
Time-frame to Execute a Contract	5.3
Estimating the Start Date of a Contract	5.4
Processing Steps and Timeline for a Contract	5.5
Miscellaneous Approvals	5.6
Distribution of Approved Contracts	5.7
Table 5-1, Required Contract Approvals	5-1
Table 5-2, Timeline Estimate for Contract Approval Process	5-2
Table 5-3, Contract Request Approval Process	5-3
<b>SECTION 6 CONTRACT MANAGEMENT</b>	<b>6</b>
Introduction	6.0
Table of Contents	6.1
Overview of Contract Manager Responsibilities	6.2
Contract Manager “Don’ts”	6.3
Work Authorizations	6.4
New Subcontractors	6.5
Replacing a DVBE Subcontractor	6.6
Changes in Contractor Personnel or Subcontractor Personnel	6.7
Evaluating Contractor’s Progress Reports and Performance	6.8
Types of Payment and Retention	6.9
Equipment Purchases	6.10
Disposition of Equipment	6.11
Travel and Per Diem	6.12
Budget Reallocations	6.13
Approving an Invoice, Processing and Timelines	6.14
Disputing Contractor Invoices	6.15
Contractor Performance Dispute Resolution	6.16
Closing Out a Contract, Final Reports and Final Invoices	6.17

## Table of Contents

Amending a Contract	6.18
Table 6-1, Invoice Approval Process	6-1
Attachment A-1, Budget Reallocation Example	A-1
<b>GRANT MANUAL</b>	
Solicitations	1
Agreement Development, Approval and Execution	2
Progress Reports	3
Payment Requests	4
Amendments	5
Award Termination	6
Award Close-Out	7
<b>LOANS MANUAL</b>	
Solicitations	1
Agreement Development, Approval and Execution	2
Securing Collateral	3
Payment Requests	4
Progress Reports	5
Amendments	6
Award Termination	7
Award Close-Out	8
<b>AGREEMENT ACRONYMS</b>	
<b>EXAMPLE FORMS</b>	

# 1. INTRODUCTION TO CONTRACT MANUAL

## 1.0 • INTRODUCTION

The Energy Commission Contract Manual is provided as a resource to Energy Commission staff involved in the State's contracting process. Contained in this manual are state and Energy Commission policies, procedures and guidelines to promote sound business decisions and practices in securing the necessary services. Both service and consulting services contracts are Personal Services contracts. Careful analysis must be given to the justification for using contracted personnel rather than using civil service positions within state government.

This manual:

- provides guidance on different types of contracts,
- describes the process for obtaining those contracted services, either competitive or noncompetitive (formerly called sole-source),
- describes the approval process within the Commission and outside, and
- describes contract management, the most important aspect to achieve a successful contract.

This contract manual repeatedly refers to several programs, processes and even standard documents with compound titles that would be awkward to spell out repeatedly. For these common programs, processes and documents, the manual uses several acronyms which are defined in their first usage. To make it easier for the user of this manual, we have also created a list of common acronyms in an appendix.

## 1.1 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	1.0
Table of Contents	1.1
Circumvention of Responsibilities Prohibited	1.2
Contracts Versus Grants	1.3
Preliminary Considerations and Decisions	1.4
Energy Commission Authority	1.5
Authority to Sign a Contract	1.6
Commission Business Meetings	1.7
Other Prohibited Items	1.8

## 1.2 • CIRCUMVENTION OF RESPONSIBILITIES PROHIBITED

Statutes, regulations and policies governing the state's contracting process are designed to protect the State's and Energy Commission's interests. Therefore, it is not appropriate to seek artificial exceptions to contracting requirements or to seek loopholes. In particular, circumvention of required competitive bidding or contract approval is unlawful. Pass-through contracts in which the contractor or another governmental entity is doing something that the Energy Commission cannot lawfully do directly, such as avoiding competitive bidding, are a common type of circumvention. (PCC § 10340)

## 1.3 • CONTRACTS VERSUS GRANTS

"A contract is an agreement to do or not to do a certain thing" (California Civil Code [CCC] §1549). A contract gives rise to an obligation or legal duty enforceable in an action of law (CCC §1428) by setting forth terms, conditions and the statement of all work to be performed. It is essential to the existence of a contract that there should be parties capable of contracting, their consent, a lawful object, and a sufficient cause or consideration. Contract and Agreement are used interchangeably in this manual.

"Grants are to be interpreted in like manner with contracts in general" (California Civil Code [CCC] §1066). A grant must fall under specific statutory authority. Without specific statutory authority, a grant is an illegal gift of public funds. (PIER and AB118 have authority to issue grants.)

A contract is the appropriate award document for providing services or a product to be performed for the state's benefit.

A grant must not benefit the state. Even if the award was made subject to an authorized grant program, if the agreement provides a benefit to the state, it cannot be a grant. Common benefits are:

- services are provided to the state
- the state obtains title to equipment, copyrights, or patents
- the state is relieved from a statutory obligation to perform the services

Performance under a contract is under the control of the state. The state can define the scope of the project and direct the project.

A grant provides funding for the recipient's program or project, not the state's program. The recipient defines the scope of the project, and the state has minimal involvement in the project. Performance under the grant must not be controlled by the state.

Contract Managers should discuss possible grants with the Contracts Office, Grants and Loans Office, or the attorney assigned to their division.

## 1.4 • PRELIMINARY CONSIDERATIONS AND DECISIONS

Many of the questions and decisions needed to establish a sound basis for a final contract must be addressed by the contract users. They are the individuals most concerned with both quality and usability of what will be produced under the contract. They are the individuals best equipped to ask and to answer the main questions about the performance leading to the final service or product that prompts the need for the contract.

Primary Contracting Considerations:

- A. What type of service is needed and why and when is it needed?
- B. Can services be provided within the agency? If agency staff cannot provide the services, a justification consistent with Government Code 19130 is required.
- C. Can another state agency provide the service through an Interagency Agreement?

- D. If an outside contractor is to be used, how will the contractor be obtained? Will it be necessary to competitively bid, or does one of the exemptions to bidding apply?
- E. What type of contract is involved? Commodities, goods, IT Service, IT Consulting Service, non-IT Service, non-IT Consulting Service?

**NOTE:** The Scope of Work is the key to a satisfactory contract. The level of satisfaction depends on fully assessing and defining the contract need. The determination of a level of quality sufficient to meet the need and guarantee the desired outcome and identification of the capability and qualifications required of a contractor to accomplish the outcome will produce a successful contract.

### **1.5 • ENERGY COMMISSION AUTHORITY**

Public Resources Code section 25218(b) grants the Energy Commission the power to contract for professional services if “such work or services cannot be satisfactorily performed by its employees or by any other state agency.” Section 25209 requires that “the affirmative vote of at least three members shall be required for the transaction of any business of the Energy Commission”. Staff gains approval to execute contracts via Energy Commission Business Meetings. The Executive Director has been delegated the authority to approve contracts under \$10K, amendments extending the term no more than one year, if the contract under \$100K and Expert Witness contracts for siting cases under \$25K. These exemptions are identified on the CEC 94 Contract Request Form (CRF).

### **1.6 • AUTHORITY TO SIGN A CONTRACT**

- A. The Energy Commission Contracts Office maintains a written record of all persons authorized by the Commissioners and the Executive Director to sign contracts.
- B. Energy Commission Contract Managers are not authorized to sign contracts or contract amendments.
- C. A state agency’s authority to contract is limited to those officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority.
- D. State boards and commissions either have statutory authority for the executive officer to sign contracts, or the authority of the executive officer to sign contracts is provided by resolution, order or motion.
- E. Local and other public entities authorize and approve execution of contracts through a resolution, order, motion or ordinance. A copy of such authorized approval is required for contract approval.

### **1.7 • COMMISSION BUSINESS MEETINGS**

Contracts, that do not meet one or more of the exemptions identified on the CRF, must be approved by the Commissioners at a Commission Business Meeting. A business meeting schedule is available on the Commission’s Intranet. The Commission Contract Manager or other designated staff must attend the preliminary agenda review and final agenda review meetings.



**1.8 • OTHER PROHIBITED ITEMS**

Contract Managers must be aware of these prohibited items when reviewing and evaluating proposals. These items have been identified as unallowable expenses in the Solicitation Boilerplate so that bidders are aware that subcontracting these services may not be used to fulfill DVBE requirements or other preferences.

**A. Food and/or Beverages**

- The State Constitution prohibits gifts of state funds. Providing food to conference attendees can be argued to be an illegal gift of state funds.
- As a general rule, Contracts shall not allow or budget for food and/or beverages outside of the standard per-diem allowances.
- Exceptions are rare and should be discussed with the Contracts and Legal Offices

**B. Printing**

- As of June 21, 2007, State agencies must now procure printing services through the Office of State Publishing (OSP). Prior to this policy, State agencies were allowed to contract out for printing services. State agencies can continue to do so only if they justify the contract to the State Personnel Board.
- This policy does not affect the use of in-house printing and reproduction facilities.

## 2. TYPES OF CONTRACTING

### 2.0 • INTRODUCTION

This section explains the various types of contracts. Once management has identified a specific project and approved the funding, the Contract Manager may use this section to determine what type of contract is needed.

### 2.1 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	2.0
Table of Contents	2.1
Preliminary Considerations	2.2
Consultant Services Contracts	2.3
Expert Witness Contracts	2.4
Interagency Agreements	2.5
Other Government Agencies and Public University Contracts	2.6
Revenue Contracts	2.7
Memorandums of Understanding	2.8
Cooperative Agreements	2.9
Information Technology and Telecommunications Contracts	2.10
License Agreements	2.11
Co-sponsorship Contracts	2.12
Membership and Sponsorship Contracts	2.13

### 2.2 • PRELIMINARY CONSIDERATIONS

The contracting process starts with the recognition of a need for services. From that point, the process varies depending on the type of services needed. Key considerations include:

#### A. Time

A critical factor to determine is when the contracted services are needed and is there enough time to obtain all contract approvals. Sufficient time must be allowed for Energy Commission processing as well as required external review and approval (such as the Department of General Services or DGS). Refer to Section 3, for assistance in estimating the start date of a contract.

#### B. Civil Service

Services performed by a contractor must be justified as allowable under civil service law. Government Code section 19130 allows for contracting out in specified situations. Under Government Code section 19130(a), contracts are justified on the basis of cost savings. This justification has not been used at the Energy Commission and involves a complicated statutory process. Government Code section 19130(b) contains the conditions for contracting out utilized by the Energy Commission. The ones most used are:

- The Services Contracted:
  - are not available within civil service
  - cannot be performed satisfactorily by civil service employees
  - are of such a highly specialized or technical nature that the expert knowledge, expertise, and ability are not available through the civil service system
- The Services are of such a(n):
  - urgent
  - temporary, or
  - occasional nature

that the delay to implement under civil service would frustrate their very purpose.

In addition to identifying the appropriate justification, it is necessary to analyze whether a civil servant could do the work, and what effort has been made by the division to find a civil servant. The questions to ask are: could a retired annuitant, limited term employee, or permanent employee do the work? Has the division attempted to find a civil servant?

Contract Managers (CM) are responsible for justifying in detail on the Contract Request Form how the contract meets one or more of the above options. This description is then used by the Contracts Officer on the form that accompanies the contract when it is sent to DGS for approval. It is important to accurately analyze and describe the reasons why contracting for the services is appropriate and to provide sufficient detail. Simply restating one of the above options is not considered sufficient detail. CMs must describe in detail how the work fits within one of the above options.

If there is any question about finding a civil servant to do the work, contact the Personnel Office. If there is any question about the appropriate statutory justification, contact the Legal Office.

#### C. Authority and Approvals

Many decisions require authorized approval, including final, formal approval either by the Energy Commission or by DGS. Some contracts are legally exempt from DGS approval; some may require approval by other agencies.

#### D. Funding

1. Determine if your Agreement is a Product or Service
  - a. Product Contract:
    - The contract calls for a product of the mind rather than mechanical or physical skills
    - The product may include: answers to specific questions to the design of a system or plan, i.e., Consultant services
  - b. Service Contract:
    - The contract calls for a rendition of mechanical or physical skills, i.e., Hearing Reporter Services
2. Determine the Fiscal Year (FY)
  - a. Check with your division liaison if you are not sure of the FY for the funds

3. Determine the Encumbrance Period:
  - a. The amount of time in which a FY's funds must be allocated to an agreement and approved at a Commission Business Meeting (except when exempt).
    - o One year for state funded Product and Service Agreements
    - o Two years for PIER/AB 118 funded Agreements
4. Determine the Fund Life or Liquidation Date of Contract Funds:
  - a. The amount of time in which to spend the funds.
  - b. The date (June 30) all fiscal year funds must be allocated and spent.
  - c. The closing of the books.
    - o Service Agreements should be paid for out of the funding for the FY during which the services are rendered (SCM 7.31 B.)
    - o Three years for Product Agreements
    - o Six years for PIER/AB 118 funded Agreements
5. The Last Possible Term End Date:
  - a. March 31<sup>st</sup> of the Final Year of the Fund Life or Liquidation Year
    - o 2011-2012 FY ERPA (state) Funds:
      - 1 year to encumber: July 1, 2011 - June 30, 2012
      - 3 years to liquidate: June 30, 2014 (June 30<sup>th</sup> of 2011 + 3 yrs)
      - Last Possible Term End Date: March 31, 2014 (2014 liquidation year above)
    - o 2011-2012 FY PIER/AB118 funds:
      - 2 years to encumber: July 1, 2011 - June 30, 2013
      - 6 years to liquidate: June 30, 2017
      - Last Possible Term End Date: March 31, 2017

Funding for the services is a crucial component and must be identified. Contact your Division Liaison or the Budget Office for detailed funding information for a contract.

#### E. Competitive Bidding

Services obtained from the private sector are typically subject to a competitive selection process unless the procurement meets approval requirements for a Non-Competitive Bid (NCB) (*formerly known as sole source*) contract, or the contract is with a state, local or federal agency, state university or college. Competitive bidding is a complex process with specific legal requirements. See Section 3 for the process of selecting a Contractor.

#### F. Conflict of Interest

1. Is there a conflict of interest? The phrase “conflict of interest” covers several subjects. It requires taking a close look at who is doing the work under the contract.
2. A CEC 105 is required at the following stages of the Solicitation and Contracting process:
  - All involved parties when developing the Solicitation
  - All evaluation team members before evaluating received proposals
  - CM when finalizing contract documents before the Business Meeting
  - CM when adding a subcontractor
  - CM when processing a Work Authorization (WA)
  - CM when processing an amendment
3. Is or was the Contractor a State Employee? Determine whether the contractor is or was a former or current state employee who is prohibited from contracting under the PCC 10410 – 10411 or GC 87101 et seq.
4. Consultant Contracts. Determine whether the consultant has proposed duties that create any reporting requirements under the Political Reform Act. Check with the Legal Office.
5. Is there a prohibited financial interest present? Employees and certain consultants may be prohibited from participating in decisions or participating in “making contracts” if they have a financial interest. See GC 1090 et seq. and GC 87400 et seq., or check with the Legal Office.
6. Is there a follow-on contract involved? Consultants are prohibited from bidding on, or being awarded a contract that is required, suggested, or otherwise deemed appropriate in the end-product of a previous consulting contract with them. See PCC 10365.5 to determine applicability, or check with the Legal Office.

#### G. Multiple-Year Justification

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

Approval by DGS/OLS must be obtained prior to releasing any RFP or IFB for a contract term beyond two years. A justifiable business reason must support such a request for approval. Approval will be requested by the Contracts Officer via an email to the DGS attorney.

## 2.3 • CONSULTANT SERVICES CONTRACTS

#### A. Definition

1. The majority of Commission contracts are considered consultant services. A consultant services contract is a contract for services of an advisory nature that provides a recommended course of action or personal expertise. (PCC § 10335.5)
  - The contract calls for a product of the mind rather than the rendition of mechanical or physical skills. The product may include anything from answers to specific questions to the design of a system or plan.
  - Some examples of consulting services are technical support for a specific program, assistance in developing a new program, conducting conferences, seminars, retreats, and workshops, and developing energy technologies.

2. Consultant services contracts **do not** include:
  - Contracts between state agencies and the federal government (**PCC § 10335.5**)
  - Contracts for architectural and engineering services (GC § 4525)
  - Contracts with local agencies, as defined in Revenue and Taxation Code § 2211, to subvene federal funds for which no matching state funds are required.
3. Consultant services contracts shall only be written to use private consultants when the quality of work is at least equal to that of agency resources. (PCC § 10371).

#### **B. Consultant Services Contract Requirements**

1. Consultant services contracts have certain requirements that do not apply to other contracts. For competitively bid contracts, these special conditions are usually included in the solicitation (PCC § 10371).
  - a. Consultant services contracts of \$5,000 or more shall contain detailed performance criteria and a schedule of performance.
  - b. The Contractor must provide a detailed analysis of the costs of performance of the contract.
  - c. Consultant services contracts of \$5,000 or more shall have attached as part of the contract a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor.
2. To ensure that all the legal requirements are met, DGS recommends consultant contracts contain:
  - a. A clear description of the work to be done or the problem to be solved. (If a problem cannot be clearly delineated, staff must consider whether the problem is sufficiently understood or is not deserving of a consultant's attention). The contract must specifically identify in realistic terms what the consultant is to accomplish, including:
    - any desired approach to the problem; practical, policy, technological, and legal limitations;
    - specific questions to be answered; the manner in which the work is to be done;
    - a description of the items to be delivered;
    - the format and number of copies to be made of the completed reports; and
    - the extent and nature of the assistance and cooperation that will be available to the consultant from the Energy Commission.
  - b. Time schedules, including dates for commencement of performance and submission of progress reports, if any, and date of completion.
  - c. Manner of progress payments, whether and to what extent they will be allowed, and, if appropriate, known or estimated budgetary limitations on the contract price.
  - d. A detailed budget containing:
    - Personal service costs showing individual or position rates per unit of time
    - Fringe benefit costs citing actual benefits or a percentage of personal service costs
    - Operating expenses including rent and supplies

- Equipment costs specifying equipment to be brought and the disposition of equipment at the end of the contract
  - Travel expenses and per diem rates set at the rate specified by the Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the contractor
  - Overhead
  - Other specific breakdown required
- e. Final meeting requirements between contractor and staff, when the contractor is to meet and present his or her findings, conclusions, and recommendations, when applicable.
- f. Final report requirements that require the consultant to submit a comprehensive final report, when applicable.
3. Review of Technical Qualifications – Use the following criteria in the evaluation of technical qualifications before requesting a Consultant Services contract.
- a. Does the firm understand the Energy Commission’s problem?
  - b. Is the approach to the problem reasonable and feasible?
  - c. Does the firm have the organization, resources, and experience to perform the assignment? Has the firm had experience in similar problem areas?
  - d. What are the professional qualifications of the personnel whom the firm will commit to the assignment?
  - e. Have resumes for the firm and the personnel been reviewed?
4. Multiple Contracts with the Same Consultant – When the Energy Commission enters into more than one consultant services contract with the same contractor within a 12-month period for an aggregate amount of \$12,500 or more, each contract that exceeds the \$12,500 aggregate amount must be approved by DGS (PCC § 10371).
5. Prohibited Bids/Contract Participation (PCC § 10365.5)

A person, firm, or subsidiary awarded a consulting services contract shall not submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract. This means that a contractor cannot bid on work that was suggested as a result of a previous contract with that contractor. A contractor cannot suggest work in one contract and then be the contractor to do the work that was suggested.

Exceptions:

- a. A person, firm, or subsidiary may be awarded a subcontract of no more than 10 percent of the total monetary value of the consulting services contract, and
- b. Contracts for consulting architect or engineer services pursuant to GC § 4525 et seq., or for IT or telecommunications goods or services pursuant to PCC § 12100 et seq., are exempt (PCC § 10430).

## 2.4 • EXPERT WITNESS CONTRACTS

An expert witness is a person qualified to testify as an expert that has special knowledge, skill, experience, training, or education sufficient to qualify as an expert on the subject to which the testimony relates. (Evidence Code section 720.)

- A. Contracts solely for the purpose of obtaining expert witnesses for litigation are exempt from advertising and competitive bidding requirements. In addition, a Non-Competitive Bid (NCB) justification.

The Commission Executive Director has authority to approve Expert Witness contracts of \$25,000 or less for providing testimony on issues arising in energy facility licensing cases and compliance amendments, and up to \$10,000 for any other subject area Expert Witness contract. All other Expert Witness contracts must be approved at a Commission Business Meeting.

- B. When a consultant is retained as an expert witness in pending litigation, the rate paid should be consistent with the complexity and difficulty of the testimony to be given, the going rate for similarly qualified consultants, and the qualifications and reputation of the particular consultant. The contract should detail exactly what the consultant will perform, i.e., provide reports, submit depositions, testify in court, or make other public appearances.
- C. Use of litigation experts pursuant to PCC 10335.5 (c) (3) must be supported by a written justification, which demonstrates that litigation is "likely" rather than theoretical.
- D. An expert witness provides oral and/or written testimony for the record in proceedings that are adjudicatory in nature. "Adjudicatory proceedings" are where the rights and duties of a person or entity ultimately will be decided. The issue could be a dispute between parties, enforcement of a right or law, or decision on how to apply the law. An actual issue must be at stake that will impact specific parties, to qualify as an adjudicatory proceeding. An example of an adjudicatory decision is the Commission deciding whether to grant power plant certification. The decision could also be where another governmental agency requests the Commission to provide expert testimony at a hearing where the other agency will decide whether to grant an exemption to a person from complying with that agency's regulations, or to testify in pending litigation.
- E. The proceeding can be a Commission hearing, workshop, Committee meeting, etc., as long as a right will be determined at the end of the process. For example, an expert witness will testify at a power plant siting workshop although there is no specific right decided at the workshop. The expert will also testify at a power plant siting hearing, where an administrative law judge presides and the parties take testimony and examine witnesses. Again, a specific decision made at the hearing. The last step is a Commission business meeting, where the Commission grants or denies certification for the proposed power plant. All steps in this process are appropriate for an expert witness contract, since the process is an "adjudicatory proceeding".
- F. The Commission does not use expert witness contracts for "fact finding proceedings", since there is no specific right being adjudicated. An example of a fact finding proceeding is a workshop to gather opinions before the Commission begins a rulemaking.
- G. The Commission also does not use expert witness contracts for "policy hearings" where there is no particular determination being made. Policy hearings are often held to make a general strategic decision that will affect a broad group or class of people or entities. An example is a Committee hearing to form a policy to be used in writing legislation. Another example is a hearing related to the Biennial Report or Electricity Report. Although the Committee may make a decision (i.e. adopt a policy on some issue), there has been no decision that affects specific rights or duties.



H. In deciding whether a contract is a true expert witness contract, the following questions are helpful:

- Is there an "adjudicatory proceeding" involved where a decision will be made?
- Does the decision affect specific persons or entities (as opposed to a broad group or class)?
- Does the decision involve applying a law, a dispute between parties or enforcement of a right or law?
- Will the expert be asked to provide live testimony where various people can ask the expert questions (as opposed to simply submitting a report)?

## 2.5 • INTERAGENCY AGREEMENTS

A. The term Interagency Agreement (I/A) only applies to a contract between two or more California state agencies.

1. "State agency," means every California state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, or any agency in the judicial branch of government. (PCC §§ 10335.7)
2. A direct contract with a California State University campus is always an I/A (but not with their auxiliary foundations).
3. A contract with a University of California campus may be either an I/A or a standard contract, but the contract must follow the requirements for whichever type of contract is used.
4. I/As may not be used for contracts with campus foundations, cities, counties, federal government, or other states.

B. The following special circumstances apply to IAs:

1. are exempt from advertising in the CSCR.
2. are exempt from competitive bidding.

*Note: If the entity performing the service is using subcontracts or purchasing goods, those services and goods should be competitively bid. **See SCM 3.06.***

3. are not required to meet DVBE participation goals if the entity performing the services is using its own personnel.
4. may provide for advancing of funds (GC §§ 11257 through 11263 and SAM § 8758.1)

## 2.6 • OTHER GOVERNMENT AGENCIES AND PUBLIC UNIVERSITIES CONTRACTS (OGAS) (SCM 3.06)

A. Other government agencies and public universities are:

1. the Federal Government,
2. a governmental agency from California or any state,
3. a state college or state university from California or any other state,
4. a local governmental entity or agency, including those created as a Joint Powers Authority, (this would also include public utilities like SMUD)
5. an auxiliary organization of the CSU, or a California community college,
6. a foundation organized to support the Board of Governors of the California Community Colleges, and

7. an auxiliary organization of the Student Aid Commission established under Education Code 69522.
- B. The following special circumstances apply to IAs:
1. are exempt from advertising in the CSCR.
  2. are exempt from competitive bidding.
- Note: If the entity performing the service is using subcontracts or purchasing goods, those services and goods should be competitively bid. **See items E. and F. below and SCM 3.06.***
3. are not required to meet DVBE participation goals if the entity performing the services is using its own personnel.
- C. Consult your Division's Contract Officer when requesting a contract with any of the entities above as subcontracting limitations are placed on these entities as well as limits on administrative overhead fees. For example, state agencies may only pay overhead charges on the first \$25,000 for each subcontract.
- D. No Subcontracting to Circumvent Competitive Bidding: Staff shall assure that when services are subcontracted by Other Governmental Agencies, the services must be performed primarily with the staff of the public entity, or in the case of educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular institution. Agreements with OGAs are not to be used to circumvent the state's competitive bidding requirements (PCC § 10340).
- E. Subcontracting without limitation: Services may be subcontracted without restriction only when:
- The total of all subcontracts does **not** exceed \$50,000 or 25% of the total contract, whichever is less, and subcontracting is not done to circumvent competitive bidding requirements.
  - All subcontracts are with OGAs or the services to be provided under the subcontract are otherwise exempt from competitive bidding.
- F. Subcontracting subject to limitations: If the total of all subcontracts exceeds \$50,000 or 25% of the total contract, whichever is less, then subcontracting shall be permissible only if:
1. all subcontracts are with OGAs, or
  2. Prior written approval from DGS has been received, or
  3. Certification that the subcontractor has been selected by the prime contractor pursuant to a bidding process requiring at least three bids from responsible bidders, or
  4. Approval by the Agency Secretary or highest executive officer (Commission Executive Director), attesting that the selection of the particular subcontractor(s) without competitive bidding was necessary to promote Commission needs and was not done for the purpose of circumventing bidding requirements.

Note: When determining the amounts or percentages being sub-contracted, do not include amounts or percentages sub-contracted to exempt entities.

## 2.7 • REVENUE CONTRACTS

Revenue contracts allow the Energy Commission to receive funds from a source other than the Energy Commission budget. Revenue contracts generally include: Revenue, Reimbursable, Income Contracts, Receivable and Cost Recovery Contracts. They typically fall into two categories.

