STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

OFFICE OF ADMINISTRATIVE AND INFORMATION SERVICES-
BUSINESS SERVICES OFFICE
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MEMORANDUM

DATE	November 10, 2010
TO	ALL BOARDS, BUREAUS, PROGRAMS, DIVISIONS, OFFICES
FROM	Judy Masuda, Business Services Officer
SUBJECT	**CONTRACTS FOR SUBJECT MATTER EXPERT CONSULTANTS**

Purpose

This memorandum announces changes to existing processes related to acquiring the services of a Subject Matter Expert Consultant (Expert Consultant).

Definition

An Expert Consultant is defined as an individual, business firm, or corporation whose services are retained for any one of the following services:

- Provide an expert opinion in an enforcement matter from the initial review through testifying at a hearing;
- Evaluate applications for applicant licensure;
- Evaluate curriculum content and other requirements for school or program approval;
- Develop (but not proctor) professional licensing exams.

New requirement

All Expert Consultants shall enter into a formal consulting services contract that will follow all guidelines, procedures, and rules governed by the:

- State Contracting Manual (SCM) and
- the California Public Contract Code.

This change may impact the time required for boards, bureaus, and programs to secure Expert Consultant services through the required contracting process.

Transition	The DCA recognizes this potential impact. To facilitate this transition, the Business Services Office will schedule a meeting with your office to better understand your Expert Consultant processes and business requirements. The Business Services Office will use the information gathered at the meeting to prioritize and develop a rollout plan for each board. The rollout plan will allow the boards, bureaus, and programs to plan, adjust resources to adhere to these changes, and minimize the impact to your licensing and enforcement efforts.
Questions	If you have any questions, please contact: Mike Melliza, Contract Operations Manager Department of Consumer Affairs Business Services Office- Non-IT Contracts Unit Email: michael.melliza@dca.ca.gov Phone: (916) 574-7292
Attachment 1, Expert Consultant Authority	Public Contract Code Sections 10335.5, 10340, 10371, 10410, 10411; Government Code Section 19130, 19131; State Contracting Manual Chapter 7.10

Attachment 1
Expert Consultant Authority

AUTHORITY PERTAINING TO CONTRACTING FOR CONSULTING SERVICES CONTRACTS

The following sections of California law require state agencies to meet certain conditions before entering into a consulting services contract, also referred to as a personal services contract. These sections of law also contain exemptions to these requirements that may or may not apply to all consulting services contracts executed by DCA. Also, some boards have exemptions from these requirements in their practice acts.

Public Contract Code section 10335.5

(a) "Consulting services contract," as used in this article, means services that do all of the of the following:

(1) Are of an advisory nature.

(2) Provide a recommended course of action or personal expertise.

(3) Have an end product that is basically a transmittal of information either written or verbal and that is related to the governmental functions of state agency administration and management and program management or innovation.

(4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

(5) The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

(b) "Consulting services contract" does not include any of the following:

(1) Contracts between a state agency and the federal government.

(2) Contracts with local agencies, as defined in Section 2211 of the Revenue and Taxation Code, to subvene federal funds for which no matching state funds are required.

(c) The following consultant services contracts are exempt from the advertising and bidding requirements of this article:

(1) Contract that are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. Payment under a consulting service contract may be on the basis of each hour or day devoted to the task or in one lump sum for the end product.

(2) Contracts that can only be performed by a public entity as defined in subdivision (b) of Section 605 of the Unemployment Insurance Code.

(3) Contracts solely for the purpose of obtaining expert witnesses for litigation.

(4) Contract for legal defense, legal advice, or legal services.

(5) Contracts in an amount of less than five thousand dollars ($5,000).

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code. (Emphasis added.)

Public Contract Code section 10340

(a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.
(b) Three competitive bids or proposals are not required in any of the following cases:

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(7) Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations. (Emphasis added.)

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Public Contract Code 10371

The following provisions shall apply to all consulting services contracts:
(a) Each state agency shall, regardless of the fiscal amount involved, use available private resource only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.
(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars ($12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars ($12,500) approved by the department.
(c) Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars ($5,000) or more, prepare a detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.
(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For purposes of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

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Government Code section 19130

The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

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(b) Personal services contracting also shall be permissible when **any of the following conditions can be met:**

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(3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

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(5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

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(10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

(Emphasis added)

Government Code section 19131

Any state agency proposing to execute a contract pursuant to subdivision (a) of Section 19130 shall notify the State Personnel Board of its intention. All organizations that represent state employees who perform the type of work to be contracted, and any person or organization which has filed with the board a request for notice, shall be contacted immediately by the State Personnel Board upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract. Departments or agencies submitting proposed contracts shall retain and provide all data and other information relevant to the contracts and necessary for a specific application of the standards set forth in subdivision (a) of Section 19130. Any employee organization may request, within 10 days notification, the State Personnel Board to review any contract proposed or executed pursuant to subdivision (a) of Section 19130. The review shall be conducted in accordance with subdivision (b) of Section 10337 of the Public Contract Code. Upon such a request, the State Personnel Board shall review the contract for compliance with the standards specified in subdivision (a) of Section 19130. (Emphasis added.)

AUTHORITY PERTAINING TO PROHIBITIONS AGAINST CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES INCLUDING THOSE EXEMPT FROM CIVIL SERVICE

Public Contract Code section 10410

The Public Contract Code (PCC) mandates that "no officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods."

Public Contract Code section 10411

The PCC also requires an employee to wait a period of twelve months before he or she contracts with his or her prior employer. Specifically, PCC 10411 forbids a former state employee, for a "period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person employed under state civil service or otherwise appointed to serve in state government may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation."

State Contracting Manual, Ch. 7.10

A. *Current State Employees* (PCC § 10410)

1. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency unless the employment, activity, or enterprise is required as a condition of regular state employment.

2. No officer or employee shall contract on that person's own behalf as an independent contractor with any state agency to provide goods or services.

B. *Former State Employees* (PCC § 10411)

1. For the two-year period from the date of leaving state employment, no former state officer or employee may enter into a contract in which that person was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2. For the twelve-month period from the date of leaving state employment, no former state officer or employee may enter into a contract with any state agency if that person was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to that person leaving state service. This does not apply to contracts with former employees as an expert witness, or continuation of attorney services the former employee was involved with prior to leaving state service.