- A. A contract between the Energy Commission and a public or private entity, in which the Energy Commission is providing or contracting for services and uses the funds from the revenue contract to pay for the services.

- B. A contract between the Energy Commission and a private entity in which the private entity that provides the services pays the Energy Commission. This type of revenue agreement must be competitively bid (or an NCB approval obtained) if it is a profit-making venture for the contractor.

## **2.8 • MEMORANDUMS OF UNDERSTANDING**

These agreements may involve several parties mutually agreeing to participate in a specific endeavor that does not involve any exchange of money. Since there is no exchange of money, or commitment of contract dollars, these agreements are not subject to control agency approval. However, a contract request package must be submitted to the Contracts Office and approved at an Energy Commission Business Meeting.

A Contract Attorney assists staff and the Contract Officer in preparing the terms, negotiating with the other parties, and advising staff of legal limitations or requirements.

## **2.9 • COOPERATIVE AGREEMENTS**

A Cooperative Agreement is usually with the Federal Government because the Energy Commission responded to a Federal Government solicitation. Energy Commission staff may perform the services or contract the services out to another party.

## **2.10 • INFORMATION TECHNOLOGY (IT) AND TELECOMMUNICATIONS CONTRACTS**

- A. IT and Telecommunications contracts are contracts whose primary purpose is to obtain, maintain, or enhance the Energy Commission's use of data processing or telecommunications technology.
- B. Services may be consultant services to write programs, to develop databases, maintain databases, develop websites or modify websites and many other IT services. Contact the IT Office for assistance in determining if the services being provided are IT services or not.
- C. There is a separate acquisition authority for IT and telecommunications goods and services. The Energy Commission has been delegated authority to procure up to \$500K in goods or services without going through DGS approval. Consult the Information Technology Office if you have an IT contract or purchase.

After reviewing the Scope of Work, the Contract Officer may contact the IT office to determine if the work qualifies as IT services, and may have the Scope of Work reviewed by the IT office.

## **2.11 • LICENSE AGREEMENTS**

These types of contracts are usually for Information Technology or Intellectual Property whereby the Commission obtains permission to use proprietary information, or retains the rights to reuse or to distribute IT developed to the public at large. These contracts are usually handled by the Information Technology Office.

## **2.12 • CO-SPONSORSHIP AGREEMENTS**

Date specific events (such as conferences, workshops, seminars or meetings) which the Energy Commission supports, in conjunction with others, through one or more of the following mechanisms:

- A. funding;
- B. use of the Energy Commission mailing lists;
- C. use of the Energy Commission's name in publicizing the event;
- D. staff time to help with planning and conducting the event, staff participation, etc.

All co-sponsorships including no-cost co-sponsorships must have Commission approval at a Business Meeting in advance of the event and must be on the Budget Committee's list of pre-approved memberships and co-sponsorships. A "co-sponsorship" is different than a "sponsorship" agreement. The Energy Commission uses the term "co-sponsorship" to mean funding an event; we use the term "sponsorship" interchangeably with "membership" (see section 2.13).

### **2.13 • MEMBERSHIP / SPONSORSHIP AGREEMENTS**

Memberships in professional organizations for represented employees are governed by the 21 collective bargaining agreements and payment is on a reimbursement basis (via a travel claim). Memberships in professional organizations for non-represented employees are governed by DPA rules and payment is on a reimbursement basis (via a travel claim). These memberships, for both represented and non-represented employees are not to be purchased through the State's procurement process (that is, via a STD 65).

Departmental memberships in professional organizations are considered a service and therefore, must be procured via a service order or STD 213, depending on the dollar amount. Departmental memberships are not to be purchased through PD's procurement process (that is, via STD 65).

The Energy Commission pays annual dues, specified by the organization in order to gain the rights and privileges associated with the membership. Dues may not be equal for all members and rights and privileges may vary among classes of members. The Energy Commission, as a whole, is the member. Individual staff may attend meetings and exercise other rights of membership on behalf of the Energy Commission. All memberships of \$10,000 or more must have Commission approval at a Business Meeting in advance of the membership start date and must be on the Budget Committee's list of pre-approved memberships and co-sponsorships.

Sometimes an organization does not have an official "membership" structure, but instead receives funds from "sponsors". In this case, the work statement will refer to a "sponsorship agreement". Whether the agreement is called a "membership" or a "sponsorship", the Energy Commission provides funding to the organization and in return receives certain benefits only available to paying members/sponsors.

## 3. SELECTING A CONTRACTOR

### 3.0 • INTRODUCTION

This section explains the options for selecting a contractor. It lays out guidelines and procedures in order to procure the required services using the appropriate selection method. Methods used to select contractors are:

- A. Direct Contracts with Exempt entities
- B. Solicitations using: California Multiple Award Schedule (CMAS), Master Service Agreement (MSA), SB/DVBE Option, Invitation for Bid (IFB), Request for Proposals (RFP), and Request for Qualifications (RFQ).
- C. Non-Competitive Bid (formerly known as sole source)

### 3.1 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	3.0
Table of Contents	3.1
Fundamental Rules	3.2
Contracts Exempt from Advertising and Competitive Bidding	3.3
Information Technology (IT) Services	3.4
Contract Opportunity Notice (CON)	3.5
Solicitations	3.6
Solicitation Process Steps	3.6.1
Master Agreements	3.6.2
CMAS	3.6.3
SB/DVBE Option	3.6.4
IFB	3.6.5
RFP Primary	3.6.6
RFP Secondary	3.6.7
RFQ	3.6.8
Non-Competitive Bid (NCB) Contracts	3.7
Initiating the Contract	3.8
Section 3 Attachments	
Table 3-1, Standard Solicitation Flowchart	3-1
Table 3-2, Standard Solicitation Calendar	3-2
Table 3-3, Solicitation Variations	3-3
Table 3-4, Time Line for CMAS or MSA Process	3-4
Table 3-5, Time Line for SB-DVBE Option and IFB Process	3-5
Table 3-6, Time Line for RFP Process	3-6
Table 3-7, Time Line for RFQ Process	3-7
Table 3-8, Time Line for CNS Process	3-8
Table 3-9, Time Line for NCB Process	3-9
Attachment A-1, Process for Establishing A Reasonable Rate for RFQ	A-1

### 3.2 • FUNDAMENTAL RULES

- A. The State Constitution generally requires contracting to be limited to those services that cannot be performed by civil service employees except as provided for in GC § 19130.

- B. The Commission may not draft any competitive bidding document (i.e. IFB or RFP) in a manner that limits bidding directly or indirectly to any one bidder.
- C. Services may not be split to avoid the need to advertise or obtain competitive bids. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to a state law, policy, or Commission procedure.
- D. Sealed bids must be received at the place and by the time stated in the solicitation document. Bids received after the time stated are not valid regardless of the circumstances causing the late submittal.

### **3.3 CONTRACTS EXEMPT FROM ADVERTISING AND COMPETITIVE BIDDING**

The following contracts are exempt from the advertising, competitive bidding and NCB approval requirements: (GC § 14825; PCC § 10348)

#### **A. Contracts with a Governmental Agency:**

Contracts or agreements (including amendments) with a California State, another state, local, or federal agency; the University of California, the California State University, or a California community college or any of their auxiliary organizations; or an organization acting as a governmental agency under a Joint Powers Agreement.

Note that these contracts cannot be used to circumvent the state's bidding requirements. These entities may only subcontract \$50,000 or 25% of the total contract, whichever is less, to private entities without competition or DGS approval (SCM 3.06).

#### **B. Contract Amendments (SCM 5.80 B.2):**

1. An amendment to a contract that only extends the original time for performance for a period of one year or less. This exemption can only be used once. (SCM 4.10 A.1)
2. Amendments to existing contracts under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending until a new contract can be executed, but in no case shall the amendment extend beyond six months.
3. An approved NCB is not required for the first amendment, if the amendment adds no more than 30% of the original contract value, not to exceed \$250,000, and there is no change to the scope of work. This exemption does not include extending the term.
4. Amendments to an existing contract to correct incidental errors such as: state's clerical error in transposition of numbers from bid response to contract, typographical errors in a contract number, name, or address, or change in or omission of a contact name or phone number.

#### **C. The specific types of contracts listed below:**

1. Emergency contracts which are necessary for the immediate preservation of life or state property;
2. Contracts for which only per diem and travel expenses are paid not to exceed \$5,000 and there is no payment for services rendered;
3. Contracts solely for the purpose of obtaining expert witnesses for litigation;
4. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff;

5. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000.
6. Proprietary subscriptions, proprietary publications, and/or technical manuals regardless of media format, up to \$250,000. This includes access to pre-existing proprietary research data through a non-IT services contract.
7. Departmental memberships in professional organizations.

*Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by Department of Personnel Administration rules. (See SCM section 3.23.)*

### **3.4 • INFORMATION TECHNOLOGY (IT) SERVICES**

The procurement for IT services is specialized and is administered by the Commission's IT Office.

### **3.5 • CONTRACT OPPORTUNITY NOTICE (CON)**

Before a solicitation is released a Contract Opportunity Notice may be something to consider. A CON is an informal announcement that the Commission contemplates a contract in a broadly defined area of expertise. A CON is not a substitute for a RFP or solicitation and DOES NOT result in a contract award. The only indispensable element is a categorical statement that it is not a formal solicitation.

The CON may be used:

To verify a Non-Competitive Bid (NCB): If it is believed that a prospective contractor is unique in nature and capabilities, a CON could be used to probe the marketplace to determine whether there is another Contractor with comparable capabilities. If another source is found, a solicitation will be necessary.

To involve potential contractors in the development of the work for a solicitation: Occasionally, there may be a project where staff is uncertain of the specific scope of work, the timeframe to perform the work, and the required funding amount. Potential contractors' views may be considered in developing the solicitation. To maintain impartiality to all potential contractors, a CON meeting or workshop is scheduled and an open discussion regarding the project is conducted and may be followed up with published points.

The Contract Manager and Contracts Officer determine when a CON is appropriate; the Contract Manager prepares and submits to the Contracts Officer a notice briefly describing the activity to be performed. The Contracts Officer handles the distribution of the CON. All comments are handled by the Contract Manager or program staff.

A CON may be announced by an advertisement in the newspaper (depending on contract scope or size); a professional or trade journal; Energy Commission Listserv; Commission Website, or any other appropriate means. The CON shall be posted at least 10 days prior to the workshop. The Contract Manager is responsible for all workshop arrangements. The Contracts Officer may attend the workshop at their discretion.

The following chart describes the differences between a CON and a solicitation.

DISTINCTIONS BETWEEN A CON and A SOLICITATION	
<p><b>CON</b></p> <p>No contract is awarded</p> <p>Contains a general description of the area of expertise, and a description of the work sufficient to enable readers to determine the disciplines, which might be utilized in the performance of the contract.</p>	<p><b>SOLICITATION</b></p> <p>Results in a contract</p> <p>Contains specified requirements such as the statement of work, expertise, qualifications, and timeframes.</p>
<p>Funds may not be available at the time the notice is circulated but there should be a sincere expectation that they will become available in the future.</p>	<p>Funds are definitely available for a contract if satisfactory proposals are received.</p>
<p>Requests potential contractors to attend a CON meeting to discuss the capabilities, experience, scope of work tasks and costs needed to perform the work.</p> <p>Next step would be a solicitation.</p>	<p>Requires potential contractor to prepare a formal proposal, with detailed tasks, timeframes and cost.</p> <p>The Commission evaluates and selects contractor.</p>

**3.6 • SOLICITATIONS**

A solicitation is a public request for bids/proposals to provide services, a specified product, and/or solve a defined problem under a contractual agreement. The Energy Commission uses a variety of selection procedures. The Contract Manager and Contracts Officer should discuss the type of services being procured and then determine the appropriate selection process to use.

**3.6.1 • SOLICITATION Process steps**

**A. Preparing And Submitting A Solicitation Request Package**

1. Contract Manager completes a Literature Search.

The Contract Manager is responsible for completing a Contract Literature Search (Form CEC-30). This step will discover any duplications of the scope of work being contracted and/or who has documented efforts within the scope of work. The Contract Manager is responsible for ensuring the literature search is as comprehensive as possible, given the Library's resources.

2. Contract Manager prepares the appropriate Solicitation Template.

Solicitation templates are available on the Commission's Intranet for each solicitation type:

<http://energynet/Admin/fsb/Contracts/Contracts%20Templates/Contracts%20Templates.html>.

The Contracts Officer will combine the information from the template with the standard boilerplate language and attachments to create the full solicitation package. Below are the sections of the standard template:

- a) Title (All Solicitation Types)

Contract Manager shall title the solicitation based on the purpose.



b) Introduction (All Solicitation Types)

This section contains both boilerplate and tailored language for the specific solicitation. The Contract Manager will insert a brief background, purpose and funding amount.

c) Scope of Work (May be completed by Bidder in RFP Secondary Method)

This section, also referred to as the SOW, provides the background, goals and objectives of the solicitation and a clear and concise description of the work to be performed or services to be provided and a description of deliverables expected and due dates of deliverables. State the results or outcomes, be as precise as possible.

For this section, Contract Managers shall use the Scope of Work Template provided on the Commission's Intranet:

<http://energynet/Admin/fsb/Contracts/Contracts%20Templates/Contracts%20Templates.html>.

d) Minimum Qualifications (IFB)

- i. Bidders only certify that they meet the stated requirements as part of their Bid.
- ii. No additional verification of these qualifications will be completed by the Contracts Officer or Contract Manager.

e) Evaluation Criteria (RFP & RFQ)

This section contains tailored language for the selection criteria with scoring criteria (provided by the Contract Manager). Criteria under each category are solicitation-specific. Contract Manager shall consult with the Evaluation Committee Members on the evaluation criteria prior to the Team Meeting. Evaluation criteria shall correspond with the Scope of Work and required bid/proposal documents. The minimum score to pass the evaluation stage shall be 70% unless Contract Manager receives approval from the Contracts Officer.

The following are suggested criteria that may be used in evaluating proposals:

- i. Does the bidder understand the Commission's problem or need?
- ii. Can the bidder fit this work into its existing obligations?
- iii. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
- iv. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
- v. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
- vi. Has the firm had experience performing work of a similar nature, size, and scope?

- vii. Does the bidder's past experience complement the services being sought, or is the past experience appropriate to qualify the bidder to perform these services?
- viii. What are the professional qualifications of the personnel committed to the project?
- ix. Did the bidder allocate sufficient staff resources?
- x. Has the bidder addressed all goals, objectives, service demands, and required deliverables specified in the solicitation?
- xi. Does the bidder appear to be able to handle and resolve unanticipated complications and delays without interrupting the delivery of services?
- xii. Are any proposed timelines for performance feasible?
- xiii. Did the bidder include plans that will show how performance will be monitored and measured to ensure that all services are successfully performed and that the objectives, goals, and requirements are met?
- xiv. Does the bidder appear to have the capacity to manage fiscal resources responsibly?
- xv. Does the bidder have sound fiscal, accounting and cost-monitoring or budget-monitoring procedures in place?

f) Technical Response Required Documents

The Contract Manager shall modify this section of the template as appropriate for their specific solicitation.

3. Contract Manager and anyone else working on the preparation of the solicitation must complete and sign a CEC 105 Conflict of Interest Questionnaire.
4. Solicitation Request Approvals

The Contract Manager completes a CEC-20 Solicitation Request Form. The Contract Manager attaches the appropriate Solicitation Template, all CEC 105s and the CEC 30 to the CEC-20, obtains Division Deputy Director's signature and submits the entire solicitation request package to the Contracts Office.

The Contract Manager shall include one hard copy and send an electronic version of the solicitation request package to the appropriate Contracts Officer.

## **B. Review And Approval**

Upon submittal of a CEC-20, Solicitation Request, the Contracts Officer will incorporate any necessary revisions and send the solicitation request package for review and approval by the following offices:

Budget Office

Grants/Loans Office (Federal funding)

Information Technology (IT Components)

The Contracts Officer will schedule a meeting with the Contract Manager and Attorney (Team Meeting). The Contracts Officer will send the solicitation request package to the legal office prior to the Team Meeting. Depending on the complexity of the SOW or lack of information, the Contracts Officer or Attorney may require additional Team Meetings.

The Contracts Officer will request Pre-Bid information from the Contract Manager and will coordinate with the Contract Manager the editing and final drafting, then send the full solicitation package to the Attorney for final review.

A general timeline is provided for each solicitation in Attachments 3-1 through 3-8 of this chapter. The timelines are only estimates and may increase based on the complexity of the SOW.

### **C. Solicitation Release**

The Contracts Officer will manage the reproduction and distribution of the solicitation once approval has been obtained from all necessary offices. The Contracts Officer posts the solicitation on the State Contracts Register website which is advertised to companies interested in the subject area. In addition, the Contracts Officer sends the solicitation to the web team to be posted on the Commission's website.

### **D. Communications With Bidders**

Once a solicitation is "on the street" or officially released, all inquiries concerning it are directed to the Contracts Officer ***only***.

In order to prevent giving any organization an unfair advantage in the competitive process, the Contract Manager must direct any questions from interested parties to the Contracts Officer. When the Contract Manager or staff receives questions regarding the solicitation, the questions should be forwarded to the Contracts Officer for response. When technical questions are asked, the Contracts Officer will contact the Contract Manager for the answer and include the question and response in the questions and answers (Q's and A's) mailed electronically to all bidders and posted on the Energy Commission website.

The maintenance of an impartial and fair distribution of information is extremely important. When asked, Commission staff is encouraged to inform potential Bidders that questions are made in writing to the Contracts Officer prior to the Pre-Bid Conference or during the discussion period at the Pre-Bid Conference. Questions of a technical nature cannot be submitted after close of business on the date of the Pre-Bid Conference.

### **E. Pre-Bid Conference**

A key component of the solicitation process, for potential bidders, is the Pre-Bid Conference. The conference is primarily used for solicitations that are more complex like RFPs and RFQs. The IFB, CMAS, MSA and SB/DVBE Option rarely have a conference due to the simplicity and routine nature of the work being solicited. The conference is usually held two (2) weeks after the solicitation is released and advertised in the State Contracts Register.

The purpose of a Pre-Bid Conference is to create a forum for bidders to ask technical and administrative questions regarding the solicitation and the work requested. It is also an opportunity for bidders to network or form teams in responding to the solicitation. The conference may last a couple of hours or more, depending on the number of attendees and complexity of the solicitation. The Contract Manager and Contracts Officer must attend. Overall, the principal objective of the Pre-Bid Conference is to make information available and to clarify issues concerning the solicitation. By meeting this objective, staff can anticipate quality proposals that are responsive to the solicitation.

The Contracts Officer will send the administrative power point slides to the Contract Manager. The Contract Manager will add any relevant technical slides. The Contract Manager prepares an agenda for the meeting with a question and answer period at the end of the meeting and provides copies for attendees.

The Contracts Officer will bring extra copies of the solicitation and any other material available for the solicitation.

The Contracts Officer prepares and circulates a Pre-Bid Sign-in sheet which requests stapled business cards to capture accurate information. At the conclusion of the meeting, the sign-in sheet may be copied and distributed to attendees. It is also posted on the Energy Commission website and included in the questions and answers addendum.

Pre-Bid Conferences must be audio recorded. The Contract Manager (or their designee) is responsible for setting up the audio recording through WebEx. For information on WebEx and WebEx recording, please contact the IT department.

#### **F. Addenda**

The Contract Manager shall prepare the significant questions and answers received in writing and asked at the Pre-Bid conference, and submit them to the Contracts Officer no later than 3 days after the Pre-Bid conference. The questions and answers are not verbatim. Failure to release the information in a timely manner may result in extending the proposal due date.

The Contracts Officer reviews the questions and answers, prepares any changes, and answers administrative questions. The Contracts Officer forwards the questions and answers to the Legal Office for review and approval.

The Contract Manager should discuss any changes to the solicitation with the Contracts Officer.

Once finalized, the Contracts Officer drafts an addendum to the solicitation (which includes the questions and answers, any changes to the solicitation language, and the sign-in sheet) and e-mails the package to all parties that attended the Pre-Bid Conference and sends the addendum to the Commission's webmaster and Contracts Register website.

#### **G. Receipt Of Bids/Proposals**

An appropriate due date for bids/proposals depends on the solicitation type (see attached timelines). The Contracts Office receives and records the name, date and time of all proposals. Information noted in the solicitation regarding the date, location, and time that proposals are due will be strictly adhered to. No proposals will be considered which have not been received in accordance with the information stated in the solicitation.

The Contracts Officer opens and reviews each proposal to determine that the format requirements and standards specified in the solicitation were met (DVBE goals etc.). The Contracts Office keeps a minimum of two copies of each bid/proposal.

#### **H. Evaluation Process (RFPs and RFQs)**

The Evaluation Process includes the following steps:

1. Initial Evaluation Committee Meeting
2. Scoring
3. Evaluation Committee Review of Preliminary Scores Meetings
4. Interviews, Presentations, and/or Discussions
5. Final Evaluation Committee Meeting
6. Cost Proposals
  - A. The sealed cost bids for an IFB and RFP primary must be publicly opened.
7. Preference Points

### 1. Initial Evaluation Committee Meeting

Evaluation Team members may consist of Energy Commission staff or staff of other California state entities. The Evaluation Team shall consist of a minimum of 3 and a maximum of 5 individuals. If an opinion is required from someone not in state government, the Contract Manager may identify Technical Reviewers. Technical Reviewers may consist of personnel from public or private entities but they must sign a non-disclosure agreement. Technical Reviewers are not evaluators and will not score the proposals. They may make recommendations or point out strengths or weaknesses that the evaluators may take into consideration when scoring.

This initial meeting is to ensure that the Evaluation Committee members are all on the "same page" with regards to evaluating the proposals. The Contracts Officer meets with the entire Evaluation Committee to review the scoring procedures and definitions of the scoring percentages identified in the solicitation, as well as the Evaluation Committee meeting schedule.

The Contracts Officer will hand out the Non-Disclosure Agreement and Conflict of Interest forms and distribute proposals to the Evaluation Committee. Members of the Evaluation Committee shall sign the Evaluation Committee Scoring Guidelines and complete the CEC 105 Conflict of Interest Questionnaire and return the document to the Contracts Officer prior to obtaining their copies of the proposals.

Members of the Evaluation Committee shall be instructed to independently evaluate each proposal and complete the evaluation form prior to the Evaluation Committee's preliminary scoring meeting. Evaluation Committee members must not discuss the proposals among themselves or with any other staff during the review process; the Evaluation process is confidential until a final selection has been made. If an Evaluation Committee member does not complete the proposal review scoring process, the meeting shall be rescheduled or the score of that member cannot be included in the scoring of proposals.

The Contract Manager shall prepare and distribute score sheets for each Committee Member to complete. Checking the proposals' references will be assigned to a Committee member by the Contract Manager. The Contract Manager is responsible for creating the reference check questions.

### 2. Scoring

All proposals are considered "confidential" and each Evaluation Committee member individually reviews and scores each proposal. Evaluation Committee members must not discuss any of the proposals or scores with other Evaluation Committee members or anyone outside of the Evaluation Committee. The first discussion is held at a selection committee meeting, and the Evaluation Committee reveals their individual preliminary scores. Evaluation Committee meetings shall not be held without the Contracts Officer present and require all members of the Evaluation Committee to be present.

Each Evaluation Committee member may develop comments for each proposal, but is required to provide comments for scores of 0% and 100%. These comments will become available for public review with the individual committee member's score sheets. These comments must be descriptive and objective so anyone can understand why a particular score was assigned to each evaluation criteria.

Technical proposals are evaluated for content and quality as they relate to the solicitation requirements. You must use the exact percentage increments as listed below. For example, you may not give a 75% as a score; the score is either a 70% or an 80%. Percentages of points are assigned to each criterion as follows:

% of Possible Points	Interpretation	Explanation for Percentage Points
0%	Not Responsive	Response does not include or fails to address the requirements being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
25%	Minimally Responsive	Response minimally addresses the requirements being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
50%	Inadequate	Response addresses the requirements being scored, but there are one or more omissions, flaws, or defects or the requirements are addressed in such a limited way that it results in a low degree of confidence in the proposed solution.
70%	Adequate	Response adequately addresses the requirements being scored. Any omission(s), flaw(s), or defect(s) are inconsequential and acceptable.
80%	Good	Response fully addresses the requirements being scored with a good degree of confidence in the Bidder's response or proposed solution. No identified omission(s), flaw(s), or defect(s). Any identified weaknesses are minimal, inconsequential, and acceptable.
90%	Excellent	Response fully addresses the requirements being scored with a high degree of confidence in the Bidder's response or proposed solution. Bidder offers one or more enhancing features, methods or approaches exceeding basic expectations.
100%	Exceptional	All requirements are addressed with the highest degree of confidence in the Bidder's response or proposed solution. The response exceeds the requirements in providing multiple enhancing features, a creative approach, or an exceptional solution.

### 3. Evaluation Committee Review of Preliminary Scores Meetings

The Contracts Manager will schedule a meeting with the entire Evaluation Committee and the Contracts Officer to review the preliminary scores, discuss proposals and to determine if clarification interviews are necessary. This meeting should be scheduled as early as possible to avoid any schedule conflicts. The Contract Manager is responsible for creating the matrix of all Committee Members' scores to be reviewed at the meeting.

**NOTE: NO MEETING WILL BE HELD UNTIL ALL EVALUATION COMMITTEE MEMBERS HAVE SCORED THEIR PROPOSALS.**

Discussion regarding proposals must be germane to the conditions of the solicitation. Past projects of the proposing firm must not be discussed or considered, unless it is included in the evaluation criteria.

The Evaluation Committee should discuss why the criterion is scored high or low. If a proposal has a variety of scores on any criteria, discussion should take place as to why members scored high or low. Individual members may re-evaluate their ratings of each factor and re-score to reflect their evaluation; however, they are not required to change their score. If clarification interviews are not held, the scores for each proposal are averaged and considered final. (See 5. Final Evaluation Committee Meeting)

If clarification interviews or presentations are necessary and were included as an option in the solicitation, they will be scheduled at this point (see 4. Evaluation Committee Interviews, Presentation and Discussions)

The Evaluation Committee has the option of rejecting all proposals if it feels that an adequate response has not been obtained, or canceling the solicitation if the Evaluation Committee is not satisfied with the proposals. However, rejection of all proposals or cancellation of the solicitation will not be made without the specific approval of the Contracts Officer and Legal Office.

#### 4. Evaluation Committee Interviews, Presentations and Discussions

##### a. Interviews

The Evaluation Committee may request interviews to clarify information in the proposal. These can be requested of any bidders if it is felt that this would be beneficial to the selection process. Each Evaluation Committee member must attend the interviews. If interviews are anticipated in the selection process, it must be included in the solicitation. If interviews are not included in the solicitation schedule and selection process, interviews cannot be held.

Interviews are different from a presentation. Interviews are not the opportunity of a bidder to make a "presentation" regarding their proposal, nor can additional information be added to their proposal. Its purpose is to ask "clarifying" questions the Evaluation Committee has to arrive at a final score in a particular criterion. Interviews may be scheduled via conference call or in person if the bidder wishes to travel to the Energy Commission. The cost of travel to the Energy Commission is borne by the bidder.

The Evaluation Committee determines the questions to be asked. It is not necessary to ask the same question of each bidder, only the necessary clarification questions regarding a bidder's proposal. The questions are given to the Contracts Officer who will send them to the Legal Office for their review. The Contracts Officer schedules the interviews and will forward the questions to the bidders. Interview questions must be in writing and sent to the bidder at least 24 hours prior to the interview. Thereby, the bidder comes prepared to answer the questions regarding information in their proposal.

It is not necessary to have interviews with all bidders. Only those proposals receiving a requiring clarification should be scheduled for an interview.

The agenda used for the Interview are the questions prepared and already sent to the bidder. No additional questions may be asked. Interviews must be audio recorded with all Evaluation Committee members and the Contracts Officer present. The Contracts Office has a recorder for use.

##### b. Presentations

The Contract Manager and Contracts Officer determine if a presentation is necessary for any type of solicitation, and if so, the solicitation document shall include a tentative date for the presentations and they must be audio recorded.

A presentation requires bidders to appear in front of the scoring committee and present a verbal proposal or present and answer to a hypothetical question. A presentation is usually required if the scope of work calls for presenting information to an audience. For example, if we were hiring trainers in a specific technical field, or required to interact with other professionals on behalf of the Energy Commission, we would schedule bidders for a presentation.

A presentation allows the scoring committee to view the verbal and communication skills of the contractor and score them. Presentations must be audio recorded with all Evaluation Committee members and the Contracts Officer present. The Contracts Office has a recorder for use. Presentations shall be scheduled by the Contracts Officer.

c. Discussions (RFQ)

Discussions are required as part of the RFQ process and held with at least the top three firms. Discussions shall be scheduled by the Contracts Officer. A discussion requires firms to appear in front of the Evaluation Committee and present a verbal response to questions previously prepared by the Evaluation Committee. Unlike the RFP process, RFQ firms may conduct a “dog and pony” show as well as provide new information. Discussions shall be included as a criterion on the evaluation worksheet.

5. Final Evaluation Committee Meeting

Scoring and Rescoring

Upon completion of the interviews, presentations, or discussions the Evaluation Committee may rescore the proposals of the firms to arrive at final scores. The final Evaluation Committee meeting must be attended by each of the Evaluation Committee members and the Contracts Officer. At this time, it is imperative that the score sheets be completed in black ink or typed, signed and dated by each scoring committee member. Score sheets must be legible and neat, with any comments added by members. These score sheets are submitted to the Contracts Officer before the Notice of Award is released. Final score sheets become a public record and are available for public review.

Final scores are determined by averaging the Evaluation Committee members' scores for each proposal.

6. Cost Bids

Cost bids detail the bidder's offer on how much they will charge to do the work. Each solicitation type identifies the cost bid method appropriate as detailed below:

a. Low Bid Method (IFB, SB/DVBE Option, RFP Primary)

The cost proposals are opened by the Contracts Officer for those bidders passing the administrative screening and minimum technical score (when applicable). Cost bids must be opened publicly. The contract is awarded to the bidder with the lowest cost after applicable preferences are applied.

Lowest cost may be determined by the overall cost of the bid/ proposal or by the average loaded hourly rate. Typically, the overall cost of the bid/proposal is the cost method used for Low Bid. The average hourly loaded rate method should only be used when the resulting agreement is being written for the actual dollar amount specified in the solicitation and we are asking the bidder to distribute the dollars to the tasks. This determination will be made before the solicitation is released and described clearly in the solicitation document.



To calculate the cumulative average loaded hourly rate for each bidder, we calculate the average rate, by adding all rates and then dividing by the number of rates: (Sum of all rates/number of rates given = Average Loaded Hourly Rate (\$) for each Bidder).

b. High Score/ Best Value Method (RFP Secondary)

In the RFP Secondary method, proposals are evaluated on technical merit by the evaluation team. Proposals will receive cost points based on the overall proposal cost or the average loaded hourly rate. Cost effectiveness may be evaluated as part of the technical score, but this must be in addition to the cost points. Substantial weight must be given in the consideration of cost points. The cost points shall not be less than 30% of the total evaluation points.

The Contract is awarded to the highest scored proposal after the applicable preferences are applied.

During the evaluation process, the Contracts Officer and a minimum of one Evaluation Committee member will be responsible for performing the calculations of the average loaded hourly rates for each proposal. The Contracts Officer and Evaluation Committee Member(s) will compare their scores in the scoring meeting to ensure they have both calculated the same results.

The cost points shall be determined by using one of the two following options. The Contract Manager shall select an option and submit the selected option with their solicitation request.

Option 1:

The method for evaluating the overall proposal cost is the formula below:

$$\text{Lowest Bidders Cost/ Bidder's Cost X Points Available} = \text{Bidder's Cost Points}$$

Example of applying option 1:

Cost Points Available = 30

Bids Submitted = Bidder A - \$110K      Bidder B- \$115K      Bidder C- \$100K

Lowest Bidder = Bidder C - \$100K

$$\text{Bidder A} = \$100K/\$110K \times 30 = 27.27 \text{ points}$$

$$\text{Bidder B} = \$100K/\$115K \times 30 = 26.09 \text{ points}$$

$$\text{Bidder C} = \$100K/\$100K \times 30 = 30 \text{ points}$$

Option 2:

The method for evaluating the based on average loaded hourly rate is the formula below:

<b>COST CRITERIA for use in Secondary RFPs.</b>
<p><b>1. Average Loaded Hourly Rate (Cost Points).</b> The Score for this criteria will be derived from the mathematical cost formula set forth below, which compares the cumulative average loaded hourly rate of all loaded hourly rates listed in the subject Bidder's Cost Bid, with the cumulative average loaded hourly rate of all loaded hourly rates listed in the Lowest Bidder's cost bid .</p>
<p><b>2. Cost Justification.</b> Bidder has justified all proposed personnel identified in its bid for all technical areas and functions to be performed by Prime and Team Members.</p>

i. Cost Formula for calculation of average loaded hourly rate score (criterion 1 above)

“**Lowest Bidder**” is defined as the Bidder with the lowest cumulative average loaded hourly rate for all prime contractor and all subcontractor personnel.

For example (using the following arbitrary hourly rates and fictional cost bids):

**Bidder 1**

<b>Prime Contractor</b>	<b>Subcontractor A</b>	<b>Subcontractor B</b>
Project Manager: \$100/hr	Engineer I: \$90/hr	Engineer IV: \$120/hr
	Engineer II: \$100/hr	
	Engineer III: \$110/hr	

Bidder 1's cumulative average loaded hourly rate = 100 + 90 + 100 + 110 + 120 divided by 5 = **\$104**

**Bidder 2**

<b>Prime Contractor</b>	<b>Subcontractor A</b>	<b>Subcontractor B</b>
Project Manager: \$100/hr	Engineer I: \$100/hr	Engineer IV: \$130/hr
	Engineer II: \$110/hr	
	Engineer III: \$120/hr	

Bidder 2's cumulative average loaded hourly rate = 100 + 100 + 110 + 120 + 130 divided by 5 = **\$112**

**Bidder 3**

<b>Prime Contractor</b>	<b>Subcontractor A</b>	<b>Subcontractor B</b>
Project Manager: \$110/hr	Engineer I: \$110/hr	Engineer IV: \$140/hr
	Engineer II: \$120/hr	
	Engineer III: \$130/hr	

Bidder 3's cumulative average loaded hourly rate = 110 + 110 + 120 + 130 + 140 divided by 5 = **\$122**

In the examples above, Bidder 1 would be the Lowest Bidder.

ii. The Cost Formula for calculating the Points Awarded for criterion 1 above is as follows:

**a. Calculate Cumulative Average Loaded Hourly Rate**

For each Bidder, we calculate the average rate, by adding all rates, and dividing by the number of rates:

Sum of all rates divided by Number of Rates Given = Average Loaded Hourly Rate for each Bidder: \$\_\_\_\_\_

**b. Create Percentage**

Then we compare rates of all the Bidders, by creating a percentage of the Bidder's rate, compared to the lowest Bidder's rate. The lowest Bidder will have the highest percentage of points:

(Lowest Bidder's Cumulative Average Loaded Hourly Rate divided by Bidder's Cumulative Average Loaded Hourly Rate) = Bidder's Percentage of Points

**c. Apply Possible Points**

Finally, we multiply the Bidder's Percentage of Points by the number of possible points:

Bidder's Percentage of Points X Possible Points = Points Awarded

*Following is an example of Cost Score Calculation, using the above examples:*

Cumulative Average Hourly Rates: Bidder #1 = \$104, Bidder #2 = \$112, Bidder #3=\$122

Bidder #1			Bidder #2			Bidder #3		
104 divided by 104 = 100%			104 divided by 112 = 93%			104 divided by 122 = 85%		
Possible Points	Percentage of Points	Points Awarded	Possible Points	Percentage of Points	Points Awarded	Possible Points	Percentage of Points	Points Awarded
20	100%	20	20	93%	18.6	20	85%	17

iii. Cost Justification

In relation to Cost Criteria 2 above, the bidder shall explain and justify all proposed personnel identified in the Proposal for all technical areas and functions to be performed by the Prime and each of the Subcontractors.

The purpose of this justification is to give the Evaluation Committee the opportunity to verify that the Bidder did not include irrelevant classifications or pad the classification list with lower level personnel in order to have a lower cumulative average hourly rate.

c. Cost Negotiations (RFQ- A&E)

Cost Negotiations are specific to RFQ solicitations for selecting A&E Firms. Prior to the Statement of Qualification (SOQ) due date, the Contract Manager shall prepare a market survey comparing costs. The process for this market survey is located in an attachment to this section of the manual.

Firms do not provide any cost information in their SOQs. After SOQs have been reviewed, they are scored and ranked and the Commission begins negotiating cost with the best qualified firm.

First, the Contracts Officer shall request the highest ranked firm to complete the cost forms. Then the Contracts Officer shall compare the submitted cost forms with the Cost Survey provided by the Contract Manager. In consultation with the Contract Manager and sometimes other key decision makers at the Energy Commission, the Contracts Officer shall negotiate the costs provided by the firm. There may be several communications back and forth between the Contracts Officer and the firm to arrive at agreed costs.

If the Commission is unsuccessful in negotiating a contract with the most qualified firm, the negotiations with that firm shall be terminated and negotiations undertaken with the second most qualified firm. If the Commission is unable to negotiate a satisfactory contract with any of the selected firms, the Commission may select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached.

## 7. Preference Points

The Contracts Officer is responsible for applying all applicable preferences after final scores have been decided. The Contracts Officer will confirm State certified small business status and obtain information from the appropriate sources for other preference programs, if applicable.

### 1. Small Business Preference:

#### Low Bid:

The cost bids received from small businesses are reduced by five (5) percent of the bid price of the lowest bidder who is not certified as a small business. This reduction of cost may reduce the small businesses bid to win the contract.

#### High Score:

Five (5) percent of the points received by the highest scored proposal that is not a small business are added to the certified small business bidder's points. This new scored point count is used to determine highest scored bidder.

### 2. Non-Small Business Preference:

Government Code Section 14838(b)(2) also provides for a non-small business preference. The small business regulations are located at 2 CCR 1896 et seq.

A non-small business bidder that commits to small business or micro-business subcontractor participation of twenty-five percent (25%) of its net bid price shall be awarded preference in the same manner as the Small Business Preference Program. A non-small business, which qualifies for this preference, may not take an award away from a certified small business.

Non-Small Business Preference is calculated the same as the Small Business Preference.

### 3. TACPA/ EZA/ LAMBRA:

If a Bidder submits a bid/proposal claiming one of the following preferences, the Contracts Officer must send the appropriate documentation for review and approval by DGS.

The Target Area Contract Preference Act (Government Code Section 4530 et seq.) provides preference points to California-based companies that perform state contract work in a distressed area.

The Enterprise Zone Act (Government Code Section 7070, et seq.) provides preference points as an incentive for business and job development in distressed and declining areas of the State.

The Local Agency Military Base Recovery Act (LAMBRA, Government Code Section 7118, et seq.) provides preference points to California-based companies that perform State contract work in the LAMBRA.

4. California Based Entity Preference (PIER Funding Only):

The PIER program has an additional preference requirement for California Based Entities. This requirement is always being updated and so it is not defined in this manual. For more information, please ask your Contracts Officer.

5. Disabled Veteran Business Enterprise Incentive:

The DVBE Incentive Program gives a contractor an opportunity to improve their bid status based on the efforts attained from the DVBE Participation Program. The DVBE Incentive program was established pursuant to Military & Veterans Code Section 999.5(2) and Department of General Services' Regulations 2 CCR 1896.98 et.seq. Incentive amount increases as the DVBE participation increases.

**I. Notice of Proposed Award (NOPA)**

Notice of Proposed Award (NOPA) and Notification of Solicitation Results are used to announce the final action of the solicitation.

The Contract Manager submits to the Contracts Officer a matrix reflecting the Evaluation Committee's scores for each proposal and the signed score sheets from each Evaluation Committee member.

The Contracts Officer drafts the notification letters to bidders informing them of the results of the solicitation, attaches the Notice of Proposed Award (NOPA) as well as the scoring matrix. The Contracts Officer sends a copy of the NOPA to the Energy Commission's webmaster, emails it to all Bidders and posts it on the Contract Office award board. Posting of the NOPA cannot occur until the notification letters to all bidders are in the mail. The NOPA is a dated document which expires 5 working days after the posting date.

All solicitation documents including proposals and score sheets become public information after the posting of the Notice of Proposed Award.

**J. Debriefing Bidders**

Unsuccessful bidders may request a debriefing. Bidders will obtain the Contract Manager's information from the Contracts Officer and the Contract Manager shall be responsible for scheduling the debriefing meeting.

The debriefing is to provide the bidder with information on the strengths and weaknesses of their proposal. No other proposals may be discussed at the debriefing. Evaluation Committee members may attend the debriefing but the Contract Manager must attend. It is helpful for each Evaluation Committee Member to have the notes that they developed during the scoring phase of the solicitation. This is an informal meeting involving the Evaluation Committee members and the bidder. Keep in mind that this is not the forum to resolve a protest.

## K. Protests

Contracting law allows bidders a forum to protest a department's contract award as a result of a solicitation. Department of General Services-Legal Office has jurisdiction when a protest is filed and certain grounds and exclusions apply. Once a protest is filed the contract may not be awarded until the protest is withdrawn or DGS has rendered a decision. There are time limits in which to file a protest. A protest must be filed, within five (5) **working** days, with the agency and DGS after notice of intent to award the contract. After filing a protest, the protestant has five (5) **calendar** days to file a detailed written statement of the protest grounds if the original protest did not contain the complete grounds for the protest. Below are some components governing protests, please see a Contracts Officer for specifics if a protest has been filed.

Those who may protest:

- IFB solicitation---the lowest responsible bidder meeting the specifications for the contract.
- RFP solicitation---Any bidder who claims that the State agency failed to follow the procedures specified in either subdivision (b) or (c) of Public Contract Code section 10344.
- There is no basis for protest if the awarding agency rejects all bids or proposals, based on the interests of the state.

Protest exclusions:

- The protestant was not a bidder. The only recourse is through the civil courts.
- The protestant has not alleged that it was the lowest responsible bidder or the highest scored bidder.
- The protestant is not in a position to make a supportable assertion that it was the lowest responsible bidder or should have been the highest-scored bidder.
- The protest was not submitted timely.
- The grounds do not meet the permissible grounds stated in the Public Contract Code.
- The contract award is for a type of contract not subject to the protest procedures. The category includes contracts for the construction, alteration, improvement, repair or maintenance of real or personal property; goods or commodities and contracts for professional architecture or engineering services under GC 4525 (RFQ-A&E).
- The contract was awarded through CMAS or MSA.
- The contract was awarded through an Informal DVBE/Small Business Solicitation.

## L. ITSB Involvement

At this time, the winning proposal(s) will be sent to the ITSB Project Manager for the appropriate division for review of IT components.

### 3.6.2 • Master Agreements

Statewide Master Agreements are contracts bid by DGS for services and consulting services that are used by many state agencies. Master Agreements offer services that have been competitively assessed, negotiated, or bid by the DGS or another state agency, therefore, the solicitation or Request For Offer (RFO) is not a competitive solicitation but instead a comparison of offers by suppliers.

1. Master Agreements take advantage of the state's large buying power. Prices are often less than those a single agency could obtain on its own.
2. Master Agreements take care of the bidding process and other administrative details. Depending on the particular agreement, civil service justification, and DVBE goals may or may not have been complied with. (These items should be detailed in the "user instructions" for the Master Agreement.)
3. Master Agreements allow an agency to obtain needed services quickly and easily, avoiding delay and uncertainty of the bid process.
4. Some subscription contracts to Master Agreements developed by the Department of Personnel Administration and the DGS Procurement Division cannot exceed certain amounts, also known as "caps". Before developing a subscription contract, check with the Master Agreement Contract Manager as to the maximum amount permitted.
5. Check Management Memo 03-10, regarding Guidelines for use of CMAS, Master Agreements and Non-Competitively Bid contracts for additional requirements.
6. A current master agreement list is available on DGS's webpage:  
<http://www.dgs.ca.gov/pd/Programs/Leveraged/masteragreements.aspx>
7. Master Agreements Process Steps (only if an RFO is required in the user instructions):
  - A. Preparing And Submitting A Solicitation Request Package
    - 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
    - 2) Contract Manager shall identify which Master Agreement applies and which contractors on the list are eligible.
  - B. Review and Approval
    - 1) Timeline located in Table 3-4
  - C. Solicitation Release
    - 1) Not posted on websites because it is not competitive. Only sent to list of eligible contractors or vendors.
  - D. Communication with Bidders
    - 1) As described in 3.6.1.D
  - E. Pre-Bid Conference
    - 1) No Pre-Bid.
  - F. Addenda
    - 1) No Pre-Bid so the RFO will detail a deadline for technical questions and the answers will be sent to all that were sent the RFO.
  - G. Receipt and Distribution of Bids/Proposals
    - 1) 2-4 weeks after sent to eligible parties unless otherwise identified in the User Instructions.

- H. Evaluation Process: High Score/ Best Value Method (unless otherwise identified in User Instructions)
  - i. Technical Evaluation
  - ii. Cost Points
  - iii. May or may not have preference points based on the user instructions.
- I. NOPA
  - 1) No NOPA.
  - 2) Notice to bidders of Award.
  - 3) No NOPA expiration.
- J. Debriefing Bidders
  - 1) As described in 3.6.1.J.
- K. Protests
  - 1) No protest period.

### **3.6.3 • California Multiple Award Schedule (CMAS)**

If you are considering utilizing CMAS, contact the Contracts Office. A CMAS solicitation or Request for Offer (RFO) seeks an answer to the following: "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 for how much?"

CMAS Agreements are a form of Leverage Procurement Agreement (LPA) and are contracts bid by DGS for services and goods that are used by many state agencies. The CMAS program offers Federal General Services Administration multiple award schedule pricing (primarily) with California terms and conditions with suppliers that provide non-IT goods, IT goods and services and some non-IT services. CMAS offers services that have been competitively assessed, negotiated, or bid by the CMAS program, therefore, the RFO is not a competitive solicitation but instead a comparison of offers by suppliers.

CMAS dollar thresholds are:

Non-IT Goods: \$100,000.00

Non-IT Services: \$250,000.00

The Contract Manager shall visit the CMAS website to see if the needed services are available through CMAS. If so, the Contract Manager shall contact the Contracts Officer and discuss whether the CMAS option is the best method. If the Contracts Officer agrees, the Contract Manager shall identify three (3) to fifteen (15) suppliers from the service category when submitting the solicitation package. One of the vendors must be a certified Small Business (SB) and/or DVBE unless neither is available.

#### 1. CMAS Process Steps:

##### A. Preparing And Submitting A Solicitation Request Package

- 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
- 2) Contract Manager shall identify which CMAS category they are soliciting from the following website:



<http://www.applications.dgs.ca.gov/pd/search/vcodes.asp?pagename=main.asp>

- 3) Contract Manager shall identify three (3) to fifteen (15) suppliers from the service category when submitting the solicitation package. (One must be a certified SB or DVBE unless neither is available.)
  - 4) After the solicitation is submitted, the Contracts Officer will work with the Contract Manager to prepare the cover letter.
- B. Review and Approval
- 1) Timeline located in Table 3-4
- C. Solicitation Release
- 1) Not posted on websites because it is not competitive. Only sent to list of suppliers.
- D. Communication with Bidders
- 1) As described in 3.6.1.D
- E. Pre-Bid Conference
- 1) No Pre-Bid.
- F. Addenda
- 1) No Pre-Bid so the RFO will detail a deadline for technical questions and the answers will be sent to all that were sent the RFO.
- G. Receipt and Distribution of Bids/Proposals
- 1) 2-4 weeks after sending.
- H. Evaluation Process Best Value/ High Score Method.
- i. Technical Evaluation
  - ii. Cost Points
  - iii. No Preference Points
- I. NOPA
- 1) No NOPA.
  - 2) Notice to bidders of Award.
  - 3) No NOPA expiration.
- J. Debriefing Bidders
- 1) As described in 3.6.1.J.
- K. Protests
- 1) No protest period.

#### **3.6.4 • Small Business (SB) or Disabled Veteran Business Enterprise (DVBE) Option**

The SB/DVBE Option is used for services performed by Small Businesses or DVBE companies without advertising. The contract amount must be less than \$250,000.00. This solicitation follows the IFB method. The solicitation is not posted on the websites and is only sent to a pre-selected list of SBs or DVBEs.

DVBE requirements apply to solicitations solicited to small businesses, unless the DVBE requirements are exempted by the Executive Director. The small business preference is not applicable under this method.

This process applies to contracts for services, consulting services, commodities, goods, and IT services.

1. SB/DVBE Option Process Steps:

A. Preparing And Submitting A Solicitation Request Package

- 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
- 2) Contract Manager shall identify six (6) to fifteen (15) certified SBs or DVBEs that are qualified to perform the work when submitting the solicitation package.

B. Review and Approval

- 1) Timeline located in Table 3-5

C. Solicitation Release

- 1) Not posted on websites because it is only sent to list of SBs or DVBEs.

D. Communication with Bidders

- 1) As described in 3.6.1.D

E. Pre-Bid Conference

- 1) No Pre-Bid.

F. Addenda

- 1) No Pre-Bid so the solicitation will detail a deadline for technical questions and the answers will be sent to all that were sent the solicitation.

G. Receipt and Distribution of Bids/Proposals

- 1) 2-4 weeks after sending.

H. Evaluation Process

- 1) Low bid method.
- 2) No technical evaluation.
- 3) Bidders certify that they meet the minimum qualifications.
- 4) Public Bid opening.
- 5) Award made to the lowest bidder that met administrative requirements after application of preference points.

I. NOPA

- 1) No NOPA expiration.

J. Debriefing Bidders

- 1) As described in 3.6.1.J.

K. Protests

- 1) No protest period.

**3.6.5 • Invitation for Bids (IFB)**

This solicitation must be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same work or equipment, specifications, and contract obligations.

An IFB seeks an answer to the following: "Here is exactly what we need to have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?"

Award is made to the responsible bidder offering the lowest price. In this instance, a bidder is required to have the services and qualifications specified in the IFB in order to qualify to submit a bid. A Bidder must certify that they are capable of providing the services based on the requirements stated in the IFB. The cost proposals of bidders who meet the certification requirements are publicly opened. This procedure has been used to select hearing reporter firms, furniture repair services, film development services, etc.

**1. IFB Process Steps:****A. Preparing And Submitting A Solicitation Request Package**

- 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
- 2) Contract Manager identifies minimum qualifications in solicitation template.

**B. Review and Approval**

- 1) Timeline located in Table 3-5

**C. Solicitation Release**

- 1) As described in 3.6.1.C.

**D. Communication with Bidders**

- 1) As described in 3.6.1.D

**E. Pre-Bid Conference**

- 1) No Pre-Bid.

**F. Addenda**

- 1) No Pre-Bid so the solicitation will detail a deadline for technical questions and the answers will be posted.

**G. Receipt and Distribution of Bids/Proposals**

- 1) 2-4 weeks after posting.

**H. Evaluation Process: Low bid method.**

- 1) No technical evaluation.
- 2) Bidders certify that they meet the minimum qualifications.
- 3) Public Bid opening.
- 4) Award made to the lowest bidder that met administrative requirements after application of preference points.

- I. NOPA
  - 1) As described in 3.6.1.I.
- J. Debriefing Bidders
  - 1) As described in 3.6.1.J.
- K. Protests
  - 1) As described in 3.6.1.K.

### **3.6.6 • Request for Proposals (RFP) Primary (Low Bid)**

This solicitation must be as precise as possible to ensure that all proposals are accomplishing the same goal. An objective evaluation procedure must be used to determine which bidders have complied with the RFP requirements and to whom the contract should be awarded.

An RFP seeks an answer to the following: “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 for how much?”

For this method, the majority of the Scope of Work is identified but the Bidder offers the methods and approach.

In most cases, the Commission uses this method. An Evaluation and Selection Committee evaluates and scores the technical proposal. This method should be used to obtain complex services in which professional expertise is needed and may vary or where different methods or approaches may be applied during performance.

Cost proposals are opened for those passing the minimum technical score and the contract is awarded to the lowest bidder after the application of preference points.

1. RFP Primary Process Steps:
  - A. Preparing And Submitting A Solicitation Request Package
    - 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
  - B. Review and Approval
    - 1) Timeline located in Table 3-6
  - C. Solicitation Release
    - 1) As described in 3.6.1.C.
  - D. Communication with Bidders
    - 1) As described in 3.6.1.D
  - E. Pre-Bid Conference
    - 1) 2 weeks after posting.
    - 2) As described in 3.6.1.E.
  - F. Addenda
    - 1) As described in 3.6.1.F.
  - G. Receipt and Distribution of Bids/Proposals
    - 1) 6 weeks after posting.

- H. Evaluation Process: Low bid method
  - 1) Technical evaluation with identified minimum score.
  - 2) Public Bid opening.
  - 3) Award made to the lowest bidder that met the minimum technical score after application of preference points.
- I. NOPA
  - 1) As described in 3.6.1.I.
- J. Debriefing Bidders
  - 1) As described in 3.6.1.J.
- K. Protests
  - 1) As described in 3.6.1.K.

### **3.6.7 • Request for Proposals (RFP) Secondary (High Point)**

This method requires evaluation of proposals by an Evaluation and Selection Committee with the award made to the responsible bidder earning the highest technical and cost score. This method should be used to obtain very complex and/or unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed.

Typically, for this method, goals and objectives are stated but the Bidder offers the detailed work plans, approaches, methods, or even the detailed scope of work.

Use of the secondary method should be limited to those instances in which the Commission is seeking a unique solution to a problem or situation that cannot necessarily be resolved by the lowest bidder (i.e. when the methods, approaches, and procedures to be used in performing the work are of primary importance) and in work authorization agreements. The cost effectiveness and cost adequacy may be judged, evaluated and awarded points as part of the technical score, but this must be in addition to the cost points. The cost points must be at least 30% of the total points.

- 1. RFP Secondary Process Steps:
  - A. Preparing And Submitting A Solicitation Request Package
    - 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
    - 2) SOW Template may be excluded in some circumstances.
  - B. Review and Approval
    - 1) Timeline located in Table 3-6
  - C. Solicitation Release
    - 1) As described in 3.6.1.C.
  - D. Communication with Bidders
    - 1) As described in 3.6.1.D
  - E. Pre-Bid Conference
    - 1) 2 weeks after posting.

- 2) As described in 3.6.1.E.
- F. Addenda
  - 1) As described in 3.6.1.F.
- G. Receipt and Distribution of Bids/Proposals
  - 1) 6 weeks after posting.
- H. Evaluation Process: High Score Method
  - 1) Technical evaluation with cost included in score.
  - 2) Not a public Bid opening.
  - 3) Award made to the highest scored proposal after application of preference points.
- I. NOPA
  - 1) As described in 3.6.1.I.
- J. Debriefing Bidders
  - 1) As described in 3.6.1.J.
- K. Protests
  - 1) As described in 3.6.1.K.

See Tables 3-3 at the end of this section for differences between a Primary and Secondary RFP.

### **3.6.8 • Request for Qualifications (RFQ), Architectural & Engineering (A&E)**

An RFQ-A&E is the competitive process for selecting the professional services of an architectural, landscape architectural, engineering, environmental and land surveying services, and construction project-management services. Award is made to the firm deemed to be the highest qualified to provide the required services and cost is negotiated. Projects requiring A&E services must be solicited through the RFQ process.

In 1996, the Commission adopted regulations for the implementation and use of the A & E selection process. Per Government Code §4525, eligible A & E services are architectural, landscape architectural, engineering, environmental, and land surveying. Staff should first consult with the Contracts Officer to determine if an A & E solicitation is feasible for their project.

The Evaluation of professional services for A & E contractors must be based on demonstrated competence and on the professional qualifications for the satisfactory performance of the required services at a fair and reasonable price.

All A & E solicitations use the Request for Qualifications (RFQ) method that sets out the criteria for determining the best qualified professional for the project.

For an RFQ, the Contract Manager is responsible for completing a rate survey which shall identify appropriate classifications and average rates to be used in negotiating costs with a selected firm. The Process for Establishing a Reasonable Rate under the California Energy Commission's RFQ Regulations, Title 20 CCR, Division 2, Chapter 7, Article 4 is attached to this chapter and available from the Contracts Office.

1. RFQ Process Steps:
  - A. Preparing And Submitting A Solicitation Request Package
    - 1) CEC 20, CEC 30, CEC 105, SOW template and solicitation template, as described in 3.6.1.A.
    - 2) Rate Survey for purposes of negotiations, using the Commission's Process for Establishing A Reasonable Rate (Attachment A-1).
  - B. Review and Approval
    - 1) Timeline located in Table 3-7
  - C. Solicitation Release
    - 1) As described in 3.6.1.C.
    - 2) Also published in identified professional publications, if applicable
  - D. Communication with Bidders
    - 1) As described in 3.6.1.D
  - E. Pre-Bid Conference
    - 1) 2 weeks after posting
    - 2) As described in 3.6.1.E.
  - F. Addenda
    - 1) As described in 3.6.1.F.
  - G. Receipt and Distribution of Bids/Proposals
    - 1) 6 weeks after posting.
  - H. Evaluation Process: Cost Negotiation method
    - i. Technical evaluation
    - ii. Discussions
    - iii. Notice of Proposed Selection (NOPS)
    - iv. Negotiations with the highest scored Firm after application of preference points.
    - 2) Not a public Bid opening because there is no bid.
  - I. NOPA
    - 1) Notice of Award after finalizing cost negotiations.
  - J. Debriefing Bidders
    - 1) As described in 3.6.1.J.
  - K. Protests
    - 1) No protest period.

### **3.6.9 • Competitive Negotiation Solicitation (CNS)**

The CNS option has been removed from the Manual. For more information regarding CNS, please contact your Contracts Officer and refer to a pre-2011 version of the manual. This option is only available for the PIER program.

### 3.7 • NON-COMPETITIVE BID (NCB) CONTRACTS

The Commission has two processing methods for NCB contracts, non-PIER funded contracts and PIER funded contracts.

#### A. Non-PIER funded:

State policy requires contracts to be competitively bid except under specific circumstances as set forth by law or as determined to be in the best interests of the state. In accordance with these policies, the Commission must request approval of NCB contracts for services, in writing, which includes a full and complete justification for limiting the competition.

All NCB contracts require written approval by the Executive Director, the Resources Secretary and DGS-Procurement Division prior to contract execution. The Contracts Officer is responsible for reviewing and processing the NCB request for all approvals.

The Contract Manager prepares the NCB Form CEC-96 and submits it to the Contracts Officer. Contract Managers may submit the CEC-96, prior to submitting the entire contract request package, or may attach the CEC-96 to the contract request package.

The following describes elements of the NCB justification:

1. Why is the acquisition restricted to this good/service/supplier?
2. Explain why the acquisition cannot be competitively bid. Explain if this is an emergency purchase or how the supplier is the only source for the acquisition and reference the PCC that applies, i.e., 12102, 10301/10302, or 10340.
  - Include applicable PCC code
  - Include statements as to the overall need for acquisition
    - o Clear facts
    - o Make your case
    - o Be convincing
    - o Include detail
    - o Mandates
3. Provide the background of events leading to this acquisition.
  - Tell the sequence of events that led to the request for NCB
  - Explain the situation clearly and in detail
4. Describe the uniqueness of the acquisition (why was the good/service/supplier chosen?)
  - This is where you need to make the case that only the designated supplier can meet the requirements/specifications
  - Tell why this supplier is so unique that only they can fulfill the departments requirements/needs
  - Does this contractor offer something, which is unique in its nature (as distinguished from unique in its quality)? Previous experience is not a justification.
  - The fact that a contractor is the best in the business does not justify the NCB. However, the fact that the proposed contractor is the only one in that particular business who is known to the Commission, and a reasonable search for other contractors with similar capabilities has been made, may justify the NCB.



5. What are the consequences of not purchasing the good/service or contracting with the proposed supplier?
  - Describe consequences to department's business needs, programs and, if applicable constituents.
  - Could also describe costs to the State from not acquiring the needed goods and/or services
  - When a contractor has a proprietary database or computer program, the NCB may be justified if the performance of the work requires utilization of that database or program, and that program is not readily available to or from others. If these three conditions (proprietary nature, not available to others, and necessary to the performance of the work) exist, the NCB will generally be approved.
6. What market research was conducted to substantiate no competition, including evaluation of other items considered?

(Provide a narrative of your efforts to identify other similar or appropriate goods/services, including a summary of how the department concluded that such alternatives are either inappropriate or unavailable. The names and addresses of suppliers contacted and the reasons for not considering them must be included OR an explanation of why the survey or effort to identify other goods/services was not performed.)

  - Should include a search not only for supplier that can supply or provide the specified goods/services, but also for alternative goods/services that are similar or appropriate
  - Explain how the department concluded such alternatives were either unavailable or inappropriate
  - Is similar work being or has been performed by the contractor? If the work required is an extrapolation or extension of the original work and substantially relies upon experience gained during the original work, which is not available by a reading of the original work, the NCB may be approved. For example, if relying upon the published or about-to-be-published work, it must be assumed that any prospective contractor could obtain the work and read it. If this reading would put another contractor on a nearly equal basis to the proposed NCB contractor, the NCB cannot be justified. If another contractor is willing to duplicate portions of the original work, which will be needed in order to get the new contract, then NCB is not justified.
7. How was the price offered determined to be fair and reasonable?

(Explain what the basis was for comparison and include cost analyses as applicable.)

  - Provide sufficient detail to justify the purchase.
    - What did you do to determine the price was reasonable?
    - Where did you get the information?
      - From a catalog, internet, past contracts, etc.
    - How does it compare today versus a year ago?
    - Define cost savings
    - Is it set by code or regulation? If so, provide which codes and regulations.
8. Describe any cost savings realized or costs avoided by acquiring the goods/services from this supplier.

- Tell what the cost savings are by using the supplier.
  - Tell what the cost to the state is if the supplier is not used.
  - Indicate if the State will lose money and any other consequences
  - Could include:
    - o Costs avoided if need to choose another vendor/supplier
    - o Cost avoided in terms of lost revenue
    - o Best value consideration
  - If there are no cost savings, say so
    - o "Cost neutral"
9. Time Constraints - The point that a contractor cannot be selected through the competitive process in time to meet a program need is not an adequate justification for NCB. If the time constraint is of a legislative origin, and there is not adequate time for the competitive process, the NCB, limited or informal competition may be appropriate.
2. The PIER Program and AB118 Applied Research Process (Sole Source Letter):
- Sole Source and NCB have the same meaning. Both are justifying why a particular contractor was selected without competitive bidding on the basis of them being the only contractor capable of performing the work.
- In consultation with DGS, and when the cost to the state is reasonable and the Commission makes any of the following determinations:
- The proposal was unsolicited and meets the evaluation criteria of the statute.
  - The expertise, service, or product is unique.
  - A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.
  - The award funds the next phase of a multi-phased proposal and the existing agreement is being satisfactorily performed.
  - When it is determined by the Commission to be in the best interests of the State.
- In addition to the above, the Commission may not award on the basis of sole source until the Commission notifies the Joint Legislative Budget Committee and the relevant policy committees in both houses of the Legislature at least 60 days prior to taking an action of its intent to award, and the Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 60 days from the date of notification.
- The Contract Manager prepares the letter informing the Joint Legislative Budget Committee and the relevant policy committees.
  - The Contract Manager forwards the letter to the appropriate division staff for approval.
  - The letter must then be approved by the Office of Governmental Affairs.
  - The letter shall be approved and signed by the Executive Director.
  - The contract cannot be signed by the Energy Commission Designee if the letter is questioned by the Joint Legislative Budget Committee or before the 61<sup>st</sup> day following the date of the letter.

A Marketplace Survey is not required for PIER Sole Source contracts.

### **3.8 • INITIATING THE CONTRACT**

After selecting an exempt entity, processing a solicitation, or completing a NCB for selecting the contractor, the contract request documents are drafted and submitted to the Contracts Office. The Contract Manager prepares a Contract Request package consisting of a Contract Request Form including all necessary attachments. See Section 4, Contract Request, for details.

**Table 3-1**  
**Standard Solicitation Process Flowchart View**



**Table 3-2 Solicitation Process Calendar View**

<b>Week #</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
<b>1</b>	Request Received TM Sched, CAO edits				
<b>2</b>	CAO sends to Legal Legal edits				
<b>3</b>	Legal sends to CAO CAO send to CAM		Team Meeting	CAO begins finalizing full solicitation	
<b>4</b>	Solicitation Routed				
<b>5</b>	Solicitation Posted				
<b>6</b>					
<b>7</b>	Pre-Bid/ Workshop Questions Due COB	Questions to CAM		Questions to CAO	Q&A to Legal for Review
<b>8</b>	Q&A Posted				
<b>9</b>					
<b>10</b>					
<b>11</b>	Proposals Due	Admin Review	1 <sup>st</sup> Eval Meeting	Evaluations begin	
<b>12</b>					
<b>13</b>					
<b>14</b>	2 <sup>nd</sup> Evaluation Meeting	NOPA Posted			

**TABLE 3-3  
SOLICITATION VARIATIONS**

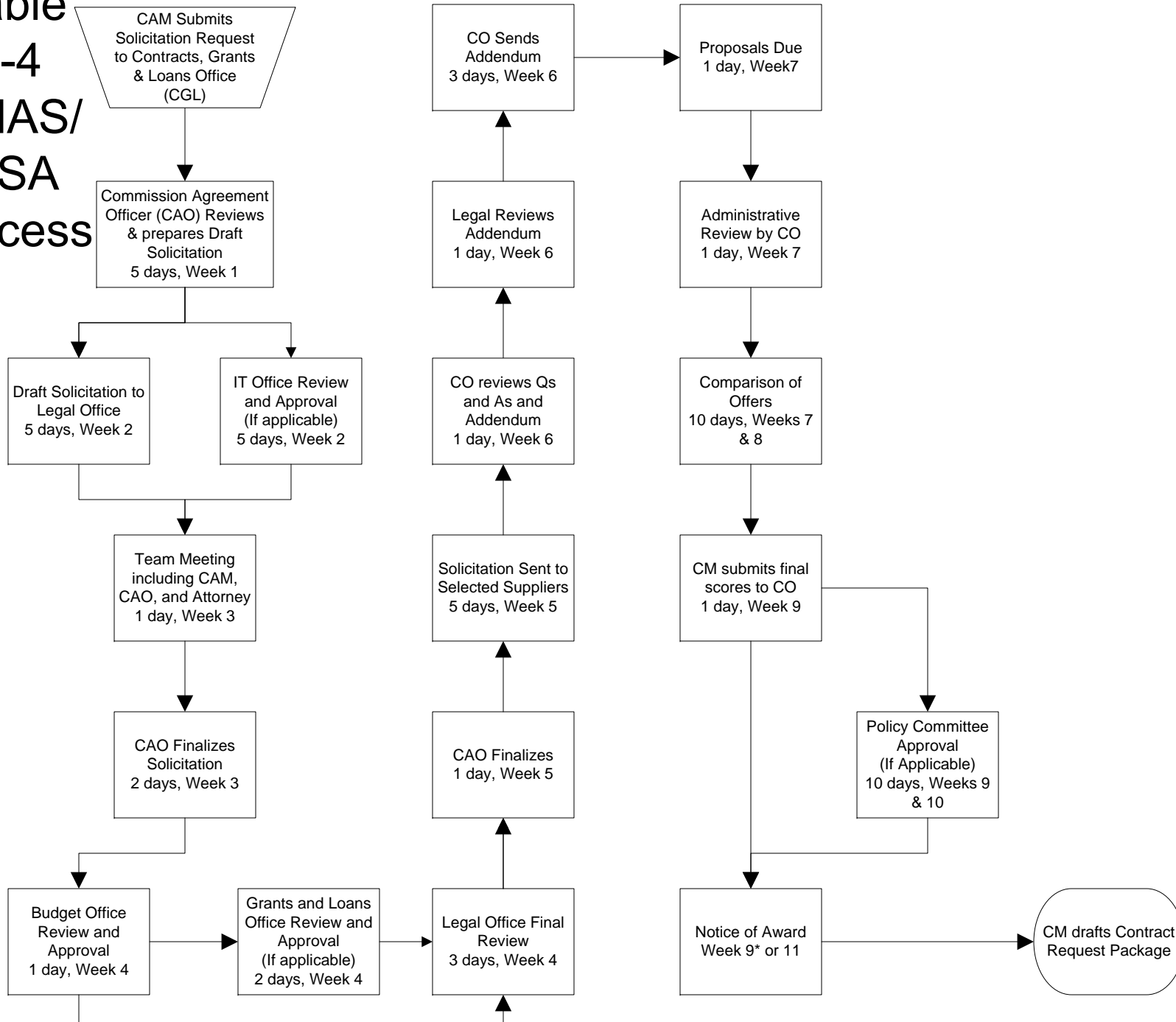
<b>Considerations</b>	<b>Invitation for Bid</b>	<b>Primary RFP</b>	<b>Secondary RFP</b>
<b>When this method is typically used:</b>	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.	<p>To obtain complex, but not uncommon, services in which professional expertise is needed and performance requires varying methods or approaches but not innovation or creativity.</p> <p>The bidder uses discretion in applying various approaches or methods.</p> <p>The methods and approaches used may not differ significantly from one bidder to another, which allows costs to be used as the deciding factor for making the award.</p>	<p>To obtain very complex and/or unique services in which professional expertise and methods may vary greatly and performance requires unusual, innovative, or creative techniques, methods, and approaches.</p> <p>The quality of expertise and approaches, methods, and innovation used may differ significantly from one bidder to another.</p>
<b>Cost/value of services:</b>	\$5,000 or more	<p>\$5,000 or more</p> <p>Costs offerings are submitted in a separate sealed envelope apart from the narrative proposal.</p> <p>Cost proposals are not scored.</p>	<p>\$5,000 or more</p> <p>Cost may appear as a section within the narrative proposal and must be a significant factor. Cost does not mean cost effectiveness.</p> <p>The cost component is either scored against criteria stated in the RFP or subjected to a formula to convert the quoted cost into score or point values.</p> <p>Cost offerings are not announced or publicly read.</p>
<b>What information is submitted:</b>	Bid form and other material deemed necessary by the awarding agency.	Narrative proposal and a separate envelope containing cost information.	Narrative proposal, including a cost component, in one envelope.
<b>Scope of work (SOW) considerations:</b>	<p>SOW is pre-developed and clearly stated in the IFB package.</p> <p>Bidders are generally told what, how, when, and where work and services are to be done.</p>	<p>Objectives, major tasks, and timelines are identified. Bidder offers detailed work plans, methods, etc.</p> <p>SOW is fairly well defined in terms of services or functions that must be performed, as are the time frames that are required.</p>	<p>Goals and objectives are stated. Bidder offers detailed work plans, approaches, methods, etc.</p> <p>SOW is less precisely defined and may contain only the agency's needs, goals, or objectives that must be met.</p>

**TABLE 3-1  
SOLICITATION VARIATIONS**

<b>Considerations</b>	<b>Invitation for Bid</b>	<b>Primary RFP</b>	<b>Secondary RFP</b>
<b>How small business preference is applied:</b>	The cost bid of a certified small business is reduced by 5 per cent of the lowest cost offered by a noncertified small business.	The cost bid of a certified small business is reduced for evaluation purposes by 5 per cent of the lowest cost offered by a noncertified small business.	Certified Small business will have its points increased by 5 per cent of the total points awarded to the highest scored nonsmall business bidder.
<b>CSCR advertising:</b>	Yes. (See Note below.)	Yes. (See Note below.)	Yes. (See Note below.)
<b>Bidders' conference:</b>	Optional. Held if necessary to clarify service needs.	Optional. Held if needed to clarify service needs.	Optional. Held if needed to clarify service needs.
<b>Oral Interviews:</b>	Not applicable.	Optional. Held if needed.	Optional. Held if needed.
<b>When TACPA/EZA/LAMBRA-applied:</b>	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 and the work site is not fixed.  Following the opening and reading of cost offerings, cost offerings are then adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.	If the total contract is more than \$100,000 the work site is not fixed.  Cost offerings are adjusted for applicable small business, TACPA, EZA and LAMBRA preferences.
<b>When DVBE participation is required:</b>	Dependent on agency decision.	Dependent on agency decision.	Dependent on agency decision.
<b>How award is made:</b>	Lowest cost responsible bidder: public bid opening  Bidder capabilities are not rated or scored. Bidders either pass or fail IFB requirements.	Lowest cost, qualified responsible bidder with a public cost bid opening.  Narrative proposals are reviewed, evaluated, and scored for compliance with format, content, and qualification requirements.  Qualified proposals that are responsive to the RFP requirements will have their cost/price offerings publicly opened and read.  Award is to the responsible bidder offering the lowest cost for its services.	Award is to the responsible bidder earning the highest overall score.  Narrative proposals are evaluated and scored. Passing points are set to determine the finalists.

Note: Exception: See SCM 5.80 B for contracts under \$250,000 awarded to a certified small business or DVBE.

# Table 3-4 CMAS/MSA Process

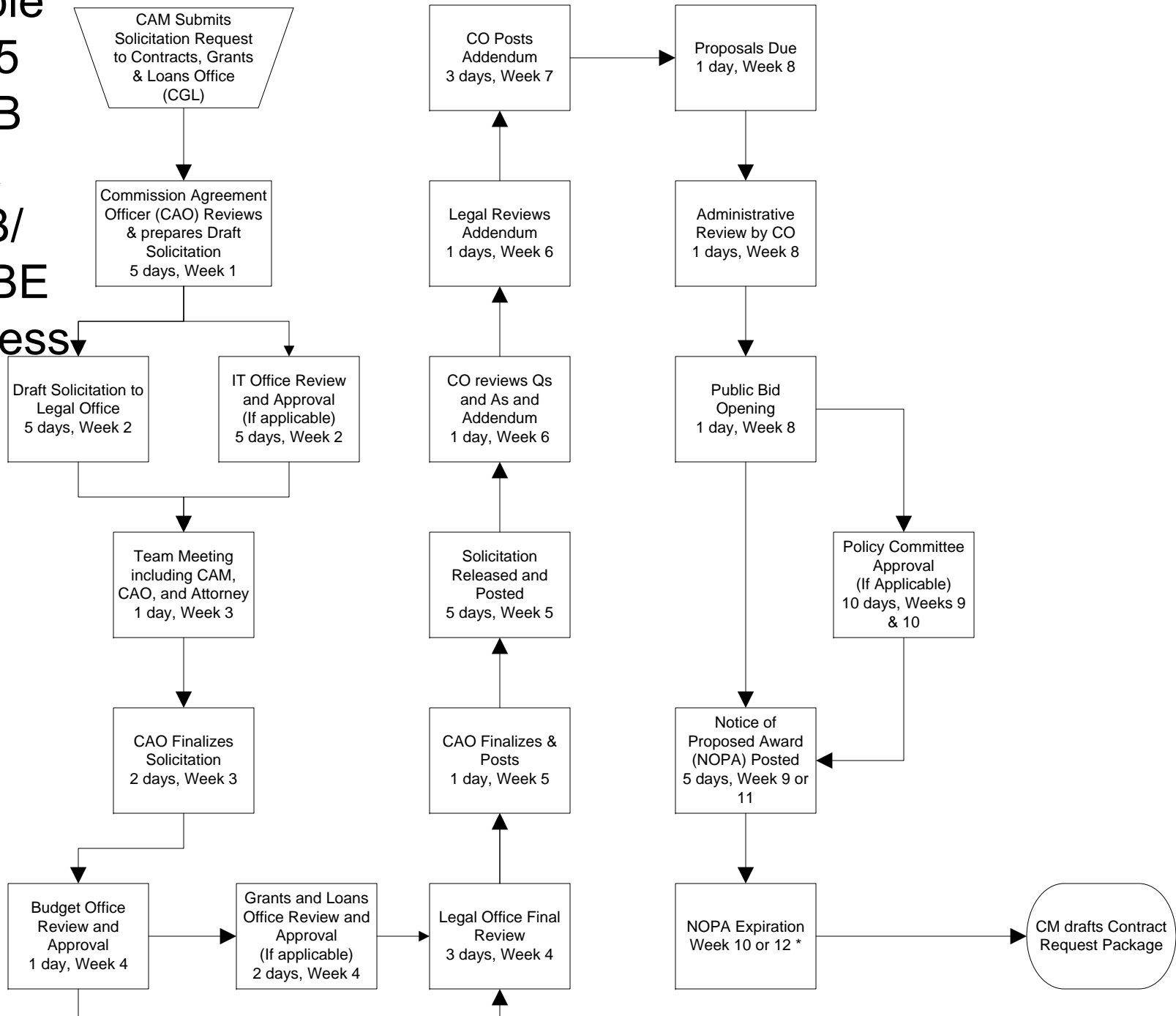


Days shown are Work Days.

\*9 Weeks is the average processing time from the date the solicitation request package is submitted to the Contracts, Grants & Loans Office. Delays at any point of the process will affect the NOPA date.



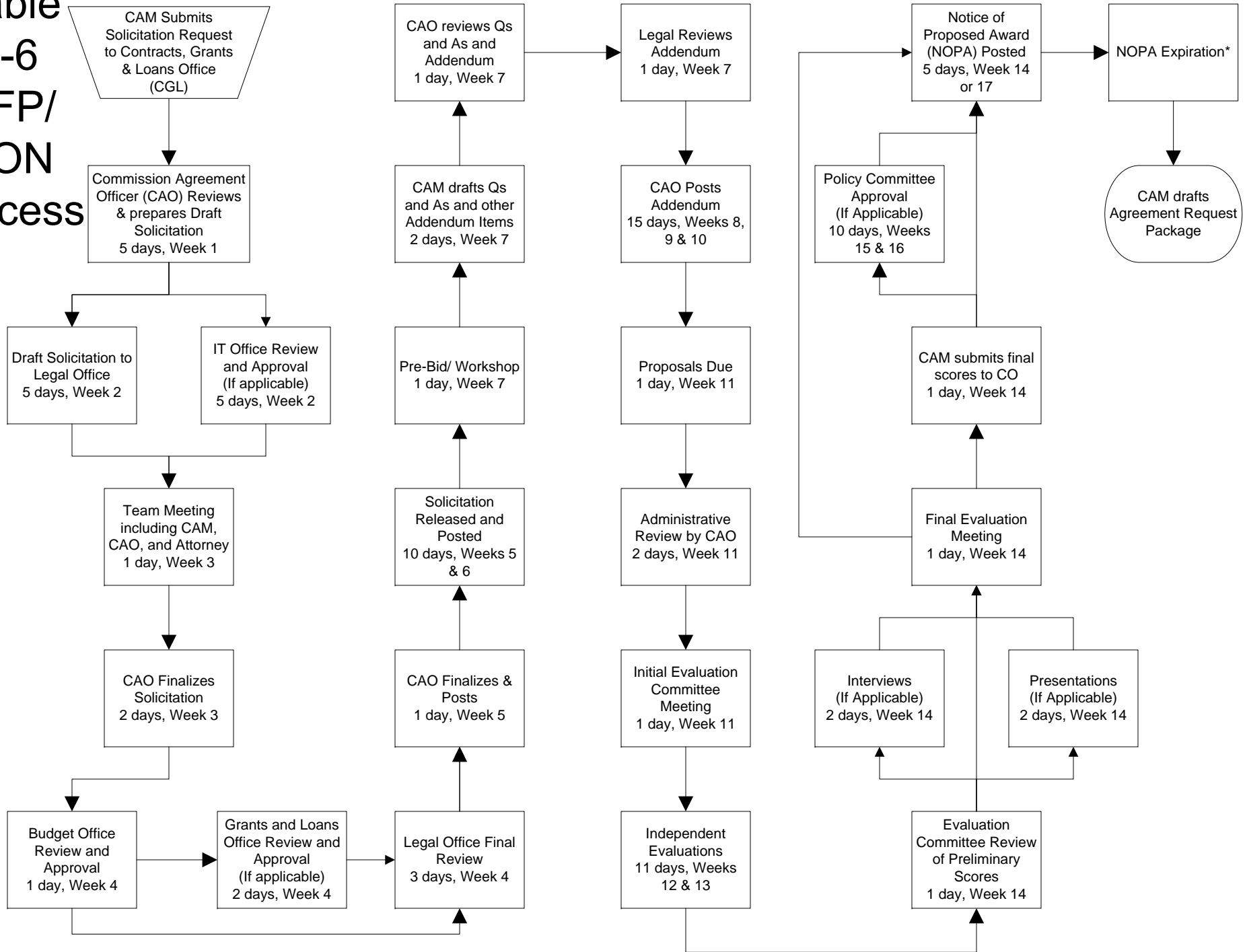
# Table 3-5 IFB & SB/DVBE Process



Days shown are Work Days.

\*10 Weeks is the average processing time from the date the solicitation request package is submitted to the Contracts, Grants & Loans Office. Delays at any point of the process will affect the NOPA date.

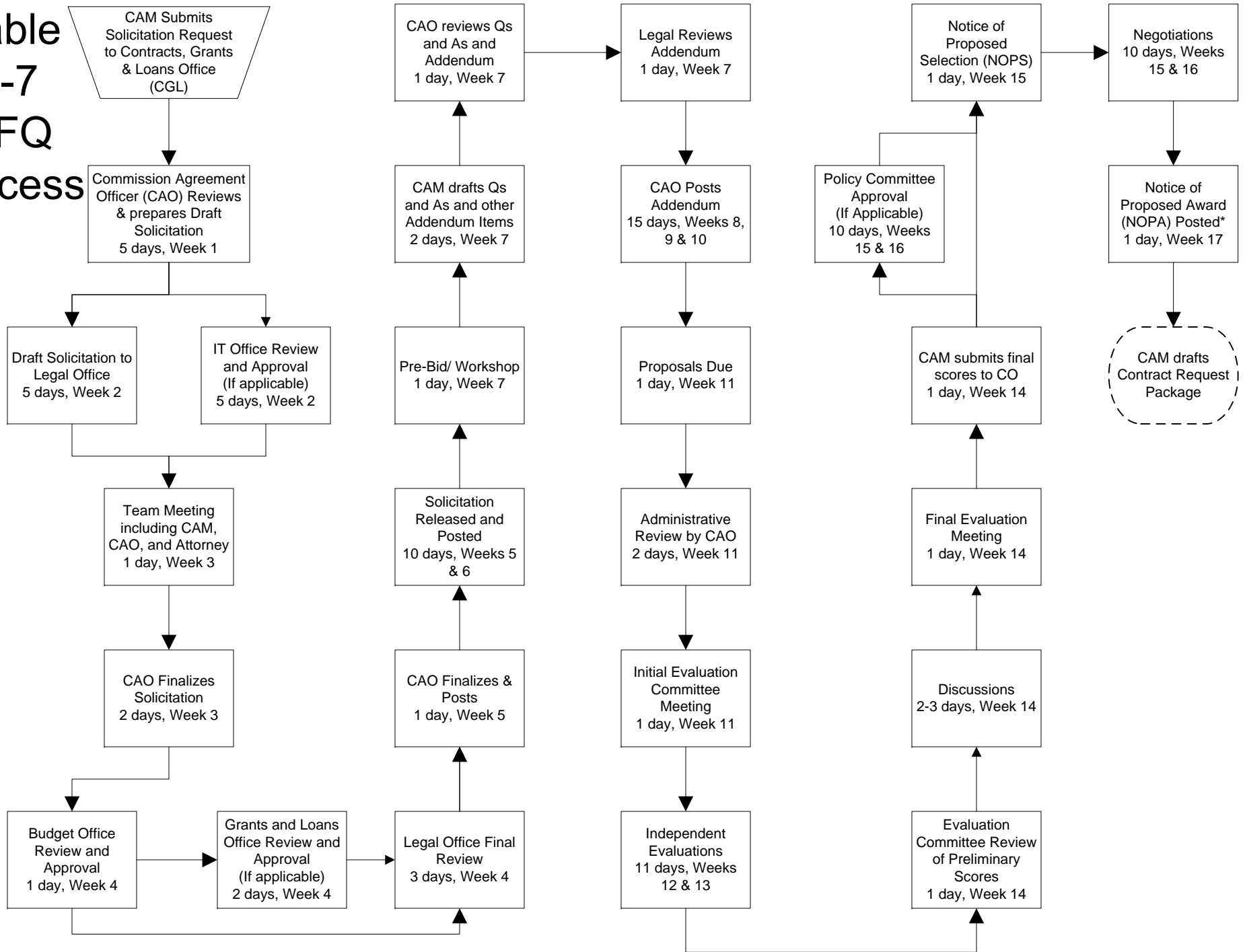
# Table 3-6 RFP/PON Process



Days shown are Work Days.

\*14 Weeks is the average processing time from the date the solicitation request package is submitted to the Contracts, Grants & Loans Office. Delays at any point of the process will affect the NOPA date.

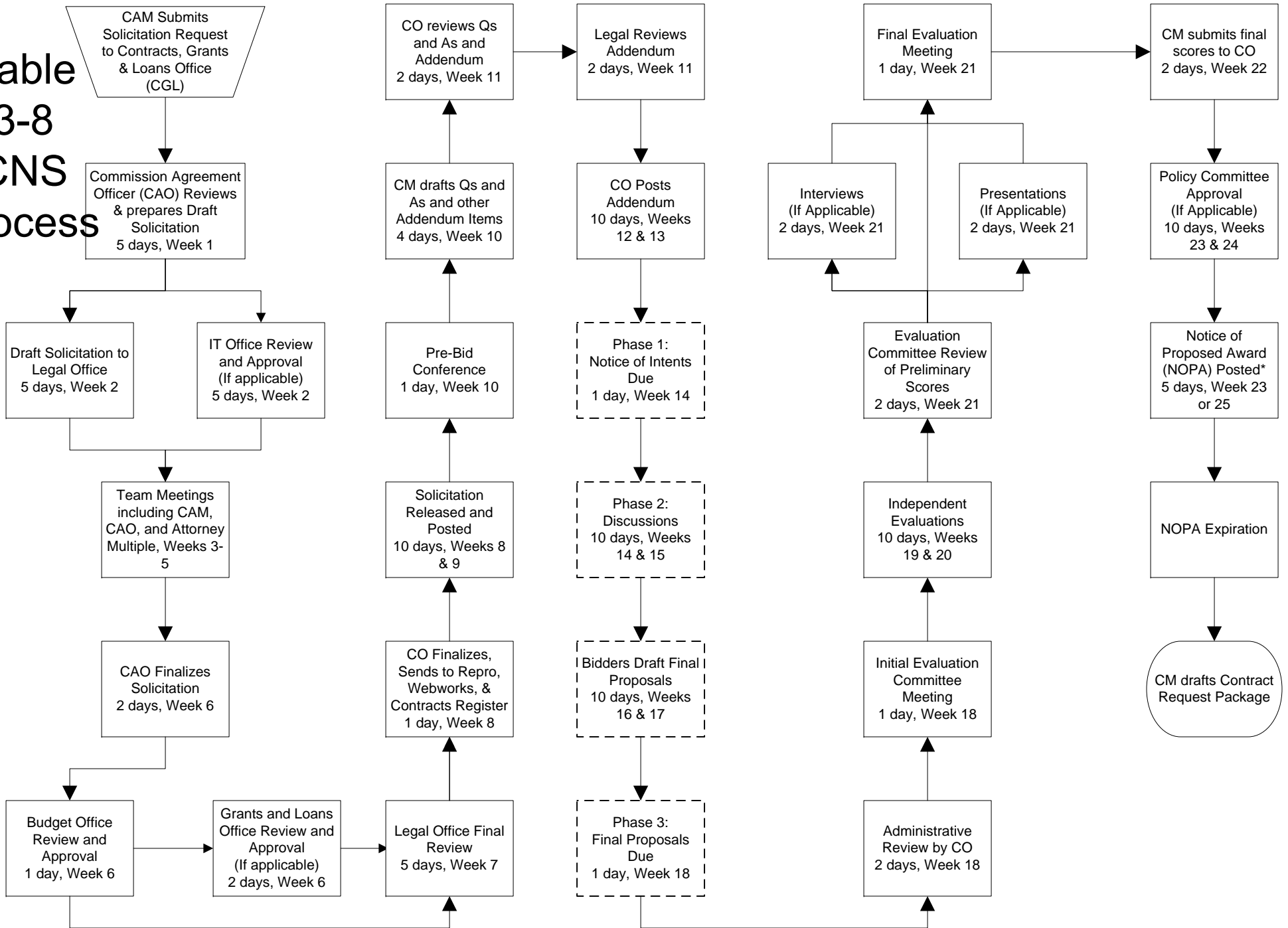
# Table 3-7 RFQ Process



Days shown are Work Days.

\*17 Weeks is the average processing time from the date the solicitation request package is submitted to the Contracts, Grants & Loans Office. Delays at any point of the process will affect the NOPA date.

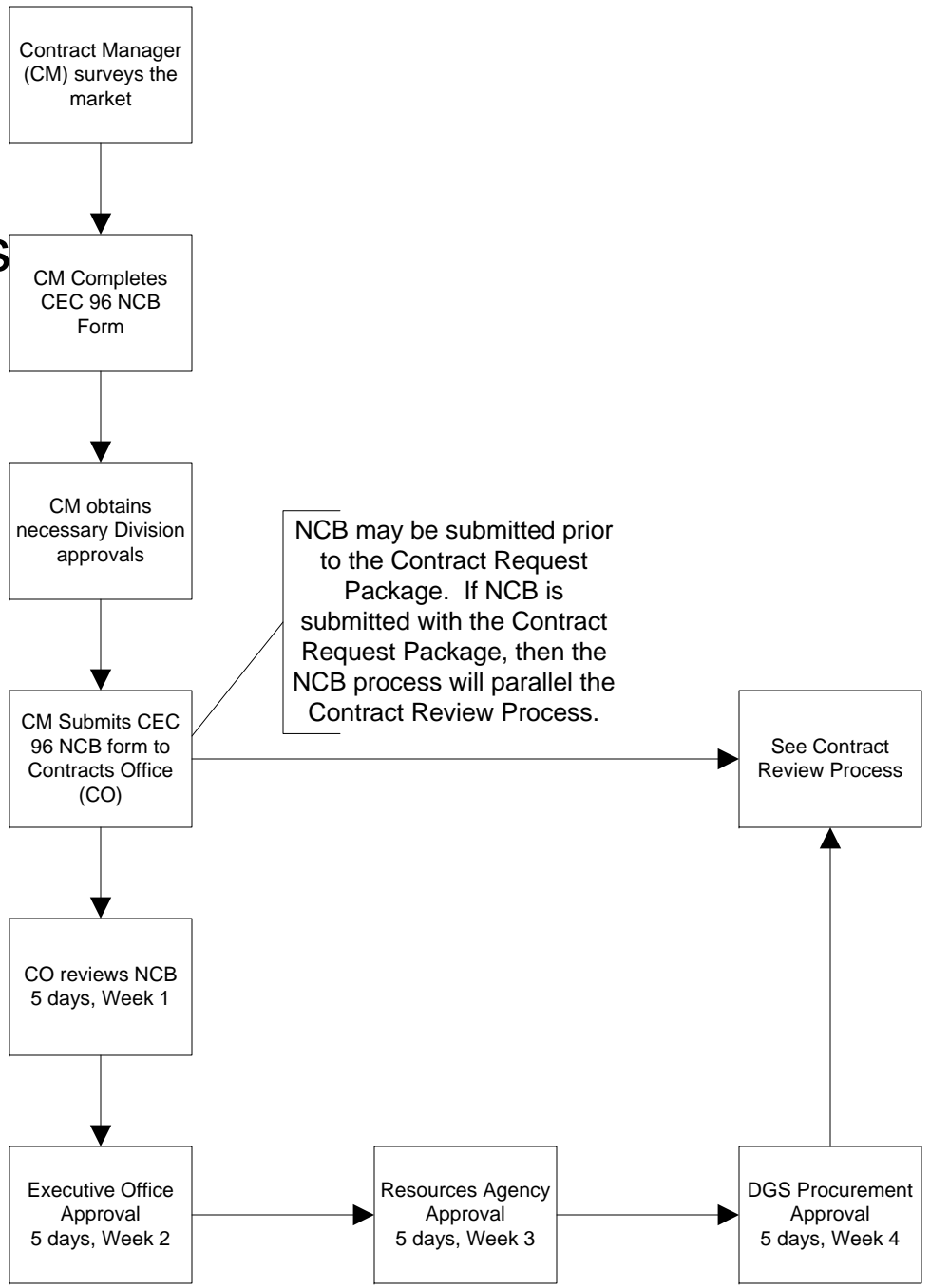
# Table 3-8 CNS Process



Days shown are Work Days.

\*23 Weeks is the average processing time from the date the solicitation request package is submitted to the Contracts, Grants & Loans Office. Delays at any point of the process will affect the NOPA date.

Table  
3-9  
NCB  
Process



## 4. CONTRACT REQUEST PACKAGE

### 4.0 • INTRODUCTION

This section explains the process for requesting a contract. The Contract Request Form (CRF), with appropriate attachments, serves as the primary source of information for contract preparation and justification. All Contracts forms can be found on the Intranet, under Contract Forms.

### 4.1 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	4.0
Table of Contents	4.1
Contract Request Form (CRF)	4.2
Funding Redirections	4.3
Preparing a Scope of Work	4.4
Preparing a Contract Budget	4.5
Table 4-1, Contracts <u>not considered a project</u> Under CEQA	
Table 4-2, Contracts <u>considered a project</u> Under CEQA, Need to Analyze for Possible <u>exemptions</u>	

### 4.2 • CONTRACT REQUEST FORM, CEC 94 (CRF)

A Contract Request form (CRF) is prepared and submitted with the Scope of Work and Budget details when requesting a contract to be processed by the Contracts Office. These documents are referred to as the Contract Request Package. Each item must be addressed on the CRF as incomplete information may cause a delay in contract development or execution. If you have questions as you complete the CRF, use the F1 button on your keyboard and a help text box will appear or refer back to these instructions or you can select the Form Instructions Tab.

#### A. Determine if this is a new Contract or an Amendment to an existing Contract:

1. A new contract
  - a. Check the box
  - b. Contract Number will be assigned by the Contracts Office
2. An amendment to an existing contract
  - a. Check the box
  - b. Provide the Original Contract Number and the number of this amendment

#### B. Division/ Office Information

1. Select the requesting division/ office
2. Identify the name of the Contract Manager, the date Contract Manager's Training was obtained, Mail Stop number, and phone number

The Contract Manager is the person designated by the Commission to monitor the contractor's performance, to ensure compliance with all contract provisions, and is usually the program staff familiar with the work required under the contract. Contract Managers are required to complete contract management training before assigned to manage a contract. The training is required by Department of General Services and covers the following areas: contract preparation requirements, processing procedures, State requirements and policies, roles and responsibilities, contract management, invoice review and approval, and required interim and final product reports and evaluations.

**C. Contractor:**

1. Fill in the complete legal name of the Contractor
2. Fill in the Federal ID Number for the Contractor (the contract cannot be processed without it, ask the contractor if you do not have the number)

**D. Title of Project:**

1. Give a brief title for this project
2. Limit the length of your title to 72 characters

**E. Term of Contract:**

1. Projected Start and End dates of New or Original Agreement
  - a. The start date must be after the Commission Business Meeting and control agency approval. The end date should be two or three months after the final deliverable is due, this cushion allows for slippage in the schedule.
  - b. Term must be within the Funding Life of the dollars funding the contract work (see Chapter 2 of the Energy Commission Contract Manual)
2. New end date if requesting an extension via amendment
3. Amount funded by this contract
  - a. If action is an amendment and no dollars are being added, enter 0.
  - b. If action is an amendment and dollars are being added, enter dollar amount being added to the original contract and any previous amendments.

**F. Business Meeting Information**

1. Proposed Business Meeting Date
  - a. Follow the Business Meeting Schedule posted on the Energy Commission's EnergyNet
2. Selection of consent or discussion
  - a. Consent items may include no-cost time extensions or other administrative changes, or contracts greater than \$10K but less than \$25K
  - b. Most contracts will be discussion items. The Executive Director may change this selection during the preliminary agenda review meeting
3. Business Meeting Presenter
  - a. This is the Contract Manager or other designee
4. Time Needed
  - a. Regular time for an item is 5-15 minutes

5. Agenda Item Subject and Description
  - a. This should begin: "Possible approval of a contract with XYZ Company to ..." Describe contract action in a brief summary of what the project will be doing. If an amendment, describe amendment action, i.e. extending term 12 months and adding \$100K to contract.
6. If Business Meeting Approval is not required, check the applicable box (Executive Director's signature is required in all cases and some options also require Policy Committee's signatures)

#### **G. Purpose of Contract:**

1. Insert a brief summary of the contract. What is the reason and necessity for contracting out this service? What is being achieved? Is there specific legislation that affects the contract? How will the contract results fit or affect Commission goals and programs?
2. Describe any ongoing or follow-up requirements which may result from the proposed contract including the estimated needs for further funding, staff resources. Describe potential impacts, problems or required coordination efforts between the proposed contract and other Commission programs, state agency programs, the public or utilities.
3. For amendments, briefly describe the purpose of the original contract and then describe what the amendment is changing, e.g., a no cost time extension of one year is necessary because the work was delayed by an earthquake that destroyed the Contractor's equipment and prevented the Contractor from completing the work as originally planned. Or, this amendment adds \$50K to test additional appliances than originally planned in the contract.
4. Include how the Final Report will be used by the Commission, if applicable.

#### **H. California Environmental Quality Act (CEQA) Compliance:**

There are two main questions for the California Environmental Quality Act (CEQA) section of the CRF. First, is the contract considered a "Project" under CEQA? Second, if it is a "Project", is it exempt?

##### **1. Is the contract a Project as defined by law?**

###### **a) A Project is defined as:**

"An activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is ... an activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies". Public Resources Code section 21065.

###### **b) A Project does not include:**

The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. 14 California Code of Regulations 15378(b)(4).

###### **c) A Project does not include:**

Based on these definitions, many Energy Commission contracts are not considered to be a Project. See the tables at the end of this section for examples of Energy Commission contracts that are considered to be a Project and contracts not considered to be a Project. If you do not find your type of contract on these charts, and have any question about whether your contract is a Project, please contact the attorney assigned to review contracts for your division.



If you determine that the contract is not a Project, check the “No” box, and then include a brief explanation of why the contract is not a Project based on the statutory definition of Project. The CRF already includes the first part of the sentence containing the statutory language, and you complete the sentence. For example, if your contract involves a survey of consumer energy use behavior, you will add the underlined portion:

“Contract will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because the contract involves a survey of consumer energy use behavior and the outcome of the contract is a report analyzing survey results.”

2. If the contract is considered a Project, is it exempt?

- a) If the contract is considered a Project, the next question is if an exemption applies. For most Commission contracts that are considered to be a Project, there will be an applicable exemption in one of the following categories:
- Statutory exemption
  - Categorical exemption
  - Common sense exemption
  - For PIER contracts, Contract Managers will have possible exemptions available in the PIER Information Management System (PIMS). Choose the exemption you believe is applicable, and include the section number from the statute or CEQA Guidelines, as included in PIMS.
  - For non-PIER contracts, contact the attorney assigned to your division for assistance in choosing a suitable exemption.
  - For all contracts that have an appropriate exemption, complete the Notice of Exemption (NOE) form and submit it with the CRF. The blank form is available on the Energy Commission Intranet under blank forms. The information on the NOE is similar to portions of the CRF. The NOE is a standard state form and is filed with the Office of Planning and Research.
- b) If the contract is not exempt, the Contract Manager needs to consult with the attorney assigned to their division and the Energy Facilities Siting Division (Siting). Based on the information provided by the Contract Manager, Siting will determine what type of CEQA documentation, if any, is necessary and how to proceed. A Negative Declaration could be prepared for those contracts resulting in actions that have a potential for a significant environmental effect but have been shown by an Initial Study to not have one. An Environmental Impact Report (EIR) could be prepared for contracts that directly result in an action having a significant environmental impact. Because of the considerable lead time needed for Siting to determine the need for a Negative Declaration or EIR and to prepare, distribute, and review the specific documents, it is important that the Contract Manager contact Siting as early as possible.

**I. Budgets Information:**

If you have questions with this section, contact your division liaison or the budgets office. If requesting an amendment and no dollars are being added via the amendment, enter 0. If this section is not completed, it will delay contract preparation.

1. Amount Funded by this Contract
  - a. This section is a summary of all funding sources

- b. For each funding source, identify the total dollars to be allocated to this contract
- c. The total for all funding sources should be the total amount of the contract
2. Breakdown by Fiscal Year (FY)
  - a. This section is a summary of all funding sources for each FY
  - b. By FY, identify the total amount allocated to this contract
  - c. This section does not identify funds by funding source and does not need to line up with the previous section
  - d. Also identify by FY if the funds have already been approved (for future FY funds, this option should be no)
  - e. The total of this section should be the total amount of the contract
3. Funding Sources
  - a. This section details the funding by both the Funding Source and FY
  - b. List the amount for each Funding source by FY and budget list number
  - c. The total in this section should be the total of the contract
4. Reimbursement Contract:
  - a. If the funding source is a Reimbursement Contract, identify the contract number
5. Federal Agreement:
  - a. If the funding source is a Federal Agreement, identify the Agreement number

**J. Contractor's Contact Information:**

1. Contractor's Administrator/ Officer is:
  - a. The administrative contact and the equivalent of the Commission Contracts Officer
  - b. The individual that will receive all contract correspondence from the Contracts Office including the final contract for signature (but is not necessarily the individual that will sign)
2. Contractor's Project Manager is:
  - a. The technical contact
  - b. The equivalent of the Commission Contract Manager
  - c. The individual that will work with the Commission Contract Manager as the contract progresses
3. The same individual could be the administrator and project manager

**K. Contractor Type:**

1. Is the contractor:
  - a. A Private Company (including non-profits)
  - b. A CA State Agency or Department (including UC and CSU)
  - c. An Other Governmental Entity (i.e. city, county, federal government, air/water/school district, joint power authorities, public universities from another state)

**L. Selection Process Used:**

This section should identify the selection processed used for the item being requested. If you are requesting an amendment, you need to address the amendment selection (NCB? Exempt no cost time extension?)

1. Solicitation:
  - a. Select Solicitation type from drop-down menu
  - b. Identify the Number
2. Non-Competitive Bid
  - a. Attach a CEC 96 (and Sole Source letter for PIER)
3. Exempt
  - a. Select Exemption:
    1. Amendment to a competitively bid contract (adding no more than 30% of original contract value not to exceed \$250,000 with no change to the SOW)
    2. Amendment to correct an incidental error
    3. Co-Sponsorship
    4. Expert Witness
    5. Federal Grant Funding Agency Required
    6. Interagency
    7. Legal Services
    8. Mandated by Legislation
    9. Membership
    10. MOU
    11. No Cost Time Extension
      - a. must be the first no-cost time extension of 12 months or less
      - b. no change to the scope of work or budget
      - c. no increase in rates or fees
    12. Other Governmental Entity
    13. Proprietary Subscriptions
    14. Royalty Agreement
    15. Temporary Assignment
    16. Travel and Per Diem Only (less than \$5,000)

**M. Civil Service Considerations:**

See Chapter 2 of the Energy Commission Contract Manual for more information

1. Not Applicable:
  - a. If the Contract is with a CA State Entity
  - b. If the Contract is a membership or co-sponsorship
2. PIER Exemption per Public Resources Code

- a. PRC 25620, et seq., authorizes the Commission to contract for PIER research projects
  - b. Select this option only for PIER funded R&D projects.
3. The Services Contracted
- a. Are not available within civil service
  - b. Cannot be performed satisfactorily by civil service employees
  - c. Are of such a highly specialized or technical nature that the expert knowledge, expertise, and ability are not available through the civil service system
4. The Services are of such an
- a. Urgent
  - b. Temporary, or
  - c. Occasional nature
- That the delay to implement under civil service would frustrate their very purpose.
5. Justification:
- a. Provide a detailed justification demonstrating how your contract meets any of the items in #3 or #4.

#### **N. Payment Method**

How will we be paying the contractor for their work?

1. Reimbursement in arrears based on:
  - a. Itemized Monthly (most often used)
  - b. Itemized Quarterly (second most often used)
  - c. Flat Rate (this is not common or encouraged, speak to Contracts Office if choosing this payment method)
  - d. One-time payment
2. Advance Payment (State Restrictions apply, See Contracts Office if contractor is not one of the entities listed below)
  - a. Advance payment can be made to:
    - CA State Agencies
    - Federal Government (DOE Laboratories etc...)
3. Other (not a common option)
  - a. Explain

#### **O. Retention:**

1. Is contract subject to retention?
  - a. Private entities (including non-profits) are always subject to retention
  - b. California state agencies are never subject to retention
  - c. Federal agencies are not subject to retention (including national laboratories)
  - d. Other public entities may not be subject to retention at the discretion of the Contract Manager

2. If yes, do you plan to release retention prior to contract termination?
  - a. Is yes, the budget must identify which tasks are separate and distinct.
  - b. Administrative tasks cannot be considered separate and distinct.
  - c. Tasks considered separate and distinct must not affect the initiation or outcome of other tasks.

**P. Justification of Rates:**

1. Rates for other governmental entities do not require justification.
2. What basis did you use to determine that the price or rate is reasonable?
3. Describe the steps that you took to compare rates between firms:
  - a. Did you do a phone survey?
4. Be specific, this is required by DGS.
  - a. Was this the lowest bidder in a primary RFP?
  - b. Were the rates negotiated in an RFQ solicitation?
  - c. Are these the CMAS or MSA rates?
  - d. The Energy Commission has a negotiated overhead rate with UC.
  - e. Are the rates similar to the rates from this company or like companies in previous agreements?

**Q. Disabled Veteran Business Enterprise Program (DVBE):**

All contracts with private companies must have at least 3% of all contract dollars going to certified DVBEs or the Executive Director may exempt the contract from the DVBE requirement.

1. Contracts with the following entities are exempt from DVBE participation requirements:
  - a. Other CA State Agencies
    - Including UC and CSU (but not CSU Foundations like University Enterprises)
  - b. Other Governmental Entities:
    - i.e. city, county, federal government, air/water/school district, joint power authorities, public universities from another state
2. All other entities must meet the 3% DVBE requirement by one of the following:
  - a. Contractor is a certified DVBE
  - b. Contractor is subcontracting at least 3% with a certified DVBE
  - c. Identify the DVBE amount and percent of the total contract
  - d. Identify the name of the DVBE if other than the prime contractor
3. Contract Managers may request an exemption to the DVBE requirements:
  - a. Complete and attach a CEC 95 with the CRF
  - b. Exemption must document a clear justification for not meeting DVBE requirement

**R. Is the Contractor a certified Small Business (SB), Micro-Business (MB) and/ or DVBE?**

1. Mark all that are appropriate
2. Many DVBEs are also Small Businesses

**S. Is the Contractor subcontracting any services?**

1. If so, identify each company and mark if they are a certified SB, MB or DVBE

**T. Miscellaneous Contract Information:**

1. Will there be work authorizations?
  - a. See Chapter 6 of the Energy Commission Contract Manual for more information on work authorizations.
2. Will there be IT expenditures?
  - a. Purchasing software?
  - b. Modeling?
  - c. If the project will affect any Commission infrastructure, Contract Manager should contact the IT office and keep them informed of the project
  - d. Project may be contracted through the IT office instead
3. Is the Contractor providing confidential information?
  - a. As a State Agency, the Commission has policies and practices for accepting confidential information
  - b. All Contract information not identified as confidential is public record and can be viewed by anyone. This includes Contractor budgets.
4. Is the Contractor going to purchase equipment?
  - a. Equipment is defined as:
    - Having a useful life of at least one year
    - Having an acquisition unit cost of at least \$5,000
    - Purchased with Energy Commission funds
    - Any products, objects, machinery, apparatus, implements or tools purchased used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of Materials purchased for the project.
    - For determining depreciated value of equipment used in the Agreement, the project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.
5. Frequency of Progress Reports:
  - a. Must coincide with how the contractor is invoicing because each invoice must be accompanied by a progress report
  - b. Monthly
  - c. Quarterly
  - d. Other
6. Is a final report required?

- a. Most Energy Commission Contracts ask the Contractor to answer a problem in the form of a final report.
- 7. Is the Contract, with amendments longer than a year?
  - a. Contracts longer than a year must be justified.
  - b. PIER contracts are authorized for longer than a year by statute

#### **U. CRF Checklist**

- 1. Scope of Work (Exhibit A)
  - a. All Contract Request packages must be accompanied by a Scope of Work (SOW) (unless the request is for an amendment where the SOW is not being modified)
- 2. Budget Detail (Exhibit B)
  - a. All Contract Request packages must be accompanied by Budget Detail (unless the request is for an amendment where the budget is not being modified)
- 3. CEC 96, NCB Request (If applicable)
  - a. Required if contractor was selected by Non-Competitive Bid
- 4. CEC 30, Survey of Prior Work
  - a. Required to document that this work is not duplicative (not required for an amendment)
  - b. Contract Manager must complete the CEC 30 and submit it to the Library
- 5. CEC 95, DVBE Exemption Request (If applicable)
  - a. Required if contractor is not meeting DVBE participation of 3%
  - b. Contracts Officer will review this form and route it for Executive Director signature
- 6. Draft CEQA Notice of Exemption (NOE)
  - a. Required if contract is considered a CEQA project but is exempt
- 7. Resumes
  - a. Required for all Consultant Service Contracts
  - b. Not required for a contract that is a result of a solicitation as they were provided in the proposal
  - c. Not required for contracts with public entities
- 8. CEC 105 Conflict of Interest Questionnaire
  - a. Required of CM and any other staff working on the agreement
  - b. Required for ALL agreements, contracts and amendments
- 9. CEC 106 IT Component Reporting Form
  - a. Required for ALL agreements, contracts and amendments
  - b. Questions on the form should be directed to ITSB

#### **V. Signatures:**

- 1. Contract Manager, Office Manager and Deputy Director signatures are always required for a Division. Contract Manager and Office Manager signatures are required if request is not coming from a division.

2. Presiding Policy Committee
  - a. Required when contract approval is delegated to the Executive Director
3. Associate Policy Committee
  - a. Required when contract approval is delegated to the Executive Director
4. Executive Director
  - a. Required when contract approval is delegated to the Executive Director

#### 4.3 • FUNDING REDIRECTION

Any request to change funding sources or amounts for an executed contract should be directed to the Budget Office.

#### 4.4 • PREPARING THE SCOPE OF WORK, EXHIBIT A

The Scope of Work template and instructions are located on the Intranet under the Contracts Office page. Contract Manager shall retrieve and use the current version of the template and instructions when preparing a Scope of Work.

- A. The Scope of Work is drafted in the selecting a contractor phase but may need to be updated to include information from the contractor's bid/proposal.
- B. It is important that the Scope of Work define the work to be accomplished in a clear, step-by-step, and concise manner to avoid problems or misunderstandings. It should be written containing mandatory or direct language using complete sentences. Components of a Scope of Work:
  1. Should be structured by task and/or subtask which may be either ongoing or sequential. Reports are the result of a task and should not be listed as a task.
  2. If a task includes interim deliverables, identify them and how they relate to the entire task. If interim or final written reports are required, the Contract Manager must carefully describe what is to be included in these reports. This will assure that the Contractor is specifically aware of the work to be performed, and will assist the Contract Manager in effectively managing the contract. A good phrase to use is: "The report shall contain, but not be limited to, the following:"
  3. Deliverables must be tangible items that can be filed in the contract file. These may include reports, written summaries, written or drawn plans, a CD including worksheets, presentation materials, etc. The following are examples of items that are not deliverables:
    - a. Phone calls (instead, the deliverable could be a written summary of a phone call)
    - b. E-mails (instead, the deliverable could be a copy of an email)
    - c. Workshops (instead, the deliverable could be workshop materials)
  4. Presentations (instead, the deliverable could be presentation materials)
  5. Each task should contain the due dates for all deliverables.
    - a. For PIER, due dates are identified on a separate Schedule of Deliverables document.
    - b. For Non-PIER, due dates should be identified in a table at the end of the Scope of Work.
  6. May also provide for contingencies. This can include acceptable alternatives to the primary tasks or deliverables in the event that the primary task cannot be performed.
- C. Deliverable Due Dates, Exhibit A



1. Reasonable timelines should be established for deliverables. In making this determination, the Contract Manager should consider the nature of the work to be performed, dependence on external input, such as third parties, etc., and consistency with ongoing Commission programs.
2. The Contract Manager has the authority to change a due date for a deliverable after the contract has been executed. The revised date cannot extend beyond the term end date of the contract. The Contract Manager shall issue the revised Schedule of Deliverables and Due Dates to the Contractor the Contracts Officer. Although the dates can be revised, the deliverables cannot be changed through this process.

#### 4.5 • PREPARING A BUDGET, EXHIBIT B

A budget is the document where the Commission agrees (before work begins) what is reimbursable under the contract. It is imperative the budget identify **all** expected expenses to be reimbursed, i.e., labor costs either by Contractor staff or a subcontractor, materials, travel costs, and any overhead expenses. The budget is also the document the Contract Manager audits invoices against. If an expense is invoiced but not identified in the budget, the Contract Manager cannot approve it for payment.

If a contract is a result of a solicitation, the budget will have been submitted as part of the Contractor's proposal and in the format required in the solicitation.

Budget templates are located on the Intranet. Instructions for completing the Budget templates are located in the workbook. Contract Manager shall retrieve and use the current version of the Budget template when preparing a budget.

##### A. Budget Details

The following items must be included in all consultant services contract budgets (Public Contract Code §10371[C]):

1. Direct Labor

Identified by class of employee, rate per hour and number of hours

2. Indirect Costs, i.e. Overhead, G&A, Fringe, Profit

Specific overhead burden (if any) and the basis of application

List items included in indirect costs

3. Materials/ Miscellaneous/ Equipment

Provide a brief description of supplies to be purchased. Materials and Miscellaneous items must be itemized. Equipment must be itemized and justified. Equipment is the property of the State and must be returned to the Commission at the conclusion of the contract. Equipment is defined in Section 6 of this manual.

Computers should only be allowed in contracts when they are to be specifically utilized for a particular task and will be devoted to the work for that particular contract. Computers with a value of less than \$5,000 would be considered materials.

4. Subcontractors

Identify consultants or subcontractors (if any), and breakdown the cost for their services.

5. Travel

Identify estimated travel costs to show the number of trips required, destinations and cost of travel. Reimbursement of travel is based on rates applicable to non-represented state employees.

If a fixed fee or profit is part of the overall contract, it should be identified.

6. Total Estimated Costs

The sum of the above cost elements.

**EXAMPLES OF ENERGY COMMISSION CONTRACTS CEQA ANALYSIS**

<b>TABLE 4-1 Contracts Most Likely <u>NOT CONSIDERED A PROJECT</u> Under CEQA</b>
<b>Applicable to Multiple Divisions:</b>
Energy audits
Surveys
Training
Video Production
<b>Efficiency &amp; Demand Analysis:</b>
Bond support contracts such as rebate analysis and program audits
Provide administrative services to support local energy efficiency projects
Monitoring and verifying peak load reduction
Forecasting and demand analysis
Behavioral evaluation research
<b>Transportation:</b>
Most technical support contracts
Planning for seminars and energy audits
Investigating effects of pricing supply legislation on California transportation fuel consumers
Study of tire life span and fuel efficiency
<b>PIER &amp; Renewables:</b>
Most technical support contracts
University of California master research agreement (individual work authorizations require separate CEQA analysis)
CSU administration of Small Grant Program
Co-sponsorships for conferences, workshops, etc.
<b>Siting:</b>
Siting expert witness / peak workload
<b>Small Offices, Administration and Miscellaneous:</b>
Security guards
Court reporters
Translation services
Student services to assist Energy commission staff
Legal services for bankruptcy, bond or intellectual property counsel

<b>TABLE 4-2 Contracts Most Likely <u>CONSIDERED A PROJECT</u> Under CEQA, Need to Analyze for Possible <u>EXEMPTIONS</u></b>
<b>Efficiency &amp; Demand Analysis:</b>
Construction of energy-saving EV battery chargers
Implementation of commercial building HVAC upgrade program
<b>Transportation:</b>
Construction of demonstration LNG fueling station
<b>PIER: (Almost all PIER contracts are considered a Project)</b>
Fuel cell testing
Computer modeling for transmission and distribution of distributed generation applications
Distributed generation turbine testing
Evaluate HVAC systems for energy efficiency and noise levels
Demonstrate biogas energy system
Evaluate windfarm locations
Assessment of building envelope energy efficiency features
Develop energy efficient agricultural irrigation system
Methods to assess benefits of distributed energy resources
Monitor meteorological and hydrological sites
Research hydropower facility flows and aquatic species
Demonstrate software agents for building load reduction strategies

## 5. CONTRACT APPROVAL PROCESS

### 5.0 • INTRODUCTION

This section identifies the approval process; steps needed to process a contract, the offices that review the contract, and the approximate time it takes to fully execute a contract. The timeframe is noted from when a Contract Request Package is submitted to the Contracts Office.

### 5.1 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	5.0
Table of Contents	5.1
Approval and Commencement of Work	5.2
Time-frame to Execute a Contract	5.3
Estimating the Start Date of a Contract	5.4
Processing Steps and Timeline for a Contract	5.5
Miscellaneous Approvals	5.6
Distribution of Approved Contracts	5.7
Table 5-1, Required Contract Approvals	
Table 5-2, Timeline Estimate for Contract Approval Process	
Table 5-3, Contract Request Approval Process	

### 5.2 • APPROVAL AND COMMENCEMENT OF WORK

#### A. Basic Policy

The basic state policy is that no contractor should start work until receiving a copy of the approved contract. The approval by Department of General Services/Office of Legal Services (DGS/OLS) is the final, formal approval of the contract unless the contract is delegated to the Commission. The law provides that when DGS/OLS approval is required, contracts for services should not begin before receipt of approval; payment for services may not be made until the contract is approved by the DGS/OLS or, in the case of an exempt contract, until it is formally approved by the Commission.

#### B. DGS Exemption Issued to Commission for Contract Approval

The Commission has received an exemption from DGS/OLS to approve contracts under \$75,000. Certain limitations apply, for example, any contract for legal services must still be approved by DGS/OLS. See the Contracts Office for other limitations that may apply to our exemption authority.

#### C. Commission's Policy

All contracts over \$10,000 must be approved at a Commission business meeting, with the exception of co-sponsorship contracts; they require business meeting approval regardless of amount.

All contracts under \$10,000 are delegated to the Executive Director and the appropriate Commission policy members or budget committee members, if there is no policy committee responsible for the contract subject.

Amendments that only extend the term (no cost) by a period less than one year, and the original contract amount does not exceed \$100,000, is delegated to the Executive Director for approval.

Expert Witness contracts up to \$25,000 solely for the specific purpose of providing testimony to be used to assist staff and the Commission in energy facility licensing and compliance amendment is delegated to the Executive Director.

Contract Managers are not authorized to approve contracts in any form.

### **5.3 • TIME-FRAME TO EXECUTE A CONTRACT**

Once a contract request is submitted to the Contracts Office, it takes about 10 ½ weeks (minimum) to fully execute or receive final approval, of a contract over \$75,000. Contractor may not begin working until final approval is obtained. Action steps are noted below with estimated timeframes. Assume contract is \$76K, therefore Business Meeting and DGS/OLS approval is required.

- Contract request package is due about 5 ½ weeks prior to the selected business meeting date. During this period, the Contracts and Legal Offices review the scope of work, budget details, obtains any special documents from the contractor, drafts the terms and conditions and prepares the contract for Commission approval.
- Contractor review and signature, 2 weeks.
- Commission signature and packaging to DGS/OLS, 2 work days.
- DGS/OLS review, 10 work days

### **5.4 • ESTIMATING THE START DATE OF A CONTRACT**

To determine an estimated start date, add one month to the date the contract is scheduled for a business meeting. This is a guideline, the start date may be revised; if the contractor takes more than 2 weeks to review and return the signed contract; the contract is moved to a different business meeting; DGS/OLS returns the contract unapproved, or other delays.

### **5.5 • PROCESSING STEPS AND TIMELINE FOR A CONTRACT**

#### **Step 1 – Requesting Division (Friday before Week 1)**

The Contract Manager prepares a Contract Request Package and obtains Division review and approval prior to submitting the request to the Contracts Office. The Contract Request Package must be in the Contracts Office by the due date listed on the Business Meeting Schedule in order to be scheduled for the corresponding Business Meeting. If your Contract Request Package is submitted late, it will be scheduled for the next listed Business Meeting. Requests for late Contract Requests must be approved by the Contracts Office Manager in writing prior to the Request being submitted.

Each Division has a slightly different internal approval process so be sure you know your division's process. Also, ensure the funding source and amount is approved, check with the Budget Office if you are not sure prior to submitting a contract request to the Contracts Office. Refer to the attachments to this section for a timeline calendar and flow chart.

The Contract Request Package contains the following:

#### **Basic Request**

- Contract Request Form (CRF), CEC 94

- Exhibit A, Scope of Work,
- Exhibit B, Detailed Budget
- CEC 105, Conflict of Interest Questionnaire
- CEC 106, IT Component Reporting Form

#### **Optional Items Depending on Request**

- Non-Competitive Bid (NCB) form, CEC-96 (formerly called sole source), if contract wasn't competitively bid
- Disabled Veteran Business Enterprise (DVBE) Exemption form, CEC-95, if not participating in the DVBE Program
- Literature Search Form, CEC-30, if required
- Draft CEQA Notice of Exemption, if required
- Resumes (for consultant service agreements)

#### **Step 2 – Contracts Office – 5 Days (week 1)**

The Contracts Office will log the Contract Request Package in the database, schedule the contract for the business meeting, verify contractor's information with the Secretary of State and assign the Contracts Officer.

The Contracts Officer will:

1. Review the package for required forms, signatures and completeness.
2. Review the Scope of Work for basic edits and whether the tasks are in logical sequence.
3. Review the Budget for calculation errors and compare against the deliverables and scope of work.
4. Review the Non-Competitive Bid/DVBE forms, if applicable, and route them to the specific offices for approval.

#### **Step 3 – Legal Review of Draft – 5 Days (week 2) (concurrent with IT review)**

1. The attorney will review the draft documents in preparation for the team meeting.
2. The Contracts Officer will schedule the Team Meeting

#### **Step 4 – ITSB Project Manager Review – 5 Days (week 2) (concurrent with Legal review)**

1. IT Project Manager will review the CEC-106, scope of work and budget for IT components.
2. IT Project Manager will give SCIT to CIO for review and signature.

#### **Step 5 – Agenda Notice to Secretariat – 1 Day (Friday, week 2)**

The Contracts Office will submit the Agenda Notice information to the Secretariat for the Business Meeting. Contract Managers do not need to submit a CEC 36 to the Secretariat as the CEC 94 will serve that purpose.

#### **Step 6 – SCIT to CIO– 2 Days (week 3)**

1. CIO reviews and signs SCIT.

#### **Step 7 – Team Meeting – 1 Day (week 3)**

The Contracts Officer, Contract Manager and Attorney meet to discuss comments or questions. The IT Project Manager may also attend.

**Step 8 – Contracts Office – 2 Days (week 3)**

The Contracts Officer team and will:

1. Prepare contract for business meeting approval, including drafting the resolution.
2. Draft the appropriate terms and conditions and send to the Legal Office for final review and approval.

**Step 9 - Grants and Loans Office – 1 Day (week 3)**

All contracts funded, in whole or in part, by a federal grant require approval by the Grants and Loans Office. They certify that federal funds are available, determines if the work statement and deliverables are consistent with the requirements of the grant, and the term of the contract is within the term of the grant. The Grants & Loans Office will provide the appropriate grant terms and conditions to be included in the contract and may need to discuss the contract with the Contract Manager.

**Step 10 – Contracts Office Manager – 1 Day (week 3)**

Contract Office Manager reviews for accuracy and any missed issues.

**Step 11 – Contract Manager - 1 Day (week 4)**

Contract Manager reviews for accuracy and any last minute issues.

**Step 12 - Budgets Office – 1 Day (week 4)**

All contracts, and amendments, regardless of funding source, require Budget Office approval to ensure funds are available and consistent with the approved Division contract list and funding source requirements. The Budget Office also reviews and approves contract funding redirections, for example, switching funding sources from one year to another.

**Step 13 – Legal Office – 5 Days (weeks 4 & 5)**

The Contract Attorney reviews contracts for 1) clarity, 2) compliance with statutory requirements and program goals, 3) compliance with applicable state contracting laws and policies, and 4) sound business practices. The Attorney may contact the Contracts Officer or Contract Manager regarding revisions, additional information or clarifications.

**Step 14 – Back-Up Materials to Secretariat – 1 Day (Friday, week 4)**

The Contracts Officer will prepare and submit the required business meeting back-up materials.

**Step 15 – Final Agenda Review**

The Contract Manager attends this meeting with the Executive Director.

**Step 16 – Contractor – 10 Days (weeks 6 and 7)**

The Contractor reviews the contract and if acceptable, signs and returns the contract to the Contracts Office for further processing. If the Contractor has questions or changes they should contact the Contracts Officer to discuss their concerns. The Contracts Officer may contact the Contract Manager, particularly if there are questions regarding the SOW, schedule, or budget.

**Step 17 – Business Meeting – 1 Day (week 6)**

1. All contracts over \$10,000 and co-sponsorship contracts for any amount require business meeting approval. It is the responsibility of the Contracts Office to schedule the contract on the business meeting agenda. The business meeting schedule is prepared by the Secretariat and is located on the Commission's website.



- All items scheduled for a business meeting are discussed with the Executive Office at meetings titled Preliminary and Final Agenda Review meetings. These meetings are held twice a month and are identified in the Commission's Business Meeting Schedule. The Contract Manager or designated staff are required to attend the meetings to talk about their contract and inform the Executive Office of any known issues and if interested parties plan on attending the business meeting.
  - The Contract Manager or designated staff is expected to obtain Policy Committee approval prior to the business meeting. Concerns raised by the Commissioners should be addressed and Contract Manager should inform the Executive Director of these issues at the agenda review meetings.
  - The Contract Manager or designated staff presents the contract at the business meeting.
2. All contracts under \$10,000, are delegated to the Executive Director and the appropriate Policy Committee or Budget Committee (if there is no policy committee responsible for the contract subject,) for approval. Approval signatures are obtained on the CEC 94, CRF.
  3. Approval is delegated to the Executive Director for amendments extending the term for a period not to exceed an aggregate of one year, and the original contract amount does not exceed \$100,000. Approval signature is obtained on the CEC 94, CRF.
  4. Approval is delegated to the Executive Director for Expert Witness contracts up to \$25,000, solely for the specific purpose of providing testimony to be used to assist staff and the Commission in energy facility licensing and compliance amendment. Approval signatures are obtained on the CEC 94, CRF.

#### **Step 18 - Accounting Office – 2 Days (week 7)**

The Accounting Office encumbers the funds for the contract. This can only be done after the agreement has been approved at a Business Meeting.

#### **Step 19 – Contracts Office Manager – 2 Days (week 8)**

The Executive Director has delegated signature authority of contracts to the Contracts Office Manager. The Manager will sign the contract after the contractor and after approval at the Commission Business Meeting or if the contract is under \$10K, after Executive Director and Policy Committee members have signed the CEC 94, CRF.

#### **Step 20 – California Technology Agency (CaTA) (if required)**

Agreements with over \$500,000 of IT activities and/or components go to CaTA for review and approval.

#### **Step 21 – Department of General Services, Office of Legal Services (DGS/OLS) – 10 Days (remainder of week 8, week 9 and part of week 10)**

The Contracts Office forwards the signed contract to DGS/OLS for review and approval. DGS/OLS is allocated 10 working days for their review. The DGS-OLS Attorney will contact the Contracts Officer with questions or additional information. The Contracts Officer may contact the Contract Manager for assistance in responding to the DGS-OLS Attorney.

### **5.6 • MISCELLANEOUS APPROVALS**

If the contract involves any of the following items, additional approvals may be required by the offices listed below. For a listing of different types of contract approvals, see also Table 5-1, Required Contract Approvals.

- Purchase of equipment      DGS - Office of Procurement

- Purchase of vehicles           DGS - Office of Procurement & Fleet Administration
- Information Technology       CATA and  
  DGS – Office of Procurement
- Legal services                 Attorney General's Office and  
  DGS –OLS
- State Personnel Board        There is reason to believe contract does not comply with  
  Government Code 19130 or an employee's represented  
  organization requested the State Personnel Board review the  
  contract.
- NCB                             Natural Resources Agency and  
  DGS – Office of Procurement

**5.7 • DISTRIBUTION OF APPROVED CONTRACTS**

The Contracts Office distributes the fully executed contract as follows:

1. Contracts Office file
2. Accounting Office
3. Contractor
4. Controller's Office (if not approved by DGS)
5. Contract Manager

**TABLE 5-1**  
**REQUIRED CONTRACT “APPROVALS”**

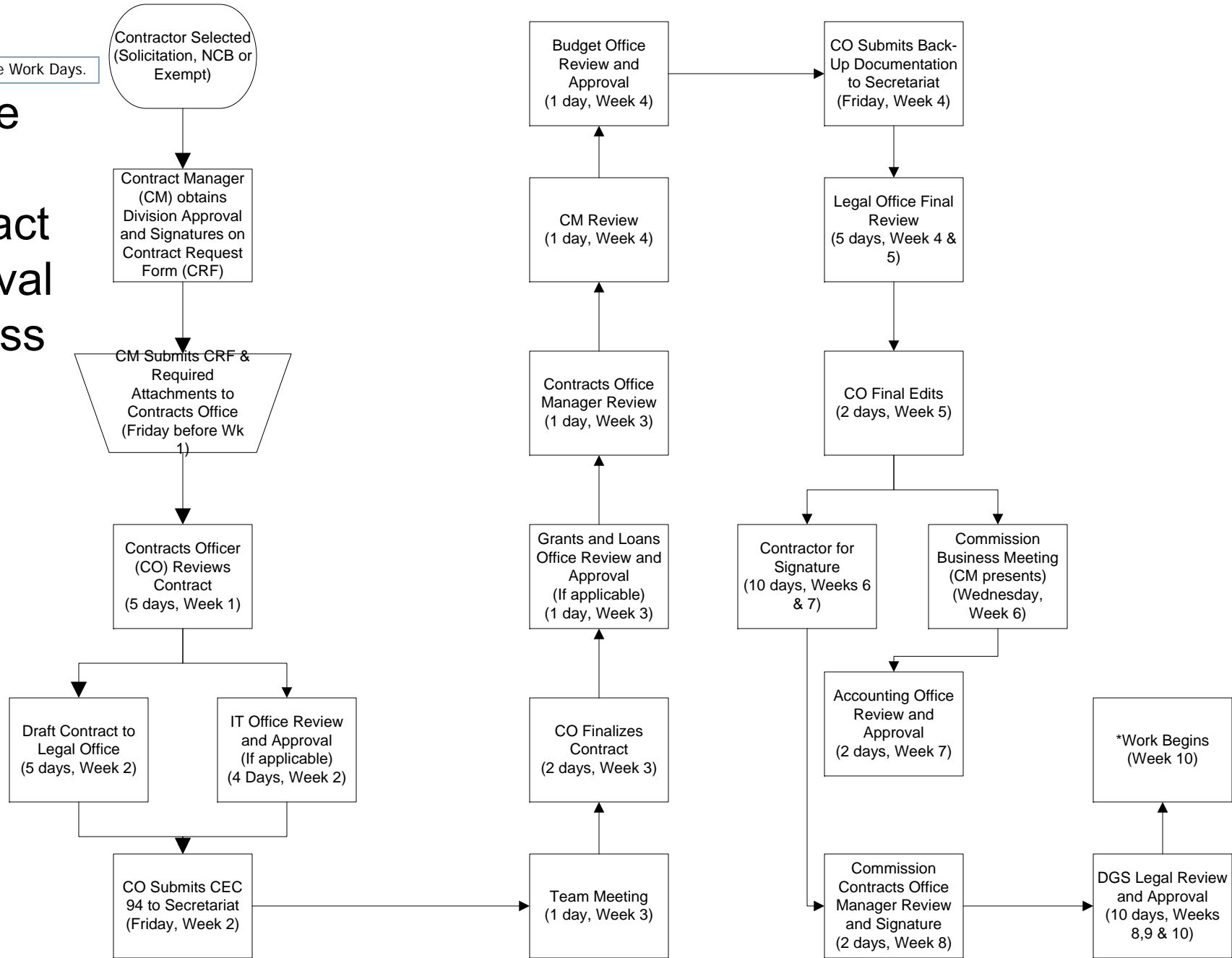
	Contracts < 10k	Contracts >10k But < \$75k	Contracts > 75k	Siting Expert Witness <25k	MOUs	No Cost Time Extension**
Contracts Officer	●	●	●	●	●	●
Legal Office	●	●	●	●	●	●
Budget Office	●	●	●	●		●
Accounting Office	●	●	●	●		●
Policy Committee*	● (CRF)			● (CRF)		● (CRF)
Executive Director*	● (CRF)			● (CRF)		● (CRF)
Business Meeting		●	●		●	
Contractor	●	●	●	●	●	●
Contracts Office Manager	●	●	●	●	●	●
DGS-OLS			●			

\* Business meeting approval not required, only Executive Director and Policy Committee signatures required on the CEC 94, CRF.

\*\* Amendment extending the term not more than one year and contract is less than \$100k.

# Table 5-2 Contract Approval Process

Days shown are Work Days.



\*10 Weeks is the average processing time from the date the contract request package is submitted to the Contracts Office. Delays at any point of the process will affect the date work can begin.

# Table 5-3 Contract Request Approval Process

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>Submitted Package</b>					<b>CM Submits Contract Request To Contracts</b>	
<b>Week 1</b>	CO Review (5 days)					
<b>Week 2</b>		ITSB Review (5 days)			<b>Contracts Office Submits Agenda Notice to Secretariat</b>	
		Legal Review Draft (5 days)				
<b>Week 3</b>	<b>Team Meeting</b> <b>Pre-Agenda Review</b>		CO Finalize Contract (2 days)		G&L (1 Day if applicable)	Contracts Office Manager Review (1 Day)
<b>Week 4</b>	Contract Manager Review (1 day)	Budgets Office Review (1 day)	Legal Review Final (5 days)			<b>Contracts Office Submits Back-Up to Secretariat</b>
<b>Week 5</b>	Legal Review Final Continued (5 days)		CO Final Edits (2 days)			Contract Sent to Contractor for signature

# Table 5-3 Contract Request Approval Process

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>Week 6</b>			<b>BUSINESS MEETING</b>			
	Contractor (10 days)			→		
<b>Week 7</b>	Accounting (2 days)	→				
	Contractor (10 days)			→		
<b>Week 8</b>	CEC Sig (2 days)	→		DGS (10 days)	→	
<b>Week 9</b>	DGS (10 days)			→		
<b>Week 10</b>			<b>*Work Begins</b>			
	DGS (10 days)	→				

**\*Work may only begin after receipt of approved contract from DGS.**

**Items in Red are dates set by the Energy Commission Business Meeting Calendar located on the Intranet.**

## 6. CONTRACT MANAGEMENT

### 6.0 • INTRODUCTION

Contract management is the most important segment in the contracting process. Effective management throughout the term of the contract is the key to obtaining the desired results. The Contract Manager is the authorized representative of the Energy Commission responsible for administering the contract, establishing and maintaining a good working relationship with the Contractor, and monitoring and managing to all contract terms.

### 6.1 • TABLE OF CONTENTS

DESCRIPTION	SECTION
Introduction	6.0
Table of Contents	6.1
Overview of Contract Manager Responsibilities	6.2
Contract Manager "Don'ts"	6.3
Work Authorizations	6.4
New Subcontractors	6.5
Replacing a DVBE Subcontractor	6.6
Changes in Contractor Personnel or Subcontractor Personnel	6.7
Evaluating Contractor's Progress Reports and Performance	6.8
Types of Payment and Retention	6.9
Equipment Purchases	6.10
Disposition of Equipment	6.11
Travel and Per Diem	6.12
Budget Reallocations	6.13
Approving an Invoice, Processing and Timelines	6.14
Disputing Contractor Invoices	6.15
Contractor Performance Dispute Resolution	6.16
Closing Out a Contract, Final Reports and Final Invoices	6.17
Amending a Contract	6.18
Table 6-1, Invoice Approval Process	6-1
Attachment A-1, Budget Reallocation Example	A-1

### 6.2 • OVERVIEW OF CONTRACT MANAGER RESPONSIBILITIES

All contracts are unique as to their scope of work, budget and terms and conditions. When managing a contract, a Contract Manager's first source of reference should be the contract itself.

A. The following summarizes Contract Manager responsibilities:

1. Monitoring the contract progress and performance to ensure that the Contractor is performing the services according to the quality, quantity, objectives, and time frames, specified in the contract.

2. Keeping in frequent contact with the Contractor by phone or e-mail.
  3. Revising the schedule of deliverable due dates as long as the new dates are within the term of the contract.
  4. Preparing a CEC-84, Contract Progress Evaluation Form (found under FORMS on the Commission's Intranet). This form documents the progress of the project, noting any problems or delays. It is submitted to the Contracts Office monthly or quarterly depending on the contract terms, but is always required when approving an invoice.
  5. Keeping the Contracts Officer informed regarding any potential problems or difficulties or changes in the contract.
  6. Reviewing and approving the Contractor's invoices to:
    - a. Substantiate expenditures for work performed, and the rates and operating expenses billed do not exceed the rates as allowed in the contract budget.
    - b. Ensure there are sufficient funds to pay for all services rendered and required in the contract.
    - c. Ensure retention is withheld from the invoice, according to the retention language specified in the contract.
  7. Closing out the contract by:
    - a. Ensuring that all work is completed and accepted before the contract expires.
    - b. Approving the final products, including the Final Report, Final and Retention invoices, and Final Meeting, if required.
    - c. Verifying that the Contractor has fulfilled all requirements of the contract before approving the final invoice and releasing retention.
    - d. Completing the Contractor Evaluation Form - Std 4, for consultant services contracts of \$5,000 or more and submitting one copy with the Final Report (if required) to the Contracts Office.
- B. To help you manage the contract, ask yourself the following questions:
- Do you expect the Contractor to be able to comply with all terms of the contract?
    - o If not, communicate with your Contracts Officer.
  - Is the Contractor on schedule according to the contract timetable?
    - o If not, consider communication with your Contractor.
  - Have all deliverables that are due to date been received and satisfactory?
    - o If not, consider communication with your Contractor.
  - Have all progress report(s) that are due this month or quarter been submitted and are they satisfactory?
    - o If not, consider communication with your Contractor and dispute invoice
  - Is the contract progress consistent with the contract budget to date?
    - o If not, consider communication with your Contractor.
  - Has the Contractor's performance been acceptable to date?
    - o If not, communicate with your Contractor.



- Has the schedule for deliverables been revised and a copy sent to the Contracts Office?
  - o If a copy has not been sent to the Contracts Officer, send right away.
- Do you foresee changes to the Scope of Work?
  - o If so, consider processing a formal amendment.
- Are the expenditures for the Disabled Veteran Business Enterprise (DVBE) Program being met?
  - o If not, communicate with your Contractor and encourage use of DVBE.

### 6.3 • CONTRACT MANAGER “DON'TS”

The Contract Manager *is not* authorized to:

- A. Instruct the Contractor to start work before the contract is executed,
- B. Change the description or scope of work of the contract, including deliverables,
- C. Direct the Contractor to do work that is not specifically described in the contract Scope of Work,
- D. Sign a contract or contract amendment as the Commission's authorized signatory,
- E. Sign any Contractor's contract form(s),
- F. Sign a Contractor's nondisclosure or confidentiality agreement form,
- G. Receive and retain confidential information,
- H. Approve payment to the Contractor for any work not performed satisfactorily,
- I. Extend the time period of the contract (this would require a formal amendment),
- J. Allow the Contractor to incur costs that exceed the original or amended amount of the contract, or
- K. Allow the Contractor to incur costs for food and/or beverages (except for allowable per diem) or printing services.

### 6.4 • WORK AUTHORIZATIONS

- A. In order to use Work Authorizations (WAs), your agreement has to allow for WAs. WA contracts are used (a) when a scope of work is written broadly, using general tasks, because we aren't certain of our exact needs or (b) when components of work are needed and the Commission will identify the specific tasks, deliverables and cost after contract execution. The WA will specify the work to be provided by task, deliverables, and a detailed budget for that specific work. WA formats and terms are governed by the contract terms; refer to your contract terms and conditions for the WA terms specific to your contract.
- B. A WA does not add terms or conditions to the contract.
- C. Each WA shall use the Contracts Office WA templates located on the Intranet <http://energynet/Admin/fsb/Contracts/Contracts%20Templates/Contracts%20Templates.html>, and shall include a signature page, scope of work with detailed tasks (the same as for a standard contract), deliverables and due dates, and a budget.
  - a. The Contract Manager, in conjunction with the Contractor Project Manager shall prepare Work Authorizations (WA) in accordance with the contract terms and conditions, using the Energy Commission templates.
  - b. Follow your Division's internal process for WA review/approval.

- c. Once internal approval is obtained, use the WA route slip located on the Contracts Office page on the Intranet and follow the routing sequence. Routing and signatures for items 1-4 on the route slip shall be processed by Contract Manager prior to submitting to the Contracts Office. Two signature pages with original signatures are required. The Contract Manager shall be the **last Energy Commission person to sign** a WA.
  - d. Submit complete signed WA, route slip, completed CEC-105 and completed CEC-106 to the Contracts Office.
  - e. Contracts Office is responsible for routing items 5-10. The Contracts Office will route WA to DGS for approval, when applicable. WAs under Architectural and Engineering Agreements will follow the same process as listed above, however, they do not require DGS approval.
  - f. The Contracts Office will distribute copies of fully executed WAs to the Contractor and Contract Manager.
- D. Payment for services is based upon an approved budget in each WA. Any expenses incurred by the Contractor that have not been identified in the WA shall be borne by the Contractor.
- E. WA amendments shall follow the same steps as outlined in item C above.
- 1. Certain circumstances require an amendment to the WA; refer to the terms and condition of your contract for the allowable circumstances.
  - 2. Amendments require prior written approval of the authorized individuals of the Contractor, the Energy Commission and when applicable DGS.
  - 3. Amendments must be fully executed prior to the termination date of the WA. If the WA has expired, an amendment cannot be processed and a new WA would need to be issued.
- F. Each WA shall be incorporated into the Agreement. However, it is understood that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any WA. A WA shall in no way constitute an independent Agreement, other than as provided pursuant to the Agreement, nor in any way amend or supersede any of the other provisions of the Agreement.

### 6.5 • NEW SUBCONTRACTORS

The Contract Manager may add a subcontractor to a contract, or replace an existing subcontractor. Refer to the terms and conditions of your contract for subcontract terms specific to your contract.

- A. The new subcontractor shall be selected using either:
- o A competitive bid process with written evaluation criteria by obtaining three or more bids and soliciting the work to a suitable pool of subcontractors including without limitation: California Contracts Register; Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or
  - o Non-competitive bid (sole source) process with a specific subcontractor. This requires justification.
- B. A major subcontractor is defined as any subcontractor receiving at least 25% of the Commission funds or \$100,000 (whichever is less). A minor subcontractor is any subcontractor receiving less than 25% or \$100,000 (whichever is less). Major subcontractors are required to provide detailed budgets including rates and other direct operating costs. Minor subcontractors are only detailed by the total to be spent with that company.
- o Note: Contract Manager should make Contractor aware of budget detail requirements prior to Contractor soliciting for bids.

- C. To add a new subcontractor under a **competitive bid** process, the Contract Manager will:
1. Prepare a CEC-97, Subcontractor Addition form. This form identifies the new subcontractor and what bidding method was used to obtain the subcontractor. The "Purpose of Subcontractor" section shall identify what tasks the new subcontractor will perform work under, and where the funds for the new subcontractor are coming from, for example:
    - o budget reallocation,
    - o WA agreement, or
    - o replacing subcontractor.
  2. Attach a document to the CEC-97 that outlines the following:
    - o Number of bids received,
    - o If less than three bids were received, include who was solicited and how they were solicited.
    - o Names of Bidders, and
    - o Was lowest bid selected? If not, justification for not selecting low bid.
  3. Complete a CEC 105 Conflict of Interest Questionnaire.
  4. Obtain current budget workbook from Contracts Officer. Complete budget templates (same level of detail as executed contract) for new subcontractor. If major subcontractor complete full budget detail. If minor subcontractor update minor subcontractor table.
  5. Obtain and include resumes for the added subcontractor personnel who play a major role.
- D. To add a new subcontractor under a **non-competitive** process, the Contract Manager will:
1. Prepare a CEC-97, Subcontractor Addition form. This form identifies the new subcontractor and what bidding method was used to obtain the subcontractor. The "Purpose of Subcontractor" section shall identify what tasks the new subcontractor will perform work under, and where the funds for the new subcontractor are coming from, for example:
    - o budget reallocation,
    - o WA agreement, or
    - o replacing subcontractor.
  2. Complete a CEC-96 Non-Competitive Bid Request justifying why the subcontractor is the only subcontractor capable of performing the work.
  3. Complete a CEC 105 Conflict of Interest Questionnaire.
  4. Obtain current budget workbook from Contracts Officer. Complete budget templates (same level of detail as executed contract) for new subcontractor. If major subcontractor complete full budget detail. If minor subcontractor update minor subcontractor table.
  5. Obtain and include resumes for the added subcontractor personnel who play a major role.
- E. Contract Manager may request assistance in completing the forms from the Contractor.
- F. Submit CEC-97 and all required attachments to the Contracts Office.

- G. Approval is required by the Division Deputy Director and the Contracts Officer prior to the subcontractor beginning work. The proposed subcontract is fully executed only **after** the Contract Officer approves the Subcontractor Add form. The effective date of the subcontractor addition is the date approved by the Contracts Officer, the subcontractor shall not perform work or invoice for work performed prior to this effective date.
- H. The Contracts Office will scan and e-mail the executed Subcontractor Addition form to the Contract Manager. Upon receipt of the fully executed Subcontractor Addition form, the Contract Manager shall notify the subcontractor that they may begin work.

#### **6.6 • REPLACING A DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) SUBCONTRACTOR**

- A. Contractor shall use each DVBE identified in its proposal or listed in the Agreement. If DVBEs were identified in its proposal or listed in the Agreement, award of the Agreement is based in part on its commitment to use the DVBE subcontractor(s). If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall inform Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Military and Veterans Code section 999.5 (e). Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.
- B. The Agreement shall be formally amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in the Agreement.

#### **6.7 • CHANGES IN CONTRACTOR PERSONNEL OR SUBCONTRACTOR PERSONNEL**

Sometimes a Contractor or subcontractor needs to add or replace a person who is listed in the contract. This might happen when an employee of the Contractor or Subcontractor leaves the company or a person is hired as a new employee of the Contractor or an existing Subcontractor. (This is a different situation than adding or replacing a new Subcontractor, discussed above.) Refer to the terms and conditions of your contract for the terms and conditions specific to your agreement. Following is a general guideline:

##### **A. Process for Offering Work**

If the Energy Commission or Contractor requires the replacement of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Contractor shall:

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of Contractor or a subcontractor).
- 2) If there is no available qualified person listed in this Agreement who can perform the work, then Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, Contractor may request to add a new person to the Agreement in accordance with terms and conditions, Rates & Classifications: Changes in Contractor Personnel or Subcontractor Personnel. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- 3) If the person to be replaced or substituted was identified in the Agreement as a DVBE firm, refer to the DVBE provision in the contract terms and conditions for changes to DVBEs.
- 4) If the person added is a new subcontractor, Contractor shall use the process outlined in the contract terms and conditions, Subcontracts provision, Process for New Subcontractors.

**B. Rates & Classifications: Changes in Personnel**

This section contains provisions allowing rate and classification changes without a formal amendment. The following rules explain the rates and classifications for which the Contractor can invoice. Changes outside of these rules require a formal amendment to the Agreement.

**A. New Personnel**

If Contractor or a subcontractor adds new personnel after the Agreement has been executed, the Contractor shall submit the new personnel's resume and proposed job classification/rate, consistent with classifications/rates within the respective budget, to Contract Manager for review and approval. If the Agreement budget includes a job classification with the person identified as "To Be Determined", and a person is later identified, this person is considered to be new personnel. The new personnel shall not provide services until the Contract Manager approves the new personnel request in writing and notifies the Commission Contracts Officer. Any work performed by these new personnel prior to Contract Manager approval is at Contractor's expense; the Energy Commission will not reimburse Contractor for work performed by these new personnel that occurs prior to Contract Manager approval.

**B. Labor Rates & Classifications**

The Agreement budget identifies individuals and/or job classifications and the maximum rates that the Contractor can invoice for them. The Contractor shall only invoice for the actual rates up to the maximum amount listed. Contractor can only increase rates or add new job classifications to the Agreement through a formal amendment to this Agreement.

**1. Contractor Changes: Addition or Replacement of Personnel****a) Labor Rates**

If the Contractor adds a new person to a job classification listed in the Contractor's budget or replaces a person listed in the Contractor's budget, the Contractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the Contractor's budget. The Contractor cannot use for its personnel a rate of a subcontractor.

**b) Classifications**

Additions or replacement of personnel can only be made within existing job classifications identified in the Contractor's budget. The Contractor cannot use for its personnel a job classification of a subcontractor. The new person must be invoiced within job classifications that already exist in the budget for the Contractor. If the Contractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

**c) Promotions**

Contractor personnel listed in the Contractor's budget can be moved to a higher-paying job classification listed in the Contractor's budget with prior written approval of the Contract Manager and the appropriate Division Deputy Director. The written approval must be submitted to the Contracts Officer.

## 2. Subcontractor Changes: Addition or Replacement of Personnel

### a) Labor Rates

If a subcontractor adds a new person to a job classification listed in the subcontractor's budget or replaces a person listed in the subcontractor's budget for that subcontractor, the subcontractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the subcontractor's budget. The subcontractor cannot use for its personnel a rate of another subcontractor or of the Contractor.

### b) Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the subcontractor's budget. The subcontractor cannot use for its personnel a job classification of another subcontractor or of the Contractor. The new person must be invoiced within job classifications that already exist in the budget for the subcontractor. If the subcontractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

### c) Promotions

Subcontractor personnel listed in the subcontractor's budget can be moved to a higher-paying job classification listed in the subcontractor's budget with prior written approval of the Contract Manager and the appropriate Division Deputy Director. The written approval must be submitted to the Contracts Officer.

## C. Changes in Assigned Personnel Hours

Contractor may move hours allocated for a specific person (employee or subcontractor) to another person listed in the Agreement, upon written notification to the Contract Manager. However such changes cannot change the amount of the budget for the task or labor category. If a change in personnel will result in a change in the dollar amount of the task or in the labor category, then refer to the Budget Reallocation provision in the contract terms and conditions.

## **6.8 • EVALUATING CONTRACTOR'S PROGRESS REPORTS AND PERFORMANCE**

### A. Contractor's Progress Reports

The Contract Manager will provide the Contractor with the progress report format. The Contractor must prepare monthly or quarterly progress reports (with the exception of service contracts), in writing, submitted with the invoice for that reporting period. The Contractor's progress report shall be brief and address at a minimum:

#### 1. Period Covered by Report

The Contractor's Progress Report must coincide with the invoicing period (dates, etc.) on Contractor's request for payment. A Progress Report is required by the Contractor even if billing for that particular month is later.

#### 2. Schedule

Is the contract work ahead of schedule, on time, or falling behind? If the work is not on time, there should be a written explanation.

### 3. Budget

Are expenses in line with the contract budget? If the expenses are not in line with the contract budget, there should be an explanation.

### 4. Scope of Work

Is the performance progressing as anticipated? If not, there should be an explanation.

### 5. Problems/Comments

Have any problems been encountered that would delay or prevent contract completion? If there are, there should be an explanation or recommendation of resolution.

## B. Contract Manager's Evaluation of Contractor's Progress

The Contract Manager must prepare a Form CEC-84, Contract Progress Evaluation, using the same time period (monthly or quarterly) as Contractor's Progress Report and invoice. The evaluation form is a tool for monitoring the Contractor's performance and informing Division management of potential contract problems.

The evaluation form prompts the following considerations:

1. Schedule – Is contract on schedule? If the schedule of work is falling behind, the Contract Manager may revise the deliverable due dates (the deliverables cannot be revised), not to exceed the end term of the contract. A copy of the revised schedule is sent to the Contractor and Contract Officer.
2. Budget – Are expenses in line with the contract budget? If not, consult with the Contract Officer on what steps are needed to either add money or realign budget tasks, etc. You will need to provide specific detail of the situation.
3. Scope of Work – Is performance progressing as anticipated? If not, consult with the Contract Officer of what steps are needed to revise the scope of work, i.e., modify tasks or add tasks. You will need to provide specific detail of the situation.
4. Problems – If the Contractor has identified problems, contact the Contract Officer as soon as possible in order to formulate a timely solution to fix the problem. You will need to provide specific detail of the situation.

## 6.9 •TYPES OF PAYMENT AND RETENTION

### A. Progress Payments

Progress payments can be made but not more frequently than monthly in arrears for work performed and costs incurred. Whatever the frequency of payment, the invoice should clearly reflect the period being invoiced, i.e., January through February 2007. Payments shall coincide with the progress reports.

### B. Advance Payments

Private contractors cannot be paid in advance.

Public contractors can be paid in advance in accordance with the California Government Code, in the following circumstances:

- to California state agencies, e.g., California Air Resources Board, UC, CSU, CALTRANS, Section 11257;
- the U.S. Government ( ) e.g., Dept of Energy, including National Labs, Section 12425; and
- under certain circumstances, to joint powers agreements, Section 6504.

### C. Retention on Progress Payments

Refer to the terms and conditions of your contract to determine if retention applies to your contract. Typically, in contracts where retention is withheld and for progress payments a minimum of 10% is retained from each invoice and released upon satisfactory completion and receipt of all deliverables including the final deliverable, at the end of the contract. Retention can be more than 10%, depending on the Contractor's performance on prior contracts or as leverage to keep the Contractor on schedule.

The Contractor must request the release of retention in a separate invoice and the Contract Manager completes an Evaluation Form, STD-4, (for consultant service contracts), when approving the retention invoice. A CEC-84 is not required with the retention invoice.

Occasionally, due to expiring funds, retention needs to be released early. Under these circumstances a CEC-21, Early Retention Release Authorization and Evaluation Form (found on the Commission's Intranet) shall be completed and submitted with the retention invoice.

## 6.10 • EQUIPMENT PURCHASES

- A. When equipment is purchased or built with state funds as part of the contract, the contract must clearly state that title to any equipment purchased or built with state funds will vest in the state. On termination of the contract, the state may:
  1. Request equipment be returned to the state.
  2. Authorize the continued use of such equipment for work to be performed under a different contract.
  3. By mutual agreement with the Contractor, allow the Contractor to purchase equipment for an amount not to exceed the residual value of the equipment, as of the end date of the contract.
- B. The state may, at its option, repair any damage or replace any lost or stolen items and deduct the cost thereof from the Contractor's invoice to the state, or require the Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the state with no expense to the state. In the event of theft, a police report must be filed immediately. (Refer to SAM § 2625)
- C. The Contractor should maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of a contract. The inventory record of each piece of such equipment should include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Nonexpendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 should be inventoried. A copy of the inventory record must be submitted to the state with the invoice. (Refer to SAM Section 8600)
- D. Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the possession or subject to the control of Contractor. Contractor is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.
- E. Determination of the equipment must be resolved with the Contract Manager and Contract Officer prior to the end of the contract. The procedure of equipment disposition is governed by state purchasing policies.



- F. The Contract Officer will complete and file a Uniform Commercial Code (UCC.1) Financing Statement with the Secretary of State's Office. Filing takes approximately two days. Once completed and filed, the Contract Officer will send a copy to the contractor. Invoices for equipment purchases associated with a UCC.1 will not be processed until the UCC.1 has been filed with the Secretary of State's Office.

#### **6.11 • DISPOSITION OF EQUIPMENT AT CLOSE OF CONTRACT**

If state funds are used under a contract to purchase equipment, the Energy Commission must make a determination of the final disposition of equipment. There are two ways to do this: (1) if it is known when creating the contract what will happen with the equipment at the end of the contract, the equipment disposition can be written as part of the contract; or (2) a determination of the final disposition of equipment can be made when closing the contract. The following procedure is for the second option of how the Energy Commission approves the final disposition of the equipment at the close of a contract.

- A. The Contract Manager shall make a recommendation to the Contracts Office.
- B. The information that must be included in the recommendation is:
  - 1. The contractor name and contract number;
  - 2. Amount the Energy Commission paid for the equipment;
  - 3. Current value of the equipment and a description of how the current value was calculated;
  - 4. A brief explanation of the project purpose, and what was achieved under the contract; and
  - 5. Approval by the Contract Manager's Division.
- C. The factors to be considered by the Contract Manager when making the recommendation to the Contracts Office for the disposition of the equipment are:
  - 1. The remaining useful life of the equipment;
  - 2. The current value of the equipment and its anticipated depreciation over its remaining useful life;
  - 3. Whether the equipment may be used for another project to further Energy Commission programs or research in the public interest;
  - 4. Estimated cost to the Energy Commission if it had to pay to dispose, transport, store, sell or otherwise deal with equipment itself; and
  - 5. Any other pertinent factors that have influenced the Contract Manager's recommendation.
- D. Once the Contract Manager's recommendation is received by the Contracts Office, the Contract Officer will review and send to the Legal Office for review. Upon agreement with the Contract Manager's recommendation, the Contract Officer will draft a Memorandum to the Executive Office. The Contract Officer will attach the final recommendation and send it to the Executive Office.
- E. The Executive Director makes the final approval.
- F. If the final recommendation involves a new agreement, or the Energy Commission may use a Letter of Agreement, to which the contractor or another entity must approve (e.g., the contractor agrees to purchase the equipment or the contractor or another entity agrees to further use the equipment in the public's interest), a new contract may have to be executed. Executing a new contract may be as simple as having the contractor or other entity sign the recommendation approved by the Executive Director or as complex as having to obtain approval from both the Energy Commission at a Business Meeting and the Department of General Services (DGS). The determining factor is the value of the agreement.

**6.12 • TRAVEL AND PER DIEM**

- A. Contractors are reimbursed travel expenses using the rates paid to non-represented State employees. Current travel and per diem rates are located on the Energy Commission website under the Funding section at [http://www.energy.ca.gov/contracts/TRAVEL\\_PER\\_DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF). It is very important Contract Managers' familiarize themselves with travel and per diem rates prior to approving contractor invoices.
- B. For purposes of payment, the Contractor's headquarters is the city designated in the signature block on the std. 213. Travel outside the State of California shall not be reimbursed without prior written authorization from the Contract Manager, or unless otherwise expressly so provided in the terms of the contract.
- C. Unless specified otherwise in the contract terms, receipts are required for travel expenses.

**6.13 • BUDGET REALLOCATIONS**

Most contracts allow for Budget Reallocation. Refer to the terms and conditions of your contract for budget reallocation terms specific to your contract.

- A. The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that do not substantially change the Scope of Work include, but are not limited to, the following:
  - 1. Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
  - 2. Increasing or decreasing the equipment budget.
  - 3. Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
- B. The budget reallocation only involves moving funds between tasks or categories. The total contract amount and the total budget of any work authorizations must remain unchanged. Increasing the total amount of the Contract requires a formal amendment.
- C. The budget reallocation does not increase the percentage rate of Indirect Overhead, Direct Overhead, Fringe Benefits, General and Administrative Costs, Profit, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment. Another example is that if a Contractor listed that its profit rate is 8% of the total agreement, to increase this rate would require a formal amendment.
- D. To effectuate a budget reallocation, the Contractor must make a request in writing to the Contract Manager.
  - 1. If the Contract Manager agrees that the request meets the reallocation criteria, the Contract Manager shall proceed with the following steps:
    - i. Request current budget workbook from Contracts Officer.
    - ii. In the excel budget workbook, add Budget Reallocation column to Att B-1 Task Summary and Att B-2 Category Summary. (In some instances the attachment numbers as noted in these instructions will not match the budget template you are working in, under these circumstances update the attachments in the workbook that are consistent with the names of the attachments listed in this section.)

- a. Copy the existing "Totals" column and paste special as values and number formats only to the right of the existing "Totals" column.
  - b. Name new column "Original Totals". Change the name of the old column to "Budget Reallocation effective (insert date)".
  - c. Update cells where applicable to the budget reallocation changes. Use underline/bold when updating dollar figures so that changes are easily identified. If columns were added correctly, the Budget Reallocation Totals will update as you make changes within the spreadsheet.
  - d. When Att B-5 Direct Operating Expenses is affected by the Budget Reallocation update dollar figure changes using underline/bold.
- iii. Prepare a narrative explaining the budget reallocation changes that occurred.
  - iv. Send an electronic copy of the updated workbook and the narrative to the Contracts Officer for review and approval.
  - v. Upon approval of the Contracts Officer, send approval e-mail (including the Contracts Officer approval) and updated budget workbook to Contractor. The approval is not effective or binding unless signed by both the Contract Manager and the Contracts Officer. Oral communications cannot be used or relied upon.
  - vi. Submit a hard copy of full budget reallocation documentation with the next processed invoice.
2. If the Contract Manager disagrees with the budget reallocation request, the Contract Manager shall proceed with the following steps:
    - i. Send Contracts Officer e-mail with details of budget reallocation request and Contract Manager's justification of denial.
    - ii. Upon concurrence of Contracts Officer, send e-mail to Contractor with disapproval of budget reallocation request and justification of denial. The disapproval is not effective or binding unless signed by both the Contract Manager and the Contracts Officer. Oral communications cannot be used or relied upon.
- E. Any desired budget reallocations that do not meet the criteria per the contract terms and conditions must be made through a formal amendment.
- F. Budget Reallocations must be approved prior to the expense being incurred by the Contractor. If the Budget Reallocation is not approved prior to the expense being incurred, then the expense is not reimbursable.

#### **6.14 • APPROVING AN INVOICE, PROCESSING AND TIMELINES**

- A. The Contract Manager is responsible for reviewing and approving contract invoices in a timely manner. Payments are made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity, e.g., all of the deliverables have been received and acceptable, progress reports have been received.
- B. Many Divisions are required to use the PIMS system in processing invoices. Check with your Division Liaison if you are unsure of your Division's process.

C. The approval process and approximate timelines for contract invoices is:

1. Accounting Office - 2 to 3 Business Days

Per the terms of the contract, the Contractor must send invoices directly to the Accounting Office. If an invoice is received by the Contract Manager without being processed by the Accounting Office send the invoice immediately to the Accounting Office. The Accounting Office then attaches a Contract Invoice Route Slip (CEC-28), and forwards the invoice to the Contract Manager with any documents attached to the invoice. Accounting keeps the original invoice on file. Accounting enters information in to PIMS, if necessary.

2. Contract Manager and Division Management – 7 Business Days

The Contract Manager reviews the invoiced rates and categories to determine if they are consistent with the contract budget and the contract terms and conditions, i.e., Contractor is performing, deliverables have been received, progress evaluation reports have been prepared and are favorable. The Contract Manager **SIGNS AND DATES THE INVOICE**, indicating approval, attaches all deliverables, correspondence, Contractor's monthly progress report, Contract Progress Evaluation (CEC-84) and routes to the Division Liaison or Contract Office. Each Division has a different internal review process. Before forwarding invoices to the Contracts Office, check with your Division Liaison for the proper division review process. Contract Manager approves in PIMS, if necessary.

3. Contracts Office – 6 Business Days

Upon receipt of the progress evaluation report (CEC-84), Contractor progress report/deliverables and approved invoice, the Contracts Office reviews and logs the information in the contract file, signs, dates, and sends the invoice to Accounting. Contracts Office "concurs" or "returns in PIMS, if necessary.

4. Accounting Office – 5 Business Days

The invoice is processed for payment through the State Controller's Office. Accounting marks in PIMS once scheduled, if necessary.

5. State Controller's Office - 10 Business Days

The Controller's Office cuts and mails the check directly to the Contractor.

## 6.15 • DISPUTING A CONTRACTOR'S INVOICE

### Invoice Dispute Process

The Contract Manager shall dispute an invoice if the Contractor is not performing, deliverables have not been received, or billing is not in accordance with the budget or contract terms.

- A. The Contract Manager must handle disputes immediately to protect the Commission's interests and to be fair to the Contractor. Delaying contact or action of an invoice dispute weakens any legal remedies the Commission may be afforded under law.
- B. To dispute an invoice, the Contract Manager must notify the Contractor via a Dispute Notification Form (Std 209), within 15 working days of receipt of the invoice. The Std 209 informs Contractor the reason why the Contract Manager couldn't approve the invoice submitted and it stops the time period the Commission is required to review invoices. It also informs the Contractor where to send a revised invoice or requested information so payment maybe authorized. Mail or fax the Std 209 to the Contractor with copies to the Contracts Office and the Accounting Office. It is also recommended the Contract Manager inform their Division management of the disputed invoice.

- C. Disputes may also require documentation in PIMS when necessary.
- D. Government Code, Chapter 4.5, Section 927, requires the Commission to review and process an invoice within so many days. If we don't, the Commission is required to pay the Contractor a penalty fee for late processing. The penalty fee amount is deducted from the Division's operating budget, i.e. training and travel budget, therefore, invoice review is a priority. If a Contract Manager is scheduled for vacation, their supervisor or Division Liaison should assign another staff person to perform invoice review in the Contract Manager's absence.

#### **6.16 • CONTRACTOR PERFORMANCE DISPUTE RESOLUTION**

When a problem arises that cannot be resolved between the Contract Manager and the Contractor, consult your Contract Officer. In the event of a Contract dispute or grievance between Contractor and the Energy Commission, both parties use the dispute procedures under the terms and conditions of the contract. Contractor shall continue with the contract responsibilities during any dispute.

#### **6.17 • CLOSING OUT A CONTRACT, FINAL REPORTS AND FINAL INVOICES**

##### **A. Final Reports**

The Final Report is a comprehensive document covering the project with conclusions and recommendations based on project experiences. The Contractor submits the Final Report prior to the termination of the contract no later than thirty (30) days prior to the contract termination date. The thirty days allows the Contract Manager time to review, comment, or accept the Final Report.

When the purpose of the contract is to produce a printed document for publication, the Contract Manager must review the Media and Public Communications Office "Document Production" requirements on the Commission's Intranet prior to the beginning the contract and assures conformance with Commission guidelines.

##### **B. Final Meeting (if required in the contract)**

The Contractor is required to meet with the Commission Contract Manager to present the findings, conclusions, and recommendations. This meeting may also include administrative closeout issues such as final invoicing, equipment disposition and IT. Both the final meeting and the final report must be completed on or before the contract termination date.

##### **C. Final Evaluation of Contractor**

An evaluation of the Contractor's performance and contract outcomes must be made. The form to be used is a State issued Std-4 Form Contract/Contractor Evaluation, which is available on the Intranet. This form is sent to the Contracts Office and is maintained in a performance file on all Commission Contractors. While this file is not part of the public record, it is available to Commission staff to review a Contractor's performance prior to awarding subsequent contracts.

If the Contractor has not performed to the contract standards, the Contract Manager may file a negative evaluation of the Contractor. The Contract Officer sends the evaluation form to the Contractor and the Department of General Services where it is retained for 36 months.

Contractor Evaluations are not required for contracts with other state agencies, governmental entities, memberships, co-sponsorships, or service agreements.

##### **D. Paying Final Invoices And Retention**

The Contract Manager prepares the Final Evaluation, Std-4, attaches all of the required contract documentation, signs and dates the invoice, writes "FINAL INVOICE" on the invoice, and submits it to the Contracts Office with one copy of the Final Report. The Final Report may be submitted on CD. The Contractor must submit the "Final Invoice" within 30 days of contract termination.

The Contractor must request the release of retention in a separate invoice. A CEC-84 is not required with the final invoice or the retention invoice.

NOTE: The final invoice or release of retention will not be paid until the final report is accepted and the Std 4 Final Evaluation has been prepared by the Contract Manager.

#### 6.18 • AMENDING A CONTRACT

- A. As the contract progresses, it may become necessary to change certain items in the contract that require a formal amendment. **Formal amendments must be approved at an Energy Commission business meeting and by Department of General Services, (if necessary), before they become effective.** A contract amendment is required, but is not limited to, the following instances:
1. change of the Contractor's legal name
  2. change of Contractor
  3. extending the end date beyond contract term
  4. changes to Exhibit A, Scope of Work that reasonably modify the contract purpose
  5. changes to Exhibit B that increase the total contract amount
  6. changes to Exhibit B that increase contract rates or fees
  7. changes to Exhibit B that decrease the contract amount (disencumber funds)
  8. re-allocations to Exhibit B, that substantially change Exhibit A.
- B. A contract amendment requires preparation of a CEC-94 Contract Request Form, with attachments, identifying only what is changing in the original contract. For instance, if only requesting a time extension, state the original term and the revised term, a summary of the original contract purpose and why the time extension is necessary or justified. Other items on the Contract Request Form may either be "no change or not applicable."
1. If processing a "no cost time extension" amendment, submit an updated Schedule of Deliverables and applicable updated Budget attachments (Att B-3s Labor Rates and B-4s Non-Labor Rates) indicating the amended term end date. Rates cannot change in a "no cost time extension", only the through/to date of the rates can be extended. When submitting your electronic workbook with your Contract Request Package, hide all sheets that are not being amended.
  2. If amending the Scope of Work, Contract Manager shall obtain the current contract Scope of Work from the Contracts Officer. Contract Manager shall make changes to the Scope of Work using strike-out for text being deleted and bold/underline for text being added (**do not use track changes**).
  3. If amending the budget, Contract Manager shall obtain the current budget workbook from the Contracts Officer and edit as follows:
    - i. Add amendment column/row as appropriate to applicable budget attachments. For example, if you are adding money to the contract, then Att B-1 Task Summary, Att B-2 Category Summary will be affected and possibly Att B-5 Direct Operating Expenses. If you are increasing labor rates then Att B-3 Labor Rates will be affected. (In some instances the attachment numbers as noted in these instructions will not match the budget template you are working in, under these circumstances update the attachments in the workbook that are consistent with the names of the attachments listed above.)

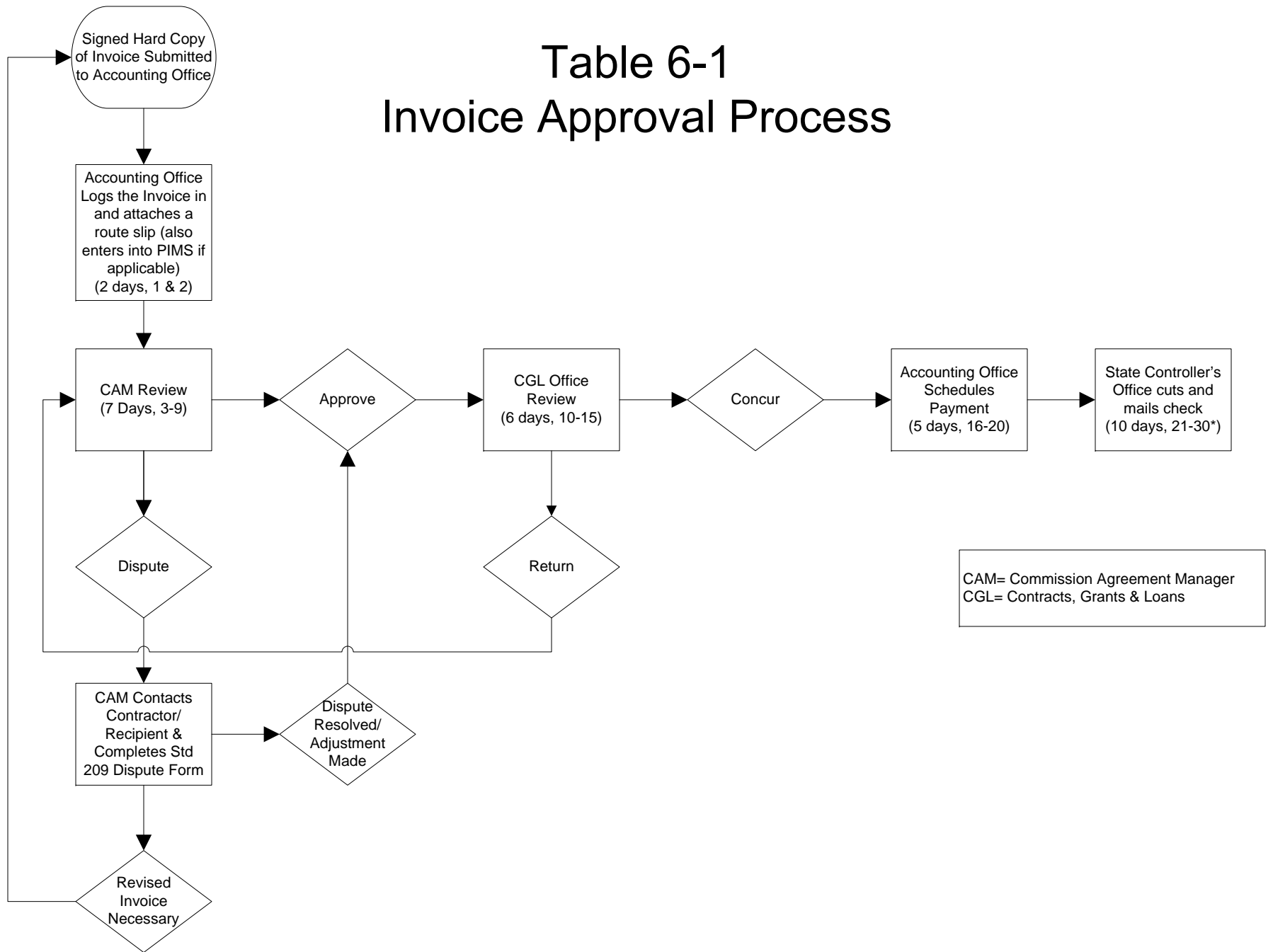
- ii. When amending Att B-1 Task Summary and Att B-2 Category Summary:
    - a. Copy the existing "Totals" column and paste special as values and number formats only to the right of the existing "Totals" column.
    - b. Name new column "Original Totals". Change the name of the old column to "Amendment # (insert appropriate amendment number)".
    - c. Update applicable cells according to the amendment changes. Use underline/bold when updating dollar figures so that changes are easily identified. If the new columns were added correctly, the Amendment Totals will update as you make changes within the spreadsheet.
    - d. Add (insert) a column to the right of the Original Totals column. Name the column "Difference". Create a formula to calculate the difference between the original and the amended totals. The formula should be created as: Amended Totals minus (-) Original Totals = the difference. Copy the formula down the column.
  - iii. When amending Att B-3s Labor Rates unhide column(s) as appropriate and insert amendment information using bold/underline.
  - iv. When amending B-4s Non-Labor Rates add rows or columns as appropriate to amended changes and insert amendment information using bold/underline.
  - v. When amending Att B-5 Direct Operating Expenses update the information that is changing using underline/bold.
  - vi. When submitting your electronic workbook with your Contract Request Package, hide all sheets that are not being amended.
4. If amending a budget that has had a budget reallocation or a previous budget amendment, Contract Manager shall obtain the current budget workbook from the Contracts Officer and edit as follows:
- i. Add amendment column/row as appropriate to applicable budget attachments. For example, if you are adding money to the contract, then Att B-1 Task Summary, Att B-2 Category Summary will be affected and possibly Att B-5 Direct Operating Expenses. If you are increasing labor rates then Att B-3 Labor Rates will be affected. (In some instances the attachment numbers as noted in these instructions will not match the budget template you are working in, under these circumstances update the attachments in the workbook that are consistent with the names of the attachments listed above.)
- ii. When amending Att B-1 Task Summary and Att B-2 Category Summary:
    - a. Add (insert) a new column to the right of the "Budget Reallocation" or previous "Amendment" column, whichever is applicable to your amendment.
    - b. Copy "Budget Reallocation" or previous "Amendment" column totals and paste special as values and number formats only in the new column. Cut and paste the name of the old column in to the name the new column. (The newly created column will be "Budget Reallocation" or "Amendment # (insert appropriate amendment number)".
    - c. Name the new column "Amendment # (insert appropriate amendment number)".
    - d. Update applicable cells according to the amendment changes. Use underline/bold when updating dollar figures so that changes are easily identified. If the new columns were added correctly, the totals for the Amendment that was added will update as you make changes within the spreadsheet.

- e. Add (insert) a column to the right of the Original Totals column. Name the column "Difference". Create a formula to calculate the difference between the original and the amended totals. The formula should be created as: Amended Totals (amendment that is being processed) minus (-) Original Totals = the difference. Copy the formula down the column.
  - vii. When amending Att B-3s Labor Rates unhide column(s) as appropriate and insert amendment information using bold/underline.
  - viii. When amending B-4s Non-Labor Rates add rows or columns as appropriate to amended changes and insert amendment information using bold/underline.
  - ix. When amending Att B-5 Direct Operating Expenses update the information that is changing using underline/bold.
  - x. When submitting your electronic workbook with your Contract Request Package, hide all sheets that are not being amended.
- C. Contract terms and conditions are not amended by Contract Managers and terms and conditions should not be submitted with an amendment request.
- D. **State policy requires amendments to be fully executed (all approvals received) before the original contract expires. It is the Commission's policy when requesting an amendment extending the term; the Contract Request package must be submitted to the Contract Office four (4) months prior to the end date of the original contract.**

If you have missed the four month deadline, you must receive approval from the Contracts Office Manager prior to submitting your Contract Request package.



# Table 6-1 Invoice Approval Process



Days shown are Work Days.

\*30 is the standard processing time from the date the invoice is submitted to the Accounting Office. Delays at any point of the process will affect the date submitted to SCO and may cause penalties to accrue.

Exhibit B  
Att B-1 Task Summary

Contracts Section 6  
Attachment A-1  
Budget Reallocation Example

Summary Task Budget		Prime Contractor Reimbursable Costs	Subcontractor #1 Reimbursable Costs	Subcontractor #2 Reimbursable Costs	Subcontractor #3 Reimbursable Costs	Budget Reallocation Totals	Original Totals
		USFS: PSW	UC Berkeley	UC Davis	SIG	Effective 10/20/2011	
		<input type="checkbox"/> SB <input type="checkbox"/> MB <input type="checkbox"/> DVBE <input checked="" type="checkbox"/> None	<input type="checkbox"/> SB <input type="checkbox"/> MB <input type="checkbox"/> DVBE <input checked="" type="checkbox"/> None	<input type="checkbox"/> SB <input type="checkbox"/> MB <input type="checkbox"/> DVBE <input checked="" type="checkbox"/> None	<input checked="" type="checkbox"/> SB <input checked="" type="checkbox"/> MB <input type="checkbox"/> DVBE <input type="checkbox"/> None		
1.0	Task 1: Agreement Management	\$ 128,048	\$ -	\$ -	\$ -	\$ 128,048	\$128,048
2.0	Task 2: Survey Forest-Practice Regulations	\$ -	\$ <b>40,095</b>	\$ -	\$ -	\$ <b>40,095</b>	\$39,565
3.0	Task 3: Develop BioSum 3.0	\$ 40,000	\$ <b>140,792</b>	\$ -	\$ -	\$ <b>180,792</b>	\$152,590
4.0	Task 4: Develop Impacts Analysis for Thinned Even Aged Mixed Conifer Stands	\$ -	\$ <b>47,045</b>	\$ -	\$ -	\$ <b>47,045</b>	\$45,776
5.0	Task 5: Develop Fuel Treatment Design Model	\$ 98,740	\$ -	\$ -	\$ -	\$ 98,740	\$98,740
6.0	Task 6: Quantify Carbon Storage and Mass Balances	\$ 114,000	\$ -	\$ -	\$ -	\$ 114,000	\$114,000
7.0	Task 7: Measure Forest Ecological Impacts from Recent Fires	\$ -	\$ -	\$ 115,347	\$ -	\$ 115,347	\$115,347
8.0	Task 8: Model Impacts of Biofuel Demand	\$ -	\$ -	\$ 128,712	\$ -	\$ 128,712	\$128,712
9.0	Task 9: Model Life Cycle Energy and GHG Emission Balances	\$ -	\$ -	\$ <b>114,681</b>	\$ -	\$ <b>114,681</b>	\$114,680
10.0	Task 10: Quantify the Effects of Biomass Reduction Treatments on Habitat Quality	\$ 118,188	\$ -	\$ -	\$ 5,750	\$ 123,938	\$123,938
11.0	Task 11: Quantify the Efficacy of Fuel Reduction Treatments	\$ <b>52,568</b>	\$ 33,745	\$ -	\$ 167,031	\$ <b>253,344</b>	\$253,343
12.0	Task 12: Integrate Project Results	\$ -	\$ 1,000	\$ -	\$ <b>154,258</b>	\$ <b>155,258</b>	\$185,259
<b>Grand Totals</b>		\$ <b>551,544</b>	\$ <b>262,677</b>	\$ <b>358,740</b>	\$ <b>327,039</b>	\$ 1,500,000	\$1,500,000

For these boxes, be sure to include all costs: labor (unloaded rates), indirect costs (fringe, overhead, general & administrative, & profit), and other direct operating costs. The totals are total costs to perform each task.

Exhibit B  
Att B-2 Category Summary

**Contracts Section 6  
Attachment A-1  
Budget Reallocation Example**

Summary Category Budget	Prime Contractor Reimbursable Costs	Subcontractor #1 Reimbursable Costs	Subcontractor #2 Reimbursable Costs	Subcontractor #3 Reimbursable Costs	Budget Reallocation Totals	Original Totals
	USFS: PSW	UC Berkeley	UC Davis	SIG	Effective 10/20/2011	
Direct Labor	\$ 417,098	<u>\$ 183,388</u>	\$ 276,834	<u>\$ 279,158</u>	<u>\$ 1,156,478</u>	\$1,184,724
Materials/ Misc.	\$ 8,000	<u>\$ 37,476</u>	\$ 8,615	\$ 2,000	<u>\$ 56,091</u>	\$23,615
Equipment	\$ -	\$ 7,144	\$ -	\$ -	\$ 7,144	\$7,144
Travel	\$ 23,000	<u>\$ 13,520</u>	\$ 8,000	<u>\$ 4,007</u>	<u>\$ 48,527</u>	\$48,628
<b>Total Direct</b>	\$ 448,098	<u>\$ 241,528</u>	\$ 293,449	<u>\$ 285,165</u>	<u>\$ 1,268,240</u>	\$1,264,111
Fringe Benefits	\$ 65,342	<u>\$ 21,149</u>	\$ 65,291	<u>\$ 41,874</u>	<u>\$ 193,656</u>	\$197,784
Indirect Overhead	\$ 38,104				\$ 38,104	\$38,104
General & Administrative	\$ -	\$ -	\$ -	\$ -	\$ -	\$0
Profit	\$ -	\$ -	\$ -	\$ -	\$ -	\$0
<b>Total Indirect</b>	\$ 103,446	<u>\$ 21,149</u>	\$ 65,291	<u>\$ 41,874</u>	<u>\$ 231,760</u>	\$235,889
<b>Grand Total</b>	<u>\$ 551,544</u>	<u>\$ 262,677</u>	<u>\$ 358,740</u>	<u>\$ 327,039</u>	\$ 1,500,000	\$1,500,000

Direct Labor = unloaded rates X number of hours (Att B-3)

**ENERGY COMMISSION****AGREEMENT ACRONYMS AND ABBREVIATIONS**

<b>A&amp;E</b>	Architectural and Engineering
<b>CAM</b>	Commission Agreement Manager
<b>CCR</b>	California Code of Regulations
<b>CCM</b>	Commission Contract Manager
<b>CM</b>	Contract Manager
<b>CCO</b>	Commission Contracts Officer
<b>CMAS</b>	California Multiple Award Schedule
<b>CRM</b>	Contract Request Memo
<b>CSCR</b>	California State Contracts Register
<b>DGS</b>	Department of General Services
<b>DVBE</b>	Disabled Veteran Business Enterprise
<b>EIR</b>	Environmental Impact Report
<b>ERPA</b>	Energy Resources Program Account
<b>EZA</b>	Enterprise Zone Act
<b>G&amp;A</b>	General and Administrative
<b>GC</b>	California Government Code
<b>IFB</b>	Invitation for Bids
<b>IT</b>	Information Technology
<b>LAMBRA</b>	Local Military Base Recovery Area Act
<b>MB</b>	Micro Business
<b>MOU</b>	Memorandum of Understanding
<b>MSA</b>	Master Service Agreement
<b>NCB</b>	Non-Competitively Bid Contract Justification
<b>NOE</b>	Notice of Exemption
<b>NOPA</b>	Notice of Proposed Award
<b>OGA</b>	Other Governmental Entities
<b>OLS</b>	Office of Legal Services, DGS
<b>OSDC</b>	Office of Small Business and DVBE Certification, DGS
<b>OSP</b>	Office of State Publishing
<b>PCC</b>	California Public Contract Code
<b>PRC</b>	California Public Resources Code
<b>PIMS</b>	Program Information Management System
<b>PD</b>	Procurement Division, DGS
<b>PIER</b>	Public Interest Energy Research
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>SB</b>	Small Business
<b>SCM</b>	State Contracting Manual
<b>SOW</b>	Scope of Work
<b>TACPA</b>	Target Area Contract Preference Act
<b>WA</b>	Work Authorization